COMMERCIAL COURT

[2025] IEHC 451
RECORD NUMBER 2024/7232P

THE HIGH COURT

BETWEEN

PROPITEER IRELAND LIMITED

PLAINTIFFS

AND

CASTLEHAVEN PROPERTY FINANCE DESIGNATED ACTIVITY COMPANY, CLONDAKIN URBAN DEVELOPMENT LIMITED, PEARLVALE LIMITED AND ARBETEN LIMITED

DEFENDANTS

JUDGMENT of Mr. Justice Michael Twomey delivered on the 5th day of August, 2025

INTRODUCTION

1. Should this Court avoid, where possible, using Latin terms or terms of art, known only to lawyer, in its judgments, and instead use plain language understandable to the '*reasonably intelligent lay'* person?
2. This issue arose in this case because the second defendant wants an order from this Court that the plaintiff pays its legal costs on a '*legal practitioner and client'* basis, rather than on a '*party and party'* basis. However, it is clear that what is meant by these terms would

be unknown to most laypersons and even to some lawyers (i.e. those who do not specialise in litigation).

3. The reason this is an issue of some importance is because the rule of law states:

   "The law must be **accessible and so far as possible, intelligible, clear** and predictable"[1] (Emphasis added)

4. Yet a judgment by this Court to the effect, say that the defendant pay costs on a legal practitioner and client basis could be seen as operating as a barrier to the law being '*accessible'* and '*clear',* since its significance would not be clear to a layperson.

5. While it is true that the rule of law refers to '*the law',* and not judgments, having to be accessible and clear, judgments are interpretation and clarification of the law. For this reason, it seems to this Court that it must follow that the rule of law requires not just say, statutory provisions to be accessible and clear, but also that judgments, interpreting and clarifying those statutory provisions, also be accessible and clear.

6. This is not however the only reason that this Court will seek to use terms, that are understandable to a layperson, instead of terms of art, such as 'party and party costs' and 'legal practitioner and client costs'.

<u>Supreme Court requires pleadings to be in language easily understood by the layperson</u>

7. The second reason this Court will seek to put its judgment in more easily understood terms is because this approach is consistent with the requirement, set down by the Supreme Court in *PW v. CIE* [1967] IR 137, that pleadings be in easy-to-understand language. At pg. 40, Walsh J. stated that:

[1] Bingham, *The Rule of Law* (Penguin, 2010) at pg 37.

"The second matter **which should not need to be emphasised** is that pleadings, and the particulars of the matters alleged therein, **should** be in language and terms **easily understood by the reasonably intelligent layman**. It would be quite an intolerable position if it would suffice to furnish information in terminology intelligible only to experts in the sphere in which the subject-matter of the information lay." (Emphasis added)

8. In this Court's view, it would be illogical if the Supreme Court required a litigant's claims to be easily understandable, as it does, but then, when it came to a court expressing those claims in a judgment, the same requirement did not apply. For this reason, it seems to this Court that it is implicit in the Supreme Court's judgment in *PW v. CIE* that judgments should, where possible, be easily understandable to a layperson.
9. One way to ensure that judgments are easily understandable by a layperson, is by avoiding, where possible, the use of terms which are only accessible to lawyers. Thus, it seems to this Court that, unless a technical legal term or a Latin term is impossible or impractical to accurately translate into plain English, or not necessary to translate, or if something might be lost in the translation, then instead using plain English should make the resulting judgment consistent with the decision in *PW v. CIE* and perhaps, even more significantly, with the rule of law.

Court of Appeal in England & Wales use plain English instead of a Latin term

10. The third reason why this Court will seek to avoid using terms which are not easily understood by the layperson. It is because of the recent decision of the Court of Appeal in England & Wales in *Churchill v Merthyr Tydfil* [2024] 3 All ER 771, to stop using the Latin term '*obiter'* in that judgment.

11. In that case, even though that Latin term has been used for centuries in judgments, the Court of Appeal took the significant step of refusing to use it in that case. It did so for the simple reason that, the term *'obiter'*, although understood by all lawyers, is invariably *not* understood by a layperson. Thus, Sir Vos M.R. (with Carr C.J. and Birss L.J. concurring) decided to instead use a plain English translation of that term in order to make the judgment as '*accessible as possible*'. At p 774, Sir Vos M.R. stated:

> "The simple question under this heading is whether the passage from *Halsey* [2004] 1 WLR 3002 upon which the judge relied was a necessary part of the reasoning that led to the decision in that case. In Latin, one would ask whether the passage was "*obiter*". **I prefer to avoid the use of Latin in order to make the court's judgment as accessible as possible**." (Emphasis added)

Although he did not refer explicitly to the rule of law, it is clear that by using plain English, Sir Vos M.R. was thereby making the court's judgment more accessible and so, more compliant with the rule of law.

12. The fourth and final reason for taking such an approach is that making judgments more '*easily understood by the reasonably intelligent lay'* person should make *'the system better for the litigant*', which Irvine P. noted is one of the roles of the court.[2]

<u>Application of these principles to this case</u>

13. Applying the principles contained in *PW v. CIE* and in *Churchill*, leads this Court to conclude that judgments should, where possible, seek to plain English in preference to expressions, which are generally known only to lawyers.

[2] These comments were extra-judicial, as they were made in an interview: 'I have always seen it as my responsibility to try to make the system better for the litigant, who must always be kept front and central in the administration of justice.' The Irish Times, (6 August, 2022).

14. In this case, unlike in *Churchill*, we are not dealing with Latin terms, but rather with terms of art which are used by lawyers and, in general, only understood by lawyers. In particular, it is clear that a layperson will not understand the significance of the fact that in this case, the first defendant ("**Castlehaven**") wants a court order that the plaintiff ("**Propiteer**") pay Castlehaven's legal costs calculated on the *'party and party'* basis rather than on the *'legal practitioner and client'* basis.

Background to the application for costs

15. The background to this application is that it is not in dispute that Propiteer should have to pay Castlehaven its legal costs on the basis of the 'loser pays principle'. (In fact, Propiteer did not lose the proceedings, as it discontinued them, nonetheless it is not disputed that it should have to pay Castlehaven's costs, as if it had lost.) However, Propiteer objects to paying the costs on the legal practitioner and client basis, rather than on the party and party basis.

16. However, it is clear that if this application is considered in this manner, to a layperson it will seem like double-Dutch. For this reason, this judgment will now seek to put Castlehaven's application in terms which are understandable to the layperson.

(i) 'Party and party costs' in terms easily understood by a layperson

17. As a preliminary point, it is relevant to note that there was no dispute between counsel for the parties regarding the differences between costs calculated on a party and party basis *versus* costs calculated on a legal practitioner and client basis. Accordingly, this Court does not need to go into the technical differences between these two bases for calculating costs. This is because Castlehaven want costs calculated on the solicitor and client basis, and so the dispute is whether the conditions have been satisfied for such an order to be made, as Propiteer want them calculated on the party and party basis,

18. Nonetheless, as brief background, the differences between the two ways of calculating costs can be explained as follows. Order 99, rule 10(2) of the Rules of the Superior Courts provides that party and party costs are:

> "[S]uch costs as were **proper and necessary** for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed."[3] (Emphasis added)

It follows that this condition, that the costs must be '*proper and necessary*', has to be satisfied before the paying party is obliged to pay such costs.

19. In contrast, no such condition applies to legal practitioner and client costs. Under Order 99 rule 11(1) of the Rules of the Superior Courts, the emphasis, on how legal practitioner and client costs are calculated, is very different. It states that '***all costs shall be allowed*** *except insofar as they are of an unreasonable amount or have been unreasonably incurred'*.[4] Since the starting point therefore is that *'all costs'* are allowed, unless they are unreasonable, and since one does not have to establish that the costs were '*proper and necessary'*, invariably legal practitioner and client costs are *greater in amount* than party and party costs. This is the key difference between the two types of costs for present purposes. In this case, it is clear that Castlehaven wants costs calculated on the legal practitioner basis as it stands to financially gain if such an order is granted.

20. However, in making this application for costs to be paid on this basis, Castlehaven accepts that it is looking for something exceptional. This is because as noted by Barniville J., as he then was, in *Trafalgar Developments Limited v Mazepin* [2020] IEHC 13 at para. 54:

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[3] The expression having costs 'taxed' was the previous term used for having costs 'adjudicated' (i.e. calculated) by the Taxing Master (now the Office of the Legal Costs Adjudicator).

[4] Emphasis added. There is also a third category of costs called 'legal practitioner and *own* client' costs, which are costs awarded on an '*even more severe basis'* than legal practitioner and client costs – see the comments of Barniville J. in *Trafalgar* at para. 54. As such they are awarded in even more exceptional circumstances than legal practitioner and client costs and *Delany & McGrath on Civil Procedure* (5th ed, Round Hall, 2023) at paras. 24-333 lists only one instance where such an order was made.

"The **normal position is** that where costs are awarded against a party in favour of another, these costs will be taxed or adjudicated on **the party and party basis**." (Emphasis added)

21. It is clear therefore, that party and party costs represent the normal or usual costs order, which a losing litigant has to pay. For this reason, this Court will adopt the term, the '**usual costs order'**, to describe an order for 'party and party costs'. It seems to this Court that, for present purposes, this term should make the dispute more understandable to the layperson.

The usual costs are 'prohibitive' and so unreasonable in amount

22. Although not perhaps widely appreciated, when a court makes the usual costs order, it has no control over how those costs are calculated. This is because the calculation is done, not by the court, but by a State body, known as the Office of the Legal Costs Adjudicator. This calculation is done in accordance with rules for calculating costs which have been passed by the Oireachtas, and which are contained in the Legal Services Regulation Act 2015. For many decades[5], the judiciary has pointed out that costs (and so the usual costs) in High Court cases, which are calculated by the Office of Legal Costs Adjudicator (and previously by its predecessor the Taxing Master), are anything but reasonable in amount.
23. For example, in *SPV Osus Limited v. HSBC Institutional Trusts Services (Ireland) Limited* [2019] 1 IR 1 at para. 2.5. (Clarke C.J.), the Supreme Court called for the Oireachtas to

[5] In *Beakonford Limited v Stokes* [2025] IEHC 22 at para. 130, it is noted that, "Irish judges have complained, without any success, about the high level of costs:
- 4 years ago Kelly P. noted that Ireland is one of the '*highest-cost jurisdictions internationally'*.
- 5 years ago Clarke C.J. called for the Oireachtas to give *'urgent consideration'* to the '*cost of going to court'*.
- 6 years ago Kelly P. complained about the *'millionaire'* levels of High Court costs.
- 12 years ago, Kearns P. stated that '*the right of access for all citizens to our courts…is threatened when the cost of going to court – be it for plaintiffs or defendants – becomes or remains prohibitive'*.
- 20 years ago in the Supreme Court, McGuinness J. referenced the '*very high costs that are inevitable in a prolonged High Court action'*.
- 30 years ago High Court judge O'Hanlon J. pointed out the *'terrifying cost'* of High Court litigation.
- 60 years ago in the Supreme Court, Murnaghan J. noted the '*high cost of litigation'*."

give '*urgent consideration'* to the reform of the '*cost of going to court'*. There seems little doubt that the Supreme Court in making this call was referring to reducing the 'usual costs' which a court orders a litigant to pay, and which are calculated by the Office of the Legal Costs Adjudicator (or its predecessor the Taxing Master).

24. Similarly, when Kearns P. stated, in *Bourbon v. Ward* [2012] IEHC 30 at pg. 40, that costs in the High Court were *'prohibitive'*, there seems little doubt, that he too was referring to the 'usual costs' which are ordered to be typically paid by a losing litigant to her opponent and calculated by the Office of the Legal Costs Adjudicator (or its predecessor the Taxing Master).
25. Since the High Court in *Bourbon v Ward* has held that the usual costs order is prohibitive in amount, it follows that even if Propiteer is subject to the usual costs order, it will still have to pay a sum of money, which is anything but reasonable, for the legal services which were provided to its winning opponent, Castlehaven.
26. All of this means that if Propiteer has to pay the usual costs in this case, it could be said that it will be punished for losing this litigation, in the sense that it will be subject to a *punitive* costs order, i.e. one that is prohibitive, rather than reasonable. (It is however important to point out that in *Bourbon v Ward*, Kearns P. was referring only to High Court costs and so, a litigant who is ordered to pay, say, District Court costs, could not be said to be obliged to make an unreasonable payment in respect of legal costs.

(ii) 'Legal practitioner and client costs' in terms easily understood by a layperson

27. It is against this background that Castlehaven is looking, not for the usual costs order, but rather for costs on the 'legal practitioner and client' basis. As noted in *Delany & McGrath on Civil Procedure* (5th ed., Round Hall, 2023) at paras. 24-331, this term was *'formerly referred to as a "solicitor and client basis"'*. In *Trafalgar* at para. 54, Barniville J. stated

in relation to a court ordering the payment of costs on this basis, as distinct from on the normal basis, that:

> "There has to be a good reason to depart from the normal position [i.e. payment of the usual costs]."

While an order for the usual costs order is therefore the norm, Barniville J. noted that:

> "The court may exercise its discretion to order costs on the solicitor and client basis where it wishes to **mark its disapproval of or displeasure** at the conduct of the party against which the order for costs is being made." (Emphasis added)

28. In light of the foregoing, for present purposes, there are two key differences between legal practitioner and client costs and the usual costs. Firstly, an order for costs on the legal practitioner and client basis is only made in exceptional cases. Secondly, the amount payable under an order for costs on the legal practitioner and client basis is invariably more than under the usual costs order. Accordingly, for present purposes, this Court will adopt the term **'enhanced costs'** to describe legal practitioner and client costs. This is because they are invariably even more *'prohibitive'* in amount than the usual costs.

<u>Castlehaven's application in terms understandable to the layperson</u>

29. Therefore, to put Castlehaven's application in terms which are understandable to the layperson, Castlehaven believes that Propiteer's conduct in these proceedings was such that Propiteer should *not* be ordered to pay the **usual costs**, which are prohibitive, but it should be ordered to pay **enhanced costs,** which are likely to be even more prohibitive.
30. One textbook author has described payment of enhanced costs in the following manner:

"Such an award represents a boon for the lawyers of those parties in whose favour such an award is made."[6]

31. However, counsel for Castlehaven submitted that the lawyers for Castlehaven would not benefit from an order for enhanced costs. She stated that the lawyers will get paid the same no matter whether the costs are calculated on the usual basis or the enhanced basis.

32. In any event, the key issue for this Court is whether this Court regards Propiteer's conduct as being so egregious as to justify an order for enhanced costs.

An order for the usual costs or enhanced costs in this case?

33. The proceedings, for which Castlehaven seeks its costs, were commenced on 11 December 2024 by Propiteer, and they were admitted to the Commercial Court on 10 February 2025. In the proceedings, Propiteer claims that the defendants acted in breach of their contractual and fiduciary obligations, were guilty of conspiracy, and acted in a manner which is contrary to the financial interests of Propiteer.

34. The first substantive hearing in the case was due to take place on 22 July 2025, as there was due to be security for costs hearing on that day, in which the defendants were due to seek an order requiring Propiteer to pay money into court as security for the defendants' costs (in case Propiteer lost the case and had to pay those costs). However, the proceedings were discontinued by Propiteer on the eve of the hearing, thus obviating the need for that hearing.

35. On the morning of 22 July 2025, when the proceedings were due to be struck out, it transpired that Castlehaven was not looking for the usual costs order, but rather it wanted an enhanced costs order. Since an enhanced costs order is are only made in exceptional

[6] Alcock, *The Law of Costs in Ireland* (Lonsdale, 2020) at para. 1.17.

cases, this Court granted Propiteer's application to adjourn the proceedings until 25 July 2025, to enable it respond to this exceptional application for an enhanced costs order.

36. On 25 July 2025, Castlehaven claimed that it is entitled to enhanced costs for a number of reasons. It pointed out that it never received a pre-litigation letter, or any warning or demand letter, from Propiteer, in advance of the issuing of the proceedings. In addition, when the proceedings were issued by Propiteer, they were done on the authority of Mr. David Marshall ("**Mr. Marshall**"), who, at the date of issuance of the plenary summons was a director of Propiteer. Crucially however, he was not a director of Propiteer, when an application was made to the Commercial Court to enter the proceedings into the Commercial List, and his grounding affidavit, stating that he was a director, was a patent falsehood. Castlehaven also pointed to the fact that an allegation of conspiracy is a very serious one to make and it should not have been made on the basis of a falsehood. Castlehaven also states that it was put to the additional cost of court hearings to deal with the fact that Propiteer failed to comply with court directions, once the matter was admitted to the Commercial Court.

37. Castlehaven also mentioned the fact that Mr. Marshall is the guarantor of Propiteer's liability of *circa* €17 million in favour of Castlehaven. On this basis, submissions were made by Castlehaven that Mr. Marshall issued the proceedings, not because of a genuine dispute, but because at that time Mr. Marshall had entered an Individual Voluntary Arrangement in the UK. In particular, Castlehaven submitted that Propiteer had instituted the proceedings, in order to create this dispute between Propiteer and Castlehaven, which meant that Castlehaven's claim (against Mr. Marshall in respect of his €17 million guarantee of Propiteer's liability) was then subject to litigation. As such, Castlehaven said this liability became *'an unliquidated and unascertained'* debt in the Individual Voluntary Arrangement and thus, in theory at least, it could be presented in the Individual Voluntary

Arrangement as being valued at somewhere between zero and €17 million. Accordingly, Castlehaven claimed that the proceedings were issued by Propiteer/Mr. Marshall, not because Propiteer had a genuine dispute with Castlehaven, but for the ulterior motive of benefiting Mr. Marshall in relation to his Individual Voluntary Arrangement.

ANALYSIS

38. As a preliminary point, it is important to bear in mind that there was no sworn evidence in relation to Propiteer's/Mr. Marshall's motivation for instituting the proceedings. For this reason, Castlehaven's submissions, regarding it being done to benefit Mr. Marshall's Individual Voluntary Arrangement, amount to speculation. It is also important to note that there can be *no finding* by this Court that the proceedings were issued for an ulterior motive, for the simple reason that these proceedings were discontinued, without any findings of fact by this Court.

39. More generally however, it is beyond doubt that Castlehaven has been subject to an injustice. This is because it was put to the time and effort of defending proceedings which were brought on a false basis. In the normal course, it would be entitled to the usual costs order. This would have the effect of compensating Castlehaven for the wrong done to it, by providing it with the funds to pay its lawyers. However, such an order will also have a punitive effect on Propiteer, since, as already noted, High Court costs have been described as prohibitive (and so anything but reasonable). This factor cannot be ignored by the courts, particularly when for decades the judiciary has been calling, without success, for the *'terrifying cost'* of litigation to be tackled.[7]

[7] O'Hanlon J., on his retirement expressed concern at the '*the terrifying cost of litigation'*. He stated that for *'ordinary members of the public who become involved in High Court litigation, it could spell financial disaster for many of them',* The Irish Times (8 April 1995).

40. In these circumstances, the real question for this Court is whether the losing litigant, Propiteer, should be *further punished* because of, in particular, the false basis upon which these proceedings were instituted; i.e., the false claim by Mr. Marshall that he was a director of Propiteer.

41. In this regard, it is clear from *Trafalgar* that this Court does have a discretion to order Propiteer to pay enhanced costs, in order to mark this Court's '*disapproval of or displeasure at the conduct of'* Propiteer.

42. However, while this Court does not approve of the conduct of Mr. Marshall/Propiteer, this Court does not believe that in all the circumstances this conduct is so egregious as to warrant this Court exercising its discretion by ordering Propiteer to pay enhanced costs to Castlehaven.

Litigants should be incentivised to discontinue/concede proceedings if appropriate

43. The first reason for this is that Castlehaven is seeking an enhanced costs order against Propiteer, even though Propiteer has discontinued these proceedings at an early stage. This is an important factor because litigants like Propiteer should be incentivised to discontinue proceedings, so as to save court time in situations like this (i.e. where it becomes clear to the party and/or its lawyers that the claim is without merit or was instituted on a false basis).

44. In this instance, Propiteer *has* done the right thing (*albeit* after initially doing the wrong thing by issuing proceedings on a false basis), by recognising its error, and discontinued the proceedings at a very early stage. If it had not done so, and instead it had run its claims for years into the future, this would have involved a huge amount of wasted court time and wasted management time for Castlehaven. In this Court's view, plaintiffs like this should be incentivised to save court time, and to save their opponent's time. Accordingly, a court should *not* unnecessarily punish such plaintiffs with an enhanced costs order, if they do the right thing, by discontinuing the proceedings.

45. In this regard, there are some limited parallels between a plaintiff who discontinues a civil action and saves court time and his opponent's time on the one hand, and on the other hand, an accused who pleads guilty and so saves court time and the DPP a lot of time and money. In criminal proceedings, there are good public policy reasons why an accused gets a reduction in his sentence for pleading guilty. In this sense, it could be said that an accused, who is guilty, is *incentivised* to plead guilty at an early stage for public policy reasons.
46. Similarly, it seems to this Court that there are good public policy reasons why, in civil proceedings, a litigant (whether a plaintiff or defendant), *should* be incentivised, or certainly not disincentivised, to discontinue or concede proceedings, if that is the appropriate thing to do. It will save not only court time but also the time of the opposing litigant, as well as the stress for the opponent of having to give evidence.
47. To put it another way, if a plaintiff in Propiteer's position was to be subject to the *same* enhanced costs order, *whether* it continued with the proceedings to the bitter end or not, there would be *less incentive* for it to discontinue the proceedings early. This would, in this Court's view, be contrary to the public policy of encouraging the use of scarce court resources *only* where absolutely necessary.
48. Accordingly, the fact that Propiteer discontinued these proceedings at a very early stage is a reason for this court to exercise its discretion, in this particular instance, *not* to award enhanced costs against it, despite the fact that it is clear that it instituted proceedings on a false basis.
49. Finally, there is also another parallel between the position of a victim of violence in a criminal case, where there has been a guilty plea, and the position of a defendant in a civil case that has been discontinued. This is because in many instances, the victim in a criminal case will feel disappointed when the application of the foregoing public policy means that the convict will *not* receive the *maximum sentence* for a crime that he/she clearly

committed. Similarly, Castlehaven may feel disappointed that this public policy also means that it will not receive the *maximum* costs award, even though Propiteer accepts it was wrong to issue the proceedings. However, in this Court's view, public policy reasons must take precedence over the individual views of a victim or defendant in a particular case.

No substantive findings were made against Propiteer

50. The second, and related, reason for this Court not exercising its discretion to award enhanced costs in this case is that the *substantive* claims which have been made by Castlehaven against Propiteer (which Castlehaven says justify the enhanced costs order) have never been determined by a court (*albeit* that there is one fact that is not in dispute, i.e. that the proceedings were issued on a false basis).

51. This is relevant because the cases in which enhanced costs have been awarded to date have invariably been ones where there has been a court finding of misconduct in the running of the proceedings, as for example occurred in *Dunnes Stores v. An Bord Pleanála* [2016] IEHC 697 where there was a finding that the plaintiff had abused the process of the court, which justified an enhanced costs order.

52. In contrast, in *Shell E & P Ireland Limited v. McGrath* (No. 3) [2007] 4 IR 277, Laffoy J. refused to order the payment of enhanced costs because there had been no decision on any of the substantive issues in dispute between the parties. At para. 56, she stated:

> "In my view it would not be proper to draw any inference from the manner in which the plaintiff's claim in these proceedings has been prosecuted to date or to infer any conduct on the part of the plaintiff which merits the disapproval of the court, **when the substantive issues on the plaintiff's claim have not been determined** and the plaintiff's motivation had not been explored at a trial on the oral evidence." (Emphasis added)

53. This is also the situation in this case. There has been no trial or oral evidence to enable this Court to make any substantive findings in this case. Thus, while the caselaw permits this Court to award enhanced costs where proceedings were issued say for an ulterior motive (as occurred in *Dunnes Stores*), in this case, there has been no finding of fact regarding the motives of Mr. Marshall or Propiteer, as the case has been discontinued. Accordingly, all there is regarding this issue is Castlehaven's *claim* that Mr. Marshall instituted proceedings for an ulterior motive.
54. In addition, there have been no findings of fact regarding the other substantive issues in the case (i.e. the claims of Castlehaven regarding Propiteer's behaviour, or indeed the claims of Propiteer regarding Castlehaven's behaviour).
55. This therefore is a second reason why this Court would not exercise its discretion to award enhanced costs, notwithstanding that is accepted as a fact that the proceedings were issued on a false basis.

CONCLUSION

56. This Court will make an order for the 'usual costs' to be paid by Propiteer.
57. It does so in the knowledge that, as a result of instituting the proceedings on a false basis, Propiteer will suffer the punishment of having to pay *'prohibitive'* costs to Castlehaven for defending those proceedings, and for the various directions' hearings which Castlehaven had to attend.
58. The conduct of Propiteer however is not so egregious as to require an order for enhanced costs, which would be even more prohibitive, particularly when one considers that Propiteer discontinued the proceedings at an early stage, rather than pursuing them to a full hearing and an appeal.

59. Since Castlehaven has lost its claim that it is entitled to enhanced costs, this Court's provisional view is that Propiteer is entitled to the usual costs order against Castlehaven, for the costs incurred by Propiteer in attending the initial and the adjourned costs hearing and successfully arguing that it should only be liable for the usual costs.

60. This case will be provisionally put in for mention at 10.45 a.m. on 10 October 2025 to deal with any final orders and costs. However, in order to facilitate the parties agreeing all outstanding matters, the parties have liberty to notify the Registrar if such a listing proves to be unnecessary. This is particularly so in light of the clear implication from *Word Perfect Translation Services Ltd v. Minister for Public Expenditure and Reform* [2023] IECA 189 at para. 94, that there is an onus on lawyers to take a broad-brush approach to costs and not to engage in the inefficient use of court resources and costly *'nit-picking'*.