

**THE HIGH COURT**

[2022] IEHC 169  
**Record No.: 2012/52P**

**BETWEEN:-**

**DANIEL SCANNELL**

**PLAINTIFF**

**-AND-**

**PAUDIE KENNEDY AND MICHAEL MEEHAN (AS EXECUTORS OF THE ESTATE OF  
THOMAS MEEHAN, DECEASED)**

**-AND-**

**JOHN KEVIN MULLAN**

**-AND-**

**THOMAS BEECHER**

**DEFENDANTS**

**Judgment of Mr Justice Cian Ferriter delivered this 16th day of March 2022**

**Introduction**

1. This is the application of the first and second defendants to have these proceedings dismissed pursuant to the inherent jurisdiction of the Court, on two alternative grounds:
  - (a) that the plaintiff's delay in prosecuting these proceedings is inordinate and inexcusable and the balance of justice requires the proceedings to be dismissed against these defendants ("*the Primor ground*");
  - (b) that the length of time which has elapsed since the alleged events giving rise to these proceedings renders it unjust to require these defendants to defend the proceedings ("*the O'Domhnaill ground*").

**Applicable legal principles**

2. The principles applicable to each of these grounds are well established. In short, pursuant to the line of jurisprudence commencing with *Primor v. SKC* [1996] 2 IR 459, the Court has a jurisdiction to dismiss proceedings where there has been both inordinate and inexcusable delay on the part of a plaintiff in prosecuting the proceedings and where the balance of justice favours the dismissal of the action. The onus is on the moving party (the first and second defendants in this case) to demonstrate inordinate and inexcusable delay. Since the Court of Appeal decision in *Cassidy v the Provinciate* [2015] IECA 74, it is clear that pre-commencement delay can be taken into in seeking to demonstrate that there has been inordinate and inexcusable delay. If the applicant can demonstrate inordinate and inexcusable delay, it then falls to the respondent (the plaintiff in this case) to establish countervailing circumstances which would otherwise allow the proceedings to continue on the balance of justice.
3. It is clear from the *Primor* jurisprudence that where there has been significant delay prior to the issue of proceedings, there is a special obligation of expedition on a plaintiff to prosecute proceedings without delay once the proceedings have commenced.
4. In assessing the balance of justice, the applicant does not have to establish prejudice amounting to a significant risk of an unfair trial; the recent authorities have established that relatively modest prejudice may suffice to dismiss the proceedings once inordinate

and inexcusable delay has been established: see *McNamee v. Boyce* [2016] IECA 19 and *Millerick v Minister for Finance* [2016] IECA 206.

5. The test is different under the *O'Domhnaill* line of jurisprudence. In *O'Domhnaill v. Merrick* [1984] I.R. 151, the Supreme Court stated as follows:

*"where there is a clear and patent unfairness in asking a defendant to defend a case after a very long lapse of time between the acts complained of and the trial, then if that defendant has not himself contributed to the delay, irrespective of whether the plaintiff has contributed to it or not, the court may as a matter of justice have to dismiss the action."*

6. In order to successfully invoke this jurisdiction, it is not necessary for a defendant to show that there was been culpable delay on the part of the plaintiff. Rather, if there has been a long time between the events complained of and the likely time of trial, a defendant must establish prejudice likely to lead to a real risk of an unfair trial as an unjust result, and proof of moderate prejudice will not suffice: Irvine J. in *Cassidy v. Provincialate* [2015] IECA 74 (at para. 37).

### **Background**

7. In these proceedings, the plaintiff seeks damages arising out of acts of sexual abuse allegedly perpetrated on him between 1993 and 1998 by the late Thomas Meehan while the plaintiff was a secondary school student in Waterpark College, Waterford. The late Mr. Meehan was a vice principal and career guidance counsellor at the school at the time. The sexual abuse is alleged to have occurred in the late Mr. Meehan's office on the school grounds, in private and during the school day.
8. The proceedings were commenced by plenary summons on 5th January, 2012. I have appended to this judgment an agreed chronology of the material steps in the proceedings. In short, there was an exchange of pleadings and the hearing of the matter was originally listed for Waterford High Court on 13th March, 2014. It was adjourned from that list to Dublin for hearing. There was relative inactivity in the proceedings thereafter for a number of years until the plaintiff served a notice of intention to proceed on 31st August, 2017. Thereafter, the plaintiff advanced the issue of discovery with the then third defendant (now fourth defendant) who was sued as the nominee of the Board of Management of Waterpark College. The original second defendant (now the third defendant) is a nominee of St. Helen's Province of the Christian Brothers congregation. The late Mr. Meehan was a member of that Christian Brothers provincialate.
9. The late Mr. Meehan died on 7th April, 2019. Pursuant to the provisions of the Civil Liability Act, 1961, the plaintiff's cause of action against the late Mr. Meehan survived his death. A grant of probate was taken out in the names of Paudie Kennedy and Michael Meehan, the executors of the late Mr Meehan's estate, on 1st December, 2020 and an order was made by the High Court on 21st December, 2020 substituting those personal representatives for the first defendant in the proceedings, so that his executors are now the first and second defendants.

10. The first and second defendants now bring this application to have the plaintiff's proceedings against them struck out on the basis that there has been inordinate and inexcusable delay both prior to and subsequent to the commencement of the proceedings and that the balance of justice decisively favours dismissal of the proceedings. In the alternative, they contend that even if there has been no culpable delay on the plaintiff's part, the lapse of time since the events in issue in the proceedings (which occurred between some 24 and 28 years ago) is such that, arising from the death of the late Mr Meehan, there is a real and serious risk of an unfair trial. The applicants rest their case on prejudice in respect of both the *Primor* test and the *O'Domhnaill* test on the fact that the alleged perpetrator of the sexual abuse, the late Mr. Meehan, has died and that, therefore, it will be impossible for them to fairly defend the serious allegations made against him, which allegations were the subject of a full denial in the defence filed on his behalf.
11. The plaintiff has sworn a lengthy replying affidavit in which he has chronicled the very serious adverse effects which he has suffered throughout his adult life as a result of the alleged abuse. His account makes for harrowing reading. I will return to pertinent aspects of his evidence later in this judgment.
12. In support of his position that any delay in either the institution or the prosecution of the proceedings was excusable, the plaintiff tendered an affidavit from his GP, Dr. Siobhan Murphy, and also exhibited a report from Dr. Brendan McCormack, a consultant psychiatrist. While objection was taken to the fact that Dr. McCormack's report was not the subject of an affidavit from Dr. McCormack, ultimately, that objection was not pushed at the hearing of the application to avoid any adjournment of the application to allow such an affidavit be procured.

### **The Primor grounds**

13. I propose, firstly, to deal with the *Primor* grounds for the application.

### **Inordinate and inexcusable delay**

14. On any view, the lapse of time since the events the subject matter of the proceedings allegedly occurred, being well over 20 years at this point, is inordinate. The real question that arises under the *Primor* test is whether that delay is excusable.
15. The applicants rely on two periods of delay which they say are both inordinate and inexcusable. The first is the period from 1998 (the end of the alleged abuse) to the institution of the proceedings in January 2012, a period of some fourteen years. The second is a period of over six years between March 2014 (when the proceedings were transferred from the Waterford High Court Personal Injuries List to the Dublin Personal Injuries List) to July 2020 (the date of issue of this application to dismiss), in which the only step taken by the plaintiff relevant to the late Mr. Meehan's case was the service of an affidavit by the plaintiff on the late Mr. Meehan's solicitors in November 2017.

### **Pre-commencement delay**

16. As noted earlier, it is clear from the decision of Irvine J. (as she then was) in the Court of Appeal decision in *Cassidy v. The Provincialate* [2015] IECA 74 that a Court can consider

pre-commencement delay in assessing whether there has been inordinate and inexcusable delay within the meaning of the *Primor* test.

17. In order to explain and excuse the delay between the occurrence of the events the subject of the proceedings (which occurred, the plaintiff says, when he was a schoolboy between the ages of thirteen and seventeen), and the commencement of the proceedings, the plaintiff has sworn his own affidavit and has exhibited a report from Dr. Brendan McCormack, consultant psychiatrist, and has tendered an affidavit from his GP, Dr. Siobhan Murphy.
18. The essence of the plaintiff's position on this issue is that the trauma in the aftermath of the sustained abuse perpetrated by the late Mr. Meehan had a profound adverse effect on him, which has continued throughout his adult life to affect his mental state and relationships. He engaged in prolonged and sustained risk-taking, alcohol and drug abuse. He says he did work up the courage to arrange to meet a solicitor in January, 2006 to seek advice about the sexual abuse he had suffered. The solicitor in question was not able to act for him and that led to the plaintiff's behaviour and alcohol and drug abuse to worsen. He suffered many physical symptoms, including panic attacks in the couple of years subsequent to this and avers that he went into "full self-destruct" mode towards the end of 2008 and into 2009. He started to turn a corner in the Autumn of 2009. He avers that on 17th May, 2010, he disclosed the abuse to his family solicitors. The plaintiff also made a formal complaint to An Garda Síochána in 2010 in relation to the alleged abuse. He avers to suffering a severe blow on hearing of the DPP's decision in 2011 not to proceed with the prosecution.
19. These proceedings were instituted in January, 2012. The applicants fairly accepted that the plaintiff could not be blamed for the period that elapsed between him initially going to his solicitors in May, 2010 and the institution of the proceedings, as there were prolonged attempts made in that period to identify the appropriate nominee defendants.
20. The plaintiff's sworn account of how he experienced the fallout from the alleged abuse is reflected in the report of Dr. Brendan McCormack, consultant psychiatrist. In his report dated 23rd July 2012, Dr. McCormack gave the opinion that:

**"OPINION**

*The abuse Mr. Scannell experienced has had a profound effect on his life and continues to affect his mental state and relationships. His education was disrupted as he felt disillusioned and alienated from school. He became alienated from his family for many years. He engaged in risk taking and alcohol and drug abuse for many years. His relationships and friendships were disrupted and until recently he was unable to sustain a long term personal relationship. He continues to experience a lot of Post Traumatic Stress Disorder type symptoms such as depression, anxiety, panic, avoidance, intrusive thoughts, flashbacks and disturbed sleep with nightmares. He has recently engaged in self-help through meditation and he has also started counselling. The counselling has been helpful and he no longer engages*

*in risk taking behaviour and drug abuse. However as regards a prognosis he is likely to continue to experience stress related symptoms indefinitely."*

21. The applicants sought to contend that, while Dr. McCormack opined that the plaintiff continues to experience a lot of *"posttraumatic stress disorder type symptoms such as depression, anxiety, panic, avoidance, intrusive thoughts, flashbacks and disturbed sleep with nightmares"*, the opinion stopped short of a diagnosis of PTSD itself such as to potentially justify a delay in the inception of the proceedings.
22. Dr. Siobhan Murphy in her affidavit set out a summary of the records of the plaintiff's attendances with her GP practice from July, 2008 up to February, 2021. She concluded as follows:-

*"[14]. As the above sequence of events outlines the Plaintiff has suffered from an anxiety disorder with panic attacks and post traumatic stress syndrome as a result of abuse suffered in second level school. The initial manifestation of this was certainly mostly physical in the form of palpitations and gastrointestinal upset. The Plaintiff certainly became preoccupied with these physical ailments and despite repeated normal investigations focused primarily on these. This focus on physical ailments likely helped to reduce his requirement to deal with the mental health issues that were affecting him at the time. He did not disclose the history of abuse until 2010 to my colleague despite multiple presentations. This really represents an inability to deal with the gravity of the suffering and ongoing effect this was having on him. It is also likely a cause for the delay in proceeding with the Court case as the Plaintiff dealt with the physical ailments that were certainly taking precedence in his mind. He has ongoing severe sleep disturbance with vivid dreams that are upsetting and frightening. He reports feeling "tormented" by them. He has required medication to deal with these issues including Prothiaden, Citalopram and Noctamid. He has attended counselling and has worked very hard on coping strategies and positive outlook. He has attended counselling on the following occasions:- 2012 to 2014 with the HSE, further counselling in 2018, emergency assessment and counselling in May and June 2019. He has required a psychiatric assessment as set out above. He has attended his General Practitioner on several occasions in relation to his symptoms." (emphasis added)*
23. Objection was taken to the standing of Dr. Murphy, a GP, to offer conclusions in respect of PTSD. However, whatever about Dr. Murphy's qualifications to opine on matters which might need a formal psychiatric diagnosis, it seems to me that Dr. Murphy was well placed to offer the evidence underlined in the passage above which is, in my view, admissible evidence of weight in the context of the question of the excusability of pre-action delay.
24. It appears that the late Mr. Meehan's advisors had arranged for a psychiatric assessment of the plaintiff following the commencement of these proceedings but no psychiatric evidence was tendered by them in relation to this application. The applicants accept that they bear the burden of demonstrating that the plaintiff cannot provide reasonable excuse

for the delay in instituting the proceedings. In my view, the evidence which the plaintiff has put before the Court is sufficient to demonstrate that he has both an explanation and a good excusable reason for not having issued these proceedings before January, 2012. It is clear that he was inhibited up to 2010 in getting to the point where he could issue proceedings against the late Mr. Meehan, in light of the very adverse effects on his psychological, emotional and mental well-being suffered as a result of the abuse he claims was perpetrated on him. That position is amply supported by the medical evidence tendered on his behalf on this application.

**Post-commencement delay**

25. I will turn next to the alleged post-commencement delay.

26. In my view, the period between March, 2014 (the date of transfer of the proceedings to the Dublin Personal Injuries List) and November, 2017 (the date of the plaintiff serving his discovery affidavit on the late Mr. Meehan) is not properly excusable. No step at all was taken vis-a-vis the (original) first defendant in this period. The only step taken by the plaintiff in the period appears to have been an acceptance on 12th September, 2016 of a counter offer by the third defendant for discovery which was originally made on 30th December, 2013 and repeated on 7th September, 2014. This step of itself cannot excuse a lapse of some three and a half years. I accept that the plaintiff requested discovery from the third defendant on 26th October, 2017 and thereafter engaged with that defendant in a period up to February, 2020 on issues relating to that discovery and that there was reasonable excuse for the delay in this period. However, it is difficult to avoid the conclusion that, had the plaintiff not effectively pressed pause on the proceedings for some three and a half years from March, 2014, the matter could have been brought to trial and dealt with well before the death of Mr. Meehan on 7th April, 2019.

27. The plaintiff averred that, in the period 2014 to 2017, he sought to push his solicitor along many times in relation to the case, regularly calling to his solicitor's offices and leaving messages and not receiving responses. The plaintiff exhibited various communications with his solicitors to support that contention. By way of example, he emailed his solicitor on 10th September, 2016 to express his annoyance at the fact that he had called several times throughout the year and left several messages without anyone calling him back. He received a reply from his solicitor acknowledging that treatment and apologising for the failure to return calls or to correspond with him in relation to the matter. It would appear from the exhibited material that the solicitor in question retired during the course of 2017.

28. It is settled law that, in general terms, the delay of a party's solicitor will be held to be the delay of the party. The law was recently summarised by Ní Raifeartaigh J. in *McAndrew v. Egan* [2017] IEHC 346 at paragraphs 19 and 20 as follows:-

*"A number of authorities have indicated a reluctance to find sufficient excuse in the fact that delay can be attributed to a plaintiff's legal advisers. These authorities demonstrate the general rule that responsibility will rest with the plaintiff for failure to expedite matters in such circumstances, although the personal blameworthiness*

*of the plaintiff is a matter which may be considered in the exercise of a court's discretion (see the comments of Finlay P. in Rainsford). Comments of similar effect were made by MacMenamin J. in *McBrearty v North Western Health Board* [2007] IEHC 431 ... These cases illustrate that the responsibility for advancing their case lies at the door of the plaintiff."*

29. It was also noted by Clarke J. in *Rogers v. Michelin Tire Plc* [2005] IEHC 294 at paragraph 37 that "*where the entire responsibility for delay rests upon a professional advisor, the court can and should take into account the fact that the plaintiff may have an alternative means of enforcing his or her rights*".
30. I do not believe it can be said, as contended for by counsel for the plaintiff, that there was acquiescence on the part of the first defendant in this three and half year period of delay. As Fennelly J. made clear in *AIBP v. Montgomery* [2002] 3 IR 510 at 519 "*When considering any allegation of delay or acquiescence by the defendants, [the court] would be careful to distinguish between any culpable delay in taking any step in the action and mere failure to apply to have the plaintiff's claim dismissed*".
31. I will return to the delay caused by the plaintiff's solicitor when considering the balance of justice, but, in my view, on the principles established by the authorities, the plaintiff cannot excuse the delay of some three and a half years in failing to prosecute his proceedings in the period March 2014 to November 2017.
32. In my view, this period is also inordinate. It is, accordingly, necessary to turn to the question of the balance of justice.

### **Balance of Justice**

33. In considering the balance of justice in this case, there are a number of matters which weigh in the plaintiff's favour. Firstly, there is the nature of the wrongs complained of and the enormous personal damage to the plaintiff for which he seeks compensation in these proceedings by way of vindication of his rights. Secondly, it is relevant to take into account that the three-and-a-half-year period of inexcusable delay post-commencement of the proceedings cannot be attributable entirely to him given the difficulties he had with getting his then solicitor to progress matters. While the authorities note that a plaintiff may have an alternative remedy in those circumstances, I take the point made by counsel on behalf of the plaintiff that any alternative remedy (if realistically available) would not serve to vindicate the plaintiff's right to have determined that the sexual abuse allegedly perpetrated against him in fact occurred and to be compensated on that basis.
34. However, in my view, the factors in the balance of justice which would favour the plaintiff being allowed to proceed with these proceedings are outweighed by the very real and acute prejudice to the applicants here which is caused by the death of the late Mr. Meehan. The late Mr. Meehan's position on the allegations, as reflected in the defence filed on his behalf, is that he was innocent of the alleged sexual abuse. The alleged abuse was said to have occurred in private encounters between the plaintiff and the late Mr. Meehan. In the absence of Mr. Meehan, the determination of that matter at trial would

occur without the applicants being able to call any witnesses to advance the late Mr. Meehan's defence.

35. In my view, the circumstances are analogous to those present in the case of *Whelan v. Lawn* [2014] IESC 75. In that case, the plaintiff alleged sexual abuse against his grandfather in the home of his grandfather and grandmother. The alleged abuse had taken place between 22 and 25 years prior to the proceedings. The plaintiff's grandmother died and her unavailability as a witness was sufficient for the High Court to take the view that the real risk of an unfair trial such as to dismiss the proceedings. The plaintiff appealed to the Supreme Court. By the time the Supreme Court hearing came on, his grandfather, the alleged abuser, had also died.
36. In his judgment, Hardiman J. noted that "*the grossest form of prejudice in civil proceedings is the death of the defendant himself, so that he is not able to deny what is alleged against him in evidence, or of witnesses who might have been available to the defence at an earlier stage*" (at paragraph 9). Hardiman J. went on to state that:
- "In a case like the present, the death of [the plaintiff's grandfather] means that his Personal Representative, who has to defend the action, will not be able to call any witness whatever to contradict the plaintiff's case. Accordingly, the plaintiff's counsel will be able to urge that his client's evidence is uncontradicted so that he must win the case."*
37. Hardiman J. took the view that the action there should be dismissed because it had become "*afflicted with difficulties and prejudice to the defendant 'so... as to be beyond the reach of fair litigation' in the phrase of Henchy J. giving the judgment of the Court in Sheehan v. Amond [1982] IR 235, at 239*".
38. Counsel for the plaintiff sought to answer these concerns by stating that the applicants would be fully free to cross-examine the plaintiff at trial, and have access to a range of material (including the statements of complaint made by the plaintiff to An Garda Síochána) from which the reliability and consistency of his story could be tested. It was pointed out that it is accepted in the defences filed by each of the defendants that the plaintiff was a pupil in the school at the relevant period and that the late Mr. Meehan was a guidance counsellor and vice principal at the school during the period. It was further pointed out that the late Mr. Meehan, in replies to particulars furnished when he was alive, had said, in providing further particulars of a plea that he was prejudiced by reason of delay in the bringing of the proceedings, that his capacity:-

*"to remember events at such remove (and in particular events which would have the potential to exculpate him from the allegations being made) has or will be prejudiced. Diary/records that he kept over the relevant years are no longer available. [He] himself is now a man of advanced years."*



39. (I note that it was also pleaded in those replies to particulars that *"the very nature of the claims as made are such that determination of issues of liability will come down to oral evidence and/or assessment of the credibility of the parties to the proceedings"*.)
40. Counsel for the plaintiff made the point that, as a general principle, the death of a party was not necessarily fatal to an action proceeding, highlighting in this regard the dictum of McDermott J. in *J C v S D* [2012] IEHC 383 that *"the death of a witness even if a party to a case is not of itself enough to establish the basis for the dismissal of an action"*. It is, however, worth quoting the entirety of the relevant paragraph in the judgment of McDermott J.:

*"[5.17] It is not surprising that the application of the same principles regarding delay in civil cases concerning alleged sexual abuse or other abuse of children in schools or institutions many years ago may result in different conclusions. Each case depends on its own facts. In some instances the defendant alleged to have perpetrated the abuse may be alive: the witnesses to some of the surrounding circumstances relevant to the claim may be alive. Relevant facts may still be capable of objective verification by records or otherwise. In some cases the acts of the perpetrator may have caused huge damage to the plaintiff effectively disabling them from dealing with the issues or taking proceedings until many years later. Other claimants may have been minors during and for some time after the alleged abuse and/or been under the control or dominance of the alleged abuser. On the other hand, witnesses including the alleged perpetrator may be dead at the time of the initiation of proceedings or at the time the case comes on for trial. Vital evidence may no longer be available. Records may have been lost. All of these factors must be carefully considered. In that regard, I accept that the death of a witness even if a party to a case, is not of itself enough to establish the basis for the dismissal of an action. The death or unavailability of a witness is one of life's events which the administration of justice is often required to accommodate (see *Killeen -v- Thornton Waste Disposal Limited* [2010] 3 I.R. 457)."*

41. It is clear that McDermott J. was not laying down any prescriptive rule to the effect that the death of a party could not lead to the dismissal of an action; rather, each case has to be assessed on its own facts.
42. It was finally submitted, on behalf of the plaintiff, that any question of potential prejudice should be left to the trial judge. It was pointed out that, as this application was being brought by the first and second defendants only, the matter would be proceeding to trial as against the other defendants in any event. It was submitted that the various questions thrown up by the pleadings related to delay, including any actual prejudice that might be occasioned by the death of the late Mr. Meehan, would be more justly determined at trial.
43. In my view, it would not be fair or appropriate to leave to trial the issue of the prejudice resulting from the unavailability through death of the late Mr. Meehan, the sole alleged perpetrator of sexual abuse against the plaintiff, and the balance of justice in my view accordingly favours dismissal of the proceedings at this juncture. This is a case where the

relevant facts of the alleged abuse are not capable of objective verification by records or other witnesses. It is not a case where there are admissions on the record as to acts allegedly committed by the late Mr. Meehan. (In this regard, I do not think it can be said that the copy of the compliment slip sent by Mr. Meehan to the plaintiff following completion of his Leaving Cert exams, which was before the Court on this application, could be said to constitute any form of admission). That position is not going to change between now and any trial. In the circumstances, I do not see that it would be consistent with the sound administration of justice for the plaintiff to be allowed to proceed to a trial, at which the most serious allegations would be made in open court against a deceased man, in circumstances where the applicants will simply not be able to meet that case on its merits through any admissible evidence at that trial owing to the death of the late Mr. Meehan.

44. Neither side were able to identify a case in which a defendant alleged perpetrator of sex abuse had died but the case had nonetheless proceeded to trial. In *McDonagh v. O'Shea* [2018] IECA 298, the plaintiff had sought damages for the sexual abuse allegedly perpetrated on him by a member of a religious order while at primary school. He also sought damages for alleged physical assaults by a separate individual, the principal of the school. The alleged perpetrator of the sexual abuse had died. The High Court dismissed the proceedings on account of that person's death. The Court of Appeal (Baker J.) held (at paragraph 55) that the defendants would be prejudiced in their defence of the sexual assault claims due to the death of the alleged perpetrator of the sexual assaults and dismissed those claims on the basis that there was a real risk of an unfair trial of same. Baker J. overturned the High Court's dismissal of the physical assault claims (for which there was a separate alleged perpetrator) on the basis that the alleged perpetrator of the physical assaults was still alive and there was no evidence that allowing the action to proceed in respect of the alleged assaults by that person would cause unfairness (paragraphs 64 and 65). The important point, however, for present purposes is that both the High Court and Court of Appeal took the view that a fair trial could not ensue in respect of the sexual assault allegations because of the death of the alleged perpetrator of those assaults.
45. While the degree of real prejudice to the applicants by reason of the death of the late Mr. Meehan is the dispositive reason for my view that the balance of justice favours the dismissal of these proceedings at this point, I do note that there may still be an opportunity for vindication on the plaintiff's part in that no application has been brought by the third and fourth defendants to strike out the proceedings and, therefore, as matters stand, his claims in vicarious liability against those defendants can proceed to trial.

**O'Domhnaill grounds**

46. In the event that I am wrong in relation to my conclusions on the *Primor* grounds, I will for completeness address the case made on the basis of *O'Domhnaill*.
47. For the reasons set out above, in my view, the very serious prejudice caused to the applicants by the death of the late Mr. Meehan is such to lead to a very real and

substantial risk that there will be an unfair trial or an unjust result at trial in this matter. The right of the first and second defendants to call evidence in defence of the very serious allegations made is effectively set at nought by the death of the late Mr. Meehan.

48. In that regard, I do not believe that the analogy with a criminal trial invoked by counsel for the plaintiff at the hearing before me is well founded. Counsel for the plaintiff made the point that questions of prejudice would typically be dealt with at criminal trials and that it is only very exceptionally, where there is a grave risk of an unfair trial, that a criminal trial will not proceed. However, it is of course the case that a criminal trial will not proceed if an accused dies. The provisions of the Civil Liability Act, 1961 mean that a cause of action can survive the death of a party to a civil action. Accordingly, the *Primor* and *O'Domhnaill* jurisprudence serves to ensure that no injustice can result from civil trials proceeding, including in the event of death of a defendant, at a lengthy remove from the events the subject of the proceedings, in the event that either the balance of justice does not favour same, where there has been inordinate and inexcusable delay by the plaintiff (in the case of the *Primor* jurisprudence), or there is a real and substantial risk of an unfair trial and/or an unjust result (in the case of the *O'Domhnaill* jurisprudence).
49. I am acutely conscious of the very serious damage which the plaintiff says has been caused to his life as a result of the matters complained of. I have very carefully considered his right to seek to pursue to trial his claim for compensation for the grave wrongs which he alleges have been perpetrated against him and which have had such adverse effects on his life. However, it is important when considering fair trial rights to also weigh in the scales of justice the right of a defendant, who maintains his innocence of allegations made against him, to a fair trial which will yield a fair result. Unfortunately, and through absolutely no fault of the plaintiff, the death of the late Mr. Meehan means that, objectively, there is a real risk that a fair trial would not occur in this case.
50. Accordingly, I will grant the orders sought.
51. I am sure the applicants will be mindful of the fact that the late Mr. Meehan died well after the commencement of the proceedings and that an event beyond the control of the plaintiff has effectively led to a position where he will not now have a trial and determination of his claims against the late Mr. Meehan. I am provisionally minded in the circumstances to take the view that a just order on costs would be no order as to costs. I will, however, hear the parties further in that regard if necessary.

#### **CHRONOLOGY**

1998	The Plaintiff pleads that the alleged abuse the subject matter of the proceedings occurred up to the year 1998.
5th January 2012	Plenary Summons issued

12th January 2012	Deceased enters an Appearance
11th December 2012	Statement of Claim delivered
15th January 2013	Notice for Particulars raised by the Deceased
17th June 2013	Plaintiffs' Replies to Particulars
4th July 2013	Defence of the Deceased delivered
4th July 2013	Letter from Deceased seeking Voluntary Discovery from the Plaintiff
9th July 2013	Plaintiff's Notice of Trial
19th November 2013	Plaintiff delivers Reply to Defence ; Notice for Particulars raised by the Plaintiff ; Plaintiff seeks Voluntary Discovery from Third Named Defendant
30th December 2013	Third Named Defendant makes counter-offer of Voluntary Discovery
6th January 2014	Deceased delivers Replies to Particulars raised by the Plaintiff
13th March 2014	Proceedings transferred to Dublin Personal Injuries List
7th September 2014	Third Named Defendant repeats counter-offer of Voluntary Discovery
12th September	Plaintiff accepts Third Named Defendant's offer to make Voluntary Discovery ; Third Named Defendant Requests Voluntary Discovery from Plaintiff

2016	
31st August 2017	Plaintiff's Notice of Intention to Proceed
26th October 2017	Plaintiff requests Voluntary Discovery from Third Named Defendant
16th November 2017	Plaintiff swears Affidavit of Discovery
23rd January 2018	Plaintiff repeats request for Voluntary Discovery from Third Named Defendant ; Plaintiff furnishes Affidavit of Discovery on Third Named Defendant
7th March 2018	Plaintiff repeats request for Voluntary Discovery from Third Named Defendant
28th June 2018	Plaintiff receives Affidavit of Discovery from Third Named Defendant
17th September 2018	Plaintiff writes to Third Named Defendant asking if a specific item in the Affidavit of Discovery is within the possession or procurement of the Third Named Defendant
22nd November 2018	Third Named Defendant confirms that they have been unable to locate the relevant document
11th February 2019	Plaintiff writes to Third Named Defendant requesting a supplemental Affidavit of Discovery
7th April 2019	Death of Deceased
10th June 2019	Plaintiff writes to Third Named Defendant requesting a supplemental Affidavit of Discovery
8th July 2019	Plaintiff writes to Third Named Defendant requesting a supplemental Affidavit of Discovery
1st August	Plaintiffs solicitors seek confirmation as to the identity of the legal personal

2019	representatives of the Deceased
27th August 2019	Plaintiff writes to Third Named Defendant requesting a supplemental Affidavit of Discovery
6th September 2019	Deceased's solicitor notifies Plaintiff of Personal Representatives
30th September 2019	Plaintiff writes to Third Named Defendant requesting a supplemental Affidavit of Discovery
18th November 2019	Plaintiff seeks Grant of Probate/Letters of Administration from First Named Defendant
13th February 2020	Plaintiff writes to Third Named Defendant requesting a supplemental Affidavit of Discovery ; Plaintiffs solicitors seek an undertaking that the Deceased's legal personal representatives would not distribute his Estate pending resolution of these proceedings
30th March 2020	Deceased's solicitor undertakes to provide Plaintiff with Grant of Probate
22nd July 2020	Deceased's Solicitors issue Motion seeking to dismiss the proceedings
25th February 2021	Plaintiff issues Motion seeking to strike out the Third Named Defendant's Defence for failure to comply with Agreement to make Discovery