

**THE HIGH COURT
JUDICIAL REVIEW**

[2021] IEHC 800
[Record no. 2021/76 JR]

BETWEEN

B

APPLICANT

**AND
HEALTH SERVICE EXECUTIVE
AND
[A] HOSPITAL**

RESPONDENTS

JUDGMENT in respect of costs delivered by Ms. Justice Miriam O'Regan on the 17th day of December, 2021

1. By judgment in writing bearing date 1 December 2021 the applicant's application for judicial review was refused primarily on the basis that the issues raised were solely and exclusively derived from an individual contract in private law and therefore not amenable to judicial review. The judgment also dealt with the substance of the applicant's arguments in the event that I was incorrect in finding that the issues raised were solely and exclusively derived from a private law contract.
2. The respondent was entirely successful within the meaning and application of s.169(1) of the Legal Services Regulation Act 2015 which provides:

"A party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings, unless the court orders otherwise, having regard to the particular nature and circumstances of the case, and the conduct of the proceedings by the parties".
3. In accordance with the dicta of Murray J. in *Chubb European Group SE v. The Health Insurance Authority* [2020] IECA 183 it is necessary to have regard to the fact that the general discretion of the court is preserved and to have regard to the provisions of s.169(1) of the 2015 Act.
4. In my view there was nothing about the conduct of either party before or during the proceedings to influence an order for costs which might otherwise be made. Furthermore, there does not appear to me to have been issue raised, pursued or contested which might be considered unreasonable. The manner in which the parties conducted the case did not in my view prolong the hearing of the matter or otherwise warrant an interference with costs which might otherwise be afforded.
5. There was an offer of settlement effectively prior to the action namely a letter of 5 March 2021 from the respondents to the applicant to the effect that should the applicant withdraw her proceedings within a seven-day period, effectively an order which provided for no order as to costs would be agreeable.
6. The applicant argues that the within judgment comprised the first Irish High Court published decision on COVID related circulars and therefore was novel.

7. I am satisfied that HR Circular 34/2020 was considered solely through the prism of the applicant's claim and therefore the judgment was not one of far reaching importance or one that involved exceptional circumstances.
8. I am satisfied in all of the circumstances that it is appropriate to afford the respondents the costs of and incidental to the within proceedings to be adjudicated upon in default of agreement.
9. The applicant is seeking a stay on the order for costs pending an appeal and in the circumstances therefore I will afford a stay until the end of the period within which an appeal should be maintained, and in the event that such an appeal is maintained such stay will continue until the first directions date before the Court of Appeal.