

**THE HIGH COURT**

**[2025] IEHC 125  
RECORD No. 2023/4072P**

**Between**

**JOHN DESMOND MALLON**

**Plaintiff**

**-and-**

**THE MINISTER FOR JUSTICE, IRELAND AND THE ATTORNEY GENERAL**

**Defendants**

**JUDGMENT of Ms. Justice Stack delivered 4 March, 2025.**

*Introduction*

1. The plaintiff has brought proceedings to challenge s. 3 of the Land and Conveyancing Law Reform (Amendment) Act, 2013, arising out of the grant of a possession order against him by the Monaghan County Registrar on 6 July 2016 (“the Substantive Proceedings”).
2. This is an interlocutory motion in which he seeks a very unusual relief, namely, that a specific barrister, Ms. Eugenie Houston BL, be given liberty to represent him in the proceedings without the need for him to retain any solicitor to instruct her.
3. Ms. Houston has advised the Chief State Solicitor, in response to a request for clarification as to the precise legal services to be provided, that she wishes to receive instructions directly from the plaintiff, to correspond with the Chief State Solicitor on his behalf, to enter into negotiations on his behalf, and to provide him with such legal advice as

he may request. Although initially reluctant to confirm that she proposed to give personal undertakings to court (as solicitors conducting litigation frequently do), and which would be enforceable against her personally, it appears now that she may be willing to do so.

4. She has not, however, provided the Chief State Solicitor with evidence that she holds professional indemnity insurance to cover the legal services which she wishes to provide. While she holds insurance, this relates to her practice as a barrister and does not appear to extend to the services normally provided by solicitors, which include the burdensome task of managing client funds. As a result, it appears that Ms. Houston would be uninsured in respect of at least some of the services which she proposes to provide to the plaintiff in connection with the litigation in the event that he does not instruct a solicitor to come on record for him.

*An outline of the legal framework*

5. The Rules of the Superior Courts, which, as a statutory instrument (S.I. 15 of 1986), have the force of law, require that, in any case where a litigant wishes to be represented, he or she must be represented by a solicitor. Several of the Rules makes this clear.

6. For example, an originating summons can only be issued by a party suing or through his or her solicitor: see Order 1(2) and Form No. 1, Appendix A., No. 1. Order 12, rule 3 provides that a person can only enter an appearance to defend proceedings in person or through a solicitor. In addition, if service of a summons is not to be effected personally on a defendant, only a solicitor can accept service of it: Order 9, rule 1. Similarly, pleadings must be delivered to the other party in person or on his or her solicitor on record: Order 19, rule 10.

7. It is therefore apparent that the Rules of Court contemplate that only solicitors, and not barristers, will have carriage of proceedings in the High Court on behalf of a litigant.

8. Those Rules are drafted against a legal context which is dominated by the status of solicitors as officers of the Court. This was recognised by s. 78 of the Supreme Court of Judicature Ireland Act, 1877, and was preserved by s. 93 of the Courts of Justice Act, 1924, in relation to the Superior Courts in this jurisdiction. The Superior Courts have confirmed on a number of occasions that the status of solicitors as officers of the court, with consequent privileges but also liability to supervision by the Courts, has survived not only independence but the enactment of the Solicitors Act, 1954-2015: see *Bank of Ireland v. Coleman* [2009] 3 I.R. 699, a judgment of the Supreme Court.

9. This supervision of solicitors by the courts ensures proper professional practice in litigation, enabling not only good administration of justice but also protecting litigants. In *Bank of Ireland v. Coleman*, the Supreme Court (*per* Geoghegan J.) approved the summary of the nature of the court's jurisdiction over solicitors as stated by Lord Wright in the House of Lords in *Myers v. Elman* [1940] A.C. 282., at p.319, where he stated:

*“The underlying principle is that the Court has a right and a duty to supervise the conduct of its solicitors, and visit with penalties any conduct of a solicitor which is of such a nature as to tend to defeat justice in the very cause in which he is engaged professionally.... A mere mistake or error of judgment is not generally sufficient, but a gross neglect or inaccuracy in a matter which it is a solicitor's duty to ascertain with accuracy may suffice. Thus, a solicitor may be held bound in certain events to satisfy himself that he has a retainer to act, or as to the accuracy of an affidavit which his client swears. It is impossible to enumerate the various contingencies which may call into operation the exercise of this jurisdiction.”*

10. There is no similar supervisory jurisdiction over barristers, which is material to this application as it would mean that the courts would not retain the same jurisdiction to supervise the conduct of any barrister were he or she to take instructions directly from a

client. This would potentially have consequences for the orderly conduct of proceedings as the Court would not be in a position to supervise and control the conduct of a litigant's legal representative.

11. In *Bond v. Dunne* [2018] 2 I.R. 225, a case in which the defendants to a trespass action applied for liberty to Ms. Houston BL to come on record on their behalf, this court (Gilligan J.) held (at paras. 13 and 14) that the Rules do not permit anyone other than a solicitor to have carriage of proceedings on behalf of a client, and further stated that this was for the good reason that solicitors were “*officers of the court from whom the court demands a high standard of conduct and whom the court can call to account*”. Gilligan J. contrasted the position of barristers who are not subject to a similar supervisory jurisdiction. He also referred to the provisions of the Rules which require that only a solicitor can enter an appearance and accept service on behalf of a client.

12. It is settled law that, in accordance with the principle of comity, a court of first instance should follow one of its earlier decisions – and I should therefore apply *Bond v. Dunne* - unless there are substantial reasons for believing that the earlier decision was wrongly applied. That was clearly stated by this Court in *Re Worldport (Ireland) Limited (in Liquidation)* [2005] IEHC 189, in which Clarke J. (at pp. 8-9) gave several examples of when those exceptional circumstances might be said to arise:

*“Amongst the circumstances where it may be appropriate for a court to come to a different view would be where it was clear that the initial decision was not based upon a review of significant relevant authority, where there is a clear error in the judgment, or where the judgment sought to be revisited was delivered a sufficiently lengthy period in the past so that the jurisprudence of the court in the relevant area might be said to have advanced in the intervening period.”*

13. I will deal in due course with the grounds upon which Ms. Houston submits that I should not follow *Bond v. Dunne* but first it should also be noted that the regulatory regime applicable to barristers, and by reference to which they may be disciplined, is predicated on the state of the law being as stated above, namely, that barristers do not have carriage of proceedings on behalf of clients.

#### *Procedural History*

14. In order to ensure that all relevant parties were heard on the application, and presumably given the respective roles of the LSRA and the King's Inns in regulating barristers, this Court (Mulcahy J.) directed on 18 September, 2023, that the LSRA and the King's Inns would be notified of the application. The Attorney General subsequently decided that the Law Society of Ireland ("the Law Society") should also be notified of the application.

15. When the matter was next before the Court (Sanfey J.) on 11 October, 2023, the LSRA, the King's Inns and the Law Society were all represented and indicated that they wished to be heard on the motion. Thereafter, though their status remains as applicants to be joined as *amici curiae* to this application, the King's Inns, LSRA and the Law Society were all heard *de bene esse* on the application itself. The plaintiff has, through his counsel, consented to this.

16. It should be noted that the plaintiff was afforded a similar leeway. By order of Mulcahy J. of 18 September, 2023, Ms. Houston BL was permitted – with the consent of the defendants - to represent the plaintiff *de bene esse*, pending determination of this application. On the determination of this application (which includes any appeal from this judgment), Ms. Houston BL will no longer be authorised to represent the plaintiff in court unless she is instructed by a solicitor who has come on record for the plaintiff.

### *Codes of Conduct applicable to barrister*

**17.** Most barristers are members of the Law Library and are governed by the Code of Conduct of the Bar of Ireland which requires that, in contentious matters, and save for applications for adjournments or for orders on consent, or matters heard in the District Court on the instructions of solicitors, barristers must be attended in court at all times by their instructing solicitors.

**18.** As Ms. Houston is one of a number of barristers who are not members of the Law Library, she is not governed by that Code. However, she is governed by the Code of Conduct adopted by the King's Inns with effect from 9 April, 2018, which is to the same effect.

**19.** The King's Inns is the body responsible for the training of barristers. In 2008, Ms. Houston was admitted to the Barrister at Law degree conferred by the King's Inns and thereby became entitled to practice as a barrister in this State. As part of that process, she provided a written undertaking, signed by her on 1 July, 2008, in which she made various declarations and undertook, *inter alia*, so long as she was a barrister, to comply with the Rules of the King's Inns. These Rules (16.2) require all barristers to comply with the provisions of the Professional Code of the King's Inns as promulgated or amended from time to time by the Council of the King's Inns. Ms Houston is on the Register of Members of the King's Inns.

**20.** Accordingly, she is subject to the King's Inns Code of Conduct which provides at paras. 29-31 that barristers should not take instructions directly from a client in contentious matters, other than when moving an application for an adjournments or a consent order, or when appearing in the District Court, or on District Court Appeals, on the instructions of a solicitor.

21. The Substantive Proceedings are contentious in nature and of course are High Court proceedings and therefore the King's Inns Code of Conduct prohibits Ms. Houston from taking instruction directly from a client.

22. The King's Inns Code of Conduct is subject to any conflicting provision of a code of conduct which may be published by the LSRA and applicable to barristers: see s. 22 of the Legal Services Regulation Act, 2015. Since the date of the hearing of this matter, the LSRA has published a Code of Conduct for Practising Barristers, para. 3.12 of which provides that, in contentious matters as defined in the 2015 Act (discussed further below but undoubtedly encompassing the Substantive Proceedings), a practising barrister shall not take instructions directly from a client.

23. At the hearing of the matter, the LSRA indicated, both on affidavit and through counsel, that the public interest favours an approach whereby barristers would not take instructions directly from a client.

24. This position is reflected in s. 101 of the 2015 Act which provides:

*“No professional code shall operate to prevent a barrister from providing legal services as a practising barrister in relation to a matter, other than a contentious matter, where his or her instructions on that matter were received directly from a person who is not a solicitor.”*

Section 101 was commenced with effect from 25 September, 2024 (S.I. 477 of 2024) and reflects an intention on the part of the Oireachtas, as regards the regulation of the legal professions, that it should continue to be the case that barristers will not take instructions directly from clients in contentious matters. *“Contentious matters”* are defined in s. 99 as matters that arise in, and relate to the subject matter of, *“proceedings before any court, tribunal or other body or person before which the respective legal rights and obligations of two or more parties are determined, to which the person instructing the practising barrister*

*concerned is party.*” This obviously covers the constitutional challenge contained in the Substantive Proceedings and the LSRA Code of Conduct therefore precludes Ms. Houston BL from taking instructions directly from the plaintiff.

25. The Law Society of Ireland also made submissions at the hearing pointing out the many advantages which solicitors bring to clients who instruct them. These include – but are certainly not limited to - the ability of a solicitor to advise a client on the identity of a barrister who would be suitable, having regard to their competence, professional standing, and expertise, to represent them in any given case. Solicitors will, of necessity, have access to vastly more information on the identity of suitable counsel than most litigants, many of whom will not be frequent litigants and would simply not be in a position to nominate a suitable counsel to represent them effectively.

26. There are, therefore two applications before the Court. The first is the procedural application of the LSRA, the King’s Inns and the Law Society to be joined as *amici curiae* to the proceedings. The second is whether the plaintiff has the right, as he claims, to instruct counsel directly without the obligation to instruct a solicitor.

27. Before deciding whether it is necessary to determine the applications to be joined as *amici curiae*, it is useful to identify the principal legal issue which I have to decide on the plaintiff’s interlocutory application. If, having identified the issue and the relevant legal arguments involved, I find that it is not necessary to call on the assistance of the LSRA, the King’s Inns, or the Law Society, then it will not be necessary to consider whether they should be formally joined.

*Whether I should depart from Bond v. Dunne*

**28.** The starting point of any judgment on the principal issue as to whether the plaintiff may retain Ms. Houston directly is whether it is appropriate to depart from the earlier decision of this Court in *Bond v. Dunne*. As the judgment is relatively recent, it the passage of time in and of itself does not suggest that I should depart from it as being in some way outdated.

**29.** Having said that, there has been several, overlapping significant changes since *Bond v. Dunne* was decided and those are the introduction of the King's Inns Code of Conduct on 9 April, 2018, and the adoption of the LSRA Code of Conduct on 25 September, 2024, and the commencement of s. 101 of the 2015 Act. I have already referred to the relevant provisions of those Codes and of s. 101, which clearly prohibit Ms. Houston BL from taking direct instructions from a client in contentious matters such as the Substantive Proceedings. The subsequent changes are, therefore, supportive of the reasoning in *Bond v. Dunne* rather than representing a change in the legal landscape which would favour departing from the position as stated by Gilligan J. Furthermore, it remains the position that the Rules of the Superior Courts, which do not permit barristers to have carriage of proceedings, have not been altered in any way material to this application since *Bond v. Dunne* was delivered.

**30.** The question then is whether there is some other reasons, such as a clear error or oversight of relevant authority, which would mean that I should feel free to depart from the judgment of my colleague.

**31.** In that respect, Ms. Houston BL urged on me that I should refuse to follow *Bond v. Dunne* on the basis that I was required to do so by Union law – discussed further below - to disapply that judgment.

32. Ms. Houston also submitted that it was just a practice that barristers were instructed by solicitors, though she also conceded that, should her application succeed, the Rules would have to be amended. While this would require in substance, as the State submitted, a challenge to the Rules, and while there is no such challenge in the pleadings to date, I am going to take it for the purposes of this application, that Ms. Houston's submission is, in substance, that the same provisions of Union law would require me to disapply the relevant Rules of Court.

*The rights relied upon by the plaintiff*

33. The Defendants' written submissions were filed in December, 2023, whereas the plaintiff's written submissions – consisting of a single page – are dated 7 February, 2024. This written page of submissions, so far as the asserted right is concerned, states:

*“In all motions before the Court in this action, the Plaintiff will rely inter alia on the Treaties, the Belfast/Good Friday Agreement and the law and case law of the European Union.”*

This is totally inadequate to advise the Defendants of even the outline of the legal arguments to be made on behalf of the plaintiff. It is also of little or no use to the Court in seeking to identify the issues for determination, let alone in determining them. It is completely inappropriate to rely, by way of a passing reference, on the entire of the Treaties, law (by which is meant, presumably, the secondary legislation) and caselaw of the European Union without identifying a single legal provision or a single case.

34. The *“Belfast/Good Friday Agreement”* did not feature in oral submissions. But for the sake of completeness, it should be noted that it is in fact two agreements: the first being the Multi-Party Agreement between the governments of the United Kingdom and this State and the political parties operating in Northern Ireland, and the British-Irish Agreement between

the two governments. Critically for the purposes of any reliance that might be placed on these Agreements for the purposes of this application, as international agreements, they do not form part of the law of the State save insofar as it has been incorporated into Irish law by the Oireachtas: see Articles 15.2 and 29 of the Constitution.

**35.** In some respects, of course, it has been so incorporated – see the British-Irish Agreement Acts, 1999-2006 - but these legislative provisions have no relevance to the question of whether a litigant should be able to instruct a barrister directly and Ms. Houston BL never referred to them in any event. Accordingly, the reference to the “*Belfast/Good Friday Agreement*” is irrelevant to this application.

**36.** At the hearing, it became clear that the oral argument of the plaintiff in support of his application rested on European Union law, and specifically Articles 2 and 19 (1) of the Treaty on European Union (“TEU”), Article 47 of the Charter of Fundamental Rights of the European Union (“CFR”), and Article 57 of the Treaty on the Functioning of the European Union (“TFEU”).

**37.** Article 2 TEU provides:

*“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”*

The plaintiff made no submission as to how this Article could have direct effect so as to confer on him the right to instruct a barrister directly without retaining a solicitor and it is not apparent how it does so.

**38.** Article 19 TEU provides:

*“1. The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed. Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.”*

**38.** I did not understand the plaintiff to rely on the second and third paragraphs of Article 19, which deal with the establishment and jurisdiction of the Court of Justice and the General Court of the European Union. However, Ms. Houston appears to rely on the last sentence of para. 1, highlighted above, and it is convenient to consider this together with Article 47 CFR.

**39.** Article 47 CFR is headed “*Right to an effective remedy and to a fair trial*” and provides:

*“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.*

*Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.*

*Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.”*

I have emphasised the sentence relied upon by the plaintiff.

**39.** Counsel for the defendants points to what it is submitted are a number of insuperable difficulties for the applicant in relying on this Article for the proposition that he is entitled to instruct Ms. Houston BL directly.

**40.** The first is that the applicant relies on that portion of this Article which recognises a right to be “*advised, defended and represented*”. However, there is no dispute that the applicant is entitled to take legal advice and to be represented in the Substantive Proceedings.

The only issue is whether he must, in order to comply with the Rules of the Superior Courts, retain a solicitor to represent him.

41. As counsel for the defendants points out, the motion does not seek an order that he may be represented by counsel on his direct instructions without the need for an instructing solicitor: it seeks an order that he may be permitted to retain *Ms. Houston* BL and not any other barrister. No basis for identifying a particular barrister has been identified at all and I agree that it is difficult to see any legal basis for an application which identified a particular barrister: if there is a right to instruct a particular class of lawyer, that right would extend to all lawyers in that class.

42. However, I propose to deal with the application as if it were drafted so as to instruct any counsel of the plaintiff's choice who was willing to act.

43. Secondly, the defendants point out that there is no challenge to any of the relevant provisions of the Rules of the Superior Courts or of any statutory provision which would prevent the instruction of counsel. It is submitted that this is an absolute bar to the success of the application. However, the jurisdiction to amend pleadings is in my view sufficiently generous to permit this claim to be included if the application can be shown to be otherwise meritorious.

44. However, the third objection raised by the defendants is fundamental and I agree that it disposes of the entire application. The requirement in the Rules that only a solicitor may come on record for a litigant is not one which is derived from Union law. It was submitted by the defendants that this is what is known in Union law parlance as a "*wholly internal matter*" to which Union law does not apply.

45. In my view, this is correct. In relying on Article 47 CFR, the plaintiff has overlooked Article 51 of the Charter, which is headed "*Field of Application*" and which provides:

*“1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.*

*2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.”*

**46.** As pointed out by counsel of the defendants, this application concerns an Irish client, an Irish lawyer, and the Irish courts. It does not come within the scope of Union law. The relevant Rules of the Superior Courts are not acts done in the implementation of Union law nor do they - certainly on the facts of this application - impinge on any right or freedom recognised or conferred by Union law.

**47.** Ms. Houston BL cited para. 54 of Joined Cases C-245/19 and C-246/19, *État luxembourgeois v. B.* a judgment of the Grand Chamber of the CJEU of 6 October, 2020, and which confirms that the rights guaranteed by Article 47 CFR do not depend on their content being made more specific by other provisions of Union law or by the provisions of national law. That proposition is uncontroversial but the submission overlooks para. 55 of that judgment which states:

*“... [T]he recognition of [the right to an effective remedy], in a given case, presupposes, as is apparent from the first paragraph of Article 47 of the Charter, that the person invoking that right is relying on rights or freedoms guaranteed by EU law.”*

This was reiterated in Case C-430/21 *R.S.*, on which the plaintiff also relies. However, he has failed to identify any right or freedom guaranteed by Union law material to this application which would engage the protections of Article 47 and in my view it is simply not relevant to this application.

**48.** The closest Ms. Houston BL has come to identifying any such right or freedom guaranteed by Union law which might trigger the application of Article 47 CFR is by reference to Article 57 TFEU (ex Article 50 TEC) which guarantees the freedom to provide services and which should be read in conjunction with Article 56 TFEU. For completeness, I will cite these provisions in full:

*Article 56*

*(ex Article 49 TEC):*

*“Within the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Union.*

*Article 57*

*(ex Article 50 TEC)*

*“Services shall be considered to be ‘services’ within the meaning of the Treaties where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.*

*‘Services’ shall in particular include:*

...

*(d) activities of the professions.*

*Without prejudice to the provisions of the Chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the Member State where the service is provided, under the same conditions as are imposed by that State on its own nationals.”*

**49.** It is clear that Irish barristers - along with Irish solicitors - are entitled in an appropriate case to rely on the freedom to supply services elsewhere in the European Union. However, there is no evidence that that freedom has been impinged on in this case, as the matter is one which is wholly internal to this State.

**50.** Ms. Houston BL relies on Case C-739/19, *V.K. v. An Bord Pleanála, The General Council of the Bar of Ireland, the Law Society of Ireland and the Attorney General*, Intervening Parties, a judgment of 10 March, 2021. That was a case where V.K. had represented himself before the Supreme Court but had retained the services of a lawyer established in Germany for the purpose of a preliminary reference to the Court of Justice. He then wished to retain that lawyer to represent him when the matter returned to the Irish Supreme Court.

**51.** The Supreme Court then referred back to the Court of Justice the correct interpretation of Article 5 of Council Directive 77.249 of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ 1977 L 78, p. 17). That had been transposed into Irish law by article 6 of the European Communities (Freedom to Provide Services) (Lawyers) Regulations, 1979.

**52.** Both Article 5 of the 1977 Directive and article 6 of the 1979 Regulations concerned requirements imposed on visiting lawyers when representing clients in court. Article 6 of the 1979 Regulations imposed the requirement that such a lawyer should “*work in conjunction*

*with a lawyer who is entitled to practise before the judicial authority in question and who would, where necessary, be answerable to that authority*". This raised an issue as to whether V.K.'s German lawyer could be required to work in conjunction with an Irish lawyer, even where he would have been entitled to represent himself before the Supreme Court.

**53.** In my view, counsel for the defendants is quite correct in submitting that this case concerned the right of a lawyer qualified elsewhere in the European Union to act on behalf of a litigant before the Irish courts and this is what triggered the application of the Regulations, the Directive, and the precursor of Article 57 TFEU. This application is entirely different as it relates to an Irish lawyer who has qualified as a barrister in Ireland and who, as such, is subject to the restrictions contained in the Rules of the Superior Courts in the same way as any other Irish barrister.

**54.** It should be noted also that the CJEU, in that case, specifically stated that restrictions on the freedom to provide services could be imposed for certain legitimate reasons, including the protection of consumers, and in particular recipients of legal services provided by persons involved in the administration of justice, as well as the proper administration of justice itself, saying (at para. 22) that these objectives "*may be regarded as overriding requirements in the public interest capable of justifying restrictions on the freedom to provide services.*"

**55.** The King's Inns, the Law Society, and the LSRA have pointed to various regulatory requirements which are imposed on solicitors in the interests of protecting consumers of legal services, *i.e.*, clients and litigants, such as the requirement to have proper and adequate professional indemnity insurance. They have also pointed to the entitlement of the courts to enforce undertakings given by solicitors as an important aspect of the administration of justice. Were Article 57 TFEU engaged in this case, these matters would be relevant to a consideration of whether the restrictions on barristers taking direct instructions are in any event permissible having regard to the overriding requirements of the public interest.

**56.** It might well be that the public interest considerations involved are sufficiently important to refuse to permit a departure from the current requirements that a client should instruct a solicitor to represent him or her in the High Court and that counsel, who receive different training and are subject to differing legal and regulatory requirements, cannot be retained on direct instructions. The submissions of the Law Society, the King's Inns and the LSRA would most likely be relevant to an analysis of where the public interest lies.

**57.** However, I do not have to decide that as Article 57 TFEU is not applicable to the entitlement of an Irish barrister to take instructions directly from a client, as this application arises out of a wholly internal matter, not governed by Union law.

**58.** As a result, Ms. Houston's reliance on Article 47 CFR and Article 57 TFEU are entirely misplaced. The plaintiff has not identified any right or freedom guaranteed by Union law which is applicable either to the interlocutory application which is now for determination or indeed the Substantive Proceedings.

**59.** Indeed, as the defendants have pointed out by reference to Article 47 CFR, the plaintiff has tendered no evidence which would suggest that his access to the courts or his right to an effective remedy have in fact been infringed by requiring him to instruct a solicitor. There is no evidence whatsoever that he cannot comply with that requirement and the entire application has been moved on the basis that he simply would prefer to instruct Ms. Houston BL directly.

**60.** As a consequence, this application must fail as no legal basis for compelling this Court to disapply its own Rules has been identified.

**61.** In refusing the application, it should of course be made perfectly clear that the plaintiff is entitled to representation, should he wish to be represented. It is open to him at any time to retain a solicitor and, in that regard, it must be stressed that solicitors have, for many years now, enjoyed a full right of audience before the courts, including the Superior

Courts. There is no obligation on him to retain counsel and, although counsel are usually retained as they are proficient advocates as well as often developing specialisations in particular areas of substantive law, the plaintiff is entitled to be represented should he not wish to appear in person. The suggestion, therefore, that the plaintiff's right to be represented has somehow been breached by prohibiting him from instructing counsel directly is misconceived. The plaintiff is entirely free to choose representation from the solicitors' profession, which is the profession having the necessary qualifications, expertise and which is subject to the regulation necessary for the general conduct of proceedings.

**62.** For the avoidance of doubt, a submission was made that the court was sitting as a "*European court*". This is not correct. The court is an Irish court – or, in Union law terms, a national court – and is obliged to give effect to the doctrine of supremacy, whereby Union law is superior to national law in those areas where it is applicable. That in turn requires conflicting rules of national law, whether Rules of Court or previous caselaw of this Court, to be disapplied. In addition, this court must give effect to directly effective provisions of Union law

**63.** However, the plaintiff has failed to demonstrate that the Substantive Proceedings or indeed his interlocutory application fall within the scope of Union law.

### *Conclusion*

**64.** I therefore refuse the plaintiff's application and it is not necessary in those circumstances to deal with the applications of the LSRA, the King's Inns and the Law Society, to be joined as *amici curiae* to the application.