

Analysis of the impact of proposals to reduce legal costs in Ireland

The Bar of Ireland | Law Society of Ireland

Reliance Restricted

09 May 2022 | Final Report

The EY logo consists of the letters 'EY' in a bold, white, sans-serif font. A yellow diagonal line is positioned above the 'Y'.

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Analysis of the impact of proposals to reduce legal costs in Ireland

09 May 2022

Dear Ciara and Mark,

In accordance with the terms of our contract, we have assisted you in the provision of an assessment of the impact on the private consumer of:

1. Any proposed introduction of a table of maximum legal cost levels, and
2. Any proposed introduction of non-binding guidelines for legal cost levels

Limitations of Scope

We have not, except to such extent as you requested and we agreed in writing, sought to verify the accuracy of any data, information and explanations provided by yourselves, and you are solely responsible for this data, information and explanations. We have therefore relied on any information provided by you to be accurate and complete in all material respects.

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We appreciate the opportunity to have provided EY's services to The Bar of Ireland and the Law Society of Ireland. Should you have any queries or comments regarding this report or if we may be of any further assistance, please do not hesitate to contact me on +353 1 221 2611.

Yours sincerely

Simon MacAllister
Partner

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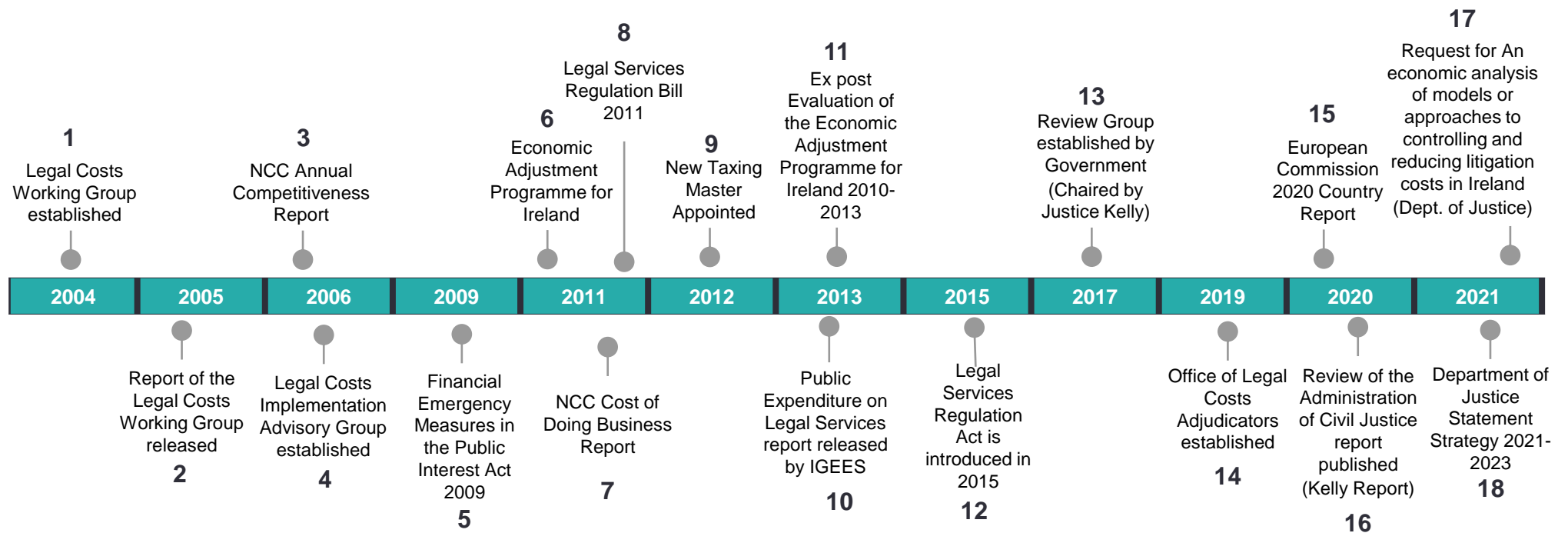
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Executive summary

Legal costs in Ireland have been the subject of several State sponsored reports over almost two decades

Legal costs in Ireland have been the subject of many discussions over the past almost twenty years, whether relating to competitiveness, equality and/or justice issues. Anecdotally, Ireland is considered to be a “high-cost jurisdiction” for legal services in comparison with many EU counterparts. The timeline below summarises the key reports and milestones on the topic of legal costs since 2004.



The international benchmarking reflects differences in legal costs throughout the eight jurisdictions examined

The jurisdictions considered as part of this review include Ireland, England and Wales, Scotland, Germany, the Netherlands, New York, Australia, and New Zealand. The international benchmarking exercise examined the legislative or procedural mechanisms which exist to determine the extent of litigation costs recoverable by the winning party from the losing party. The key findings from this exercise are summarised below.

1

Legislative or procedural mechanisms for recovering litigation costs are a feature of most jurisdictions

This is especially the case in civil law countries, such as Germany and the Netherlands. However, where non-binding guidelines exist for recoverable costs, the costs can be enhanced or reduced so that they are deemed fair and reasonable; all have flexibility to reflect the complexity, duration or nature of any particular case.

Irrespective of the mechanism for recovering costs, the actual amount awarded to the winning party may not equal the amount paid by the party to their lawyers and other experts.

2

Civil law procedures use one court-appointed expert, rather than each party hiring its own, and are paid by the courts from court fees

The court expert is selected from a panel and paid a standard rate. While this may lower the direct cost to the parties in bringing litigation, expert fees remain recoverable from the losing party but total costs are lower.

In common law jurisdictions, the parties separately engage their own expert witnesses which adds to overall costs.

3

In civil law jurisdictions where legal costs are lower, administrative costs in the form of court fees tend to be higher

The levying of court fees or filing fees is dependent upon whether the court levies a set fee for the entire case, which is common in civil law countries, or per action which is more common in common law countries where there may be more regular pre-hearing applications.

It is notable that in civil law countries there are a greater number of judges per head of population, and the overall cost of the judicial system is higher than in common law jurisdictions.

4

The threshold for the small claims procedure is much higher in a number of jurisdictions than in Ireland

In some countries, such as Australia and New Zealand, the small claims procedure has jurisdiction for cases which, had they been heard in Ireland, could be at Circuit Court level.

A simple process, completed online or by filling out straight forward forms, reduces costs. It also reduces the number of cases which go to full litigation, and hence, reduces delays in court times. However, it would require significant management and investment by the State.

Analysis of ILCA case data found median awards and professional fees have reduced since 2011-2013 despite an increase in median case duration

The following findings emerged from the analysis of case data received from the Institute of Legal Cost Accountants (ILCA):

- Based on a sample of 184 Personal Injuries and Medical Negligence cases,* the median award decreased by 12% between 2011-2013 and 2017-2019. This is contrary to the popular perception that awards have increased significantly.
- Along with decreases in overall award levels, the typical number of days at trial also decreased over the 2011-2013 to 2017-2019 time period by 31%.
- Over the same period, the median case duration increased by 29%.
- While the number of motions is often cited as one element which adds to the workload of legal professionals, the average number of motions completed across all cases remained relatively stable, with a marginal 5% decrease from 2011-2013 to 2017-2019.
- Total professional legal fees (i.e., the fees associated with solicitors, junior counsel, and senior counsel) across all cases decreased by 10% between 2011-2013 and 2017-2019. This trend contradicts the general narrative that litigation costs in Ireland have been rising steadily.
- In contrast to the trend in median professional fees, other outlays and taxes, which refers to court duties, adjudication and commissioners fees, increased by 19% over the same time period. Court fees for a summons to the High Court, for example, have increased from €125 in 2011 to their current level of €150-€400 in 2021 (depending on the nature of proceedings and the value of the liquidated claim), representing an increase in the range of 20%-220%.
- Average expert witness fees have declined (-5%), while the average VAT paid has increased (+2%) between 2011-2013 to 2017-2019.



Almost one-third of the bill of costs is returned as State revenue, either through court duty (currently 8.5%) or VAT (23%) on professional fees

Figure 1: Full ILCA dataset 2011-2019

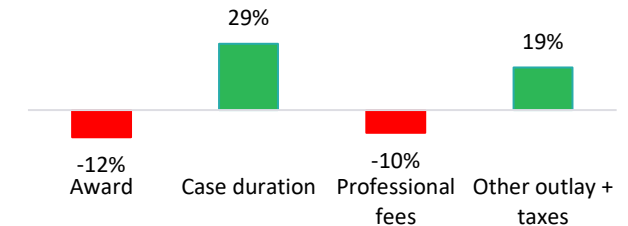


Figure 2: Breakdown of professional fees 2011-2019

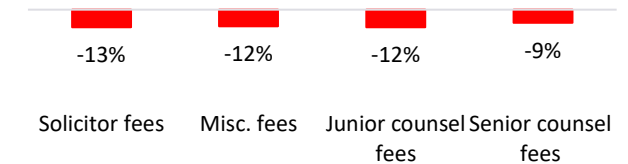


Figure 3: PI and Med Neg cases 2011-2019

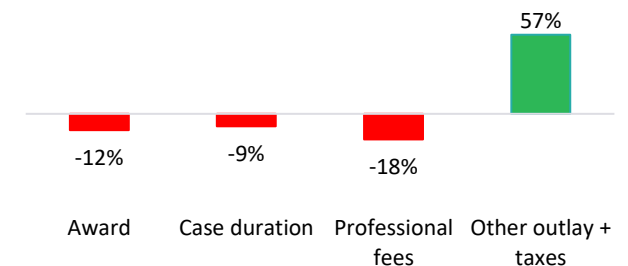
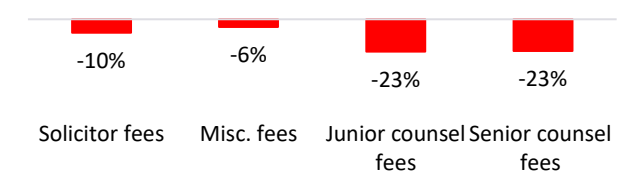


Figure 4: Professional fees (PI and Med Neg) 2011-2019



* Total cases in this instance do not include 72 judicial review cases (given there are no awards).

Assessment of the two proposed models would suggest that non-binding guidelines are more favourable than a table of maximum costs

We assess the two proposed models for reducing litigation costs against a set of the most relevant objectives or criteria which would be considered important in the framing on any new proposed legal cost model aimed at improving access to justice for the private consumer. The preferred model under each of the ten criteria is then selected. A summary table is provided below.

Table 1: Summary of the assessment of the two proposed models

Objective/criterion	Preferred model
Provides fair and equal access to justice	Non-binding guidelines
Provides transparency, clarity and predictability	Table of maximum costs
Allows for the length and complexity of a case	Non-binding guidelines
Positively impacts quality of service provision	Non-binding guidelines
Complements the current adjudication process	Non-binding guidelines
Encourages early settlement	Currently the case
Promotes greater efficiency in the way litigation is conducted	Table of maximum costs
Requires minimal legislative intervention	Non-binding guidelines
Takes into account general economic conditions	Non-binding guidelines
Safeguards competitiveness	Both proposals

Non-binding guidelines rank higher in regard to the provision of fair and equal access to justice and flexibility to recognise the length and complexity of a case.

Non-binding guidelines would also likely deliver a better quality of service, and would require minimal legislative intervention vis-à-vis a maximum table of costs.

Under either proposed model, it would be necessary to have the charges reviewed regularly; guidelines may be quicker to respond to changes in the economic cycle.

What did the Kelly Review Report say about the two proposed models?

Apart from limited information in the Kelly Report, there is no detail available on what the two approaches to controlling litigation costs would comprise or how they might work. On first consideration, the differences would appear to be very nuanced and complex. For example, the fee levels which would exist under each model are unknown, but it is assumed that fees would be competitive, although the State's view and the practitioner's view on what is a competitive rate may differ.

It is evident from the review of both models in the Kelly Review Group report on the Administration of Civil Justice that there are more advantages and less disadvantages to implementing non-binding guidelines as opposed to a table of maximum costs:

- The majority of the Review Group recommended the introduction of non-binding guidelines by reference to individual steps and items that could be referenced in a table. Non-binding guidelines were preferred for a variety of reasons, including greater transparency and more certainty in the adjudication process and greater flexibility to reflect the exceptional circumstances which can arise in a particular case.
- A minority favoured a maximum table of costs on the basis that it would reduce the scope for disputes about the level of legal costs, although it was considered such a table could stifle competition and lead to inequalities in the access to justice for less well resourced litigants.
- A maximum table might also push up the costs of litigation by becoming the standard charges.
- A table of maximum costs was also rejected because it was considered too early to assess the efficiency of the new adjudication system introduced by the Legal Services Regulation Act 2015.

The experience based on worked example of two scenarios provided in the District Court, where scales exist, shows how, depending on the solicitor's hours, a case may not be economical. The point is that the amount recoverable is irrelevant to the work undertaken, which is independent of the value.

We can draw a number of key conclusions from our analysis

Evidence base

- The assertion Ireland is a high legal costs jurisdiction is not strongly supported by evidence.
- The only evidential assessment of legal costs was undertaken in the Haran Report, which is now almost 20 years old.

Determining overall costs

- The overall cost incurred in a civil action in any jurisdiction will be determined by a matrix of issues, including resourcing of the judicial system; the nature of the litigation process; the level of legal fees incurred and any recoverable legal fees from the losing party; administrative costs imposed by the courts; and liability for the payment of expert evidence.

The preferred model

- Analysis of the two proposed models against a set of 10 desired outcomes would suggest that either model could have consequences for the private consumer in accessing justice; however non-binding guidelines outweigh a table of maximum costs by recognising the quality of service and the complexity of the work involved.

Reliability of data

- The World Bank have noted concerns they have with the data and integrity of the World Bank “Doing Business” reports. These were cited by both the NCC Annual Competitiveness reports and other documents, including the Kelly Report.
- The reliance that can be placed on these is consequently reduced.

Assessment of case data

- Assessment of 256 litigation cases suggests a decrease in median professional fees, ranging from 9% to 13%, despite an increase in median case duration (+29%) and other outlays (plus taxes) of 19%, between 2011-2013 and 2017-2019.

Desired outcomes

- Our analysis suggests any system of costs should be fair, and recognise the quality of service and the complexity of the work involved.
- The current system of adjudication on costs should be allowed to bed down fully.

Funding the legal system

- Evidence from the international benchmarking exercise shows care should be taken when attempting to rank countries by the direct cost of litigation, without considering the costs to the exchequer of funding the legal system.
- The most relevant benchmark is the total system cost of administering the justice system, e.g. Ireland would need to spend c.€85m to be on par with England and Wales, Ireland’s closest competitor.

Professional fee trends

- The breakdown of professional fees in Personal Injury and Medical Negligence cases indicates a decrease over the period 2011-2013 to 2017-2019, ranging from 10% to 23%.

Complexity of the issue

- The lack of consensus on the proposed model for reducing costs illustrates the complexity of the issue and suggests a ‘one size fits all’ policy intervention is challenging. Without a strong evidential basis and without giving due consideration to the investment required to improve the operation of the justice system, unintended restrictions on access to justice could result.

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Introduction

This report examines the impact of two alternative litigation cost models from the perspective of the private consumer

Introduction and Background

Legal costs in Ireland have been the subject of many discussions over the past almost twenty years. To understand the context for this research, it is important to examine the history of the debate. The subject of legal costs has emerged in discussions about the competitiveness of the Irish economy and restrictive competitive practices in professional services, as well as in debates about equality and access to justice issues.

Anecdotally, Ireland is considered to be a “high-cost jurisdiction” for legal services in comparison with many of its EU counterparts. Much of the research to date has focused on the reform of legal costs in Ireland with a view to lowering the cost of legal services for the consumer and improving access to justice. A person’s constitutional rights of access to the courts and to a fair hearing are fundamental in any democratic society. Equally important is that there should be greater visibility and transparency for consumers in terms of the cost of litigation, which can include a range of different charges, in addition to the charges for professional services.

High legal costs have been highlighted as a barrier to access to justice. Although a range of assertions have been made in a number of state sponsored reports over two decades about the high cost of litigation in Ireland, the evidential basis for such claims is limited and dated.

The debate culminated in October 2020 with publication of the Review of the Administration of Civil Justice Review Group Report, chaired by Mr. Justice Peter Kelly.* The Review Group, established in December 2017, was requested to report to the Minister for Justice and make recommendations to review and reform the administration of civil justice in the State. One of a number of areas to be addressed in the group’s terms of reference was to make recommendations for reducing the cost of litigation with a view to creating a more responsive and proportionate system and ensuring better outcomes for court users.

The Kelly Report is an extremely comprehensive (474 pages) report which makes a number of recommendations on a range of aspects to improve the justice system. Specifically on litigation costs, Chapter 9 examines various options as to how the level of litigation costs might be reduced. However, the Group was unable to reach a consensus regarding which option to recommend.

* [Kelly Review Group Report, October 2020](#)

** [Justice Plan 2021](#)

A majority of the Review Group’s members recommended the drawing up of non-binding guidelines for costs levels, while a minority of the Group’s members presented a minority report which recommended a table of maximum cost levels be prescribed by a new Litigation Cost Committee, which could be departed from in certain circumstances.

Although there was no consensus reached by the Kelly Review Group, a subsequent Department of Justice Plan 2021** included an action on page 22 to

“Commence work to introduce new scales of legal costs which would be independently drawn up, in order to reduce legal costs and to provide greater certainty to the users of legal services in relation to cost, and

Complete a detailed examination of the recommendations contained within the Kelly Report on legal costs. As part of this work, we will carry out a detailed economic and legal evaluation, which will include examining making such scales binding, except where both parties agree to opt out.”

The Department of Justice subsequently issued a Request for Tender in April 2021 for an economic analysis of models or approaches to controlling and reducing litigation costs in Ireland. EY understands that this study commenced in November 2021.

The Bar of Ireland and the Law Society of Ireland believe that any review of litigation costs must take a number of factors into account: access to justice for all including an effective legal aid system, investment in the justice system, the complexity of individual cases and the extent of legislative intervention required. Accordingly both The Bar of Ireland and the Law Society have commissioned this research from EY, to consider these issues and analyse the impact of:

- The introduction of a table of maximum legal cost levels, and
- The introduction of non-binding guidelines for legal cost levels

with a strong emphasis on the private consumer perspective and how either might positively or negatively impact the ability of the private consumer to access justice.

The Kelly Report lacks details on how the two approaches to reducing litigation costs would work in practice

With the exception of limited information in the Kelly Report, there is no detail available on what the two approaches to controlling litigation costs would comprise or how they might work. On first consideration, the differences would appear to be very nuanced and complex. Thus in the absence of anyone having worked out the nuances of these two mechanisms, the following assumptions are made with regard to how each system would operate for the purposes of this research.

1. A table of non-binding guidelines (the majority view in the Kelly Report)

- Guidelines for individual items which would be determined by Legal Costs Adjudicators or the Legal Services Regulatory Authority, with input from the former
- The guidelines would be guidelines only or reference points for costs, and would be non-binding
- Where the costs allowed under the guidelines do not reasonably remunerate legal practitioners for the complexity of the work and time incurred, they would be allowed to make their case to the Legal Costs Adjudicator, as is currently the case under the Legal Services Regulation Act 2015.

2. A table of binding maximum costs (the minority view in the Kelly Report)

- The maximum Table of Costs would include a scale of fixed fees or maximum levels of litigation costs chargeable for the various steps or items within proceedings, or categories of proceedings; the amount of the costs allowable for each step or item would be subject to variation by reference to factors such as value of claim or degree of complexity, and the grades of practitioner, or staff, based on experience, seniority or function
- The charges fixed in the table would not preclude a practitioner, when negotiating charges with the client, from offering legal services at a lesser amount or rate
- The maximum Table of Costs would be prescribed by an independent Litigation Costs Committee, established under legislation
- Application of the Table of Costs would only be dispensed with by a court, when making an award of costs, and a Legal Costs Adjudicator may only disregard it, where the court is satisfied that exceptional grounds arising in the case concerned justify the dispensation, and where the court has set out those specific grounds in its written order.

Further considerations arise, notably:

- Who would set the non-binding guidelines or maximum costs under either option? Would these be set by a Committee and who would be the members?
- How would either option ensure a fair system for access to justice for the private consumer?
- Were there likely to be unintended consequences for smaller legal practitioners versus their larger, better resourced counterparts, in a scenario where, for example, a scales based system will provide a huge advantage to larger firms with many trainees and paralegals working on one file versus a sole practitioner?
- How does either proposal sit within EU Law? Legal opinion obtained concluded that the imposition of a maximum fee scale may well have anti-competitive effects and in the absence of any evidence of proportionately or necessity, it is likely to contravene Article 15(3) of the Services Directive 2006/123.*

Report structure

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The remainder of this report is set out as follows:

- Section 3 provides the context to the assertion that Ireland is considered to be a “high-cost jurisdiction” for legal services and provides the history of state sponsored research on the topic over almost twenty years.
- Section 4 provides the International Benchmarking of a total of eight jurisdictions, including Ireland, to understand why headline legal costs in other countries may be higher or lower than in Ireland. This benchmarking exercise focuses on four main issues which have an impact on the costs incurred by a party to bring or defend civil litigation in any jurisdiction.
- Section 5 sets out the assessment of legal costs based on data for a sample of cases across all the courts of Ireland, including the Supreme Court, the Court of Appeal, the High Court, and the Circuit Court, with the exception of the District Court which already has a scale in operation.
- Section 6 assesses the impact of both proposals from the perspective of the private consumer and on the ability of private consumers to access justice.

“

The ability to defend and vindicate private rights is a cornerstone of a civilised society. It is central both to the promotion of the welfare of citizens as well as to the economic development of the State.”

2005 Report of the Legal Costs Working Group (Haran Report)

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A history of legal costs

Research to date has focused on the reform of legal costs in Ireland with a view to lowering the cost of legal services

Legal costs in Ireland have been the subject of many discussions over almost twenty years. The subject of legal costs has emerged in discussions about the competitiveness of the Irish economy and restrictive competitive practices in professional services, as well as in debates about equality and access to justice issues. Ireland has long been described as a high-cost economy and a relatively expensive location in which to do business. Strong economic growth has resulted in a series of upward cost pressures during the 2000-2007 boom period and more recently with the resumption of economic growth in 2014, post the 2008 global financial crash. Increases in the prices of property, business services and energy mean all businesses, not just the legal profession, can face unavoidable operational costs when doing business.

Much of the research to date has focused on the reform of legal costs in Ireland with a view to lowering the cost of legal services for the consumer and improving access to justice. A person's constitutional rights of access to the courts and to a fair hearing are fundamental in any democratic society. Indeed the availability of legal aid to those who cannot afford legal representation is an essential element in the administration of the justice system. Access to the Courts must be available to all, independent of their means, and a cornerstone of the Irish justice system is based on the principle of equality-of-arms.

Equally important is that there should be greater visibility and transparency for consumers in terms of the cost of litigation, which can include a range of different charges, in addition to the charges for professional services.

High legal costs have been highlighted as a barrier to access to justice. Although a range of assertions have been made in a number of state-sponsored reports about high legal costs in Ireland, the evidential basis for such claims is limited.

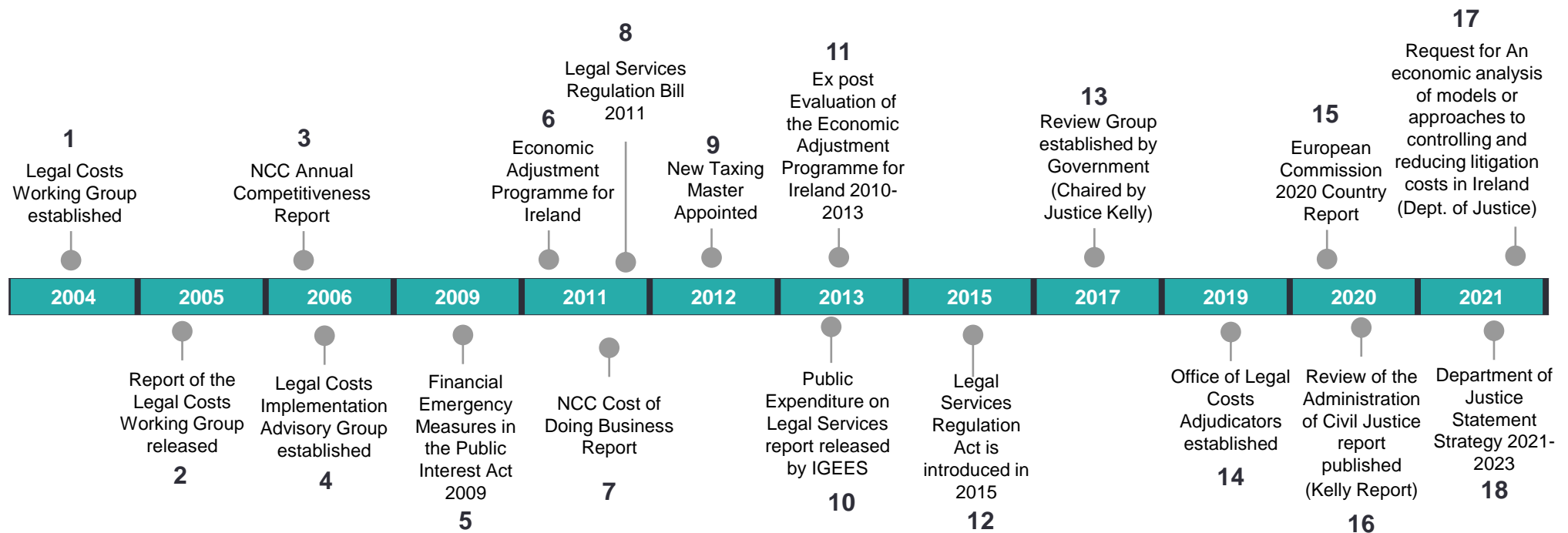
This section provides the context for the assertion that Ireland is considered to be a "high-cost jurisdiction" for legal services and provides the history of state sponsored research on the topic over almost twenty years.

“Empowering the litigant to have a better understanding of what is involved in civil litigation and the decision processes of a case, and to be actively involved in this regards – particularly with regard to cost – is an essential factor in ensuring the effective control of legal costs.”

2005 Report of the Legal Costs Working Group (Haran Report)

Legal costs in Ireland have been the subject of several reports over almost two decades

The level of legal costs in Ireland have been the subject of many discussions over the past twenty years, whether relating to competitiveness, equality and/or justice issues. Anecdotally, Ireland is considered to be a “high-cost jurisdiction” for legal services in comparison with many of our EU counterparts. The timeline below reflects the level of research, consultation, debate and the key milestones the topic has garnered to date.



Any policy intervention by the State must be grounded on a solid evidential basis. It is therefore instructive to examine the history of the debate and available reports in order to assess the evidential basis of the assertion that Ireland is a high legal cost jurisdiction. Over the next pages, we will review these in greater detail to understand the origin of the high-cost jurisdiction assertion, to establish the level of support and rationale for such a conclusion.

The evidential basis for Irish legal costs is limited and dated, and anecdotal in the majority of cases (1/2)

Table 2: State sponsored reports reviewing legal costs

Year	Publication	Assertion	Evidential basis for assertion	EY observations on their evidence
2005	Report of the Legal Costs Working Group (Haran Report)	Much of the controversy around Solicitors Instruction Fees is due to them being subjective and less transparent. However, it is noted that the report rejected the introduction of a table of maximum costs.	Data gathered from the Taxing Master for 1984 to 2003 and the State Claims Agency (1998-2004). Solicitors fees in the High Court increased by 4.2% in real terms each year (1984-2003); corresponding increase for Senior Counsel fees in the High Court was 3.3% (1984-2003).	The Haran Report commissioned research on legal costs and based their evidence on data gathered from the Taxing Master for 1984 to 2003, the State Claims Agency (1998-2004) and four Circuit Courts. The report was critical of the link between the fee and the level of award, and rejected the introduction of a table of maximum costs.
2006	NCC Competitiveness Report	Between 2000 and 2006, Ireland experienced a significant loss of international price competitiveness, caused by a combination of higher price inflation in Ireland and an appreciation of the euro. Compared to 8 other locations, Ireland has the highest cost for legal services.	Data from the 2006 Cost of Doing Business report quoted, where legal fees per hour in Dublin were the highest of the locations surveyed.	The locations surveyed included locations of relevant to other professional costs, such as IT. As a result, it includes locations such as India and Hungary which are economies with fundamental differences to Ireland and have a relative cost base/cost of living that is significantly different. We also note only 3 of the locations used were common law jurisdictions.
2006	IAG recommendation s report	Implementing change in the Irish legal system is both complex and contentious. Issues of costs and efficiency of the litigation process have become a matter of public interest.	This report references the Report of the Legal Costs Working Group. The IAG received a number of submissions and consulted with interested stakeholders.	There is limited evidence as the IAG was tasked with identifying suitable structures and processes to implement the recommendations of the Haran Report. On costs, the main recommendation was the establishment of a legal costs regulatory body, which would will be responsible for formulating and updating recoverable costs guidelines, regulating the procedure for the assessment of costs, and providing information to the public on legal costs.
2011	The Economic Adjustment Programme for Ireland	Particularly high price levels in sheltered professional service sectors, such as the legal sector, which are impervious to the economic situation.	No metric of high costs provided; report calls for structural reforms to remove restrictions to trade in sheltered domestic sectors.	The report reiterates the recommendations of the Haran Report (i.e., the establishment of an independent regulator) and the Competition Authority's recommendations to reduce legal costs.
2011	NCC Cost of Doing Business	Legal fees have remained relatively expensive compared to other jurisdictions.	SPPI* Q4 2010 data on legal services indicates that prices increased 12% since 2006 (this survey does not include data on prices for barrister services).	The SPPI is published by the CSO and measures changes in the average prices charged for a range of services supplied to business and government. The specific index quoted relates to solicitors only and surveys a small sample size. Therefore caution should be exercised in basing a conclusion off the data.

* The services producer price index (SPPI) is an indicator which measures the change in the trading price of a service, e.g. legal services, and is produced by the CSO and Eurostat.

The evidential basis for Irish legal costs is limited and dated, and anecdotal in the majority of cases (2/2)

Table 2: State sponsored reports reviewing legal costs (cont'd)

Year	Publication	Assertion	Evidential basis for assertion	EY's observations on their evidence
2013	Public Expenditure on Legal Services (IGEES)	Public expenditure on legal services is a significant draw on the Exchequer. However, there was a reduction in total expenditure in 2012 on the peak level, partially due to reduction in fees paid to legal counsel.	Gross Expenditure by Central Legal Offices 2005-2012. This report notes the complexities associated with establishing legal expenditure by State bodies due to the level of variability involved and the fact that expenditure on the specific items which make up legal costs are not generally recorded separately.	Report acknowledges the complexities with finding data on the subject.
2013	Ex post Evaluation of the Economic Adjustment Programme for Ireland 2010-2013 (published July 2015)	Lack of progress in bringing down high Irish legal costs. Reforms to increase competition in legal services continue to experience excessive delays.	The only evidence that legal costs remain high is provided in a footnote (page 87) which references the World Bank's Doing Business 2014 indicator for the cost of enforcing contracts, which represented 26.9% of the claim value. Lawyer's fees were quoted as representing the majority of these costs, at 18.8%.	The report quotes previous evidence from the World Bank 2014 Doing Business Survey, which is also from the NCC Cost of Doing Business Report for Ireland 2014, albeit the evaluation period relates to 2010-2013.
2020	Review of the Administration of Civil Justice (Kelly Report)	Ireland ranks among the highest-cost jurisdictions internationally for civil litigation	High litigation costs based on surveys (World Bank Doing Business Survey 2020, US Chamber of Commerce Institute for Legal Reform – International Comparisons of Litigation Costs, 2014)	It is noteworthy, following the comprehensive Kelly Review which reviewed caseload data and consulted widely (over 90 submissions from a range of stakeholders) that the Review Group was unable to reach a consensus regarding recommendations on how to reduce litigation costs
2020	European Commission Country Report	Despite introduction of the Legal Services Regulation Act 2015, restrictions in the provision of legal service remain in place, resulting in increased legal costs. Significant growth of legal costs in personal injury cases driving up insurance premiums.	No metric of high costs provided	The European Commission's 2020 assessment is to do with progress on structural reforms in the economy; hence it notes a lack of a firm implementation schedule for reforms in the legal services sector, based on previous findings from the Cost of Doing Business Reports, the NCC and the Competition Authority.
2021	DoJ - An economic analysis of models or approaches to controlling and reducing litigation costs in Ireland	To be determined – work in progress	To be determined – work in progress	

The legal costs debate in Ireland has been on-going since 2004 and examined by a number of different bodies

The following pages provide more detailed context around the reports summarised on the prior 2 pages, which, as noted, have relied in some instances on anecdotal claims about legal costs. It must be noted that for many of the reports, we were unable to obtain the methodology behind the data collection/analysis referred to in the reports.

1. The then Minister for Justice, Equality and Law Reform, Mr Michael McDowell, TD, established the **Legal Costs Working Group** in 2004, in order to investigate the way in which legal costs were determined and assessed and to make recommendations which would lead to a reduction in the costs associated with civil litigation.
2. This Group, chaired by Paul Haran, released the **Report of the Legal Costs Working Group¹** in 2005. The report highlighted the “high and unpredictable nature of costs” involved in litigation, stating that solicitors’ “instructions fees account for much of the controversy and challenges surrounding bills of costs”. These fees were considered to be less transparent and subjective compared to items with prescribed fees. The report concluded that there is a “very large variation in fees charges even for the same class of case.”

The report explored the feasibility of introducing fixed scales of legal fees, stating that the advantages of this proposal would be limiting recoverable costs to specified amounts. However, a number of disadvantages were also identified. The Group concluded that it did not recommend the introduction of a table of maximum legal costs levels on the basis that fixed scales do not take into consideration the complexity of work involved, i.e., the work involved in cases that are similar at the face of it but may be vastly different. In addition to this, the report stated that fixed scales of legal costs may lead to lawyers restricting their level of input and effort to a level they believe is consistent with the fee available. The research also found that the level of award was the main factor in determining legal fees in personal injury cases, but stated that it should not be “the primary factor in determining the level of the fee.”

3. The **National Competitive Council** (NCC) has consistently highlighted the issue of legal fees as a negative factor impacting competitiveness in Ireland since the early 2000s. One of the NCC’s earlier publications in 2006² stated that Ireland experienced a significant loss of international price competitiveness between 2000 and 2006. The report also stated that price levels, particularly in locally traded services such as legal fees, were rising at a faster rate than most other EU countries, making it a particular area of concern in weakening Ireland’s competitiveness. This view is based on a survey of legal fees per hour across 12 locations which led to Ireland being ranked the most expensive of the group. The most recent NCC publication³ (September 2021) makes several recommendations aimed at securing what is described as “a sustainable and inclusive” economic recovery, one of which is to “assess the feasibility of lowering legal costs, from the introduction of a scale of legal costs, by publishing an assessment of this option”. The NCC further states that many of these recommendations have not received the urgent attention that they require to support competitiveness and productivity in Ireland.

“

The ability to defend and vindicate private rights is a cornerstone of a civilised society. It is central both to the promotion of the welfare of citizens as well as to the economic development of the State.”

Report of the Legal Costs Working Group

“

The IAG accepts that there is a wide range of litigation and it would neither be desirable nor feasible to put in place guidelines of a type which would provide a simple, mathematical model designed to pre-determine the legal costs recoverable in every type of case.”

Report of the Legal Costs Implementation Advisory Group

Recommendations from the respective 2005 and 2006 Legal Costs reviews led to publication of the Legal Services Regulation Bill in 2011

4. Following the recommendations of the Report of the Legal Costs Working Group (Nov 2005), the **Legal Costs Implementation Advisory Group**⁴ (IAG) was established in 2006 to identify suitable structures and processes to implement the recommendations in addressing the “inefficiencies in the litigation process”. The IAG made a number of recommendations (Nov 2006) including:
 - The assessment of costs in a case must involve an examination of the actual work done in the case
 - The establishment of the legal costs regulatory body should be tasked with the drawing up of the appropriate guidelines governing the items of legal costs recoverable
 - A legal cost assessment office to be established to take over the functions of the existing taxation of costs system
 - The factors causing delay in the allocation of hearings and in disposal of litigation should be the subject of examination and remedial action
5. It is worth noting that as part of the **Financial Emergency Measures in the Public Interest Act, 2009**,⁵ the Government of the day imposed an 8% reduction in all professional fees payable by government departments and State agencies in February 2009, given the challenges posed by the broader fiscal conditions at the time. While 8% was the average provided for all professional fees, the State Claims Agency at the time reduced fees paid to barristers by 25%. These reductions applied to legal fees have never been re-instated. It is also important to note that the legal professionals engage by the State do not dictate the fee.
6. The **European Commission** released a report entitled ‘The Economic Adjustment Programme for Ireland’⁶ in February 2011 which commented on Ireland’s high price levels particularly in “sheltered professional service sectors such as the legal and medical professions”. The **Irish Competition Authority** recommended policy measures to be taken to bolster competition in areas where “prices are particularly high and impervious to the economic situation”.
7. Following this, in June 2011, the **National Competitiveness Council** (NCC) released the ‘Cost of Doing Business in Ireland in 2011’⁷ report. Where prices had fallen in other sectors following the crash in 2008, the cost of a range of other business inputs, including legal costs, remained relatively expensive compared to other jurisdictions, with prices for legal services up by 12% since 2006. However, this was based on a small sample size, and did not include fees for barrister services. The report also highlighted data from the **World Bank**, indicating that Ireland was the third highest for enforcing a legal contract, in terms of cost amongst 19 countries. In ensuring transparency in the manner in which legal costs are formed, the NCC recommended that a Legal Costs Assessment Office be established, to replace the Taxing Master’s Office, with a remit to cover costs arising from all courts. It also recommended that costs should be assessed on the work carried out.

“

The ability of many professions examined herein to conduct business is partially determined by developments in other professional services. For instance, the high cost of professional indemnity insurance for solicitors has been cited as a major issue for many legal firms.”

National Competitiveness Council

Reform and regulatory measures were implemented through the Legal Services Regulation Act, 2015 and the establishment of the Office of the Legal Costs Adjudicator in 2019

8. Building on the recommendations of the Legal Costs Working Group and the Competition Authority, the **Legal Services Regulation Bill**⁸ was published in late 2011 with the aim to implement key structural reforms to promote competition and transparency in the organisation and provision of legal services in the state and in relation to legal costs.
9. In January 2012, then Minister for Justice Alan Shatter appointed solicitor Rowena Mulcahy to the post of **Taxing Master**, following the retirement of James Flynn in December 2011. The Taxing Master provided an independent adjudication of legal costs and was responsible for achieving a balance between the legal costs involved and the services provided.
10. The **Irish Government Economic and Evaluation Service** (IGEES) released the Public Expenditure on Legal Services report⁹ in 2013 to highlight the significant draw of expenditure on legal services on exchequer resources, and to set out ways in which expenditure on legal services could be avoided, minimised, and recovered. At the time of writing, the analysis noted a reduction in expenditure on legal fees by the central legal offices in 2012 compared with peak levels in 2007-2009, partially due to the reduction in fees paid to legal counsel. This was considered a positive development in grounding a more systematic approach to the management of legal costs.
11. An ex-post evaluation of the Economic Adjustment Programme for Ireland 2010-2013¹⁰ by the **European Commission** highlighted the lack of progress in respect of bringing down legal costs, citing that initial progress in reforms to increase competition in legal services was followed by excessive legislative delays.
12. The **Legal Services Regulation Act 2015** was introduced to provide for:
 - The regulation of the provision of legal services
 - The establishment of the legal services regulatory authority
 - Reform of the law relating to the charging of costs by legal practitioners and the system of the assessment of costs relating to the provision of legal services.
13. A **Review Group** to examine the Administration of Civil Justice was established by Government in March 2017, chaired by the then President of the High Court, the Hon. Mr. Justice Peter Kelly. The Group was requested to report to the Minister for Justice and make recommendations for changes with a view to improving access to civil justice in the State, promoting early resolution of disputes, reducing the cost of litigation, creating a more responsive and proportionate system and ensuring better outcomes for court users.
14. The **Office of the Legal Costs Adjudicators** (OLCA) was established in October 2019 with the abolition of the Office of the Taxing Master, following the Legal Services Regulation Act 2015. Since the introduction of the new OLCA, a range of legal costs transparency and reform measures have come into operation



Public spending on legal services and on the administration of the legal system is clearly a wide-ranging and complex area. In seeking to deliver enhanced value for money and realise expenditure savings a number of guiding principles are proposed, namely that expenditure should be avoided where possible, minimised where it must occur and recovered where relevant.”

Avoid: “More use can be made of alternative dispute resolution techniques to avoid civil court proceedings”

Minimise: “Small changes and process improvements, repeated daily across the courthouses of the state, offer major potential for savings over the medium-term”

Recover: “The [case] file is properly maintained, meaning adequate recording of all work done on the case. Regard must be given to the amount of time expended on the case by the solicitor, but this is secondary to the amount of work done”

Public Expenditure on Legal Services (IGEES) 2013

* The comment relates to the gross expenditure by the Chief State Solicitors Office (CSSO), Director of Public Prosecutions (DPP) Attorney General (AG).

The Kelly Review Group Report did not reach a consensus on how to reduce litigation costs, with the majority group recommending non-binding guidelines

15. Ireland's progress following the Economic Adjustment Programme, overseen by the "Troika", in implementing structural reforms has been continually under review within the framework for the European Semester. In its 2020 Country Report for Ireland ¹¹ (February 2020), the **European Commission** states that the increase in premiums for insurance policies are driven partially by the significant growth in legal costs in personal injury cases. The Commission's Country Report also stated, quoting the NCC 2019 Competitiveness Challenge report, that the high cost of legal services was threatening the competitiveness of Irish firms, and that restrictions in the market for legal services were barriers to increasing competition.
16. The **Review Group**, established by Government in March 2017, and chaired by the Hon. Mr. Justice Peter Kelly, published its comprehensive Review of the Administration of Civil Justice¹² in October 2020. Although the report highlights that up-to-date, comprehensive data regarding the costs involved in litigation cases are unavailable, it states that it is understood from surveys, reports and experience in individual cases, that Ireland is a high-cost jurisdiction for civil litigation. One area addressed in the Kelly Review and where consensus was not reached, was litigation costs and how a reduction might be achieved. A majority of the review group members recommended the drawing up of non-binding guidelines for costs levels, while a minority in the Review Group recommended a table of maximum costs levels to be prescribed by a new Litigation Costs Committee, with suitable safeguards to deal with exceptional circumstances. Although the majority favoured non-binding guidelines, the minority group, which consisted of four representatives of the State as buyers of legal services *, favoured the drawing up of a binding table of costs. Moreover, despite the issue of litigation costs being discussed at length by the full Review Group and by a subcommittee established for that purpose, it was not possible to reach a consensus. This recognises the complexity of the issue and suggests that perhaps it is impossible to have a 'one size fits all approach'.
17. In April 2021, the **Department of Justice** issued a 'Request for Tender for Research Services - An economic analysis of models or approaches to controlling and reducing litigation costs in Ireland.' In February 2021, the **Department of Justice** published its Statement of Strategy 2021-2023¹³ and accompanying Justice Plan 2021.¹⁴ Both make several references to legal costs and how they are prohibitive and act as a barrier to people to exercising their rights before the courts, though no evidence is provided in either report to support this statement. The recently published Justice Plan 2022 ¹⁵ refers to the research which is currently underway and is expected to be published, subject to legal assessment, in Q4 2022. The research will involve a Cost-Benefit Analysis (CBA) or Multi-Criteria Analysis (MCA) of litigation costs for legal service users – citizens, businesses and the State – with the focus on evaluating the economic impact of measures to control litigation costs, in particular, looking at binding and non-binding controls on contentious costs.

“

...consensus was not achieved on recommendations to reduce litigation costs[...]. The majority proposals in essence recommend the use of non-binding guidelines as to cost levels. The minority recommends prescribing maximum costs level with suitable safeguards to deal with exceptional circumstances.”

Review of the Administration of Civil Justice, October 2020

* The Review Group in total comprised 14 members, including the Chair.

In conclusion, the evidential basis for claims that Ireland is a high legal costs jurisdiction is very limited

Key observations

The above analysis of the various reports published over the past 20 years demonstrates that the evidential basis for claims that Ireland is a high legal cost jurisdiction is very limited. The only evidential assessment of legal costs was undertaken in the Haran Report (2005), which commissioned research on legal costs. This evidence was based on data gathered from the Taxing Master for 1984 – 2003, the State Claims Agency for 1998 – 2004 and four Circuit Courts.

The NCC Cost of Doing Business in Ireland report drew from an extremely narrow survey that omits the fees of one half of the profession. More fundamentally, the validity of the World Bank Doing Business reports for 2018 and 2020 has since been called into question. In a statement from the World Bank on the Doing Business report (issued 16 September 2021) it reported data irregularities: *

“After data irregularities on Doing Business 2018 and 2020 were reported internally in June 2020, World Bank management paused the next Doing Business report and initiated a series of reviews and audits of the report and its methodology.”

After reviewing all the information available to date on Doing Business, including the findings of past reviews, audits, and the report the Bank released today on behalf of the Board of Executive Directors, World Bank Group management has taken the decision to discontinue the Doing Business report.”

Yet the World Bank Doing Business report is cited on eight occasions in the Kelly Report and was noted as a key research document for their analysis. It acknowledged that *“it is understood from surveys, reports and experience in individual cases, that Ireland is a high-cost jurisdiction for civil litigation”* but was not in a position to provide its own assessment of legal costs.

Similarly, the National Competitiveness Council (NCC) reports cited the World Bank cost of doing business reports in several of their reports.

The review of reports over the last 20 years has demonstrated there are considerable questions to be raised on the evidential basis of the assertion that Ireland is a high legal cost jurisdiction.

On the contrary, there is evidence that legal costs have reduced over the last 10 years. The Government’s own report published in 2013 - IGEES Public Expenditure on Legal Services Report - stated:

‘...many Agencies and Offices have already taken steps to deliver better value for money and reduce spending on legal services. Initiatives in this regard include:

- 1. The Financial Emergency Measures in the Public Interest (FEMPI) which imposed reductions on levels of professional fees, including legal fees.*
- 2. The State Claims Agency is reducing fees paid to barristers by 25 percent and is establishing a legal costs unit which will handle third party costs associated with the Mahon and Moriarty Tribunals.*
- 3. A range of Offices have unilaterally sought and achieved reductions in legal fees.’*

These reductions applied to legal fees have never been re-instated.

All stakeholders in the legal services market acknowledge a person’s constitutional rights to access to the courts and to a fair hearing as fundamental in any democratic society. However, a single policy intervention by the State in the form of a ‘one size fits all’ mechanism to control costs of civil litigation in Ireland without having a sound evidential basis to do so and without giving the same weight and consideration to the investment required to improve the operation of the justice system as a whole, will result in severe restrictions on access to justice for ordinary citizens. The unintended consequences of such an intervention are unknown and may well be counterproductive.

[* World Bank statement, September 2021](#)

A large, bold, yellow number '4' is positioned on the left side of the page, partially overlapping the text 'International benchmarking'.

International benchmarking

Our international benchmarking aimed to identify relevant points of difference or commonality

The direct cost incurred by a party bringing or defending a civil action in any jurisdiction will be determined by a matrix of issues, including the level of legal fees incurred and any recoverable legal fees from the losing party, administrative costs imposed by the courts, the nature of the litigation process in each country, and liability for the payment of expert witnesses and expert reports.

To understand why headline legal costs in other countries may be higher or lower than in Ireland, a review was undertaken to examine where direct and indirect legal costs arise in civil litigation in a number of common and civil law jurisdictions.*

This international benchmarking analysis is focused on four main issues which have an impact on the costs incurred by a party in bringing or defending civil litigation in any jurisdiction:

1. Legislative or procedural mechanisms to determine how much of their legal fees the winning party can recover from the losing party, and whether this recoverable amount is determined by a fixed table of legal fees, or non-binding fee guidelines

2. The circumstances where the costs of expert reports are included in the court fees or financed by the parties

3. The calculation of court or administrative fees in cases of different monetary values

4. The overall judicial process, including where procedural disputes are resolved by interlocutory motions or through written pleadings, and the role of the judge in case management

Each issue is addressed separately in the following pages.

Jurisdictions considered as part of the International Benchmarking exercise

- Ireland
- England and Wales
- Scotland
- Germany
- Netherlands
- New York
- Australia
- New Zealand

* Note here that 'civil litigation' refers to Personal Injury, Medical Negligence, Judicial Review, and Chancery cases. It excludes criminal cases, family law cases, etc.

Internationally, tables of maximum costs or non-binding guidelines relate to recoverable fees, rather than fees charged to clients

Legislative or procedural mechanisms to determine the fee recoverable by a winning party, and whether this amount is determined by a fixed table of legal fees, or non-binding fee guidelines

It is a feature of most legal systems that a winning party should be entitled to recover their costs from the losing party. The “loser pays” principle exists to “indemnify” the winning party for the cost and expenses incurred in vindicating or defending their rights. However, it is rare that the winner will be fully indemnified by the losing side.

Where the losing side of a case is ordered to pay the costs of the winning side, in all countries examined in this section, the actual amount awarded may not necessarily equal the amount paid by the party to their lawyers and other experts. This may occur when the winning side is deemed to have incurred costs which were deemed unnecessary or unreasonable given the nature of the case. While the loser pays principle does not aim to punish the loser, it also is not intended to reward the winner for incurring unnecessary costs.

Each country examined in this section have developed mechanisms to resolve the question of how much of the winning side’s costs should be borne by the losing side.

This can result in a situation whereby the lawyer or expert witness charges their client a higher amount than is recoverable from the other side. The short-fall would be borne by the client.

These mechanisms can be briefly summarised:

- The creation of an independent office to adjudicate which costs have been legitimately incurred in vindicating or defending the case, and which are therefore recoverable from the losing side
- A published suite of maximum costs which will be recoverable for each stage and/or task involved in the case (such as a published set fee for each court appearance, preparation of court document or procurement of expert evidence)
- The creation of non-binding guideline costs which would provide the parties with an indication of what fee levels are likely to be recoverable, with the exact amount being determined by factors such as the nature of the case, the time taken or the issues at stake, having regard to the guideline rates

This international benchmarking exercise examines how these mechanisms operate in jurisdictions with differing legal systems, where the role of lawyers, judges and experts vary significantly.

Germany

In Germany, irrespective of the actual fee charged to the client, costs for lawyers can only be reimbursed up to the rates of the Federal Lawyers’ Fees Act (RVG). Any costs beyond this rate may not be recovered. Court fees are also determined by the value of the claim.

Where the amount in dispute is over €10,000, the court fees for first instance proceedings are approximately €798. The statutory legal fees for each lawyer would amount to €1,850. Where higher amounts are in dispute, the court fees may actually be higher than the statutory lawyer’s fees.

The Federal Lawyers’ Fees Act table is updated on a periodic (c. 8-year basis) to reflect prevailing trends in the legal marketplace. This is binding on all parties across Germany and is determined purely on the value of the case. Where a case settles prior to being heard, the same table sets the statutory maximum fee which may be charged by the lawyer as a fixed rate if the case goes to full hearing. Thus, using the Federal Lawyers’ Fees Act, a degree of transparency is available about the total sum which will be recoverable from a losing party. This does not include any additional costs incurred by the court in the appointment of an expert.

Table 3: German Federal Lawyers’ Fees Act scale

Illustrative Claim Value	Own lawyer costs (per lawyer)	Opponent lawyer costs (per lawyer)	Court fees (excluding expert fees)	Total potential risk to the losing side
€2,500	€648.25	€648.25	€357.00	€1,653.50
€10,000	€1,850.45	€1,850.45	€798.00	€4,498.90
€25,000	€2,623.95	€2,623.95	€1,233.00	€6,480.90
€150,000	€5,786.38	€5,786.38	€4,575.00	€16,147.76
€1,000,000	€15,461.08	€15,461.08	€17,643.00	€48,565.16

Source: [Act on the Remuneration of Lawyers](#)

In Germany, because of the table of maximum recoverable fees, lawyers have special obligations to provide information to their clients in certain cases

In order to promote the settling of civil actions, the fee table provides that lawyers may be reimbursed more if settled than if the case goes to trial, with the allocation of costs determined by the parties as part of the settlement.

The sliding scale for determining the maximum legal fee which would be recoverable from the other side begins with small cases valued at €500. For the purposes of calculating the recoverable costs, at the other end of the scale, the value in dispute is capped at €30 million on which sum the first instance lawyer's fees would be capped at €230,000 for each party and court fees at €330,000. In addition to these fees, disbursements for expert witnesses and ordinary witnesses are also recoverable.

In Germany, because of the table of maximum recoverable fees, lawyers have special obligations to provide information to their clients in certain cases:

- If their fees are based on claim value, lawyers are obliged to draw attention to this fact before being instructed to act pursuant to the Federal Lawyers Code
- If an agreement is entered into concerning their remuneration, lawyers must point out that, if costs are awarded, only the statutory fees will be reimbursed
- If lawyers agree with a client that they will be paid a contingency fee, they must draw the client's attention to the fact that the agreement has no effect on any other costs that the client might have to pay
- Before concluding an agreement to represent a client in proceedings at first instance before a labour court, lawyers must draw the client's attention to the fact their costs are not refundable.

In **Germany**, while the direct costs of hiring a lawyer may appear lower than Ireland or other common law countries, parties to litigation must bear additional direct costs of higher court fees. Indirectly, the higher per capita cost of administrating the German legal system must also be taken into account when ranking countries by cost of litigation.

Netherlands

There is no cap in the Netherlands regulating the amount a lawyer may charge their client. In the past, the Bar Association published advisory rates. This practice was abandoned as a result of competition law concerns.** The only requirement for lawyers' rates may be found in the code of conduct of the Bar Association. These specify that the amount a lawyer charges must be "reasonable." Any disputes between the client and the lawyer regarding the definition of "reasonable" allows the client the possibility of requesting the supervisory board of the local Bar Association to review the lawyer's bill.

That said, where a party loses a case and is required by the court to pay the winner's costs, the recoverable lawyer's costs are calculated on the basis of a guideline table of appropriate fees. This guideline table leads to only a small percentage of the lawyer's actual costs being deemed allocatable to the losing party, with the winning client paying the balance.^ In determining how much of the lawyer's fee is returnable, the guideline table works by assigning points to each action which a lawyer has undertaken during litigation; the number of points accumulated in a case is then multiplied by the applicable rate for a case. This rate is dependent on the amount at stake. The exception is proceedings regarding intellectual property where the actual legal fees of the succeeding party must be reimbursed.

The fixed rate is based on the value of the claim and the procedural steps taken for which a writ of summons, statement of claim, or preparation of pleadings would each represent a procedural stage.

In the Netherlands, as with many other civil law jurisdictions, there are fewer pre-hearing matters than in common law countries, and the number of "points" which are likely to be incurred for each type of case is easily quantifiable. Although these rates are not binding, they are in principle followed by the courts. Payment is also made on the basis of this guideline fee scale in the event of settlement.

* DLA PIPER, 'Global Litigation Guide – Country Insight', November 2021

** For a full overview, see Mark. L Tuil, "The Netherlands" (chapter), in Hodges, C et al (eds.) "The costs and Funding of Civil litigation: A comparative perspective" (2010, Hart Publishing)

^ This can vary from only 10% recovery in some complex cases to around 25% to 50% recovery in standard civil actions.

Unlike Germany, also a civil law jurisdiction, the Netherlands have published guidelines but the costs of any court-appointed experts are in addition to the direct costs

Table 4: Guidelines on the recoverable fee per point in the Netherlands

Value of the claim	Fee per point	Max. # of points per case
Below €10,000	€475	Max. 5 per case
€10,000 – €20,000	€563	Max. 6 per case
€20,000 – €40,000	€721	Max. 7 per case
€40,000 – €98,000	€1,114	Max. 10 per case
€98,000 – €195,000	€1,770	No maximum
€195,000 – €390,000	€2,491	No maximum
€390,000 – €1,000,000	€3,214	No maximum
€1,000,000 +	€3,999	No maximum

Source: [Liquidation rate courts and tribunals](#)

In the **Netherlands**, a published guideline of fees provides a degree of transparency about anticipated direct costs to parties in litigation. Further, the civil law legal system within the Netherlands provides additional certainty about the number of steps which will be taken in any case, and the work involved by lawyers to progress each case. It should be further noted that in the Netherlands, as with Germany, a large number of steps within the litigation process are undertaken through the exchange of written submissions with a directing judge rather than contested motions before an open court, further reducing legal time and costs.

In addition, as with Germany, the costs of any court-appointed experts must be paid beyond these direct legal fees, and so too must the significantly higher than average costs of administering the courts system through greater judicial involvement in case management and direction.

Scotland

In Scotland, expenses recoverable in the Scottish system are determined by reference to a statutory Table of Fees. This allows a block fee to be claimed for each element of the legal work undertaken in the case or the charging of a lawyer's time by reference to a fixed rate.

Typically, the Table of Fees allows the successful party to recover up to 60-65% of their actual costs, although in commercial cases it is often less than that. To compensate for this deficit, enhanced costs can be awarded in complex cases via an additional fee procedure.*

New Zealand

In New Zealand, “costs” and “disbursements” are treated separately in determining which expenses should be reimbursed. Costs refers to the expense of hiring a lawyer. Disbursements refers to additional outlays, for example, court filing fees.

In New Zealand, legal costs awarded to the successful party is based on a scale set under the relevant court procedural rules (usually the High Court Rules). This provides for a set amount for each step in the proceedings on one of three bases – (1) simple, (2) standard, or (3) complex. Generally, a party will recover approximately one third of its actual costs.

With respect to recovery of costs, within each basis a New Zealand judge will allocate a scale for the costs to be calculated. The cost scales are listed in Schedules 2 and 3 of the High Court Rules. The first part of the scale is a number category (1, 2, or 3). The number represents the amount of money that can be claimed each day in legal fees. The category which is used depends on the complexity of the proceedings - the criteria for which are set out in Rule 14.3 of the High Court Rules.

The second part of the scale is a letter (A, B, or C) which specifies how much time can be claimed for each task a lawyer undertakes. The category which is used depends on how much time would have been reasonable. Again, the criteria used is set out in Rule 14.5 of the High Court Rules.

Further factors which determine awards of costs include:

- Where each litigant has enjoyed some success in the proceedings, courts may modify the general rule to make costs' orders that reflect the litigants' relative success and failure

In jurisdictions where non-binding guidelines exist for costs recoverable, the costs can be enhanced or reduced so that they are deemed “fair and reasonable”

- Increased costs may be ordered where the party opposing costs has contributed unnecessarily to the time or expense of the proceedings; or the party has refused to accept an offer of settlement that is more than the party ultimately recovered
- Indemnity (actual) costs may be awarded where a party has acted vexatiously, there is a contractual entitlement to indemnity costs, or the person in whose favour the costs order is made was not a party to the proceedings.

Australia

In Australia, Schedule 3 of the Federal Courts Rules 2011 sets out a scale of costs which may be charged for work done and services provided by lawyers in civil litigation. The amount of costs that an unsuccessful party will be ordered to pay is usually limited to the amount set out in the scale.

Where lawyers have charged clients on a time-costing basis, the Schedule itemises standard fees which will apply to each item of work. Where the lawyer has not charged the client on a time-costing basis, a “fair and reasonable amount will be allowed” having regard to:

- a) the complexity of the matter
- b) the difficulty or novelty of the questions involved
- c) the skill, specialised knowledge and responsibility involved
- d) the work actually done by the lawyer
- e) the extent to which the work was reasonably necessary
- f) the period during which the work was done
- g) the time spent on performing the work
- h) the quality of the work
- i) the number and importance of the documents prepared and read, regardless of length
- j) the amount or value of money or property involved
- k) the terms of the costs’ agreement between the lawyer and client
- l) any other relevant matter.

With respect to counsel fees, since 2003 the Federal Court of Australia has periodically issued guidelines for the amounts which may be applied by taxing officers of the court in making estimates or taxing costs under the relevant rules of the court. Updates and adjustments are regularly made for market and cost-of-living changes.

These non-binding guides provide a range of fees for both junior counsel and senior counsel on the following:

- Fee on Brief - including preparation at discretion of taxing officer and appearance on the first day of a hearing or appearance at hearing (daily rate including conference)
- Interlocutory applications - short (up to two hours) and long (over two hours).

Further, the guide provides for an hourly rate in respect of the following work:

- Directions’ hearing
- Preparation time
- Conferences (not occurring on day of hearing)
- Settling applications, statements of claim, affidavits, defence, other documents
- Opinions, advice on evidence
- Written submissions (where not allowed above)
- Attending to receive judgment (where appropriate)
- Not otherwise provided for

Conclusion

While a number of legal systems try to provide certainty to the public about the likely cost of engaging a lawyer to conduct civil litigation, these costs will ultimately be determined by the market rate of a lawyer and the complexity and nature of the case. In countries with a periodically updated matrix of recoverable costs, these too reflect standard rates of lawyers’ fees and tend to be more common in civil law jurisdictions where much of the pre-hearing litigation is in written submissions and where there may be fewer (or no) pre-hearing applications before a judge.

Civil law systems tend to use court appointed experts which are paid by the courts from court fees, which are in turn recouped from the losing side

Expert reports and witnesses

In addition to lawyers' fees, the next most significant outlay for parties to litigation is the cost of expert reports and expert witnesses. In circumstances where the proceedings involve a dispute as to fact, it is a regular feature of common law jurisdictions for each party to hire its own expert who provides their professional views in a written report before the court. Each expert may be subject to cross-examination by the parties and the judge.

In complex cases before courts in **England and Wales**, it is not unusual for each side to instruct their own expert on one or more issues, although the court has the power to order a single expert to be instructed jointly. Experts typically exchange written reports and then seek to agree a joint statement on points on which they agree and disagree. It is common for expert witnesses to be cross-examined separately at trial or, as part of a process called "hot tubbing", they appear simultaneously and answer common questions from both counsel and the judge.

In countries with a civil law tradition, a more active role has customarily been assigned to the judge than in countries with a common law tradition. In civil law courts, the procedure is inquisitorial. Judges lead the questioning of witnesses and have a responsibility to discover the facts. In common law courts, the procedure is adversarial - the lawyers for each side do most of the questioning of witnesses and presentation of the evidence.

As a result, it is a feature of civil law jurisdictions for judges to be appointed on the basis of their professional background and expertise and to sit in specialised courts. In the **Netherlands** and **Germany**, as with other civil law jurisdictions, the process of litigation is directed by a judge (or panel of three judges in more complex cases) who have expertise in the matters under consideration, thereby removing the need for external experts to give evidence. The role of an expert is to independently support and advise the court in matters in which the court does not have sufficient experience or knowledge. Therefore, it is the norm in civil law jurisdictions for experts to be appointed by the court. The court may hear the parties before appointing the expert to propose a suitable expert. If the parties unanimously agree on an expert, the court is bound to this decision.

In **Germany**, the **Netherlands**, and other civil law states, where necessary, an expert has a court-appointed duty to investigate carefully and independently, in order to assist the court with technical matters the judge will need in order to determine a case. A court-appointed expert has the duty to fulfil their appointment impartially and to the best of their professional ability. The expert must allow parties to comment on any draft report and to make requests. The comments and requests have to be included in the report. The report needs to be reasoned and parties to litigation have a duty to co-operate with the investigation of the expert.

In the **Netherlands**, court-appointed experts are taken from the Netherlands Register of Court Experts (NRGD) and paid by the court a statutory hourly rate for their services.

With respect to the payment of experts, in **Germany**, experts called by the court receive a fee based on an hourly rate, that is fixed by law in the Judicial Remuneration and Compensation Act. The costs of an expert engaged by the court to give evidence are paid by the losing party or, if the parties have been only partially successful, both parties must pay their share of the costs on the basis of the relative extent to which they have won and lost. This is paid as part of a legally-binding court fees table.

In addition to the expert procedure, the parties may submit expert opinions commissioned by the parties themselves. However, these opinions are not considered independent expert evidence within the meaning of the legislative framework regarding court-appointed experts, but part of the party's overall submission. These costs must therefore be claimed separately. If the party has engaged an expert to provide advice during litigation, reimbursement depends on the necessity of this in the case in question.

Conclusion

While the civil law tradition removes the need for a duplication of expert evidence, such court-appointed experts are paid by the courts from court fees, which are in turn, levied on the parties to litigation and recouped from the losing side. However, by avoiding the necessity for all parties to engage their own experts, as in common law jurisdictions, the overall cost to the parties is reduced.

Judicial processes, case management, and court fees all have an effect on the overall cost of litigation to the consumer

Calculation of court fees

It is a feature of all systems that fees will be charged by the court to pay for the expenses incurred by the court in hearing the case. These fees will be levied either (a) as a fee for the transaction of the entire case, or (b) at various stages, based on each matter before the court. Therefore, the actual fee charged by the courts will be determined on how often the matter appears before the court for determination.

There are significant differences between judicial systems on pre-hearing matters, and comparisons between jurisdictions is difficult.

Similar to many civil law jurisdictions, **German** civil procedure law does not provide rules on mandatory disclosure of documents by the parties. Each party usually bears the burden of proof for the facts on which the party's claim or defence is based. Each party decides for itself which facts and documents are submitted to the court. No rule obliges a party to disclose all available information that might be relevant to the case. However, the information provided to the court must be true and correct. Therefore, in the German system, no court fees or lawyers' fees will attach to discovery.

In the **Netherlands**, court fees depend on: (i) the claimed amount; and (ii) the capacity of parties. At the district courts, court fees range between €79 (for persons of limited means) and €3,894 (for corporate entities and claims over €100,000). Court fees are higher at courts of appeal, ranging between €314 and €5,213. Bailiff fees vary between €50 and €300.

A fixed charge has to be paid by each claimant as soon as a case is referred to a court and by each defendant who appears before the court. Each court levies a fixed fee for filing a claim, defence statement, or a petition of any other kind than those referred to in Article 14(3) of the Act on Fees for Civil Proceedings.

If the court orders that the losing party must reimburse the court fees of the winning party, these are recoverable on a set rate. There are three levels of court fees:

- €656 for claims which have an indefinite value
- €2,042 for claims up to €100,000
- €4,131 for claims over €100,000

It is clear from the example in the **Netherlands**, that the successful party will not recover all court fees originally charged. It is also notable that the strong tradition of promoting settlement means that court-mandated mediation is a regular feature of civil litigation. The first 2.5 hours of mediation are provided for free, and thereafter a mediator will charge around €150 with the payment of this charge a matter for debate between the parties.

In **England and Wales**, the court fee for a claim of up to £300 is £35 or £25 if filed online. For a claim of between £10,000 and £100,000, the court fee is 5% of the total claim amount and for a claim for in excess of £200,000 it is a flat fee of £10,000. The costs incurred by each party will vary from case to case, depending on factors such as the value and complexity of the case, the duration of the case, and the costs associated with their legal representatives.

In **Scotland**, the level of court fees depends upon the court in which the action is raised. The Court of Session, as the Superior Court, incurs higher fees than the Sheriff Court. Fees are generally payable by each party to the action. The fees are set out in Scottish Statutory Instruments (referred to as a Fee Orders). These are regularly updated by Fee Amendment Orders.

In **Australia**, fees apply for filing most documents, for setting down, for hearing, for mediation, and some services are calculated according to the type of body or person liable to pay them. For most fees, from 1 July 2015 a corporation pays the higher rate of fees; for all other parties, including any individual, small business, unincorporated not-for-profit association, and public authority, they pay the lower rate. In **New Zealand** and the USA, court fees are payable for the filing of documents and for the hearing of each pre-hearing step of the litigation process.

Conclusion

The levying of court fees or filing fees is dependent upon whether the court levies a set fee for the entire case, which is common in civil law countries, or per action which is more common in common law countries where there may be more regular pre-hearing applications. As noted previously, in higher value cases in Germany, it may be the case that the court fees are significantly higher than the lawyers' fees.

Alternatives to litigation elsewhere have proved effective in reducing delays and the number of cases that ultimately end up in court; but these require significant investment

Litigation alternatives and small claims

Many jurisdictions have developed mechanisms to prevent lower-value cases from going through the same litigation process as higher-value cases and thereby reduce the cost of litigation. These tend to be smaller for non-contested matters which can be resolved by officials rather than judges, and where the schemes are designed to be managed by the litigants themselves without the necessity to engage lawyers.

In **Germany**, as previously noted, the scale for lawyers' fees and court fees are set on a scale based on the value of the claim. This begins at €500, effectively meaning that even the smallest claims will be subject to court fees (albeit at very reduced rates, around €152 for a €500 claim).

In the **Netherlands**, dispute resolution boards are available for the informal resolution of small-value and easily-quantifiable claims. The fee charged is dependent on the value of the claim and will range from €25-€125. The claim and conduct of the resolution board is intended to be easily undertaken without the need for engaging a lawyer and is informally conducted. The outcome of a dispute resolution board is considered a form of settlement between the parties and is binding on them.

In **New Zealand**, the Disputes Tribunal hears claims less than \$30,000 in value. The fee for filing a case before the Disputes Tribunal is a maximum of \$180, with documents submitted electronically. If the matter goes to hearing, it will be heard before a referee. Referees are not judges, but receive legal training. Lawyers are specifically excluded from assisting parties in dispute tribunal hearings.

Table 5: New Zealand small-value claims procedure fees

Claim value	Court fee
Less than \$10,000	\$52
\$10,000 - \$30,000	\$108
More than \$30,000	\$279

Source: [Community Law Manual | New Zealand](#)

In **Australia**, a variety of small claims and dispute resolution mechanisms exist in

each state. For example, the New South Wales Civil and Administrative Tribunal (NCAT) resolves a wide range of everyday disputes such as tenancy and other residential property issues and disputes about the supply of goods and services. An application to NCAT may result in a hearing in the Tribunal if the matter cannot be resolved on an analysis of the papers submitted by the parties.

NCAT can also assist in resolving a matter without the need for a hearing through the use of alternative dispute resolution methods such as preliminary conferences, conciliation, and mediation.

In **Scotland**, the small claims procedure is designed to be simplified and less formal and can only be applied for in the sheriff court. The procedure can be used where the value of the claim is up to and including £3,000. In terms of fees, for claims of £300 or less, a fee of £19 is payable and claims over £300, a fee of £106 is charged. Further itemised fees may be charged. For example if a sheriff officer is used to serve the claim form on the respondent, this costs £13 plus the sheriff officer's fees.

The maximum value of a claim which can be processed by the small claims procedure varies widely between jurisdiction, and it is noteworthy that in some countries, such as **Australia** and **New Zealand**, the small claims procedure has jurisdiction for cases which, had they been heard in Ireland, could be at Circuit Court level.

Therefore many cases in other jurisdiction which, had they been heard in Ireland, would appear before the District Court (or even, in some cases the Irish Circuit Court), because of their value can be resolved through non-court routes. This, as has been shown, can reduce court fees and eliminate the necessity to engage a lawyer, but would require significant management and investment by the State.

Conclusion

The threshold for the small claims procedure is much higher in a number of the jurisdictions than in Ireland. These small claims procedures tend to be for low-value and straight-forward cases which can be processed online or through the exchange of forms without full litigation procedures and without the need to hire a lawyer. A simple process, which can be done online or by filling out straight forward forms, reduces costs. It also reduces the number of cases which go through the full litigation process, and hence, reduces delays in court times.

Ireland falls well behind other jurisdictions in terms of courts service resources

The overall judicial process

Any assessment of legal costs needs to take account of the costs of the judicial system, which can vary across civil and common law jurisdictions. Accordingly, data has been collected on a number of key performance metrics for the justice system in the European jurisdictions examined. Data for New York, Australia and New Zealand is not available.

The data for EU member states is taken from the annual study on the functioning of judicial systems in EU member states by the European Commission for the Efficiency of justice (CEPEJ), prepared for the European Commission *. The latest study is based on 2019 data but does not contain data for Scotland, England and Wales. A range of indicators are presented from the EU scoreboard contained in the CEPEJ report: Professional judges per 100,000 inhabitants; Lawyers per 100,000 inhabitants; and Non-judge staff per 100,000 inhabitants. Justice system expenditure € per inhabitant is based on 2018 data** and is defined as the combined resources allocated to courts, legal aid, and the prosecution services.

Data is presented opposite for the EU average, Germany, Netherlands and Ireland for 2019. Data for Scotland, England and Wales is presented for 2018 only.

Ireland falls well behind other jurisdictions in terms of courts service resources:

- There are 3.4 judges per 100,000 inhabitants in Ireland compared with 21.5 judges per 100,000 inhabitants across the EU.
- There are 21.9 non-judge staff per 100,000 inhabitants in Ireland compared with 69.4 non-judge staff per 100,000 inhabitants across the EU.
- The justice system expenditure per inhabitant of €59.50 is significantly below other similar common law jurisdictions such as Scotland (€76.86), and England and Wales (€76.33).
- The justice system expenditure per inhabitant of €59.50 is less than half the expenditure evident in civil law jurisdictions where a table of costs exist, such as in Germany (€131.20), and where non-binding guidelines exist, as in the Netherlands (€120.40).
- Scotland and England and Wales have an expenditure per inhabitant that is 28% higher than Ireland. Expenditure per inhabitant in the Netherlands, a civil law jurisdiction, is more than double Ireland's expenditure on the justice system.

Table 6: Number of judges* and expenditure on the justice system **

	EU average	Civil law		Common law		
		Germany	Netherlands	Ireland	Scotland **	England & Wales**
Professional judges per 100,000 inhabitants	21.5	24.7	14.5	3.4	3.7	3.1
Lawyers per 100,000 inhabitants	190.4	199.5	102.4	301	215.6	270.3
Non-judge staff per 100,000 inhabitants	69.4	65.5	44.2	21.9	29.3	24.0
Justice system expenditure € per inhabitant	€61.30	€131.20	€120.40	€59.50	€76.86	€76.33

* [European Commission for the Efficiency of Justice - EU Scoreboard](#) (2019 data)

** [European Judicial Systems | Overview](#) (2018 data)

Care should be taken when attempting to rank countries by the direct cost of litigation without considering the indirect costs to the exchequer of funding the legal system in place, the extent of court fees and charges, and the payment by the courts of expert witnesses and expert reports. Ireland currently spends 28% less per inhabitant on its justice system compared with England and Wales. Ireland would need to spend an additional c.€85m to be on par with England and Wales, a common law jurisdiction and Ireland's closest competitor.

If Ireland were to have a similar justice system to the Dutch, it would require an additional investment of €61 per inhabitant or c.€305m on an annual basis, with clear implication for general taxation.

Summary international benchmarking findings

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	3 A history of legal costs	
	4 International benchmarking	
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Table 7: International Benchmarking summary table

Jurisdictions	Split legal profession	Legal System	Recoverable lawyer fees	Expert fees	Court fees charged to parties	Small claims max value*	Small claims fee*
Ireland	Yes	Common law	No binding fee structure	Borne by the parties, with the loser paying winning costs	Fixed charge for each court per stage	€2,000	€25
England and Wales	Yes	Common law	No binding fee structure	Borne by the parties, with the loser paying winning costs	Sliding scale for overall case, depending on the value of the claim	€11,808	€41 to €537
Scotland	Yes	Mixed system of law	Table of Maximum Costs	Borne by the parties, with the loser paying winning costs	Separate fees per stage depending on Court	€5,904	</= €354 - €22 > €354 - €125
New York	No	Common law	Non-binding guidelines (determined by prevailing market rates)	Borne by the parties, with the loser paying winning costs	Per stage	€8,874	</= €887 - €13 > €887 - €18
Australia	Yes	Common law	Non-Binding Guidelines (determined by criteria set in legislation)	Borne by the parties, with the loser paying winning costs	Per stage	€19,000	€33 to €177
New Zealand	Yes	Common law	Non-Binding Guidelines (determined by time and complexity of case)	Borne by the parties, with the loser paying winning costs	Per stage	€18,500	€110
Germany	No	Civil law	Table of Maximum Costs	Court appointed experts paid from court fees	Sliding scale, dependent on the value of the claim	N/A	N/A
Netherlands	No	Civil law	Non-Binding Guidelines (subject to max. no. of work points per case)	Court appointed experts paid from court fees	Per stage; reduction based on ability to pay	€25,000	€25 to €125

* Note here that the values provided have been converted from their original currency to euro for comparison purposes. The conversion is based on rates as of 29/11/2021

The State would need to increase its expenditure on the justice system in order to implement either of the proposals

Key observations from the international benchmarking exercise

This section of the report benchmarked Ireland against seven other jurisdictions. This survey does not purport to provide a complete overview of civil litigation in these countries, but rather highlights where costs may be incurred by the parties, and the methodology under which (some of) the costs may be recovered. The main observations are as follows:

1. Non-binding guidelines with respect to legal fees tend to be a feature of a number of jurisdictions, with flexibility to permit lawyers to charge clients on the basis of the work done, the complexity and nature of the case and the number of stages involved in bringing the case to conclusion.
2. Irrespective of the mechanism for recovering costs, the actual amount awarded may not equal the amount paid by the party to their lawyers and other experts
3. Of more significant impact on the cost of litigation are other direct costs to parties, including the procuring of expert evidence, and the payment of court fees and charges.
4. In many civil law jurisdictions, where cases proceed through the exchange of written submissions with a judge who directs the case, these costs are directly borne by the parties through higher court fees, and indirectly funded through more expensive per capita costs of managing the court service.
5. In order to avoid parties paying high costs involved in resolving low-value claims, a number of jurisdictions have developed sophisticated small-claims or alternative dispute resolution mechanisms. While these can reduce (or even eliminate) the necessity of parties to hire lawyers or attend court, the administrative costs of processing small cases (in civil law jurisdictions) is also funded through increased numbers of judges, non-judge court staff and higher investment in judicial infrastructure.
6. Based on the analysis of the performance of judicial systems, if the Department of Justice wish to implement new measures to reduce litigation costs, via the Legal Services Regulatory Authority, this will require a greater expenditure on the justice system to support any such measures. While many other EU countries appear to offer consumers lower exposure to legal costs, the analysis of EU member States shows that in the sample of other jurisdictions presented, a greater number of judges and non-judge court staff are required to manage the passage of litigation, paid for through general taxation.
7. In summary, care should be taken when attempting to rank countries by the direct cost of litigation without considering the indirect costs to the exchequer of funding the legal system in place, the extent of court fees and charges, and the payment by the courts of expert witnesses and expert reports.
8. The overall conclusion for the purpose of this assessment is that that while attempts to create transparency in the costs of hiring a lawyer have been made in many counties, a degree of flexibility is required to compensate for the actual work undertaken by lawyers, and to reflect the complexity or duration of the action.

“

It is therefore critical to ensure that maximum value for money is being achieved and that the State – as a consumer – is not acting to distort the market for legal services to the detriment of national competitiveness.”

**Irish Government Economic and Evaluation Service,
Expenditure Report 2013**

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Assessment of costs



The assessment of costs analyses a sample dataset of 256 litigation cases, with a majority focus on the High Court

Approach to the assessment of legal costs

- This section addresses the assessment of legal costs based on a sample dataset of 256 cases received from the Institute of Legal Costs Accountants (ILCA) in order to assess the evidence on whether Ireland is a high litigation cost jurisdiction.
- The sample of cases are obtained across all the superior courts of Ireland, including the Supreme Court, Court of Appeal, the High Court and the circuit Court, with the exception of the District Court which already has a scale in operation. However, the main focus of the assessment is on the High Court where fee disputes are most prominent.
- The sample of cases provided by the ILCA includes three agreed types of litigation cases: Personal Injury (PI), Medical Negligence (Med Neg), and Judicial Reviews. For the purpose of this assessment, the cases are analysed in three separate intervals:
 - 2011-2013 – to coincide with the post-2008 recession period
 - 2014-2016 – corresponding to the period when the Irish economy commenced its recovery
 - 2017-2019 – a period when the Irish economy performed strongly

Key findings from the assessment of costs

- Based on a sample of Personal Injuries and Medical Negligence cases,* the median award has decreased, by 12%, between 2011-2013 and 2017-2019
- The typical number of days at trial decreased over the 2011-2019 time period by 31%
- The median case duration increased by 29%
- Total professional legal fees across all cases decreased in the range of 9% to 13% in the period 2011-2019, while professional fees in a sample of PI and Med Neg cases only, decreased in the range of 10%-23%
- Other outlays and taxes increased by 19% over the same period across all cases, while other outlays and taxes increased significantly by 57% in PI and Med Neg cases only
- Average expert witness fees have remained relatively stable (-5%), as has the average VAT paid (+2%) between 2011-2019

* Total cases in this instance do not include judicial review (given there are no awards).

Any assessment of legal costs requires comprehensive data on costs which has been absent to date, with the exception of the 2005 Legal Costs Working Group report

Legal costs evidence base

This chapter provides an assessment of legal costs to ascertain the evidence on whether it is reasonable to conclude that Ireland is a high litigation cost jurisdiction. In order to do so it is essential to have a robust sample of data on which to base any findings.

Section 3 summarised the debate on litigation costs to date and shows that the evidential basis for the assertion that Ireland is a high litigation cost jurisdiction has been mixed and anecdotal in the majority of cases. The Kelly Report does note (p.267) that

“comprehensive data on the levels of litigation costs in cases disposed of at trial or on settlement are not available”

It goes on to state that

“It would seem clear from surveys, reports and experience in individual that Ireland ranks among the highest-cost jurisdiction internationally for civil litigation.”

Many of the surveys and reports mentioned are also those noted in other reports. Specifically, the Kelly Report provides as evidence the cost of “enforcing contracts” from the 2020 Annual Doing Business Survey of the World Bank. This indicator measures the time and cost to resolve a commercial dispute and the quality of judicial processes, which is intended to evaluate the extent to which a country promotes quality and efficiency in its court system. The data are collected from information on civil procedures and court regulations as well as questionnaires from local lawyers and judges. The methodology is based on a particular case study which is assumed to apply in every country to ascertain time, cost and quality indicators for the benchmarking exercise.* The 2020 Survey does state that where fee schedules are lacking, extensive consultations are conducted based on actual practice, an approach which the World Bank states

“introduces a degree of judgment by respondents on what actual practice looks like.”

The Kelly Report refers to the cost of resolving a commercial contract dispute, which is calculated based on the costs incurred as a percentage of the claim value. To enable comparability across all countries, the claim value is assumed to

be twice the national income per capita or \$5,000, whichever is the greater.

In Ireland’s case, Kelly provides the following evidence from the 2020 World Bank Survey (based on May 2019 data):

- The total costs of resolving a commercial dispute were estimated at 26.9% of the value of a claim in Ireland versus 46% in the UK (most expensive), 22.3% in Canada, 17.4% in France, 14.4% in Germany and 21.5% across a group of high income OECD countries
- The 26.9% for Ireland is made up of
 - Attorney costs of 18.8%
 - Court fees of 2.3%
 - Enforcement fees of 5.8%

Taking a further range of indicators associated with time and quality of the courts system for enforcing contracts, and averaging across all three (cost, time, quality) Ireland ranked in 91st place out of 190 economies surveyed.

Taking the attorney fees alone, Ireland was found to be the fourth most expensive jurisdiction in the EU for litigation of commercial contract disputes, but a comparison with other common law jurisdictions found that Ireland performed more favourably. This is significant and relates to the type of legal system, which our benchmarking has shown has implications for the funding of a legal system.

Similar data was provided in the 2019 Cost of Doing Business Report for Ireland, published by the National Competitiveness Council.

The above data, by its nature, is somewhat subjective and thus dependant on consultations to ascertain actual practice with respect to specific cases.

However, following the discovery of data irregularities in the 2018 and 2020 World Bank Doing Business report and the initiation of a series of reviews of the report and its methodology, which has led to the discontinuation of the report, any trust in this data, which is the basis for many statements in the Kelly and NCC reports, is now dubious at the very least.

* <https://www.doingbusiness.org/en/methodology/enforcing-contracts>

Ireland's economy has followed a volatile cycle of booms and busts over the period 2011 to 2019

The economic context is relevant

In order to assess the level of legal costs in Ireland, it is important to first set out the economic context in the same period of 2011-2019.

From an economic perspective, Ireland has been through a volatile economic cycle over the last two decades. To put the last decade in context, Ireland enjoyed significant economic growth starting in the 1990s and continuing well into the first decade of the new millennium. This economic growth was fuelled by a credit and property market boom. Property prices and debt rose to unsustainable levels in the latter half of the decade. Employment levels reached 2 million in Q2 2005, the labour market continued to perform strongly and with employment peaked at 2.25 million in Q3 2007. The period was characterised by robust growth in domestic demand during the boom period to 2006/2007 and demand for professional and technical services across the public and private sectors would have been exceptionally strong, which would have led to an increase in the prices charged for those services. Consumer price inflation remained persistently high in the 2006-2009 period at an annual average of 4.4% despite the onset of the international financial crisis in 2007/2008.

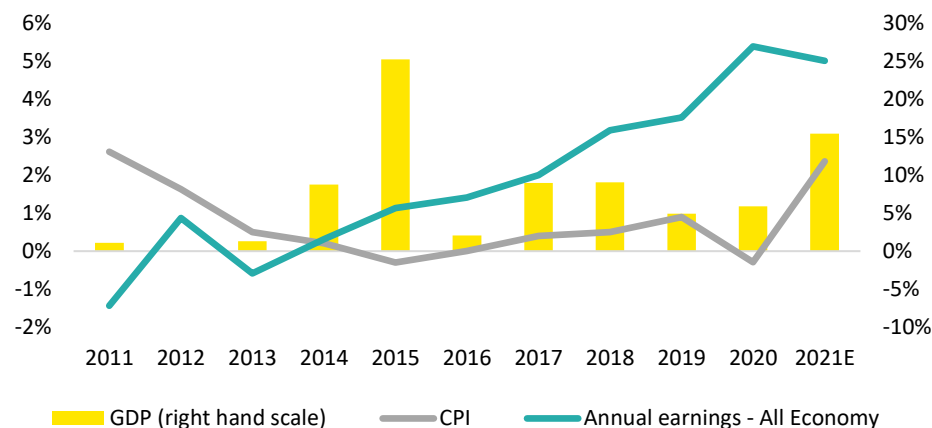
This is the economic backdrop to the publication of a number of reports on the subject of legal costs during the Celtic Tiger period.

The financial crisis of 2007/2008 eroded the levels of credit flowing to domestic Irish banks, property prices began to fall sharply and GDP contracted in 2008 and 2009 by 4.5% and 5.1% respectively. GDP growth would have been negligible between -0.1% and 1.3% in the period 2011-2013. Employment levels fell to a low point of 1.86 million in Q1 2012.

Economic recovery began in earnest in 2014 and employment started to recover, as the Government implemented an economic strategy for robust jobs growth. The recovery gathered momentum in the 2017-2019 with an annual average GDP growth of 7%.

The chart shows the relative benign inflation pattern which prevailed over the period from 2011 to 2019. Even with the economy recovery commencing in 2014, CPI inflation remained well contained between 0% and 0.9% in the period 2013-2019, despite the strength in growth as measured by other economic indicators such as GDP and earnings.

Figure 5: GDP, CPI and Average Earnings, 2011-2021E
Annual % changes



Source: CSO

Average earnings (based on average hourly earnings and average hours worked) for all workers across all sectors was reasonable stable over the period 2011 to 2016, following which they increased by 2% in 2017. Earnings growth gathered momentum in 2018 (+3.2%) and 2019 (+3.5%). The overall increase was 6.8% in the 2017-2019 period, up from 2.6% in the period 2014-2016 and 0.3% in the period 2011-2013.

From the analysis of case data which follows, it will be apparent that legal costs responded with a lag to the 2007/2008 economic recession, as median professional fees declined by 25.6% between 2011-2013 and 2014-2016, which would have coincided with the start of the economic recovery. This may reflect the long time involved in litigation, by its nature, involving the courts, compared with other transactions in the economy, such as for example, residential property or financial services transactions. This also suggests that legal fees respond to economic conditions.

Costs include the overall award (where relevant), professional fees, miscellaneous fees, outlays and taxes. The analysis shows that 32% of the total costs accrue to the State

The assessment of legal costs 2011-2019

In this section, we have been provided with a dataset of **256** litigation cases from the Institute of Legal Costs Accountants (ILCA) and it’s members. The sample of cases provided by the ILCA includes three agreed types of litigation cases: Personal Injury (PI), Medical Negligence (Med Neg), and Judicial Reviews (breakdown provided in the table to the right). For the purpose of this assessment, the cases are analysed based on three separate intervals:

- 2011-2013 – to coincide with the post-2008 recession period
- 2014-2016 – corresponding to the period when the Irish economy commenced its recovery
- 2017-2019 – a period when the Irish economy performed strongly

These intervals will be particularly interesting in assessing the level of legal costs in Ireland as it is understood that the trends in legal costs follow the economy with a lag of approximately 3-4 years, reflecting the length of time it can take to settle a case.

The Bill of Costs is a document setting out the legal costs chargeable to a client in respect of legal services provided to him or her prepared by a legal practitioner in accordance with Section 152 or where applicable, Section 154(1) of the Legal Services Regulation Act 2015.

The assessment of legal costs considers all the courts of Ireland, including the Supreme Court, Court of Appeal, High Court and the Circuit Court, with the exception of the District Court which already has a scale of charges in operation. However, the main focus of the assessment is on the High Court where fee disputes are most prominent. Therefore these cases, by nature, are larger, more expensive cases where disputes over the costs are more likely to arise. It is important to note these cases may not accurately represent the average fee a legal professional would earn from a case.

As not all cases are similar, the ILCA provided a common set of case metrics, which are set out opposite. It is understood there can be a number of stages of inactivity throughout the duration of the case; and similarly, there can be short periods of high intensity such as consecutive days at trial which involve significant effort, and in turn legal professional expenses. As such, the duration of the case may not be representative of the costs involved in the case on all occasions. However, any change in the average duration of all cases is reflective of increased delays in the legal process and impacts on access to justice for private consumers.

The typical breakdown of the bill of costs includes three main elements: solicitors costs, barristers costs, and outlay. Solicitors costs are the standalone professional fee for the services provided by the solicitor; therefore, postages and miscellaneous costs are accounted for separately. Barrister costs which outline the fee for counsel are disaggregated to show costs for junior counsel and senior counsel separately. Outlay comprises court fees, adjudication and commissioners’ fees, while expert witness fees are treated separately within our analysis.

Table 8: Breakdown of case data

Case Type	Period	# of Cases
Personal Injuries	2011-2013	30
	2014-2016	42
	2017-2019	51
Medical Negligence	2011-2013	10
	2014-2016	20
	2017-2019	31
Judicial Review	2011-2013	20
	2014-2016	14
	2017-2019	38

Common case metrics

- The value of award
- Number of days at trial
- Case duration (start and end month)
- Number of motions
- Date and stage of settlement

32%

of the Bill of Costs is returned as State revenue, either through court duty (currently 8.5%) or VAT from professional fees (currently 23%).

Median awards have reduced by 12%, despite an increase in the median case duration (+29%) and other outlays (plus taxes) of 19% between 2011-2013 and 2017-2019

On a detailed examination of the cases provided, the analysis found, for both Personal Injuries and Medical Negligence cases,* the median award has decreased by 12% between 2011-2013 and 2017-2019.

This would suggest that the trend of reduced awards was already in place despite claims by the Personal Injuries Assessment Board’s (PIAB) in October 2021 that **:

- Personal Injuries award values fell sharply following the implementation of the new Judicial Council Guidelines on 24 April 2021:
 - The average award was reduced by 40% on 2020 levels
 - Almost half of PIAB awards are now under €10,000

Along with overall award levels decreasing, the typical number of days at trial also decreased over the 2011-2013 to 2017-2019 time period by 31%.

However, over the same period, the median case duration increased by 29%. The increase in the average case duration across all cases reflects issues with case management and the overall judicial process in Ireland at present. This is likely to worsen as a result of delays associated with the COVID-19 pandemic-induced restrictions on court operations.

While the number of motions is often cited as one element which adds to the workload of legal professionals, the average number of motions completed across all cases has remained relatively stable from 2011-2013 to 2017-2019, with a marginal decrease of 5%.

The median miscellaneous fees, including telephone calls, office supplies and postage and packaging, decreased by 12%.

On the other hand, other outlays and taxes, which refer to court duties and commissioners’ fees, increased by 19% over the 2011-2013 to 2017-2019 period. Court fees for a summons to the High Court for example have increased from €125 in 2011 to their current level of €150-€400 in 2021 (depending on the nature of proceedings and value of the liquidated claim), representing an increase in the range of 20%-220%.

Separately, average expert witness fees have declined by 5%, while the average VAT paid increased by 2%.

Figure 6: Median award, € (2011-2019)

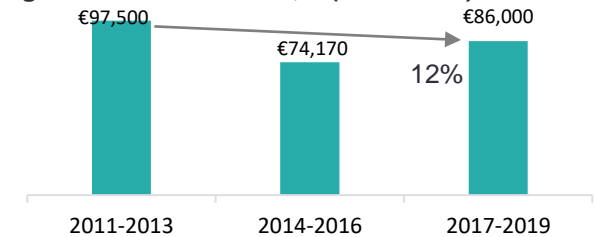


Figure 7: Median case duration, months (2011-2019)

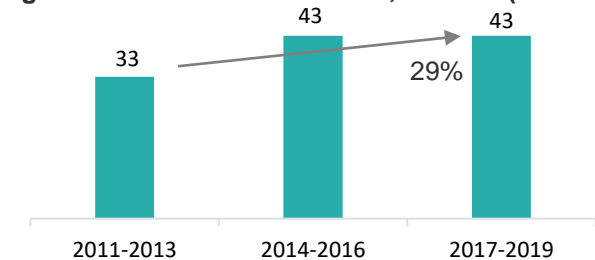


Figure 8: Median other outlay + taxes, € (2011-2019)

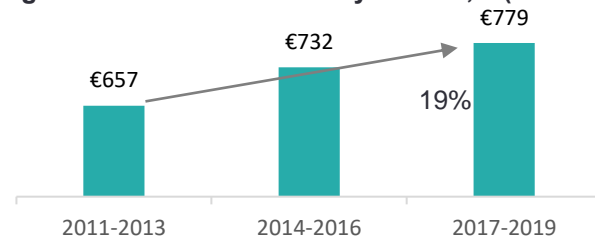
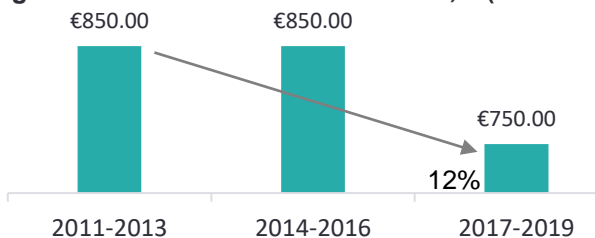


Figure 9: Median miscellaneous fees, € (2011-2019)



* Total cases in this instance do not include judicial review (as there are no awards)

** Source: www.piab.ie 'News release - PIAB Report shows personal injuries award values have fallen sharply following implementation of new Judicial Council Guidelines', 15 October 2021

Across all cases, the analysis of professional fees indicates a decrease between 2011-2013 and 2017-2019, ranging from 9% -13%

Our analysis of overall professional legal fees (i.e. the fees associated with solicitors, junior counsel, and senior counsel) across all cases have decreased in the range of 9% to 13% since 2011, and with an overall decrease of 10%. This trend contradicts the general narrative that litigation costs in Ireland have been rising steadily.

A breakdown analysis of professional fees in PI, Med Neg and Judicial Review cases indicates that over the period 2011-2013 to 2017-2019:

- The median solicitor fees have decreased by 13%
- The median junior counsel fees decreased by 12%
- The median senior counsel fees decreased by 9%

Across the analysis as a whole, while the charts show a drop, in some instances, between 2011-2013 and 2014-2016, this decline is attributed to the lagged response of the cost of legal services to the impact of the post-2008 economic crash, which would have straddled the period to 2014.

It is important to note that the professional fees in this sample should not be taken to represent the average fee a legal professional would earn from a case, as the sample provided by the ILCA is representative of the more complex cases where the input of a legal cost accountant was required.

Figure 10: Median professional fees, € (2011-2019) **Figure 11: Median solicitor fees, € (2011-2019)**

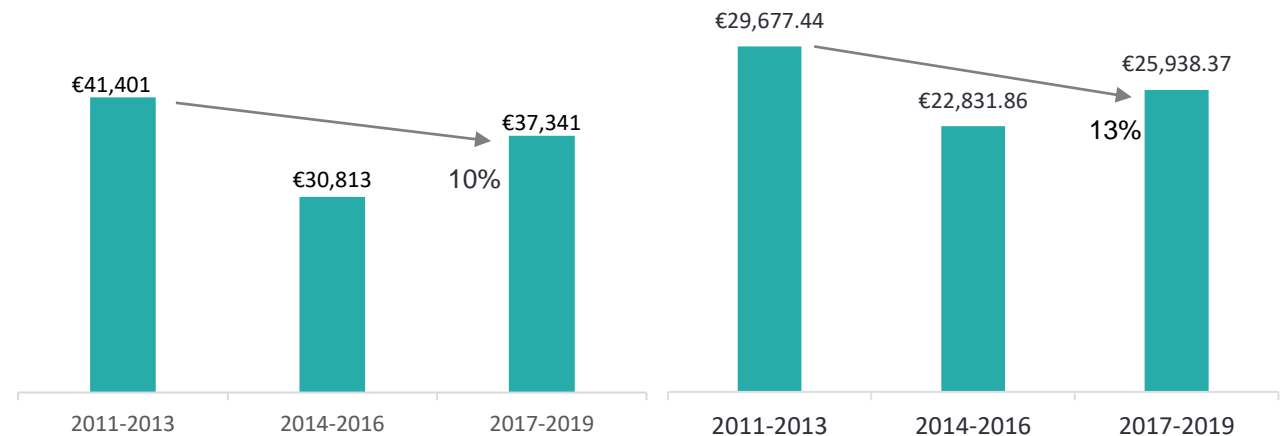
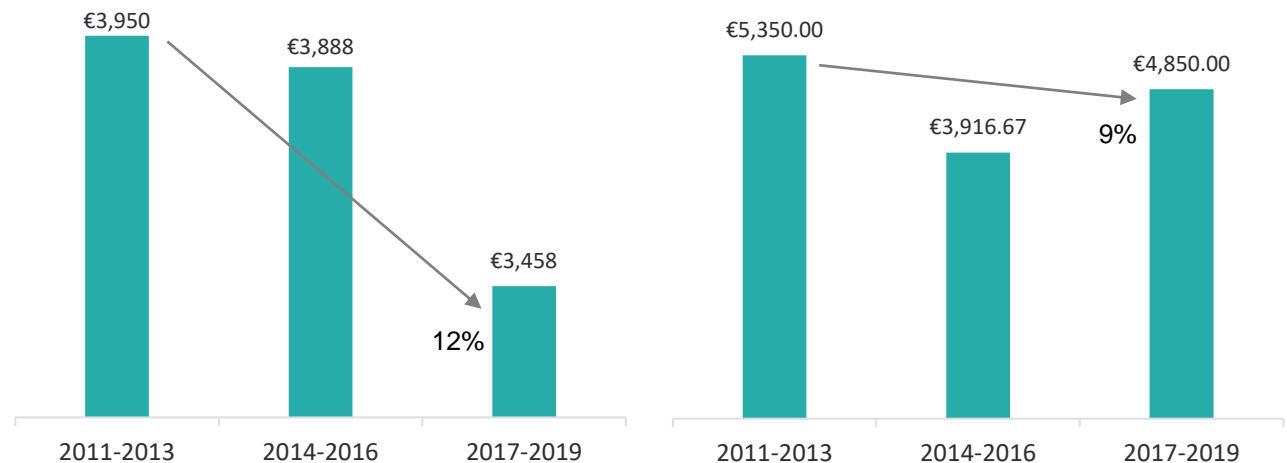


Figure 12: Median junior counsel fees, € (2011-2019) **Figure 13: Median senior counsel fees, € (2011-2019)**



PI and Med Neg median award (-12%) and case duration (-9%) have reduced since the 2011-2013 period, despite an overall increase in other outlay + taxes (+57%)

An analysis of 184 PI and Med Neg cases found that:

- The median award decreased by 12% between 2011-2013 and 2017-2019.
- Along with overall award levels decreasing, the median case duration also decreased over the 2011-2013 to 2017-2019 time period by 9%.
- Against an overall decrease in the median award and case duration, other outlay and taxes, which refers to court duties and commissioners' fees, increased significantly by 57% over the 2011-2013 to 2017-2019 time period.
- The median miscellaneous fees, including telephone calls, office supplies and postage and packaging, decreased by 6% over the period.

Figure 14: Median award, € (2011-2019)

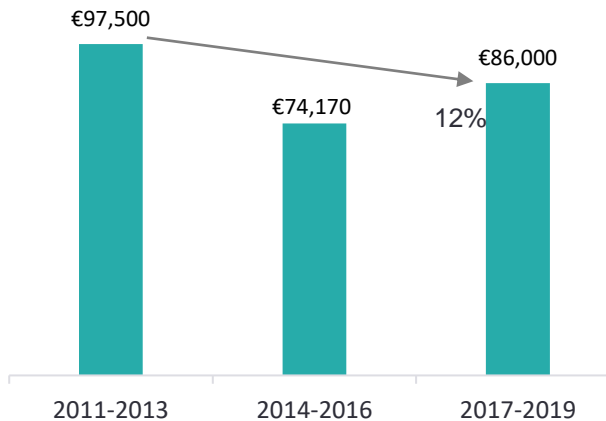


Figure 15: Median case duration, months (2011-2019)

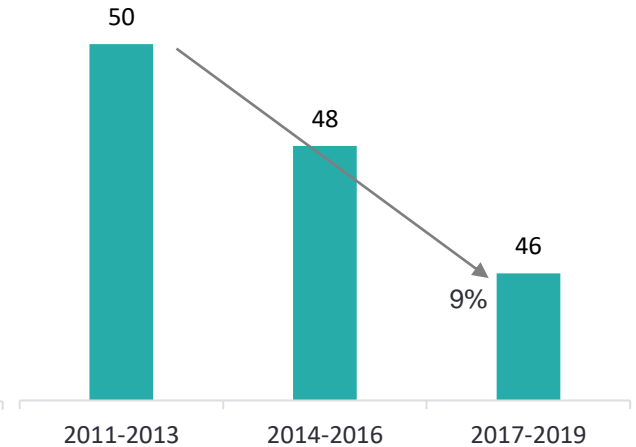


Figure 16: Median other outlay + taxes, € (2011-2019)

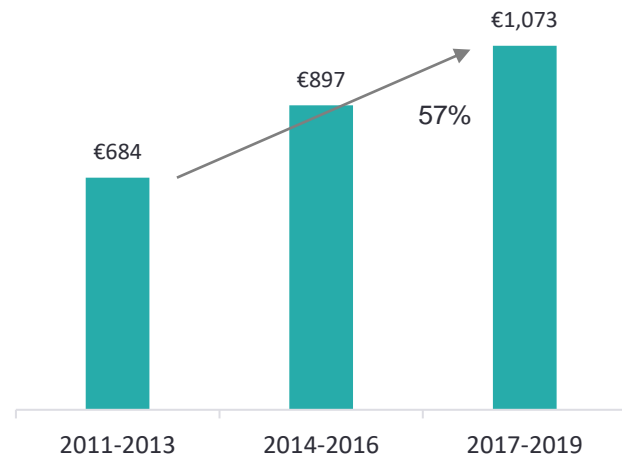
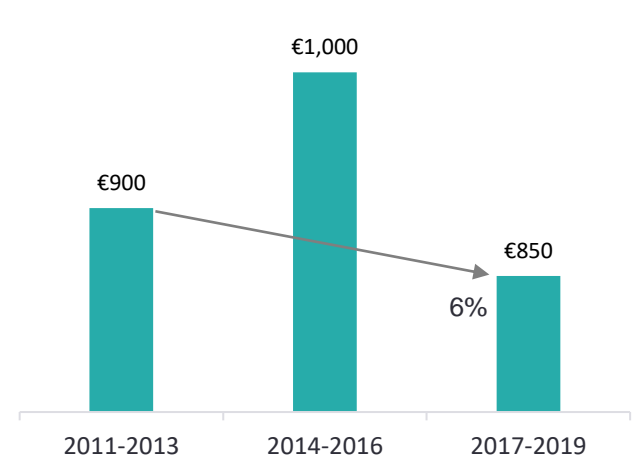


Figure 17: Median miscellaneous fees, € (2011-2019)



The breakdown of professional fees in PI and Med Neg cases indicates a decrease over the period 2011-2013 to 2017-2019, ranging from 10%-23%

Based on our analysis of PI and Med Neg cases, the total professional legal fees across all cases have decreased in the range of 10% to 23% since 2011, and with an overall decrease of 18%.

Based on an analysis of professional fees in PI and Med Neg cases:

- The median solicitor fees decreased by 10%
- The median junior counsel fees decreased by 23%
- The median senior counsel fees decreased by 23%

Across the analysis as a whole, while the charts show a drop, in some instances, between 2011-2013 and 2014-2016, this decline is attributed to the lagged response of the cost of legal services to the impact of the post-2008 economic crash which would have straddled the period to 2014.

Figure 18: Median professional fees, € (2011-2019) Figure 19: Median solicitor fees, € (2011-2019)

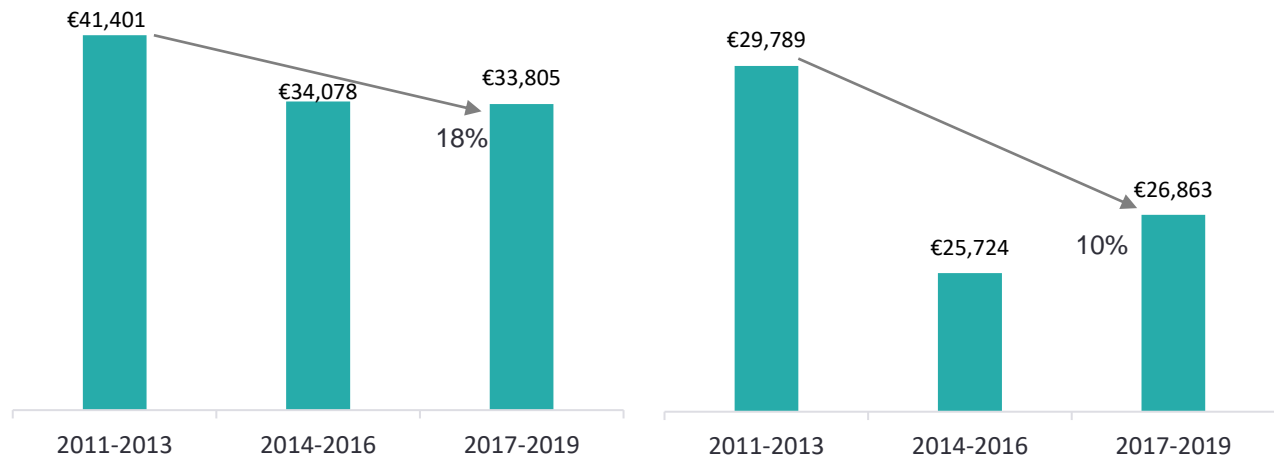
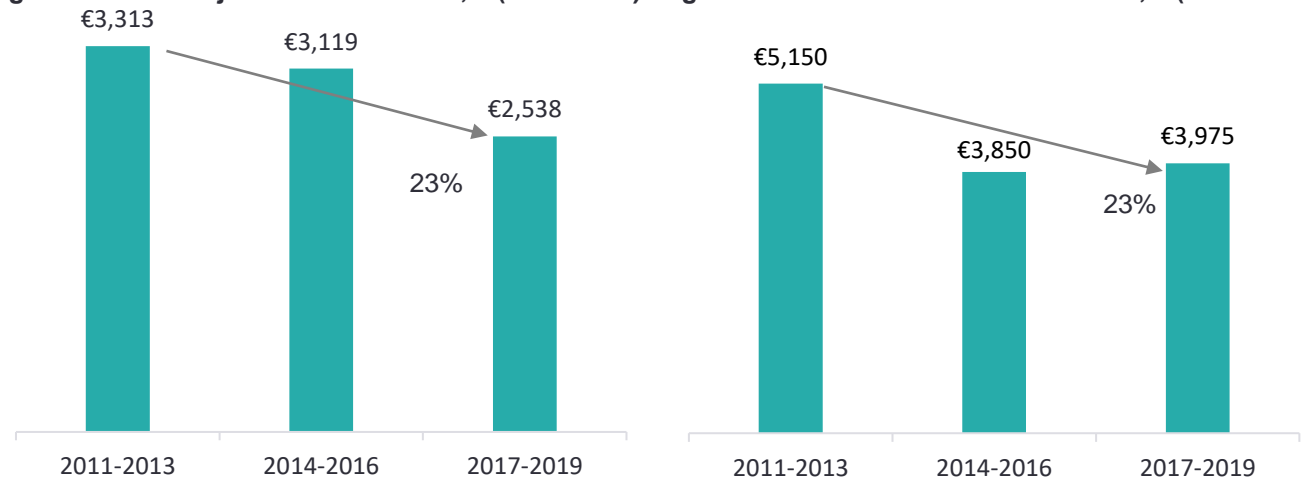


Figure 20: Median junior counsel fees, € (2011-2019) Figure 21: Median senior counsel fees, € (2011-2019)



The main title of the report is 'Assessment of State proposals to reduce legal costs'. The word '6' is written in a large, yellow, stylized font, partially overlapping the text. The background of the title is a photograph of the Old Parliament Building in Dublin, Ireland, featuring a prominent dome and classical columns. The text is white and centered over the image.

6 Assessment of State proposals to reduce legal costs

Assessment of the two models – a table of non-binding guidelines versus a table of binding maximum costs

Approach to the assessment of the two proposed models

This section assesses the impact of the two proposed models – a table of non-binding guidelines and a table of maximum costs – from the perspective of the private consumer and on the ability of private consumers to access justice.

This section of the report is set out as follows:

1. The current arrangements for adjudicating on costs according to the Legal Services Regulation Act 2015 are discussed.
2. A summary is provided of the advantages and disadvantages of each of the two proposed models, according to the Kelly Report.
3. The approach to the assessment of the two proposed models follows and sets out a number of objectives/criteria which any proposed model aimed at reducing legal costs should meet in order to deliver equal access to justice for the private consumer. Each cost model is evaluated against the specific criteria and the preferred model is selected. There are ten criteria in total which have been determined as critical to ensuring an efficient civil justice system which makes it easier for persons to access justice.
4. At present, party and party costs incurred in the District Court are subject to a scale of costs. The experience of District Court scales points to the potential outcomes for other courts if tables of binding maximum costs are introduced. This section illustrates two potential scenarios and the economic viability of bringing these cases to the District Court.

It is acknowledged that a key feature of the above approach to assessing the two proposed models is the judgement of the team conducting the assessment, firstly in setting the criteria and then evaluating the preferred model against those criteria. The criteria have been informed from the range of Irish and international literature consulted for the purposes of this study and from consultations with the client and legal practitioners. The previous section provided the quantitative evidence to determine legal costs trends between 2011-2013 and 2017-2019. In this section the approach considers the impact of the proposed measures on controlling litigation costs and on access to justice for the private consumer.

Key findings from the assessment of the two models

- The system in place (since 2019) for adjudicating on legal costs takes into account a range of issues to establish that costs are reasonable, and have been reasonably incurred. Any proposed new system for controlling litigation costs should allow this system to fully “bed down” before disrupting the sector, and introducing more legislative interventions which a maximum table of costs would require. The introduction of non-binding guidelines would retain the current Legal Costs Adjudicator system.
- Based on an assessment of the two proposed models using ten criteria for delivering fair and equal access to justice for the private consumer, non-binding guidelines rank higher when compared with a table of maximum costs with regard to providing flexibility to recognise the length and complexity of a case.
- Non-binding guidelines would likely deliver a better quality of service, and would require minimal legislative intervention vis-à-vis a maximum table of costs.
- Under either proposed model, it would be necessary to have the charges reviewed regularly, particularly in response to changes in the economic cycle and cost variations (up or down) faced by legal practitioners. In the District Court (where scales have not been updated since 2014) the likelihood is that the fees recoverable in recent years may be understated given the economic recovery and rising inflation in the interim. Non-binding guidelines may be quicker to respond to changes in the economic cycle but it is imperative that such guidelines have some regular review built into the system.
- It is noted that litigation costs were discussed at length in the Kelly Report by the full Review Group and by a subcommittee established for that purpose, yet it was not possible to reach a consensus. This recognises the complexity of the issue and illustrates the challenge associated with a ‘one size fits all’ approach.

The buyers of legal services tended to be the dominant supporters of the table of maximum costs; while practitioners generally favoured the majority view of non-binding guidelines

In April 2021, the State announced their intention to complete an economic analysis of models or approaches to controlling and reducing litigation costs in Ireland. This arose following the Kelly Report recommendations that the following two options be explored:

1. The creation of a table of binding maximum costs chargeable (the minority view) and;
2. A table of non-binding guidelines regarding costs (the majority view).

In relation to the former, the minority group recommendation (comprising of members from the Department of An Taoiseach, the Department of Public Expenditure and Reform, the Department of Justice and Equality and the Courts Service) noted that the maximum table of costs concept it proposed should not preclude legal practitioners from agreeing costs lower than the levels specified. It noted that the table of costs could be developed with regard to principles and policies which would be applied to both legal practitioner and client costs, and party to party costs.

In relation to the second option above, the Group (comprising of members from the Supreme Court, Court of Appeals, High Court, Circuit Court, District Court, Bar Council and Law Society) noted that the guidelines should be expressed by reference to Schedule 1 of the Legal Services Regulatory Authority Act 2015,* and the levels at which parties have either resolved or had adjudicated costs disputes. They should take into account prevailing economic conditions and refer to the need to ensure no more than a reasonable level of remuneration on a party and party basis, and that similar guidelines for practitioner and client costs also be formulated.

In both cases, these proposals would relate to contentious costs of litigation before the courts.

The State has separately commissioned a Cost-Benefit Analysis (CBA) or Multi-Criteria Analysis (MCA) in the area of litigation costs, with the focus on evaluating the economic impact of measures to control litigation costs to the State, in regard to the two models that were put forward as part of the recommendations by the Review Group.

An assessment of the two alternative models is provided in the following pages, based on a set of desired outcomes which are considered most relevant in determining the preferred option, such that a private consumer's access to justice in Ireland is not adversely affected.

To begin with, the current arrangements for adjudicating on costs according to the Legal Services Regulation Act 2015 are set out.

“

As well as ensuring our people are safe and secure, it is our duty to provide an equitable and accessible path to justice; to support victims and communities... To support those who rely on us every day in their business, family and community life, or those who need us to respond with compassion and understanding at moments of crisis and difficulty... Building a justice system that works for everyone also requires us to make our courts and legal services more accessible.”

Helen McEntee TD (Minister for Justice) – Department of Justice Action Plan 2021

* Schedule 1 of the Legal Services Regulation Act 2015 Principles relating to Legal Costs - Sections 150 (4) and 155.

Source: Department of Justice, 'Request for Tender for Research Services - An economic analysis of models or approaches to controlling and reducing litigation costs in Ireland', April 2021

The Legal Costs Adjudication system in place since 2019 should be given time to “bed down”

The Legal Costs Adjudication system has only been in place since 2019. Schedule 1 of the Legal Services Regulation Act 2015 sets out the principles relating to legal costs which the Adjudicator must adhere to when adjudicating on a bill of costs pursuant to an application under Section 154, namely:

- that the costs have been reasonably incurred, and
- that the costs are reasonable in amount, in which case the Adjudicator must consider the matters set out opposite.

Under a table of non-binding guidelines, these would be determined by Legal Costs Adjudicators or the Legal Services Regulatory Authority, with input from the former. The introduction of guidelines therefore would not require the establishment of a new body at further cost to the clients of legal services. An additional body would also add complexity to the overall governance and management of the legal sector. Where the costs allowed under the guidelines do not reasonably remunerate legal practitioners for the complexity of the work and time incurred, they would be permitted to make their case to the Legal Costs Adjudicator, as is currently the case under the Legal Services Regulation Act 2015.

In contrast, the introduction of a maximum Table of Costs would be prescribed by an independent Litigation Costs Committee, who would be legally obliged to rely on appropriate evidence, and would take into account general economic conditions which the Committee considered affected the market for provision of legal services. This new Committee would prescribe the initial Table of Costs via a statutory instrument within two years of its establishment. It would also have powers to consult with the Chief Legal Costs Adjudicator to request assistance in evaluating litigation costs and provide data on costs adjudications to assist in the determination of the Table of Costs.

The Kelly Report suggests that “ease of implementation” is a factor that should be kept in mind in regard to the recommendations of the Review Group being accepted and that “any mechanism must be fair and efficient” (p267). On this alone, there may be merit to allowing the current model in place to “bed down” fully as it is only in place since 2019.

In determining whether costs are reasonable a Legal Costs Adjudicator shall consider each of the following matters, where applicable: *

- the complexity and novelty of the issues involved in the legal work;
- the skill or specialised knowledge relevant to the matter which the legal practitioner has applied to the matter;
- the time and labour that the legal practitioner has reasonably expended on the matter;
- the urgency attached to the matter by the client and whether this requires or required the legal practitioner to give priority to that matter over other matters;
- the place and circumstances in which the matter was transacted;
- the number, importance and complexity of the documents that the legal practitioner was required to draft, prepare or examine;
- where money, property or an interest in property is involved, the amount of the money, or the value of the property or the interest in the property concerned;
- whether or not there is an agreement to limit the liability of the legal practitioner pursuant to section 48 ;
- whether or not the legal practitioner necessarily undertook research or investigative work and, if so, the timescale within which such work was required to be completed;
- the use and costs of expert witnesses or other expertise engaged by the legal practitioner and whether such costs were necessary and reasonable.

* Sources: Appendix 2 Schedule 1 of the Legal Services Regulation Act 2015 Principles relating to Legal Costs - Sections 150 (4) and 155.

Complaints in relation to costs have fallen since the LSRA commenced its role in managing complaints

Since the introduction of the Legal Services Regulation Act in 2015, the LSRA is required under section 73(1) of the Act, to report on complaints made against solicitors and barristers at intervals of no greater than six months. The LSRA began receiving and investigating complaints relating to lawyers in October 2019 following the commencement of Part 6 of the Act.

There are three types of complaints under the Act that the LSRA can deal with; the legal services provided by the legal practitioner were of an inadequate standard; the level of costs sought by the legal practitioner were excessive; and the legal practitioner performed an act or omission which led to misconduct under the Act.

The first *Complaints about solicitors and barristers* report released in March 2020* indicated that complaints about excessive costs accounted for less than 9% of all complaints received. It was noted that the majority of these complaints pre-dated the introduction of Section 150 of the 2015 Act, which entered into force in October 2019, whereby legal practitioners must inform their clients of the likely costs to be incurred for legal services, to ensure transparency on the matter of legal costs. Complaints were expected to reduce over time due to greater transparency relating to costs. It is evident from the most recent report** that complaints relating to excessive costs are in fact falling steadily. Less than 4% of all complaints came under the category of excessive costs. This is down from 6.5% in March 2021 and 5.5% in October 2021.

To put the number of complaints about lawyers into context, there are approximately 14,100 solicitors and barristers in Ireland. This suggests there were 0.004 cost complaints per practitioner in March 2020 and 0.002 complaints per practitioner in March 2022. This statistic understates the true magnitude as it is expressed per practitioner. Accounting for the number of cases/matters a solicitor or barrister may manage, the number of complaints compared to the number of opportunities for a complaint to arise is extremely low.

Table 9: Summary table of complaints reports 2020-2022

Nature of complaints	Report 1 - March 2020	Report 2 - October 2020	Report 3 - March 2021	Report 4 – October 2021	Report 5 – March 2022
Misconduct	53.7% (342)	57.2% (346)	57.4% (462)	65.8% (443)	70.2% (577)
Inadequate service	37.4% (238)	35.2% (213)	36.1% (291)	28.7% (193)	25.9% (213)
Excessive costs	8.8% (56)	7.6% (46)	6.5% (52)	5.5% (37)	3.9% (32)

Source: LSRA Complaints Reports, 2020-2022

It is evident that complaints about exceeding costs have fallen steadily, both in absolute terms and as a proportion of total complaints, since the LSRA commenced its role in reporting on complaints.

This supports the evidence that the new Legal Costs Adjudication system in place since 2019 may be working and supportive of our recommendation to allow this current model to bed down further. It is also a potential argument in support of non-binding guidelines (working in tandem with the current adjudication system) and not a table of maximum costs, which would require a separate litigation costs committee.

* [Complaints about Solicitors and Barristers Report 1 – 2020](#)

** [Complaints about Solicitors and Barristers Report 1 – 2022](#)

The Kelly Report* assessed the advantages and disadvantages of the proposed models with a majority favouring non-binding guidelines

On a table of maximum legal cost levels

Advantages

- A table of maximum costs should provide a greater degree of transparency, certainty and predictability in a very uncertain environment, by giving clients full knowledge of the likely costs to be incurred (pg.282)
- A table of maximum costs can reduce the scope for disputes about the level of legal costs and therefore reduce the extent of adjudication exercisable (pg.282)

Disadvantages

- A table of fixed costs could undermine, to some extent, the principle of equality of arms (pg.282)
- May suppress competition, as the table of maximum costs may encourage an upward push to the costs ceilings set by the tables, and fixed costs maxima could become the standard charge (pg.282, 428)
- Maximum costs levels may not fully compensate an exceptional aspect or development of a case. This can lead to inequalities in the access to justice for less well-resourced litigants (pg.428)
- The table of costs may not be revised for a number of years, as seen with the District Court guidelines. This may result in the values being understated in the prevailing economic environment (pg.411)
- It is too early to assess the efficiency of the new adjudication system introduced in the 2015 Act and operational from 2019 (pg.411)
- A fixed level of costs may not capture the totality and complexity of the range of legal proceedings that emerge. Lawyers may restrict their input and effort in a case to a level of input which they related to the scale fee available, and fixed scales maxima could become the standard charge (pg.282)

On non-binding guidelines for legal cost levels

Advantages

- The guidelines could provide transparency through a logical and detailed breakdown of costs involved for the consumer (pg.289)
- Non-binding guidelines should improve the certainty and transparency of the adjudication process, but with minimal legislative intervention (pg.412)
- Non-binding guidelines should be simple and straight-forward to introduce and would not require any additional resources to implement them (pg.412)
- The guidelines should allow for flexibility to reflect the individual and exceptional circumstances which may arise at different stages of a particular case (pg.282)
- The guidelines could take into account prevailing economic conditions (pg.412)
- The guidelines could be weighted towards encouraging early settlement in cases so that there is no benefit in seeking defence from a defendant (pg.120)

Disadvantages

- Non-binding guidelines may not provide the degree of transparency, certainty and predictability which private consumers of legal services should expect in comparison to a fixed level of costs (pg.428)
- Guidelines are likely to leave scope for dispute as to the consequences of exceeding or otherwise not adhering to those referenced (pg.428)
- Significant revisions may not be made to the scales of costs as was seen prior to the revisions of the scales of costs in the District Court and the Rules of the Superior Courts Rules in 2014 and 2019 respectively (pg.430)

The majority of the Review Group did not recommend the implementation of a table of maximum costs for a variety of reasons. The main reason was that it is too early to assess the efficiency of the new adjudication system introduced by the Legal Services Regulation Act 2015. Instead, the majority favoured the introduction of non-binding guidelines, by reference to individual steps and items that could be referenced in a table.

* [Kelly Review Group Report, October 2020](#)

Non-binding guidelines rank higher in regard to the provision of fair and equal access to justice and flexibility to recognise the length and complexity of a case

In the next three pages, we assess the two proposed models for reducing litigation costs against a set of the most relevant objectives or criteria which would be considered important in the framing on any new proposed legal cost model aimed at improving access to justice for the private consumer. The preferred model under each of ten criteria is then selected. It is noted that the fee levels which would exist under each model are unknown, but it is assumed that fees would be competitive, although the State's view and the practitioner's view on what is a competitive rate may differ.

Table 10: Evaluation of the two proposed models for reducing legal costs against key objectives/criteria

Objective/criterion	Table of Maximum Costs	Non-Binding Guidelines	Preferred model
Provides fair and equal access to justice	A table of maximum costs could undermine, to some extent, the principle of equality of arms, in that a gap may develop in certain areas of practice between the fee recoverable and the amount of work involved in a case. This may result in a limit in the number of lawyers in a position to practice in a particular area of law. Consumers may not then be in a position to freely choose a legal practitioner of their choice.	Non-binding guidelines could undermine, to some extent, the principle of equality of arms. For instance, a litigant faced with an opponent who uses resources greater than the guidelines suggest may find themselves at a disadvantage. This would clearly place the less well-resourced opponent at a disadvantage. Nevertheless, even in the current environment, the level of recoverable party and party costs is not unlimited and those employing greater resources may, where they so choose, have a better resourced legal team than the other party.	Non-binding guidelines: if a lawyer can recover a fee beyond what non-binding guidelines allow, subject to the costs being reasonable, they are more likely to practice in areas of law where the fee takes into account the time involved in a case, thereby promoting equality of arms.
Provides transparency, clarity and predictability	A table of maximum costs would provide consumers with full knowledge of the costs likely to be incurred in their case. The logical breakdown of costs at each stage involved has the potential for greater transparency for the consumer.	Non-binding guidelines could, to some extent, provide greater transparency and clarity on the likely costs to be incurred. However, by their nature, non-binding guidelines will not provide the greatest degree of predictability whereby costs can exceed those referenced in the guidelines.	Table of maximum costs: provide the greatest degree of transparency, clarity and predictability by providing full knowledge of costs as referenced in a table, which can only be exceeded in exceptional circumstances.
Allows for the length and complexity of a case	A fixed table of costs may not take into account the totality and complexity of the range of legal proceedings that emerge. For instance, the actual work involved in a case may be vastly different to another of the same type being heard in the same court. In such circumstances, it might not be realistic to have a 'one-price-fits-all' fee. In other instances where the legal practitioner is required to carry out certain work that is not sufficiently covered by the scale fee, it would fall to the client to pay his or her legal practitioner.	Non-binding guidelines could provide greater flexibility to account for the complexity and length of the case, where appropriate. This would therefore give rise to legal costs being prescribed by reference to work done.	Non-binding guidelines: provide flexibility to depart from amounts specified to allow for the length and complexity of a case - which can often only emerge as the case progresses - to be accounted for.

Non-binding guidelines would likely deliver a better quality of service, and would require minimal legislative intervention vis-à-vis a maximum table of costs

Table 10: Evaluation of the two proposed models for reducing legal costs against key objectives/criteria (cont'd)

Objective/criterion	Table of Maximum Costs	Non-Binding Guidelines	Preferred model
Complements the current adjudication process	Should a table of maximum costs be introduced, it would require the establishment of a new independent body, such as a Litigation Cost Committee, at further cost to the State. This would reduce the extent of adjudication exercisable by the Legal Costs Adjudicator and complicate the governance and management environment of the legal sector.	Non-binding guidelines could complement the current adjudication process. The Legal Cost Adjudicator has the power at the minute to implement non-binding guidelines, but to date has not opted to do so. This may be because the adjudication system is new and the Legal Cost Adjudicator has yet to be fully “embedded” in the system.	Non-binding guidelines: would be determined by Legal Costs Adjudicators or the Legal Services Regulatory Authority, with input from the former. Legal practitioners make their case to the Legal Costs Adjudicator, as is currently the case under the Legal Services Regulation Act 2015.
Encourages early settlement	Should a case settle prior to hearing, lower costs would be incurred by all parties and thus the legal costs associated with having to attend court would be reduced, but this is also currently the case	Similarly, with non-binding guidelines, an early settlement reduces costs for both parties and also reduces the scope for dispute of legal costs by avoiding the courts, as is currently the case.	Neither proposal would encourage early settlement compared with the current system, the incentive currently exists to reduce litigation costs without having to attend court.
Promotes greater efficiency in the way litigation is conducted	Up-front publication of potential legal costs in a table of maximum costs may act as a deterrent against imposing additional unnecessary costs e.g. duplication of expert evidence, or unnecessary medical evidence. However, a table of maximum costs may require a mechanism for review and appeals which could increase the scope for disputes about the level of legal costs.	Non-binding guidelines may leave scope for disputes about the level of legal costs as there is no binding fee structure around the number of expert witnesses and other outlays recoverable.	Table of maximum costs: publication of the costs recovered for outlay may act as a deterrent in a party seeking unnecessary expert witness/evidence, although a table of maximum costs could increase the number of disputes over costs.
Requires minimal legislative intervention	Significant reform of and investment in the civil litigation procedure would be needed to make maximum cost tables successful. A proposed new table of costs would require the replacement of current costs allowable in adjudication as set out in Appendix W to the Rules of the Superior Courts*. Therefore, it could prove costly to the State to implement such necessary changes to the Irish courts system.	Non-binding guidelines would be complementary to the existing costs assessment regime and could operate in conjunction with the scales of costs as set out in Appendix W, RSC in Section 143 of the 2015 Act. Therefore the guidelines would be simple and straightforward to implement and would require minimal legislative intervention.	Non-binding guidelines: legislatively more favourable than table of maximum costs as they could be easily integrated with the current costs assessment regime.
Safeguards competitiveness	A table of maximum costs has the potential to stifle competition, if the maximum rates referenced in the table become the standard charge for legal services. If practitioners choose to operate below the maximum that could improve competition but is not likely to impact overall competitiveness.	In the event that costs exceeded those referenced in the guidelines, legal costs could begin to hamper competitiveness.	Neither proposal is likely to have a major impact on national competitiveness, which is influenced by a host of other factors in the economy.

*[Appendix W, RSC](#)

Under either proposed model, it would be necessary to have the charges reviewed regularly; guidelines may be quicker to respond to changes in the economic cycle

Table 10: Evaluation of the two proposed models for reducing legal costs against key objectives/criteria (cont'd)

Objective/criterion	Table of Maximum Costs	Non-Binding Guidelines	Preferred model
Impacts quality of service provision	As is their right when operating in a business environment, lawyers seek to make profits. A table of maximum costs may remove the ability for legal practitioners to charge for their time involved in a case, which may result in legal practitioners feeling restricted in how to provide the appropriate level of service and quality. A table of maximum costs may therefore impact the commerciality of the service provision.	Similarly to other professional services, lawyers are entitled to charge a fee to commensurate for their expertise in a commercial environment. As non-binding guidelines provide greater flexibility in departing from the amounts specified, legal practitioners may not be commercially restricted in providing a quality service that is commensurate with a fee available.	Non-binding guidelines: allows lawyers to provide high quality services and to appropriately reward complexity, thereby supporting the sustainability of their business.
Takes into account general economic conditions	Evidence from the District Court, where the current scales have not been updated since 2014, would suggest that a table of costs could lead to inequalities in the legal system if they are not independently reviewed on a regular basis. Therefore, a table of maximum costs should be subject to regular review in order to fairly reflect trends in the economic cycle.	Although the guidelines would also need to be reviewed on a regular basis, they may be quicker to react to the economic cycle, as the prevailing economic conditions could be addressed in the adjudication of legal costs by providing the appropriate evidence.	Non-binding guidelines: may be faster to take into account general economic conditions, given the flexibility to adjudicate on fees subject to the appropriate evidence.

Conclusions

Each of the proposed cost models for reducing legal costs have been evaluated against a set of relevant objectives or criteria that would be considered important in framing any new proposed legal cost model, and how either might positively or negatively impact the ability of the private consumer to access justice. Non-binding guidelines outweigh the table of maximum costs when evaluated against the above ten criteria from the perspective of the private consumer.

The introduction of non-binding guidelines would retain the current Legal Costs Adjudicator system and would be the least disruptive way of controlling litigation costs and protecting access to justice for the private consumer compared with a table of maximum costs which would require the establishment of a new body at further cost to the consumers of legal services.

However, the Legal Cost Adjudicator currently has the power to implement non-binding guidelines, but has not (yet) opted to do so. This may be due to the fact that the adjudication system is new and the Legal Cost Adjudicator has yet to be fully embedded. Amending such a new structure before its impact on legal fees has been determined may prove fallacious.

Any review of the direct cost of litigation must consider the indirect costs of funding the legal system to the exchequer, including the extent of court fees and charges, and the payment by the courts of expert witnesses/reports. The consequences of introducing either model could have significant implications for access to justice for the private consumer and for the cost of running the justice system. Significant State investment would be required.

The unintended consequences of using either mechanism to control litigation costs are unknown and may well be counterproductive.

The experience of District Court scales indicate what could lie ahead for the other courts if tables of binding maximum costs are introduced

Party and party costs incurred in the District Court are strictly subject to a scale of costs,* samples of which are detailed in Appendix 2.

The scales refer to solicitors' professional fees, petty outlay, and counsels' fees, which must be certified by the District Court Judge on conclusion of the hearing of the action. The scale of costs does not provide for any other outlay or witness expenses. Any such expenses are measured by the District Court Judge on the application for costs following the hearing of the matter.

For example, in respect of professional fees, the scale of costs is primarily determined on the amount of damages that are awarded or agreed, regardless of the amount of work that may be required by a solicitor to achieve the desired outcome for the client. As such, while two separate District Court cases could award (for example) €7,000 and €14,000, they may require an equivalent level of complexity and input from legal practitioners, but the fee recoverable is significantly different, with €750 recoverable by Counsel and €175 recoverable by solicitors in the former and €1,050 recoverable by Counsel and €220 recoverable by solicitors in the latter. This is contrary to the criteria for the assessment of fees pursuant to Schedule 1 of the Legal Services Regulation Act 2015.

The scale provides no scope for the amount of hours that legal practitioners are required to work and has no relevance to the novelty or difficulty that may be present in any given case. However, legal practitioners may apply to the Courts in exceptional circumstances should they feel the fee recoverable should exceed the amount listed by the scale fee under Order 53 R. 2(2) of the District Court Rules

“The Court may, where appropriate in the special circumstances of a case, to be specified by the Court, award an amount for costs and/or counsel’s fees in excess of the amount provided in the Schedule of Costs.”

In instances where the legal practitioner is required to carry out certain work not sufficiently covered by the scale fee, it falls to the client to pay his or her legal practitioner, effectively reducing the sum recovered for damages and increasing the costs for the client as the buyer of legal services. The following two pages set out two scenarios for the scales in action in the District Court.

“

Access to justice is a fundamental right and a key enabler of an equitable and thriving society. The justice and courts systems must continually adapt to the development of our society and our economy.

The Department’s responsibility includes widening access, and identifying and removing barriers, to the justice system so it meets the needs of the public, society, and business.”

Department of Justice Action Plan 2021

* See District Court Rules, 2014 Schedule 3, Schedule of Costs (Appendix 2).
Sources: Department of Justice, 'Justice Plan 2021', 2021

A worked example of District Court scales shows how, depending on the solicitor's hours, a case may not be economical (1/2)

By way of example, depending how the case develops, it can become uneconomical for a solicitor to work in the District Court as set out in the example below. The scenario outlines a potential case and two potential outcomes. We have used a theoretical case of a two party road traffic accident on 1 January 2021, and the following scenarios could arise.

Table 10: District Court example - Scenario 1: Liability admitted by other party

Process steps (solicitor's perspective)	Hours involved	Fee payable under District Court scale	
1 Brief Counsel	1.5 hours	These are fees which are not calculated by reference to each individual step. The fees varies between €650 and €3,250 depending on the value of the case.	
2 Receive draft proceedings, discuss with client, engross and issue summons	2 hours		
3 Receive Notice for Particulars	0.5 hours		
4 Discuss with client	1 hour		
5 Answer Particulars	1 hour	Value of award	Fee payable
6 Receive defence	0.5 hours	<€3,000	€650
7 Provide discovery of medical notes	2 hours	€3,000 - €6,000	€1,300
8 Get date for trial	0.5 hours	€6,000 - €9,000	€1,950
9 Brief counsel	1 hour	€9,000 - €12,000	€2,600
10 Attend court for trial (In addition, motions for discovery or particulars may be required see steps below so this may happen twice)	2-8 hours	€12,000 - €15,000	€3,250
11 Brief Counsel	1 hour		
12 Receive draft documentation for discussion with client and swearing	1 hour		
13 Issue motion	0.5 hour		
14 Brief counsel for motion hearing	1 hour		
15 Attend motion hearing	2.5 hours		

In this scenario, the case could take a minimum of 12 hours or maximum of 30 hours, while the fee could vary from €650 to €3,250.

Assuming the majority of cases fall within the value ranges of €3,000-€6,000 to €6,000-€9,000, with the mid-point hours worked of 22 hours, this would result in an hourly rate of between €59 to €89.

“

Lawyers working in the District Court are providing a very important public service: this includes holding the authorities to account and upholding human and civil rights. This is part of the work at all levels in the criminal justice system. It is essential that this work be funded properly at all levels.”

Mr Michael L O'Higgins SC

A second worked example of District Court scales similarly shows how, depending on the solicitor's hours, a case may not be economical (2/2)

Table 11: District Court example - Scenario 2: Disputed liability requiring expert evidence (e.g. forensic engineer, doctor report)

Process steps (solicitor's perspective)	Hours involved	Fee payable under District Court scale	
1 Brief Counsel	1.5 hours	These are fees which are not calculated by reference to each individual step. The fees varies between €750 and €3,750 depending on the value of the case.	
2 Receive draft proceedings, discuss with client, engross and issue summons	2 hours		
3 Receive Notice for Particulars	0.5 hours		
4 Discuss with client	1 hours		
5 Answer Particulars	1 hours		
6 Receive defence	.5 hours		
7 Brief engineer	2 hours	Value of award	Fee payable
8 Discuss engineers report with client	1 hours	<€3,000	€750
9 Brief counsel to draft discovery request from Defendant	1 hours	€3,000 - €6,000	€1,500
10 Receive discovery from defendant	1.5 hours	€6,000 - €9,000	€2,250
11 Provide discovery of medical notes	2 hours	€9,000 - €12,000	€3,000
12 Get date for trial	0.5 hours	€12,000 - €15,000	€3,750
13 Brief counsel	1 hours		
14 Attend court for trial	2-8 hours		
(In addition, motions for discovery or particulars may be required see steps below so this may happen twice)			
15 Brief Counsel	1 hours		
16 Receive draft documentation for discussion with client and swearing	1 hours		
17 Issue motion	1 hours		
18 Brief counsel for motion hearing	1 hours		
19 Attend motion hearing	2.5 hours		

In this scenario, the case could be worked in a minimum of 17 hours or a maximum of 35 hours, while the fee could vary from €750 to €3,750.

Assuming the point made previously whereby the majority of cases fall within the value ranges of €3,000-€6,000 to €6,000-€9,000, with the mid-point hours worked in this scenario of 28 hours, this would result in an hourly rate of between €54 to €80.

The point is that the amount involved is irrelevant to the work undertaken, which is independent of the value.

The District Court scales are obliged to be reviewed not less than every three years.* However the current scales have not been updated since 2014.

* [District Court Rules](#)

A number of observations emerge from the assessment of the two proposed models

1. Care should be taken when comparing the mechanisms to control the direct costs of litigation across countries as it is important to also consider the indirect costs of funding the legal system in place. These costs capture the extent of court fees and charges, the payment by the courts of expert witnesses and expert reports, the number of judges and support staff, case management and the adoption of technology.
2. When comparing Ireland to other EU countries, it appears that other EU countries offer consumers lower exposure to legal costs, however, as shown (page 33) a greater number of judges and non-judge court staff are required to manage the passage of litigation, which is paid for through general taxation. For example if Ireland were to have a similar justice system to the Dutch, it would require an additional investment of €61 per inhabitant or c.€305 million on an annual basis.
3. There are a wide range of reforms required so that timely and efficient access to justice is accessible to all those that need it. Increased efficiency and in turn a reduction in costs could be achieved by the appointment of additional judges, reforms to the discovery process, the increased use of electronic filing and service procedures, improvements to the process for listing cases, and enhanced case management tools across all courts.
4. Investment in effective civil legal aid is essential to ensure access to justice for all regardless of means. For any legal system to operate at its optimum level, access to justice must be available to all. The availability of legal aid to those who cannot afford legal representation is an essential element in the administration of justice in a democratic society. Legal aid has long been recognised as a vital component to ensuring that a person's constitutional rights of access to the courts and to a fair hearing are given effect to, and that litigation can and (can be seen to) operate on an equality-of-arms basis.
5. The introduction of non-binding guidelines in respect of legal costs could improve the certainty and transparency of the adjudication process, but with minimal legislative intervention. Legal costs should be assessable primarily by reference to the work actually done by the legal practitioner in question. Guidelines or any system for controlling direct litigation costs should allow for flexibility to reflect the individual and exceptional circumstances which may arise at different stages of a particular case. This is in-line with the majority recommendation from the Kelly Report.

* gov.ie - End-2021 Exchequer Returns Summary (www.gov.ie)

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Appendices



Appendix 1 – Glossary of Terms

Term	Meaning
Administrative Costs	This refers to the fees paid to the court either for expert witnesses to give evidence or to commission expert reports to support a case in jurisdictions where parties to litigation are not required to pay. It also includes the fees paid e.g., in Irish courts by persons using the courts for many of the operations carried out by each of the court offices, such as the stamping of official documents, i.e., the entering of a motion or setting a case down for trial.
Adversarial common law procedure	The adversarial common law procedure requires the opposing sides to bring out pertinent information and to present and cross-examine witnesses. This procedure is observed primarily in common law jurisdictions.
Average earnings	Average earnings data covers earnings in all enterprises with 50 or more employees and a sample of those with 3 to 49 employees. Average weekly earnings are determined based on the absolute earnings per hour and the number of hours worked.
A party acting vexatiously	Vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights.
Civil law procedure	Under the inquisitorial procedure, the pretrial hearing for bringing a possible indictment is usually under the control of a judge whose responsibilities include the investigation of all aspects of the case, whether favourable or unfavourable to either the prosecution or defence. At the trial, the judge assumes a direct role, conducting the examination of witnesses. Neither the prosecution nor the defence has the right to cross-examine, but they can present effective summations.
Conciliation	The process of adjusting or settling disputes in a friendly manner through extra judicial means. Conciliation means bringing two opposing sides together to reach a compromise in an attempt to avoid taking a case to trial.
Cost-Benefit Analysis (CBA)	A CBA assesses all costs and benefits from a financial and societal point of view of a proposed project.
Consumer Price Index (CPI)	A measure of inflation which measures the overall change in the prices paid for a fixed basket of consumer goods and services by all private and institutional households over a given time period.
Directions' hearing	A directions hearing is usually held to decide how a case should progress and prepare parties for a final hearing. Directions may require a party to do whatever is necessary for the quick and fair conduct of the proceeding, consistent with achieving justice.
Disbursements	A payment, especially one made by a solicitor to a third party and then claimed back from the client.
Discovery	The compulsory disclosure, by one party to an action to another, of testimony or documents of historical origin, which may be of relevance.
Gross Domestic Product (GDP)	A measure of the size of the economy, the total economic activity in a country.
Hot-tubbing	Hot-tubbing, or 'concurrent evidence' giving, is a method of giving evidence whereby both experts of the same discipline give their evidence simultaneously and where the court or arbitrator chairs a discussion between them.
Indemnity costs	Indemnity costs are all costs, including fees, charges, disbursements, expenses, and remuneration, incurred by a party to litigation in undertaking proceedings provided they have not been unreasonably incurred or are not of an unreasonable amount.
Interlocutory motion	This refers to an order, sentence, decree, or judgment, given in an intermediate stage between the commencement and conclusion of a cause of action, used to provide a temporary or provisional decision or relief on an issue.
Legal Costs	The overall cost incurred by a party bringing or defending a civil action in any jurisdiction. This includes professional fees, expert witness fees, court fees, VAT, and any other outlay.
Multi-Criteria Analysis (MCA)	An MCA identifies and compares different options by assessing their effects, performance, impacts, and trade-offs against a rating scale.
Party and Party Costs	Legal costs payable by one party to another in legal proceedings e.g. where a plaintiff is successful in legal proceedings, the unsuccessful defendants will pay the plaintiff's party and party costs.
Setting down	To schedule, as to "set a case for trial."

Appendix 2 – Examples from the Current District Court Scales

Solicitors costs in summary proceedings for the recovery of rates for the following amounts	Costs if settled without necessity for appearance	Costs after hearing
• Not exceeding €1,100	€26	€52
• Exceeding €1,100 and not exceeding €2,200	€33	€66
• Exceeding €2,200 and not exceeding €3,300	€55	€110
• Exceeding €3,300 and not exceeding €5,500	€66	€132
• Exceeding €5,500 and not exceeding €11,000	€87.50	€175
• Exceeding €11,000	€110	€220 or such other amount as the Court thinks proper

Counsel's Fees - When the amount of compensation claimed under the Malicious Injuries Acts 1981 and 1986	€
• Exceeds €2,000 and does not exceed €3,000	500
• Exceeds €3,000 and does not exceed €4,000	550
• Exceeds €4,000 and does not exceed €5,000	600
• Exceeds €5,000 and does not exceed €7,000	750
• Exceeds €7,000 and does not exceed €9,000	800
• Exceeds €9,000 and does not exceed €11,000	850
• Exceeds €11,000 and does not exceed €13,000	950
• Exceeds €13,000 and does not exceed €15,000	1,050

Appendix 3 – Section 3 sources

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Appendix 4 – Section 4 sources

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 - Federal Court of Australia: <https://www.fedcourt.gov.au/forms-and-fees/court-fees>
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