

2019

# ANNUAL REPORT 2019

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*

# **First Annual Report 2019**

**First Annual Report 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**

THE HIGH COURT  
OFFICE OF THE LEGAL COSTS ADJUDICATORS



### Our Mission

The Office's Mission is 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.

**In support of this mission, the Office pursues two strategic goals:**

- *Supporting the Legal Costs Adjudicators*

Supporting the Chief Legal Costs Adjudicator and the Legal Costs Adjudicators is a statutory obligation of the Courts 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.

- *Providing High Quality Service to Court Users*

A core part of our mission is the provision of a consistent, impartial, timely and excellent service to court users, consistent with the limitation of the Office's statutory remit.

### 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.

### 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.



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### FOREWORD



#### Foreword by the Chief Legal Costs Adjudicator

In accordance my obligations, as Chief Legal Costs Adjudicator, pursuant to s.146 of the Legal Services Regulation Act 2015, I am pleased to present the first Annual Report covering the period to 31<sup>st</sup> December 2019.

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 7<sup>th</sup> October 2019.

Because the Office only came in to being on 7<sup>th</sup> October 2019, this report covers a short period of time, if taken by date, but a significant amount of activity was undertaken in that period and indeed prior to the establishment of the Office, this was necessarily so, as otherwise, the effective establishment, could simply not have occurred as smoothly and efficiently as it did. The staff in the office of the Taxing Master, transferred their experience, skill and knowledge effortlessly and with their unfailing commitment and professionalism. The staff ran, and continue to run, two systems in parallel until the older cases are finally resolved. I am indebted to them for all that they did and all that they continue to do.

It is necessary to point out that the coming into being of the Office, is only part of the work of the Office. The Office of the Legal Costs Adjudicators replaced the Office of the Taxing Master. The existing cases which were part of the Taxing Masters case load, were still in being and depending on whether these had been the subject of a hearing or not, they were to be treated as transitional cases and subject to the provisions of s. 165 of the Legal Services Regulation Act. A Legal Costs Adjudicator where a case is in transition, has the existing powers of a Taxing Master.

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Taxing Master Declan O'Neill retired from office on 6<sup>th</sup> June 2019. It would be remiss of me not to acknowledge the help and advice that he gave to me, the Courts Service and the ICT personnel, prior to his retirement. His experience was an invaluable part of the preparation for the commencement of the preparations for the implementation of the 2015 Act.

I remained in office as the sole Taxing Master and was appointed as Chief Legal Costs Adjudicator to coincide with the coming into effect of the Office on 7<sup>th</sup> October 2019. Niall O'Hanlon was appointed as a Legal Costs Adjudicator. It is expected that a third Legal Costs Adjudicator will be appointed in 2020.

Prior to the establishment, the Office staff of the Taxing Masters had engaged in significant development work with the Courts ICT personnel to develop an e-filing platform for the initiation of Applications for Adjudication of Legal Costs. 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 and members of the Public. Over time, this will aid in providing transparency around legal costs, their value and the assessment process and rationale underlying the determinations.

There were engagements with users of the services and public consultations and information seminars were held with about 40 attendees. In addition an online instructional video and a detailed handbook was prepared and is available on the Courts Service Website.

The Rules of Court underpinning the 2015 Act, came into effect on 3<sup>rd</sup> 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 and importantly provided for the preparation of bills of costs separating of aspects of the legal costs across four discrete areas, being work undertaken prior to the commencement of proceedings, work undertaken during the proceedings, work done in connection with the trial, hearing and settlement and finally for work done post the hearing. There are separate

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categories for other legal work undertaken which do not fall into these identifiable categories. These changes only took effect when the new Court rules came into force, so their benefit will become clearer with time.

I am pleased to present the first Annual report on behalf of the Office of the Legal Costs Adjudicators

**Paul M. Behan**

**Chief Legal Costs Adjudicator**



### CHAPTER 1 - About the Office of the Legal Costs Adjudicators

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Part 10 of The Legal Services Regulation Act, 2015 was commenced on 7<sup>th</sup> 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.

### CHAPTER 2 - The Year in Review

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#### *1) Development of Online System and Register*

Prior to the establishment of the Office, the Courts Service devoted significant resources to the development of an e-filing system for the initiation of Applications for Adjudication of Legal Costs. Phase one of the Courts Service ICT High Court e-filing of Applications for Legal Costs Adjudication

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project was launched following the commencement of part 10 of the Legal Services Regulation Act 2015 via 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. Legal firms or Legal Costs Accountants firms must first set up a CSOL account and obtain a Username and Password in order to access the system for e-filing of legal costs adjudication applications (LCA).

Figure 1:- Screenshot of CSOL homepage login screen.

Following log in the user is presented with the My Dashboard home page, which contains a link to *Create an Application for Adjudication of Legal Costs*.

Figure 2:- Screenshot of CSOL My Dashboard homepage screen.

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.

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The screenshot shows the 'Courts Service Online' interface. At the top, there is a navigation bar with the logo 'An tSeirbhís Chúirteanna Courts Service' and the text 'Courts Service Online'. Below the navigation bar, there are several tabs: Home, Create Account, eDiary, High Court Search, eRegister, and Information. The main content area contains a search form with the following fields: Application Date (Choose a date), Party Names, Record Number of Related Proceedings, Title of Related Proceedings, and Date of Determination (Choose a date). There are 'Clear Filters' and 'Search Now' buttons. Below the search form, there is a table with the following columns: Receipt Date of Application, Adjudication Parties, Status of Prerequisite Documents, Record No. of Related Proceedings, Title of Related Proceedings, Date Assigned, Assigned LCA, Determination Date, Determination Notice Date, and Reasons for Determination.

Figure 3:- Screenshot of Legal Costs Adjudicators Register of Determination on CSOL..

These online facilities will yield benefits for legal costs accountants and practitioners and members of the Public, in addition, over time, this will aide in providing transparency around legal costs, their value and the assessment process and rationale underlying the determinations.

### 2) Information Seminars

In keeping with the overall strategy of the Civil Service Renewal program, to move to a more digitised platform. A number of information seminars were held prior to the establishment of the office to both promote and educate practitioners in the use of the on-line system. These information seminars were well attended, with queries being raised and addressed. In addition, an online instructional video was developed and is available on the Courts Service Website.



Figure 4:- Screenshot of Online Registration Video

### 3) Appointments and Welcome

Following the commencement by the Minister for Justice and Equality, Mr Charlie Flanagan TD of Part 10 of the Legal Services Regulation Act, 2015, which established the new Office of the Legal Costs

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Adjudicators. and the subsequent appointment of Paul M. Behan as Chief Legal Costs Adjudicator (formerly Taxing Master Behan) and Legal Costs Adjudicator Niall O'Hanlon.

A reception was held in the Office of the Legal Costs Adjudicators, to formally welcome Dr. Niall O'Hanlon as Legal Costs Adjudicator. His appointment making legal history being the first Legal Costs Adjudicator to be drawn from the ranks of the Bar and indeed the first Legal Costs Adjudicator in his own right.



*(pictured left to right) Chief Legal Costs Adjudicator Paul M.Behan, Courts Service*

*CEO Angela Denning, President of the Institute of Legal Costs*

*Accountant Peter Fitzpatrick and Legal Costs Adjudicator Dr. Niall O'Hanlon*

*Figure 5:- Welcome Reception Photo*

### **4) Office Set Up**

The setting up of the new office, required a lot of work. An additional Adjudication Room and Chambers were added to the existing infrastructure of the office in preparation of the appointment of a third Legal Costs Adjudicator (appointment pending). A dedicated PC was installed to provide on-site access to the Register of Determinations for members of the public. New signage, stationery, brochures and email address were developed and implemented by the office. Staff training materials were developed and training delivered to facilitate a smooth transition from the old to the new legal regime and on-line system, leading to the effective establishment of the Office of the Legal Costs Adjudicators.

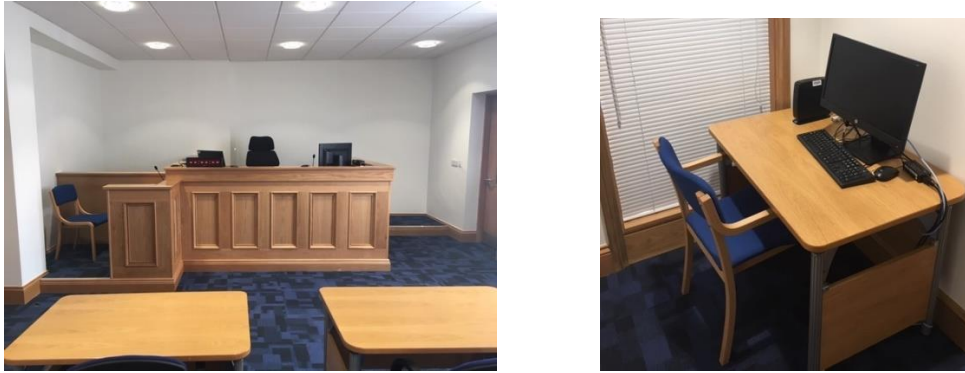


Figure 6:- Photos of the new Legal Cost Adjudication Room and Register of Determination Public Access PC.

### CHAPTER 3 - Office of the Legal Costs Adjudicators Governance and Management Structure



Figure 7:- Office of the Legal Costs Adjudicator Governance Structure



Figure 8:- Office of the Legal Costs Adjudicator Management Structure

### CHAPTER 4 - Activity

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#### *1. Establishment Day - Total Number of Applications on hand*

At the date of the establishment of the Office a total of 602 cases fell to be dealt with, either as a Taxation of Costs or as an Adjudication pursuant to the Transitional provisions contained with s.165 of the Legal Services Regulation Act, which provides

#### *Transitional — matters in course and legal proceedings*

165. (1) Where, before the day on which this subsection comes into operation, a matter has been referred for taxation and a hearing has taken place on the matter, whether before a Taxing-Master or a County Registrar exercising the powers of a Taxing-Master, the matter shall be dealt with in accordance with the applicable law as it stood before that day notwithstanding the provisions of this Part.

(2) Where, before the day on which this subsection comes into operation, a decision has been made on a matter referred to taxation, any review of the decision shall be determined in accordance with the applicable law as it stood before that day, notwithstanding the provisions of this Part.

(3) Where, before the day on which this subsection comes into operation, a matter has been referred for taxation but a hearing has not yet taken place on the matter, the matter shall be dealt with as though the referral were an application for adjudication of legal costs under section 154 made on the day on which the matter was referred for taxation.

(4) Where, immediately before the day on which this subsection comes into operation, any legal proceedings are pending to which a Taxing-Master, or a County Registrar exercising the powers of a Taxing-Master, is a party and the proceedings have reference to any functions that on or after that day are functions of the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator, the name of the Chief Legal Costs Adjudicator or Legal Costs Adjudicator, as the case may be, shall, in so far as the proceedings relate to those functions, be substituted in those proceedings for that of the Taxing-Master, or County Registrar, or added in those proceedings, and those proceedings shall not abate by reason of such substitution.

A breakdown of the type and status of the cases on hand on establishment day can be seen from the graphic illustrations below – demonstrating the wide variety of cases dealt with by the office.

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### *Originating Case Type – In List Form*

Originating Case Type	No. of Cases	Amount Claimed €
Road Traffic Accidents	152	11,890,465
Employer & Occupiers	86	9,312,701
Medical Negligence	67	22,926,116
Judicial Review	60	6,372,656
Motions Interlocutory	60	3,276,650
Contract	32	6,443,082
Public Liability	31	3,209,097
Appeal - Court of Appeal	23	5,998,218
Other	14	3,310,125
Appeal - Supreme Court	11	1,680,089
Defamation, Libel & Slander	11	2,763,622
Solicitors Acts	8	332,088
Assault & Battery	7	760,953
Wards of Court	7	473,623
Tribunal of Inquiry	5	1,872,746
Commercial Court	4	5,404,301
Arbitration	3	259,544
Bankruptcy	3	178,912
Companies Act	3	41,887
Probate Matters	3	214,438
Case Stated	2	236,927
Garda Compensation Acts	2	57,665
Article 40/Habeas Corpus	1	300,992
Constitutional Law	1	1,802,773
Employment Law	1	41,879
Family Law	1	7,479
Immigration Law	1	102,189
Pension Matters	1	77,452
Planning Matters	1	179,391
Sale of Land	1	182,459
<b>Total</b>	<b>602</b>	<b>€89,710,518</b>

Figure 9:- Table showing the breakdown of Legal Costs Adjudication applications by originating case type



**Originating Case Type – By Area**

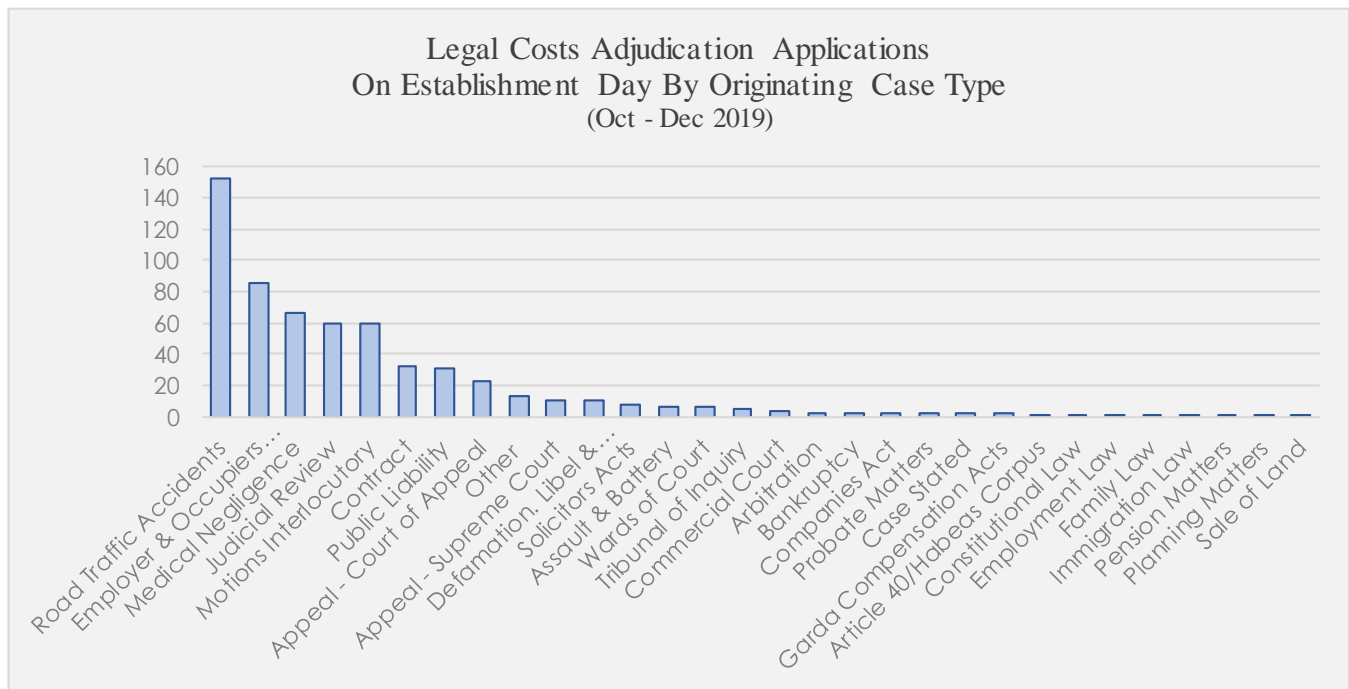


Figure 10:- Graph of Number of Legal Costs Adjudication Applications per Case Type

**Originating Case Type – Monetary Value**

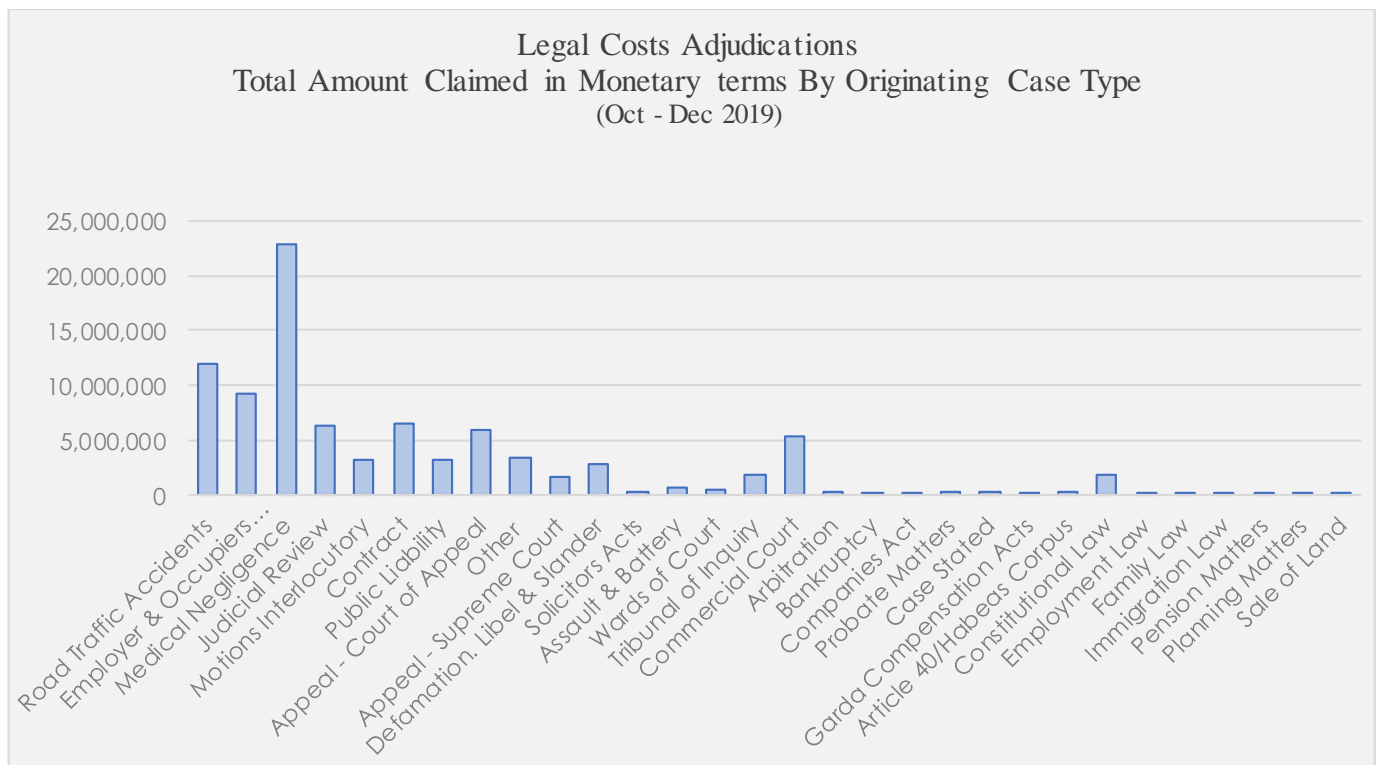


Figure 11:- Graph of Total Amount Claimed in Legal Costs Adjudication Applications per Case Type

## 2. Year End Case Status

A breakdown of the cases, dealt with in the period 7<sup>th</sup> October 2019 to 31<sup>st</sup> December 2019, shows that 62% of the cases were settled between the parties, 9% were determined and concluded, 28% are adjourned, either pending further hearings, heard and rulings may be reserved or the matters are subject to negotiation. Five in number or less than 1% of the cases are subject to a request for consideration.

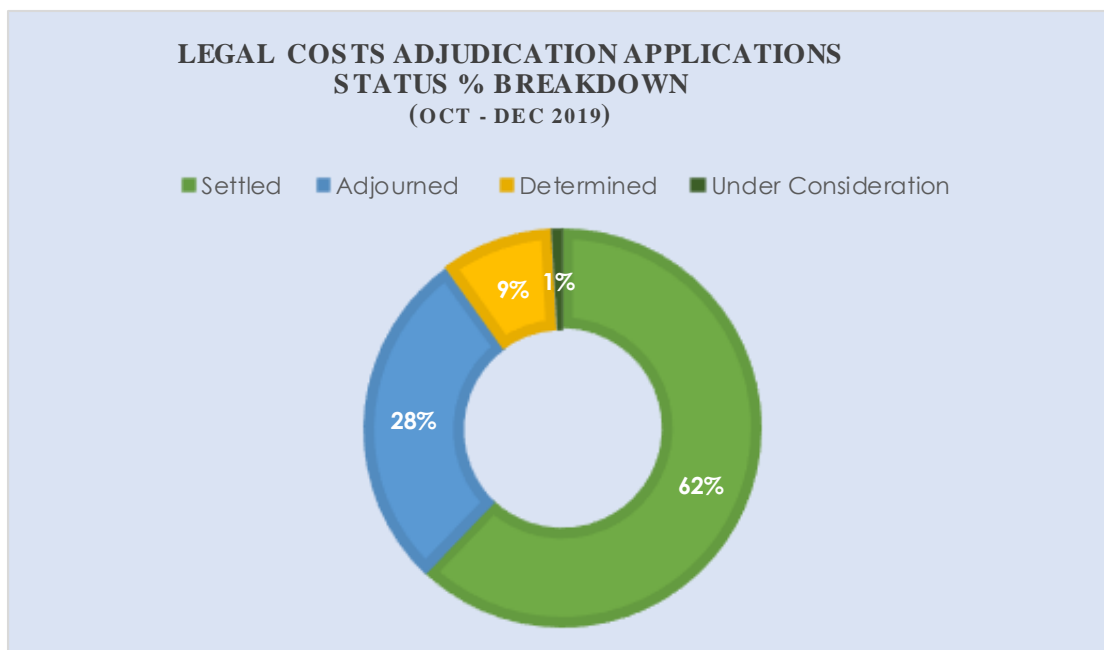


Figure 12:- Graph of Year End - Legal Costs Adjudication Applications Case Status

Case Status	No. of Cases	%
Settled	374	62
Adjourned	168	28
Determined	55	9
Under Consideration	5	1
<b>Total Number of Cases</b>	<b>602</b>	<b>100</b>

Figure 13:- Table of Year End - Legal Costs Adjudication Applications Case Status

## 3. Settled Cases

In many instances, the parties to an Adjudication, will take the opportunity to resolve disputes regarding legal costs. The Office of the Legal Costs Adjudicators will facilitate the resolution of disputes. In keeping with many adjudicative processes, parties often resolve their disputes close to or after a hearing. The 2015 Act, provides in s. 153 (2) that in the event of a dispute between a legal practitioner and client,

that the parties shall take all appropriate steps to attempt to resolve the dispute. The relevant provisions are as follows

### *Legal practitioner to attempt to resolve dispute*

153. (1) Where a client disputes any aspect of a bill of costs, he or she shall, within 21 days of the bill of costs being provided to him or her under section 152, send the legal practitioner concerned a statement in writing setting out the nature of the dispute.

(2) Where a legal practitioner receives a statement in accordance with subsection (1), he or she shall, before making an application under section 154 (5), take all appropriate and reasonable steps to attempt to resolve the dispute by informal means, which may include, where appropriate and with the consent of the client, mediation.

(3) Where the legal practitioner or the client, as the case may be, having made reasonable attempts to resolve the dispute in accordance with subsection (2), is of the opinion that the attempt has failed, he or she shall inform the other party in writing of that opinion.

(4) In reckoning the period of time for the purposes of subsection (5) or (7) of section 154, the period beginning on the date on which the client sends the legal practitioner a statement under subsection (1) and ending on the date on which the legal practitioner or the client, as the case may be, informs the other party of his or her opinion referred to in subsection (3), shall be disregarded.

(5) Failure by a client to pay a bill of costs to a legal practitioner within the time period referred to in section 154 (5) shall not be construed as a formal communication of the existence of a dispute by the client to the legal practitioner.

There is also power within s.156(2) that a Legal Costs Adjudicator can invite the parties to an Adjudication to refer their disputes to mediation. The relevant provisions are as follows

(2) A Legal Costs Adjudicator may invite the parties to an adjudication to refer their dispute to mediation or another informal resolution process if he or she considers that to do so would be appropriate in all the circumstances, whether or not any of the parties have requested that the Legal Costs Adjudicator do so.

(3) If the parties agree to refer their dispute to mediation or other process referred to in subsection (2), the Legal Costs Adjudicator shall adjourn the determination of the application and may give any other direction that he or she considers will facilitate the resolution of the dispute.

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As previously indicated 62% of the total cases dealt with in the period 7<sup>th</sup> October 2019 to 31<sup>st</sup> December 2019, were settled between the parties. The breakdown of settled cases is shown below:-

### *Settled cases – By List Type*

<b>Settled Cases -</b>	<b>No. of</b>	<b>Total Amount Claimed €</b>
Road Traffic Accident	110	8,149,038
Employers and Occupiers	67	7,334,406
Judicial Review	48	4,248,918
Medical Negligence	40	13,551,905
Motions Interlocutory	22	1,359,772
Public Liability	20	1,181,506
Contract	16	3,573,969
Appeal - Court of Appeal	10	3,447,081
Other	9	1,382,060
Appeal - Supreme Court	5	1,020,434
Defamation. Libel & Slander	5	690,506
Wards Of Court	5	388,496
Assault & Battery	4	440,715
Commercial Court	2	65,260
Garda Compensation	2	57,665
Arbitration	1	81,109
Case Stated	1	62,832
Employment Law	1	41,879
Family Law	1	7,479
Immigration Law	1	102,189
Pension Matters	1	77,452
Probate Matters	1	11,624
Sale of Land	1	182,459
Solicitors Acts	1	28,464
<b>Total</b>	<b>374</b>	<b>€47,487,218</b>

*Figure 14:- Table showing the breakdown of settled cases by originating case type*

### Settled Cases - By Case Type

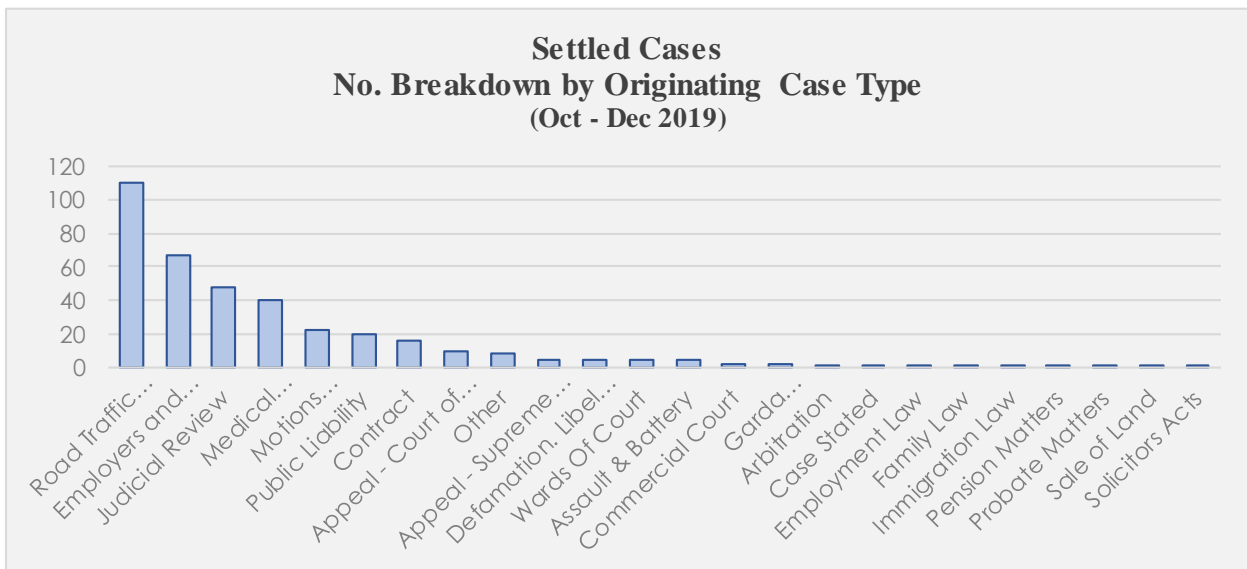


Figure 15:- Graph of Settled Cases - No. breakdown by Originating Case Type

### Settled Cases - By Monetary Value

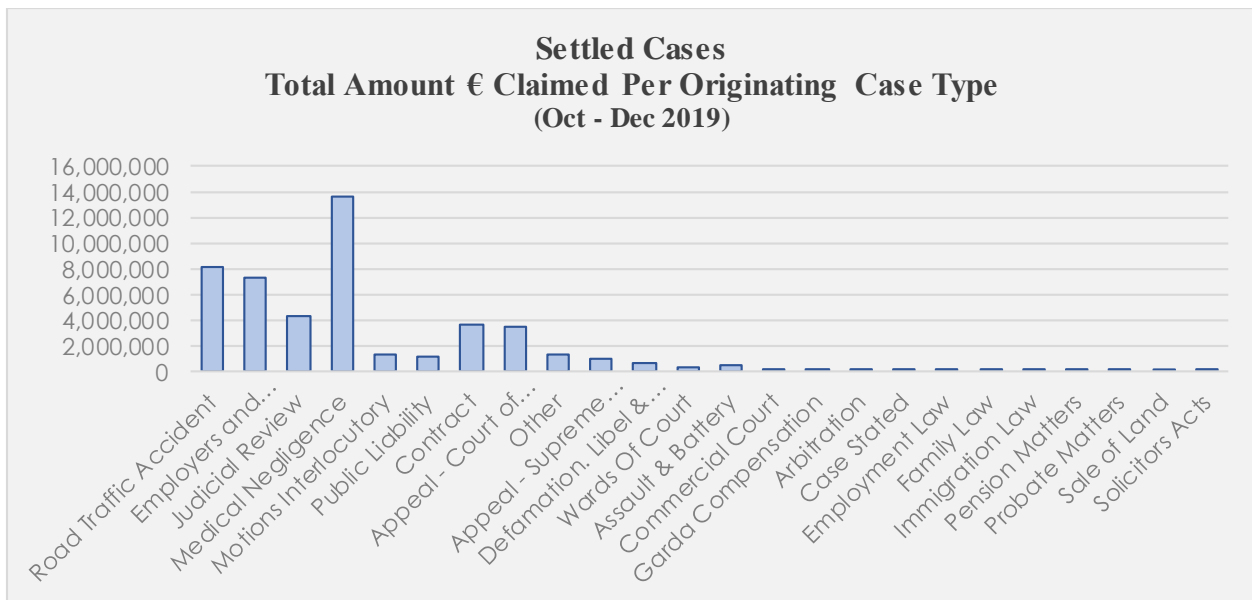


Figure 16:- Graph of Settled Cases - Total Amount Claimed € per Originating Case Type

## 4. Adjourned Cases

There are many reasons why matters may be adjourned. This would be particularly relevant where matters are under active discussion or a party was not in a position to proceed for one reason or another. In general terms, the Office tries to have a presumption against adjournment applications, without good reasons. Another reason is the short period of time for reporting and the implementation of new systems,

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New Rules of the Superior Courts and a variation of the application of the 2015 Act. All of these factors combined indicate that whilst matters are getting on for hearing in a short period of time, some flexibility was necessary for all concerned parties. Cases may be adjourned for written determinations.

### 5. The Value of Legal Costs in issue

The office had, in the period 7<sup>th</sup> October 2019 to 31<sup>st</sup> December 2019, claims for legal costs and expenses for adjudication in the sum of €89,710,518, illustrated as follows: -

Case Status	Total Amount Claimed €
Under Consideration	234,537
Determined	9,170,454
Adjourned	32,818,309
Settled	47,487,218
<b>Total</b>	<b>€89,710,518</b>

Figure 17:- Table of Total Amount Claimed € in Legal Costs Adjudication Applications per Case Status

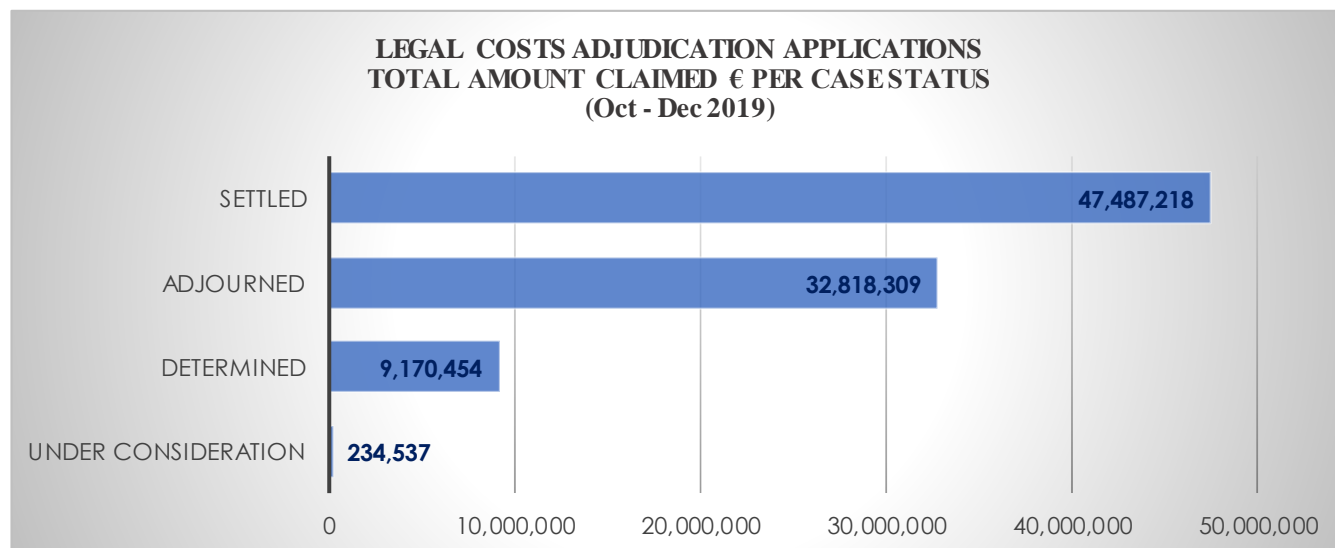


Figure 18:- Graph of Total Amount Claimed in Legal Costs Adjudication Applications per Case Status

### 6. Determined Cases

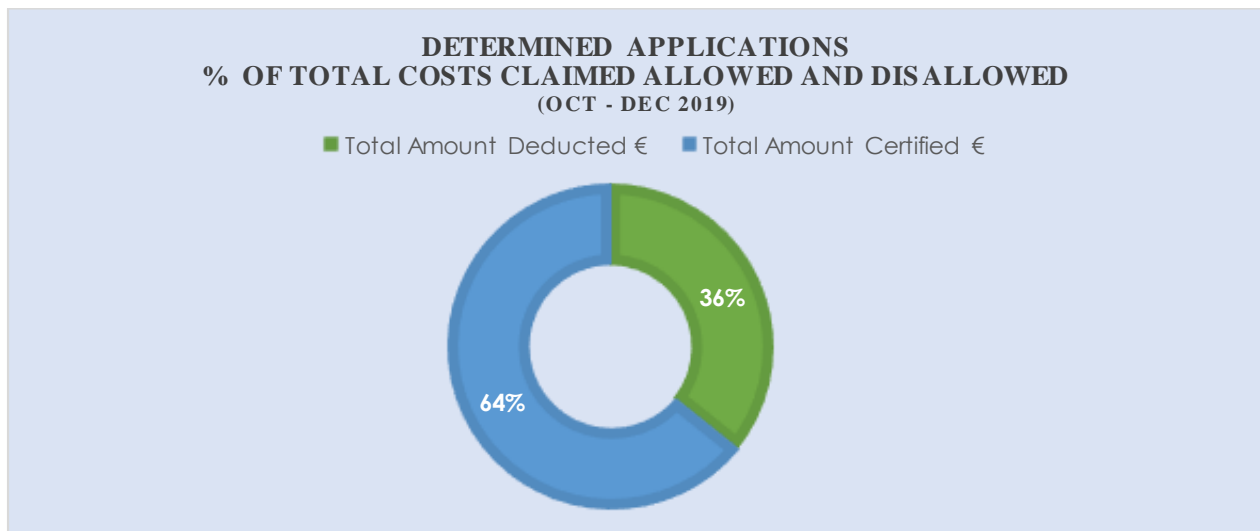
Bearing in mind the relatively short period of this report, the cases completed and determined, which are not under negotiation or subject to a consideration are as below:-

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Determinations Originating Case Type	No. of Cases	Total Amount Claimed €	Total Amount Deducted	Total Amount Certified	% Disallowed
Road Traffic Accidents	14	843,729	198,900	644,829	24
Motions Interlocutory	12	181,269	37,480	143,788	21
Appeal - Court of Appeal	4	579,057	214,478	364,578	37
Employer and Occupier Liability	4	296,857	69,025	227,832	23
Public Liability	4	297,063	109,586	187,477	37
Appeal - Supreme Court	3	612,375	230,564	381,811	38
Judicial Review	3	559,987	179,693	380,294	32
Medical Negligence	3	500,621	138,079	362,543	28
Companies Act	2	25,820	10,250	15,570	40
Contract	2	33,639	11,090	22,549	33
Assault and Battery	1	90,962	27,875	63,087	31
Commercial Court	1	5,080,580	2,022,204	3,058,375	40
Tribunal of Inquiry	1	59,282	32,502	26,781	55
Wards of Court	1	9,215	1,046	8,169	11
<b>Total</b>	<b>55</b>	<b>9,170,454</b>	<b>3,282,771</b>	<b>5,887,683</b>	

*Figure 19:- Table Breakdown of Determined Cases per Originating Case Type*

Of the amount claimed, about 64% of the amounts claimed were allowed. This is not suggestive that 36% of the costs claimed were unreasonable, there are many reasons why a costs incurred may not be recovered, such as a limitation on the amount recoverable, having regard to the terms of settlement or a Court Order or a difference in the interpretation of a liability for costs, or in some cases, the type of costs sought may not simply be recoverable on the applicable law or facts of the case.



*Figure 20:- Graph of % of Total Costs Claimed – Allowed and Disallowed in Determined Cases*

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In monetary terms, the result is as below

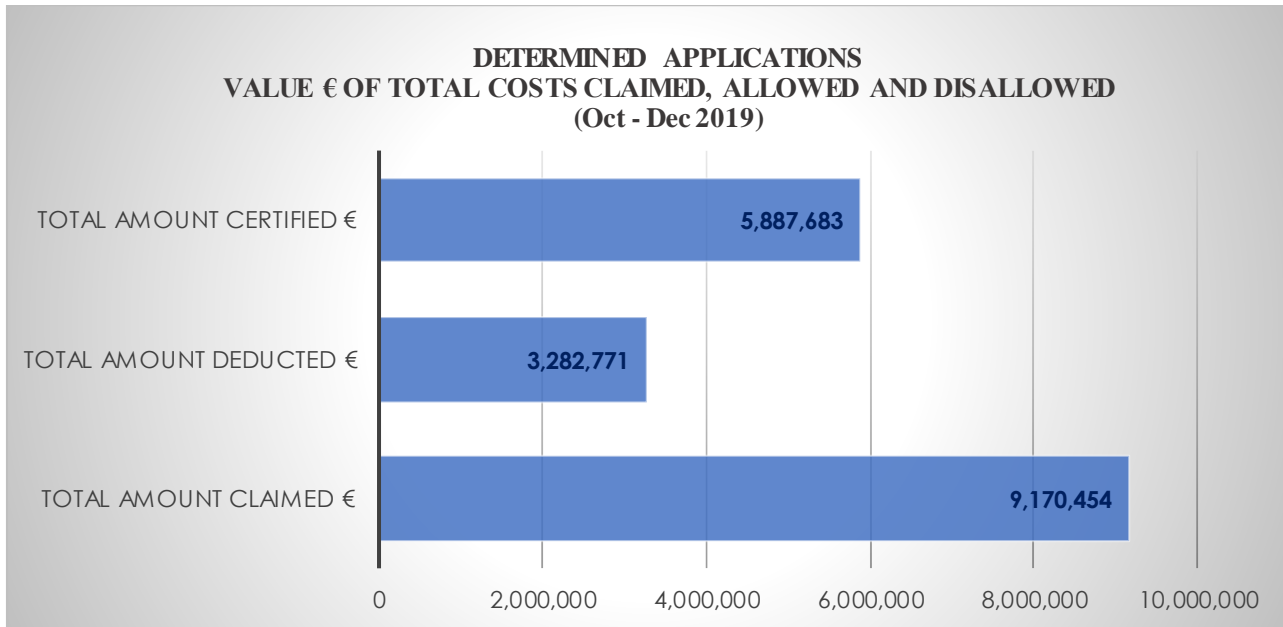


Figure 21:- Graph of Amount € of Total Costs Claimed - Allowed and Disallowed in Determined Cases

The chart below takes each case determined by case type in monetary terms.

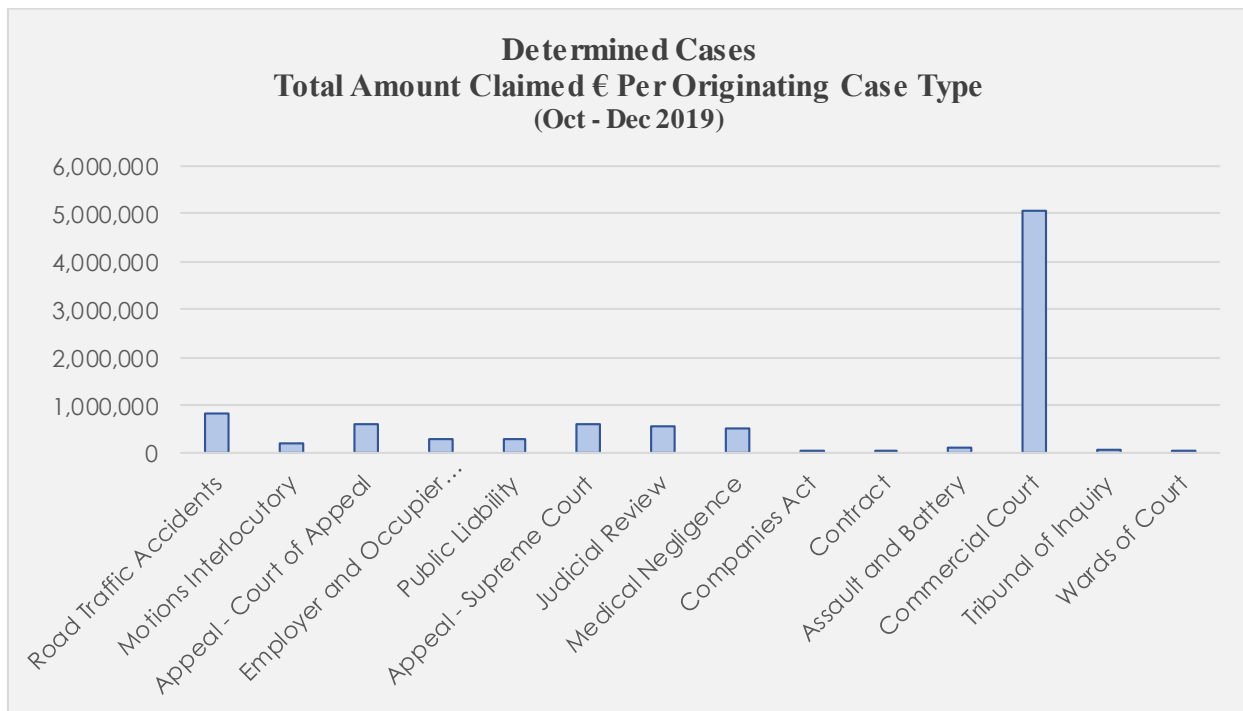


Figure 22:- Graph of Total Amount € of Costs Claimed Per Originating Case Type in Determined Cases

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Looked at side by side as to claim and allowance

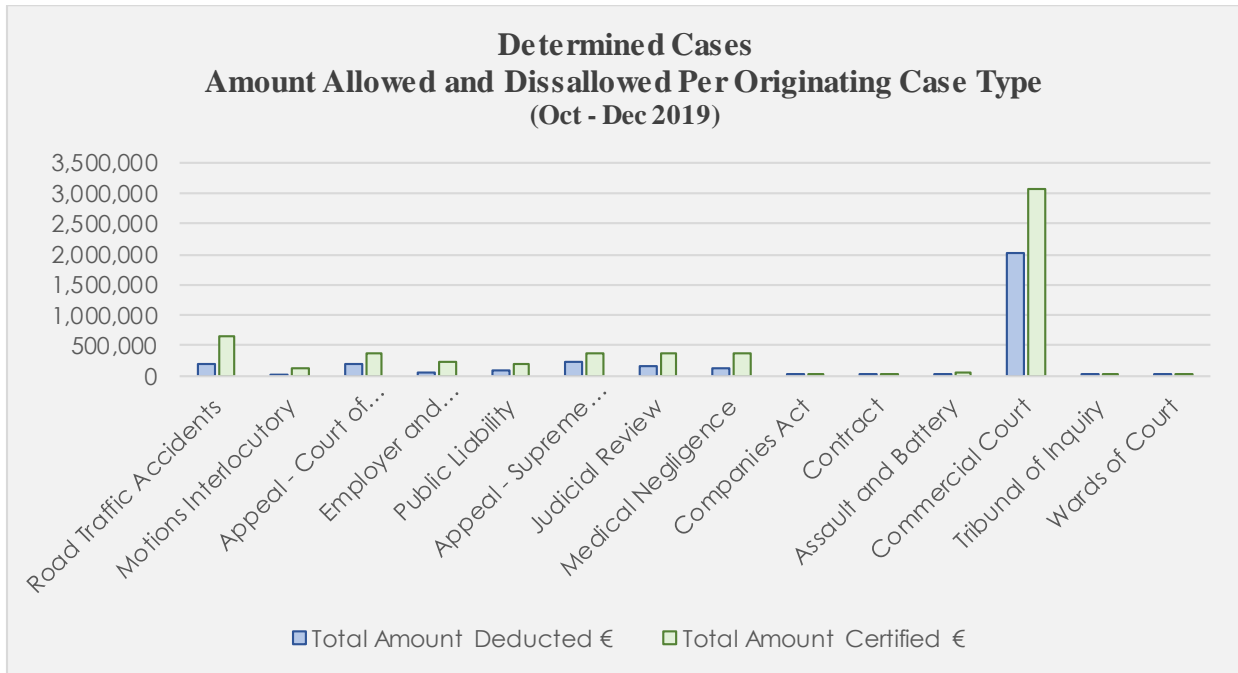


Figure 23:- Graph of Amount € - Allowed and Disallowed Per Originating Case Type in Determined Cases

The number of cases determined by case type is as follows.

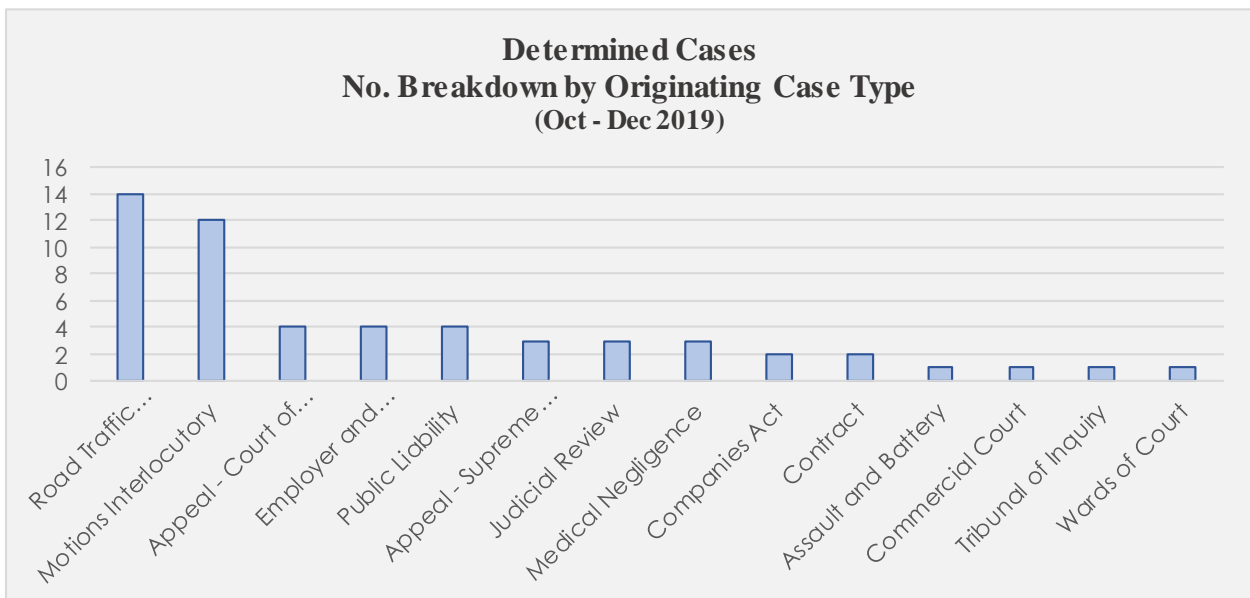


Figure 24:- Graph of Determined Cases - No. breakdown by Originating Case Type

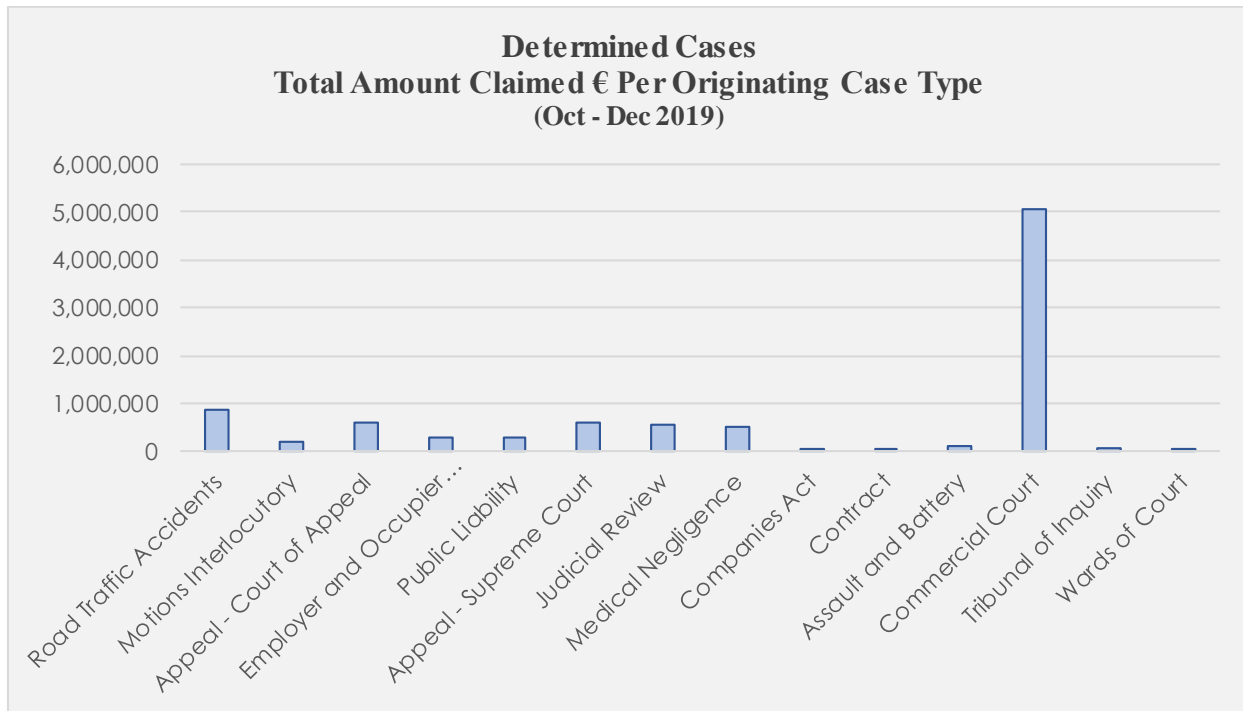


Figure 25:- Graph of Determined Cases - Total Amount Claimed € per Originating Case Type

## 7. Register of Determinations

The Legal Services Regulation Act, at s.140 provides that a Register of Determinations is to be maintained. With certain exceptions, that the outcome of Adjudications are to be written and published by way of Reports. The Act provides as follows

### *Register of determinations*

140. (1) The Chief Legal Costs Adjudicator shall ensure that a register of determinations is established and maintained in relation to applications for adjudication of legal costs under this Part.

(2) Subject to this section, the register of determinations shall contain the following particulars in relation to each application:

- (a) the date of the receipt by the Office of the application;
- (b) the names of the parties to the adjudication;
- (c) the date of receipt by the Office of the bill of costs and each other document in connection with the application, including, if the application arises from contentious business, the title of the proceedings and record number of the proceedings (if any);

(d) the date on which the adjudication is assigned and, where the adjudication is assigned to a Legal Costs Adjudicator, the Legal Costs Adjudicator to whom the adjudication is assigned;

(e) the outcome of determination made under section 157 (1) and the dates on which it was made and on which the notice of it was furnished to the parties;

(f) where a party applies under section 160 for a determination to be considered, the date on which the Legal Costs Adjudicator concerned makes his or her decision under section 160 (5), the date on which notice of that decision is furnished to the parties and, where a new determination is made under section 160 (5)(b), the outcome of that determination;

(g) where a party applies under section 161 for a review of a determination made under section 160, the date on which the High Court determines that review, the outcome of the review and, where the High Court remits the matter under section 161 (4)(b)(i), the determination of the Legal Costs Adjudicator to whom the matter is remitted;

(h) the reasons for the determination, prepared by the Chief Legal Costs Adjudicator in accordance with subsection (3).

(3) Subject to subsections (4) to (7), the Chief Legal Costs Adjudicator shall prepare, and cause to be placed on the register of determinations, the reasons for a determination unless—

(a) the adjudication relates to an application for adjudication of legal costs as between the parties to proceedings which—

(i) were held otherwise than in public, or

(ii) if there had been a hearing, would have been held otherwise than in public,

(b) the adjudication relates to an application for adjudication of legal costs as between a legal practitioner and his or her client,

(c) the adjudication relates to an application for adjudication of legal costs as between the parties to proceedings where the proceedings have been settled prior to the conclusion of the hearing by a court of the proceedings, or

(d) the Chief Legal Costs Adjudicator considers, having obtained the views of the parties to the adjudication, that it would be contrary to public interest for that information to be published.

(4) For the purposes of subsection (3), the Chief Legal Costs Adjudicator need not publish the reasons for a determination where he or she is of the opinion that the adjudication concerned does not involve a matter of legal importance.

(5) Where paragraph (a), (b) or (c) of subsection (3) applies, notwithstanding that subsection and subsection (2), the Chief Legal Costs Adjudicator shall cause to be published the outcome of and the reasons for the determination, as well as the information referred to in paragraphs (b) and (c) of subsection (2), in such a manner that—

(a) where subsection (3)(a)(i) applies, information which is protected from disclosure by reason of those proceedings is not disclosed,

(b) where subsection (3)(a)(ii) applies, information is not disclosed which would have been protected from disclosure if the matter had been disposed of by proceedings which would have been held otherwise than in public, and

(c) where subsection (3)(b) applies, the client concerned may not be identified, whether by name, address, or economic activity.

(6) Where the adjudication concerned relates to legal costs as between parties to proceedings, or a legal practitioner and his or her client, the Chief Legal Costs Adjudicator shall ensure that the information referred to in subsection (2) is published in such a manner that commercially sensitive information relating to either party, or to the client, as the case may be, is not disclosed.

(7) A reference to a determination in subsection (2)(h) shall be construed, as the case may be, as a reference to—

(a) subject to paragraphs (b) and (c), a determination made under section 158 (1),

(b) subject to paragraph (c), where a party applies under section 160 for a determination to be considered, and a new determination is made under section 160 (5)(b), that determination, or

(c) where a party applies under section 161 for a review of a determination made under section 160, and the High Court remits the matter under section 161 (4)(b)(i), the determination under that provision of the Legal Costs Adjudicator to whom the matter is remitted.

(8) The register of determinations shall be available for inspection without payment, during office hours by any person who applies to inspect it, and on a website of the Courts Service.

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Determined Case Status	No.
Published	26
Withheld	24
To be completed	5
<b>Total No. of Determinations</b>	<b>55</b>

*Figure 26:- Table of Determined Cases Status in relation to the Register of Determinations*

A total of 55 cases were determined in the period between 7<sup>th</sup> October 2019 and 31<sup>st</sup> December 2019. Of these, 40% are published and uploaded to the Register. 51% of the cases, were subject to the restrictions contained within s.140 and 9% have yet to be uploaded.

Determined cases, which are subject to being uploaded to the Register of Determinations, have reports prepared in accordance with s. 157(8) and s.157(9) of the Act, which provides that when an Adjudicator has completed the Determination on an item or a series of items, the Act provides

### *Determination of applications*

157. (1) A Legal Costs Adjudicator, having considered an application in accordance with section 155, shall, in accordance with this section, make a determination in respect of that application.

(2) A determination shall, as soon as practicable after it is made, be furnished to the parties to the adjudication.

(3) Subject to the other provisions of this section, and the principles relating to legal costs specified in Schedule 1, a Legal Costs Adjudicator shall confirm the charge in respect of an item of legal costs the subject of the application if, having regard to the matters that he or she considered and ascertained under section 155, he or she considers that—

(a) charging in respect of the item is fair and reasonable in the circumstances, and

(b) the amount charged in the bill of costs in respect of that item is fair and reasonable in the circumstances.

(4) A Legal Costs Adjudicator shall, if he or she determines that it is fair and reasonable to charge an amount in respect of an item but that the amount of the charge in respect of the item is not fair and reasonable, determine a different amount to be charged in respect of that item.

## First Annual Report 2019

(5) A Legal Costs Adjudicator shall not confirm an amount for a disbursement unless—

(a) there is a valid voucher or receipt in respect of the disbursement, or

(b) the parties have agreed, and the Legal Costs Adjudicator is satisfied, that such a voucher or receipt is not required.

(6) A Legal Costs Adjudicator shall not confirm a charge in respect of a matter or item if the matter or item is not included in a notice referred to in section 150 or, as the case may be, is not the subject of an agreement referred to in section 151, unless the Legal Costs Adjudicator is of the opinion that to disallow the matter or item would create an injustice between the parties.

(7) If a Legal Costs Adjudicator is of the opinion that a party to the application has neglected or refused to provide documents, and that the refusal or neglect would likely be prejudicial to the interests of one or more of the other parties, the Legal Costs Adjudicator shall, in order to minimise the prejudice to those interests—

(a) determine the application to the extent possible in the circumstances, and

(b) determine that only a nominal amount is to be payable to the party who has neglected or refused to provide the required documentation.

(8) The Legal Costs Adjudicator, having made a determination, shall prepare a report under subsection (9) —

(a) where he or she considers it to be in the public interest, or

(b) upon request by any party to the adjudication, made not later than 14 days after the making of the determination.

(9) A report referred to in subsection (8) shall set out the matters or items the subject of the adjudication and a brief outline of the background to the provision of the legal services concerned and the principal issues relating to the context of the provision of those services and—

(a) specify the work involved relating to the matters or items the subject of the adjudication which was considered in reaching the determination,

## First Annual Report 2019

(b) specify the various stages of the legal services and the stage of the legal process at which such work was carried out by reference to distinct aspects of the course of the work,

(c) set out a summary of the written or oral submissions made by or on behalf of the parties to the adjudication, and

(d) give reasons for his or her determination.

(10) A copy of any report under subsection (8) shall be furnished to any requesting party to the adjudication as soon as practicable after it has been prepared.

The plan and expectation is that as time progresses, that the volume of cases available to view on the Register will increase in accordance with the number of cases determined. It requires the application of significant resources on the part of the Adjudicators, in addition to the role in dealing with cases and public sittings, but to prepare written determinations and extraction of information for incorporation on the register. It is hoped that the appointment of a third Adjudicator in 2020, will assist in the process.

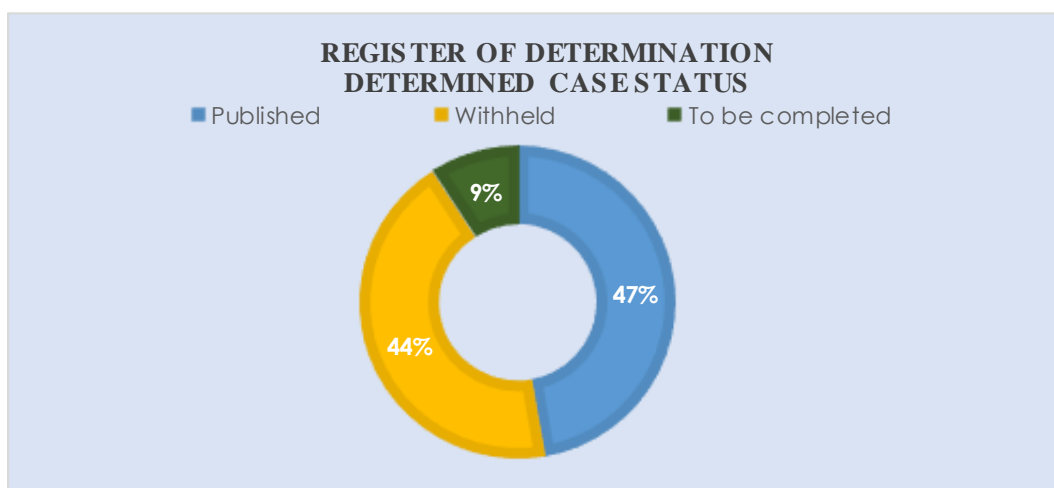


Figure 27:- Graph of Determined Cases Status in relation to the Register of Determinations

Determination Reason Withheld Under	No.
s.140 (3)(a) (i) or (ii)	3
s.140 (3)(c)	20
s.140 (4)	1
<b>Total Withheld</b>	<b>24</b>

Figure 28:- No. of Determinations withheld from the Register of Determinations under the relevant section of the Legal Services Regulation Act, 2015

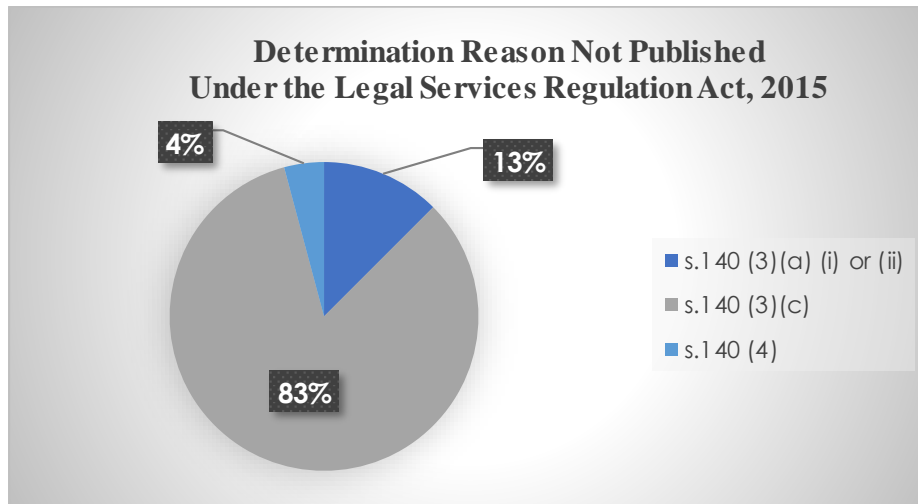


Figure 29:- Graph showing the % of Determinations withheld from the Register of Determinations under the relevant section of the Legal Services Regulation Act, 2015

Determination Reason Published Under	No.
s.157(9)	22
s.140 (3)(c)	1
s.140 (4)	3
<b>Total Published</b>	<b>26</b>

Figure 30:- No. of Determinations published on the Register of Determinations under the relevant section of the Legal Services Regulation Act, 2015

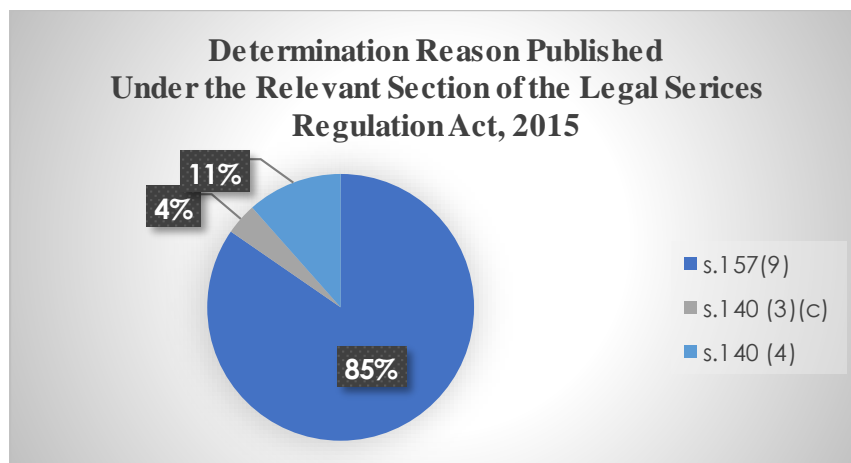


Figure 31:- Graph showing the % of Determinations published on the Register of Determinations under the relevant section of the Legal Services Regulation Act, 2015

## 8. Request for Consideration

Any party who is dissatisfied with a Determination made by a Legal Costs Adjudicator can apply pursuant to s.160 of the Act for a Consideration. The relevant section provides

### *Consideration by Legal Costs Adjudicator of determination*

160. (1) Where a party to an adjudication is dissatisfied with a decision of a Legal Costs Adjudicator under section 157 to confirm a charge, not to confirm a charge or to determine a different amount to be charged in respect of a matter or item the subject of the adjudication, he or she may, within 14 days of the date on which the determination is furnished to him or her under section 157 (2), apply to the Legal Costs Adjudicator for the consideration of the decision and the making of a determination under this section.

(2) An application under subsection (1) shall be—

(a) in such form as may be specified in rules of court or, where applicable, under section 166, and shall specify by a list in a short and concise form the matters or items, or parts thereof, to which the decision of the Legal Costs Adjudicator being objected to relates and the grounds and reasons for such objections, and

(b) made on notice to the other party to the adjudication.

(3) The Legal Costs Adjudicator shall, if he or she considers it appropriate to do so, and upon the application of the party entitled to the costs, issue an interim determination pending consideration of an application under subsection (1), in respect of—

(a) the remainder of the matters or items in the determination to which no objection has been made, and

(b) such of the matters or items that are subject of the application as the Legal Costs Adjudicator considers reasonable.

(4) For the purposes of an application under subsection (1), the Legal Costs Adjudicator shall reconsider and review his determination having regard to the matters or items specified under subsection (2)(a), and sections 155 to 158 shall apply in relation to such a consideration.

(5) The Legal Costs Adjudicator, having considered an application under this section may decide—

(a) not to vary his or her determination, or

(b) to make a new determination,

and the determination referred to in paragraph (a) or (b) shall, subject to section 161, take effect immediately.

(6) The functions of a Legal Costs Adjudicator in relation to an application under this section shall, insofar as practicable, be performed by the Legal Costs Adjudicator who made the determination to which the application relates.

As matters stood at 31<sup>st</sup> December 2019, less than 1% of the case Determined were subject to a Request for Consideration. It follows that as the number of cases are Adjudicated, that this number will increase. In addition, a decision by a Legal Costs Adjudicator on a Consideration, is subject to Review by the High Court in accordance with s.161 of the Act, which provides.

### *Review of determination of Legal Costs Adjudicator*

161. (1) A party to an adjudication who has made an application under section 160 may, not later than 21 days after the date on which the Legal Costs Adjudicator has made his or her determination under section 160 (5), apply to the High Court for a review of the determination concerned.

(2) A review under this section shall be made by motion on notice to all other parties to the adjudication and the Chief Legal Costs Adjudicator.

(3) The court shall hear and determine the review on the evidence that was tendered to the Legal Costs Adjudicator unless the court orders that other evidence be submitted.

(4) The court shall, having heard the review under subsection (1) —

(a) confirm the determination of the Legal Costs Adjudicator, or

(b) allow the review and—

(i) remit the matter to the Legal Costs Adjudicator to determine the adjudication in accordance with the decision of the court, or

(ii) substitute its own determination for that of the Legal Costs Adjudicator.

## First Annual Report 2019

(5) The High Court shall allow a review under subsection (4)(b) only where it is satisfied that the Legal Costs Adjudicator has, in his or her determination, erred as to the amount of the allowance or disallowance so that the determination is unjust.

(6) In this section “court” means—

(a) if the adjudication the subject of the review is in relation to party and party costs, the court that heard the proceedings to which those costs relate, and

(b) in any other case, the High Court.

The cases subject to a Request for Consideration in the period 7<sup>th</sup> October to 31<sup>st</sup> December 2019 are as follows.

### *Request for Consideration– In List Form*

Considerations Originating Case	No. of Cases	Total Amount
Appeal - Court of Appeal	1	8,969
Appeal - Supreme Court	1	5,987
Contract	1	172,284
Motions Interlocutory	2	47,297
<b>Total</b>	<b>5</b>	<b>€234,537</b>

Figure 32:- Table showing the breakdown of cases Under Consideration by originating case type

### *Request for Consideration– Graphic One – by Originating Case Type*

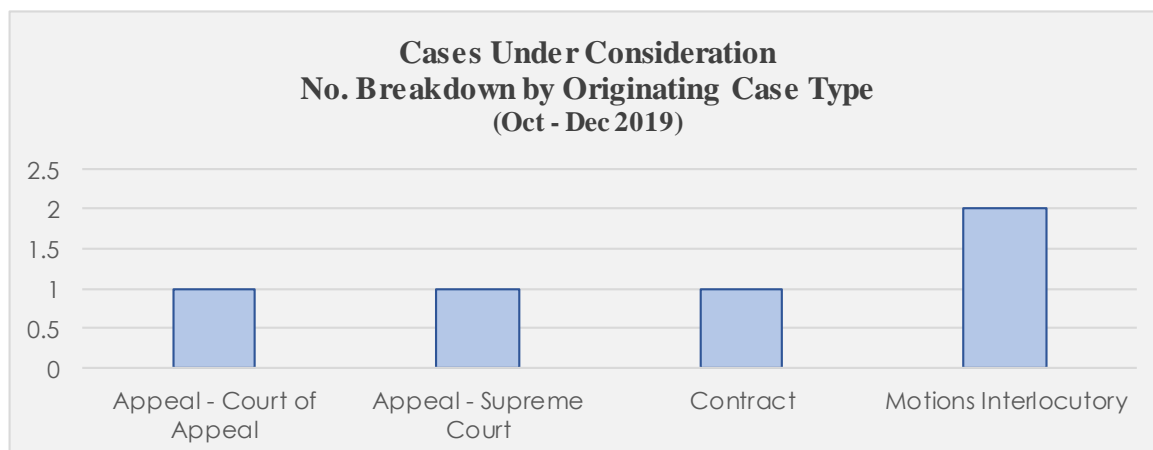
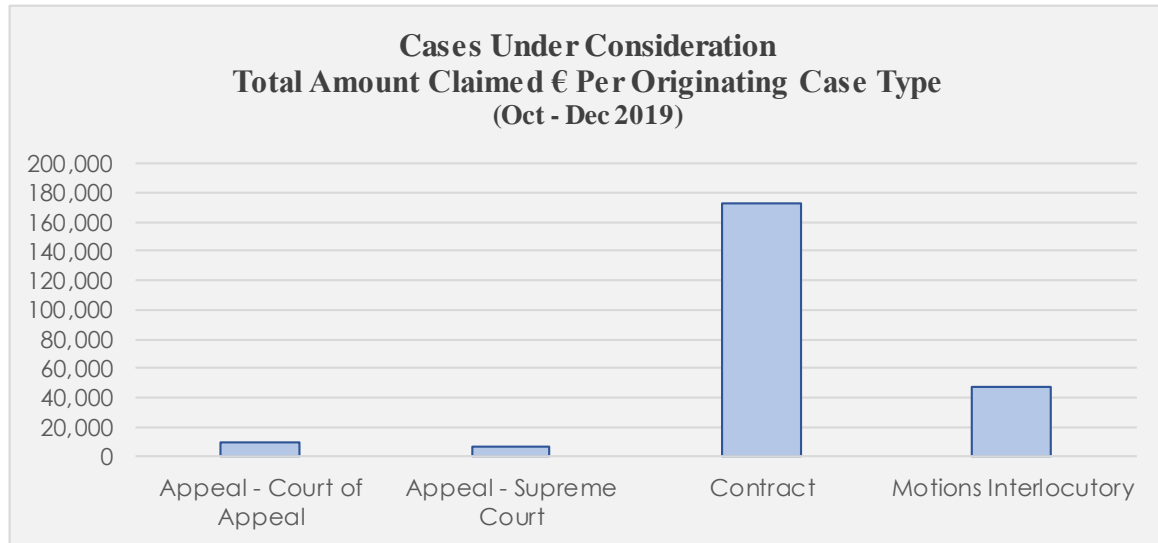
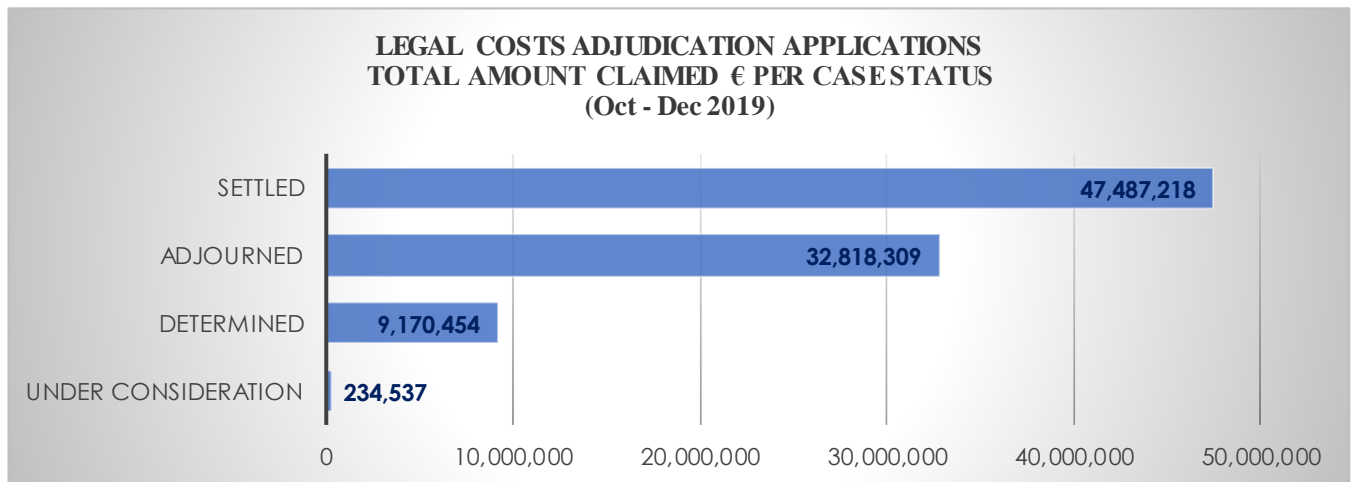


Figure 33:- Graph of breakdown of cases Under Consideration by originating case type

*Request for Consideration—Graphic by Amount and by Area*



*Figure 34:- Graph of Cases Under Consideration - Total Amount Claimed € per Originating Case Type*



*Figure 35:- Graph of Total Amount Claimed in Legal Costs Adjudication Applications per Case Status*

## CHAPTER 5 - County Registrars Summary Report

It is a requirement of s. 141(5) that a County Registrar is to report to the Chief Legal Costs Adjudicator, as follows

## First Annual Report 2019

(5) Each County Registrar shall report annually to the Chief Legal Costs Adjudicator providing a summary of the information contained in the register of taxation determinations maintained by him or her.

The information received by the Chief Legal Costs Adjudicator, from the County Registrars for the relevant period is shown below:-

Application Date	Total Amount Claimed €	Total Amount Deducted €	Total Amount Certified €	Date of Determination	Outcome
25/02/2019				21/10/2019	Settled - Strike Out
15/08/2019	70,814				Adjourned
15/08/2019	70,953				Adjourned
21/08/2019				07/10/2019	Certified
21/08/2019				07/10/2019	Settled - Adjourned Generally
16/09/2019				11/11/2019	Settled - Strike Out
16/09/2019				11/11/2019	Certified
16/09/2019				03/12/2019	Certified
30/09/2019	24,224	7,823	17,713	13/12/2019	Certified
02/10/2019				04/11/2019	Settled - Strike Out
02/10/2019				11/11/2019	Settled - Adjourned Generally
31/10/2019	19,371			06/12/2019	Adjourned to date for implementation of Settlement
02/12/2019	49,812				Adjourned
09/12/2019	15,558				Adjourned
10/12/2019	28,731				Adjourned
11/12/2019					Adjourned
12/12/2019					Adjourned
13/12/2019	41,414				Adjourned

Figure 36:- Table showing the breakdown of total cases reported by County Registrars for the period 7/10/19 to 31/12/19

Taxation Applications	No. of Cases
Certified	4
Settled	6
Adjourned	8
<b>Total</b>	<b>18</b>

Figure 37:- Table of Year End – Case Status Case Status reported by County Registrars

## 2019 AT A GLANCE

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**45 PEOPLE**  
ATTENDED OUR  
**INFORMATION  
SEMINARS**



ON E-FILLING OF LEGAL COSTS  
ADJUDICATION APPLICATIONS

FROM 7 OCTOBER TO DECEMBER

**602**  
**TRANSITIONAL  
APPLICATIONS**

WERE UPLOADED ONTO THE  
ON-LINE SYSTEM

### CASE STATUS

**374** WERE SETTLED

**60** WERE DETERMINED

**168** WERE ADJOURNED



## THE REGISTER OF DETERMINATIONS

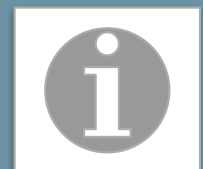
OF THE **60** CASES DETERMINED

**26**

REASONS FOR DETERMINATION WERE  
**PUBLISHED**

**24**

REASONS FOR DETERMINATION WERE  
**WITHHELD**



**5** ARE UNDER CONSIDERATION & **5** ARE TO BE COMPLETED

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,  
1<sup>st</sup> 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](mailto:info_legalcostsadjudicators@courts.ie)