

*Final but unapproved
No redaction required*



**AN CHÚIRT UACHTARACH
THE SUPREME COURT**

S:AP:IE:2025:0000075

S:AP:IE:2025:0000076

[2026] IESC 41

Woulfe J.

Hogan J.

Murray J.

Collins J.

Donnelly J.

BETWEEN

JOSEPH HOWLEY

Plaintiff/Respondent

AND

PAUL HOWARD

Defendant/Appellant

AND

THE ATTORNEY GENERAL AND THE LAW SOCIETY OF IRELAND

Amici Curiae

BETWEEN

JOSEPH HOWLEY

Plaintiff/Respondent

AND

ÚNA McCLEAN

Defendant/Appellant

AND

THE ATTORNEY GENERAL AND THE LAW SOCIETY OF IRELAND

Amici Curiae

JUDGMENT of Mr. Justice Maurice Collins delivered on 7 October 2026

1. I am afraid that I cannot subscribe to the costs orders proposed by Hogan J.
2. The background to these proceedings is set out in detail in the judgment of Quinn J in the High Court ([2024] IEHC 15). In brief, these were debt collection proceedings, in respect of large amounts of unpaid tax. The Appellants never had any substantive defence to the claims against them. The defence advanced by them, namely that the fee arrangements between the Revenue Commissioners (“*Revenue*”) and its solicitors were champertous and/or otherwise unlawful, was opportunistic and unmeritorious, failing in the High Court, in the Court of Appeal and, on further appeal, in this Court. Now, some five years after commencing summary proceedings – in respect of tax assessments that date back to 2015 – Revenue has finally obtained judgment against the Appellants. In my view, it would be wholly unjust to require Revenue to pay any part of the costs incurred by the Appellants in their vain efforts to avoid their tax liabilities. The fact that, in seeking to construct a defence to the claims against them, the Appellants made and persisted in groundless allegations of fraud against Revenue (as to which see in particular the judgment of O’ Moore J in the Court of Appeal ([2025] IECA 77)) significantly compounds the injustice of such an order.
3. In considering the costs of this appeal – and the costs of the proceedings more generally – the proper starting point is that, in circumstances where Revenue has been “*entirely successful*,” section 169(1) of the Legal Services Regulation Act 2015 (“*the 2015 Act*”) ordains that it is presumptively entitled to its costs. That entitlement is, of course, a

qualified one and the Court is empowered to “*order otherwise*” but, as this Court recognised in *Little v The Chief Appeals Officer* [2024] IESC 53 (“*Little*”), section 169(1) nevertheless reflects a significant policy choice by the Oireachtas, which courts must respect: §§48-49. The considerations underpinning that legislative choice are those identified by this Court in *Godsil v Ireland* [2015] IESC 103, [2015] 4 IR 535, §§19-22.

4. *Little* is carefully calibrated so as to respect the parameters set down in the 2015 Act while giving valuable guidance as to the proper exercise of the Court’s power to depart from the statutory default position prescribed by section 169(1) – the power to “*order otherwise*” – in “*public interest proceedings*”. That power must be exercised with care and circumspection if the delicate balance between legislative rule and judicial discretion that *Little* strikes is to be maintained. The factors identified by Murray J in *Little* help in structuring the exercise of the Court’s discretion but that exercise should not be seen as a “*tick the box*” one; the Court must in every case make an assessment having regard to “*the particular nature and circumstances*” of the case, as well as “*the conduct of the proceedings by the parties.*”
5. I do not consider that these proceedings are properly characterised as “*public interest proceedings*” within the meaning of *Little*. Rather, the proceedings were debt collection proceedings in which the claimant happened to be Revenue and the issues raised as to the lawfulness of Revenue’s fee arrangements with its solicitors were not connected in any way to the fact that the claimant was a public body or that the debts in question were Revenue debts. Those issues could have arisen in precisely the same way in debt

proceedings by a private body such as a bank or other financial institution seeking repayment of a loan or (so far as the “*no foal no fee*” issue was concerned) in the most mundane slip and fall action. So far from being crucial, the identity of the claimant as Revenue (in the person of the Collector General) was, for the purposes of these appeals, *nihil ad rem*. The Appellants’ case was that the fee arrangements entered into by Revenue and its solicitors were generally impermissible, not that they were impermissible by virtue of Revenue being a public body. Conversely, Revenue’s case was that those arrangements were permissible for all litigants, not that its status as a public body made lawful what would be unlawful for other categories of litigant.

6. In any event, even if the proceedings are to be regarded as “*public interest proceedings*” it would not follow that a departure from the presumptive rule in section 169(1) of the 2015 Act is warranted in this case, less still that any order for costs *in favour* of the unsuccessful Appellants – an order which *Little* emphasises should only be made “*in the most exceptional of circumstances*” (§71) – would be justified.
7. There are, in my view, a number of factors which, individually and cumulatively, compel the conclusion that the Appellants here are particularly undeserving of any special solicitude from the Court. As I have mentioned, these proceedings arose from tax assessments dating back to 2015, relating mainly to tax on rental income and capital gains on a property portfolio (along with interest and penalties). The assessments were appealed unsuccessfully to the Appeals Commissioners and an attempt by the Appellants to compel the Commissioners to state a case to the High Court was also unsuccessful (Judgment of Quinn J in the High Court, §§18-21). At that point, the

assessments became, as a matter of law, final and conclusive. Final demands issued in October 2021, but nothing was paid on foot of those demands and Revenue was thus compelled to bring these proceedings in order to seek recovery. Neither Appellant ever had any substantive defence to Revenue's claim but Revenue has had to incur costs in three courts in order to obtain judgment against them.

8. Revenue also had to answer the Appellants' groundless allegations of fraud. Those allegations were dismissed as "*unstateable*" by Quinn J (High Court Judgment, §132) but were nonetheless reheated on appeal before the Court of Appeal, prompting O' Moore J to deliver a separate judgment, in which he characterised the claim of fraud as "*just hopeless*" and one which "*should never have been made*" (Judgment of O' Moore J, §28). O' Moore J expressed concern that far too frequently in recent years, litigants acting by themselves or represented by lawyers, have "*resorted to the making of vitriolic but groundless allegations in defending or advancing their position*" (§33). I share that concern but it was, evidently, not a concern shared by the Appellants or their advisers here. Undaunted by the successive admonitions of the High Court and Court of Appeal, the Appellants sought to maintain the claim of fraud before this Court. That they were not permitted to do so by this Court is hardly to their credit.
9. Section 169(1) of the 2015 Act sets out a number of specific matters to which courts should have regard in deciding whether to "*order otherwise*" (and, by virtue of Order 99, Rule 3 RSC, courts must have regard to those matters whenever they are considering making any award of costs). These include the conduct of the parties "*before and during the proceedings*" ((1)(a)) and the "*manner in which the parties conducted all or any*

part of their cases” ((1)(c)). The matters identified above – and in particular the Appellants’ persistence in maintaining an unstateable complaint of fraud against Revenue, litigation conduct which I regard as especially egregious given that the Appellants were at all times legally represented – are clearly relevant to the costs decision to be made here and in my view weigh very heavily against any mitigation of the normal costs consequences of pursuing an unsuccessful appeal to this Court or, more generally, the normal costs consequence of unsuccessfully defending these proceedings.

10. It is also relevant in this context that the Appellants’ unsuccessful defence was advanced solely for their personal advantage and not for the purpose of vindicating any public right or interest. That the Appellants were acting for an entirely self-interested purpose may not, of itself, serve to exclude these proceedings from being regarded as “*public interest proceedings*” (*Little*, §34(d)) but it is clear that that is a relevant consideration in the exercise of the Court’s discretion as to costs (*Little*, §35(ii)).
11. So far as the majority of the Court is concerned, these factors are outweighed by the systemic importance of the legal issues determined in this appeal. I cannot agree.
12. In the first place, it is clear both from *Little* (§35(i)) and from the consistent practice of this Court in respect of costs in the period since the 33rd Amendment of the Constitution that the fact that an appeal involves issues of general public importance is not, in itself,

a basis for departing from the normal cost rules.¹ The vast majority of appeals in this Court involve such an issue or issues and to afford decisive weight to the presence of such an issue in an appeal would effectively abrogate the legislative policy expressed in section 169(1).

13. Secondly, the significance of this Court’s substantive decision needs to be properly understood. As regards the Appellants’ challenge to the “*conditional uplift fee*,” section 149(1) of the 2015 Act (re-enacting section 68 of the Solicitors (Amendment) Act 1994) provided a complete answer. As regards the “*no foal no fee*” issue, if the Appellants’ arguments had been accepted then that would undoubtedly have had significant repercussions for litigation practice in the State. But, in contrast to *Lee v Revenue Commissioners* [2021] IECA 114 (in which the Court of Appeal ultimately *declined* to make an award of costs to the unsuccessful applicant) – where the issue of the precise parameters of the jurisdiction of the Appeal Commissioners was obviously a matter of special importance to Revenue – it cannot fairly be said that the clarification provided by the Court’s decision was of particular benefit to Revenue. Had the challenge to its fee arrangements succeeded, Revenue could simply have adopted different arrangements with its solicitors (and indeed it has already done so). Nor (once again in contrast to *Lee*) can it be said that the need for such clarification arose from legislative inadequacies which might properly be attributable to Revenue. Furthermore, the extent to which this Court’s decision could be said to have *clarified* the law is debatable; it rather *confirmed* the correctness of the long-established and settled understanding that

¹ See, by way of example, *Minister for Communications, Energy and Natural Resources v Wymes* [2021] IESC 63, §7 and *MD (A Minor) v Board of Management of a Secondary School (No 2)* [2024] IESC 18, §10.

“*no foal no fee*” arrangements are permitted in this jurisdiction (Judgment of Hogan J, §§64-69). Any uncertainty as to the lawfulness of such arrangements was generated by the proceedings themselves and such uncertainty as the proceedings may have produced was short-lived and has now been dispelled.

14. In his judgment, Hogan J recognises that any clarification of the law resulting from these proceedings is likely to be of little practical advantage to Revenue. The chief beneficiaries are, he suggests, litigants, legal practitioners and the legal system itself. That may well be so (though it might be observed that any such benefit was, so far as the Appellants were concerned, entirely unintended) but it begs the question of why Revenue – and, ultimately, the Exchequer and, by extension, taxpayers (or at least compliant taxpayers) – should be compelled to bear the cost of that exercise.
15. I cannot identify in the circumstances of these proceedings, or of this appeal, any basis for departing from the default position set out in section 169(1) of the 2015 Act and certainly no basis for concluding that this was the sort of “*most exceptional*” case which could warrant directing Revenue to pay any part of the Appellants’ costs. In my view, these proceedings bear no resemblance to the type of very exceptional case in which such an order has been considered appropriate, as illustrated in *Little*, §§62-65. The high threshold for the making of such an order has been repeatedly emphasised by this Court both before and after the decision in *Little*. The High Court and the Court of Appeal both awarded costs against the Appellants and I see no basis for interfering with those orders. As regards the costs of the appeal, my inclination would have been to order the Appellants to pay those costs also. However, given that Revenue itself

indicated a willingness to bear its own costs before this Court – a very generous concession in the circumstances – I would make no order in relation to those costs.