THE COURT OF APPEAL
CIVIL

Court of Appeal Record Number: 2025/199
High Court Record Number: 2020/6178P
Neutral Citation: [2026] IECA 116

Faherty J.
Pilkington J.
Butler J.

BETWEEN/

JOSEPH CORCORAN AND KATHERINE CORCORAN
PLAINTIFFS/RESPONDENTS

– AND –

PERMANENT TSB PLC, START MORTGAGES DAC, TOM O'BRIEN OF MAZARS, HILARY LARKIN OF MAZARS, AND MARS CAPITAL FINANCE IRELAND DAC

DEFENDANTS/APPELLANTS

JUDGMENT of Ms. Justice Butler delivered on the 26th day of June 2026

Introduction

1. This judgment concerns the entitlement of a litigant-in-person to costs in circumstances where an appeal taken by the represented party is withdrawn before the hearing date. It arises in the context of ongoing litigation between the parties and, indeed, in circumstances where the costs of this appeal are likely to be minimal compared to the costs already incurred in other aspects of the litigation and which will be incurred if the proceedings are fully litigated through to a judicial conclusion. That said, the issues raised are important as a matter of principle and merit some consideration even if, for reasons explained more fully below, they are not capable of being fully resolved at this point.

Background to the Proceedings

2. The underlying proceedings raise issues which are, unfortunately, commonplace before the Irish courts. The plaintiffs borrowed considerable sums of money from Permanent TSB ("PTSB") in 2007 on dates just prior to the economic crash in 2008. The loans were secured on what appears to be a number of investment properties. Charges created by the terms of the mortgages between the plaintiffs and the PTSB were duly registered on the properties in question. Inevitably the plaintiffs had difficulties meeting the repayment on their loans and fell into arrears. In February 2019 PTSB transferred its loan book (or a portion of it) to Start Mortgages DAC ("Start"). This included the plaintiffs' loans and related securities and Start was registered as the owner of the relevant charges. In February 2020 Start appointed the third and fourth defendants as receivers over the properties.

3. In September 2020 the plaintiffs issued proceedings against the first four defendants and the court understands that the plaintiffs have acted as litigants-in-persons throughout with the first plaintiff appearing as their spokesperson before the courts. While the detail of these proceedings is not relevant to the issues at hand, in common with many such cases, the plaintiffs allege that PTSB was not entitled to sell their loans to Start which did not legally purchase them and that the appointment of receivers by Start is invalid. Additional grounds are more specific to the plaintiffs' case and allege that PTSB engaged in fraudulent misrepresentation regarding the terms of what the plaintiffs claim were "interest only" loans and that the receivers acted in breach of their duty by requiring existing tenants to leave the properties.

4. The defendants (who are the appellants before this court) brought an application to strike out the plaintiffs' proceedings under O. 19, r. 28 of the Rules of the Superior Court on the grounds that the proceedings were frivolous and vexatious or bound to fail. That application was unsuccessful (see judgment of Dignam J. [2024] IEHC 345), although Dignam J. did make an order pursuant to the court's inherent jurisdiction striking out part of the claim which asserted that Start did not have the right to appoint a receiver because of the repeal of the Conveyancing Act 1881. He also vacated a *lis pendens* which the plaintiffs had registered.

5. Whilst this application was pending, Start transferred the loan book (or a portion thereof) which it had acquired from the PTSB to Mars Capital Finance Ireland DAC ("Mars") in May 2024. Start then made an application to have Mars substituted in place of Start as a defendant to the proceedings. The plaintiffs objected to this application. Ultimately the application did not proceed, and the plaintiffs consented to the joinder of Mars as an additional defendant.

6. In February 2025 the plaintiffs sought discovery of two categories of documents, the first relating to the transfer of mortgages from PTSB to Start and the second relating to the transfer of the same mortgages from Start to Mars. That application was heard by Quinn (Oisín) J. on 4th June 2025. He delivered an *ex tempore* judgment on the same date requiring the defendants to make discovery of the documents in the first category and refusing discovery of the documents in the second category. The order records that he made no order in relation to costs. The first plaintiff, who has acted as the plaintiffs' spokesperson throughout, informed the court that discovery of the second category of documents was not refused as he had withdrawn his application regarding this category at the hearing and the reason no order for costs was made was because he had brought a second motion seeking to have the receivers discharged. He did not proceed with the second motion following discussion with Quinn J. regarding the very high threshold which he would have to meet to succeed in such application. This is not reflected in the order before the court but there may be a second order which was not the subject of any appeal and, consequently, was not included in the books for this appeal. Either way, the point of significance is that no order for costs was made in respect of the discovery motion in the High Court and the failure to make an order for costs was not the subject of an appeal by either party.

Appeal to this Court

7. On 22nd July 2025 a notice of appeal was filed on behalf of the 2nd to 5th defendants against the discovery order. This notice was apparently filed late with the benefit of consent from the plaintiffs to an extension of time for doing so. The grounds of appeal are not especially relevant to the issues at hand and in any event are fairly formulaic (the documents were not relevant or necessary, the plaintiffs were engaged in a fishing expedition *et cetera*). The plaintiffs responded in greater detail in the respondents' notice filed on 13th August 2025. That notice also included additional grounds on which it was contended the High Court decision should be upheld and grounds of cross-appeal. The cross-appeal sought to have the order for discovery "expanded" so as to preclude the redaction of documents coming within its scope. The order sought by the plaintiffs on foot of the cross-appeal included "*an order that the full cost of and incidental to this appeal be awarded to the respondent*".

8. The appeal was listed in the Directions List before Costello P. on 17th October 2025. She directed dates for the exchange of submissions and listed the appeal for hearing on 11th December 2025. The appellants did not file their submissions by the scheduled date of 31st October 2025. Instead, on 29th October 2025 the solicitors on behalf of the appellants wrote to the plaintiffs. This letter was marked "*without prejudice*" but counsel on behalf of the appellants appears to have operated under the mistaken apprehension that it was an open letter and the terms of that letter are set out in some detail in the appellants' written submissions. The plaintiffs did not object to the letter being further referred to in the course of the appeal hearing in circumstances where its contents had already been disclosed. In summary, the appellants offered to withdraw the appeal if the plaintiffs were to withdraw their cross appeal and sign an undertaking regarding the confidentiality of the documents to be discovered. The fifth appellant (Mars) also offered to pay the respondents' 'reasonable' costs incurred to date to be adjudicated in default of agreement.

9. On 4th November 2025 (a Tuesday) solicitors on behalf of the appellants wrote to the plaintiffs informing them that the appeal would be withdrawn *simpliciter*. The plaintiffs did not reply to either of these letters. The matter was listed in the call-over list taken by Meenan J. on 7th November 2025 (the following Friday). On that date the first plaintiff, again appearing in person, withdrew the cross-appeal and sought his costs of the appeal. Counsel for the appellants informed the court that an open offer had been made that the plaintiffs would be paid their reasonable expenses. Having confirmed that the documents the subject of the High Court order would be discovered within 14 days, Meenan J. directed that the matter remain listed on the scheduled date but only for hearing on the question of costs and directed the exchange of submissions on costs.

10. As noted above, the offer made on 29th October was not in fact an open offer as it was made in without prejudice correspondence. Consequently, it should not have been disclosed to the court at the directions hearing on 7th November and its contents should not have been paraphrased in the appellants' written legal submissions. We accept that this was a genuine error and indeed counsel on behalf of the appellants quite fairly acknowledged the error in the course of the hearing before this court. Nonetheless, greater care should be taken when dealing with without prejudice correspondence, particularly when the party to whom such correspondence is sent is a litigant-in-person. In this case the error was compounded as not only was the court informed that an open offer had been made regarding costs, the court was not informed that the terms of the offer were conditional in that they required the first plaintiff to execute an "*undertaking*" in the form of a non-disclosure agreement regarding the documents to be discovered. The plaintiffs never agreed to those terms and confirmation of the withdrawal of the appeal in the letter of 4th November 2025 was not premised on receipt of such an undertaking. There are issues between the parties as to the legitimate use to which the discovered documents or knowledge of their contents may be put, but these issues are not the subject of this judgment. The first plaintiff indicated that he was fully aware of the restrictions which normally apply to the use of discovered documents and informed the court that he intended to raise the matter in the Chancery List.

Arguments of the Parties

11. The argument made on behalf of the plaintiffs was admirably straightforward. The first plaintiff contends that as costs normally follow the event, the appellants should be held liable for the plaintiffs' costs. However, cognisant of the fact that litigants-in-person normally only recover "*out of pocket expenses*" as opposed to "*costs*", he points to s.169(1) of the Legal Services Regulation Act 2015 under which a party who has been entirely successful in civil proceedings is entitled to an award of costs against the other party. He argues that the 2015 Act does not distinguish between a represented party and an unrepresented party and, consequently, as a 'party' he should get an order for his costs *simpliciter*. He contends that any other interpretation of the 2015 Act would amount to unwarranted discrimination against litigants-in-person. He points to the fact that the costs recoverable by legal representatives include what he terms "*non-professional legal costs*" in respect of administrative work involved in the preparation of a case for court. By way of example, time spent by secretarial or administrative staff in a solicitor's office preparing booklets of documents for court is recoverable as part of the legal costs albeit such staff will not be charged the same hourly rate as solicitors. No allowance is made for equivalent time spent by a litigant-in-person doing exactly the same work

12. In reply, the appellants make two arguments. The first is to say that no order should be made in favour of the plaintiffs as an offer had been made to pay the plaintiffs' reasonable expenses which, if accepted, would have met their entitlements and obviated the need for a costs hearing. In fact, the appellants go so far as to assert that they should be awarded the costs of the costs hearing. Secondly, it is contended that litigants-in-person are not entitled to recover costs on the same basis as a solicitor would be for preparatory work undertaken prior to trial. Therefore, the order in favour of the plaintiffs should be one for outlay and expenses only.

<u>Entitlement to Costs where an Offer is Made</u>

13. In very simple terms, where a party to litigation refuses an offer and proceeds to recover no more than that which was offered, they will not be entitled to the costs of what was ultimately an unnecessary court hearing. Of course, this is of necessity a simplification and when such situations arise, they are often far more complex. Offers may be made on an 'open' or on a 'without prejudice' basis or even 'without prejudice save as to costs'. Correspondence which starts on a 'without prejudice' basis may become 'open' and *vice versa*. Litigation can be multilayered and there may be a benefit to pursuing the litigation which is not measurable in purely financial terms. Nonetheless, the appellants contend in their written submissions that by not accepting their offer the plaintiffs, presumably artificially, created '*an event*' for costs purposes, namely the hearing of the costs application. They also dispute the plaintiffs' entitlement to anything greater than '*outlays and expenses*' (per Haughton J. in *Dowling v. Minister for Finance* [2023] IECA 197 at paragraph 66) – an issue to which I shall return.

14. I do not accept that the plaintiffs' refusal of the appellants' offer of 29th October created the 'event' which is the subject of the plaintiffs' application for costs. The offer made to the plaintiffs was conditional and quite clearly the plaintiffs did not agree to the condition on which the offer had been made. Neither was the offer an open offer as it was erroneously characterised to the court on 7th November and again at the hearing of this appeal until, at a relatively late stage, counsel corrected himself.

15. Further, the unconditional withdrawal of the appellants' appeal which was confirmed in a letter dated 4th November 2025, took place just over a month before the appeal was due to be heard. If the plaintiffs were not litigants-in-person it is unlikely that an offer of costs to that date, which would exclude the costs of the scheduled hearing for which solicitor and counsel would almost certainly have already been briefed, would be accepted. Withdrawal of the appeal at that late stage would normally entitle the other party to an order for their full costs of the appeal. Thus, leaving aside for a moment the fact that the plaintiffs are litigants-in-person, what was being offered to them was further qualified in terms of the period which would normally be covered by a costs order in such circumstances.

16. For all of these reasons, I'm satisfied that the appellants' offer is largely irrelevant to the issues the court has to decide. I am also satisfied that on the withdrawal of the appellants' appeal, the plaintiffs were "*entirely successful*" on the issues which were before the court. The withdrawal of the cross-appeal was done promptly on 7th November, the plaintiffs having been advised of the withdrawal of the appeal only three days earlier. Again, I would regard the bringing and withdrawal of the cross-appeal as largely irrelevant. The plaintiffs did not seek to pursue the issues raised in the cross-appeal within the timeframe for bringing an appeal and quite clearly only raised them in the context of the appellants' extant appeal. Therefore, the plaintiffs are clearly entitled to an order in their favour. The only question is the form such order should take. The plaintiffs seek an order of their costs *simpliciter* which will allow the costs adjudicator to decide the appropriate level of costs to be applied. The appellants argue that the order should be limited to outlay and expenses to reflect the fact that the plaintiffs are litigants-in-person.

Law in relation to Costs

17. Both parties relied on a decision of the Supreme Court in *Dawson v. Irish Brokers Association* [2002] 2 ILRM 210, [2002] IESC 36 to differing effect. The appellants say it is clear authority for the proposition that a litigant-in-person is not entitled to recover costs on the same basis as a solicitor for preparatory work and, further, that this has recently been confirmed by the Court of Appeal in *O'Connell v. BATU* [2021] IECA 265 at paragraph 131. The plaintiffs say that *Dawson* envisages that legislative change would be necessary to alter the position as set out in that judgment but that such legislative change has now been effected by the Legal Services Regulation Act 2015.

18. *Dawson* was an appeal from a taxation of costs by the Taxing Master. The Supreme Court accepted the defendant's argument that the indemnity to which a successful party in litigation was entitled as to the costs incurred by him "*extended only to legal costs which the court could measure*". This language is derived from the judgment of Bowen L.J. in *London Scottish Benefit Society v. Chorley* [1884] 13 QBD 872 which continues "*such legal costs are to be treated as expenses necessarily arising from the litigation and necessarily caused by the course [which] it takes*". This is described by Keane C.J. as the "*underlying basis of our law on the topic*". The issue in *Chorley* was whether a solicitor who acted for himself was entitled to recover legal costs for the work which he and his firm had done. In addressing whether a solicitor should be entitled to costs to reflect the work done by his own firm in representing him, Bowen L.J. looked at the different considerations which would apply as between a solicitor and the layperson: –

> "*Professional skill and labour are recognised and can be measured by the law; private expenditure of labour and trouble by a layman cannot be measured. It depends on the zeal, the assiduity, or the nervousness of the individual. Professional skill, when it is bestowed, is accordingly allowed for in taxing a bill of costs; and it would be absurd to permit a solicitor to charge for the same work when it is done by another solicitor, and not to permit him to charge for it when it is done by his own clerk.*"

19. The passage on which the plaintiffs rely appears at paragraph 11 of the *Dawson* judgment: –

> "*It may be thought that it is somewhat unjust that a person who has been wrongfully obliged to institute or defend proceedings should be unable to recover any costs in respect of time which he has spent in the preparation of his case and that the*

> *unsuccessful party should be under no obligation to pay anything in respect of that loss. However, that is a matter which it must be for the legislature, and the legislature alone, to redress…*".

It may be noteworthy that in the same paragraph Keane C.J. makes the following observation (albeit in terms of multiple negatives) "*no doubt the exercise by citizen of his/her right of access to the courts would be facilitated by making some provision for the recovery of such costs, but it certainly does not follow that the common law principle that they are irrecoverable in the absence of legislation is inconsistent with that constitutional right.*"

20. The plaintiffs contend that that the legislature has in fact addressed the issue identified in *Dawson* in s.169(1) of the Legal Services Regulation Act 2015. That section provides as follows: –

> "*(1) A party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings, unless the court orders otherwise, having regard to the particular nature and circumstances of the case, and the conduct of the proceedings by the parties, including…*".

21. The plaintiffs point out that s.169(1) does not distinguish between parties who are legally represented and parties who are not. The matters listed at subparagraphs (a) to (g) of s.169(1), being the matters to which a court must have regard in deciding to exercise its discretion not to award costs to a successful party, do not include whether that party is legally represented. Consequently, according to the plaintiffs, an unrepresented party who is entirely successful is entitled to an award of costs on the same basis as a legally represented party in similar circumstances.

22. There is no definition of "*party*" in the 2015 Act. Similarly, the 2015 Act does not define "*costs*" nor expressly distinguish between legal costs and other costs. There is a definition of "*legal costs accountant*" but this does not add significantly to our understanding of the concept of "*costs*".

23. The appellants do not really engage with these aspects of the 2015 Act. They point to subparagraphs (a), (b) and (f) of s. 169(1) as being of potential relevance. Subparagraph (a) deals with conduct before and during the proceedings and subparagraph (b) deals with the reasonableness of raising, pursuing or contesting an issue in the proceedings. I cannot see how these would benefit the appellants in any way as certainly it could not be suggested that the plaintiffs were unreasonable in seeking the discovery which they successfully obtained nor in opposing an appeal which was ultimately withdrawn. Subparagraph (f) looks at whether a party made an offer to settle the matter the subject of the proceedings and, if so, the date, terms and circumstances of that offer. For the reasons set out in more detail in the preceding section of this judgment, I do not think that the appellants can gain any benefit for having made a without prejudice, conditional offer (albeit one the terms of which were subsequently disclosed to the court), the conditions of which were never accepted.

24. The appellants cite the decision of Murray J. in *Chubb European Groupe SE v. Health Insurance Authority* [2022] 2 IR 734 which contains a comprehensive analysis of the changes effected by s. 169 of the 2015 Act. *Chubb* is undoubtedly the leading decision in this area but is not of direct relevance to the issues currently before the court. It examines the differences in the pre-and post-2019 regime (the relevant provisions of the 2015 Act having been commenced in 2019), related changes to Order 99 and what constitutes an 'event' in litigation where multiple issues are raised and a party who succeeds in obtaining relief is unsuccessful on most of those issues. As both of the parties before the court in

Chubb were legally represented, the court was not required to and did not address the position of litigants-in-person under the 2015 Act. The appellants also point to another decision of the same judge in *Higgins v. Irish Aviation Authority* [2020] IECA 277. There, the court focused on the meaning of the phrase '*entirely successful*' in s.169(1) where the respondent succeeded in obtaining relief but failed on one or more of the discrete issues on which it based its claim (i.e. the respondent succeeded in upholding the High Court jury verdict in his favour but the quantum of damages awarded to him was significantly reduced on appeal). In those circumstances the court proceeded to deal with costs under s.168(2)(d) of the 2015 Act which allows costs relating to the successful element(s) of the proceedings to be awarded where a party is only partially successful. Again, whilst this decision is important it does not address whether a litigant-in-person is entitled to costs on the same basis as a represented party.

25. The appellants also rely on the decision of this court, Power J. in *O'Connell v. BATU* [2021] IECA 265 in which she expressly cites with approval the decision of Keane C.J. in *Dawson* noting "*it [is] well-established law that litigants in person are not entitled to recover costs for preparatory work undertaken before a trial on the same basis as solicitors*". The appellants contend that it follows from this that the pre-2015 case law on this point continues to be authoritative notwithstanding the legislative changes which have taken place.

26. *O'Connell* involved a successful appeal against the quantum of damages which had been awarded to the appellant in High Court proceedings in which he successfully alleged a breach of his constitutional right to earn a livelihood. The plaintiff had obtained some legal advice and assistance from a solicitor who never formally came on record on his behalf but conducted the majority of the proceedings as a litigant-in-person. The High Court awarded him expenses for a number of the days for which the case was at hearing but did not allow anything in respect of the legal costs of the solicitor who had previously been retained.

27. Having decided the substantive issues largely in favour of the plaintiff/appellant, Power J. then proceeded to deal with the question of costs. It is of some relevance that her consideration of this issue at the end of her judgment is on a provisional basis, and the judgment expressly records that if the parties wished to argue for an alternative costs order they should notify the office and a hearing would be organised. This is standard practice in this court and can obviate the need for unnecessary costs hearings (and unnecessary additional costs) where the indication given in the judgment reflects the parties' expectations in light of the outcome of the appeal without depriving them of the right to contend for a different outcome. The discussion on costs in *O'Connell* is detailed not least because the Court of Appeal significantly increased the number of days for which the successful appellant could recover and expressly allowed him to recover a proportion of the legal costs incurred prior to the discharge of his legal representatives. Thereafter, the proposed order was that the appellant would recover his "*expenses*" in respect of the hearing on quantum and the appeal.

28. As the Court of Appeal was not addressed on costs prior to the delivery of this judgment, it does not appear that any argument was made to the court on whether the provisions of the 2015 Act had any impact on the continuing effect of the decision in *Dawson*. Therefore, as a point not argued is a point not decided, I do not think that *O'Connell* can be regarded as strong authority for the continuing relevance of *Dawson* to the issues raised by the plaintiffs in this appeal.

29. The decision of the Court of Appeal (Haughton J.) in *Dowling v. The Minister for Finance* [2023] IECA 197 is one delivered after a hearing had taken place on the issue of costs. At paragraph 66 of that judgment Haughton J. notes that the third plaintiff/appellant did not have legal representation and continued "*Acting as a lay litigant he is only entitled, at best, to outlays and expenses*". It appears from the portion of the judgment setting out the legal principles relating to costs, that the main focus of the argument was on whether the respondent and notice party had been '*entirely successful'*. The third-named appellant appears to have made arguments based on public interest litigation and the importance of the points in issue. No argument appears to have been made by him as to whether s.169 brought different considerations to bear as regards the entitlement of litigants-in-person to recover the costs of proceedings in which they had been entirely successful, much less what those costs might be.

30. Some of these issues were revisited in a further judgment of this court relating to the same litigant-in-person (see *Skoczylas v. Minister for Finance,* Burns J. [2024] IECA 201). This was an appeal against the decision of the High Court upholding the Legal Costs Adjudicator's refusal of the appellant's claim for a sum of over €750,000 in respect of what he described as "*professional expert non legal litigation advice and services*". The appellant specifically relied on the fact that he had engaged a third party to do this work and was therefore not claiming for work he personally had carried out. Much of the analysis in the judgment focuses on the nature of expert work in the context of litigation and the extent to which a party can claim the cost of expert work done for the purposes of the litigation by himself or his employees.

31. Burns J. did not treat the fact that the appellant was a member of the company which he had engaged to do the work as necessarily defeating the claim. Rather the description of the work done (set out in a series of invoices) was very general – perusing court documents and exhibits, preparing court documents, proofreading documents, conducting research, analysing material and advising the appellant – and on its face comprised the type of work generally done by legal professionals when acting for a client in litigation. In principle this work was not a recoverable expense. No detail was provided which would have allowed the Legal Costs Adjudicator to assess whether any of it genuinely comprised expert work of a non-legal nature.

32. Some issues were raised regarding the application of the 2015 Act (see paras. 66 and 67 regarding consideration of the matters listed at s.155 and the First Schedule of the 2015 Act and paras. 74 and 75 as to whether the 2015 Act or the Courts and Court Officers Act 1995 was the applicable legislation). However, the point in issue here, namely whether under s.169(1) the entitlement of a litigant-in-person who has been entirely successful to their costs reflects something broader than traditional outlay and expenses, was not raised and consequently was not decided in *Skoczylas*.

33. Finally, in *Delaney and McGrath on Civil Procedure* (5th edition, 2023) at paragraph 24-323 the authors cite *Dawson* as authority for the proposition that litigants-in-person are not entitled to recover costs on the same basis as a solicitor for preparatory work undertaken by them prior to trial. They note that the decision in *Dawson* continues to cover the assessment of the costs of lay litigants and cite the decision of Clarke C.J. in *Tracey v. McDowell* [2021] IESC 38 as apparent authority for this proposition. It is, however, notable that although the decision in *Tracey* was delivered in June 2021 it relates to a judgment delivered in 2016 allowing the appellants' appeal (see [2016] IESC 44). It is not clear why the costs hearing in respect of that judgment did not take place until June 2021, although restrictions in place on public health grounds in 2020 and 2021 may have contributed to the delay. The provisions of Part 11 of the 2015 Act concerning "Legal Costs in Civil Proceedings" were not commenced until 2019. Consequently, those provisions could not have governed proceedings which concluded with the delivery of judgment in 2016. The decision on costs in *Tracey* makes no reference to the 2015 Act and, insofar as Clarke C.J. refers to *Dawson* as representing the current law, I do not think it can be assumed that the court either considered or intended to confirm that *Dawson* was entirely unaffected by changes to the law on costs effected by s.169.

Discussion and Analysis

34. On the face of it, the plaintiffs make a simple and attractive argument. Under s.169(1) a party who is entirely successful in civil proceedings is entitled to an award of costs against the unsuccessful party unless there are countervailing considerations which do not arise here. The section does not distinguish between represented and unrepresented parties. As the plaintiffs have been entirely successful, they are, they claim, entitled to an order for their 'costs' and not merely for their outlay and expenses.

35. Whilst this argument is attractive, it may in fact be deceptively simple. The language used in s.169 does not distinguish between represented and unrepresented parties to litigation, but neither did the language used in the governing instruments prior to the enactment of the 2015 Act. Order 99 of the Rules of the Superior Courts was substituted by a recast Order 99 in 2019 (S.I. No. 584 of 2019) to reflect the changes made by the 2015 Act. However, the language used in the old and the new versions of Order 99 remains remarkably similar. Both versions, like the 2015 Act itself, talk about the costs of "a party" without stipulating whether the party in question is represented or unrepresented. Therefore, it may be difficult to read into s.169 the legislative intent on which the plaintiffs rely, i.e. a deliberate decision not to distinguish between represented and unrepresented parties, when the absence of such distinction represents a continuum rather than a change.

36. That said, the 2015 Act is significant in providing a clear statutory basis for the award of costs. Previously although the entitlement to costs in certain matters was based in legislation, the power of the courts to award costs more generally was governed by the provisions of Order 99. The statutory language in both s.168 and s.169 refers to 'costs' *simpliciter* and not to any lesser entitlement such as expenses or outlay. While expenses and outlay are, of course, elements of the costs incurred in litigation which are properly recoverable when an award of costs is made, it cannot be gainsaid that the *prima facie* entitlement of a successful party in civil litigation is to an award of costs. The issue here is whether the award of costs to which the plaintiffs as litigants-in-person are entitled should automatically be so limited on the face of the order.

37. At this stage the question is somewhat hypothetical as no bill of costs has been prepared and the court does not know the nature of the items for which the plaintiffs hope to recover which might go beyond their expenses and outlay. Further, even if the court were to make an order for 'costs' in the plaintiffs' favour, it would not follow that the plaintiffs will recover for 'legal' work done by them such as the drafting of pleadings and written submissions or their attendance at court in order to make oral argument (see the analysis of Burns J. in *Skoczylas* above). This is for two reasons. Firstly, although Part 11 of the 2015 Act does not contain a definition of 'costs', the title of that Part is "Legal Costs in Civil Proceedings'. The immediately preceding Part, Part 10, which deals with the adjudication of costs is entitled 'Legal Costs'. Thus, there is a strong link, although I accept not necessarily an exhaustive one, between the notion of 'costs' and 'legal costs' in the 2015 Act.

38. Secondly, the 2015 Act as a whole is concerned with the regulation of the legal professions in Ireland and ensuring that only persons who are properly qualified, registered and insured can hold themselves out as being lawyers. Under s.136(2) it is a criminal offence for an unqualified person whose name is not on the roll maintained by the Authority under s.133 of the Act to practise as a barrister. A similar prohibition on acting as a solicitor without a valid practising certificate applies under s.56(1) of the Solicitors (Amendment) Act 1994. It would be entirely inconsistent with the broader purpose of the 2015 Act (and the related Solicitors Acts) if its costs provisions were to be interpreted as entitling parties to litigation to recover costs in respect of legal work done by people who are not qualified to act as lawyers in this jurisdiction. Thus, in my view the fundamental premise of *Dawson* which is that litigants-in-person cannot recover costs for legal work done by them which would be recoverable if it were done by a solicitor or barrister is unlikely to have been undermined by the enactment of the 2015 Act.

39. There is nonetheless a grey area where costs can be recovered for non-legal or administrative work done by a solicitor's office which does not qualify as an expense when the same work is done by a litigant-in-person. The obvious example is that given by the plaintiffs of the preparation of books for court by secretarial staff in a solicitor's office but there are also others such as the service of documents by a summons server. The appellants argue that if the litigant-in-person pays another person to do this work it may be recoverable as an expense. The example used was the printing of books for court by a print shop. Perhaps coincidentally this example is indicative of the problems faced by litigants-in-person. Print shops were commonplace 20 or 30 years ago but with the advent of home computers and printers they are now few and far between. The likelihood is that this work will now be done personally by the litigant-in-person.

40. Further, there is often a considerable amount of administrative work to be done on court books before they are ready for multiple copies to be printed and indeed afterwards in terms of preparing and tabbing folders. The obligations on litigants in terms of the filing of court books and books of authority are now significantly greater than they were 20 or 30 years ago. Whilst this greatly facilitates courts in the discharge of court business and allows judges to familiarise themselves with cases before they are heard, it represents an added layer of work and expense for litigants. Where both parties are legally represented the cost of complying with these requirements will usually fall on the losing party as those costs will be an inherent part of any costs order made at the conclusion of the proceedings. However, if the appellant is correct, where the successful party is a litigant-in-person the losing party will escape the costs burden of the successful party's compliance with these mandatory requirements.

41. Finally, it has to be borne in mind that quite often people appear before the courts as litigants-in-person precisely because they cannot afford to retain solicitors. Those individuals are likely to have similar difficulty retaining the type of administrative back-up available to solicitors in their offices. Whilst there is a very clear justification for not allowing the recovery of costs by a litigant-in-person for legal work done personally by them, the same logic does not necessarily apply to the recovery of the cost of administrative and similar types of work done in a solicitor's office but not personally by a solicitor.

42. With respect, I cannot agree with Bowen L.J. that the private expenditure of labour by a lay man cannot be measured. It is routinely measured by costs adjudicators when allowance is made for administrative and other work done by non-professional staff in a solicitor's office. In my view the distinction is, or should be, a different one – that as a matter of principle a lay person cannot recover costs for doing legal work regardless of whether or not the value of that work can be measured because the Oireachtas has, in the public interest, reserved the doing of that work to legal professionals who are properly qualified, insured and registered. The same principle does not apply to secretarial or administrative work.

Conclusions

43. Based on the above analysis, the order I propose to make is that sought by the plaintiffs, namely an order that they recover the costs of this appeal (including the costs of the costs application) as against the second to fifth named appellants inclusive. The order, expressly, will not be limited to the plaintiffs' outlay and expenses.

44. However, in circumstances where this court has not had sight of any bill of costs, it should not be assumed that any particular item will be recoverable as costs by the plaintiffs. Their status as litigants-in-person remains relevant to the adjudication of their costs and this judgment should not be read as suggesting that they are entitled to recover costs for legal work done by them. Unless the parties agree on the quantum of costs, it will be a matter for the Legal Costs Adjudicator at first instance to determine whether any item claimed by the plaintiffs in connection with this aspect of their litigation is properly recoverable by them. That determination will in normal course be subject to an application for review before the High Court under s.161 of the 2015 Act.

45. Faherty and Pilkington JJ. have read this judgment in advance of its delivery and indicated their agreement with its contents and with the proposed order.