

Neutral Citation No: [2024] NIMaster 11

Ref: 2024NIMaster11

*Judgment: approved by the Court for handing down (subject to editorial corrections)*

ICOSNos: 2019/003608 & 2018/26358

Delivered: 12/04/24

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

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Between:

MARK STEPHEN JORDAN

Plaintiff

&

DEPARTMENT OF JUSTICE

Defendant

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

---

Between:

MARK STEPHEN JORDAN

Plaintiff

&

THE BOARD OF GOVERNORS OF BANGOR GRAMMAR SCHOOL

Defendant

&

LINDSAY BROWN

Third party

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Mr Corrigan, instructed by Higgins Hollywood Deazley on behalf of the plaintiff.

Mr Maxwell instructed by Keoghs (NI) LLP on behalf of Bangor Grammar.

Mr J McEvoy instructed by Departmental Solicitors Office on behalf of  
Department of Justice.

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## **MASTER HARVEY**

### ***Introduction***

1. These are applications in both cases under Order 29 of the Rules of the Court of Judicature (Northern Ireland) 1980 (“the Rules”) in which the plaintiff seeks an interim payment of £25,000.00.
2. I am grateful to counsel Mr Corrigan, Mr Maxwell and Mr J McEvoy for their helpful submissions which were of great assistance to the court.
3. The two cases were subject to a quasi-consolidation order on 30 September 2022.

### ***Causes of action***

4. The action against Bangor Grammar relates to alleged negligence, assault, battery and trespass to the person arising from an alleged sexual assault during a swimming lesson in 1971 when the plaintiff was aged 11 and a pupil at the school. The assault was allegedly perpetrated by the third party, an employee of the defendant. The defendant admitted vicarious liability on 4 July 2022.
5. The case against the Department of Justice (“DoJ”) relates to negligence, breach of statutory duty, assault, battery and trespass to the person arising from alleged emotional and physical abuse at Rathgael Training School and Millisle Borstal between 1976 and 1978. Liability is denied in respect of this action.

### ***The issues in dispute***

6. Given the admission of liability in the Bangor Grammar case, and the candid concession by counsel for that defendant that they are prepared to make an interim payment, matters are straightforward, however, counsel for the plaintiff and counsel for Bangor Grammar contend the Department of Justice should also be liable to make an interim payment, the obvious contribution being by way of “50/50 split” with each defendant paying £12,500.00 to the plaintiff.

### ***Legal principles***

7. Order 29 Rules 12 and 13 are in the following terms:

“Application for interim payment

12. - (1) The plaintiff may, at any time after the writ has been served on a defendant and the time limited for him to enter an appearance has

expired, apply to the Court for an order requiring that defendant to make an interim payment.

13. - (1) If, on the hearing of an application under rule 12 in an action for damages, the Court is satisfied –

(a) that the defendant against whom the order is sought (in this paragraph referred to as “the respondent”) has admitted liability for the plaintiff’s damages; or

(b) that the plaintiff has obtained judgment against the respondent for damages to be assessed; or

(c) that, if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent; or

(d) that, in an action in which there are two or more defendants and the order is sought against any one or more of them, if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against at least one of the defendants (but the Court cannot determine which), the Court may if it thinks fit, subject to paragraphs (2) and (3), order the respondent, or any one or more of the respondents as the case may be, to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff after taking into account any relevant contributory negligence and any set-off, cross-claim or counterclaim on which the respondent may be entitled to rely.

(2) Where an application falls within paragraphs (1)(a)-(c), no order shall be made under paragraph (1) in an action for personal injuries if it appears to the Court that the defendant is not a person falling within one of the following categories, namely-

(a) a person who is insured in respect of the plaintiff’s claim;

(b) a public authority; or

(c) a person whose means and resources are such as to enable him to make the interim payment.

(3) Where an application falls within paragraph 1(d), no order shall be made under paragraph (1) unless the Court is satisfied that each of the defendants is a person falling within one of the following categories, namely –

(a) a person who is insured in respect of the plaintiff’s claim or whose liability will be met by an insurer under Article 98 of the Road Traffic (Northern Ireland) Order 1981;

(b) a person whose liability will be met by the Motor Insurers’ Bureau, a company limited by guarantee and incorporated under the Companies Act 1929, or an insurer acting on its behalf; or

(c) a public authority.”

## *Consideration*

8. I consider the test under Order 29 Rule 13(1)(a) as against Bangor Grammar is met. Liability is admitted and in all the circumstances of the case, having considered the grounding affidavit, supporting medical reports, helpful submissions from counsel and noting the financial difficulties experienced by the plaintiff, this is a matter in which an interim payment is appropriate for an amount not exceeding a reasonable proportion of the damages that are likely to be recovered by the plaintiff.
9. The position in relation to the DoJ is somewhat different. As stated above, liability is denied. The test under Rule 13 (1) (b) requires the court to be satisfied that if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages.
10. I consider that based on the various medical reports available, this plaintiff, if successful at trial, will attract substantial damages. The word "substantial" is a subjective term but when one considers the injuries suffered, the impact on the plaintiff, the general and special damages claimed, the guidance to be drawn from the updated "*Guidelines for the Assessment of General Damages in Personal Injury Cases in Northern Ireland (Sixth Edition)*" and awards for psychiatric injury generally, I am of the view this falls within the substantial category.
11. The difficulty for the court at this interlocutory stage is assessing whether the plaintiff "would obtain judgment" which inevitably requires consideration of the merits of the case to determine whether, on the balance of probabilities, the plaintiff will succeed in his action against the DoJ. The burden of proof is on the moving party, the plaintiff to this action. Based on the papers available to me, which include inter alia the statement of claim, replies to particulars and various medical reports prepared many years after the events in question, I consider that I do not have sufficient evidence to conclude the plaintiff will, on balance, be successful in his action against this defendant. This does not mean he will not win his case, nor does it mean, considering the pragmatic approach to litigation in this jurisdiction in relation to alleged sexual abuse cases and the commercial realities of litigation generally, there will not be fruitful negotiations in advance of any trial.
12. I have also considered Order 29 Rule 13(1)(d) which makes provision for interim payments where there are two or more defendants and at trial the plaintiff would obtain judgment against one of them, but the court cannot determine which. These are separate actions, albeit subject to quasi consolidation, relating to different incidents. This is not a co-defendant case as envisaged under the aforementioned Rule and I do not consider the plaintiff's application can succeed pursuant to this provision.

## *Conclusion*

13. For the above reasons, I therefore refuse the plaintiff's application against the DoJ. I determine that the costs of that application shall be reserved to the trial judge.
14. I grant the plaintiff's application against Bangor Grammar and order that they pay the sum of £15,000.00 by way of interim payment, within 21 days of the date of service of this Order. Costs of the application shall be awarded to the plaintiff, such costs to be taxed in default of agreement. I certify for counsel on behalf of all parties in respect of the hearing.