

Séamus Woulfe was the State's lead barrister while also attorney general

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Now-Supreme Court judge Séamus Woulfe continued to act as the State's barrister in a case against a grandfather who was attempting to recoup more than €100,000 in illegal nursing home charges, for months after his appointment as attorney general.

This was confirmed by the Government after the Irish Mail on Sunday obtained discovery documents that were issued to Joseph Conroy following his 10-year legal battle with the State.

The discovery order triggered the State to triple a settlement offer to ensure the Government's litigation strategy to limit illegal nursing home payments to families remained a secret.

Mr Woulfe, who had represented the State as a barrister in the case against Mr Conroy, was appointed to the position of attorney general in June 2017.

A Government spokesman this weekend confirmed Mr Woulfe continued to represent the State in the months after his appointment.

Now-Supreme Court judge Séamus Woulfe continued to act as the State's barrister in a case against a grandfather who was attempting to recoup more than €100,000 in illegal nursing home charges, for months after his appointment as attorney general. Pic: Gareth Chaney/Collins

The spokesman told the MoS: 'Séamus Woulfe, then practising as a senior counsel, had been retained by the State in the case in question prior to his appointment as attorney general in 2017. Upon being appointed attorney general he continued to represent the State in this case. This approach is adopted as and when such circumstances arise in order to ensure continuity in the State's legal representation.'

However, the spokesman refused to say if Mr Woulfe continued to be paid barrister's fees for his work on the case following his appointment as the then-government's top lawyer.

Documents obtained by the MoS from a protected disclosure made by the Department of Health whistleblower Shane Corr, show that a month after Mr Woulfe's appointment, the then attorney general significantly increased its settlement offer to Mr Conroy to €100,000 from its initial offer of €30,000.

The retired carpenter and businessman, from a prominent family in Portlaoise, had paid more than €100,000 in fees later deemed to be illegal for his late mother Helen's nursing home care before she died in 2004.

And he got virtually every cent of this back in late 2017 when the department panicked at the prospect of having to show its hand.

'We had no realistic option other than to consent to a discovery order,' Mr Woulfe's team concluded, before indicating that handing over the documents was not an option for the State.

'The reality of making discovery or running a hearing in one of these cases continues to be too risky to be seriously contemplated.'

The retention of Mr Woulfe as lead barrister for the State despite becoming attorney general was an indication of how seriously the State took the matter.

Mr Conroy's Mullingar-based solicitor David Nohilly, told the MoS, 'I knew there was something significant when I saw Séamus Woulfe as the senior [counsel] on the case'.

Mr Woulfe, who had represented the State as a barrister in the case against Mr Conroy, was appointed to the position of attorney general in June 2017. Pic: Niall Carson/PA Wire

He continued: 'He was present at all stages throughout the settlement talks that we were having. He was always present, always there.'

Once the discovery order was granted, Mr Nohilly knew the tone of his team's negotiations with Mr Woulfe had changed.

From originally offering less than €30,000, the State suddenly began upping its offer.

'The initial figure was derisory,' Mr Nohilly, said. 'It was an insult and that probably showed that they viewed us as a nuisance more than anything else. But when this discovery order was granted, everything changed.'

According to files seen by the MoS, the State upped its offer from less than €30,000, to just under €60,000 and then to €80,000 before a €100,000 settlement was eventually sanctioned. This meant the State agreed to pay virtually 100% of what it estimated the claim to be – far more than the 40% to 60% it had set for settling similar cases.

Mr Nohilly said it was, in his experience, unusual to be in settlement talks with the State.

'The State very rarely has settlement talks with the plaintiff,' he added.

'It's very difficult to reach a settlement with the State because they have the resources to run a trial? they tend to fight cases.'

When asked what he believes the State was afraid of, Mr Conroy replied, ‘The truth’.

Referring to Taoiseach Leo Varadkar’s defence of the State’s legal strategy this week, Mr Conroy said, ‘Thursday evening, Leo Varadkar said the legal grounds were sound. Friday evening, he said it wasn’t worth the paper it was written on – then the [current] Attorney General [Rossa Fanning] says the law stands up. I know it doesn’t stand up.

‘There’s right and wrong. And this was wrong. I’ve nothing against Government or politicians, but law is law; right and wrong. And this is wrong? my mother had a right and that will be proven. I have no doubt about that.’

One way or another, the documents sought in the Conroy discovery would certainly have shed light on who was in the right.

The discovery order sought all files relating to any health board subventions paid for Mrs Conroy’s nursing home care, which could have been significant for a couple of reasons.

Firstly, several years after Mrs Conroy’s death, the HSE conceded some element of error in the manner in which it had been granting subventions for her care and refunded almost €11,000 to Mr Conroy.

The letter accompanying the cheque informed Mr Conroy that the department had directed that people who were adversely affected by the implementation of subvention rules issued in 1993, ‘should be compensated by way of an ex-gratia payment’.

Secondly, secret Government memos show the State has identified ‘problematic documents’ relating to the introduction of subvention deemed too dangerous to disclose.

However, the spokesman refused to say if Mr Woulfe continued to be paid barrister’s fees for his work on the case following his appointment at the then-government’s top lawyer. Pic: Gareth Chaney/Collins

The State hoped some of the documents would attract legal privilege and be excluded in discovery.

The existence of these ‘problematic documents’ – and the State’s failure to ever fight a case – appears to contradict robust claims made by Mr Varadkar and the Attorney General Mr Fanning, that the State has a valid legal defence.

Other files sought in the Conroy discovery order included ‘circulars, mandates and directions’ from the department and the attorney general, ‘concerning the manner in which charges were to be applied to long-stay patients in public and/or private facilities’.

The discovery order also sought the department’s own legal advice in relation to concerns about illegal charges raised by various health boards over the years.

This material could have been devastating to the State's case, as revealed by a report commissioned by then health minister Mary Harney in 2005 after the Supreme

Court's ruling on illegal nursing home charges. The Travers Report, which had access to all government files, found the department's own rules for charges would not stand up in court.

Rather than have this material disclosed – and risk a flood of cases – it was the State's policy to settle. But its strategy was to drag cases out to make it as difficult as possible for the plaintiffs.

However, they did not reckon on the determination of Joe Conroy and his solicitor, who was working on a no foal [win], no fee basis.

'It's a case that wouldn't suit every client,' Mr Nohilly told the MoS.

'Joe is robust – but not every client would be suited for 10 years of litigation against the State.'

For his part, Joe – whose mother ran Conroy's hairdressers on the Main Street in Portlaoise for decades – was never going to quit.

'I never thought of giving up. I didn't – that wouldn't be in me,' he said. 'It's not about the compensation. This is about right and wrong. It's about how many other people are in limbo. For me it was settled because they just wanted to keep me happy and get rid of me, which means that they didn't see the justice in the end.'

The State's indifference as seen in the Conroy case file is striking. It describes how, in late 1994, Mrs Conroy was 79 and suffering from 'severe rheumatoid arthritis, chronic obstructive pulmonary disease, diabetes, depression, hypertension, peptic ulcer disease, incontinence and had eye cataracts, bilateral knee arthroplasties, was immobile, wheelchair bound, disabled and confined to bed'.

It adds she had been, 'for a number of years prior to her admission to a nursing home, unable to properly look after or fend for herself, to feed, clothe or wash herself and was severely curtailed and limited in and about all of her activities of daily living.'

The file says how she had 'fallen down the stairs from her first-floor apartment and had fallen out of bed a number of times and was, on at least three separate occasions, found unconscious by her son'.

It also describes how Mrs Conroy's son and his wife cared for her as best they could, but could not take care of her medical needs.

And it details how the family could not find any public beds – despite Helen having a full medical card – when a GP advised that a care home was necessary.

But none of this mattered to the State legal team; the case files show their job was to drag out the case regardless of the circumstances.

They demanded proof Mrs Conroy had been entitled to a medical card and that she really had suffered all the ailments described.

‘The defendants require proof that the deceased held and/or was entitled to hold a medical card,’ one of a long list of demands reads.

They also accused the family of being ‘vexatious’ in its claims and of acquiescing, ‘in the matters that are the subject of the claim’.

And they forced Mr Conroy to provide discovery to the State – knowing they were not prepared to do likewise. This involved seeking 20 years’ worth of bank statements from financial institutions and going back through stubs of countless decades-old chequebooks.

‘They actually just bog you down in paperwork in the hope that you’ll just give up,’ said Mr Nohilly.

‘We have folders of cheque stubs because we had to go through and prove every payment we made.’

For a decade, the paperwork – amounting to thousands of pages – went to and fro, until the time came time for the State’s discovery.

At that point, the State’s team finally increased its offers. while referring in its internal correspondence to the settlement being ‘unpalatable’ and the case being ‘difficult’. Mr Conroy said he takes particular exception to these comments which he describes as ‘stomach-wrenching’ after 15 years of ‘being treated with disdain’.

‘That comment “unpalatable” – that I find a step too far,’ he said. ‘I want an apology. I’ve been besmirched.’

While his own case has been resolved, Mr Conroy remains conscious of all the others who could not pursue the issue as he did.

‘I feel sorry for the people that might have had to sell property – that weren’t in the position I was in at the time – and they just didn’t have the money to do what I did.’

Mr Nohilly has already begun fielding calls from such cases.

‘She was in tears on the phone,’ he said of a teacher who contacted him this week about the losses incurred paying for her parents’ care.

‘She lost her house; the mortgage went into arrears.’

Mr Conroy said the Government will ultimately move to address the unfairness of its legal strategy.

He had this message for Mr Varadkar, 'I'd ask him to go back and check out the law. I think this just has to be sorted out'.

Link to original article

<https://extra.ie/2023/02/25/news/irish-news/seamus-woulfe-barrister>