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I would like to make the following observations on the proposed Consumer Rights Bill and in particular Head 63(8) which provides:

(8) What is a reasonable time for the supply of a service is a question of fact, the decision of a court on which shall be final.

and which quotes in the footnote to the bill:

Section 56 of the Sale of Goods Act 1893 states that where any reference is made in the Act to a reasonable time, the question of what is a reasonable time is a question of fact. A finding of fact by a court is not usually subject to appeal to a higher court. A provision similar to subhead (8) can be found at section 52(3) of the UK Consumer Rights Act 2015.

This is somewhat incorrect, it is true that the 1893 Act provides what is a reasonable time is a question of fact. This means that it would have been decided by a jury (which had a greater role in civil litigation in the 19th century), as opposed to being decided on by the judge who would instruct the jury. It also meant that it is governed by the circumstances of each case and is not subject to general legal principles to be laid down in precedent as to what is in general to be considered "reasonable".

Although appeal rights from jury verdicts were more limited at that time, this was not the case in terms of appeals from a judge as juries were progressively abolished for most civil litigation.

So for example an appeal from the District Court to the Circuit Court is a complete de novo hearing as is an appeal from the Circuit Court to the High Court.

Appeals from the High Court to the Court of Appeal are governed by the judgement in Hay v. O'Grady [1992] 1 IR 210 which provide that primary findings of fact made by the High Court if supported by the evidence should not be overturned by an appellate court.

It should be noted that the entitlement to appeal in England and Wales is much more limited than under our legal system with leave being required in many cases.

I don't think it is the intention of the Oireachtas to overhaul civil appellate entitlements in this litigation, or have a perverse situation where the case is entitled to be heard de novo on an appeal to the circuit court or the high court, but a finding by the lower court as to what was a reasonable period of time cannot be overturned for some reason.

I think the statement in the 1893 Act that the question of what is a reasonable time is a question of fact should just be replicated in Head 63(8).

To change it would cause confusion as to what was intended, and the provision as drafted would leave to great difficulties where although a litigant is entitled by statute under the Courts Acts to a de novo appeal, this is limited for some reason for findings as to what is a reasonable period of time.

A further and distinct observation is that the definition of consumer service in Head 2(1) does not appear to exclude a residential tenancy which has its own code in the Residential Tenancies Act. Recital 12 of EU Directive 2019/771 excludes contracts in respect of land from that directive.

Kind Regards



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