



THE COURT OF APPEAL
CIVIL

UNAPPROVED

NO REDACTION NEEDED

Record Number 2025/169

Neutral Citation Number: [2026] IECA 119

Whelan J.

Binchy J.

Meenan J.

BETWEEN/

CHRISTOPHER PRENDERGAST

APPELLANT

AND

THE LEGAL AID BOARD

RESPONDENT

Costs Judgment of Ms Justice Máire Whelan delivered on the 2nd day of July 2026

Background

1. This judgment is directed solely towards the issue of the proper allocation of costs of this appeal brought by Mr Prendergast (the appellant) from the judgment, [2025] IEHC 257, and consequential orders of the High Court made by Gearty J. The judgment of

this court, which rejected the appeal on all grounds, was delivered on the 21st day of April 2026 ([2026] IECA 97). The latter judgment engages with the labyrinthine facts and events in detail and is to be read herewith.

2. In January 1986 a knitwear factory in Co. Carlow was destroyed in a fire. The appellant and his father were shareholders in the company which owned the factory. The company then instituted proceedings seeking compensation under the malicious Injuries Act 1981 for the loss. After initial success in the Circuit Court, the decision was reversed on appeal and no compensation was recovered by the company under the 1981 Act. Almost 40 years on from those events, the appellant continues to be personally aggrieved in regard to the conduct of the Circuit Appeal in 1988 and certain remarks made by the judge who had heard that Circuit Appeal in 1988.
3. The Appellant argued that the evidence given by an expert called on behalf of Carlow County Council in 1988 was misleading. He also suggested it was fraudulent. He contended entitlement to Legal Aid to pursue these claims. A legal aid certificate was initially granted by the Legal Aid Board (the respondent). Later, as fully explained in detail in the judgments of the High Court, [2025] IEHC 257, and this Court [2026] IECA 97, on the advices of Counsel and in light of the state of the evidence that certificate was terminated. The appellant instituted the within proceedings to review the decision of the respondent to terminate his legal aid certificate.
4. Briefly put, the appellant had contended that the High Court had erred on sundry bases in rejecting his arguments that the respondent was required to provide him with a civil legal aid certificate to enable him to pursue civil litigation. The judgment of the High

Court was exhaustive and comprehensive and set out in great detail why the claim was unsustainable and also misguided. Gearty J. took great care to ensure that the legal basis for her findings and conclusions was clearly set out and explained. No doubt this was in part at least done to facilitate the appellant in understanding why that Court concluded as it did that his claim was not sustainable on any of the several bases he had advanced.

5. Undeterred by those findings the appellant appealed, continuing to maintain that the 1988 Circuit Appeal was the equivalent of a criminal case, even though, as the High Court clearly explained, that judgment amounted in substance to a finding of fact that O'Hanlon J. was not satisfied that the company was entitled to compensation under the 1981 Act because the company had not proved its case and no more than that. The second major issue identified in the High Court based on the arguments he had advanced was that any finding of fact made by the Circuit Appeal Judge in 1988 which affected his reputation had occurred over three decades previously and "*... he did not take any step to vindicate his reputation in the intervening 31 years...*" (High Court judgment para. 25).
6. The judgment of this Court in the appeal runs to 50 pages and set out why the grounds of appeal are not sustainable. The proceedings under the 1981 Act, as instituted by the company in 1986, at the behest of its insurance company, were *civil* in nature and the appellant was not at any time the subject of a criminal process whether as to the determination of his guilt for any crime or otherwise. Each ground of appeal advanced is addressed in the judgment and is not being repeated in this judgment.

7. The substantive judgment engages with the various points raised in the appeal including the proposition that the Civil Legal Aid Act 1995 (as amended) which allows for termination a Legal Aid Certificate was contrary to the Unfair Terms in Consumer Contracts Directive 93/13/EEC ('The Unfair Terms Directive'). The judgment concluded "*...all grounds of appeal fail. The trial judge made no material errors of fact or law such as undermines the correctness of her analysis or legal conclusions. The appellant's arguments as to the supremacy of EU law and caselaw over national law, Directive 91/13/EC (The Unfair Terms in Consumer Contracts Directive), Article 19(1) TEU, Charter and Joint Declaration of 1977 of the Council, Community and Parliament in conjunction with the CJEU are unsound in the context of the issues to be determined and this ground of appeal is unsustainable.*" (para.88).

8. On the issue of costs, this court indicated "*The respondent, having been entirely successful in resisting the appeal, is presumptively entitled to an order for its costs.*" That preliminary position followed from the statutory regime to be found in ss. 168/169 of the Legal Services Regulation Act 2015 ('the 2015 Act') as well as Order. 99, rules 2 and 3 of the Rules of the Superior Courts ('RSC'), as revised and amended in the wake of the introduction of the 2015 Act and the body of jurisprudence thereafter including in particular the decision of this Court (Murray J.) in *Chubb European Group SE v. The Health Insurance Authority* [2020] IECA 183 which clearly and helpfully explained the principles governing Costs for the benefit of litigants and appellants.

9. The appellant identifies 3 distinct reasons why this court should make no order for costs. Each is considered in turn.

10. Firstly, the appellants asserts that the application “... *concerns matters of general public importance including the scope of consumer protection in Ireland and the circumstances in which EU consumer law ...may apply, and the baselines to be used by legal aid boards in deciding cases before it*”. It was asserted that the “...*proceedings were brought in good faith to clarify matters affecting a wide class of consumers...*”. Despite the appellant’s insistence to the contrary, there was no justification for the arguments advanced which sought to invoke the Unfair Terms Directive or EU Consumer law. Agreements with State Bodies through statutory schemes such as the provision of civil legal aid fall within the sphere of public rather than private law. The judgment makes that very clear. There was never any justification for the appellant seeking to fasten his attempt to litigate belatedly concerning events of 1986 – 1988 based on EU Consumer Law on Unfair Terms including Directive 93/13/EEC and consumers rights. As the judgment makes clear these contentions were unstateable and it was not demonstrated to be relevant to “*a wide class of consumers*” – particularly in light of the exceptional delays.
11. The second ground appears to be based on the fact that the appellant self-represented and did not have the benefit of “*legal assistance*” and that he relied on “*publicly available materials*”. That may be so. It does not offer an exemption from the statutory regime which governs the allocation of costs at the conclusion of an appeal. The discretion of the court is limited and must be governed by the principles laid down in the statutory and regulatory regime and the relevant jurisprudence to which I must have regard as provided by s. 169(1) of the 2015 Act.

12. Thirdly the appellant relies on the fact that he is “... *a pensioner of limited means and has no financial capacity to absorb a costs order*... ”.
13. The legal principles to be found in s. 169(1) make clear that where, as here, the respondent has been “*entirely successful*” they are entitled to an order of costs against the unsuccessful party unless the Court orders otherwise. It is for the appellant in the circumstances to establish that this Court should act by making an order “*otherwise*”. But there is nothing in the nature or circumstances of this case and appeal which the appellant has identified which supports in any way his contention that there should be no order as to costs in this appeal notwithstanding that the respondents have been entirely successful in every respect.
14. Further, the High Court judgment was very clear. The appellant identified no cogent or coherent argument to cast doubt on its conclusions. No valid basis was identified for bringing this appeal and many of the arguments and propositions were specious or very weak – yet had to be met by the respondent and engaged with at length at the hearing.
15. I am satisfied that it is especially relevant in this case that the respondent advanced settlement proposals by virtue of a letter dated 30th September 2024 openly offering to mediate and to discharge the costs of that mediation and the provision of legal advice by a lawyer of the appellant’s choosing for the purposes of the mediation. That was a serious and responsible proposal and the appellant elected to reject same and refused to engage in a mediation process. It is in the public interest that mediation be availed of wherever possible. He must have been fully aware that his decision carried risks and implications in relation to costs.

16. In all of the circumstances and in light of the decision in *Chubb* the respondents are entitled to an Order for Costs of this appeal as against the appellant. Said costs to be adjudicated in default of agreement.