

Subject: Achieving more effective outcomes for court users, particularly vulnerable court users

I welcome this opportunity to submit my views on the functioning of our Civil Justice system (CJS).

I contend that our CJS militates against fairness and equity for the majority of potential lay litigants in the Republic of Ireland. This is due to an imbalance of power which can leave average litigants seriously exposed to substantial financial costs. To ensure that all Irish citizens in a functioning Republic can have confidence in its CJS this inequitable balance of power needs to be addressed.

My submission is in two parts:

1. Outlying how the current CJS is not proportionate and so does not ensure fair/equitable outcomes for the vast majority of potential lay litigants, and
2. A suggested solution to redress this inequality so as to ensure that all citizens are treated equitably in civil cases. This should be a core principle of our Republican justice system.

Part 1: Current System

It is widely accepted that having “deep pockets” or substantial wealth may cause an imbalance in power between litigants in civil cases. This tends to scare off many potential litigants from seeking justice against wealthy individuals or large organisations. In the case of large organisations, it is even more invidious as in the majority of such cases the management personnel participating in the defence are not using their own funds in the litigation process.

In essence the downside risks for ordinary litigants are the substantial legal costs that could be awarded against them. These costs are often so prohibitive that they can lead to bankruptcy for the individual. In addition the litigants are often frustrated by defendants dragging out the litigation process for sometimes many years and so adding to the litigants’ financial and psychological stress. These factors result in many litigants agreeing to accept what they consider to be unfair settlements without the case ever going before an independent judge.

Part 2: Suggested solution to achieve a true Republican Justice system for all Irish citizens

A rebalance of the power equation between a lay litigant and a wealthy person/organisation would surely lead to a fairer outcome in line with natural justice. In addition it is likely to result in an earlier resolution of the dispute since it would not be in the interest of the defendant to drag the process out or to incur excessive costs in defending the case. A proper balancing of power may also encourage both parties to reach an earlier and fairer negotiated settlement rather than risk the costs of proceeding to civil court. This applies in particular to vulnerable and impecunious court users in civil cases.

A potential method to achieve a more equitable power balance would be to award costs in civil cases in the following manner:

- a) Where a lay litigant loses, the litigant's cost exposure could be limited to twice (or some low multiple of) his/her legal costs.
- b) Where a lay litigant wins, he/she could be awarded a sum equal to the defendant's legal costs in addition to any settlement as adjudicated
- c) Where the case is adjudicated somewhere in between, then either party would bear their own costs, or the costs could be awarded proportionally as in formula (a) and (b) above.

The above scenario could also apply where the litigant and defendant roles are reversed.

In summary it is essential that a proper power balance is achieved in civil cases so as to ensure a fair, just and equitable outcome for all Irish citizens irrespective of their means.