APPROVED **[2026] IEHC 603**



THE HIGH COURT

IN THE MATTER OF ARTICLE 40.4.2° OF THE CONSTITUTION

2026 1275 SS

BETWEEN

AARON KIELY

APPLICANT

AND

GOVERNOR OF CLOVERHILL PRISON
DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

MINISTER FOR JUSTICE, HOME AFFAIRS AND MIGRATION

NOTICE PARTY

JUDGMENT of Mr. Justice Garrett Simons delivered on 28 August 2026

INTRODUCTION

1. This judgment is delivered in respect of an inquiry under Article 40.4.2° of the Constitution. The striking feature of the present case is that the Applicant, Mr Kiely, had already been released from custody on High Court bail *prior* to

the inquiry coming on for hearing. As will be explained, this has implications for the outcome of the inquiry.

2. The inquiry arises against the backdrop of an ongoing dispute between the Minister and a large number of solicitors about the rates of remuneration payable in relation to the defence of criminal proceedings before the District Court.

3. One unfortunate consequence of this dispute is that, in many District Court cases, there are no readily identifiable solicitors who are willing to accept assignments under the fee arrangements introduced by the Criminal Justice (Legal Aid) (Amendment) Regulations 2026 (S.I. No. 303/2026). This has brought about a situation whereby individuals accused of criminal offences are now regularly appearing at bail hearings unrepresented. Mr Kiely was one such individual.

PROCEEDINGS BEFORE THE DISTRICT COURT

4. Mr Kiely was brought before the District Court (Judge John Brennan) on 3 August 2026. Mr Kiely was charged with an alleged robbery said to have been committed in Ranelagh on 1 August 2026. Mr Kiely was not legally represented in circumstances where his usual solicitor was not accepting assignments under the amended Criminal Justice (Legal Aid) Regulations.

5. Mr Kiely made a bail application. The prosecuting Garda objected to bail on *O'Callaghan* grounds by reference to Mr Kiely's bench warrant history. There was some discussion at the hearing as to Mr Kiely's accommodation. The prosecuting Garda stated that Mr Kiely had been moving between hostels, and that the staff at the hostel address which he had provided indicated that he was not staying there anymore. Mr Kiely responded by saying: "*That is where I'm*

living". He explained that he had a bed there but had to rebook on a 24-hour basis.

6. The District Court judge decided to grant bail notwithstanding Mr Kiely's extensive bench warrant history. In reaching that decision, the judge took account of the fact that Mr Kiely had been incarcerated for a lengthy period, that the two recent warrants had since been executed, that he did not have legal representation, and that his circumstances appeared to involve what the judge described as "*somewhat of a chaotic lifestyle*".

7. The judge concluded his ruling as follows:

> "*I'm satisfied we'll give him one more chance in the circumstances.*"

8. The judge fixed bail in the sum of €200 and imposed conditions intended to address the risk of non-attendance. These included requirements to sign on daily at Store Street Garda Station, to provide a mobile telephone number, and to reside at an address approved by An Garda Síochána. The judge explained to Mr Kiely that he was going to remand him in custody with consent to bail on those terms and that as soon as the Gardaí approved an address he would be released.

9. The judge also directed that, if Mr Kiely had not taken up bail because the Gardaí were not satisfied with the address, he was to be produced in court on 6 August 2026. The Garda was asked to contact Mr Kiely's usual solicitor, Mr Edward Bradbury, to explain what had occurred, and to afford the solicitor an opportunity to contact Mr Kiely.

PROCEEDINGS BEFORE THE HIGH COURT

10. For reasons which have not been properly explained on affidavit, Mr Kiely did not take up the District Court bail of 3 August 2026. He instead pursued an application for his immediate release pursuant to Article 40.4.2°. Counsel on his behalf made an application for the opening of an inquiry on the day immediately following the District Court hearing. This application was refused by Twomey J. by reserved judgment delivered on 6 August 2026, *Kiely v. Governor of Cloverhill Prison* [2026] IEHC 576.

11. As is his entitlement under Article 40.4.2°, Mr Kiely renewed his application before another judge of the High Court on Friday, 7 August 2026. Brett J. directed an inquiry returnable before her on Monday, 10 August 2026.

12. On the return date, Mr Kiely was produced before the High Court. Counsel for Mr Kiely and the Director of Public Prosecutions, respectively, indicated that bail conditions had been agreed. These had been reduced to writing and a copy was handed in to the judge. The bail conditions were read aloud in Mr Kiely's presence, and he confirmed his agreement to them. Brett J. then admitted him to bail. The bail conditions have since been replicated in the perfected court order.

13. Brett J. noted that there was a disagreement between the parties as to the proper characterisation of the bail order. The judge recorded that the Director's position was that this was a bail application *simpliciter*, whereas the Applicant's position was that this was a bail application raised in the context of an Article 40 application. Brett J. expressly stated that this was a matter for future argument. She reserved the matter to the Vacation List on 17 August 2026, saying that the judge could make whatever decision they wished.

14. The matter came before me, sitting as the Duty Judge, on Monday, 17 August 2026. I heard the inquiry, together with four other inquiries, over two days. I reserved judgment in Mr Kiely's case.

TITLE OF THE PROCEEDINGS

15. The proceedings were instituted with the relevant prison governor named as sole respondent. The Director of Public Prosecutions nevertheless participated in the inquiry as a respondent and was separately represented throughout the hearing. It does not appear that any formal order was made joining the Director to the proceedings. To ensure that the title of the proceedings reflects the role actually played by the Director, and to preserve her right of appeal, I will make an order formally joining the Director as a respondent and amending the title to the proceedings accordingly. The amended title is reflected in this judgment.

16. I dispense with any requirement to re-serve the proceedings by reason of the amendment of the title. The Director of Public Prosecutions is to be joined as a respondent pursuant to the court's jurisdiction under Article 40.4.2° of the Constitution, and not pursuant to Order 15 of the Rules of the Superior Courts. The procedure under Article 40.4.2° is self-contained and is not governed by the Rules of the Superior Courts: *State (Ahearne) v. Cotter* [1982] I.R. 188 (at p. 200). The court may regulate the inquiry flexibly, consistently with the constitutional requirement that it be conducted forthwith.

OVERVIEW OF LEGAL ISSUES

17. The striking feature of Mr Kiely's case is that he had already been released from detention *prior* to the inquiry coming on for hearing. To assess the implications

of this feature for the Article 40.4.2° inquiry, it is necessary to consider the legal character of the order releasing him from detention. More specifically, it is necessary to consider whether it is an order made pursuant to the High Court's full and original jurisdiction in bail matters, or whether, alternatively, it is an order made pursuant to Article 40.4.2°. The answer to this question will inform the outcome of the inquiry.

18. The High Court has full and original jurisdiction to admit to bail an accused person who has been remanded in custody in pending District Court proceedings. That jurisdiction is not appellate and is exercised afresh, although the effect of the order is to release the accused person pending, and subject to attendance at, the underlying criminal proceedings: *People (Attorney General) v. O'Callaghan* [1966] I.R. 501.

19. The discussion below will use the following terms to distinguish between the two types of "*bail*". The term "*conventional bail*" will be used to describe a bail order made pursuant to the High Court's full and original jurisdiction in bail matters, and the term "*interim release*" used to describe a bail order made pursuant to Article 40.4.2°.

ARTICLE 40.4.2° AND INTERIM RELEASE

20. Article 40.4.2° mandates the High Court to inquire forthwith into a complaint that a person is being unlawfully detained. As explained by Barrington J. in *State (Whelan) v. Governor of Mountjoy Prison* [1983] I.L.R.M. 52, this obligation stresses the importance and the urgency of *habeas corpus* proceedings but does not mean that the High Court should "*skimp its enquiry or proceed on an inadequate understanding of the law or the facts*". Once the inquiry has been

entered upon, and provided its urgency and importance are kept in mind, the court is entitled to conduct it in the manner best calculated to resolve the issues of law and fact and to achieve the interests of justice.

21. Barrington J. went on then to say that where an inquiry raises difficult issues of law or fact, the court may have to consider whether the detained person should be admitted to bail until these issues are resolved. As explained earlier, the term "*interim release*" will be used by me to describe this form of bail.

22. The existence of a jurisdiction to direct interim release must not be allowed to displace the urgency of an inquiry under Article 40.4.2°. It would not be appropriate to allow an inquiry to drift merely because an applicant has been granted interim release. The Constitution requires that a determination be made urgently in respect of the lawfulness of the detention. The need for a prompt determination is especially acute in circumstances where the interim release is subject to conditions, such as a requirement to reside at an approved address or to surrender one's passport. Such conditions arguably affect the individual's liberty and should not be prolonged any more than is necessary to complete the inquiry.

23. Although the existence of a jurisdiction to direct interim release has long been recognised, there is little discussion in the case law as to the threshold to be applied in determining whether to direct the interim release of the detained person pending the completion of the inquiry under Article 40.4.2°.

24. Approaching the matter from first principles, the threshold cannot simply be the same as that governing a conventional bail application in the context of criminal proceedings. This is because the starting point for the analysis is different in each instance.

25. In a conventional bail application, the accused person enjoys the presumption of innocence and, as a corollary, a presumption in favour of bail. The burden of proving that the accused person should not be admitted to bail lies upon the prosecution. The allocation of the burden of proof is more complex in an application for interim release. The accused person, of course, continues to enjoy the presumption of innocence. However, there is no presumption in favour of interim release in cases where the accused person is being detained pursuant to an order which is valid on its face and made by a court of competent jurisdiction. Such an order is *prima facie* valid.

26. It is correct to say that the High Court—in an exceptional case—has the capacity to direct the release of an applicant notwithstanding the existence of such a court order. Crucially, this is normally only ever done following the completion of the Article 40.4.2° inquiry and the making of a determination that the detention is not in accordance with law. An applicant who seeks interim release takes on the burden of persuading the High Court that his is an appropriate case in which to "*look through*" the District Court's remand order *prior* to the completion of the inquiry. Such an applicant invites the High Court to disregard the legal effect of an order which is *prima facie* valid prior to a final determination of the inquiry.

27. It would be inappropriate to do so unless the applicant had satisfied a threshold related to the *underlying merits* of the complaint that he is being detained unlawfully. It would not be enough for an applicant who is, for example, held pursuant to a post-conviction order, to establish that he is not a flight risk.

28. A loose analogy can be drawn with the approach taken to interim orders in judicial review proceedings. In *Okunade v. Minister for Justice, Equality and Law Reform* [2012] IESC 49, [2012] 3 I.R. 152, the Supreme Court held that the

burden rests upon the applicant seeking a stay to establish an arguable case on the merits. An applicant must justify the court's departure from the existing legal position by demonstrating that the risk of injustice from allowing the *prima facie* valid order to take effect is greater than the risk of injustice from staying it. In carrying out that assessment, the court must give all appropriate weight to the orderly implementation of the order unless and until it is set aside.

29. It is not necessary for the resolution of these proceedings to attempt to articulate the precise threshold which has to be met by a detained person who seeks interim release. The point for present purposes is a narrower one. It is that whereas an application for interim release may partake of some of the characteristics of a conventional bail application—for example, in terms of the assessment of flight risk—the starting point is different. The detained person must meet a minimum threshold related to the merits: he must be able to demonstrate to some objective standard that he has arguable grounds for saying that the detention is unlawful.

30. The fact that an inquiry has been directed does not, without more, establish an entitlement to interim release. The opening of an inquiry merely establishes that a sufficient question has arisen to require the detainer to justify the detention. An applicant seeking interim release must additionally persuade the court that release is appropriate pending completion of that inquiry, having regard to a provisional assessment of the underlying merits, the consequences of continued detention, the *prima facie* validity of the remand order and any countervailing considerations relevant to bail.

31. The balance of justice will ordinarily favour the expeditious completion of the inquiry under Article 40.4.2°, rather than the grant of interim release pending its determination.

32. In summary, an application for interim release involves a different and more layered test than that governing an application for conventional bail. An applicant who institutes Article 40.4.2° proceedings and then seeks to be released prior to the completion of the inquiry without addressing these additional factors is, in effect, making an application for conventional bail.

PROPER CHARACTERISATION OF THE CONSENT ORDER

33. Having identified the distinction between conventional bail and an interim release pending the determination of the Article 40.4.2° inquiry, I turn now to the proper characterisation of the order made on 10 August 2026.

34. The operative part of the order reads as follows:

> "IT IS ORDERED that the said Applicant be admitted to bail on the charges before Dublin District Court 10 Criminal Court of Justice on the 06th day of August 2026 as set out in Charge Sheet Number 29047698 on entering into a bond before the Governor (or their nominee) of the Prison where the Applicant is currently detained Cloverhill Prison in the following terms:
>
> […]
>
> appear at his next scheduled remand date at Cloverhill District Court on the 20th day of August 2026 and all further adjournments thereof, unless specifically excused appear in Court at each and every remand until the charges shall be disposed of according to law"

35. The distinguishing feature of the order is that its duration is fixed by reference to the criminal proceedings before the District Court and not by reference to the proceedings before the High Court. Mr Kiely was required to enter into a bond which obliged him to appear at his next scheduled remand date at Cloverhill District Court on 20 August 2026, and at every subsequent remand until the charges were disposed of according to law, unless he was specifically excused.

Put shortly, the order regulates Mr Kiely's status pending the determination of the criminal proceedings. This is the hallmark of a conventional bail order.

36. By contrast, an order for interim release is intended to regulate the interregnum between the opening of an inquiry under Article 40.4.2° and its determination. The rationale for this type of bail has been explained as follows in *State (Aherne) v. Cotter* [1982] I.R. 188 (at p. 204):

> "The grant of bail to an applicant in habeas corpus proceedings is not unusual, but the rationale for granting it is to ensure that, if at the end of the proceedings the detained person is successful, he will not be able to say with any justification that he was unnecessarily deprived of his liberty during the habeas corpus proceedings."

37. For this reason, the duration of the interim release is coterminous with the inquiry. The applicant is temporarily released from detention pending the conclusion of the inquiry.

38. The order of 10 August 2026 cannot sensibly be interpreted as an order for interim release pending the determination of the Article 40.4.2° inquiry by reason of the fact that the currency of the order is delimited by reference to the District Court proceedings. The recognisance expressly regulates Mr Kiely's attendance at future District Court remand dates and continues until the criminal charges are disposed of according to law. The wording of the order stands in marked contrast to that in *McCormack v. Governor of Mountjoy Women's Prison* [2026] IEHC 554: Ms McCormack's interim release had been expressly linked to the duration of the Article 40.4.2° inquiry in her case.

39. Any contrary interpretation of the order of 10 August 2026 would be less favourable to Mr Kiely. The logic of interim release is that the detained person is released only pending the determination of the Article 40.4.2° inquiry. If the court were to determine that the detention pursuant to the District Court's remand

order was lawful, the interim release would come to an end, and Mr Kiely would have to return to custody.

40. It is apparent from the proceedings before Brett J. on 10 August 2026 that Mr Kiely's counsel sought to characterise the order as being something other than a conventional bail order. Counsel referred to it as an order arising within the Article 40.4.2°. With respect, there is no basis for such a characterisation.

41. A court order falls to be interpreted objectively by reference to the ordinary and natural meaning of the words used, read in the context in which the order was made. It is essential that the parties understand what the order requires them to do. This is especially important where a breach of its terms could result in bail being revoked and Mr Kiely being returned to custody. The broader context confirms the meaning conveyed by the wording of the order. Brett J. had expressly informed all of the parties in court on Monday, 10 August 2026, that she was available to hear bail applications that day, i.e. there was no necessity to apply to the High Court Bail List in the Criminal Courts of Justice.

42. It will be recalled that the terms of the order had been agreed between the parties in advance and a written draft had been handed in to the judge. The bail conditions embodied in the order were read aloud to Mr Kiely and the judge asked him to confirm that he agreed to same. There is no ambiguity in the wording of the perfected order. It is clearly referable to the criminal proceedings and is properly characterised as conventional bail rather than an interim release pending the determination of the Article 40.4.2° inquiry. Although the parties subsequently differed as to the correct legal characterisation of the order, they were *ad idem* as to its terms. The order was made with the consent of the parties on the basis of an agreed draft order.

43. In summary, Mr Kiely was admitted to conventional bail on 10 August 2026. The bail period is coterminous with the criminal proceedings not the Article 40.4.2° inquiry.

APPLICANT IS NOT CURRENTLY BEING DETAINED

44. It is next necessary to consider the extent, if any, to which the inquiry may have been overtaken by the grant of conventional bail. The purpose of an Article 40.4.2° inquiry is to determine whether the applicant is being detained other than in accordance with law. The case law indicates that the inquiry is directed to the position pertaining at the date of the inquiry.

45. The position has been explained as follows by Baker J. in *Miller v. Governor of the Midlands Prison* [2014] IEHC 176 (at paragraphs 13 and 14):

> "The article is framed in the present continuous and requires the court, in regard to the applicant, to be 'satisfied that he is being detained in accordance with the law' (emphasis added). If the court is not so satisfied it must order the release of the person from 'such detention'. The focus of the inquiry is whether the detention complained of is lawful and the procedures set out in the Article itself envisage a two stage process: A High Court Judge enters upon a full hearing of the basis of the detention following on the giving of notice to the respondent and other State authorities of the making of the conditional order.
>
> Accordingly, in my view, the inquiry this court makes on the full hearing of the application is a hearing into the lawfulness of the current detention of the applicant and on the evidence adduced at that hearing."

46. The fact that the person is on bail as of the date of the Article 40.4.2° inquiry may be a decisive consideration in some cases. This will depend on the character of the bail. Where the bail takes the form of an interim release pending the determination of the inquiry, it would be wholly circular to dismiss the inquiry on the basis that the person is not currently in detention. The interim release is

ephemeral and merely "*holds the ring*", as it were, pending the completion of the inquiry.

47. The position is different where, as here, the person has been released on conventional bail pending the determination of the criminal proceedings and makes no complaint as to the validity of the High Court bail order or the conditions imposed under it. Such a person is not being "*detained*" at all.

48. The Applicant's complaint is that he had been unlawfully detained for the period between 3 August and 10 August 2026. The Applicant has never suggested that the bail conditions imposed by the High Court on 10 August 2026 are invalid, still less that the restrictions on his freedom of movement—for example, his exclusion from Dublin 6 and the requirement to reside at a specified address—can be characterised as a form of detention within the meaning of Article 40.4.2°.

49. On the facts of the present case, the Applicant was not in detention at the date on which the inquiry was heard. It follows that there was no current detention from which an order for release could be made under Article 40.4.2°.

50. For completeness, however, I address below the lawfulness of the earlier period of detention. This will ensure that all necessary findings of fact are made at first instance in the event of an appeal to the Court of Appeal or the Supreme Court.

APPLICABLE LEGAL PRINCIPLES

51. An accused person who has been refused bail by the District Court and remanded in custody is entitled to apply to the High Court for bail. This will be the proper procedure to pursue in most cases. The High Court has a full and original jurisdiction in bail matters. The application is heard *de novo* and determined afresh. The High Court does not sit on appeal from the District Court, and it is

not necessary for the accused person to establish that the decision of the District Court was erroneous. The High Court may receive evidence, consider proposed sureties, and assess whether appropriate conditions can address the risks underlying the objections to bail. Where the accused person lacks the financial means to obtain legal representation, legal assistance may be available under the Legal Aid – Custody Issues Scheme administered by the Legal Aid Board.

52. It is only in rare and exceptional cases that an accused person who has been remanded in custody pursuant to a District Court order will be entitled to an order for immediate release under Article 40.4.2° of the Constitution. This is because detention pursuant to a court order which is valid on its face and made by a court of competent jurisdiction will normally be regarded as being detention in accordance with law. An immediate release pursuant to Article 40.4.2° is only available where there has been a default of fundamental requirements, or some kind of fundamental denial of justice or a fundamental flaw in the decision-making process.

53. In the context of a bail hearing, the defect must involve the denial of a fundamental requirement, such that the proceedings could not properly be regarded as a bail hearing at all.

54. In *Ennis v. Governor of Cloverhill Prison* [2026] IEHC 599, I set out my understanding of the division between those cases which come within Article 40.4.2° and those which do not. I turn now to apply those principles to Mr Kiely's case.

ASSESSMENT

55. The District Court has an express statutory power to impose a residence condition. Section 6(1)(b) of the Bail Act 1997 provides that a recognisance may be made subject to such conditions as the court considers appropriate having regard to the circumstances of the case. The conditions expressly contemplated include a condition under section 6(1)(b)(i) that the accused person reside or remain in a particular district or place in the State. The decision whether to impose such a condition, and the formulation of the condition, represent an exercise of the statutory discretion conferred upon the District Court in the conduct of a bail hearing. An alleged error in the exercise of that discretion would not ordinarily render the resulting detention unlawful for the purposes of Article 40.4.2°. The appropriate remedy would normally be an application to vary the condition under section 6(3), or a fresh application to the High Court in the exercise of its full and original bail jurisdiction.

56. More fundamentally, there is no evidential basis in the present case for concluding that the District Court exercised its discretion unlawfully or imposed a condition which was incapable of being met. The District Court transcript records that the Gardaí had considered the hostel address supplied by Mr Kiely and had called to that address. The practical difficulty was that staff there had informed the Gardaí that Mr Kiely was no longer staying at the hostel. The transcript therefore establishes a difficulty with the verification of the particular address supplied. It does not establish that Mr Kiely was incapable of furnishing any address which could be approved.

57. This is not a case in which the District Court refused bail because Mr Kiely did not have permanent accommodation. The District Court judge and the Gardaí

were aware that he was homeless. Neither treated the fact that the proposed address was a homeless hostel as disqualifying it from consideration. The requirement was that Mr Kiely provide an address capable of being approved by An Garda Síochána; it was not that he have permanent accommodation.

58. Mr Kiely has not sworn an affidavit. There is no evidence that Mr Kiely was unable to confirm that he would be residing at the first hostel or to identify the address of another hostel and furnish it to the Gardaí for consideration. Still less is there any suggestion that the Gardaí would have refused to approve an address merely because it was that of a homeless hostel. Instead, Mr Kiely's focus appears to have shifted almost immediately from satisfying the residence condition to pursuing relief under Article 40.4.2°. The first iteration of those proceedings was brought before Twomey J. on the day immediately following the District Court hearing.

59. The High Court subsequently admitted Mr Kiely to bail subject to a condition that he furnish an address to the nominated Garda within 48 hours of his release and reside at that address. There is no evidence that he failed to comply with that condition, and no breach has been alleged. He remains at liberty on bail.

60. Strictly speaking, the High Court order did not require the address to be *approved* by An Garda Síochána. Nevertheless, the fact that Mr Kiely was able, following his release, to furnish an address at which he could reside does not support the submission that the residence condition imposed by the District Court was inherently inoperable.

61. In summary, the claims of incapacity and impossibility advanced in the submissions are not supported by evidence and do not disclose the type of fundamental defect which could justify relief under Article 40.4.2°.

CONCLUSION

62. The High Court has jurisdiction to direct the interim release of a detainee pending the hearing and determination of an inquiry under Article 40.4.2° of the Constitution. The character of such release differs from conventional bail in a number of respects. In particular, the detainee must satisfy a threshold related to the *underlying merits* of the complaint that the detention is unlawful. The duration of the interim release is fixed by reference to the date of the determination of the inquiry.

63. An applicant who institutes Article 40.4.2° proceedings and then seeks to be released prior to the completion of the inquiry without addressing these additional factors is, in effect, making an application for conventional bail.

64. The question whether a person is being detained otherwise than in accordance with law will generally fall to be determined by reference to the position pertaining at the date of the Article 40.4.2° inquiry. Where, as here, the person has been released on conventional bail pending the determination of the criminal proceedings and does not challenge the bail order, that person is not being "*detained*" at all. Even if the residence condition is characterised as involving some restriction upon personal liberty, that restriction derives from a High Court order which is valid on its face and has not been challenged. There is no suggestion that the criminal proceedings are being pursued improperly or that the bail conditions are invalid.

65. It will not normally be appropriate, in the context of an Article 40.4.2° inquiry, to determine whether an earlier period of detention was unlawful. For completeness, however, I have addressed the lawfulness of Mr Kiely's detention

between the making of the District Court order of 3 August 2026 and his release on conventional bail on 10 August 2026. For the reasons explained, that detention was in accordance with law. It was pursuant to an order which was valid on its face and had been made by a court of competent jurisdiction. The exceptional threshold which would permit the High Court to "*look through*" that order by reason of a fundamental flaw has not been met.

66. An order will be made declaring that the Applicant is not currently being detained for the purposes of Article 40.4.2° and dismissing the inquiry.

67. As to costs, my *provisional* view is that the Applicant is not entitled to recover any costs associated with the inquiry. If and insofar as the precise wording of the District Court may have caused logistical difficulties—and no evidential basis for this has been established—the proper procedure was to apply to the High Court for conventional bail. The application for an inquiry under Article 40.4.2° was misconceived.

68. I will hear the parties further on whether the Applicant is entitled to recover any costs in relation to the application for conventional bail made on 10 August 2026. The quantum of any costs recoverable in respect of that application would represent only a fraction of the costs identified in the fee estimate for the Article 40.4.2° proceedings, submitted in accordance with the direction made pursuant to Order 99, rule 7. The fee estimate gave an indicative total of €48,651, including a solicitor's general instructions fee of €20,500.

69. Finally, for the avoidance of doubt, it should be recorded that the Applicant remains bound by the terms of the conventional bail order made by the High Court on 10 August 2026.

70. I will list the proceedings before me on 5 October 2026 to hear argument on costs.

Appearances
Colman FitzGerald SC and Kevin McCrave for the Applicant instructed by Edward R. Bradbury Solicitors

Eoin McCullough SC and Davy Lalor for the Minister and the Governor instructed by the Chief State Solicitor's Office

Sunniva McDonagh SC and Kieran Kelly for the Director of Public Prosecutions, instructed by the Chief Prosecution Solicitor