

**THE HIGH COURT
IN THE MATTER OF SECTION 159(1) OF THE LEGAL SERVICES REGULATION
ACT 2015**

AND

**IN THE MATTER OF AN ADJUDICATION OF COSTS PURSUANT TO SECTION
154 OF THE LEGAL SERVICES REGULATION ACT 2015**

[Adjudication Reference: H:MCA:OLCA:2022/000833]

[High Court Record No. 2020/8339P]

[High Court case stated 2025/1638SS]

[2026] IEHC 418

BETWEEN

YVONNE MELIA

PLAINTIFF

AND

HEALTH SERVICE EXECUTIVE

DEFENDANT

Judgment of Mr Justice Cian Ferriter delivered 1st July 2026

Introduction

1. This is a case stated by Chief Legal Costs Adjudicator ("CLCA") Magee pursuant to s. 159(1) of the Legal Services Regulation Act 2015 ("the 2015 Act"). The opinion of this Court is sought on questions of law relating to the costs consequences which follow where a claiming party recovers a sum on adjudication of costs that is less than a lodgment or tender made by a paying party pursuant to the provisions of s. 154(10) of the 2015 Act and Order 99, rules 57-61 of the Rules of the Superior Courts ("RSC").

2. The case stated raises questions as to the proper interpretation of various statutory provisions relating to the allocation of costs following a successful lodgment or tender in relation to costs.

Background

3. The background to this matter is as follows. The plaintiff issued medical negligence proceedings against the defendant and the matter was specially fixed for a two-week trial commencing on 13 October 2022. A mediation was held on 7 October 2022 when the matter was settled in the sum of €1 million together with costs. On foot of that settlement, by order of the High Court of 13 October 2022, the plaintiff was awarded the costs of the action to include reserved costs and the costs of discovery, the costs of mediation and the costs of a motion returnable for 13 October 2022, to be adjudicated upon in default of agreement.

4. By notice of adjudication dated 14 November 2022, the question of the adjudication of the plaintiff's costs was referred for adjudication. The matter was returnable before CLCA Behan on 24 January 2023. The matter was adjourned to facilitate negotiations between the parties. The notice of adjudication was struck out in February 2023 and re-entered subsequently by the plaintiff. The defendant made an application to make a tender and was granted permission to do so by Legal Costs Adjudicator ("LCA") Magee (as he then was) on 27 July 2023.

5. On 18 August 2023, the defendant made a tender in satisfaction of costs to the plaintiff in the sum of €445,204.72 (inclusive of VAT). The aspect of the tender offer in respect of outlay and witness expenses was accepted by the plaintiff. The plaintiff did not accept the balance of the tender offer, which related to her solicitor's professional fee and counsel's fees.

6. The matter then proceeded to adjudication, which took place before CLCA Behan on 17 October 2023. He delivered his written report and determination on the adjudication of costs on 15 March 2024. In his determination, CLCA Behan allowed a total of €443,637.62 (inclusive of VAT) in respect of the fees of solicitor and counsel. This included a sum of €15,000 for costs incurred in Section D of the Bill of Costs ("Section D"), which included sums relating to the costs of the adjudication.

7. As the total costs allowed was just over €1,567 less than the tender offer made by the defendant, it is common case that the plaintiff failed to beat the defendant's tender.

8. The defendant then lodged a “form 9” application (a mechanism similar to a motion which allows a matter to be brought back before the CLCA) to address the costs consequences of the plaintiff's failure to beat the tender. The matter came back before CLCA Behan on 25 April 2024. The matter was adjourned on that date to allow the parties to file written submissions. By letter of 2 May 2024, the defendant's legal costs accountants wrote to the plaintiff's legal costs accountants to indicate that a reasonable fee to cover the defendant's costs of the adjudication from the date of tender would be €6,500 plus VAT. A number of issues arose as a result of the exchange of the parties' submissions, in particular, an issue as to the proper incurrence and assignment of liability for the applicable court fees payable on adjudication, being (in broad terms) 8% of the allowed costs in accordance with the provisions of s. 65 of the Courts of Justice Act 1936 (as amended) and the Supreme Court, Court of Appeal and High Court (Fees) Order 2014 (SI 492 of 2014) (as amended by SI 530 of 2019) (“the Fees Order”). Issues arose as to whether such court fees came within the definition of “costs of the adjudication” for the purposes of O. 99 RSC and the provisions of the 2015 Act and whether the CLCA had jurisdiction to amend or adjust his previous allowance to the plaintiff under Section D and, if so, the correct procedure to follow in order to invoke any such jurisdiction.

9. Following the retirement of CLCA Behan, a hearing on these issues took place before CLCA Magee on 17 February 2024. At the outset of the hearing CLCA Magee drew the parties' attention to previous rulings that he had delivered in other proceedings which were relevant to the issues before him.

10. Firstly, he referred to a written ruling he had given in a legal practitioner and client adjudication where he held that “costs of the adjudication” as set out in s. 158(3) of the 2015 Act and O. 99 RSC did not include the 8% court fee on adjudication, and that the client remained liable for the court fees despite succeeding in having more than 15% deducted from the legal practitioner's Bill of Costs. One of the reasons for that decision was that O. 99, r. 32(5) appeared to make a distinction between the “costs of the adjudication” and the “court fee”.

11. Secondly, CLCA Magee indicated that he had ruled in another case that a legal costs adjudicator does not have the jurisdiction or power to subsequently amend or adjust their previous allowance to a claiming party under Section D even where that party has failed to beat a tender.

12. During the hearing, CLCA Magee suggested it might be appropriate for the parties to request him to refer a case stated pursuant to s. 159 of the 2015 Act to the High Court for its opinion on the various questions of law arising. The parties agreed to this course of action.

13. As a result, CLCA Magee stated a case to this Court on 30 September 2025 pursuant to s. 159(1) of 2015 Act requesting the opinion of the High Court on the following questions of law:

“1. Do the “costs of the adjudication”, as provided for in Order 99 r.60 of the Rules of the Superior Courts, include the applicable court fee on the adjudication of a bill of costs, (approximately 8% of the allowed costs), arising under Part 6 of the Supreme Court, Court of Appeal and High Court (Fees) Order 2014 (SI 492 of 2014)?

2. In circumstances where a claiming party has failed to beat the paying party’s lodgment or tender, and having regard to the finality provided to a determination by s.158(1) of the 2015 Act, does an Adjudicator have jurisdiction or power to adjust or amend the allowance already made to the claiming party in respect of Section D costs in circumstances where the said allowance includes costs which were incurred after the date of the paying party’s lodgment or tender and where the existence of the tender/lodgment cannot be brought to the attention of the Adjudicator prior to them determining the Section D costs?”

Relevant legal provisions

14. The long title of the 2015 Act states that one of the purposes of the Act is “*to provide for 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.*” Part 10 of the 2015 Act is headed "Legal costs" and contains the provisions directed towards this objective. Part 10 is divided into five chapters.

15. Chapter 1 of Part 10 relates to interpretation and sets out a series of definitions in s. 138. The following definitions in s.138 are relevant to the issues arising in these proceedings:-

“bill of costs” means a document setting out the amount of 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);

“contentious business” means legal services provided by a legal practitioner for the purposes of, or in contemplation of, proceedings before a court, tribunal or other body, the Personal Injuries Assessment Board or an arbitrator appointed under the Arbitration Act 2010 or in connection with an arbitration, mediation or conciliation;

“disbursement” means a fee or cost (whether or not fixed by or under a statute or rules of court) payable to a third party that is necessarily and reasonably incurred by a legal practitioner for the purposes of the provision by that legal practitioner of legal services to a client, and includes fees or costs payable by the legal practitioner to a barrister or an expert witness, but does not include general costs incurred in the course of the legal practitioner’s practice as a legal practitioner;

“legal costs” means fees, charges, disbursements and other costs incurred or charged in relation to contentious or non-contentious business, and includes—

- (a) the costs of or arising out of any cause or matter in any court,*
- (b) any costs which are the subject of an order made by an arbitral tribunal in accordance with [section 21 \(4\) of the Arbitration Act 2010](#) for the adjudication of the costs of the arbitration by a Legal Costs Adjudicator,*
- (c) the costs of a receiver appointed in any cause or matter, on the application of the receiver or of any party to the cause or matter,*
- (d) costs that arise from an inquiry, investigation or other proceeding conducted under an enactment, and*
- (e) the cost of registering judgments as mortgages, of obtaining grants of probate and of letters of administration, of satisfying judgments, and any other costs usually adjudicated ex parte.*

“non-contentious business” means legal services that do not relate to contentious business.

16. Chapter 2 of Part 10 of the 2015 Act is headed “Office of the Legal Costs Adjudicator”. Section 139(1) provides that the *“the Office heretofore known as the Taxing-Masters’ Office shall be known as the Office of the Legal Costs Adjudicators”* and the rest of the chapter provides for matters relating to LCAs including the CLCA.

17. Chapter 3 of Part 10 is headed “Legal practitioners’ duties in relation to legal costs”. That subject is then addressed in sections 149 to 153. Section 152 imposes a duty on a legal practitioner *“as soon as is practicable after concluding the provision of legal services in relation to a legal matter for a client”* to *“prepare and sign a bill of costs, which shall contain the particulars specified in this section and shall be in such form (if any) as may be specified in rules of court.”*

18. Chapter 4 of Part 10 of the 2015 Act is headed "Adjudication of legal costs". Section 154 is headed "Application for adjudication of legal costs". This section details the procedure for the process of adjudicating legal costs.

19. Section 154(10) is the provision most directly engaged by question 1 of the case stated. Section 154(10) provides as follows:

“Rule of court may make provision for-

- (a) The giving of notice of the application for adjudication to other parties or to such other persons as the Chief Legal Costs Adjudicator shall direct, including the manner in which notice is to be given,*
- (b) The furnishing of documents, records and vouchers to the Chief Legal Costs Adjudicator or to other parties to the adjudication,*
- (c) the circumstances and manner in which written submissions are to be provided for the purposes of an adjudication, and*

- (d) *the steps that may constitute an attempt, by a person referred to in subsection (2) or (3), to agree a bill of costs, and the certification by a Legal Costs Adjudicator that the person has made an attempt*
- (e) *a procedure whereby a party to an adjudication may, upon notice to another party*
 - (i) *pay into court a sum of money, or*
 - (ii) *make an offer by way of tender to the other party, in satisfaction of the costs of the other party that are the subject of the adjudication, and*
 - (iii)
- (f) *the respective liability of the parties referred to in paragraph (e) for the costs of the adjudication where the amount of a payment or offer referred to in that paragraph is equal to or greater than the amount of the costs concerned that, in the adjudication, are determined to be paid.”*

20. I have underlined above the key phrase in s.154(10) which falls for interpretation in answering question 1 of the case stated.

21. The Superior Court Rules Committee (“The Rules Committee”) has introduced rules of court on foot of the power contained in s.154(10). Such rules are found in Part XII of Order 99, which is headed “Lodgment or tender in respect of costs”.

22. Order 99 rule 57(1) provides that *“In any application for adjudication of costs initiated under this Order by a person in whose favour the order to pay costs has been made or by a legal practitioner, the person who is the subject of the order to pay costs or, as the case may be, the client, may within 21 days of the service upon him of the application, or at any later time by leave of a Legal Costs Adjudicator, upon notice to the party obliged to pay costs or, as the case may be, the legal practitioner concerned, pay into Court a sum of money in satisfaction of the claim for costs (in this Part, a “lodgment in satisfaction of costs”).”*

23. Order 99, r. 57(4) provides that the lodgment/tender *“shall not be disclosed to the legal costs adjudicator until the proceedings on the application for adjudication of costs have been finally determined”*.

24. Order 99 rule 61 makes a similar provision in respect of those parties who are entitled to make tenders as to costs in place of lodgments as to costs.

25. Order 99 rule 60 (specifically referenced by the LCLA in question 1 of the case stated) deals with a situation where a lodgment or tender is not accepted and the sum awarded to the claiming party does not beat the lodgment or tender.” It provides that:

“If the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner, does not accept the sum so paid in but proceeds with the adjudication in respect of such costs and is not determined to be due more than the amount paid into Court, then the following provisions shall apply:

(1) If the amount paid into Court exceeds the amount determined to be due for costs to the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner, the excess shall be repaid to the person who is the subject of the order to pay costs or, as the case may be, the client, and the balance shall be retained in Court.

(2) The person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner shall be entitled to the costs of the adjudication up to the time when such payment into Court was made.

(3) The person who is the subject of the order to pay costs or, as the case may be, the client, shall be entitled to the costs of the adjudication from the time such payment into Court was made.

(4) The costs mentioned at paragraphs (2) and (3) shall be set off against each other, and:

(i) if the balance is in favour of the person who is the subject of the order to pay costs or, as the case may be, the client, the amount thereof shall be satisfied pro tanto out of the money remaining in Court and, in so far as the money remaining in Court is not sufficient to satisfy the same, shall be recoverable from the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner, or

(ii) if the balance is in favour of the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner, the amount thereof shall be recoverable from the person

who is the subject of the order to pay costs or, as the case may be, the client.” (emphasis added)

26. Section 155 of the 2015 Act deals with the determination of an application for adjudication of legal costs. Section 156 confers certain powers on an LCA for the purposes of such a determination. Section 157 obliges an LCA to make a determination in respect of an application for adjudication of legal costs and to furnish that determination to the parties to the adjudication.

27. Section 158 is headed “Effect of Determination”. Section 158(1) provides “*(1) Subject to [section 160](#), the determination of a Legal Costs Adjudicator is final and shall take effect 20 days after it is furnished under [section 157\(2\)](#) to the parties to the adjudication.*” The provisions of s.158(1) are engaged by question 2 of the case stated.

28. Section 158(2) to (4) apply to an adjudication which concerns only legal costs as between a legal practitioner and his or her client. Those subsections provide:

“(2) Where an adjudication concerns only legal costs as between a legal practitioner and his or her client, and the Legal Costs Adjudicator has determined that the aggregate of the amounts to be paid is less than 15 per cent lower than the aggregate of those amounts set out in the bill of costs, the party chargeable to those costs shall pay the costs of the adjudication.

(3) Where a Legal Costs Adjudicator has determined that the aggregate of the amounts to be paid in respect of the legal costs referred to in subsection (2) is 15 per cent or more than 15 per cent lower than the aggregate of those amounts set out in the bill of costs, the legal practitioner who issued the bill of costs shall be responsible for the costs of the adjudication.

(4) Where subsection (3) applies, the Legal Costs Adjudicator may determine that the costs of the adjudication be set-off against the aggregate amount determined.”

29. Part IV of Order 99 is headed “Adjudication of costs” and covers rules 13 to 36.

30. Rule 32 of Order 99 deals with legal practitioner – client adjudication of costs. Rule 32(4) to (6) provides as follows:

“(4) On the completion by the Legal Costs Adjudicator of the adjudication of a bill of costs, the legal practitioner shall take up the certificate of determination within a period of 21 days or such further period as the Court or the Legal Costs Adjudicator may allow. If either party seeks a consideration in accordance with section 160 of the 2015 Act of any decision as regards a matter or item in the bill of costs by the Legal Costs Adjudicator, or seeks a review in accordance with section 161 of the 2015 Act by the Court, the relevant period shall operate from the date of the decision or determination under section 160(5) of the 2015 Act or, as the case may be, the order of the Court under section 161(4) of the 2015 Act.

(5) If the legal practitioner fails to take up the certificate of determination within the said period of 21 days or such extended period as is allowed in accordance with sub-rule (4), the client may take up the certificate of determination on payment of the court fee on the bill of costs and on the certificate of determination. The client shall be entitled to deduct from the bill of costs, any fee allowed or payable to such legal practitioner for attending on and opposing the adjudication. The client shall also be entitled to deduct from the said bill of costs the costs of adjudication, the court fee on the bill of costs and on the certificate of determination, the fee for drawing the bill of costs and for attending the adjudication or any of them.

(6) The foregoing provisions of this rule shall apply in cases of the adjudication of a bill of costs payable out of a fund or estate or out of the assets of a company in liquidation, as well as between legal practitioner and client.”

31. Section 159 of the 2015 Act provides that “a Legal Costs Adjudicator may, whether or not at the request of a party to an application for adjudication of legal costs, refer a question of law arising in the application to the High Court for the opinion of that Court.” CLCA Magee has exercised this statutory power in referring the questions of law set out in the case stated before the Court.

32. For completeness, I should also refer to section 160. This section is headed “Consideration by Legal Costs Adjudicator of determination” and provides in subsection (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.

33. Chapter 5 of Part 10 of the 2015 Act deals with miscellaneous matters, none of which are relevant to the issues arising from the case stated.

34. I should also note the provisions of Order 99 rule 1 which, under the heading “definitions”, provides that “*words and expressions contained in this Order shall, where the context so admits, have the same meaning as in the 2015 Act.*”

Principles of statutory interpretation

35. The principles of statutory interpretation have been the subject of detailed consideration by the Supreme Court in recent years including in the cases of *Heather Hill Management Company CLG v An Bord Pleanála* [2022] IESC 43; [2024] 2 IR 222 and *A, B and C (minor) v Minister for Foreign Affairs* [2023] 1 ILRM 335.

36. There is no dispute as to the applicable principles. The following useful summary of the applicable principles is set out by Murray J at para. 73 of his judgment in *A, B and C (minor) v Minister for Foreign Affairs* [2023] 1 ILRM 335:

“In answering these questions, it is to be remembered that the cases – considered most recently in the decision of this court in Heather Hill Management Company CLG v An Bord Pleanála [2022] IESC 43; [2022] 2 I.L.R.M 313 – have put beyond doubt that language, context and purpose are potentially in play in every exercise in statutory interpretation, none ever

operating to the complete exclusion of the other. The starting point in the construction of a statute is the language used in the provision under consideration, but the words used in that section must still be construed as having regard to the relationship of the provision in question to the statute as a whole, the location of the statute in the legal context in which it was enacted, and the connection between those words, the whole Act, that context, and the discernible objective of the statute. The court must thus ascertain the meaning of the section by reference to its language, place, function and context, the plain and ordinary meaning of the language, being the predominant factor in identifying the effect of the provision but the others always being potentially relevant to elucidating, expanding, contracting or contextualising the apparent meaning of those words."

Consideration of Question 1

The parties' positions on question 1

37. While it will be seen that question 1 of the case stated is framed in terms of the meaning of the phrase "costs of the adjudication" as provided for in O. 99, r. 60 RSC, it is common case that, in order to answer that question, the court must firstly interpret the meaning of the same phrase in s. 154(10) of the 2015 Act. Accordingly, the question arising is whether the phrase "the costs of the adjudication" in s. 154(10)(f) includes the court fee on the adjudication of the bill of costs (which is approximately 8% of the allowed costs) arising under Part 6A of the Fees Order (for ease, "the 8% court fee").

38. The defendant's case is that the phrase "the costs of the adjudication" in s. 154(10)(f), and in the related rules of court found in O. 99, r. 60 must, in light of its natural and ordinary meaning, in its statutory context, include the 8% court fee which only arises for payment because adjudication was necessitated due to refusal of the plaintiff to accept a tender offer which was more than the sum of adjudicated costs.

39. As we have seen, Order 99, rules 57 to 61 set out the procedural rules governing lodgments and tenders on adjudication. These rules are introduced in furtherance of the power to do so given to the Superior Court Rules Committee by the terms of s. 154(10).

40. The scheme as a whole is analogous to that for lodgments and tenders in relation to damages in High Court proceedings, with the important qualification that, in contrast to O. 22 rule 6 RSC in relation to lodgments and tenders as to damages, there is no discretion in the LCA to not have the costs of the adjudication follow the event, even where, as in the case at hand, the differential between the lodgment or tender amount and the costs of the proceedings as adjudicated is very small.

41. In broad terms, the consequences of the failure to beat the lodgment/tender as to costs is that the claiming party is entitled to the costs of the adjudication only up to the date of the lodgment/tender, with the paying party being entitled to recover the costs of the adjudication from the date of the lodgment or tender onwards. The provisions are mandatory with no discretion for an LCA to disapply same.

42. The defendant submits that, having regard to the natural and ordinary meaning of the words "costs of the adjudication" in s.154(10) and the lodgment/tender context in which they arise, these costs must include the 8% court fee as this fee is a necessary cost of the adjudication process once that process has proceeded to a determination.

43. The defendant emphasises that it is the claiming party's decision to reject a reasonable tender offer and proceed to adjudication that causes the 8% court fee to be incurred. The court fee would not have arisen at all if the tender had been accepted. It submits that, as is clear from the terms of the Fees Order, the court fee is a mandatory cost which is imposed pursuant to statute on parties who avail of the adjudication process. Giving the phrase "costs of the adjudication" its natural and ordinary meaning, that must include the 8% court fee given that this is a fee that must be paid when the process of adjudication moves to a determination, and is therefore on the ordinary meaning of the term "cost", a cost of that adjudication process. The defendant submitted that there was no basis in the natural and ordinary meaning of the words, viewed in their statutory context, which would allow a distinction between a court fee such as the 8% court fee levied on the adjudication, and other costs of the adjudication; the term "costs of the adjudication" therefore necessarily embraced the 8% court fee.

44. The defendant submits that the 8% court fee payable on adjudication is no different to other court fees or duties imposed in substantive proceedings and falls within the definition of

costs provided for in s. 138. It points out that the other items included in Part 6A of the Fees Order, which is headed “Fees payable in the office of the legal costs adjudicators”, include a fee of €275 “on a notice of application for adjudication of costs”. Item 2 of Part 6A specifies the 8% court fee, being the fee payable “*On the adjudication of a Bill of Costs – for every full €100 in the total amount confirmed by the Legal Costs Adjudicator (including witnesses' expenses)*”, that fee being €8 for every such €100 (with credit to be given *inter alia* for the fee of €275 paid on the notice of application for adjudication of costs). The defendant submits that there is no basis in the wording of s.154(10), or its clear purpose in its statutory context, for excluding fees in part 6A including the 8% court fee.

45. The defendant makes the point that the 8% court fee is levied in precisely the same manner as a whole host of other court fees payable in court offices such as fees on originating summonses, affidavits, motions, notices of appeal and the like. All of these court fees are recoverable as part of an order for costs made by the courts and are routinely allowed by the legal costs adjudicators on adjudication. The defendant submits that it follows that a litigant is entitled to recover all court fees properly incurred as part of a costs order made by a court and, by similar reasoning, the costs of the adjudication provided for in s. 154(10) and O. 99, r. 60 must include all of the costs incurred in the adjudication from the date of the tender including the applicable court fees payable and incurred only as a result of the decision of the claiming party to reject the tender.

46. The defendant submits that its interpretation is entirely consistent with the policy behind the lodgment/tender regime which is to incentivise the taking up of reasonable lodgments or tenders. It submits that the risk created by a reasonable lodgment/tender would be significantly reduced if the paying party was obliged to discharge the 8% court fee regardless of the outcome in relation to the costs adjudication and whether the claiming party beats the lodgment/tender. It makes the point that, in many cases, the risk for a claiming party of potentially having to pay or set off the paying party’s costs associated with preparing for and participating in the adjudication would be relatively minimal when compared to the risk of potentially incurring liability for the 8% court fee and accordingly that the interpretation contended for by the plaintiff would seriously undermine the efficacy and use of the regime of lodgments/tenders as to costs.

47. The plaintiff, for her part, contends that the policy issues are not quite so straightforward. Given the absence of any discretion in the legal costs adjudicator where adjudicated costs are only marginally less than the sum of a tender/lodgment on such costs (in contrast to the discretion afforded to Courts on an equivalent scenario in respect of court lodgments/tenders as to damages) there is a draconian consequence of losing out and, as a matter of policy, it would have been entirely legitimate for the Oireachtas to decide that, consistent with the plaintiff's case, the proper interpretation of the phrase "costs of the adjudication" in s. 154(10) is to exclude the 8% court fee thereby leaving the party subject to the legal costs order in the proceedings bearing that court fee.

48. I do not believe that I need to engage with these competing policy arguments. It is common case that a lodgment/tender mechanism is in broad terms intended to encourage parties to avoid the time and expense of an adjudication process if the lodgment/tender is a sufficiently reasonable one. As I shall come to, it seems to me that the matter can be resolved by reference to the plain meaning of the phrase "costs of the adjudication" in its statutory context and in light of the terms of part 10 of the 2015 Act as a whole.

49. The plaintiff contends that the proper meaning of the phrase "costs of the adjudication" in s.154(10) is the solicitor's costs for preparing the bill of costs and attending the adjudication. This is so, her counsel submits, because such solicitor's costs are a charge in relation to contentious business, to deploy language used in the context of the definition of legal costs in s. 138 of the 2015 Act. While accepting that the 8% court fee is a legal cost within the definition of legal costs in section 138, counsel for the plaintiff submits that the costs of the adjudication is a necessarily narrower concept in light of the scheme of part 10.

50. The plaintiff submits that it is telling that the Oireachtas did not use the phrase "the legal costs of the adjudication" in s.154(10) or a phrase such as "the costs and expenses of the adjudication" or "the costs of the adjudication and any applicable court fees" or "the costs of the adjudication and any disbursements". The plaintiff lays particular emphasis on the definition of "legal costs" in s. 138 of the 2015 Act. The plaintiff submits that the costs of the adjudication are plainly embraced within the definition of "legal costs" in s. 138 as either costs of, or arising out of, any cause or matter in any court (within subpara. (a) of that definition) or costs that arise from a "proceeding conducted under an enactment" within subpara. (d) of that

definition. However, she submits that the phrase “costs of the adjudication” must constitute a smaller, or inferior, subset of the broader category of "legal costs" set out in s. 138.

51. During the course of discussion with counsel for the plaintiff at the hearing, he submitted that the costs of the adjudication would be separate from the question of the 8% court fee under Part 6A and that the 8% court fee would more properly come within the term "charges" in the definition of legal costs in s. 138. He submitted that, had s. 154(10) (and, by extension, s. 158) used the phrase “legal costs of the adjudication”, it would be arguable that such a phrase would include "fees, charges, disbursements and other costs incurred or charged in relation to contentious or non-contentious business", i.e. to align it with the definition of legal costs in s. 138. The plaintiff also submitted that the Oireachtas could, equally, in setting the objectives of the lodgment/tender regime under s. 158, have adapted the language of the old O. 99 RSC, rule 29(13) (addressing the then “one sixth” rule), being "*the costs of taxation and the court fees on the bill of costs, and on the certificate of taxation*” or the language of the current O. 99, r. 13(2) RSC being "*costs and expenses of the adjudication*".

52. While rooting his primary submission in the language of the 2015 Act itself (in my view, properly so), counsel for the plaintiff also drew attention to the fact that the phrase “costs of the adjudication” as approached by the Rules Committee can arguably be seen in items 88 to 93 of Part 1, section D of Appendix W to O. 99 which addresses post-trial matters to be included in a bill of costs. These items do not include the 8% court fee and therefore can also be taken as not having been defined by the Rules Committee as the "costs of the adjudication". Those items are as follows:

“88. Preparing and compiling particulars of costs incurred and completion of requirements of s 152 and s 154 of the Legal Services Regulation Act, 2015,

89. Notice of application for adjudication,

90. Preparation of an index, engrossing Bill of Costs and preparation of papers for Adjudication, including reasonable copies for service and filing,

91. Lodging and serving bill of costs and issuing, serving and filing notice to tax or adjudicate,

92. Attending taxation or adjudication, completing bills, vouching, and certificate and taxation or adjudication,

93. Preparing application for consideration by Legal Costs Adjudicator of decision under section 160(1) of the Legal Services Regulation Act 2015 or to answer to objections, including copies for service and filing; delivery to one party of such objections or answers and attending hearing or review by Legal Costs Adjudicator – if objections sustained.”

53. My attention was also brought to the fact that O. 99, r. 32(5) RSC (set out at para 30 above) provides for the offset of court fees separately to the offset of the costs of the adjudication in the context of legal practitioner-own client adjudications where there has been more than a 15% reduction in the costs charged over the costs adjudicated, thereby continuing the approach of the old rules, although counsel for the plaintiff fairly accepted in the hearing before me that it is arguable that O. 99, r. 32(5) arises in a different statutory context (being the specific and discrete context of a situation where a legal practitioner has failed to take up a certificate of determination on an own client – legal practitioner adjudication).

54. In *DC v McEntee & O’Doherty Solicitors* (OCLA:2021:447), a determination delivered on 16 January 2025 in the context of an adjudication of costs in a client-legal practitioner matter which resulted in more than 15% of the costs claimed being deducted, meaning that pursuant to s.158(3) of the 2015 Act the legal practitioner was liable for the costs of the adjudication, CLCA Magee took the view that the 8% court fee did not come within the meaning of the phrase “costs of the adjudication” in s.158(3). He so found by reference to the provisions of Order 99 rule 32(5) (set out at para 30 above) which in terms make a distinction between the costs of the adjudication and “*the court fee on the bill of costs, the court fee on the certificate of adjudication and the fee for drawing the bill of costs and for attending the adjudication*”. He took the view that this rule demonstrated that the legislature considered that the costs of the adjudication were separate to the court fees payable as part of the adjudication process. He reasoned that in the previous version of Order 99 similar language was to be found in Rule 33(4) and that it was presumed that the Oireachtas was aware of the distinction drawn in this previous version of Order 99 when it passed the 2015 Act and that “*there is no indication in*

the 2015 Act that it was the intention of the Oireachtas to change the meaning of “costs of the adjudication” in s.158 to now include court fees.”

55. Order 99 rule 29(13) as it existed prior to the implementation of the 2015 Act provided that *“in cases of the taxation of a bill of costs payable out of a fund or estate, or out of the assets of a company in liquidation, or as between solicitor and client, the costs of taxation and the court fees on the bill of costs and the certificate of taxation should be disallowed in case one sixth of the bill is taxed off unless the taxing master shall in his discretion allow the items on special grounds to be stated in his order”*. This provision has been replaced by s.158(2) and (3) of the 2015 Act which, as we have seen, uses the phrase “costs of the adjudication” and does not make any distinction between such costs and the court fees on the bill of costs or the certificate of adjudication. I should note that the pre-2015 Act version of Order 99 also contained a rule in rule 33(4) similar in terms to the present Order 99 rule 32(5).

56. The defendant also made reference to the provisions of Order 66 rule 8 Circuit Court Rules which makes reference to the costs of taxation, in the event a tender is refused and the amount of taxed costs does not exceed the tendered sum, that the costs of taxation shall be borne by the party claiming on foot of such bill. I was told that the practice of county registrars applying this rule in the Circuit Court is that the costs of taxation referenced in the rule are taken to include the 8% court fee.

Discussion of Question 1

57. As we have seen, the phrase “costs of the adjudication” is not defined in the 2015 Act. In my view, the proper interpretation of the phrase “costs of the adjudication” in s. 154(10) is accordingly to be assessed by looking at the plain meaning of that phrase in the context in which it is found, being Part 10 of the 2015 Act and in a provision addressing the making of rules relating to *inter alia* the attribution of liability for costs of adjudication where there has been a successful lodgment or tender.

58. The word “costs” in its ordinary meaning means an amount of money charged or incurred in relation to something. The something in question here is an adjudication of legal costs. On its ordinary meaning, the “costs of the adjudication” includes those amounts of money which are incurred in relation to an adjudication of costs; on the face of it that would

include the legal fees incurred in relation to the adjudication process, and any court fees or charges incurred in the process such as the fees set out in Part 6A of the Fees Order, including the 8% court fee charged by Part 6A.

59. That view of the plain meaning of the term “costs of the adjudication” is fortified by the meaning given to the term “costs” in the context of the definition of “legal costs” in s.138 of the 2015 Act.

60. The definition of “legal costs” is critical to the operation of Part 10 of the 2015 Act as it defines the scope of the types of costs that can be the subject of adjudication and also the subject of obligations and entitlements on the part of legal practitioners and their clients. The term “legal costs” as defined in s. 138 refers to the broad class of costs which is governed by the provisions in Part 10 of the 2015 Act, namely “fees, charges, disbursements and other costs” which are “incurred or charged in relation to contentious or non-contentious business”. It is only “legal costs” which can be the subject of adjudication. The definitions of “contentious business” and “non-contentious business” are rooted in categories of legal services provided by legal practitioners; what makes costs *legal* costs for the purposes of Part 10 of the 2015 Act is therefore determined by the nature of the service provided by the legal practitioner, and not solely by the nature of the costs themselves.

61. The question then arises as to what Part 10 has to say about what constitutes “costs”. It is clear from the definition of “legal costs” in s.138 that the concept of “costs” in this context means “fees, charges, disbursements and other costs” i.e. fees, charges and disbursements are all individual examples of the broader concept of “costs”. “Disbursement” is very broadly defined in s.138 as meaning “*a fee or cost (whether or not fixed by or under a statute or rules of court) payable to a third party that is necessarily and reasonably incurred by a legal practitioner for the purposes of the provision by that legal practitioner of legal services to a client, and includes fees or costs payable by the legal practitioner to a barrister or an expert witness, but does not include general costs incurred in the course of the legal practitioner’s practice as a legal practitioner*”. However, costs for the purposes of s.138 are not confined to disbursements as defined but also include “fees” and “charges” and “other costs”, terms which are not separately defined. Accordingly, s.138 gives a very broad definition to the concept of “costs” in connection with the provision of legal services, being in broad terms fees, charges, disbursements to third parties such as barristers and expert witnesses and other costs. In this

way, the definition of costs in s.138 is closely aligned with the ordinary dictionary meaning of costs as being monies charged or incurred in relation to something.

62. The costs of an adjudication are clearly “legal costs” within the meaning of s.138 as they are costs incurred in relation to contentious business being either (and arguably both) costs “of or arising out of any court or matter in any court” (within subparagraph (a) of the definition of “legal costs” in s.138) or costs arising from “an inquiry, investigation or other proceeding conducted under an enactment” (within sub-paragraph (d) of the definition of “legal costs” in s.138). Accordingly, the ordinary meaning of costs as including money charged or incurred in relation to something is broadly consistent with the meaning attributed to the concept of “costs” in s.138 i.e. fees, charges, disbursements to third parties including barristers and expert witnesses and other costs incurred or charged in relation to the particular legal service in question (in this case the legal service provided to a client in relation to the adjudication of costs). On the face of it, the 8% court fee is clearly such a cost as it is a fee or charge or disbursement incurred or charged in relation to the adjudication process

63. It seems to me that this understanding of the meaning of “costs” applies thereafter to Part 10 as a whole unless the context requires some qualification of that understanding.

64. The question that next arises is whether there is anything in the terms of s.154(10), considered in context, that requires the application of the much narrower definition of the concept of “costs” in that subsection as advocated for by the plaintiff? It will be recalled that the plaintiff contended that the concept of costs in the phrase “costs of the adjudication” in s.158(10) should be read as confined to the solicitor’s fees in connection with the adjudication process, being the costs of preparing the bill of costs and attending at the adjudication. She contended that the use of the word “costs” in the phrase “costs of the adjudication” here was necessarily narrower than a broader formulation such as “the legal costs of the adjudication” or “the costs and expenses of the adjudication” or “the costs of the adjudication and any applicable court fees” or “the costs of the adjudication and any disbursements”.

65. In my view, the plaintiff’s case misses the crucial point that fees, charges and disbursements are each regarded as components of the broader concept of “costs” in s.138 for the purposes of Part 10 of the 2015 Act. Such costs become “legal costs” if they are incurred or charged in relation to the provision of defined types of legal services by a legal practitioner.

Use of the phrase “legal costs of the adjudication” in s.154(10) would not have made sense as adjudication costs are a type of legal costs. In my view, the concept of “costs” as used in part 10 of the 2015 Act properly understood does not shrink or reduce because they are incurred in a particular type of legal process such as an adjudication. Use of phrases such as “the costs and expenses of the adjudication” or “the costs of the adjudication and any applicable court fees” or “the costs of the adjudication and any disbursements” in s.154(10) would not have made sense because concepts such as “expenses”, “court fees” and “disbursements” are all subsets of the broader concept of “costs”, as is clear from the definition of legal costs in s.138. The Oireachtas could of course have delimited a narrower set of costs in s.154(10) such as “costs excluding court fees” or simply made no use of the term “costs” and limited the relevant category of costs concerned to “the legal practitioner fees” of the adjudication. However, the Oireachtas did not do so; rather it chose to use the broad term “costs” in the phrase “costs of the adjudication” and the phrase must therefore be interpreted accordingly.

66. In my view, the phrase “costs of the adjudication” in s.154(10) should accordingly be interpreted, in both its ordinary meaning and in the meaning attributed to costs in s.138 for the purposes of Part 10 as a whole, as being costs incurred in relation to the adjudication process in the sense of any charge or fee or disbursement or other cost related to the adjudication process which includes fees or charges such as the 8% court fee.

67. Turning then to the meaning of the phrase “costs of the adjudication” in Order 99 rule 60, that rule makes the claiming party liable for the “costs of the adjudication” i.e. the precise phrase used in s.158(10) without any carve out from that general rule for specific items of such costs. Order 99 rule 1 requires that words and expressions used in the Order shall, where the context so admits, have the same meaning as in the 2015 Act.

68. It seems to me that the context clearly admits the same meaning of the phrase “costs of the adjudication” in Order 99 rule 60 as in s.154(10). The rule, entirely consistently with s.154(10), makes provision in accordance with the empowering parent statutory provision for the attribution of liability for the costs of the adjudication where the lodgment or tender is equal to or greater than the amount of adjudicated costs i.e. where a claiming party has failed to beat a lodgment or tender as to legal costs.

69. The approach taken by the Oireachtas in s.154(10), and by the Rules Committee in order 99 rule 60, is also in my view consistent with the discernible objective of s.154(10) which is to allow for the making of court rules which shift the liability for the costs of the adjudication from the claiming party to the paying party where the paying party has made a lodgment or tender in relation to the legal costs of the claiming party which are the subject of the adjudication, thereby encouraging the acceptance of lodgments or tenders “pitched” at the appropriate level in order to avoid the time and costs and use of LCA resources involved in an adjudication process. It is difficult to see why a cost such as the 8% court fee, which has only been incurred as a result of the claiming party’s insistence on proceeding to an adjudication which could sensibly have been avoided, should not be regarded as part of the costs of the adjudication for the purposes of the shifting of liability for such costs of the adjudication process where the claiming party has not beaten the tender or lodgment. The purpose of encouraging a claiming party to accept a tender or lodgment which is made at an appropriate level is to prevent the unnecessary time, costs and use of legal costs adjudicator resources which will otherwise be incurred without any benefit to the parties; such unnecessarily incurred costs of the adjudication clearly include the 8% court fee which in many cases may be the major cost of the adjudication.

70. If it is felt that the rules as currently framed can serve to operate harshly, as might be said in the plaintiff’s case, where she failed to beat the tender by a very marginal amount, the solution is to amend the rules to give the legal costs adjudicator discretion as to liability for the adjudication costs in such circumstances (as is the case in the rules dealing with tenders/lodgments as to damages), not to interpret the phrase “costs of the adjudication” in a manner which strains the proper meaning of that term in its statutory context to breaking point.

71. While it can be fairly said that there is some phrasing in O. 99 which might be somewhat at odds with the interpretation of the phrase “the costs of the adjudication” found in s.154(10) as I have interpreted it (such as the reference in O. 99, r. 13(2) to the “costs and expenses of the adjudication”), it does not seem to me that this can serve to transplant or amend the proper interpretation of the phrase in the primary statutory provision (see e.g. *DPP v Judge McGrath* [2021] 3 IR 785).

72. I should say for completeness that my view on the correct interpretation of the phrase “costs of the adjudication” in s. 154(10) is not influenced by the content of the provisions of

Order 99 rule 29(13) or rule 33(4) prior to the implementation of the 2015 Act or the understanding apparently given in practice to the provisions of Order 66 rule 8 of the Circuit Court Rules. Rather, I have arrived at my view as to the proper interpretation of the phrase “costs of the adjudication” in s. 154(10) on the basis of the natural and ordinary meaning of the phrase in the context of part 10 of the 2015 Act as a whole. Given that the proper interpretation of the phrase can be safely arrived at by reference to the natural and ordinary meaning of the words in the context of part 10 of the 2015 Act as a whole, it is not necessary to look at the legislative antecedents in arriving at the correct meaning of the phrase.

73. While I am not called upon to rule on the meaning of the phrase “costs of the adjudication” in s.158, it seems to me that the logic of my finding in relation to the proper meaning of that phrase in section 154(10) also on the face of it applies to the proper meaning of that same phrase where used in section 158. It follows that I respectfully disagree with the analysis contained in the determination of LCLA Magee referred to earlier in this judgment. The proper approach as a matter of law is to determine the correct interpretation of the phrase in the 2015 Act by reference to the terms of that act alone and not to interpret the phrase where used in part 10 of the 2015 Act by reference to the use of the phrase in court rules.

74. While I am conscious that the following comments are *obiter*, I might observe that the use of the phrase "costs of the adjudication" in O. 99, r. 32(5) may connote a narrower conception of that phrase than is used in s.158(2) and (3) of the 2015 Act given the particular context of that provision of the rules, namely one where a client is in dispute with his or her own legal practitioner as to the question of the costs sought by that practitioner from the client and where a client is faced with a failure of his or her legal practitioner to take a step required to advance matters in the client's interest (i.e. to take up a certificate of adjudication in a legal practitioner-client adjudication of legal costs). One can readily envisage a scenario where a client in dispute with his or her legal practitioner on the question of costs may not have the benefit of legal advice or representation in relation to his or her entitlements arising from the adjudication process and where there may therefore be merit in the Rules Committee having spelled out in some granular detail the precise aspects of the various fees and costs involved and how they are to be approached and allocated in that context. It can fairly be said that the very particular context addressed by that rule might call for a different understanding of the phrase “costs of the adjudication” in that rule from the meaning of the same phrase in s.158, thereby being an example of a specific context in the rules providing an exception to the general

rule otherwise provided for in Order 99 rule 1 that the meaning of a phrase in Order 99 will have the same meaning as that phrase in the 2015 Act.

75. In any event, I do not see that the use of the phrase “costs of the adjudication” in apparent contradistinction to the concept of a court fee in O.99 r. 32(5) can serve to undermine the statutory interpretation which I believe is proper to give to the phrase “costs of the adjudication” in section 154(10) of the 2015 Act.

Consideration of Question 2

76. The context in which question 2 of the case stated arises is as follows. Part 1 of Appendix W to O. 99 deals with scales of costs and sets out matters which will be included in a bill of costs. Part 1 is broken down into four sections, A to D, each of which contain sub-headings for various specific items of costs. Section A of that Part deals with costs before commencement of proceedings, Section B deals with costs from commencement to trial/settlement date and Section C deals with costs incurred during the course of the trial/settlement and up to determination of proceedings. Section D is headed "Costs incurred subsequent to trial". Items 88 to 93 of Section D set out headings related to various aspects of the costs of the adjudication process itself, as set out earlier in this judgment.

77. Accordingly, a bill of costs that proceeds to adjudication before an LCA will very likely – if not inevitably – include amounts in Section D related to the costs of the adjudication process itself. It follows that where an LCA makes a determination on an application for adjudication of legal costs, that adjudicated sum will also very likely – if not inevitably – give an allowance, as part of the overall adjudication sum, of recoverable costs for costs of the adjudication. Therefore, in the event that a lodgment or tender has been made in relation to the costs of the adjudication, and the claiming party does not beat that lodgment or tender, the sum against which his costs of the adjudication under s. 154(10) will be deducted, will itself include sums for the costs of the adjudication as allowed by the LCA under Section D of the bill of costs, which costs would not have been incurred if the lodgment or tender had been accepted.

78. This creates a potential anomaly as a claiming party will end up getting an allowance for a sum of costs related to an adjudication which the level of successful lodgment or tender demonstrates should not have been necessary.

79. Question 2 of the case stated, accordingly, concerns the question of the jurisdiction, if any, of an LCA to subsequently amend his or her allowance under Section D for adjudication costs where a lodgment or tender in relation to costs has not been beaten.

80. Question 2 is primarily concerned with the proper interpretation of s.158(1) of the 2015 Act which provides “*subject to section 160, the determination of a Legal Costs Adjudicator is final and shall take effect 20 days after it is furnished under section 157(2) to the parties to the adjudication.*”

81. In order to assess the terms of s. 158(1) in context, it is necessary to advert to a number of the other provisions of part 10 of the 2015 Act. As we have seen from the material provisions of part 10 set out earlier in this judgment, the "determination of a legal costs adjudicator" referred to in s. 158(1) is a determination by a legal costs adjudicator, pursuant to s. 157(1) of the 2015 Act, of an application made in accordance with s. 155 of the 2015 Act. Section 157 addresses a determination of "an application for the adjudication of legal costs". There is therefore no doubt but that the reference to a “determination” of the legal costs adjudicator being “final” in s. 158(1) is a reference to a determination of an application for adjudication of a bill of costs under s.157(1) being final.

82. The defendant’s position on question 2 is as follows. It submits that the provisions of O. 99, r. 60(2) and (3) create a clear division of liability for the costs of the adjudication, where a claiming party fails to beat a lodgment/tender, anchored to the date of the lodgment or tender; the claiming party is entitled to the costs of the adjudication up to the date of the lodgment/tender, with the paying party being entitled to the costs of the adjudication from the date of the lodgment/tender onwards. In circumstances where a claiming party’s entitlement to the costs of the adjudication from the date of the lodgment or tender has been established, the LCA must be empowered to reduce the previous allowance made to the claiming party in respect of costs of the adjudication under section D where such costs include costs incurred after the date of lodgment or tender. If the allowance in respect of section D costs is not adjusted, the defendant submits that this will inevitably mean that the claiming party will wrongly recover costs of the adjudication beyond the date of the lodgment or tender in contravention of the principle embodied in O. 99, r. 60.

83. As we have seen, Order 99, rule 57(4) provides, *inter alia*, that the lodgment or tender "*shall not be disclosed to the legal costs adjudicator until the proceedings on the application for adjudication of costs have been finally determined*". The defendant says that it follows by virtue of the fact that the tender or lodgment cannot be disclosed to the LCA until the adjudication proceedings have been "finally determined" that the provisions of s. 154(10)(e) and (f) and O. 99, r. 57 to 61 must envisage a jurisdiction in the LCA to address the question of costs of the adjudication after the adjudication application has been finally determined, notwithstanding the wording of section 158(1) which suggests that such a determination is final subject only to section 160 (which is concerned with the separate process of consideration of a determination i.e. a form of review of the costs determination).

84. The defendant submits that it follows that there must be a "residual discretion" in the LCA to revisit the question of allowances for the costs of the adjudication within section D contained within a determination where such costs were found in retrospect to have been unnecessary (by virtue of the fact that the claiming party failed to beat the lodgment or tender and should have accepted same, thereby obviating the need for the adjudication in the first place). It submits that this residual jurisdiction necessarily extends to the power to vary the award of costs made under section D to the claiming party after the LCA has made a determination on the adjudication of the legal costs. It submits that to hold otherwise would lead to the absurd and unjust situation that, irrespective of the outcome of the adjudication vis-a-vis the lodgment or tender, the paying party would be obliged to pay adjudication-related costs to the claiming party; the defendant contends that this could never have been intended by the legislature in respect of costs of the adjudication where the claiming party has failed to beat a lodgment/tender.

85. The plaintiff, for her part, submits that the wording of s. 158(1) of the 2015 Act is clear and straightforward: subject to section 160, the determination of a legal costs adjudicator "*is final and shall take effect 20 days after it is furnished under section 157(2) to the parties*" (emphasis added). She submits that there is simply no basis in the wording of the legislation to read in the residual discretion contended for by the defendant. She submits that the defendant's case on question 2 inappropriately puts the cart before the horse in the sense that the law is clear, per *Thompson v Curry* [1970] IR 61, that rules of court cannot operate in a manner that would require legislative amendment and cannot provide for mechanisms that the legislation does not allow for.

86. The parties drew my attention to the decision of Bradley J in *HJ Ward LLP v Chief Legal Costs Adjudicator* [2025] IEHC 150. However, that case dealt with the quite different question of the application of the 14 day time limit in s.160(1) of the 2015 Act, for applications for consideration of determinations made by an LCA. It did not address the question arising before me here as to whether there is any residual or implied discretion in s.158 to revisit a s.157 determination post-tender but pre-consideration. Accordingly, in my view, the decision in *HJ Ward* does not materially advance the question of the proper interpretation of section 158(1).

87. Counsel for the defendant very fairly accepted at the outset of the hearing before me that, while his position may be compelling as a matter of policy, he could not point to an anchor for his case on question 2 in the wording of s. 158 or the 2015 Act more generally. He did suggest, in the event that I was against the defendant and with the plaintiff on the question of the correct answer to question 2, that, if the court felt it appropriate, it might be useful to highlight a potential lacuna in the legislative scheme in relation to Section D costs allowed in an adjudication of legal costs where the claiming party fails to beat a lodgment or tender as to costs given that an LCA can only become aware of the lodgment/tender post-determination.

88. I should say that the plaintiff made certain fallback arguments as to the mechanisms which might be open to a party in the position of the defendant in this case who wished to have the LCA revisit the terms of any allowance made under Section D for the costs of the adjudication in the LCA's determination pursuant to s. 157. This might include an application by way of form 9 (a mechanism in the form of a motion application to bring matters before an LCA) before the expiry of the 20-day period set out in s. 158(1) or an application under s. 160(1) for consideration of the aspect of the adjudication dealing with the Section D allowance for the costs of the adjudication. In my view, these matters do not assist resolution of the substantive question of the proper interpretation of s. 158(1). Section 160 provides for a form of review by way of “consideration” of a determination made as to allowable costs on an adjudication; it is not a mechanism whereby a determination made under s.157(1) can be treated as some form of provisional determination subject to revision by an LCA prior to the consideration stage itself. Likewise it is difficult to see that an LCA would have jurisdiction to entertain an application to vary a determination before the 20 day period in s.158(1) elapses as that would suggest that the word “final” in that subsection does not mean what it says; the

reference in s.158(1) to the determination taking effect 20 days after it is furnished to the parties “subject to section 160” seems designed to allow for exercise of the right in s.160 to make an application for consideration of a determination within the 14 day period for such an application provided for under s.160, not to allow for some revisiting of a determination specified by the subsection to be “final”.

89. In my view, the proper interpretation of s. 158(1) is clear: subject only to an application for consideration under s. 160, a determination made on the adjudication of a bill of costs is final for all purposes and takes effect 20 days after it is furnished to the parties under s. 157(2).

90. This interpretation necessarily flows from the clear and unequivocal terms of s. 158(1) of the 2015 Act. Section 158(1) provides, in terms that admit of no exception save “subject to section 160”, that the determination of an LCA is “final” and shall take effect 20 days after it is furnished under s. 157(2) to the parties to the adjudication. The defendant effectively requires the court to read in or imply a second exception namely “*subject to section 160 or a situation where a claiming party has failed to beat a sum paid or tender made in satisfaction of legal costs, the determination of a legal costs adjudicator is final and shall take effect 20 days after it is furnished under section 157(2) to the parties*” (new wording emphasised). In my view, the court would be improperly legislating in seeking to find such an implied provision in section 158(1).

91. The reality is that there are no express provision set out in the 2015 Act in relation to the scenario where an LCA has, on a determination of legal costs, made an allowance for the costs of the adjudication under Section D of the Bill of Costs but where the claiming party fails to beat a lodgment or tender in relation to the costs of the adjudication and where it might therefore be said that it is unfair on the paying party to have to nonetheless pay adjudicated costs inclusive of costs of adjudication (subject, obviously, to any deduction post-lodgment or tender for the costs of the adjudication on account of the claiming party failing to beat that lodgment or tender). It might well be that the Oireachtas takes the view that this creates a level of unfairness which should be addressed by an appropriate legislative amendment. However, in my view, it is clearly not a matter which the court can address by effectively seeking to rewrite the terms of s. 158(1) to cover such a scenario.

92. It follows that, in my view, the correct answer to question 2 in the case stated is that the LCA does not have jurisdiction or power to adjust or amend the allowance already made to the claiming party in respect of Section D costs in circumstances where a claiming party has failed to beat the paying party's lodgment or tender and in circumstances where the Section D allowance made by the LCA includes costs which were incurred after the date of the paying party's lodgment or tender and where the existence of the tender/lodgment cannot be brought to the attention of adjudicator prior to the adjudicator determining the Section D costs.

Conclusion

93. For the reasons outlined above, my answers to the questions posed in the case stated are as follows:

Question 1: Do the “costs of the adjudication”, as provided for in Order 99 r.60 of the Rules of the Superior Courts, include the applicable court fee on the adjudication of a bill of costs, (approximately 8% of the allowed costs), arising under Part 6 of the Supreme Court, Court of Appeal and High Court (Fees) Order 2014 (SI 492 of 2014)?

Answer to Question 1: Yes, the “costs of the adjudication”, as provided for in Order 99 r.60 of the Rules of the Superior Courts (and s.154(10) of the Legal Services Regulation Act 2015) include the applicable court fee on the adjudication of a bill of costs, (approximately 8% of the allowed costs), arising under Part 6 of the Supreme Court, Court of Appeal and High Court (Fees) Order 2014 (SI 492 of 2014).

Question 2: In circumstances where a claiming party has failed to beat the paying party's lodgment or tender, and having regard to the finality provided to a determination by s.158(1) of the 2015 Act, does an Adjudicator have jurisdiction or power to adjust or amend the allowance already made to the claiming party in respect of Section D costs in circumstances where the said allowance includes costs which were incurred after the date of the paying party's lodgment or tender and where the existence of the tender/lodgment cannot be brought to the attention of the Adjudicator prior to them determining the Section D costs?

Answer to Question 2: *In circumstances where a claiming party has failed to beat the paying party's lodgment or tender, and having regard to the finality provided to a determination by s.158(1) of the 2015 Act, an Adjudicator does not have jurisdiction or power to adjust or amend the allowance already made to the claiming party in respect of Section D costs in circumstances where the said allowance includes costs which were incurred after the date of the paying party's lodgment or tender and where the existence of the tender/lodgment cannot be brought to the attention of the Adjudicator prior to them determining the Section D costs.*