



**AN CHÚIRT UACHTARACH
THE SUPREME COURT**

[2026] IESC 41

**Woulfe J.
Hogan J.
Murray J.
Collins J.
Donnelly J.**

S:AP:IE:2025:0000076

Between/

JOSEPH HOWLEY

Plaintiff/Respondent

AND

PAUL HOWARD

Defendant/Appellant

AND

ATTORNEY GENERAL AND LAW SOCIETY OF IRELAND (NO.2)

Amici Curiae

-and-

S:AP:IE:2025:0000075

Between/

JOSEPH HOWLEY

Plaintiff/Respondent

AND

UNA McCLEAN

Defendant/Appellant

AND

ATTORNEY GENERAL AND LAW SOCIETY OF IRELAND (NO.2)

Amici Curiae

JUDGMENT of Mr. Justice Gerard Hogan delivered on the 7th day of October 2026

Background

1. In its first judgment in this case which was delivered on 17th June 2026 this Court was required to traverse important aspects of the law of maintenance and champerty: see *Howley v. Howard* [2026] IESC 34. The appeal itself arose out of certain arrangements made between the Revenue Commissioners and various solicitors' firms in respect of fee arrangements and, specifically, in respect of certain "uplift" fees provided by that agreement whereby the level of fee payable was made contingent on the amount of unpaid taxes recovered by the Collector General against defaulting taxpayers.
2. In the first judgment this Court upheld the legality of these fee arrangements, albeit for reasons which differed appreciably from those given by the Court of Appeal in its earlier judgment. In our judgment we were required to traverse complex and sometimes confusing 19th century statutes and case-law on the topic. In the end we concluded that both the conditional "uplift" fee and the general system of "no foal, no fee" arrangements were lawful in this State. Further details as to both the factual background of the case and the legal issues which arose in this case are to be found in that judgment and this costs judgment assumes a familiarity with the terms of that first judgment.
3. The question which arises now is whether either the Collector General, Mr. Joseph Howley, or the defendant taxpayers, Mr. Paul Howard and Ms. Una McClean, are entitled to the costs of these proceedings as against each other. It is agreed that both the Attorney General and the Law Society of Ireland (who both appeared as *amici curiae* in this Court) will bear their own costs.
4. The Collector General has been entirely successful in respect of these proceedings. There is, after all, no dispute but that the Collector General has obtained judgments for significant sums against both defendants. He has also established that the existing conditional uplift

fee structure provided for in Clause 5.3 of the contract with the various legal firms is lawful having regard to the terms of s. 149(1)(a) of the Legal Services Regulation Act 2015 (“the 2015 Act”). For good measure the Collector General has effectively demonstrated that the existing “no foal, no fee” structure (or some variant of it, as in this case) is not unlawful, even if the comments in the first judgment to this effect were strictly *obiter*.

The Court’s jurisdiction under s. 169 of the 2015 Act

5. The starting point, accordingly, is that the Collector General is presumptively entitled to his costs: see s. 169(1) of the 2015 Act. This, not surprisingly, is also the principal argument which the Collector General advances as to why he is entitled to the costs of these proceedings.
6. Section 169(1) of the 2015 Act does not, however, preclude the Court from taking other considerations into account, including the extent to which it was “reasonable” to litigate a particular point. This, essentially, is the argument advanced by the defendants. They say that it was reasonable for them to litigate this issue, not least having regard to the nature of the conditional uplift fee agreement and the question of whether or not the existence of a fee agreement which is alleged to have been infected by champerty was a defence to legal proceedings. Indeed, the defendants may be said to have been successful on this latter point, in that this Court disagreed with the Court of Appeal on this very question. The defendants, moreover, also point to the fact that the Collector General was forced to make certain concessions in this Court regarding the extent to which he intended to charge the conditional uplift fee.

The jurisdiction to award costs against a successful State body

7. The circumstances in which this Court will consider exercising its discretion to award costs in favour of a losing party in important litigation concerning the State were set out by Murray J. in *Little v. Chief Appeals Officer (No.2)* [2024] IESC 53. In that case Ms. Little

had sought a Domiciliary Care Allowance in respect of her child. Her application was refused and a subsequent application to revise that refusal under s. 317(1)(a) of the Social Welfare Consolidation Act 2005 was also rejected. Her judicial review challenge failed in the High Court and, ultimately, in this Court: see *Little v. Chief Appeals Officer (No.1)* [2023] IESC 25.

8. As Murray J. stressed in that judgment, there is, of course, a distinction between the decision to make no order as to costs on the one hand and to award some or even full costs to the losing party on the other: see, e.g., para. 63 of the judgment of Murray J. The decision in *Little (No.2)* accordingly contains important guidance as to the factors to which the Court will have regard for the purposes of any s. 169(1) analysis in cases of this nature.
9. In his judgment Murray J. set out these factors (at para. 34) as follows:

“(a) It involves a claim against the State, or an organ or agency of the State (including a statutory body). Normally, the proceedings themselves will be initiated against the State or such organ agency or body but, if unusually, such a claim may arise by way of defence or counterclaim in proceedings brought by the State.

(b) It seeks relief in public law, whether in the form of a challenge to the validity, legality or compatibility having regard to the Constitution, European Law, the European Convention on Human Rights or the general principles of administrative law, of an enactment, measure, act, omission or decision of a body of the kind specified in (a), whether by way of plenary action, proceedings by way of judicial review, or statutory appeal.

(c) It raises directly a point of law of general public importance.

(d) Although – as I have noted – there are decisions using this term to refer exclusively to proceedings brought solely for the purpose of vindicating a right or interest of the

public generally, and not the advancement of the personal interests of the litigant, when I use these and cognate phrases in the course of this judgment, I am not so limiting them.”

10. Pausing at this point, it would be hard to say that the defendants did not satisfy each of these conditions, at least in substance. They satisfy condition (a) in that the present case involves a claim against a statutory body. The case unquestionably raises a point of law of general public importance (condition (c)). While the claim was advanced in order to vindicate their own interests, the decision clearly affected the interests of the public as well (condition (d)).
11. The only possible reservation is that it is true that the claim is not strictly a claim in public law (condition (b)). It is true that these were debt collection cases and the issue of the conditional uplift fee could also have occurred in private debt collection cases. Yet the identity of the plaintiff as Collector General is crucial. He is statutorily authorised to collect tax and interest in the manner specified in the Taxes Consolidation Act 1997 on behalf of the Revenue Commissioners and the Minister for Finance on behalf of the Central Fund. The issue of whether he was entitled to exercise his statutory functions by bringing proceedings before the court while allegedly committing the tort of champerty is sufficient, in my opinion, to bring the matter within the concept of “public interest proceedings”.
12. While tax is in some respects *sui generis*, it nonetheless has close links with public law. The defendants’ case can therefore fairly be described as a tort-based defence to a statutory claim (i.e., failure to pay tax). In that respect, it can be said that the tort-based claim is sufficiently connected to the public law aspect of the case in much the same way as, for example, a claim for damages for false imprisonment arising from what was said to be the unlawful detention of a plaintiff pursuant to a statutory provision would also equally amount to a public law claim in this sense.

13. In these circumstances, therefore, I consider that the requirements of paragraph (b) have been satisfied, at least in substance.

14. Returning now to the judgment in *Little (No.2)*, Murray J. then went on (at para. 35) to set out the further guidance derived from the case-law. He stated as follows:

“(i) It is a necessary, but not sufficient, condition to the exercise of the power not to award costs against an unsuccessful claimant in such proceedings that the proceedings involve a point of law of general public importance (*Pervaiz v. The Minister for Justice and Equality and ors.* [2020] IESC 73 at para. 7). Built into that requirement is that the issue, if not novel, is sufficiently unclear or, if clear, there is a substantial question of whether it is appropriate to decide if it should be changed.

(ii) It is a relevant, but not necessary, consideration that the proceedings are brought by the party in question in circumstances in which they obtain no personal advantage from the outcome of the proceedings, but in that regard it is relevant whether '*the subject matter of the litigation is likely to have a significant effect on the category of persons affected by the legal issues*' (*ELG v. HSE (No. 2)* [2022] IESC 26 at para. 11).

(iii) Before the Court can consider exercising this discretion, the point of law must be stateable, and it is only in unusual circumstances that costs would not be ordered against an unsuccessful applicant where the case is other than one of real substance on the merits. The strength of the case for an exemption from costs is in proportion to the strength of the underlying claim.

(iv) A point of law may be of general importance, yet at the same time discrete in its application. The strength of the case for an exemption from costs is also in proportion to the systemic importance of the point. This reflects the fact that the State may often be the net beneficiary of a clarification of the law in an area of systemic importance,

while the party who instituted the proceedings may not secure any equivalent advantage for themselves had they won. It may in an individual case be just that, in those circumstances, the respondent should bear its own costs as the price of obtaining clarification of the law.

(v) Even a case that is weak, although stateable, and although brought by the plaintiff or applicant in the advancement or protection of their own interests, may merit an exemption from an order for costs where the point arises from avoidably unclear legislation. This is a particular situation, which should be viewed as an expression of the court's disapproval that persons affected by obviously unclear laws should have to bear the risk of litigation costs in order to secure a clarification that ought never to have been necessary (*Lee v. Revenue Commissioners* [[2021] IECA 114]).

(vi) Similarly, where a case is a 'test case' in the true sense of the term (that is one or more pathfinder cases selected from a larger cohort of pending claims for the purposes of determining issues of law that will govern all actions) the Court may decide not to award costs against the claimant whose case is selected to go forward on this basis (*O'Keeffe v. Hickey and ors.* [2009] IESC 39; *Cork County Council v. Shackleton* [2007] IEHC 334, [2011] 1 IR 443).

(vii) Necessarily, in exercising this discretion, the Court should have regard to whether a given case falls into a category where the subject matter of the litigation is such that costs are likely to have a significant deterrent effect on the category of persons affected by the legal issue (*Corcoran [v. Commissioner of An Garda Síochána* [2021] IEHC 11] at para. 20)."

15. Let us now examine the extent to which the defendants meet these further criteria. They clearly meet condition (i) as the points at issue on the appeal were obviously ones of

general public importance. As the first judgment makes clear, the relevant statutory provisions were convoluted and difficult to follow. These provisions, taken together with the general common law principles governing the law of champerty and maintenance, gave rise to much complex and overlapping case-law, not all of which is easy to reconcile.

16. So far as the second consideration is concerned, it is true that the defendants litigated for their personal advantage. At the same time, it is also clear, to adopt the language of Baker J. in *ELG (No.2)* (and quoted by Murray J. in this context in *Little*), that the fact that the subject matter of the litigation “is likely to have a significant effect on the category of persons affected by the legal issues” is also a highly relevant consideration. As was recognised in the first judgment, there is no question but that this decision has very considerable implications for the practice of litigation in this jurisdiction. So the second condition is also clearly satisfied.
17. So far as the third condition is concerned, it is also plain that the issue raised by the defendants was one of real substance. As was frequently said in the first judgment and repeated already in this judgment, the relevant legislation was in many respects obscure – even obtuse – and the caselaw was not consistent. This leads to the fourth condition, namely, whether this issue is systemic to the legal system. It clearly was systemic and there were many observations in the first judgment to the effect that the “no foal, no fee” system plays a key role in providing access to justice within the legal system.
18. Neither the fifth nor sixth conditions apply to the present case. The contentions of the defendants could not in any sense be described as “weak” (a precursor to the application of the fifth condition) and nor could it be said that the present case presents a “test case” (sixth condition) in the usual sense of that term.
19. The final condition – namely, whether an adverse award of costs could act as a deterrent – is probably a neutral one as far as the present case is concerned. On one view it could be

said that as the Collector General had already obtained large judgments against these defendants, a further award of costs was unlikely to have made any real difference to their decision to litigate this point. Yet on the other hand, the prospect of further costs being imposed by court order is likely to have a deterrent effect on many litigants.

The awarding of costs to the losing party

20. Of course, one further important consideration is that the test governing even the partial award of costs against the State in favour of the losing party is even more elevated. As Murray J. said in *Little (No.2)* (at para. 62), the Court should only take this step “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”. In my view, the present case represents almost a paradigmatic example of the type of case contemplated by this test. As the first judgment attests, the issues were ones of real substance. The issues were fundamental to the operation of the legal system and the clarification of the law was, in many respects, both necessary and overdue.
21. There is, moreover, an additional consideration. The defendants did not merely raise a point of law of general importance. Their appeal enabled this Court to undertake a comprehensive re-examination of fundamental aspects of the law of maintenance and champerty and, in particular, to clarify the legal status of both conditional fee and “no foal, no fee” arrangements which have become an important feature of modern litigation. The resulting clarification is not a benefit enjoyed principally by these defendants. Indeed, in one sense it may be said that they derive little practical advantage from it. Rather, the chief beneficiaries of that clarification are litigants, legal practitioners and, ultimately, the legal system itself.
22. In that respect I consider that the present case falls into the limited category envisaged by Murray J. in *Little (No.2)* where the public interest served by the litigation transcends the

private interests of the parties. While the defendants have admittedly ultimately failed, the litigation has nonetheless produced an authoritative resolution of questions of genuine systemic importance which had not previously received definitive consideration by this Court. It would not, in my view, be just that the parties who have facilitated that clarification should bear the costs associated with securing it.

Conclusions

23. The criteria enunciated by Murray J. in *Little (No.2)* are intended to act as guidelines in that they list out the type of factors to which this Court will have regard in exercising its discretion under s. 169(1) of the 2015 Act. They remain that – judicial guidelines – and the language contained in the judgment – however helpful – cannot be regarded as if they were the equivalent of a statutory text. For my part, I consider that, for the reasons just stated, the defendants comply – or, at least, comply substantially – with the *Little (No.2)* criteria. It remains, then, to consider how this discretion should be exercised.
24. Having regard to all which I have just said, I do not believe that the Collector General should be awarded any costs. It is true that the defendants have defaulted in a grave fashion on their basic civic obligation to pay their taxes when lawfully and duly assessed. As taxes represent in Holmes’ famous words “what we pay for civilized society” (*Compania General de Tabacos v. Collector of Internal Revenue* 275 US 87 at 100 (1927)) and are thus a basic obligation of citizenship, it may be that many might regard these defendants, having deliberately failed to discharge their tax obligations, as undeserving of any special indulgence in respect of costs.
25. Yet balanced against that is the fact that the defendants have litigated an issue of real substance and complexity, the resolution of which has greatly clarified an important aspect of the law. It should be borne in mind that it was also necessary for the defendants to carry an appeal to this Court from the decision of the Court of Appeal so that a key aspect of the

law of champerty – namely, whether the existence of a champertous contract was a defence to an otherwise valid set of proceedings – could be clarified. To that extent, it may be said that the defendants have narrowly satisfied the higher standard contemplated by Murray J. in *Little (No.2)* of showing that their case is sufficiently exceptional as to merit the exercise of discretion under s. 169(1) of the 2015 Act not simply as to justify no order as to costs, but also such as to merit the making of some order as to costs in their favour.

26. I do not consider, however, that the exceptional nature of the case warrants the award of the entirety of the defendants' costs. They remain unsuccessful parties and the ordinary rule reflected in the language of s. 169(1) of the 2015 Act itself continues to carry substantial weight. As I have already indicated, regard must also be had to the fact that these proceedings arose from their own failure to discharge their tax liabilities. Those considerations preclude any award approaching a full order for costs. It must also be recalled that the defendants made wholly unsubstantiated allegations of fraud in both the High Court and the Court of Appeal and this is a further factor to which the Court must have regard.
27. Nevertheless, the combination of the systemic importance of the issues, the substantial public benefit derived from the resolution of complex and somewhat obscure legal provisions in relation to both conditional uplift fees and the “no foal, no fee” practice, coupled with the fact that the defendants succeeded in obtaining important revisions to aspects of the reasoning of the Court of Appeal is in the end sufficient to persuade me that a partial and limited costs award is justified.
28. In those circumstances, I consider that an award of one half of the defendants' costs in this Court appropriately reflects both elements of the case: their status as unsuccessful litigants and defaulting taxpayers on the one hand and the exceptional public value of the appeal on the other.

- 29.** Taking all of these factors into account, I consider that the fairest outcome would be that there should be no order for costs in either the High Court or the Court of Appeal and that the defendants should have 50% of their costs in this Court, such costs to be adjudicated in default of agreement.