

APPROVED



**AN ARD-CHÚIRT
THE HIGH COURT**

[2026] IEHC 396

Record No. 2025/1514SS

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

APPELLANT

-AND-

J.P.

RESPONDENT

(No. 2)

(Costs)

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 19th day of June 2026

INTRODUCTION

1. This judgment addresses the question of costs hearing arising from the judgment in *DPP v JP* [2026] IEHC 350 (“the principal judgment”).
2. The position on costs is provided for in s. 169(1) of the Legal Services Regulation Act 2015 (“the 2015 Act”) and (a re-cast) O. 99, rr. 2 and 3 of the Rules of the Superior Courts 1986 (as amended and substituted) (“the RSC 1986”) (S.I. 584 of 2019). The operative provisions of the 2015 Act came into force on 7th October 2019 and the new provisions of O. 99 of the RSC 1986 took effect from 3rd December 2019.
3. The default position is that costs follow the event where a party has been entirely successful 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 the matters set out at ss. 169(1)(a) to (g) of the 2015 Act).
4. In this regard, s.169(1) of the 2015 Act *inter alia* provides that 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: (a) conduct before and during the proceedings; (b) whether it was reasonable for a party to raise, pursue or contest one or more issues in the proceedings; (c) the manner in which the parties conducted all or any part of their cases; (d) whether a successful party exaggerated his or her claim; (e) whether a party made a payment into court and the date of that payment; (f) 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; and (g) where the parties were invited by the court to settle the claim (whether by mediation or otherwise) and the court considers that one or more than one of the parties was or were unreasonable in refusing to engage in the settlement discussions or in mediation.

5. By way of analogy, in its recent costs ruling in *Amariei v The Chief Appeals Officer & Ors* [2026] IESC 28, the Supreme Court stated that arising from its judgment in *Little v The Chief Appeals Officer & Ors (No. 2)* [2024] IESC 53 (“*Little (No. 2)*”), the principles dealing with the question of costs adumbrated in Murray J.’s judgment in *Little (No. 2)* require “*a far stricter test in awarding costs to an unsuccessful litigant in public interest litigation than to the decision whether to exempt such a litigant from an adverse costs order*”. Those kinds of situations will be a “*genuine rarity*” (per Charleton J. in *Minister for Justice v McPhilips* [2015] 3 IR 274, [2015] IESC 47). Such an award should only be made by the Court “*in cases of real substance, in which there is a clear and significant public interest on a matter of fundamental importance served by the clarification brought to the law by the suit*”.”.

THE DPP

6. Ms. Gráinne O’Neill BL, counsel for the DPP, outlined that her instructions were that since the question of law raised in the appeal by way of case stated had been decided in favour of the DPP, she was seeking her costs as against the Respondent.
7. It was further submitted on behalf of the DPP that, having been entirely successful as per s. 169(1) of the 2015 Act, the starting point was that the DPP was presumptively entitled to her

costs unless ordered otherwise, having regard to the particular nature and circumstances of the case.

THE RESPONDENT

8. Mr. Feichín McDonagh SC, counsel for the Respondent, submitted that the custody issues scheme was not available in an appeal by way of case stated and that the Respondent had not been in receipt of legal aid in the District Court.
9. On behalf of the Respondent, Mr. McDonagh sought his costs on the following basis.
10. He submitted that the Respondent had in fact been successful in the majority ('90%') of the arguments raised in the appeal by way of case stated, and in this context, he pointed out that the facts recited and point of law in the case stated by the District Court made no mention of the requirement to make a contribution to the poor box as being a necessary aspect of the jurisdiction to strike out and that the prosecution should have brought this to the attention of the District Judge. He made the point that had this been canvassed before the District Judge, the Respondent would have in all likelihood contributed to the poor box. Such an outcome would have rendered the appeal by way of case stated otiose.
11. Mr. McDonagh SC pointed out that the Respondent received the DPP's written submissions in this case stated some 14 days before the hearing of the matter before me which was much shorter than the usual period allowed.
12. It was stated that the DPP's written submissions did not say that the decision of the High Court (Kearns P.) in *Director of Public Prosecutions v Ryan* [2011] IEHC 280; [2011] 3 I.R. 641

(“*Ryan*”) was wrongly decided and nor was it submitted that it applied to the circumstances before the District Court. On behalf of the Respondent, as was submitted at the hearing, it was contended that the written and oral submissions of the DPP generally reflected a desire to appeal the sentence on grounds of leniency, whereas the principal judgment decided this case on a jurisdictional/legal basis rather than addressing the matter as an appeal against leniency.

13. Mr. McDonagh SC referred to particular passages from the written submissions of the DPP which had addressed the decision in the *Ryan* case, including at para. 25 where it was *inter alia* stated that *Ryan* may be of limited precedential value in circumstances where the decision predated the Victims Charter and may be said not to place appropriate weight on the consideration for victims especially in alleged sexual offence cases; at para. 29, the reference on behalf of the DPP to the District Court’s finding that the alleged sexual offending was very much at the minor end of the scale flew in the face of the evidence and the reference also observations made in relation to the alleged s. 3 assault, suggested that the appeal was a *de facto* appeal against leniency; at para. 30, it was submitted that reference to the DPP stating that “*in circumstances where the prosecution was present, a guilty plea was entered and on the evidence the offences were committed. The facts of this case do not permit the striking out of the charges under any power of disposal that may be available to the District Court*” was tantamount to suggesting that the *Ryan* jurisprudence did not apply and it had further been submitted on behalf of the DPP that the District Court did not engage with the rights of a victim “*when making such a lenient order*” were also suggestive that the appeal was centred on leniency rather than on a point of law.

14. Emphasis was then placed on the following ten sub-paragraphs set out at para. 32 of the DPP’s written legal submissions: (i) any power which involves or includes the striking out of cases

where there has been a guilty plea or a finding of guilt only arises in special cases where there are ‘extenuating circumstances of special character’; (ii) such ‘extenuating circumstances’ should involve the assessment of *both* the manner of commission of the offence and the circumstances of the offender; (iii) the consequences for victims of any offences covered by such order must be given high consideration; (iv) it will thus be a very rare exceptional order to make in a criminal case; (v) it is linked to serving the ‘higher interests of justice’; (vi) these cases are ordinarily linked to analysis of the ‘poor box jurisdiction’ or agreed compensation, which was not the case here; (vii) the instant case was not and could never be said to be a ‘special case’ – two alleged victims and multiple alleged offences over a longer period of time; nothing radically unusual in the mitigation; (viii) the District Judge failed to consider the issue of the ability of the accused to make any payment at all; (ix) thus, the decision was not even within the very limited special category of cases considered available by *Ryan*; and (x) therefore, the District Judge was not correct in law in making the Orders she did.

15. Mr. McDonagh SC’s fall-back position, in the alternative, was that there should be no order as to costs.

DECISION

16. The principal judgment *inter alia* found that having regard to the facts of this case as outlined in the case stated, when the District Judge was exercising her jurisdiction pursuant to s. 13 of the Criminal Procedure Act 1967 (as amended), it was an error of law to strike out simpliciter the seven charges with no further Order on 12th March 2025.

17. In the circumstances, I am of the view that there should be no order as to costs in this appeal by way of case stated and that the “*unless the court orders otherwise*” provisions in s. 169(1) and having regard to ss. 169(1)(a) to (g) of the 2015 Act, apply.
18. In this regard, the issue of a contribution being made to the poor box as a jurisdictional requirement to a strike out order does not appear to have been raised or canvassed before the District Judge. Also, it appears that the Inspector took a neutral view when the District Judge indicated that she was going to strike out the charges.
19. Further, whilst the Respondent focuses on aspects of the arguments presented in the written submissions which were not accepted in the principal judgment, in all litigation there is an ebb and flow to the submissions made and the fact that the principal judgment did not accept some of the arguments made could be said to apply to aspects of the submissions made by the Appellant *and* the Respondent in this appeal by way of case stated. In this case, for example, a difference of view was expressed by the parties on what the *ratio* of *Ryan* was and also on the utility of remittal.
20. I shall, therefore, make no order as to costs.

CONLETH BRADLEY

19th June 2026