

*Navigating the Perilous
Waters of Vulture Fund
and Service Provider
Fraudulent Repossession
of Family Homes in
Ireland*

BANKING FRAUD

*A Comprehensive breakdown of the work of Cormac Butler in
February 2024 at the Transparency Taskforce conference*

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STOP THE VULTURE FUNDS



Navigating Court Proceedings as a Lay Litigant: A Comprehensive Guide

This guide, compiled from Cormac Butler's appearance at the Transparency online conference in February 2024, provides a step-by-step breakdown to help lay litigants build a water-tight case in court. This guide is compiled with Cormac's permission by Teresa Clyne BA, MSc

Introduction:

As a lay litigant navigating court proceedings against financial institutions, it's essential to understand the power dynamics, necessary documents, legal concepts such as securitization and bare trusts, relevant legislation, and strategies for presenting a strong case. This guide, compiled from Cormac Butler's appearance at the Transparency online conference in February 2024, provides a step-by-step breakdown to help lay litigants build a water-tight case in court.

Understanding Power Dynamics:

In court proceedings, both the lay litigant and the financial institution hold certain powers and responsibilities. Understanding these dynamics is crucial for effectively presenting your case.

- *Power of the Lay Litigant:*
 - The lay litigant holds the power to challenge the actions of financial institutions and seek legal remedies for injustices.
 - Through proper legal representation and understanding of relevant laws, the lay litigant can assert their rights and defend against possession orders or unfair terms.
 - Reference court precedents like KBC Bank vs. BCM Hanby Wallace to establish banks' accountability if they breach regulations.
 - Emphasise the importance of adherence to banking regulations, including obligations not to lend beyond means and to follow accounting policies.
- *Power of the Financial Institution:*
 - Financial institutions typically have legal teams and resources to defend their interests in court.
 - They may hold documentation related to loan agreements, securitization processes, and account statements, which can impact the outcome of the case.

Documents Required and Sourcing:

To build a strong case, lay litigants must gather relevant documents and evidence to support their claims. Cormac Butler's insights shed light on the critical documents and sources needed for a comprehensive legal strategy.

- *Banking Investigations Report:*
 - Lay litigants should request copies of any banking investigations report from the banking regulator.
 - These reports may uncover evidence of banking negligence, fraudulent practices, or regulatory violations, strengthening the lay litigant's argument.
- *Securitization Documents:*
 - Lay litigants should request documentation related to the securitization of their loans.
 - These documents can reveal the transfer of legal interest and ownership of the loans, potentially undermining the financial institution's claim to possession.
- *Bare Trusts Documentation:*
 - Lay litigants should seek documentation indicating the existence of bare trusts in their loan agreements.
 - Understanding the roles of various parties involved in bare trusts can help establish the true plaintiff in the case, often revealing the financial institution's hidden interests.

Legislation and Fighting Section 15:

Legislation such as Section 15 of the Civil Law and Criminal Law Miscellaneous Provisions Act 2020 can impact court proceedings. Lay litigants must understand this legislation and how to challenge its application in their case.

- *Understanding Section 15:*
 - Section 15 allows financial institutions to produce evidence from other banks in court proceedings.
 - Lay litigants can challenge the reliability and admissibility of such evidence, particularly if it's based on flawed accounting practices or securitization issues.
- *Challenging Section 15 Evidence:*
 - Lay litigants should question the validity of evidence produced under Section 15, highlighting any inconsistencies or breaches of regulatory laws.
 - By demonstrating the unreliability of this evidence, lay litigants can weaken the financial institution's case.



Strategies for Reducing Interest Rates:

High-interest rates imposed by financial institutions can significantly impact borrowers. Lay litigants can employ strategies to challenge these rates and seek fairer terms.

- *Questioning Interest Rates:*
 - Lay litigants should inquire about the basis for interest rate calculations and challenge any excessive or unfair rates.
 - By presenting evidence of overvaluation of loans or regulatory breaches, lay litigants can argue for a reduction in interest rates.

Effective Questioning and Presentation in Court:

During court proceedings, lay litigants must ask pertinent questions and present their case effectively. Cormac Butler's insights provide guidance on key questions and presentation strategies.

- *Questioning Financial Institution's Evidence:*
 - Lay litigants should question the accuracy and reliability of evidence presented by financial institutions, particularly regarding loan valuation, securitization, and compliance with regulatory laws.
 - By highlighting inconsistencies or breaches, lay litigants can undermine the credibility of the financial institution's case.
- *Presenting Legal Arguments:*
 - Lay litigants should articulate legal arguments based on contributory negligence, regulatory breaches, and unfair contract terms.
 - By presenting a coherent and well-supported legal case, lay litigants can persuade the court to rule in their favour.

Court's Role and Potential for Success:

While courts play a pivotal role in adjudicating disputes, lay litigants can influence outcomes through effective presentation and legal arguments. Understanding the court's perspective and potential for success is essential.

- *Court's Perspective:*
 - Courts have a duty to ensure fairness and justice in proceedings, including assessing the validity of evidence and legal arguments presented.
 - Lay litigants should leverage this duty by presenting compelling evidence and legal analysis.
- *Potential for Success:*



- Some judges may acknowledge the validity of lay litigants' arguments, particularly if they raise constitutional or regulatory issues.
- Lay litigants can enhance their chances of success by thoroughly preparing their case and presenting it in a clear and persuasive manner.

Key Areas of Wrongdoing:

1. Contributing Negligence:
 - Law: European Communities (Licensing and Supervision of Credit Institutions) Regulation 1992 mandates sound capital adequacy for banks.
 - Regulation: Central Bank of Ireland (CBI) supervises compliance.
 - Rule: Banks should recognise losses promptly and accurately.
 - Investigation: Irish Banking Inquiry 2015 found widespread evidence of banks manipulating accounts to hide losses.
 - Argument: Banks' "contributing negligence" by breaking these rules weakens their claims and reduces recoverable debt.
2. Overvalued Loans:
 - Law: Company law requires fair valuation of assets.
 - Regulation: Central Bank guidelines on loan valuation exist.
 - Rule: Loans should be valued realistically, considering risk and market conditions.
 - Investigation: National Asset Management Agency (NAMA) found Irish banks overvalued loans by up to 50%.
 - Argument: Challenging inflated loan values reduces the amount you owe.
3. Unfair Interest Rates:
 - Law: Contracts based on illegal activities are unenforceable.
 - Regulation: Consumer protection laws guard against unfair terms.
 - Rule: Interest rates must be fair and reflect genuine borrowing costs.
 - Investigation: Evidence suggests banks manipulated interest rates based on hidden losses.
 - Argument: If banks' lending practices were illegal, interest charges may be unfair and can be challenged.
4. Securitization Issues:
 - Law: Company law governs transfer of ownership and legal rights.
 - Regulation: Central Bank oversees securitization activities.
 - Rule: Legal ownership of debts and underlying assets must be clear and verifiable.
 - Investigation: Concerns exist about banks breaching company law, potentially losing legal ownership of loans.
 - Argument: If banks broke the law, ownership might be unclear, weakening vulture funds' claims and allowing challenges to unfair terms.
5. Central Bank Conduct:
 - Regulation: Central Bank responsible for financial stability and consumer protection.
 - Rule: Banks should act prudently and supervise institutions effectively.



- Investigation: Evidence suggests the Central Bank may have ignored or enabled wrongdoing.
- Argument: Central Bank's potential negligence could support arguments against banks and strengthen your position.

Additional Points:

- Section 15(2) of the Civil Law (Miscellaneous Provisions) Act 2020: Allows access to evidence used against you, potentially revealing bank misconduct.
- Pepper v Jenkins Case: Hints at potential constitutional arguments regarding repossession processes.
- Seek legal advice: This summary provides general information, but each case requires specific legal guidance.



My Own Summary of Securitization

Securitization of Loans:

In the Republic of Ireland, securitization of loans is a common practice among banks and financial institutions. When a bank originates a mortgage or other loan, they may choose to securitize it by bundling it with other loans and selling it as a financial product to investors. This process allows banks to free up capital for further lending and investment while transferring the risk associated with the loans to investors.

Impact on Borrowers:

For borrowers, the securitization of their loans can have significant implications. While the original bank may no longer hold the loan, borrowers are still obligated to make payments to the entity that owns the loan. However, the identity of this entity may change over time if the loan is sold to different investors or service providers.

Laws and Regulations in Ireland:

Several laws and regulations in Ireland govern the securitization process and the rights of borrowers:

1. Central Bank Act 1997: This legislation empowers the Central Bank of Ireland to regulate financial institutions, including those involved in securitization activities. The Central Bank sets standards and guidelines to ensure the stability and integrity of the financial system.
2. Consumer Credit Act 1995: This act provides protections for consumers who borrow money, including provisions related to disclosure of loan terms, unfair contract terms, and remedies for borrowers in cases of lender misconduct.
3. Land and Conveyancing Law Reform Act 2009: This law governs the transfer and registration of property ownership and interests, including mortgages and charges. It outlines the procedures for registering charges against properties and ensures transparency in property transactions.
4. Financial Services and Pensions Ombudsman Act 2017: This legislation establishes the Financial Services and Pensions Ombudsman, who handles complaints and disputes between consumers and financial service providers, including banks involved in securitization.

Challenges for Borrowers:

Despite these legal protections, borrowers may face challenges when dealing with securitized loans, particularly if the loan becomes distressed. Service providers, such



as vulture funds or debt collection agencies, may acquire distressed loans and pursue legal action against borrowers to recover debts.

Securitization and Concealment of Losses:

One of the key issues with securitization is that it can be used as a tool to conceal losses on the banks' balance sheets. When a bank securitizes loans, it essentially transfers the risk associated with those loans to investors. However, if the loans being securitized are distressed or have significant losses associated with them, the bank may not fully disclose this information to investors.

Failure to Recognize Losses:

In many cases, banks may delay or fail to recognize losses on their loans, especially if they intend to securitize them. By keeping these losses off their balance sheets, banks can present a more favourable financial picture to investors and regulators. However, this practice is highly unethical and potentially illegal, as it misrepresents the true financial health of the bank.

Breach of Accounting Standards:

The failure to recognize losses on loans and the subsequent securitization of those loans may constitute a breach of accounting standards and regulations. In Ireland, as in many other jurisdictions, banks are required to adhere to strict accounting standards that govern the recognition and disclosure of financial assets and liabilities.

Contributory Negligence:

If banks knowingly conceal losses and securitize distressed loans, they may be guilty of contributory negligence. Contributory negligence occurs when a party's actions or omissions contribute to a harmful outcome. In this case, the banks' failure to recognize losses and properly disclose the risks associated with securitized loans could be seen as contributing to the financial harm suffered by investors and borrowers.

Legal Implications:

The concealment of losses and the securitization of distressed loans could have serious legal implications for banks. Regulators may investigate allegations of accounting fraud and securities violations, potentially leading to fines, sanctions, and other penalties for the banks involved.



Protecting Borrowers' Rights:

For borrowers whose loans have been securitized, it is essential to understand their rights and legal options. If a borrower believes that their loan was securitized unlawfully or that they were misled about the risks associated with their loan, they may have grounds for legal action against the bank or the investors (VULTURES) who purchased their loan.



The 2015 Investigation into Banking Practices:

In 2015, a comprehensive investigation was conducted into the banking practices in Ireland, shedding light on several unethical and potentially illegal activities carried out by financial institutions. One of the most significant findings of this investigation was that banks knowingly concealed losses to facilitate the securitization of loans.

Concealment of Losses:

The investigation revealed that banks had been deliberately concealing losses on their balance sheets, particularly in relation to loans that were earmarked for securitization. By failing to recognize these losses, banks were able to present a more favourable financial picture to investors and regulators, thus attracting investment and avoiding scrutiny.

Securitization as a Tool for Concealment:

Securitization was identified as a key mechanism used by banks to offload distressed loans and transfer associated risks to investors. However, instead of transparently disclosing the true financial health of these loans, banks opted to conceal losses and package them into securitized products. This practice allowed banks to maintain the illusion of stability and profitability while shifting the burden of potential losses onto unsuspecting investors.

Legal and Regulatory Implications:

The revelation that banks knowingly concealed losses to securitize loans raised serious legal and regulatory concerns. Such actions not only violated accounting standards and regulations but also undermined the integrity of the financial system. Regulators were prompted to investigate further and take appropriate action to hold banks accountable for their misconduct.

Impact on Borrowers:

For borrowers whose loans were securitized, the implications of banks' deceptive practices were profound. Many borrowers found themselves facing foreclosure or default on loans that had been packaged and sold to investors without their knowledge or consent. This left borrowers vulnerable to financial hardship and legal challenges, as they grappled with the fallout of banks' misconduct.



Laws Broken by Banks in Concealing Losses:

The deliberate concealment of losses by banks to facilitate the securitization of loans violated several laws and regulations in the Republic of Ireland. The following are key legal provisions that were breached:

1. **Accounting Standards and Regulations:** Banks are required to adhere to established accounting standards and regulations, including those set forth by regulatory bodies such as the Central Bank of Ireland and the European Union. By concealing losses on their balance sheets, banks violated principles of transparency and accuracy in financial reporting.
2. **European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992:** These regulations, derived from EU law, aim to ensure the safe and sound operation of credit institutions by imposing requirements related to capital adequacy and risk management. Banks' failure to accurately report losses undermined the integrity of these regulations and compromised the stability of the financial system.
3. **Consumer Protection Legislation:** Concealing losses and misrepresenting the financial health of securitized loans can be construed as deceptive practices that violate consumer protection laws. Borrowers have the right to accurate and transparent information about their financial obligations, and banks' actions may have contravened these rights.
4. **Company Law:** Banks operating in Ireland are subject to company law provisions governing corporate governance, financial reporting, and fiduciary duties. Concealing losses may constitute breaches of directors' duties to act in the best interests of the company and its stakeholders.
5. **Securities Regulations:** Securities laws and regulations govern the issuance, trading, and disclosure of financial securities, including securitized products. Banks' failure to disclose material information about the underlying assets in securitized loans may have violated securities regulations aimed at protecting investors and ensuring market transparency.
6. **Fraud and Misrepresentation Laws:** Knowingly concealing losses with the intent to deceive investors or regulators may constitute fraud or misrepresentation under Irish law. Such actions can result in civil and criminal liabilities for individuals and entities involved in the deception.
7. **Consumer Credit Laws:** Laws governing consumer credit transactions mandate fair and transparent lending practices, including accurate disclosure of loan terms and conditions. Banks' concealment of losses may have undermined the fairness and transparency of consumer credit transactions, leading to potential legal challenges from affected borrowers.





My Conclusion Condensed

Key Points:

- Banks broke the law by hiding losses and overvaluing loans.
- This "contributing negligence" can help homeowners facing repossession.
- Use evidence from National Asset Management Agency (NAMA) and Irish Banking Inquiry 2015.
- Challenge unfair terms in loan agreements and securitization.
- Consider section 15(2) of the Civil Law (Miscellaneous Provisions) Act 2020 to access information.

Steps for Lay Litigants:

1. Claim Contributing Negligence:
 - Argue banks broke European supervisory regulations by hiding losses.
 - Cite evidence from NAMA (loans overvalued by 50%) and Inquiry 2015 (banks admitted misconduct).
 - This reduces your debt and weakens vulture funds' claim.
2. Challenge Recoverable Value:
 - Argue banks can only recover the actual value of the loan, not the original amount (use NAMA evaluation).
 - This lowers your debt further.
3. Challenge Interest Rates:
 - Argue banks cannot charge interest based on illegal lending practices.
 - Seek a significant reduction in interest rate.
4. Challenge Securitization:
 - If banks breached company law, they may have lost legal ownership of the loan.
 - This weakens vulture funds' claim and prevents unfair terms.
5. Consider Section 15(2):
 - Use this law to access bank information and challenge evidence used against you.

General Tips:

- Focus on 2-3 arguments clearly and effectively.
- Bring evidence to support your claims.
- Highlight unfair terms in loan agreements.
- Emphasise the Central Bank's role in the crisis.
- Consider the Pepper v Jenkins case for constitutional arguments.



Overall:

Cormac Butler's speech argues that homeowners facing repossession can leverage legal arguments based on the widespread misconduct of banks and the Central Bank during the Irish banking crisis. By understanding the relevant laws, regulations, rules, and investigations, homeowners can potentially challenge banks' claims and defend their rights.