



## May 2021

### Landmark Differential Costs Order Made Against Plaintiff

The Court of Appeal has today delivered a significant costs ruling in the case of *McKeown v Crosby & Anor* [2021] IECA 139.

#### Award of Damages

The principal judgment in this case was handed down by the Court of Appeal on 11 August 2020, in which the plaintiff's award of damages of €76,000 in the High Court was substantially reduced to €41,000. You can read more about that judgment in our previous briefing [here](#).

#### Issue of Costs

At the beginning of the High Court proceedings, the defendants had indicated their intention to seek a differential costs order should the damages ultimately awarded fall short of the High Court jurisdiction.

Following the High Court hearing, the defendants' solicitors then also issued a "Calderbank" letter (see our previous briefing on the purpose and effect of Calderbank letters [here](#)) offering a sum of €47,156 plus Circuit Court costs in settlement, subject to certain provisos. That offer was declined by the plaintiff and the defendants issued a notice of appeal. The plaintiff then made a counter-offer or "reverse Calderbank" indicating that they would settle for a sum of €61,000 plus costs at the High Court level. This was also not accepted and the appeal proceeded.

For further information on any of the issues discussed in this article please contact:



**Lorna Kennedy**  
Partner, Litigation  
DD: + 353 (0)1 673 1789  
[lorna.kennedy@dilloneustace.ie](mailto:lorna.kennedy@dilloneustace.ie)



**Elaine Healy**  
Partner, Litigation  
DD: + 353 (0)1 673 1797  
[elaine.healy@dilloneustace.ie](mailto:elaine.healy@dilloneustace.ie)

## Judgment

Ultimately, the Court of Appeal agreed with the defendants that there was no basis on which it could exercise its discretion to decline to make a differential costs order in the circumstances. The plaintiff was awarded Circuit Court costs on the basis of the reduced amount of damages of €41,000, whilst the defendants were awarded both the costs of the appeal and the excess costs incurred by them in defending the case in the High Court.

## Commentary

This case represents a cautionary tale for plaintiffs, highlighting the vital importance of ensuring that proceedings are brought at the correct jurisdictional level.

## Dillon Eustace

### DILLON EUSTACE

**Dublin**

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

**Cayman Islands**

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

**New York**

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

**Tokyo**

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

**DISCLAIMER:**

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

**Copyright Notice:**

© 2021 Dillon Eustace. All rights reserved.