

THE HIGH COURT
OFFICE OF THE LEGAL COSTS ADJUDICATORS



Supporting Access to Independent,
Impartial and Objective Resolution
of Legal Costs Disputes

in a modern, digital Ireland

STRATEGIC PLAN 2020 – 2023



**First Strategic Plan Published by the Chief Legal Costs Adjudicator
with the support of the Courts Service**

Editors:

Chief Legal Costs Adjudicator

Paul M. Behan

Assistant Principal Officer assigned to the Chief Legal Costs Adjudicator

Natasha Whyte

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FOREWORD



Foreword by the Chief Legal Costs Adjudicator

The Office of the Legal Costs Adjudicators was established when Part 10 and Schedule 1 of the Legal Services Regulation Act, 2015 were commenced following the enactment of the Legal Services Regulation Act 2015 (Commencement of Certain Provisions) (No.2) Order 2019 (S.I. No. 502 of 2019). The effective date being 7th October 2019.

The establishment of the Office, meant the abolition of the Office of the Taxing Masters, an Office in being in one form or another, for almost two hundred years. I had the privilege of being the last Taxing Master to have held the position and the honour of being appointed as the first Chief Legal Costs Adjudicator.

In accordance with one of my obligations, as Chief Legal Costs Adjudicator and in accordance with s.144 of the Legal Services Regulation Act 2015, I am pleased to present the first three-year strategic plan covering the period 2020-2023.

There are profound changes contained in the Legal Services Regulation Act, 2015, with specific obligations arising on practitioners in the manner in which information regarding legal charges is to be conveyed to clients of solicitor's, barristers and legal practitioners. This is a timely development.

There is a prohibition on charging remuneration as a specified percentage of damages, a prohibition on deductions in respect of legal costs, without written consent (s.149) There is a strong emphasis contained in the Act, and a continuing legal obligation to communicate information regarding legal charges. Legal obligations are created in s.150 with regard to the duties of disclosure and transparency. Importantly, agreements between legal practitioners and clients are amenable to Adjudication (s.151) and specific terms of agreements made in accordance with s.150 may well feature as part of the Adjudication process, having regard to s.151 and s.152.

Obligations on practitioners to provide Bills of Costs pursuant to s.152 are broad, as to content, timing and information to be provided. There is now a statutory duty on practitioners to attempt to resolve disputes (s.153). Time limits regarding disputes are imposed on the parties seeking adjudication, with no longer a requirement on a legal practitioner to commence proceedings prior to obtaining an Adjudication. In most cases either party can apply to have costs adjudicated. (the Act has simplified the steps leading to either party to a dispute, whether as between a legal practitioner and client or *inter-partes*, to take steps to obtain an Adjudication hearing (s.154 and s.155). The emphasis is on evidence based allowances and determinations highlight the need for work undertaken to be properly recorded and explained by all legal practitioners.



There are new lodgement and tender provisions, with potential burden shifting of the costs associated with the Adjudication. The Courts Act 2019 and the Superior Courts (Costs) Rules, 2019 made provision for lodgement and tenders. These are provided for in both Party and Party Adjudications and Legal Practitioner and Client (s.154(10)(e)). Decisions of Legal Costs Adjudicators are capable of being reviewed by the Court following a request for consideration (s.160)

One of the more significant changes brought about by the Act, is the obligation in s.140 of the Act, for the creation of a Register of Determinations (subject to certain limitations, as defined in the Act) to be created and maintained. Over time, this will create a body of information, publicly available, which will help to inform and assist users of legal services and professional representatives alike.

The Rules of Court underpinning the 2015 Act, came into effect on 3rd December 2019, with the Rules of the Superior Courts (Costs) 2019 being signed into effect. These rules updated and modified the existing Order 99 of the Superior Court Rules.

The new Rules updated the schedule of fees provided for drafting and preparing documents contained in Appendix W. The Rules also introduced new provisions for the preparation and presentation of bills of costs for Adjudication so that any paying party has greater transparency and visibility as to the components of the Bills of Costs. The Rules require that particulars of the charges are to be broken down into particular stages of work, such as work undertaken prior to proceedings, work undertaken during the proceedings, and for work undertaken in connection with the trial or settlement. A new welcome provision provides for work undertaken post the hearing, which can often be significant. For matters not falling within those identifiable stages, there is provision in the Rules for work not specifically falling within those defined areas or for work outside the scope of litigation generally.

It is hoped that the information contained in the Register will, over time, bring more transparency and greater visibility to legal costs. This should provide detail as to where the greatest expenditure arises. This information is likely to be of assistance in policy formation, to facilitate better access to justice.

In keeping with the overall strategy of the Civil Service Renewal program, to move to a more digitised platform, phase one of the Courts Service ICT High Court e-filing of Applications for Legal Costs Adjudication project was delivered through the Court Services Online (CSOL) platform. The development of this facility allows legal practitioners and legal costs accountants to lodge Applications for Legal Costs Adjudication in the Office of the Legal Costs Adjudicators electronically in cases where parties are legally represented. Additionally, as part of this project a searchable online register of determinations has been developed to allow for the office to meet its statutory requirements. These online facilities will yield benefits for legal costs accountants and practitioners alike, as well as providing transparency around legal costs to the public.

A key function of the office, is to ensure that disputes on legal costs are resolved in a timely, transparent and fair manner. Access to justice requires that the providers of legal services can maintain such a service by having a throughput of cases through Adjudication, if necessary, maintaining sufficient resources to provide legal advice to those who need it. The process has to also be conducted in such a manner that those who are required to pay for those services, know how and why such charges arise, so that they are not exposed to pay any excessive or unreasonable charges for accessing those services.



All these initiatives, which are the result of considerable years of planning many of which were undertaken long prior to the commencement provisions, and represent the work of a large number of talented people across a wide range of initiatives, far too many to mention. Some of these parties are current and former members of the Courts Service, the Department of Justice and Equality, but it would be remiss of me not to thank them.

I also wish to place on record my thanks to the staff within the Office, who took on the additional burden of maintaining two parallel systems, across two different legal entities. They had to cope with new practice and procedures, new online e-filing technology and engage with the testing of new information technology. They could not have been more accommodating, nor shown more professionalism and goodwill in their approach. I thank them deeply for their assistance.

Paul M. Behan
Chief Legal Costs Adjudicator

1. Introduction

This Strategic Plan, has been prepared taking due cognisance of the current reform environment within the Public Sector and by extension the Courts Service. The plan outlines the proposed strategic direction of the Office of the Legal Costs Adjudicators for the period 2020-2023. It identifies the office's mission and vision for the future and sets out the key strategic objectives for performance of the functions of both the Chief Legal Costs Adjudicator and Legal Costs Adjudicators. The plan, while focusing on the objectives of the office, is also allied to ensuring the most effective and efficient use of resources. Furthermore, it describes the key values that will inform the culture of the Office as it grows and develops its capacity to support access to Justice, by delivering effective and efficient access to independent, impartial and objective resolution of disputes on legal costs.

2. Mission, Vision and Values

2.1. *Our Mission*

To enable access to independent, impartial and objective resolution of legal costs disputes. Through the provision of a courteous and professional service in the performance of its statutory function. To maintain and provide transparency throughout the process from inception to completion, with reasoned outcomes being published, in so far as is permitted by the law, and accessible via the register of determinations, so as to inform both legal practitioners and the public. It is our mission to provide this service in a timely manner, providing and supporting access to justice.

2.2. *Our Vision*

Over time, as the number of adjudications are completed and the register of determinations is updated, a body of information will be publicly available to inform the public and practitioners of the range of legal costs, the manner in which they are determined and the reasons underlying the determination.

2.3. *Our Values*

We are committed in performing our functions and fulfilling our responsibilities, to independence, fairness, integrity, professionalism, innovation and accountability. Our strengths derive from the expertise of the staff within the office. With a commitment to improving services, adapting innovative processes and adherence to best practices and developing strategies for improvement. It is recognised, that the Office of the Legal Costs Adjudicators is a comparatively new one. It is likely that plans will need to be developed to meet problems encountered in the initial implementation of this plan. We are committed to identify problems in a timely basis and supporting this with proposed solutions.

3. Who We Are, What We Do?

Part 10 of The Legal Services Regulation Act, 2015 was commenced on 7th October 2019 (Commencement of Certain Provisions) (No.2) Order 2019. S.I No. 502 of 2019. This resulted in the establishment of a new regime for the adjudication of legal costs, with the abolition of the Office of the



Taxing Master and the work of that Office being transferred to the newly established Office of the Legal Costs Adjudicators.

The statutory powers, functions and duties of the Office, derive from Part 10 and Schedule 1 of the Legal Services Regulation Act, 2015. These statutory powers are underpinned by the Rules of the Superior Court (Costs) 2019.

By its statutory powers, the Office of the Legal Costs Adjudicators, in addition to having the previous powers of the Taxing Masters, deals with disputes on legal costs, usually but not always, as between parties involved in litigation in the Superior Courts. There are other matters such as disputes between a legal practitioner and his or her client.

Party and Party costs usually derive from an Order of the Court. This is where a Court or an authorised body, directs one party to a cause to pay the costs of another. Party and Party Costs usually arise from proceedings in the Superior Courts, see Part 11 of the Legal Services Regulation Act, 2015.

Circuit Court costs arising in proceedings are determined by County Registrars, as is provided in s.141 of The Legal Services Regulatory Act, 2015 and the Circuit Court Rules. The Office of the Legal Costs Adjudicator does not generally have any jurisdiction or power to deal with Circuit Court Party and Party costs, but does have jurisdiction to deal with Circuit Court Costs, only where they arise as part of a wider dispute as between a legal practitioner and client.

Disputes as between legal practitioners and their clients fall within the remit of the Office of the Legal Costs Adjudicators. Legal Practitioners have prescribed duties, contained within the Act. The Legal Costs Adjudicators have a duty to hear and determine disputes relating to the amount and whether such costs are reasonable. It is important to note that the Office does not have the power to deal with matters of poor or inadequate services, complaints relating to misconduct, such matters are currently dealt with by the Legal Services Regulatory Authority.

4. Office of the Legal Costs Adjudicators Governance Structure



5. Office of the Legal Costs Adjudicators Management Structure



6. Key Challenges, Risks, Strengths and Opportunities in our operating environment

The Office of the Legal Costs Adjudicators is a statutory office, established by the Part 10 of The Legal Services Regulation Act, 2015. The Office is part of the wider courts system and plays a role in supporting access to Justice. It is a frontline, service focused office, providing support to the Legal Costs Adjudicators in the delivery of independent, impartial and objective determination of legal costs, in a modern, digital Ireland.

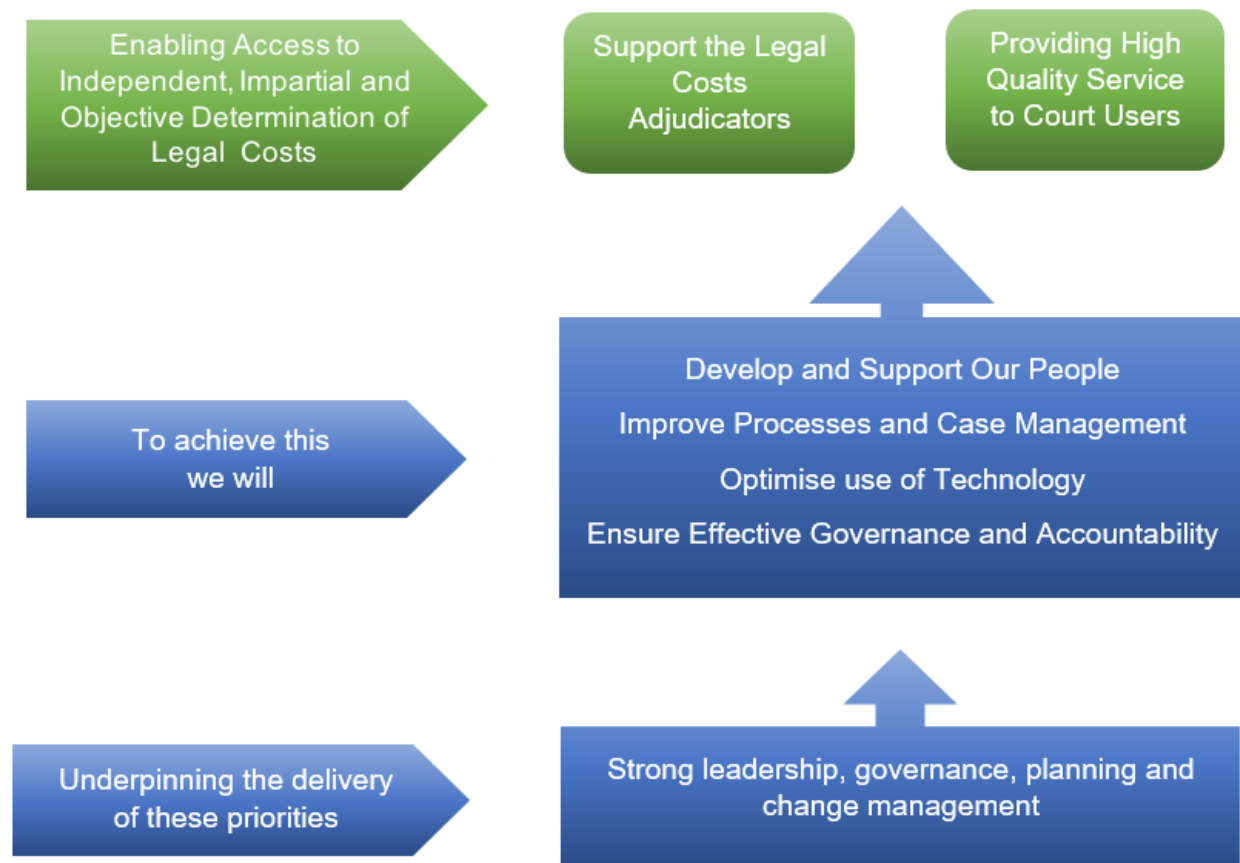
1) *Office of the Legal Costs Adjudicator - Challenges and Risks*

- Delivery of the offices mandate and reform agenda is dependent on the provision of necessary resourcing from the central government and by extension the Courts Service and on the policy and economic context in which we operate, with the current economic context predicted to change to that of recession by the Economic and Social Research Institute in its latest quarterly review dated 19th March 2020. In this regards the Court Service and by extension the office will be competing with demands from all public sector organisations for funding and resources, as part of the Government budgetary process.
- Some office reforms will be dependent on enactment of legislative reforms. Conversely changing external demands and priorities can, at times, take precedence over the implementation of office priorities and by extension the Courts Service priorities leading to an unanticipated delay in enactment of required legislative reform.
- Potential knowledge drain within the office, due to increased staff turnover from retirement, resignation, promotion and mobility, and the management of this will be key to imbedding and optimising the new service delivery channels for e-filing of legal costs adjudication applications to the High Court and the new legislative regime.

2) Office of the Legal Costs Adjudicator - Strengths and Opportunities

- The Courts Service previously implemented a learning and development strategy, which adopted a focused approach to learning and development, including delivery of leadership and management capabilities training, resulted in the development of strong leadership capabilities within the organisation. These capabilities will now be used in managing the knowledge retention and reform agenda of the office, in a manner that serves to promote long term sustainability.
- With the recent completion of phase one of the Courts Service ICT project of High Court e-filing of Applications for Legal Costs Adjudication on Court Services Online (CSOL) the office is in a position of strength to build on opportunities arising from a more diverse society, with an increased appetite to engage with public services online via digital media. In line with Public Sector ICT and eGovernment policies.
- The Courts Service has centrally adopted a user centric approach focused on better understanding the needs of those who interact with the court system and services. The Office of the Legal Costs Adjudicators will draw on this experience to work collaboratively with all users to simplify legal costs adjudication practices and procedures and design our services based on the needs of those who use them.

7. Office of the Legal Costs Adjudicators Strategy Map



8. Office of the Legal Costs Adjudicators Strategic Priorities

8.1. *Strategic Priority 1: Supporting the Legal Costs Adjudicators*

Supporting the Chief Legal Costs Adjudicator and the Legal Costs Adjudicators is a statutory obligation of the Court Service and by extension the office and is central to our mission. As well as being a key strategic priority in its own right, it is also key to the achievement of all our strategic priorities. The office supports the Adjudicators by ensuring that all required documentation, arising from either the Legal Services Regulation Act, 2015, including statutory notices, books, documents and vouchers are available for consideration and available for the adjudication hearings. Dates for hearings are allocated to each Legal Costs Adjudicator on a rotational basis. Where users require additional days for hearings or pre-adjudication case management sittings are required, the staff ensure that the adjudication sittings are supported and the necessary resources and assistance are in place for the Adjudicators to hear and determine adjudications. This support has to be undertaken by engagement with the adjudicators and the service users, at all times being independent, objective and observing fair procedures.

Objectives and Actions:

1) *Support the Adjudicators in the administration of independent, impartial and objective determination of legal costs by:*

- Have resources in place to facilitate online applications for Adjudication.
- Have knowledgeable and trained staff to assist professional and members of the public who engage with the office.
- Have resources in place to support all adjudication sittings.
- Ensure timely delivery of supporting documentation required for adjudication hearings.
- Assisting Adjudicators in list management and case progression as appropriate.
- Assisting the Chief Legal Costs Adjudicator in the accurate and timely updating of the Register of Determinations, per statutory requirements.

8.2. *Strategic Priority 2: Providing High Quality Service to Court Users*

A core part of our mission is the provision of excellent services to court users. The Office of the Legal Costs Adjudicators is involved either directly or indirectly in providing services to a wide range of court users, including legal costs accountants, legal practitioners, other public bodies, non-governmental agencies as well as directly to members of the public. We strive to provide a consistent, impartial, high level of customer service as appropriate to the circumstances. Although the Office is independent and cannot offer advice, it does assist parties in the filtering process, so as to ensure that a party is seeking the correct service, consistent with the limitation of the Office's statutory remit.

Objectives and Actions:

- 1) *Develop clear definitions of customer service standards to support excellent and consistent customer service levels across the office by:*
 - Engaging with our stakeholders through regular user group meetings.
 - Ensuring Office has all necessary supports available to maintain consistent level of service to the public.
 - Actively seeking and evaluating the views of those who use our services through quality surveys and feedback with a view to improving the quality and consistency of service based on this feedback.
 - Developing an office customer service charter in line with the Court Services customer charter.
- 2) *Develop and communicate legal costs adjudication information effectively to all court users by:*
 - Developing and promoting use of our office website homepage on www.courts.ie to provide reliable, up to date and user-friendly access to information in accordance with content best practice principles.
- 3) *Contribute to policy improvement in the area of legal costs adjudication by:*
 - Noting procedural obstacles and anomalies and devising strategies for resolution.

8.3. *Strategic Priority 3: Develop and Support Our People*

Our primary objective is to have skilled, engaged and enabled staff.

Objectives and Actions:

- 1) *Be a place where people are proud to work and be an office of choice by:*
 - Developing and implementing an office-based induction programme to integrate new staff joining the office, to run in tandem with the Courts Service induction programme.
 - Ensuring support for managers in managing the probation process.
 - Embedding a coaching culture through development of managerial coaching skills.
 - Promoting equality, dignity and wellbeing for staff by implementing Civil Service policies on wellbeing, equality, diversity and dignity at work.

2) *Develop and enable our workforce to achieve their career goals and the goals of the office and Courts Service in delivering an excellent service to the Adjudicators and to the public by:*

- Developing and implementing succession planning, to ensure continuity of business, when staff move due to promotion, mobility, resignations or retirements.
- Developing and implementing structured on the job training, through the creation of a clear framework for knowledge transfer.
- Utilising performance management with a focus on regular and effective conversations between managers and staff.
- Developing, embedding and optimising new work practices and procedures to govern new legislative regime and ICT system.
- Developing an environment of innovation and continuous learning and development to ensure staff have the management, technical and legal skills and knowledge to discharge their roles in an effective and professional manner.

8.4. *Strategic Priority 4: Improve Process and Case Management*

Working with the Adjudicators and other stakeholders, we will continue to support improved access to justice through case management, collaboration and reform.

Objectives and Actions:

1) *To assist and progress improved case management and waiting times by:*

- Optimising use of digital solutions to deliver improved case management and waiting times.

2) *Working with the Department of Justice and Equality, Legal Costs Accountants, Legal practitioners and their representative bodies and all other stakeholders in contributing to civil law reform by:*

- Contributing to the development of legislative reform as required.

8.5. *Strategic Priority 5: Optimise Use of Technology*

We will optimise the use of technology to improve service delivery for all stakeholders, by expanding the range of services provided on-line, through digital means as developed by the Courts Service.

Objectives and Actions:

1) *Generating efficiencies from increased use of online service delivery using Courts Service On-Line (CSOL) platform by:*



- Increasing awareness of facility for E-filing of Applications for Legal Costs Adjudication to the High Court, through continued delivery of information campaign.
 - Embedding and optimising use of new E-filing system.
 - Noting user obstacles and anomalies and devising strategies for resolution.
- 2) *Generation and utilisation of targeted data from Courts Service On-Line (CSOL) platform to optimise processes and increase overall efficiency of system by:*
- Developing statistical report functionality to deliver targeted data for statistical returns, as well as for inclusion in Annual Report and provision of evidence-based data for identified future improvement projects.

8.6. Strategic Priority 6: Ensure Effective Governance and Accountability

Effective governance and accountability are priorities for the OLCA.

Objectives and Actions:

- 1) *Ensure compliance with the Code of Practice for the Governance of State Bodies 2016 and other regulatory frameworks by:*
- Implementing appropriate oversight arrangements as agreed with the Chief Executive Officer of the Courts Service and by extension the Department of Justice and Equality.
 - Developing effective operation of risk management for the office.
 - Ensuring Office is compliant with the General Data Protection Regulation (GDPR), Data Protection, Act 2018.
- 2) *Demonstrate transparency and accountability in the handling of court fees and duty associated with the legal costs adjudication process by:*
- Completing and publishing the Office's Annual Report
 - Progressing the development of improved financial reporting to provide clear and transparent data.

9. Positive Outcomes

The following are the planned positive outcomes from the implementation of this Strategic Plan over the next three years:

Stakeholder Group	Benefits
Service Users	<ul style="list-style-type: none"> ✓ Reduced waiting times. ✓ User centric simplified and standardised processes. ✓ Simplified and easy to understand communications. ✓ More transparency in the area of legal costs. ✓ Greater certainty in relation to how costs are determined.
Judiciary	<ul style="list-style-type: none"> ✓ Evidence of inputs and activities, to support a case for additional quasi-Judicial resources. ✓ Provision of expertise and support. ✓ Enhanced exchange of and access to case information online ✓ Enhanced ability to focus on value added processes and activities requiring quasi-Judicial input.
Managers & Staff	<ul style="list-style-type: none"> ✓ New more interesting roles (with fewer mundane paper-based tasks) ✓ Increased focus on capabilities and skills development ✓ Collaborative, challenging supportive environment ✓ Accurate, timely management information ✓ Opportunities to use leading-edge tools and techniques
Department of Justice & Equality (DJE)	<ul style="list-style-type: none"> ✓ Delivery of transparency in the area of legal costs through the online searchable register of determinations
Legal Profession	<ul style="list-style-type: none"> ✓ Online access to case information ✓ Online searchable register of determinations ✓ More transparency in the area of legal costs ✓ Greater certainty in relation to how costs are determined ✓ Online (24*7) access to digital services
Department of Public Expenditure & Reform (DPER)	<ul style="list-style-type: none"> ✓ Demonstrating value for money. ✓ Better quality performance data. ✓ Clarity on demand for administration and quasi-Judicial resources.

10. Monitoring Implementation

1) Key to successful implementation of this strategy will be:

- Annual Office Business Plan translating high level strategic objectives into key deliverables.

2) Reporting on implementation with the achievement of key milestones will be by way of:

- Annual Office Report to the Chief Executive Officer of the Courts Service
- Quarterly reports to the Senior Management Team of the Courts Service on the implementation of the Business Plan.
- Ongoing monitoring of delivery by Head of Office.



Oifig na mBreithneoirí Costas Dlíthúil,
An Árd Chúirt,
1ú Urlár, Teach na gCeannaithe,
27/30 Cé na gCeannaithe,
Baile Átha Cliath 8.

Office of the Legal Costs Adjudicators,
The High Court,
1st Floor, Merchants House,
27/30 Merchants Quay,
Dublin 8.

Teileafón/Telephone: 01 888 6301, Facsuimhir/FAX: 01 672 8670, DX 1001 Four Courts,

Ríomhphost/E-mail: info_legalcostsadjudicators@courts.ie