

### **Rule of Law Topics: ISME Responses**

#### **Question 1: Follow-up since 2023 Report**

The bill to reform the Defamation Act has not been published.

Per last year's report, the Government was to publish a study on legal costs. We understand that this report was completed by Indecon Consultants in May 2023, but has not been published.

#### **Question 12: Accessibility of the Courts**

High legal fees remain an issue for access to justice.

#### **Question 18: Length of Proceedings**

There has been no known improvement in the time to conclude business cases in the court.

#### **Question 20: Relevant Authorities.**

The Legal Services Regulatory Authority (LSRA) is progressively closing misconduct complaints against lawyers which it has deemed to be admissible cases. ISME has made 11 complaints of misconduct to the LSRA against lawyers we consider to have taken vexatious personal injuries cases, or cases where the evidence adduced by plaintiffs in court appeared to be false.

The ability of lenders to enforce security by way of property repossession in Ireland is complex and difficult.<sup>1</sup> This results in Ireland having interest charges for property lending that are significantly higher than other eurozone countries.

#### **Question 23: Measures to enhance integrity in the public sector.**

Government has failed to appeal decisions made by the High Court<sup>2</sup> and Supreme Court<sup>3</sup> in relation to cervical screening which are believed to be clinically flawed.

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<sup>1</sup>

[https://www.dilloneustace.com/uploads/files/Recent20Cases20on20Enforcement20of20Mortgages20for20Owners20of20NPL20Portfolios\\_7931335\\_5203.pdf](https://www.dilloneustace.com/uploads/files/Recent20Cases20on20Enforcement20of20Mortgages20for20Owners20of20NPL20Portfolios_7931335_5203.pdf)

<sup>2</sup> [https://www.courts.ie/view/judgments/690b08d3-ab3c-470a-ae61-b3a9802c5093/a71c04ac-be78-4145-99a5-57356fcae016/2019\\_IEHC\\_268\\_1.pdf/pdf](https://www.courts.ie/view/judgments/690b08d3-ab3c-470a-ae61-b3a9802c5093/a71c04ac-be78-4145-99a5-57356fcae016/2019_IEHC_268_1.pdf/pdf)

<sup>3</sup> [https://www.courts.ie/view/judgments/7784827d-5344-4506-a784-312d988743fa/7bf8ad67-6173-4564-ad0b-2505f20f5f51/2020\\_IESC\\_6.pdf/pdf](https://www.courts.ie/view/judgments/7784827d-5344-4506-a784-312d988743fa/7bf8ad67-6173-4564-ad0b-2505f20f5f51/2020_IESC_6.pdf/pdf)

The Irish Health Service Executive and the WHO have completed a critique<sup>4</sup> of the legal attack on cervical screening, and the difference between diagnostic and screening testing. This means the courts effectively enforce a “zero error” policy regarding cervical screening, something which it is clinically impossible to do.

The failure to defend another case means that, as things stand, Ireland faces a legal liability in excess of €300m<sup>5</sup> in running a cervical screening program for Irish women. The legal costs associated with this litigation will typically run between 70% and 80% of the compensation awarded or settled.<sup>67</sup>

### **Question 31: Potential obstacles to investigation and prosecution**

ISME has withdrawn a complaint to the LSRA against a lawyer alleging misconduct when that solicitor threatened defamation proceedings against us.

Individuals abusing the complexity of the planning system by filing environmental planning appeals against housing developments, and then offering to withdraw them for financial gain. This has been highlighted by investigative journalism, not through police action.

### **Question 33: Media pluralism and media freedom.**

A bill to reform the Defamation Act was due to be published last year but has not been. The proposed Heads of Bill published by the Department of Justice do not mention a harm test, or a cap on damages. In our opinion, a failure to introduce a harm test or to cap damages will mean that an amended Defamation Act in Ireland will still not be capable of vindication the ECHR Article 10 right to freedom of expression.

### **Question 45: Framework, policy and use of impact assessments**

We do not believe Government is conducting an adequate level of pre-legislative scrutiny, or conducting the SME test as part of the legislative process. There are many consultations, but increasingly, they feature “closed” questions.

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<sup>4</sup> [https://publications.iarc.fr/\\_publications/media/download/6935/6abe3f6496395b6b242dc4af4b7e4112c3c4dcdc.pdf](https://publications.iarc.fr/_publications/media/download/6935/6abe3f6496395b6b242dc4af4b7e4112c3c4dcdc.pdf)

<sup>5</sup> <https://www.irishtimes.com/health/2023/07/06/exponential-rise-in-legal-claims-could-make-cervicalcheck-financially-unsustainable-report-warns/>

<sup>6</sup> [https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/national-claims-information-database/employers-liability-and-public-liability-insurance-mid-year-data-release.pdf?sfvrsn=a06e9f1d\\_5](https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/national-claims-information-database/employers-liability-and-public-liability-insurance-mid-year-data-release.pdf?sfvrsn=a06e9f1d_5)

<sup>7</sup> [https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/national-claims-information-database/private-motor-insurance-report-5.pdf?sfvrsn=1bb9d1d\\_5](https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/national-claims-information-database/private-motor-insurance-report-5.pdf?sfvrsn=1bb9d1d_5)

**Question 48: Regime for constitutional review of laws**

This is extremely slow, and is generally conducted via the Law Reform Commission. For example, there is a constitutional right to freedom of expression in the Irish Constitution, but this has not been subject to constitutional review, even after cases have been taken by Irish people to the ECHR. The judiciary is not seen to defend freedom of expression.

In a lengthy contribution to the Parliamentary Justice Committee concerning the General Scheme of the Defamation (Amendment) Bill on 20<sup>th</sup> June 2023, Mr Justice Bernard Barton did not once refer to freedom of expression or free speech.<sup>8</sup> This is extraordinary in the circumstances where the ECHR has made such critical reference to our defamation laws.

**Question 56: Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders.**

As referenced in Questions 31 and 43, ISME believes that citizens and civil society bodies such as ourselves are not protected by Irish law because of the nature of our Defamation Act. We believe this is because there is a widespread use of defamation proceedings by politicians of all political parties, and therefore the Defamation Act as currently worded is seen as useful and convenient. A non-exhaustive list of defamation cases by Irish politicians is annexed below. Defamation proceedings are also seen as financially lucrative by the legal profession as they are almost always settled. As Ireland has a very weak “Master” system in our courts, there is no effective barrier to vexatious or abusive defamation cases being brought before them.

**Question 59: Measures to foster a rule of law culture.**

A robust system allowing those who had successfully defended a civil lawsuit to recover their legal costs from plaintiffs would act as a strong deterrent to vexatious and abusive litigation. Currently there is none, a matter which (a minority) of superior court judges have referred to in judgments.

We believe that further reform of our legal system to ensure fair treatment of consumers is required.<sup>9</sup>

Despite lobbying for the enactment of a perjury statute, ISME has been advised by the Courts Service that it is unaware of any prosecutions of false affidavits tendered before court.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Neil McDonnell', followed by a long horizontal line and a circular flourish.

Neil McDonnell  
Chief Executive

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<sup>8</sup> [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_justice/2023-06-20/2/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_justice/2023-06-20/2/)

<sup>9</sup> <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/Does-the-law-protect-incumbents-FINAL-29APR16.pdf>

## **Sinn Fein**

General:

<https://www.irishtimes.com/politics/2022/10/22/the-big-chill-the-silencing-effect-of-sinn-fein-legal-threats-against-politicians/>

<https://www.independent.ie/irish-news/politics/defamation-cases-are-never-taken-lightly-sinn-fein-leader-mary-lou-macdonald/a1710110935.html>

Andrews V Irish Times & McGee

<https://www.irishtimes.com/crime-law/courts/2023/11/07/sinn-fein-td-chris-andrews-sues-the-irish-times/>

Lanigan V Shane Ross

<https://www.independent.ie/irish-news/politics/mary-lou-mcdonalds-husband-threatens-to-sue-shane-ross-for-defamation-42088239.html>

O'Laoghaire V RTE

<https://www.irishtimes.com/news/politics/sinn-fein-td-donnchadh-o-laoghaire-settles-defamation-claim-against-rte-1.4530486>

Kelly v Sunday World

<https://www.theguardian.com/politics/2011/nov/10/gerry-kelly-wins-libel-award>

Quinlivan V O'Dea

<https://www.thetimes.co.uk/article/willie-odea-pays-100-000-for-slander-wzfrh7pbdkr>

McDonald V RTÉ

<https://www.irishtimes.com/news/ireland/irish-news/mary-lou-mcdonald-takes-high-court-case-against-rte-over-alleged-defamation-1.4862314>

McDonald V Breathnach

<https://www.independent.ie/irish-news/politics/mcdonald-sues-fianna-fail-td-for-defamation-over-twitter-comment/37650872.html>

McDonald & Doherty V Examiner

<https://extra.ie/2022/11/07/news/mcdonald-two-other-defamation-suits>

Kenny V Mediahuis, AGS and Ireland

<https://www.irishtimes.com/crime-law/courts/2023/09/24/sinn-fein-td-sues-an-garda-siochana-independent-titles-publisher-and-state/>

Adams v BBC

<https://www.irishtimes.com/news/crime-and-law/courts/high-court/gerry-adams-fails-in-bid-to-block-part-of-bbc-defence-in-defamation-case-1.4824381>

Adams v Sunday World

<https://www.independent.ie/irish-news/courts/gerry-adams-defamation-case-against-sunday-world-settled-at-the-high-court/41010074.html>

Finucane V Collins

<https://www.sundayworld.com/news/irish-news/sinn-feins-john-finucane-suing-dup-councillor-over-twitter-allegations-about-supporting-and-promoting-ira/131537467.html>

Kelly V O'Doherty & Ruth Dudley Edwards

<https://www.newsletter.co.uk/news/opinion/columnists/ruth-dudley-edwards-another-republican-legal-claim-being-made-against-me-3739023>

(This case has been thrown out by the high Court Belfast with costs order against Kelly)

<https://www.irishtimes.com/crime-law/courts/2024/01/10/gerry-kelly-facing-legal-bill-of-at-least-150000-after-frivolous-libel-action/>

Lappin V Mediahuis, Breen & Ruth Dudley Edwards

<https://www.breakingnews.ie/ireland/sinn-fein-constituency-organisers-defamation-claim-against-mediahuis-and-reporter-dismissed-1558602.html>

O'Laoghaire V RTE

<https://www.irishtimes.com/news/politics/sinn-fein-td-donnchadh-o-laoghaire-settles-defamation-claim-against-rte-1.4530486>

Morrison V RTE

<https://www.anphoblacht.com/contents/25874>

Kehoe V RTE

<https://www.irishtimes.com/news/crime-and-law/courts/high-court/ex-ira-member-nicky-kehoe-wins-3-500-in-rte-defamation-case-1.3406026>

O'Snodaigh V Sunday World

<https://www.irishtimes.com/news/sinn-fein-td-sues-sunday-world-1.870141>

O'Neill V Carson

<https://www.bbc.com/news/uk-northern-ireland-67350145>

Carthy V McFadden

<https://www.thetimes.co.uk/article/sinn-fein-mep-takes-action-over-killing-tweet-n5sfv0wrq>

Maskey V Irish Times

<https://www.thephoenix.ie/article/alex-maskey-v-irish-times/>

PADRAIC WILSON V IRISH TIMES On the same date and using the same Belfast solicitors' firm as the case above, Maskey, Wilson, a former IRA commanding officer and Sinn Féin director of international

affairs, also lodged a High Court case against The Irish Times. As with Maskey, there are no details on what it relates to, and the case is also described by the same source as “dormant”.

### **Fianna Fail**

McDaid v Examiner

<https://www.independent.ie/irish-news/examiner-to-pay-mcdaid-90000-over-sex-abuse-libel/26132452.html>

Cooper V RTE

<https://www.rte.ie/archives/2014/0428/612174-beverley-cooper-flynn-loses-libel-appeal-against-rte-2004/>

<https://www.independent.ie/irish-news/beverley-flynn-pays-12m-libel-bill-after-2300-days-26311928.html>

Reynolds V Sunday Times

<https://www.irishtimes.com/news/reynolds-libel-case-against-sunday-times-settled-1.1101516>

Byrne V Google

<https://www.independent.ie/irish-news/courts/senator-in-defamation-claim-after-web-photo-mix-up-29794055.html>

Fahey V Irish Daily Mail

<https://www.newstalk.com/news/former-minister-settles-defamation-action-738601>

O’Rourke V Twitter

<https://www.breakingnews.ie/ireland/former-td-allowed-to-add-person-unknown-to-defamation-case-1072031.html>

Keaveney V O’Brien & Red Flag

<https://www.irishtimes.com/news/crime-and-law/colm-keaveney-in-defamation-move-against-inm-1.2526174>

### **Fine Gael**

Bailey v Mirror Group

<https://www.irishtimes.com/crime-law/courts/2023/11/07/mirror-group-newspapers-apologises-to-former-td-maria-bailey-and-accepts-it-made-false-claims/>

<https://www.irishtimes.com/news/crime-and-law/maria-bailey-takes-action-against-newspaper-over-swing-gate-coverage-1.4265113>

Coffey V Kilkenny People

<https://www.irishtimes.com/news/crime-and-law/courts/high-court/paudie-coffey-settles-high-court-defamation-action-with-newspaper-1.3972930>

Meade V O'Connor

<https://www.irishtimes.com/news/crime-and-law/courts/high-court/fg-activist-apologises-for-text-message-to-councillor-about-taxes-1.2627841>

Leddy V Donnelly

<https://www.irishtimes.com/news/crime-and-law/courts/high-court/fine-gael-councillor-receives-unreserved-apology-from-sinn-fein-activist-1.3894883>

Murphy V Irish Daily Mail

<https://www.thetimes.co.uk/article/dara-murphy-sues-irish-mail-over-double-jobbing-claim-hllktlq75>

## **Labour**

Costello V Mail on Sunday

<https://www.irishtimes.com/news/crime-and-law/courts/high-court/ex-labour-td-joe-costello-settles-defamation-case-with-mail-on-sunday-1.3895662>