THE HIGH COURT

[2022] IEHC 538

[2018/7992 P]

BETWEEN

T.B.

PLAINTIFF

AND

HEALTH SERVICE EXECUTIVE AND AN GARDA SÍOCHÁNA AND NOVARTIS IRELAND LIMITED

DEFENDANTS

JUDGMENT of Mr. Justice Heslin delivered on the 30th day of September, 2022

1. The plaintiff is a litigant in person who issued proceedings against the defendants by way of a plenary summons dated 7th September, 2018 ("the Plenary Summons"). This was accompanied by a "Grounding Affidavit" which the plaintiff swore on 6th September, 2018 and a copy appears to have been filed in the High Court on the 7th September, 2018 in the context of issuing the plenary summons ("the Grounding Affidavit"). By order made on the 6th September, 2019 (Barr J.) the plenary summons was renewed for a period of three months. On 24th April, 2020 the President made an order granting the plaintiff an extension of time for a period of four weeks to amend the plenary summons to disclose the correct title of the third named defendant. The plaintiff delivered a statement of claim dated 6th April, 2021 ("the Statement of Claim") and, on 16th June, 2021 the plaintiff delivered a "statement of claim addendum" ("the Addendum"). For ease of reference, I will refer to the foregoing, collectively, as "the pleadings". On 19th July, 2020 this court heard applications brought by each of the three defendants, respectively, seeking to have the plaintiff's claim dismissed.

The relief sought by the first named defendant

2. As is clear from the motion issued on behalf of the first named defendant, dated 6th August, 2021, the first defendant seeks:

(1) An order dismissing the plaintiff's claim for failing to disclose a cause of action and/or being bound to fail and/or constituting an abuse of process;

(2) An order pursuant to s. 10 (3) (b) of the Civil Liability and Courts Act, 2004 and/or pursuant to the inherent jurisdiction of the court staying these proceedings;

(3) An order pursuant to s. 10 (3) (b) of the Civil Liability and Courts Act, 2004 and/or pursuant to the inherent jurisdiction of the court dismissing these proceedings; and

(4) An order for costs.

3. I will presently look in detail at the first defendant's application, but it is fair to say that it can be summarised as follows. First, in circumstances where the nature of the plaintiff's claim is one of medical negligence, it is wholly unsupported by any independent expert medical opinion and constitutes an abuse of process (reliance being placed *inter alia* on the decision of Mr. Justice Simons in *Rooney v. HSE* [2022] IEHC 132). Second, it is contended that this is a situation where there is no credible basis for the assertions in the pleadings. Whilst acknowledging that the inherent jurisdiction of the court to dismiss proceedings should be exercised sparingly, it is contended that the plaintiff has not put forward any credible basis for suggesting that at trial it may be possible to establish the facts asserted (with reliance placed on the well-known decision of the Supreme Court by Clarke J. (as he then was) in *Lopes v. The Minister for Justice, Equality and Law Reform* [2014] 2 IR 301).

The relief sought by the second named defendant

4. The second defendant's motion which issued on 14th January, 2022 seeks:

(1) An order pursuant to O.19, r. 28 of the Rules of the Superior Courts ("RSC") striking out the plaintiff's claim on the basis that it is frivolous, vexatious and discloses no reasonable cause of action;

(2) Further and/or in the alternative, an order pursuant to O.19, r.12 of the RSC striking out the plaintiff's claim on the basis that it is unnecessary, scandalous or which may tend to prejudice, embarrass, or delay the fair trial of the action;

(3) Further and/or in the alternative, an order pursuant to the inherent jurisdiction of the court striking out the plaintiff's claim on the basis that it is frivolous, vexatious, bound to fail and discloses no reasonable cause of action; and

(4) An order for costs.

5. As can be seen from the foregoing, a somewhat different approach is taken by the second defendant. In essence, whilst the second defendant - like the first - contends that the plaintiff's claim should be struck out pursuant to the inherent jurisdiction of this court, reliance is also placed on O.19, r.28 of the RSC which provides that:

> *"The court may order any pleading to be struck out, on the grounds that it discloses no reasonable cause of action or answer and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."*

6. With respect to the application pursuant to O.19 r.28, the second defendant contends that, taking the pleadings at their height, the plaintiff cannot possibly succeed against An Garda Síochána in circumstances where the assertions, even if assumed to be true, do not give rise to a cause of action against the second named defendant.

The relief sought by the third defendant

7. By way of a motion issued on 25th November, 2021 the third defendant seeks:

(1) An order pursuant to this court's inherent jurisdiction dismissing the plaintiff's claim on the basis that it discloses no cause of action against the third defendant and/or is bound to fail and/or constitutes an abuse of process;

(2) In the alternative, an order pursuant to s. 10 (3) of the Civil Liability and Courts Act staying or dismissing the plaintiff's claim; and

(3) Costs.

The third named defendant contends *inter alia* that it is impossible to identify any valid cause of action against the third defendant. It is also asserted that, insofar as a claim is made out, it is a medical negligence claim with respect to alleged adverse reactions from a medication allegedly prescribed. No expert medical opinion on liability has been obtained by the plaintiff. Moreover, it is asserted that any such claim is 'statute barred'.

Section 10 (3) of the Civil Liability and Courts Act, 2004

8. Before proceeding further, it is useful to make clear that s. 10 (1) of the Civil Liability and Courts Act, 2004 ("the 2004 Act") requires *inter alia* that proceedings in the High Court in respect of a personal injuries action be commenced by way of a personal injuries' summons. The proceedings commenced by the plaintiff were without doubt in respect of a personal injuries action. Although a range of allegations are made, at the core of the pleadings is a claim for damages in respect of personal injuries. Thus, s. 10 (1) of the 2004 Act was not complied with. Section 10 (2) of the 2004 Act goes on to detail what a personal injuries summons must specify and this includes *inter alia, "full particulars of the acts of the defendant constituting the said wrong and the circumstances relating to the commission of the said wrong"* as well as *"full particulars of each instance of negligence by the defendant".* Section 10 (3) goes on to provide that, where a plaintiff fails to comply with the requirements in the section, the court may *inter alia* dismiss the plaintiff's action where it considers that the interests of justice so require. In his decision in *Rooney v. HSE,* Simons J. (from para. 37 onwards) made reference to the 2004 Act and to the enhanced level of detail required in pleadings and the importance of compliance with procedural requirements. At paras. 41 and 42, Simons J. stated the following with respect to claims where professional negligence, in particular medical negligence, are asserted:

> "[41] … the courts have said that it is irresponsible, and, potentially, an abuse of the process of the court to commence professional negligence proceedings without first ascertaining that there are reasonable grounds for so doing (*Cooke v. Cronin* [1999] IESC 54). An independent expert report will be required in the vast majority of medical negligence claims, but there will be certain circumstances where such is not an essential precondition (*Mangan v. Dockeray* [2020] IESC 67).
>
> [42] This has resulted in a convention whereby proceedings alleging professional negligence will not normally be issued without the intended plaintiff's lawyers having first had sight of an independent expert report. This convention is not absolute, and proceedings are sometimes issued notwithstanding the absence of the requisite report. This is done to protect the intended plaintiff's position in respect of the two-year limitation period. This practice is sometimes referred to as issuing a "*protective writ*" or issuing proceedings on a "*protective basis*". It is imperative, however, that the requisite report be obtained thereafter with reasonable expedition (*Murphy v. Health Service Executive* [2021] IECA 3 at paragraph 93). Depending on the views expressed by the independent expert, it may become necessary to discontinue the proceedings."

9. Before proceeding further, it is appropriate to note that, despite having been called upon to do so, the plaintiff has never provided any report from a medical expert. In response to a question put to her by this court, she made clear that she decided *not* to seek one. Nor has she ever shown her

pleadings to any qualified medical doctor. I now turn to an examination of the case pleaded by the plaintiff against each of the defendants.

The pleadings (the claim against the first defendant)

10. Although the general indorsement of claim to the plenary summons is relatively short, the statement of claim runs to 67 paragraphs, the grounding affidavit comprises 28 paragraphs and the addendum a further 23 paragraphs. A clear sense of the allegations made by the plaintiff against the first defendant can be seen from the following *verbatim* extracts from the pleadings:

- "*The plaintiff's claim is Explanations of many scars, microsurgeries to my body. In Tullamore Hospital following breakdown of my immune system, thyroid, Aortic Arch unfolding, Acidosis absent breakdown of optic nerves. Removal of Cartilage Bone from my neck during foot operation, glands removed. Musculoskeletal disease caused by aliskiren poisoning. X-rays and scans not explained.*
- *For damages for breach of care and safety whilst a patient of HSE. Betrayal of trust. Withholding of medical information. Defamation of name and character (see plenary summons);*
- *Up until 2011, I believed that doctors and HSE were the most trusted part o[f] Ireland even when I was misdiagnosed with appendicitis in 2009, I was grateful to be looked after in an emergency situation at Connelly Hospital and appendix removed (statement of claim para. 3);*
- At para. 5 of the statement of claim the plaintiff makes allegations in respect of a named medical professor whom she believes that she saw on 20th July, 2011 and the plaintiff pleads*, inter alia: "It was like a drama as he flitted around trainee consultants and doctors which I had not been informed were going to be there. At no time was there a consultation with me just a performance carried out in front of me with trainee medical people. He then prescribed the blood pressure drug Rasilez Aliskiren to me. He also stated that I was not to look up internet but to trust the Medical Profession as they had my interests at heart."*
- The plaintiff goes on at para. 5 of the statement of claim to make assertions to the effect that she suffered certain adverse reactions to prescribed medication pleading *inter alia* that *"the fourth day after taking my blood pressure medication one of my Students said to me that my Right Eye looked bruised and swollen.";*
- The plaintiff proceeds to set out a certain narrative which includes, *inter alia,* assertions to the effect that the third named defendant holds *"the Irish government and the HSE to ransom";*
- The plaintiff alleges, *inter alia,* that the *"HSE are equally guilty for taking cover up or allowing such torture"* (para. 17 of statement of claim);
- The plaintiff describes herself as having been *"given the run around and only what I can describe as mockery of my x-rays"* (para. 20);
- She asserts *inter alia* that she has "*been denied use of my private healthcare with HSE stalling & refusing letters of referral";*
- The plaintiff goes on to plead, *inter alia,* that she was*"Sectioned for knowing what criminal doctors in the HSE have done to me"* (grounding affidavit para. 22);

- As well as asserting that certain x-rays prove that the plaintiff does not have any mental health issues, she pleads *inter alia* that *"psychiatry has always been used as a weapon against patients who speak the truth and who know crimes have been done against their bodies – I was told there was nothing physically wrong with me – yet x-rays from Monaco prove otherwise as I knew already myself"* (grounding affidavit para. 24);
- The plaintiff claims that she *"suffered much agony and almost died at the hands of"* a named doctor in a particular hospital *"when he authorised injections to me. This was after he authorised a scan of my Aortic Arch in the general hospital. My blood pressure went off scale and could not be brought back into safe readings"* (grounding affidavit para. 26);
- In the statement of claim the plaintiff claims damages for, *inter alia,* the following:

"1*. Adverse reactions to the drug Rasilez Aliskiren.*

1. *Forced Breakdown of my healthy thyroid.*
2. *Acidoses throughout my body causing cysts on my kidneys and liver.*
3. *Unfolding of my Aortic Arch.*
4. *Eye infections.*
5. *Cataracts to both eyes.*
6. *Optic nerve damage to both yes (sic).*
7. *Damage to my pituitary gland.*
8. *Damage to glands in stomach.*
9. *Damage to glands under my arms.*
10. *Orange Freckle Rash.*
11. *Vomiting to extent of blood showing on faeces.*
12. *Pernicious anaemia.*
13. *Untold suffering & pain.*
14. *All above only took three weeks to magnify themselves.*
15. *Musculoskeletal disease.*
16. *Broken foot in 2013.*
17. *During elective operation for one broke foot.*
18. *I suffered also hospital/doctor breaking my good left foot, placing a pin and screw in this foot, and told I only had tissue damage to my right foot. This was not true.*
19. *During this operation, I suffered plates in both feet whereas my right foot could never heal.*
20. *Theft of glands including the glands under my arms.*
21. *When I came home from this forced confinement in 2011 all my personal belongings and boxes had been torn open and searched. The only things missing from my belongings were my Irish passport and my UKNI number and papers.*
22. *Theft of my pituitary gland – cut out of my forehead.*
23. *Theft of my thyroid cartilage cut out of my throat/neck.*
24. *Theft of cartilage bones from both knees.*
25. *Theft of my healthy hips which were replaced with some plastic hips.*

> 26. *Under my left breast was cut into and a patch placed in my aortic arch that had been forced unfolded.*
> 27. *2012 – Gamma Ray radiation.*
> 28. *Cryotherapy.*
> 29. *My vagina cut into, sliced and pink flesh exposed.*
> 30. *FGM of my sexual organs.*
> 31. *An episiotomy done on me and left cut open.*
> 32. *Forced involuntary into a hospital to shut me up from asking questions on the many scars to my body.*
> 33. *Assault and battery by forcing drugs into my body and keeping me in confinement for five weeks in 2011…"*

- As well as referring to correspondence sent in 2006 to the HSE CEO, the plaintiff makes allegations against her sister and also asserts that she was *"assaulted by medical people"* (statement of claim para. 6);
- The plaintiff asserts that during what she characterises as *"involuntary abduction"* in 2006, she *"suffered many adverse reactions to drugs prescribed by 'a psychiatrist'…"* whom she names;
- From para. 41 onwards, the plaintiff asserts that she *"suffered untold agony and pain under the following doctors who bullied me, ridiculed me, and added to my distress and pain…"* and, between paras. 42 and 61, numerous hospitals and individual medical practitioners are identified;
- Para. 62 of the statement of claim refers to the fourth page, where particular allegations are made with respect to the second named defendant. Immediately after para. 62, the plaintiff states: "*I submit this statement of claim for damages suffered".*
- The addendum includes *inter alia* the assertion that: *"when I still got no answers to my questions on my healthcare I tried the Ombudsman's Office but found the girl … who is in charge of HSE and healthcare completely against anything I said or did. Yet I was the one with unexplained injuries and severe pains which doctors would not explain to me"* (Addendum para. 4);
- The plaintiff goes on to assert, *inter alia,* that: *"The breaking down of my glands, organs, etc is ongoing since July 2011 ever since* [a named doctor] *prescribed Rasilez Aliskiren to me"* (Addendum para. 8);
- Later, the plaintiff pleads, *inter alia,* that: *"I wrote to the Oireachtas Committee on Health to ascertain why such happenings were going on. It was around this time also that I noted that none of the adverse reactions from Rasilez Aliskiren were being reported – the only one who was reporting them was me. The IMB at the time sent out forms to fill in the reporting of side effects and no one reported them"* (Addendum para. 14);
- Later still, the plaintiff pleads, *inter alia,* that *"the first time I felt treated like a human being was in Monaco where the doctor Antonio told me the true state of my spine – where* [a named doctor] *and others kept telling me I had a Perfect Spine. And that I was paranoid and imagining any pain in my spine or back"* (Addendum para. 16);

- The plaintiff goes on the plead, *inter alia,* that a named "*hospital started trials on placing bioactive glands in bones in 2012"* (Addendum para. 17);
- The plaintiff pleads that *"I know that during elective surgery* [a named clinician] *and his team inserted WITHOUT CONSENT bioactive glass into the end of my spine. This trial has been proven to be a complete failure as it poisons the discs and causes the spine to degenerate away"* (Addendum para. 18);
- The plaintiff pleads, *inter alia*, *"I seek damages for all that I have needlessly suffered at the hands of all parties mentioned here since July 2011 and since September 2013"* (Addendum para. 20).

The plaintiff's submissions

11. The plaintiff represented herself at the hearing and made submissions during the course of approximately an hour. I have carefully considered these as well as the averments made by the plaintiff in an affidavit sworn on 26 March, 2022 in opposition to the reliefs sought. The said affidavit comprises, in the main, a narrative setting out of assertions made against a range of hospitals and named clinicians. It is unnecessary to set out in this judgment the various oral submissions made. It is sufficient to say that they reflect the contents of the pleadings as well as comprising a setting out of other issues of concern to the plaintiff, including complaints with regard to her former partner; her efforts to secure accommodation; her interactions with South Dublin County Council with respect to that issue; treatment in the context of her dealings concerning accommodation which she described as "*abusive coercive control*" and an assault in which the plaintiff asserts that she received a punch in her right arm and her walking stick was stolen. The plaintiff also referred in oral submissions *inter alia* to her actions with the Environmental Protection Authority ('EPA') and certain suspicions she had with regard to electricity voltage. She referred, also, to writing to the "*European Commission telling them what had happened to her*". She also referred *inter alia* to scandals involving the treatment of children and those in 'Magdalen Laundries', characterising the proceedings brought by her and those scandals as all being *"the same thing" i.e. "it's all against women".*

12. Conscious that the plaintiff was appearing as a litigant in person, I encouraged her to direct her submissions at the applications made but it is fair to say that, despite this encouragement, the plaintiff's submissions were very wide-ranging. I am satisfied, however, that nothing touched on by the plaintiff in oral submissions gave rise to any possibility that either the plaintiff wished to amend her pleadings or that there was an issue which, if included in the pleadings by way of an amendment, would make any material difference to the claim articulated.

13. It is also fair to say that, although the second and third named defendants were referred to in oral submissions, what the plaintiff had to say underlined the reality that hers is a claim in which she seeks compensation for what she considers to be medical negligence. For example, her oral submissions included *inter alia* the following.

- that a certain hospital which performed x-rays and scans *"never did a blood test"* and did not perform an *"iron test"* but should have;
- that the plaintiff has been *"targeted with radiation in many ways, many times"*;
- that *"the first thing radiation does is to deplete iron"*;
- that the plaintiff has been *"turned away from a number of hospitals"*;
- that she received *"bits of information but nobody took responsibility for her injuries";*

- according to the plaintiff *"I was reading up as much as I could in order to find out what had happened to me"*;
- the plaintiff characterised her situation as being similar to that of the *"Birmingham Six",* insofar as the establishment could not acknowledge wrongs despite wrongs having been committed;
- she referred in submissions to *"cover-up"* by *"top doctors"*. In the *"NHS"*, the thrust of the submission being that the second named defendant was involved in something of this nature;
- she asserted *inter alia* that a particular doctor refused to allow a female doctor to examine her when the plaintiff *"asked too many questions"*;
- that a particular doctor made a mistake in relation to treatment of her leg;
- that calls have been made in Northern Ireland for a *"duty of candour"* and the plaintiff's submission was to the effect that same does not exist in this jurisdiction;
- in her oral submissions the plaintiff referred to as what she characterised as a *"fear"* on the part of the Department of Health of *"pharma staff"*;
- that on the plaintiff's return to Monaco, she wrote to a named individual in the HSE and never received a reply.
- that the consequences of being mis-prescribed a particular drug included *"the opening of a valve"* which was *"slit open due to the drug"*;
- the plaintiff characterised her situation as *"a life sentence"*;
- she made clear *inter alia* that all of her issues *"go back to 2011"* in addition to what she described as *"bio-active glass trials"* in a particular hospital in 2013;
- among her oral submissions was to assert that *"doctors don't take the patients seriously"*;
- she referred *inter alia* to *"other victims"* and to her involvement in the Irish *"chapter"* of a victim's support group;
- in oral submissions the plaintiff contended *inter alia* that *"sexual abuse of men and women"* was happening *"under anaesthetic"*;
- she made clear in her submissions that she had *"no trust in"* doctors;
- the plaintiff also alleged *inter alia* that for many years she had been told by medical professionals in this jurisdiction that she had a *"perfect spine"* and she went on to assert that *"after five years, they were allowing my back to go poisoned"*;
- the plaintiff asserted *inter alia* that *"doctors rule everybody"* and that doctors had *"violated her" "in every way";*
- according to the plaintiff: *"my life stopped on 20th July, 2011"*;
- she described herself as *"dehumanised in every way"*.

14. The foregoing is by no means an exhaustive summary of the oral submissions made by the plaintiff. It does, however, illustrate the reality that the plaintiff is someone who very sincerely believes that she has been wronged. This Court could have nothing but sympathy for anyone who genuinely believes they have suffered at the hands of other, but this Court simply cannot decide applications of the present type on the basis of the strength of the plaintiff's belief, regardless of how sincere.

15. In this case, the plaintiff makes a range of extremely serious allegations against no less than 8 different hospitals or medical practices, and 20 named medical practitioners in respect of a claim, which at its heart, is of medical negligence. Yet none of these claims are underpinned by the expert evidence of any independent medical practitioner. It is not enough for a plaintiff to *believe* that she is the victim of medical negligence, that belief must be supported by the views of a qualified medical doctor.

16. Before making her oral submissions, the plaintiff heard the applications which were opened on behalf of the three defendants, respectively. She heard *inter alia* the relevant extracts from the judgment of Simons J in *Rooney v. HSE* wherein the requirement for an independent expert's report in a medical negligence claim was emphasised. During the course of the plaintiff's oral submissions, I also put certain questions to the plaintiff on this issue. What emerged from her responses is the following. First, the plaintiff has not obtained any report from any medical expert. Second, the plaintiff has never shown her pleadings to any doctor. Third, the plaintiff offered no explanation as to why no independent medical expert's report was provided. Fourth, it was very clear, however, that the plaintiff had made a conscious decision *not* to seek any medical expert's opinion to support the claim made.

17. I am satisfied on the evidence before the court that the plaintiff was put squarely on notice of the necessity for an independent medical expert's opinion in the context of what is, in substance, a medical negligence claim. It is also clear that the plaintiff was afforded the opportunity to seek such an opinion. In this regard, it is appropriate to quote *verbatim* from a letter dated 29 April, 2021, wherein Messrs Ronan Daly Jermyn, solicitors for the HSE, wrote to the plaintiff stating *inter alia*: -

> *"In relation to any claims of medical negligence against my client and its employees by way of doctors, nurses etc I must point out that it is settled Irish Law that to commence and maintain a claim of medical negligence against a professional medical doctor, the claimant must base their claim upon an expert opinion from an independent expert in that area/profession, in this case a medical doctor where that independent expert's opinion is that there was negligence arising. It is not sufficient simply for you to believe that there was negligence, you must have that belief supported by an independent expert.*
>
> *Can I please ask you to confirm that in relation to my client's, the HSE that you hold a written opinion from an independent medical expert in which the said expert gives the opinion that the actions of the [sic] my clients amount to negligence? If you hold such a report, can I please ask you to confirm the name and address of the expert that has provided opinion and to provide me with the date of that written opinion.*
>
> *I must point out to you that in the event that you do not hold such an independent expert opinion, then the instructions from my clients are that we should make an application to the Court to have your case dismissed or stayed until you produce such an independent expert opinion.*
>
> *Can I please ask you to reply to this within a period of 21 days from the date hereof?"*

18. A copy of the foregoing letter comprises part of the correspondence exchanged between the plaintiff and the first defendant's solicitor (exhibit 'PG1' to the affidavit of Mr. Peter Groarke, solicitor

for the first named defendant, sworn on 30 July, 2021, to ground the first named defendant's motion). In an email sent on 15 May, 2021 to the first defendant's solicitors, the plaintiff stated *inter alia* the following: -

> *"Expert Witness – let me tell you about an Expert Witness known and respected throughout the world – Dr. David Healy – he was to come to Ireland a few years ago on the death of a young teenage boy but was blocked from coming to that case by the HSE.*
>
> *Perhaps you could inform me what Expert Witnesses are allowed in court by the HSE.*
>
> *I shall appeal the Court to let me go ahead with my Application on the severe injuries which the HSE are well aware of and have made many attempts to injure me further or worse."*

19. On 27 May, 2021 the first defendant's solicitors wrote to the plaintiff stating the following: -

> *"I note from all of the recent emails of 15 and 17 May, that you do not make any reference to holding a written opinion from a medical expert supporting your allegations against my clients, the HSE. I explained in my letter of 29 April, 2021 for you to maintain a case of professional negligence against Medical Practitioners being the doctors and medical staff employed by the HSE, you must base that upon a written opinion from an independent expert in that medical field. If you do not have such a written opinion, then you are not entitled to proceed with this case…*
>
> *so that I can confirm that my understanding is correct can you please confirm that you do not hold any written opinion from an independent medical expert supporting your case against the HSE?*
>
> *If I do not hear from you confirming this, I will take it that you do not hold such written expert opinion.*
>
> *In the event that you are saying you do hold such a written opinion, can you please provide the name of the medical expert who has provided this to you and the date of such written opinion. If I do not hear from you with confirmation that you hold such a written opinion, I will be advising my clients to bring an application to the High Court seeking to have the proceedings against my clients, the HSE dismissed on the grounds that there is no basis for the claim."*

20. By letter dated 18 June, 2021, the solicitors for the first defendant wrote again to the plaintiff stating *inter alia* the following: -

> *"In relation to my client's the HSE as I have previously indicated to you if you are alleging medical negligence against the HSE its servants or agents it is necessary for you to have an external independent expert in that area of medicine to give a written opinion that in their opinion that there is medical negligence. Without such an independent expert report you are not permitted to continue with these proceedings.*
>
> *I have previously written to you asking you to confirm whether you hold such an external independent expert written opinion and if so to identify who it is from and the date of same.*
>
> *You have to date not indicated that you have such a report.*

> *If I do not hear from you within a further period of 21 days from the date hereof confirming that you have such an independent expert opinion along with the name and date of such written opinion I will then be advising my clients to bring an application before the Court to have these proceedings struck out."*

21. Irrespective of how sincerely the plaintiff believes the assertions against the first defendant which are contained in the pleadings, the various allegations of wrongdoing do not reflect the views of any independent medical expert in a position to offer an opinion to the effect that wrongdoing has occurred. As a matter of first principles such an opinion is vital in the present case, not least because this Court entirely lacks medical qualifications. In short, this is a situation where proceedings are brought against a wide range of hospitals and named medical practitioners without any qualified medical practitioner having offered a view to the effect that there are reasonable grounds for the claims made.

22. In the manner examined earlier in this judgment, it is clear that the plaintiff was made aware of the importance of an independent medical expert's opinion and given repeated opportunities to furnish same, but has decided *against* seeking this. Thus, this Court is not presented with a situation where, for example, a plaintiff has had insufficient time to procure a medical expert's opinion which she intends to, and has a reasonable prospect of, obtaining.

Legal representation

23. The plaintiff appeared as a litigant in person. At para. 23 of the grounding affidavit, the plaintiff averred *inter alia:* "*I have not been able to secure a solicitor North or South in Ireland and I therefore ask the court to please accept this sworn affidavit to allow me in as far as I can take my case to the High Court in Dublin against all of the above-named agents and companies."* It seems appropriate to make clear at this juncture that the question of legal representation is one which, in my view, was sensitively and appropriately referred to in correspondence which was sent to the plaintiff immediately after their appointment as the first defendant's solicitors. The following is a *verbatim* extract from a letter sent by the first defendant's solicitors on 6 January,2020:

> "*Legal Representation*
>
> *In the meantime, I am wondering whether you have sought independent legal advice, and have you made contact with the Law Society, or with the Legal Aid Board or the Citizens Advice to see if they can assist you in engaging a solicitor to act on your behalf in relation to these matters? I would strongly advise that you should do that if you have not done so already."*

24. It is uncontroversial to suggest that, had the plaintiff obtained legal advice, it would have been of very significant benefit. At the risk of stating the obvious, the fact that the plaintiff did not have the assistance of a qualified legal professional to advise her is plainly no fault of the defendants or either of them.

Expert medical opinion

25. In circumstances where the plaintiff represented herself and having regard to the nature of the oral submissions which the plaintiff made during the hearing, I felt it necessary during the hearing to draw her attention to the difference between, on the one hand, a submission or assertion that something is so and, on the other hand, evidence which underpins that assertion or submission. Just

as in her pleadings, the plaintiff made a range of assertions against a variety of named hospitals and named medical practitioners during the course of her oral submissions. Those assertions of legal wrongs on the part of medical practitioners are entirely unsupported by the opinion of any qualified medical practitioner willing to act as expert, in the context of the claim the plaintiff wishes to make.

26. In making the foregoing points, I do not for a moment doubt how genuinely aggrieved the plaintiff feels. This was perfectly clear during the hearing before me. However, on the issue of an opinion from an independent medical expert, the very furthest the plaintiff went was to refer to her attendance before a doctor in Monaco and, in oral submissions, the plaintiff said *inter alia* the following: *"I told him what I believed had been done to me".* The thrust of the plaintiff's submission was that, with respect to her beliefs and assertions regarding the cause of her ill health, the Monaco doctor responded by suggesting that she was *"more than likely"* correct.

27. For the benefit of the plaintiff, I feel it needs to be made clear that to recount for the court, however accurately, a conversation with a doctor in Monaco who has not provided any written opinion supportive of her pleaded case does <u>not</u> reach the threshold of what is required of any plaintiff who wishes to bring proceedings alleging medical negligence. This is not to criticise the plaintiff's sincerity or honesty or the accuracy of her memory. It does, however, bring into sharp focus the reality that the plaintiff, as a non-lawyer, may well not understand the distinction which I referred to during the hearing namely, the fundamentally important difference between (i) an assertion and (ii) evidence supporting that assertion.

28. Furthermore, and taking nothing away from the conviction with which the plaintiff made oral submissions concerning her case, her account of the conversation with a doctor in Monaco also raises a long-standing rule of evidence, known to qualified legal professionals as the "*hearsay rule".* In essence, what a plaintiff asserts to have been stated by another person is what is known as *hearsay* evidence if it is offered to prove the truth of what that other person has stated. Even if the plaintiff had taken the oath and given an accurate account of her conversation with the doctor in Monaco to the very best of her belief, it does not elevate that account to the status of evidence of the Monaco *doctor's* opinion. This seems to me to be something which the plaintiff may not have appreciated, in circumstances where she conducted her proceedings without legal advice and assistance. It also has to be said, however, that, even if all rules of evidence were ignored (and, plainly, they *cannot* be as this would be to create an injustice) the very height of what the Monaco doctor is reported to have said falls well short of a view from a medical expert which is supportive of the pleaded claim.

<u>Decision in respect of first defendant's application</u>

29. Having carefully considered the evidence before the court, and taking into account all submissions made by all parties, I am satisfied that the interests of justice require the dismissal of the plaintiff's claim as against the first defendant pursuant to s.10(3) of the 2004 Act. The plaintiff's maintenance of these proceedings, in the context of what amounts to a *refusal* to obtain any medical opinion which might provide any basis for the legal wrongs alleged, despite having been made aware of the significance of and requirement for same, is an abuse of process in my view.

<u>Inherent jurisdiction</u>

30. The following guidance was given by the Supreme Court (Clarke, Laffoy and Dunne JJ.) in its decision in *Lopez*, including: -

"2. That it was important to distinguish between the jurisdiction to dismiss that arose under O.19, r.28 of the Rules of the Superior Courts 1986 and the inherent jurisdiction of the court. The former was designed to deal with a case where, as pleaded, and assuming that the facts, however unlikely that they might appear, were as asserted, the case nonetheless was vexatious. **If, however, it could be established that there was no credible basis for suggesting that the facts were as asserted and that, thus, the proceedings were bound to fail on the merits, then the inherent jurisdiction of the court could be invoked.** *Salthill Properties Ltd v. Royal Bank of Scotland PLC*, [2009] IEHC 207, (unreported High Court, Clarke J., 30 April, 2009) followed.

3. That the inherent jurisdiction of the court to dismiss proceedings should be sparingly exercised. In order to defeat a suggestion that a claim was bound to fail on the facts, all that a plaintiff needed to do was put forward a credible basis for suggesting that it may, at trial, be possible to establish the facts that were asserted and that were necessary for success in the proceedings. *Barry v. Buckley* [1981] I.R. 306, *Sun Fat Chan v. Osseous Ltd*. [1992] 1 I.R. 425, *Kenny v. Trinity College Dublin* [2008] IESC 18 (unreported, Supreme Court, 10th April, 2008) and *Ewing v. Ireland* [2013] IESC 44, (unreported, Supreme Court, 11th October, 2013) approved.

4. That certain types of cases were more amenable to an assessment of the facts at an early stage than others. Where the case was wholly, or significantly, dependent on documents, then it might be easier for a court to reach an assessment as to whether the proceedings were bound to fail within the confines of a motion to dismiss. *Salthill Properties Ltd. v. Royal Bank of Scotland PLC* [2009] IEHC 2007, (unreported, High Court, Clarke J, 30th April, 2009) considered.

5. That it was not appropriate to dismiss a claim by virtue of forming a view that it was bound to fail on the law. **The essential question for the court was whether there was a credible basis, on the facts, on which the plaintiff could hope to establish the claim.**" (emphasis added).

31. Looking at the present application through the lens of the court's inherent jurisdiction, it is legitimate to engage in some, albeit limited, analysis of the facts in the case as pleaded. Having engaged in this analysis, it seems to me that the plaintiff's claim is nevertheless bound to fail. I take this view because it seems to me that the plaintiff has not put forward any *credible* basis for suggesting that it may, at trial, be possible to establish the facts asserted in her pleadings, which are necessary for a successful claim. I take this view in circumstances where it is fair to say that there are two key themes in the pleadings. The first is that the plaintiff has suffered horrendous injuries as a result of medical negligence (including *"theft"* of several *"glands", "cartilage",* and *"cartilage bones"*; adverse reactions to drugs prescribed to her; and the *"breaking"* of the plaintiff's *"good left foot"* during an operation; with the plaintiff also alleging that the HSE has allowed her *"torture"* to take place).

32. The second key theme in the pleadings is that there was a "*cover up*" of medical negligence/medical crimes involving all of those identified in the pleadings (i.e. 20 medical

practitioners identified by the plaintiff and 8 named hospitals/medical practices, with some suggestion of the involvement of An Garda Síochána, as well as the contention that the State itself, in particular the Department of Health, is fearful of the third named defendant).

33. However cautiously this Court approaches the matter, I have to come to the view that there is not a credible basis, on the facts, upon which the plaintiff could hope to establish the claim pleaded. Hence, this is one of those rare cases where it is appropriate, and in my view necessary, to invoke the inherent jurisdiction of this Court to dismiss the plaintiff's claim against the first defendant.

34. Carefully considering the pleadings, it seems to me that the claim advanced is wholly unsustainable, bound to fail and constitutes an abuse of process.

Statute of limitations

35. It should also be noted that, both in the pleadings and in her oral submissions, the plaintiff makes clear that any cause of action which she claims to have is one which arose on or within days of the 20th July, 2011. The medical negligence and adverse health consequences of which she complains are said to stem from the foregoing. Even taking into account *"2012 - gamma ray radiation"* and *"broken foot in 2013",* her plenary summons was not issued until 7th September 2018. This reality obviously raises a statute of limitations issue which would seem to me to present a further and insurmountable obstacle for the plaintiff.

The plaintiff's claim against the second defendant

36. It is fair to say that the main focus of the pleadings is on damage to the plaintiff's health for which she regards the first defendant as responsible. Of the 67 paragraphs in the statement of claim, only paras. 62-67 refer to An Garda Síochána. The following is a summary of what those paragraphs contain:

- That the plaintiff made a statement to gardaí in 2016 concerning doctors at a named hospital (para. 62);
- That a named detective garda edited the plaintiff's statement before sending it to the Director of Public Prosecutions ("DPP") and that this named member of An Garda Síochána "*immediately got a promotion"* (para. 63);
- That in 2011, a named garda sergeant promised the plaintiff that *"he was looking into doctors*" in a named hospital*;* that he confirmed to the plaintiff that he had a copy of an x-ray taken at that hospital in October 2011; that the garda sergeant *"seemed to have closed this file and was promoted";* and never contacted the plaintiff further (para. 64);
- That the plaintiff suffered a violent rape and that gardaí in a named garda station "*took a year to take a statement from me"* (para. 65);
- That the plaintiff's now ex-partner injured her and her spine (para. 65);
- That the plaintiff's ex-partner assured her that *"he was one of the 'untouchables' and he could do what he liked"* to her and nothing would happen; and that the plaintiff is *"following a different court case",* with regard to her ex-partner (para. 65);
- That a named garda and a named garda sergeant bullied the plaintiff by threatening her *"that they would ring my daughter on me";* and that a named garda

superintendent covered this up; and an allegation is also made with respect to the plaintiff's sister (para. 66);

- That gardaí in other (unnamed) stations *"have a history of covering up assaults to me by known criminals who were taken on by gardaí as garda informers" (para. 67).*

37. By way of preliminary comment with respect to the foregoing, it is difficult if not impossible, to ascertain a cause of action with respect to what the plaintiff has pleaded against the second defendant. Although very serious allegations are made, they constitute mere or 'bald' assertions which are scandalous in nature. By way of example, the clear implication from any objective reading of paras. 63 and 64 is that two individual members of An Garda Síochána received promotions as a consequence of wrongdoing.

38. Although, having considered the pleadings and all affidavits before the court, I have come to the view that the allegations comprising paras. 62 – 67 of the plenary summons do not and could not result in the plaintiff having a cause of action against the second named defendant, it is important to note that there is uncontroverted evidence before the court which utterly *undermines* the assertions made by the plaintiff.

39. With regard to the allegation at para. 63 that a certain detective garda edited a statement which had been made by the plaintiff, this is addressed at paras. 8 and 9 of an affidavit sworn on 3rd December 2021 by Inspector Kieran Keyes of the relevant garda station. Having made reference to the allegation of editing the plaintiff's statement, Inspector Keyes goes on, at para. 8, to make the following averments:

> *"I say, believe and am so advised that the plaintiff made a complaint to the Garda Síochána Ombudsman Commission in relation to this allegation. I further say, believe and am so advised that such complaint was withdrawn by the complainant in or about August 2016."*

40. Inspector Keyes proceeds to exhibit correspondence which confirms the withdrawal of that very allegation, and this comprises a letter dated 2nd August 2016 which was sent by GSOC to the chief superintendent of internal affairs at garda headquarters. That letter states *inter alia* the following:

> *"The complainant has withdrawn the complaint and all associated allegations…*
> *Accordingly, the GSOC shall take no further action in relation to the complaint.*
> *The gardaí concerned have been informed of the outcome of this complaint …"*

41. It seems appropriate to say that, even from a first-principles perspective, it offends natural and constitutional justice for a plaintiff to make an extremely serious complaint to GSOC concerning a member of An Garda Síochána and, having withdrawn that complaint in 2016, to seek to 're-animate' the withdrawn - complaint by including it in a statement of claim which was not delivered until almost five years later (6th April, 2021).

42. Although this court could have nothing but sympathy for a plaintiff who, having regard to the contents of her pleadings, has had significant challenges in her life, it is inimical to justice for these most serious of allegations to be levelled against named individuals, which, very obviously, touch on their professionalism and integrity, without a scintilla of evidence to support what, I am satisfied, constitute vexatious assertions.

43. Despite feeling compassion for the plaintiff, there must also be a consciousness of the effect on third parties of baseless assertions made, and it is not difficult to conceive of the adverse effect on a hardworking and diligent member of An Garda Síochána engaged in the vital work of the Force

upon learning, in 2021, that a scandalous allegation withdrawn by the plaintiff in 2016 was now pleaded in High Court proceedings. I deliberately say *diligent* and hardworking because that would seem to me to be self-evident from the plaintiff's plea that the garda in question received a *promotion.* There is not shred of evidence to suggest that this promotion flowed from wrongdoing as opposed to hard work. In my view the claims, including by innuendo, which the plaintiff seeks to make against members of An Garda Síochána - both named and unnamed - are scandalous and unsustainable in law and in fact.

44. At para. 9 of his affidavit Inspector Keyes goes on to make the following averments with respect to the statement which, according to the plaintiff, was *"edited"* by the named member of An Garda Síochána:

> *"…when the original handwritten statements taken from the plaintiff herein and signed by her are compared to the typed version of same, there is no discernible difference. I beg to refer to a copy of the said statement…"*

45. As to the content of those statements, they concern allegations made by the plaintiff with respect to an operation carried out in September 2013 at a named hospital. That operation is referred to in the pleadings. In her statement to An Garda Síochána, the plaintiff stated *inter alia:*

> *"On 8.9.13 I had an accident outside my house… I was told that I had 2 broken feet, but I knew I only had one broken foot. I was operated on the next day … when I woke up from the operation I am alleging that I had been assaulted … I believe that I was a victim of Bio Active trial… another injury I suffered during my foot operation was that my lymph glands were removed …".*

46. Inspector Keyes also addresses the plaintiff's allegations at para. 64 of the statement of claim to the effect that a named garda Sergeant, now Inspector, allegedly made promises to that plaintiff and had copies of her x-ray. Inspector Keyes makes the following averments:

> *"I say that such allegations are not grounded in fact. I say that Inspector* [named] *was never involved in an investigation regarding the plaintiff and at no time had her x-ray in his possession. I beg to refer to a copy of the letter from Inspector* [named] *confirming this position, dated the 24th May, 2021…"*

47. In the aforementioned letter, which comprises exhibit "KK3" to the affidavit sworn by Inspector Keyes, the relevant inspector confirms the averments at para. 10. Two important comments seem to me appropriate. First, the very height of the relevant plea is that a named member of An Garda Síochána did not make further contact with the plaintiff. It is inconceivable that this comprises a cause of action. This, once more, highlights the reality that it would have been of very great benefit to the plaintiff to have at least consulted with a qualified legal professional prior to initiating her claim and drafting the pleadings in question. Second, one could well understand the adverse effect upon someone, diligently and successfully pursuing their career in An Garda Síochána, of being met with a baseless allegation in legal proceedings half a dozen years after the relevant events. I say *baseless* because there is uncontroverted evidence before the court to that effect.

48. From para. 12, Inspector Keyes addresses the very serious allegation made by the plaintiff to the effect that it took a *year* for gardaí to take a statement from her with regard to her allegation that she suffered a violent rape, allegedly perpetrated by her ex-partner. At para. 12 Inspector Keyes avers *inter alia* the following:

"For the avoidance of doubt, I say, believe and am so advised that the second named defendant, its servants and/or agents carried out a thorough investigation in relation to such an allegation. A file was forwarded by the second named defendant, its servants and/or agents to the Director of Public Prosecutions, who directed no prosecution be brought.

13. Insofar as the plaintiff alleges that the second-named defendant, its servants and/or agents took a year to take a statement, I say this is plainly untrue and is misleading. I say that Garda [named] *spoke to the plaintiff by telephone two days after the date of the alleged offence on the 23rd April, 2015. Garda* [named] *by way of report dated 10th May, 2016, confirms that the plaintiff did not disclose any offence in the course of this conversation. I beg to refer to a copy of this report, upon which marked with the letters and number "KK4" I have signed my name prior to the swearing hereof.*

14. The plaintiff subsequently made a statement to the second-named defendant, its servants and/or agents in May 2016, in which she disclosed the alleged offence.

15. I say and believe that the plaintiff was informed by letter dated the 15th September, 2016, that the Director of Public Prosecutions had not directed a prosecution in relation to the alleged offence."

49. Once more, this is an example of an allegation made which is scandalous and vexatious and calls into question the professionalism and integrity of the second named defendant, and individual members of the force, regardless of whether it comprises a cause of action against the second named defendant, which I am satisfied is not the case. Once more, uncontroverted evidence wholly undermines what has been asserted.

50. Between paras. 16 and 18 of his affidavit, Inspector Keyes deals with the allegation made by the plaintiff to the effect that named members of An Garda Síochána bullied her, specifically by threatening *"that they would ring my daughter on me".* As well as not constituting a cause of action even if true, there is evidence before the court that it is not true. It is appropriate to add that, like the plaintiff's pleadings generally, this allegation of a threat that the plaintiff's daughter would be contacted, comprises a 'bald' assertion which, in the context of an allegation of threats made to the plaintiff, is scandalous. Yet, it is unsupported by evidence or by a setting out of facts which, if proved, might conceivably offer any support for the allegation.

51. Among the averments made by Inspector Keyes is that "*no such person is known"* to the second named defendant of the name provided by the plaintiff. He goes on to aver that a particular sergeant interacted with the plaintiff on one occasion in 2016 and set out the details of this interaction in a typed statement which Inspector Keyes exhibits at "KK5". The content of that statement relates to the reporting of a domestic incident on 24th July, 2016 involving the plaintiff and her sister. The report indicates that that gardaí found that plaintiff to be *"highly intoxicated"* and assisted her with arrangements to get home. Reference is made to the plaintiff returning to the relevant garda station making certain allegations concerning clothing allegedly damaged by her sister. The report indicates that the gardaí had certain concerns in relation to the plaintiff. It is also confirmed that a harassment complaint which the plaintiff initially made to gardaí concerning her sister was investigated locally and, because there was no evidence of harassment, it was directed that no prosecution in the matter be brought.

52. With respect to the final aspect of the plaintiff's allegations against the second named defendant, the contention that gardaí in certain (unnamed) Stations have a history of "*covering up*" assaults against the plaintiff by a "*known criminals*" who became "garda informers" is an extremely serious, but utterly unsupported allegation which is scandalous and vexatious, comprising an attempt to prejudice or embarrass the second defendant. It seems to me to be utterly unsustainable and an abuse of process.

Plaintiff's oral submissions regarding second defendant

53. It is fair to say that the second defendant did not feature significantly in the oral submissions made by the plaintiff. Indeed, she emphasised, *inter alia*, that certain members of An Garda Síochána (whom she named in her oral submissions) had been very good to her, against the backdrop of the plaintiff leaving her former partner.

54. I am entirely satisfied that, nowhere in her oral submissions, did the plaintiff make reference to any issue which, if her pleadings were amended to include same, would constitute a cause of action. Nor did the plaintiff, during the course of oral submissions, seek to provide any detail which might render the pleas made by her other than vexatious and scandalous. By that I mean, it is not as if the plaintiff, during oral submissions, sketched out a narrative which, however unlikely, if the asserted facts were ultimately proved, might constitute a cause of action. Insofar as the second named defendant featured at all in the plaintiff's oral submissions, the principal assertions made by her included the following:-

- That the Gardaí had not investigated an alleged assault where she received a punch in the right arm and her walking stick was stolen;
- That she was erasing certain material from GSOC;
- That she is not *"running down the Gardaí. There are some very good Gardaí"*;
- That a certain member of the Force whom she named *"made positive changes",* in the context of efforts to find better accommodation for the plaintiff;
- That the plaintiff had what she described as a *"litany"* of matters with the Gardaí;
- That she attended a Garda station in 2000 and reluctantly made a statement subsequently;
- That she only went to the Garda station in question *"to ask will they bring this chap in for questioning"*;
- That *"things changed"* after the foregoing;
- That the Gardaí *"let off a convicted drug dealer who had spent two years in prison in Spain and who was allowed to go free"*;
- That she was ridiculed and victimised;
- That Gardaí *"don't take women seriously"*; and
- *"The Gardaí were supposed to protect me and they did not protect me"*.

55. Even if the foregoing assertions represented the plaintiff's sworn evidence, they do not seem to me to make any material difference to the pleadings.

Decision concerning the second defendant's application

56. The primary approach taken by the second defendant is with reference to O. 19, r. 28 and it is appropriate to deal first with that application, before any analysis of matter from the perspective of this Court's inherent jurisdiction.

57. A useful summary of the relevant principles is found in Chapter 16 of *Delaney and McGrath* and, for present purposes, it is appropriate to quote the following:-

*"**16-04** Order 19, rule 28 provides that a court may order a pleading to be struck out on the grounds that "it discloses no reasonable cause of action or answer" and, in any case, where the action or defence is shown by the pleadings to be "frivolous or vexatious", the court may order that the action be stayed or dismissed or that judgment may be entered accordingly. In Aer Rianta cpt v. Ryanair Ltd [2004] IESC 23 it was held by the Supreme Court that, on its plain wording, the rule applies only where it has sought to strike out an entire pleading, such as a statement of claim or defence, and not part of a pleading… notwithstanding the reference to striking out a "pleading", the jurisdiction confirmed by rule 28 is actually directed towards the underlying action or defence and the rule confers on the court the power to stay or dismiss an action or enter judgment as appropriate.*

***16-05** In Aer Rianta cpt v. Ryanair Ltd, it was emphasised by Denham J. that the jurisdiction under rule 28 is one which a court will be slow to exercise and it should "exercise caution in utilising this jurisdiction". However, she went on to say that "if a court is convinced that a claim will fail", a pleading will be struck."*

58. I am satisfied that the pleadings fail to disclose a reasonable cause of action known to the law or likely to be established. This is not a case where, for example, the plaintiff's pleadings contain what might be described as the ingredients of a good cause of action but where a deficiency in the pleadings might be rectified by means of an amendment. Thus, conscious of the principles in *Sun Fat Chan v. Osseous Ltd* [1992] 1 IR 425, this is not a situation where the application boils down to a deprivation of the plaintiff's constitutionally - protected right of access to the courts due to any lack of skill in terms of drafting her pleadings without the assistance of a qualified legal professional.

59. The present situation is of an entirely different order. The plaintiff does not, for example, allege that she was caused injury by the Gardaí. On the contrary, she lays the blame for a range of injuries at the door of the HSE, including injuries said to stem from having been prescribed a medication produced by the third defendant. The nature of the allegations which the plaintiff makes against An Garda Síochána relate to a wholly undefined and unparticularised alleged involvement in a wide - ranging conspiracy involving (i) a drug company; (ii) the Department of Health; and (iii) a long list of hospitals and medical professionals (both identified and, unnamed), the thrust of the allegation being an involvement in a *"cover up"*. Such claims are utterly unsustainable. What remains are a range of allegations directed at named members of An Garda Síochána but, when reduced to their bare essence, they amount to assertions that named members of the Force failed in their performance of their duties. The allegations are serious and, to my mind, could fairly be described as scandalous, but I am satisfied that the pleadings do not disclose a sustainable cause of action and could not be *"saved"* by any amendment to the pleadings.

60. I am fortified in this view by what the plaintiff had to say about the second named defendant during the course of her oral submissions. The distilled essence of those submissions comprised (i) praise for individual members of An Garda Síochána who had given her great help; (ii) an expressed lack of trust in the Force as a whole on the basis of a 'bald' assertion that women are not taken

seriously; and, (iii) a contention that An Garda Síochána somehow failed to protect her. Irrespective of the sincerity with which the plaintiff holds these views, they do not constitute the basis for a legal claim, bolster the claim as pleaded, or disclose any amendment which could save the pleadings.

61. Although I have approached the matter with all necessary caution, I am satisfied that this is one of those rare cases where I am convinced that plaintiff's claim will fail, insofar as the second defendant is concerned. In reaching that decision, I have considered the pleadings only and have also proceeded on the basis that any statements of fact contained in the pleadings can be proved by the plaintiff. In other words, for the purposes of this exercise, I have accepted the facts as asserted by the plaintiff in the pleadings. However, doing so (i.e. accepting those facts) does not give rise to any cause of action and does not disclose a potentially valid claim, in my view. Thus, the plaintiff cannot possibly succeed on the pleadings and her claim against the second defendant must be dismissed pursuant to O. 19, r. 28. To take one practical example, assuming that the plaintiff can prove at a future trial that Gardaí threatened to telephone her daughter, the foregoing simply does not give rise to any cause of action.

Public interest

62. It is also uncontroversial to say that court resources are necessarily limited. Thus, there is an underlying public interest in ensuring that scarce court resources are not expended on claims which disclose no reasonable cause of action, are frivolous, vexatious, scandalous, prejudicial insofar as defendants are concerned, and bound to fail. Furthermore, and on the topic of resources, it cannot be in doubt that the first and second named defendants, and those employed by them, play a vital role in our society. The resources available to these defendants are far from limitless and it seems to me that there is an added public benefit in ensuring that their limited resource, whether measured in person-hours or financial terms, are not expended on being required to meet wholly unmeritorious proceedings. For the sake of completeness, I now turn to the claim against the second defendant from the perspective of the court's inherent jurisdiction.

63. Mr. Cooney BL for the second defendant adopted the submissions made by Mr. Binchy BL for the first defendant, with respect to the court's inherent jurisdiction. The analysis of this Court's inherent jurisdiction to dismiss proceedings, which I set out earlier in the context of the first defendant's application, applies equally with respect to the application brought by the second defendant. It is settled law that, unlike the position which pertains when the court considers an application pursuant to O. 19, r. 28, it is permissible to have regard to affidavit evidence (including the averments made by Inspector Keys) in the context of considering the second named defendant's application to dismiss the proceedings pursuant to this Court's inherent jurisdiction (see *Barry v. Buckley* [1981] 1R 306, 308). The sworn evidence of Inspector Keys is uncontroverted. Thus, there is no question of this court preferring one version of events over another. Rather, the vexatious nature of the claims has been established on the basis of undisputed facts.

64. Applying the relevant principles, I have come to the view that it is clear beyond any doubt that the plaintiff could not succeed in her claim against An Garda Síochána. In my view, the plaintiff has established no *credible* basis for suggesting that the facts are as she has asserted. In short, the claims which the plaintiff seeks to make against An Garda Síochána, are claims which are scandalous and vexatious and must be dismissed. The proceedings are bound to fail on the merits (quite apart

from the insurmountable problem for the plaintiff that no cause of action is disclosed as against the second name defendant).

Frivolous claim

65. During the course of this judgment, I have used a variety of terms including *"frivolous"*. It seemed to me that, even during the hearing, the plaintiff took offence at the use of the term frivolous. For the benefit of the plaintiff, it is important to make clear that this is not to suggest that the court regards *her*, or the sincerity of her beliefs, as foolish, silly or frivolous. Not having had the benefit of legal advice and assistance, one might well understand the plaintiff's objection to the use of this term, not least because of the conviction with which she appears to hold her beliefs.

66. It is important, however, to emphasise that, in a legal context, a claim is *frivolous* where it is misconceived or futile, insofar as its prospects. In other words, a frivolous claim is one where, seen through the lens of established legal principles, there is no hope of the claim being successful. In my view, this can be said of the plaintiff's claim.

67. To say this is not to judge the plaintiff harshly or at all, as the court recognises that she genuinely believes her narrative. However, as I made clear earlier, that is not the 'yardstick' by which the present applications must be determined. Furthermore, regardless of how sincerely the plaintiff believes that her claim should succeed, the pleadings are such as designed to cause damage to, not only to institutions, but to countless individuals diligently going about their work in a professional manner within the defendants, and who would be asked to meet proceedings which have no prospect of success whatsoever. For these reasons, the second defendant is entitled to the relief sought at paras. 1 and 2 of its motion.

The third named defendant's application

68. The relief sought by the third named defendant is in similar terms to the relief sought by the first defendant, in that the third defendant moves its motion on the basis of this Court's inherent jurisdiction and also relies on s.10(3) of the 2004 Act. In the manner already explained in this judgment, the central claim comprises one of medical negligence and appears to be directed at the HSE and its employees, servants or agents. It will be recalled that, in addition to referring to a range of health complaints, the general endorsement of claim in the plenary summons pleads that the plaintiff's claim is *inter alia "for damages for breach of care and safety whilst a patient of HSE"*. With respect to specific allegations directed at the third named defendant, the following comprises a summary: -

- at para. 1 of the statement of claim, the plaintiff claims damages for *"adverse reactions to the drug Rasilez Aliskrien."*;
- at para. 41 of the statement of claim, the plaintiff pleads: *"I suffered untold agony and pain under the following doctors who bullied me, ridiculed me and added to my distress and pain. I can only think and understand that this was done to protect Novartis drug Rasilez Aliskrien."*;
- at para. 8 of the addendum, the plaintiff pleads that: *"The breaking down of my glands, organs etc is ongoing since July 2011 ever since Dr.* [named] *prescribed Rasilez Aliskrien to me."*;
- at para. 14 of the Addendum the plaintiff pleads: *"I wrote to the Oireachtas Committee on Health to ascertain why such happenings were going on. It was around this time also that I*

noted that none of the adverse reactions from Rasilez Aliskrien were being reported – the only one who was reporting them was me. The IMB at that time sent out forms to doctors to fill in the Reporting of Side Effects and no one reported them.";

- at para. 23 of the Addendum it is pleaded that: *"To date I have still not received hardback copy of data held by Novartis Ireland or Novartis Switzerland on me…"*;
- at para. 5 of the plaintiff's Grounding Affidavit she asserts that a named medical professor in a particular hospital prescribed the drug Rasilez Aliskrien in July 2011;
- later in the same paragraph the plaintiff asserts that four days after taking Rasilez Aliskrien she experienced adverse effects, specifically bruising and swelling to her right eye;
- the plaintiff goes on to aver that she went *"straight into"* a certain hospital, out of hours, and *"the doctor was very good"* and told her to stop taking the drug (grounding affidavit para. 5);
- the plaintiff claims to have suffered eye symptoms for an unspecified period of time (grounding affidavit para. 8);
- the plaintiff asserts that Rasilez Aliskrien is *"a drug prescribed to forcibly breakdown a body so that Novartis bribed doctors can use that body (me) as a Human subject"* (grounding affidavit para. 11);
- she goes on to complain of inaction; lies; coverup of x-rays and physical suffering; torture; and covert clinical trials (grounding affidavit para. 15);
- unspecified allegations of criminality on the part of the third named defendant and claims to the effect that it holds *"the Irish Government and the HSE to ransom"* are made at para. 17 of the grounding affidavit;
- at para. 21 of the grounding affidavit, the plaintiff asserts: *"For the Record the drug Rasilez Aliskrien by Novartis and known as Tekturna in the US have adverse reactions such as cysts on the liver caused by Aliskrien acidosis, Breakdown of Thyroid, unfolding of Aortic Arch which Novartis covert clinical trials on Menopausal Women in this very serious risk of death. Musculoskeletal and breakdown of Optic Nerves."*;
- at para. 25 of the grounding affidavit, the plaintiff asserts that: *"This year 2018 alone Novartis are being investigated by the Greek Parliament for bribery and corruption to former health Ministers and kickbacks to doctors to hospitals. Even South Korea are taking sanctions against Novartis for their false data on Aliskrien & Diovan both drugs which I suffered harsh side effects of."*.

69. The third named defendant did not feature significantly in the oral submissions made by the plaintiff, but it was plain that she stood over her assertions concerning the third named defendant as they appear in the pleadings.

70. It is fair to say that, although the core claim made by the plaintiff is one of medical negligence, an aspect of same is to allege that she should not have been prescribed a drug she describes as Rasilez Aliskrien in July 2011 which drug, according to the plaintiff, caused significant personal injuries to her.

71. Having very carefully considered the pleadings, I am satisfied that the plaintiff has not identified any cause of action which is alleged to give rise to a claim for damages against the third defendant specifically.

72. It seems to me that the pleadings do not specify any act or omission on the part of the third defendant alleged to give rise to any claim for damages. Insofar as the plaintiff alleges that she suffered adverse reactions to the Rasilez Aliskrien, the plaintiff does not assert that she was prescribed it directly by the third defendant. Rather, her case is that a named medical professor in a specific hospital prescribed this drug to her in July 2011. Thus, insofar as the drug in question is concerned, the only conceivable claim is one of medical negligence with regard to the prescription of that drug.

73. In the manner previously analysed in the context of a consideration of the first applicant's motion, such a claim would require medical opinion from an independent expert on the question of liability. No such opinion has been obtained by the plaintiff. This is because she decided not to seek same, despite having been put squarely on notice of its importance.

Statute of limitations

74. Furthermore, in circumstances where the plaintiff makes clear that she was prescribed the aforementioned medication in *July 2011* and claims to have experienced an adverse reaction *within a matter of days*, there is a very obvious and insurmountable problem for the plaintiff in the form of the statute of limitations, given that legal proceedings were not issued until over seven years later, on 7th September, 2018.

75. Thus, this Court is in a position to say definitely that any claim by the plaintiff against the third named defendant is truly one which would constitute a *"personal injuries action"* within the meaning of the 2004 Act and the plaintiff has not complied with the requirements of s.10 of that Act. Her claim has not been appropriately particularised and, crucially, there is no opinion from a qualified doctor which provides any basis whatsoever for a range of assertions in pleadings whose continued existence cannot be justified and which constitute an abuse of process.

76. I agree with the submissions made on behalf of the third defendant that it is not possible to discern a cause of action against the third defendant. Insofar as assertions are made, they speak to a claim which is *"medical negligence"* in nature. Any such claim is without doubt 'statute barred'.

77. Furthermore, and considered from the prospective of this Court's inherent jurisdiction, the plaintiff has not established a *credible* basis for suggesting that the facts are as asserted. In short, the proceedings are bound to fail on their merits and this triggers the invocation of the court's inherent jurisdiction to dismiss the proceedings in order to prevent abuse of process. Regardless of how tentatively the court approaches the issue, I am satisfied that this is one of the rare cases where the court's inherent jurisdiction should be invoked. The following example may best serve to illustrate why.

78. It seems clear that the plaintiff sincerely believes that the third defendant is involved, variously, in (i) criminality; (ii) control of the Irish Government and HSE; (iii) conducting covert clinical trials despite the risk of death of unsuspecting subjects; and (iv) the provision of false data concerning medications. Regardless of how genuinely the plaintiff holds these views, there is simply no credible case on the pleaded facts with regard to the foregoing allegations of criminality and corruption.

79. Approaching the matter from the perspective of O.19, r.28, the court must assume that all facts pleaded can be established. However, the third defendant asks the court to approach the matter *via* its inherent jurisdiction. Doing so entitles the court to consider whether there is a credible basis for suggesting that the plaintiff might be able to establish the facts pleaded and there is none in my

view. Thus, the plaintiff's claim is bound to fail. Hence, the continued existence of the pleaded case constitutes an abuse of process entitling the court to dismiss the plaintiff's claim against the third defendant.

80. As I observed earlier, when approaching matters *via* the court's inherent jurisdiction, it is permissible to have regard, not only to the pleadings but to affidavit evidence and, in that context, it is appropriate to note that uncontroverted evidence was put before the court in the form of the following averments contained in an affidavit sworn on 25th November, 2021 by a Mr. Brian Malone, solicitor for the third named defendant: -

> "15. The *Rasilez (Aliskrien)* was granted a marketing authorisation by the European Commission on 22 August 20[07]. An authorisation granted pursuant to the centralised procedure under Article 3(2)(a) of Regulation (EC) No. 726/2004 permits a medicinal product to be marketed throughout the European Union without the need for approval in individual Member States…"

81. Reference is then made to the current European Public Assessment Report ('EPAR') in respect of Rasilez (Aliskrien) dated June 2016 and published on the website on the European Medicines Agency. The uncontested averment is also made that *"Rasilez (Aliskrien) is a medicine that is only available on a prescription basis"*, something confirmed by the European Medicines Agency.

82. At para. 16 of Mr. Malone's affidavit, averments are made with respect to the 'Product Information' in respect of Rasilez Aliskrien, as published on the website of the European Medicines Agency. It is averred that the Product Information is annexed to the Marketing Authorisation issued by the European Commission and includes the Summary of Main Product Characteristics ('SPC'), (being information for the use of medical professionals); the product labelling; and the package leaflet ('PL') (information which is directed towards the patient). A copy of the current Product Information is exhibited and comprises exhibit 'BM3' to Mr. Malone's affidavit.

83. At para. 17 a number of matters arising from the Product Information are noted. In short, this comprises a reference to certain adverse reactions stated to have been observed in some patients. Furthermore, the SPC advised that, in the event of any signs suggesting adverse effects which are listed: *"patients should discontinue treatment and contact the physician".*

84. In short, there is before this court uncontroverted evidence as to the regulation regime concerning the medication in question which is utterly undermining of the allegations pleaded by the plaintiff and I take the view that the plainitff's allegations lack any credible basis.

<u>Invitation to discontinue legal proceedings</u>

85. It is also appropriate to say that, in advance of the present motion, the legal representatives of the third named defendant made its position very clear in the context of inviting the plaintiff to discontinue her proceedings - also making clear that if the plaintiff took this opportunity, no legal costs would be sought against her. In my view, that was a very reasonable and sensitive approach to take and it is appropriate at this point to quote *verbatim* from the relevant letter which was sent by Messrs Corrigan & Corrigan, solicitors for the third defendant on 8th November, 2021:

> *"I wrote to you on 8th April, 2021 following delivery of your statement of claim and I said that I would revert to you with our response. In the interim, you served an addendum to the statement of claim dated 16th June, 2021. I also received a letter from you on 30th July, 2021 giving twenty-one days warning in relation to a defence. I am now writing to formally*

set out our position in relation to your claim. Regrettably, neither your statement of claim nor the addendum comply with the requirements for a valid claim. For ease, I will refer to both documents together as 'the pleadings'.

First, the pleadings do not identify a legal cause of action against Novartis Ireland Limited. Any plaintiff is required to set out the legal wrong that they are alleging because there are rules of law about what needs to be proved and what the defences are. Without identifying a cause of action, your claim cannot proceed.

Second, the pleadings do not identify any acts or omissions on the part of Novartis Ireland Limited that could give rise to a successful claim. Any defendant is entitled to know what it is alleged to have done or not done that amounts to a legal wrong. The pleadings do not identify these with any specificity.

Third, it does appear that, to some extent, you are seeking damages for alleged adverse effects following being prescribed the drug Rasilez (Aliskrien) in July 2011. If that is the case, then your claim is a 'personal injuries action' and there are legal rules about the information your pleadings should contain. I am enclosing a copy of the relevant statutory provision for your information. The pleadings do not comply with this section, in particular with the requirement to specify the acts and circumstances of the wrong and the particulars thereof.

Fourth, your claim appears to relate to the provision of medical advice and treatment by certain medical professionals. If any part of your claim is that those persons provided you with sub-standard care, advice or treatment, then you must have a reasonable basis or reasonable grounds in the form of an independent expert opinion or report. It does not appear that you have obtained this.

Fifth, any claim relating to the prescription to you of Rasilez (Aliskrien) in July 2011 would ordinarily be subject to a two-year limit. Your plenary summons was issued on 7th September, 2018, more than five years after the expiry of that time limit.

For all these reasons, it is clear that your claim is bound to fail and it is unfair to expect our client to proceed to a full hearing. We do not propose to deliver a Defence and to do so would unnecessarily incur further legal costs for our client. Instead, we are prepared to offer you a period of fourteen days in which to file a Notice of Discontinuance in the Central Office of the High Court releasing Novartis Ireland Limited from the proceedings. If this is done, no legal costs will be sought against you.

If you choose not to discontinue, we will proceed to issue a motion asking the High Court to dismiss your claim and to award our client its costs at this stage for the reasons outlined in this letter. Please note that if the High Court decides that your claim should be allowed to proceed then we will deliver a defence at that stage…".

86. It seems to me that the foregoing letter stated in comprehensive terms, and in a manner designed to ensure that a non-lawyer could understand it, the reasons why the third defendant is

entitled to the relief sought in its motion. Unfortunately, the plaintiff declined to accept the offer to discontinue her proceedings without having to face any liability for costs. For the reasons set out in this judgment, the third defendant is entitled to orders *per* paras. 1 and 2 of the application which issued on 25 November, 2021,

87. Again, this is not a situation where an amendment might 'save' the plaintiff's claim against the third defendant. Rather, this is a situation where the plaintiff's claim against the third defendant is bound to fail and, thus, the continued maintenance of the claim constitutes an abuse of process. This is a situation where vexatious claims are made but this Court is satisfied that there is no *credible* basis for suggesting that the facts are as set out in the pleadings. To take the following example, there is no credible basis for suggesting, not only (i) that the third defendant is involved in criminality; but (ii) exercises control over the Government of this State as well as the HSE; and (iii) that all are implicated in permitting or covering up *"torture"*. These are allegations utterly lacking in credibility.

Redaction

88. For the purpose of efficiency during the hearing, not all affidavits were opened in full. This was on the basis that the court would take time to read *all* affidavits with care. All parties, including the plaintiff, saw the sense in that approach. Subsequent to the hearing, I carefully considered the contents of *all* pleadings, affidavit and exhibits. Having done so, I formed the view that it would be appropriate, given certain matters to which the plaintiff made reference in her affidavit of 28th March 2022, that the plaintiff's name be redacted. Although it was not apparent to me during the hearing, it subsequently became clear from a close reading of all the papers that, in the past, a certain application may have been made with respect to the plaintiff pursuant to the Mental Health Act and, against that backdrop, it seemed to me to be appropriate, and in ease of the plaintiff, for her identity to be redacted in the context of delivering this judgment.

Conclusion

89. The court's decision will undoubtedly come as a disappointment to the plaintiff, given the sincerity with which she holds the views expressed in the pleadings and articulated during the course of her oral submissions.

90. The court feels genuine sympathy for the plaintiff and any distress this outcome may cause her.

91. I also wish to express my thanks to the plaintiff for the manner in which she conducted her case during the hearing. Although doubtless a stressful experience, the plaintiff made her points with clarity.

92. I also wish to express the court's thanks to counsel for the respective defendants who made all three applications with professionalism, skill and sensitivity.

93. However, in the manner set out in this judgment, all three defendants are entitled to the relief sought and the plaintiff's claim must be dismissed against all three.

94. On 24 March 2020, the following statement issued in respect of the delivery of judgments electronically: *"The parties will be invited to communicate electronically with the Court on issues arising (if any) out of the judgment such as the precise form of order which requires to be made or questions concerning costs. If there are such issues and the parties do not agree in this regard concise written submissions should be filed electronically with the Office of the Court within 14 days of delivery subject to any other direction given in the judgment. Unless the interests of justice*

require an oral hearing to resolve such matters then any issues thereby arising will be dealt with remotely and any ruling which the Court is required to make will also be published on the website and will include a synopsis of the relevant submissions made, where appropriate."

95. Having regard to the foregoing, the parties should correspond with each other, forthwith, regarding the appropriate form of order including as to costs which should be made. My preliminary view in relation to costs is that the 'normal' rule (i.e. that 'costs' should 'follow the event') applies. Given that the defendants have been entirely successful in their respective applications (i.e. the 'event') and the plaintiff has been entirely unsuccessful in opposing them, following the normal rule would give rise to an order for costs in favour of each of the defendants, as against the plaintiff. In default of agreement between the parties on this issue, short written submissions should be filed in the Central Office within 14 days of the beginning of Michaelmas Term (which starts on 3 October 2022).