[2024] IEHC 566

THE HIGH COURT

[Record No. 2024/111/SS]

IN THE MATTER OF SECTION 52 OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACT 1961, AS AMENDED

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

PROSECUTOR

AND

S.M.

DEFENDANT

Judgment delivered by Mr Justice Barry O'Donnell on the 2nd day of October 2024

INTRODUCTION

1. This judgment answers a consultative case stated from the District Court. The questions presented arose at an early stage in the prosecution of the defendant on certain criminal charges and concern an application for legal aid. At the outset of the proceedings, the court made an order anonymising the identity of the defendant. This was done with the consent of the parties and on the basis that the defendant is a person under the age of eighteen years old and that his identity is protected in the underlying criminal proceedings.

2. However, the primary and preliminary issue that requires consideration is not the legal questions posed by the District Court, but, instead, is whether, as urged for by the defendant, this court should substantially reformulate the questions presented in order to address legal questions that were not asked by the learned District Judge.

3. While there is always scope to reformulate the legal questions presented in a consultative case stated or to provide some explanatory context for an answer, that reformulation must be accomplished (a) by reference to the facts as found by the District Court, and, in light of those facts, (b) to ensure that the legal issues that gave rise to the case stated are answered clearly so that the District Court is assisted in resolving the case before him or her.

4. In this case, I have concluded that the proposed reformulation cannot be permitted. Primarily this is because the reformulation is premised on a factual scenario that contradicts the facts found by the District Court and that are set out clearly and carefully by the learned Judge in the body of the case stated. In addition, the reformulated questions – even if they are questions that have the potential to arise at some point in the underlying proceedings – are not questions in respect of which the learned Judge has sought assistance. Accordingly, if the course proposed by the defendant was adopted it would have the effect of having the court provide an advisory opinion on a hypothetical question. That is not the purpose of a consultative case stated. At a more systemic level, the proposed course of action has the potential to develop the important statutory facility provided for in section 52(1) of the Courts (Supplemental Provisions) Act, 1961 (the 1961 Act) into a broader form of mid trial quasi-appeal from the District Court, and I consider that such a course is not consistent with the terms of section 52(1) of the 1961 Act.

THE CONSULTATIVE CASE STATED

5. In the consultative case, which is dated 11 January 2024, District Court Judge Cody stated a case pursuant to s. 52 (1) of the 1961 Act for the opinion of the High Court. The following questions were presented: -

(i) *On granting one legal aid (District Court) certificate pursuant to s. 2 of the Criminal Justice (Legal Aid) Act, 1962 can a District Judge assign three different solicitors to represent an accused?*

(ii) *If the answer to question (i) be in the affirmative, can a District Court Judge take into account in determining if the accused should be represented by one solicitor or a number of solicitors that it may be not in the "interests of justice" and in that regard take into account the best interests of the accused, the effective administration of justice, and the broader public interest?*

(iii) *If the answer to question (i) be in the affirmative should the assignment of a number of solicitors be limited to cases where it is established that because of the particular gravity and complexity of the case or other exceptional circumstances, the court is satisfied that such additional representation is essential in the interest of justice?*

6. It is important to note that the learned Judge decided to state a case to this court of his own motion. Although, as is the normal and proper course, the parties to the prosecution were provided with the opportunity to make suggestions about the consultative case stated, it was the learned Judge who chose the questions and finalised the findings of fact. Hence, this case stated was firmly rooted in the desire of the District Court to obtain answers to the specific questions that presented him with concerns.

7. By the time the matter came on for hearing before this court, it was apparent that the parties to these proceedings essentially agreed as to the answers that ought to be given to the questions posed by the District Court, subject to this court agreeing with that position. The defendant took the view that the questions presented by the District Judge were not particularly controversial and did not reflect what the defendant saw as the substantive issue. In that regard, instead of the question as to whether it was possible to have three separate solicitors assigned on a single legal aid certificate, the defendant took the view that the real issue that required resolution was whether three separate legal aid certificates should have been granted. The proposed reformulated question was framed in the following way in the defendant's submissions: -

> *"Whether the District Judge had jurisdiction to assign three separate solicitors to the Defendant, to cover three separate and unrelated offences, as opposed to assigning one solicitor to deal with all three."*

8. Accordingly, the preliminary question that the court must address is whether that reformulated question should be answered. The prosecutor took the view that while it was accepted that the High Court can reformulate a question of law opposed by a District Court on a consultative case stated pursuant to s. 52 of the 1961 Act, that reformulation ought only be directed towards permitting the High Court to deal with the real issue arising on the facts as found by the District Court. The prosecutor took the view that the proposed reformulated question in essence required the court to either ignore or override the findings of fact which were made by the District Court as part of the consultative case stated process and instead to provide what amounted to an advisory opinion on an abstract or hypothetical question that had not arisen or at least had not arisen at this point in the underlying proceedings.

9. In addressing the issues, the parties referred to and the court had available to it transcripts of the hearings that occurred before the District Court prior to the formulation of the case stated. While the primary focus of the court must be on the facts as found in the consultative case stated, the availability of the transcripts was of some assistance in providing a level of context for the issues as presented.

10. As noted in the comprehensive recitation of the facts found by the District Judge in the consultative case stated, the defendant was a minor who appeared before a sitting of the District Court at Portlaoise on the 23 March 2023 charged with ten separate offences. Five of the offences were alleged to have occurred on the 3 March 2023, one of the offences was on the 12 March 2023, one on the 20 March 2023, two on the 21 March 2023 and one of the offences was alleged to have occurred on a date unknown between the 19 March and the 21 March 2023. The alleged offences concerned damage to property, trespass and certain theft offences.

11. At an initial hearing on the 23 March 2023, the defendant was admitted to bail on certain conditions. There was then an application for a certificate for legal aid. Although the defendant's legal representatives seem to have taken issue with how that application ought to be characterised, it is of critical importance to note, for the purposes of the consultative case stated, the District Judge made very clear findings of fact about what had occurred. This is explained by the District Judge in the part of the consultative case stated as follows, and I have underlined particular matters that should be emphasised: -

> *"5. Following my decision on the question of bail, the solicitor for the defendant, Mr. Michael Byrne, made <u>an application for a certificate for legal aid</u> as provided for by section 2 of the Criminal Justice (Legal Aid) Act, 1962, as amended. Mr. Byrne began to ask for a Mr. McCarthy, in whose offices Mr.*

Byrne practices, to be the assigned solicitor in respect of the offence as set out on charge sheet 24500372. Mr. Byrne asked that he (Mr. Byrne) be the assigned solicitor in respect of the charge sheet numbered 24500404 and that a Ms. Willox be assigned in respect of the charge sheet numbered 24500307.

6. *I enquired of Mr. Byrne as to my jurisdiction to assign three solicitors to a Defendant on the granting of a Legal Aid (District Court) Certificate pursuant to the s.2 of the 1962 Act, and also Regulation 7(1) of S.I. No. 12/965 Criminal Justice (Legal Aid) Regulations, 1965 (hereinafter "the 1965 Regulations"). Both the 1962 Act and the 1965 Regulations refer, in several places, to the assignment of a single solicitor for an accused person.*

7. *I asked Mr. Byrne to address me on the issue and to outline the legislation or case-law that would allow me to assign more than one solicitor on the granting of a Legal Aid (District Court) Certificate. Mr. Byrne did not bring any authority to my attention in this regard. I suggested that the position of the Defendant ought to be put in writing and that written submissions on the legal issue arising could be furnished the following week.*

8. *Mr. Byrne then simply repeated that he was asking that his colleague Mr. McCarthy be assigned on charge sheet (ending 372), that he be assigned on charge sheet (ending 404) and that a Ms. Willow be assigned on charge sheet (Ending 307). He stated that they were three separate alleged offences.*

9. *I again asked Mr. Byrne to address me on the jurisdiction arising under the 1962 Act and the 1965 Regulations but he did not cite any authority in this regard.*

10. Mr. Byrne asked if I was deferring on the question of legal aid. I made clear that I had granted a certificate to the Defendant, and that the only issue was the assignment of either one solicitor or three solicitors, as sought.

11. No application for separate certificates had been made on behalf of the Defendant. The application was for three assignments on the granting of one certificate.

12. In his written submission received on 3 May 2023, Mr. Byrne submitted as follows:

> *"4. The defendant's solicitor, Mr. Byrne, on instructions from the applicant, made applications for District Court (legal aid) Certificates in respect of the relevant prosecutions referred to above and, as they related to separate and distinct prosecutions he applied to have separate solicitors assigned to those prosecutions.*
>
> *5. District Judge Cody questioned whether he had the legislative authority to assign the solicitors as nominated by the defendant and indicated the application was not in conformity with either section 2 of the Criminal Justice (Legal Aid) Act, 1962, nor Regulation 7 (1) Criminal Justice (Legal Aid) Regulations, 1965. Mr Byrne disagreed and, accordingly, written legal submissions were sought on the issue."*

13. A copy of the written legal submissions furnished by the Defendant are appended herein at Appendix 2.

14. I wish to make it clear that this is not what happened. There was no application for separate certificates, rather there was a single application for legal aid, not applications. There was an application for the assignment of three solicitors to three separate charges.

15. I wish to make it clear that I did not question whether I had the legislative authority to assign the solicitors as nominated, rather I asked what authority I had to assign three solicitors on foot of a single application for legal aid.

16. What is clearly in issue in this case is not the nomination of a single solicitor or the acceptability of one of those solicitors, but the issue is the nomination of multiple solicitors for the same accused person, in this case a child. Mr. Byrne's written submission does not address this issue. But in so far as Mr. Byrne relies on authorities quoted, they all refer to, "a solicitor" or "the solicitor". None of the cases referenced relate to the appointment of multiple solicitors to the same accused.

17. When the matter was before the District Court on 4 May 2023, I indicated to Mr. Byrne that the submissions did not address this issue. Mr. Byrne stated that "The application was for a legal aid certificate for three solicitors on three separate matters relating to (SM). That was the application".

18. This could suggest that there were three applications for legal aid which there were not. There was an application for three assignments." [Emphasis added]

12. Thereafter in the body of the consultative case stated, the learned District Judge sets out his understanding of the relevant legal provisions, the central issues that he saw as arising by reference to case law and he sets out in detail the reasons why the opinion was sought of the High Court in respect of the three specific questions presented.

THE TRANSCRIPTS

13. At the hearing of the consultative case stated the parties agreed that the court should see the only certificate which was granted by the District Judge. This is dated 11 May 2023, and it records that Mr. Byrne had been granted a certificate for free legal aid in respect of charge sheet ending 404, and that Mr. Byrne had been assigned as the relevant solicitor in that regard.

14. To the extent that the transcripts of the hearings are relevant, it appears clear to me that when the issue of legal aid arose at the hearing on the 23 March 2023 (which primarily was concerned with the question of bail), it is possible that there may have been some element of the solicitor for the defendant and the District Judge operating at cross purposes. However, it is abundantly clear from that transcript that, from the perspective of the District Judge, he had granted a certificate of legal aid upon an application been made in that respect by or on behalf of the defendant; and thereafter deferred the question of whether, as appears to have been contended for by the solicitor for the defendant, that separate legal aid certificates should be granted in respect of separate charges relating to the defendant.

15. The defendant's solicitor made written legal submissions to the District Judge and, on the 25 May 2023, there was a further hearing and the District Court made his ruling. It was clear at that point that the District Judge intended to refer a question or questions for the opinion of the High Court. To a very large extent the ruling of the District Judge on the 25 May 2023 reflects the findings of fact as set out in the consultative case stated document. At the conclusion of the ruling, the District Judge considered the question of if, contrary to what he had found, there was an application for three separate certificates for three different solicitors,

how that should be addressed. However, it is clear that he did so for the purposes of then considering the question of, *inter alia* whether the particular gravity and complexity or exceptional circumstances attaching to the case would justify such an approach. In that regard the District Judge made clear at pg. 7 of the transcript that it was *"abundantly clear to me that these cases could not be described in anyway as either being grave or complex"* and the court also went on to consider what the court saw as the practical difficulties associated with a vulnerable child being required to deal with three separate representations in relation to what he described as cases that were minor in nature.

16. When the District Court came to proposing a formulation of the questions that he intended to present to the High Court, he made it clear that the questions were in draft form and, as transpired, would have to be the subject of further discussion between the court and the parties. The draft questions, which in substance reflected the questions presented in the final version of the consultative case stated, included one additional question which was not sent for the opinion of the High Court. This was framed as follows at the conclusion of the hearing on 25 May 2023:-

> *"No. 2, on the granting of a number of legal aid certificates with a number of different solicitors appearing for the same person, is the granting of a number of legal aid certificates to different solicitors appearing for the same person on the same day contrary to section 2 and Regulation 7.1 and Regulation 7.4 of the Legal Aid Regulations."*

17. It can be noted that the above question – which was considered by the District Judge in May 2023 – reflects the primary question that the defendant proposed should be addressed by the High Court if the case stated was to be reformulated.

THE ARGUMENTS

18. The court has had the benefit of very helpful and succinct written and oral written submissions from both parties.

19. Essentially, in pressing for the proposed reformulation, the defendant argued that even if the court was bound by the findings of fact, the court retained a discretion to reformulate the legal question in order to ensure that the "real issues" were resolved. In that regard, it was suggested that even if only one legal aid certificate had been granted to the defendant for one solicitor in respect of the charge ending 404, there was a likelihood that applications would be made for further certificates so that two other solicitors could be assigned in respect of other charges. In that way it was submitted that the issue was not strictly moot or advisory.

20. The Director accepted that the High Court was entitled to reformulate the legal questions presented in a consultative case stated, but that entitlement was strictly qualified by the need to resolve the questions by reference to the facts as found by the District Court. The Director was clear that the proposed reformulation in this case should not be entertained because it was grounded in a factual premise that contradicted the facts found in the consultative case stated: the learned Judge had found clearly and repeatedly that he was requested to grant a single legal aid certificate. Insofar as there was any prospect of further applications being made for additional certificates, that had not yet occurred. Accordingly, the court was being asked to provide an advisory opinion to the District Court

21. Both parties referred extensively to the case law that addresses the general nature of the relationship between the District Court and the High Court as provided for in section 52(1) of the 1961 Act, and on the necessity for a consultative case stated to be grounded in findings of fact.

APPLICABLE LEGAL PRINCIPLES

22. The case law demonstrates the crucial importance of having clear findings of fact to provide a basis for addressing the legal questions posed in a consultative case stated. As noted by Hanna J. in *Attorney General v M'Loughlin* [1931] IR 480:

> *"This Court is not a moot for the decision of any questions which may occur to the District Justice…"*

23. In *DPP v Davitt and The Attorney General* [2023] IESC 17, the Supreme Court was considering an appeal from a decision of the High Court on a case stated by the District Court. The question presented in the case stated was whether a member of An Garda Siochána who was not the prosecuting member and had not initiated the proceedings had a right of audience to appear in criminal proceedings against the respondent in the District Court. The Court made a number of observations that reiterated the nature of the consultative case stated procedure and the importance of findings of facts. In the judgment, Dunne J. began by noting the relevant provision in the District Court Rules, as amended. In that regard Order 102, Rule 12, provides as follows*:*

> *"Where a Judge grants an application pursuant to section 2 of the Act of 1857 or a request pursuant to section 52 of the Act of 1961, or decides pursuant to the said section 52 to refer, without request, a question of law to the High Court for determination, such*

Judge shall prepare and sign the case stated … To secure agreement between the parties as to the facts the Judge may, if he or she thinks fit … submit a draft of the case to or receive a draft from such parties. In the event of a dispute between the parties as to the facts, such facts shall be found by the Judge."

24. Dunne J. made clear that where the parties are afforded the opportunity to comment on the facts set out in the draft case stated, the facts are found by the District Judge. One of the issue in that case was that the DPP had sought to refer to facts that were not set out in the body of the case stated. The High Court had decided that it was bound by the facts as found and the legal issues were confined to those findings, and as such the High Court declined to take account of the additional facts that the DPP sought to agitate. In that regard, the Supreme Court observed: -

"*39. The importance of finding the facts for the purpose of determining a consultative case stated was described in the case of DPP (Travers) v. Brennan [1998] 4 I.R. 67. In that case, a consultative case stated was submitted by the District Judge who had not heard the evidence and had not found the facts relevant to the point of law which had arisen. The Supreme Court (Lynch J.) said, at page 70, as follows:*

"The proper procedure leading to the stating of a consultative case for the opinion of the Superior Courts is for the District Judge to hear all the evidence relevant to the point of law arising, to find the facts relevant to such point of law in the light of such evidence, then to state the case posing the questions appropriate to elucidate the point of law and finally, on receiving the answers to those questions to decide the matter before him on the basis of those answers."

40. It goes without saying that for the purpose of any consultative case stated that the findings of fact set out therein are of crucial importance to the High Court in giving its

opinion on the issue of law raised. It follows, therefore, that if either of the parties have an issue about the facts set out in the consultative case stated this should be dealt with before the draft case stated is finalised. Matters of fact raised subsequently, by way of submissions or otherwise, simply cannot be taken into account as they are not part of the findings of fact determined by the District Judge relevant to the point of law raised in the consultative case stated.

41. Having said that two observations can be made. The first observation is that it is clearly the case, as was accepted by the DPP, that Sergeant Riley could not give evidence to the District Court as to the circumstances of the case. Only the prosecuting garda could have given the necessary evidence, as anything else would have been hearsay. The second point to make is that, as it has already been pointed out, the parties had an opportunity to invite the District Court Judge to amend the draft consultative case stated if it contained a finding of fact that was contended to be wrong, or alternatively, if some fact which was material to the issue had been omitted. This was not done, and therefore the observations of the trial judge at para. 7 of her judgment set out above seem to me to be correct.

25. Accordingly, this court must be confined to the facts that were found by the learned Judge. This is not a mere procedural formality; it goes to the essence of the consultative case stated jurisdiction. The case law has consistently emphasised the need for the District Court to set out findings of fact that allow for the proper consideration of the legal questions and for the High Court to confine itself to those facts.

26. The reason, or one of the main reasons, underpinning that requirement for facts was explained by O'Malley J. in the High Court in *O'Shea v West Wood Club Limited* [2015] IEHC

24. In that case, a consultative case stated was made to the High Court in the context of two sets of proceedings concerning the collection of commercial rates, where the complainants were rates collectors who acted on behalf of Dublin City Council. In that case the District Judge decided of his own motion to state a case where the question was whether the District Court had jurisdiction to consider a defence that sought to challenge the legality of the rates charged by Dublin City Council that was grounded in an argument on EU State Aid.

27. The difficulty presented by the case stated as formulated was that there was an absence of findings of fact, or sufficient findings of fact to allow the question to be answered. As noted by O'Malley J., even in cases where the District Court asks questions as to jurisdiction, *"There is always a factual substratum explaining why the question has arisen. Indeed, the issue of jurisdiction often depends on the facts of a case."*

28. O'Malley J. went on to make the following point which is critically important to the issues in this case: -

> *"63. It is not possible for this court to answer a question on a point of law without knowing whether it actually arises as an issue. To do so would be to engage in a moot. Putting the matter at its simplest, it is not possible in the case stated procedure to advise whether a court has jurisdiction to grant a particular remedy without knowing whether or not that court has reached a view of the facts tending to indicate that a breach has occurred which requires a remedy."*

29. In the premises the court found that it was not possible to reformulate the question since there was no finding of fact which could form the basis for such an exercise. In reaching that conclusion, O'Malley J. placed particular emphasis on the multiple authorities which made

clear that there must be findings of fact and evidence relevant to the point of law arising, see *Director of Public Prosecutions (Travers) v Brennan* [1998] 4 IR 67 and *Mitchelstown Co Op Society Ltd v The Commissioner for Valuation* [1989] IR 210. In the context of the *Mitchelstown Co Op* case Blayney J. had adopted as correct statement of principles from the Northern Ireland Court of Appeal in *Emerson v Hearty and Morgan* [1946] NI 35:-

> *"The case should set out clearly the Judge's findings of fact, and should also set out any inferences or conclusions of fact which he drew from those findings. The task of finding the facts and of drawing the proper inferences and conclusions of fact from the facts so found is the task of the Judge. It does not fall within the province of this Court. Accordingly it is not legitimate by setting out the evidence in the Case Stated and omitting any findings of fact to attempt to pass the task of finding the facts onto the Court of Appeal…"*

30. Insofar as the case law establishes an entitlement on the part of the High Court to reformulate the legal questions in a consultative case stated, this is qualified by the need for there to be findings of fact, and for the court to confine itself to those facts. Hence, in *DPP v Buckley* [2007] 3 IR 745 – a case relied on by the defendant in this case - Charleton J. in the High Court was presented with a consultative case stated in which the question was whether a defendant's admission that a substance recovered from this person was a controlled drug was sufficient evidence in a prosecution in the absence of a certificate of analysis from the Garda forensic science laboratory.

31. In addressing the case stated, Charleton J. was concerned that simply answering the question without reference to other facts which the court had found presented a danger of giving a misleading answer. In considering the relationship between the District Court and the High

Court in a consultative case stated, the court referred to the observations of Finlay C.J. in *Dublin Corporation v Ashley* [1986] IR 781 where he stated at pg. 785:-

> "*The purpose and effect of a consultative case stated by a Circuit Court Judge to the Supreme Court is to enable him to obtain the advice and opinion of the Supreme Court so as to assist him in reaching a correct legal decision. Having regard to that purpose and the relationship which exists between the two Courts, it would, in my view, be quite inappropriate for the Supreme Court, for any reason of procedure, to abstain from expressing a view on an issue of law which may determine the result of the case before the learned Circuit Court Judge."*

32. Charleton J. went on to note in the light of those observations:-

> *"[5] It follows that for the purpose of assisting the District Court, this court must look at the whole of the case stated and give advice on the basis of what Laffoy J.* in *National Authority for Occupational Safety and Health v. O'K Tools [1987] 1 IR 534 at 541 called:- 'the issue on which the District Court Judge requires guidance.' Therefore, a question may be reformulated and an answer given in the light of the whole of the case stated provided this does not exceed the facts as found for this purpose by the learned District Judge; Collins & O'Reilly, Civil Proceedings and the State (2nd Ed., Dublin, 2004), and the Director of Public Prosecutions (Comiskey) v Traynor [2005] IEHC 295, (Unreported, High Court, Murphy J., 27th July 2005)."* [emphasis added]

33. It is important to note that what occurred in *DPP v Buckley* was that the defendant had been stopped, searched and arrested. Following a caution, he admitted that a small quantity of brown substance that was found in his back pocket was cannabis. The Gardaí had also recovered as part of the search a balaclava, a pipe and a knife. At the close of the prosecution

case, in the absence of a certificate of analysis from the Garda forensic science laboratory, the defence had sought a direction. In that context, the District Court was concerned to understand whether the defendant's admission was sufficient to discharge the prosecutions burden and standard of proof. The answer given by the High Court went beyond merely giving a yes or no answer to the question presented, however the more expansive answer was given for the purpose of ensuring that it was properly contextualised having regard to the legal principles applicable to applications at the direction stage in a trial and having regard to the case law on proof of a controlled drug. Nevertheless, it is very clear from a consideration of that judgment that the answer given was firmly rooted in the facts as found by the District Judge.

34. The importance of the qualification that any reformulation of a legal question must be framed in the context of the facts as found by the District Court was emphasised by MacGrath J. in The *Child and Family Agency v L.B. and M.L*. [2018] IEHC 423. There, MacGrath J. also reviewed the authorities concerning a consultative case stated and the necessity for clear findings of fact and observed, having considered *DPP (Travers) v Brennan*, M*itchelstown Co Operative Society Limited* and *Emerson*:-

> *"42. Nevertheless, it seems clear that the above must be viewed in the light of dicta of Finlay C.J. and Charleton J. referred to at para. 36 above [DPP v Buckley and Dublin Corporation v Ashley], and that the Court should adopt a broad, helpful and purposive approach to the interpretation of the question being asked. But that does not mean that the fact-finding role of the District Judge is any the less crucial. Charleton J. made this clear in the passage quoted above where he stated in the ultimate sentence – "provided this does not exceed the facts as found for this purpose by the District Judge"."*

CONCLUSION ON REFORMULATION

35. Aside from the limits of the statutory jurisdiction and as expressed in s. 52 of the Act, at a level of principle one of the primary reasons why the District Court is required to set out clear findings of fact is so that this court is not required to answer moot or hypothetical questions or to provide general advisory opinions.

36. In this case, the District Judge in fact made very clear findings of fact and asked the legal questions that he saw arising on foot of those findings of fact. What the defendant is seeking to do is not only to divorce the reformulated question from those findings of fact but to invite the court to provide what amounts to an advisory opinion on a question that has not yet arisen in the case. It may well be that at a later stage in the proceedings before the District Court, events may occur which will provide a sufficient factual substratum for an appropriate consultative case stated to this Court regarding the question that the defendant seeks to have addressed. However, it is not for this Court to reformulate the question in order to address legal arguments grounded in a factual matrix which has not yet come to pass.

37. The reformulated question was:

> *Whether the District Judge had jurisdiction to assign three separate solicitors to the defendant, to cover three separate and unrelated offences, as opposed to assigning one solicitor to deal with all three.*

38. However, the findings of facts made by the learned Judge are very clear. At paragraph 14 of the consultative case stated the learned Judge explained:

"I wish to make it clear that this is not what happened. There was no application for separate certificates, rather there was a single application for legal aid, not applications. There was an application for the assignment of three solicitors to three separate charges."

39. In the premises the court is not satisfied that what has been proposed by the defendant is permissible.

THE QUESTIONS POSED IN THE CONSULTATIVE CASE STATED

40. The first question asked by the District Court was:

(i) On granting one Legal Aid (District Court) Certificate pursuant to s.2 of the Criminal Justice (Legal Aid) Act, 1962 can a District Court Judge assign three different solicitors to represent an accused?

41. As noted, the parties were agreed that there was no controversy about the correct answer to the first question, and that the remaining two questions did not arise in the light of the correct answer to that question. Nevertheless, the court is required to consider the question itself and to be satisfied as to the answer.

42. Section 2 of the Criminal Justice (Legal Aid) Act 1962 provides:

"*2(1) If it appears to the District Court before which a person charged with an offence or an alternative court within the meaning of section 5 of the Criminal Justice (Miscellaneous Provisions) Act, 1997 before which a person is appearing-*

(a) that the means of the person before it are insufficient to enable him to obtain legal aid, and

(b) that by reasons of the gravity of the offence with which he is charged or of exceptional circumstances it is essential in the interests of justice that he should have legal aid in the preparation and conduct of his defence before it,

the said District Court or the alternative court, as may be appropriate, shall, on application being made to it in that behalf, grant a certificate, in respect of him, for free legal aid (in this Act referred to as a legal aid (District court) certificate) and thereupon he shall be entitled to such aid and to have a solicitor and (where he is charged with murder and the said District Court or the alternative court, as the case may be, thinks fit) counsel assigned to him for that purpose in such manner as may be prescribed by regulations under section 10 of this Act.

(2) A decision of the District Court in relation to an application under this section shall be final and shall not be appealable."

43. Section 10 of the 1962 Act allows the Minister to make regulations providing for certain matters in the following way:

"*(1) The Minister may make regulations for carrying this Act into effect and the regulations may, in particular, prescribe:-*

(a) the form of legal aid certificates,

(b) the rates or scales of payment of any fees, costs or other expenses payable out of moneys provided by the Oireachtas pursuant to such certificates,

(c) the manner in which solicitors and counsel are to be assigned pursuant to such certificates."

44. Pursuant to section 10 of the 1962 Act, the Minster made the Criminal Justice (Legal Aid) Regulations 1965 (SI 12 of 1965). Regulation 7 provides:

> "*(1) Upon the grant of a certificate for free legal aid, the court granting the certificate shall, having taken into consideration the representations (if any) of the person to whom the certificate was granted, assign to him a solicitor from the appropriate list … to act for him in the preparation and conduct of his case*."

45. In the premises and particularly having regard to the portions of the legislation that have been underlined above, the relevant provisions must be interpreted as expressing an intention on the part of the Oireachtas that only one solicitor can be assigned in respect of a District Court legal aid certificate. In those premises, the answer to the question (i) must be "*no*". It follows that the second and third questions do not arise.

46. As this judgment is being delivered electronically, I will adjourn the matter for final orders before me at 10.30 am on the 11 October 2024. In the intervening period, I am requesting that the parties seek to reach agreement on the final form of the orders to be made, including any question of costs.