[2019] IEHC 642

THE HIGH COURT
IN THE MATTER OF AN INTENDED ACTION

2019 No. 79 IA

BETWEEN

EMMA OAKES

APPLICANT

AND

SPAR (IRELAND) LIMITED

RESPONDENT

Judgment of Mr. Justice Garrett Simons delivered on 13 September 2019.

Introduction

1. This matter has come before the High Court by way of an application for a direction extending the limitation period during which an intended defamation action can be brought. The normal limitation period applicable to defamation actions is one year, but the court has a statutory discretion to direct an extended period not exceeding two years.

2. As explained in more detail presently, the Applicant had, in fact, issued separate proceedings before the Circuit Court within the one-year limitation period. (*Oakes v. Spar (Ireland) Ltd*., Dublin Circuit Record No. 589/2018). The Applicant now accepts that those earlier proceedings were issued against the incorrect defendant. The Applicant wishes to institute a fresh set of proceedings before the Circuit Court against a named individual, Loye Wei. It seems that this individual is the proprietor of the retail premises wherein the alleged defamation is said to have occurred.

3. Notwithstanding that the intention is that the defamation action will be heard before the Circuit Court, the application for a direction extending the limitation period has been made on an ex parte basis to the High Court. Leading counsel on behalf of the Applicant, Mr Philip Sheahan, SC, appeared before me at the Vacation Sitting on Tuesday 10 September 2019. Counsel explained that the two-year limitation period was set to expire on Thursday 12 September 2019, and that there was no sitting of the Dublin Circuit Court scheduled before that date. It was initially submitted that the High Court would have jurisdiction to make an order extending the limitation period for Circuit Court proceedings but, on reflection, counsel then suggested that the proceedings might be instituted before the High Court and subsequently remitted to the Circuit Court.

4. The fact that the application was made at the eleventh hour, with only two days remaining within which proceedings might be instituted, meant that it was necessary to rule on the matter urgently. Having heard submissions from counsel for the Applicant, I made an order on 10 September 2019 refusing the application and indicated that I would set out my detailed reasons in a written judgment on 13 September 2019.

Relevant Factual Background

5. The intended defamation action, the subject-matter of this application for an extension of the limitation period, arises out of an alleged incident which is said to have occurred on 12 September 2017. It is alleged that on that date the intended plaintiff, i.e. the

Applicant, attended at retail premises at Mountjoy Street, Dublin 7. The retail premises seemingly traded under the style of a "SPAR" shop.

6. The alleged incident is summarised as follows in the indorsement of claim in the earlier Circuit Court proceedings (*Oakes v. Spar (Ireland) Ltd.*, Dublin Circuit Record No. 589/2018).

> "3. On or about the 12th day of September, 2017, the Plaintiff attended at the Defendant's said premises to purchase a number of items when a servant or agents of the Defendant shouted from the till area to her '*You are not getting served*'. The Plaintiff was completely shocked and asked if this man was addressing her. He said that he was and again outlined that he would not be serving her. The Plaintiff was dressed in her work attire and asked '*why*?'. He stated '*I have got a complaint that you are being rude*'. He again stated to her '*Yes, you are being rude and causing trouble, I have it on camera*'. The Plaintiff was completely shocked by this incident which took place in front of a number of onlookers and the Plaintiff was extremely embarrassed.
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> 4. The said incident occurred in the presence and view of a large number of right-thinking members of the public."

7. The Applicant instituted defamation proceedings arising out of this alleged incident. The proceedings were brought in the Circuit Court and the defendant named in the proceedings is a company known as Spar (Ireland) Ltd. The Circuit Court proceedings were instituted on 11 September 2018, that is just shy of the expiration of the initial one-year limitation period fixed for defamation actions.

8. It subsequently transpired in correspondence between the Applicant's solicitors and the insurers acting on behalf of Spar (Ireland) Ltd that that company does not, in fact, operate the individual shops. See letter dated 12 July 2019 from Zurich Insurance to the Applicant's solicitors as follows.

> "As previously advised, as with all SPAR shops, the proprietor is responsible for all trading aspects of the shop and dealings with customers. SPAR Ireland/PWG Foods provides a marketing, product supply and advisory support service to each SPAR shop. Accordingly, PWG Foods of Greenhills Road, Tallaght, Dublin 24 is not the correct legal entity of SPAR, Mountjoy Street, Dublin 7 and proceedings should be reissued in the name of the proprietor of the store in question."

9. Notwithstanding that this letter was received by the Applicant's solicitors on 15 July 2019, an application for a direction pursuant to section 11(2)(c) of the Statute of Limitations was not made until Tuesday of this week, i.e. 10 September 2019.

10. The application was made pursuant to an *ex parte* docket grounded on two affidavits sworn by the Applicant's solicitor, Joseph McNally. The first affidavit explains that the Circuit Court proceedings were initiated against Spar (Ireland) Ltd in circumstances where

it was believed that that company was operating the retail premises. The letter of 12 July 2019 from Zurich Insurance, cited above, is then referred to. It is next explained that a telephone call was made to the retail premises on 9 September 2019 and that the owner identified himself as Loye Wei.

11. The second affidavit outlines exchanges between the Applicant's solicitors and officials of Zurich Insurance during the period November to December 2018.

12. The principal relief sought in the *ex parte* docket is a direction extending the time for the bringing of proceedings against the defendant for a period of two years subsequent to the date of the alleged incident. The proceedings are, however, entitled "Emma Oakes, Plaintiff, and Spar (Ireland) Ltd., Defendant". In other words, the title of the proceedings does not reflect the proposed new defendant, Mr Wei.

13. The application was moved on an ex parte basis before me on Tuesday, 10 September 2019. It was initially submitted that the High Court would have jurisdiction to make an order extending the limitation period for Circuit Court proceedings but, on reflection, counsel then suggested that the proceedings might be instituted before the High Court and subsequently remitted to the Circuit Court.

Timing Of Application For Extension

14. Counsel for the Applicant—correctly in my view—pursued the application for an extension of the limitation period on the assumption that it was necessary to obtain a direction from the court prior to the institution of a defamation action outside the one-year limitation period. The difficulty which then arose is that the lateness of the application meant that it was not possible to comply with the requirement to put the intended defendant on notice of the application as is prescribed under Order 1B, rule 3 of the Rules of the Superior Courts. Before turning to discuss the implications of this for the application, it is necessary first to say something about the point in time at which an application for a direction must be made.

15. The limitation period applicable to a defamation action was revised under section 38 of the Defamation Act 2009. The limitation period is stated as follows under an amended section 11(2)(c) of the Statute of Limitations.

> "(c) A defamation action within the meaning of the Defamation Act 2009 shall not be brought after the expiration of—
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> (i) one year, or
> (ii) such longer period as the court may direct not exceeding 2 years,
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> from the date on which the cause of action accrued.

16. The date of accrual is defined as follows under section 11(3B) of the Statute of Limitations.

> "(3B) For the purposes of bringing a defamation action within the meaning of the Defamation Act 2009, the date of accrual of the cause of action shall be the date

upon which the defamatory statement is first published and, where the statement is published through the medium of the internet, the date on which it is first capable of being viewed or listened to through that medium."

17. There has been some debate in the case law as to whether an application for a direction prolonging the limitation period must be made prior to the institution of proceedings outside the initial one-year period. There are obiter dicta in two judgments of the High Court which suggest that the application should be made prior to the institution of the proceedings, and that draft proceedings should be exhibited as part of the affidavit grounding the application. See *Watson v. Campos* [2016] IEHC 18 and *Rooney v. Shell E & P Ireland Ltd* [2017] IEHC 63.

18. The matter was considered in more detail by the High Court in *Quinn v. Reserve Defence Forces Representative Association* [2018] IEHC 684. Barton J. held that proceedings may be issued after the expiry of the one-year limitation period without an order having first to be obtained extending time. A requirement for an application for an extension of time would only arise in the event that the defendant subsequently sought to rely on a plea that the proceedings were statute barred. See paragraphs [10] and [11] of the judgment as follows.

> "10. I accept the submissions with regard to the construction which the Plaintiff contends should be placed on the wording of the subsection; indeed, it is difficult to envisage a clearer or more concise exposition of the meaning of the phrase 'shall not be brought' in a limitation statute than that set out by Henchy J. in O'Domhnaill. I find the observations regarding the appropriate procedure made obiter in Rooney and Watson, to be of little assistance on this issue; the point was either not argued or, where it was, O'Domhnaill and subsequent decisions were not apparently opened.
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> 11. Accordingly, the Court determines the first question in the affirmative and finds on a proper construction of s. 11 (2) (c), that after the expiry of the one year limitation period proceedings maybe issued without an order having to be obtained extending the time within which the proceedings maybe brought; the necessity for such application arises only if and when a statute barred plea is raised by way of defence. No such plea having been raised in the Defence as originally delivered, it follows that so much of the claim as appeared on the face of the Statement of Claim to be statute barred would not have been in issue; rather the case would have proceeded to trial on the merits.
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> 12. It was only when the statute was pleaded in the Defence as amended that the limitation period became an issue at all and gave rise to the necessity for the application and the relief sought if the portion of the claim to which the plea refers is not to be defeated. Finally, to place the construction on the provision contended for by the Defendants would not only bear on the Plaintiff's right to a remedy but, more fundamentally, on his right to sue, a proposition which I am satisfied is neither sound in principle or law."

19. This same procedural issue subsequently arose in the context of an appeal before the Court of Appeal, *Morris v. Ryan* [2019] IECA 86. Whelan J., delivering the judgment of the court, indicated that in circumstances where this procedural issue had not been comprehensively contested before the High Court in that case, it was appropriate to determine the question of whether or not there were grounds for an extension first.

> "52. The antecedent question, as identified by the respondent, as to whether an application by a plaintiff in a defamation suit for direction pursuant to s.11(2)(c)(ii) can, in the first place, be entertained by the court after the expiration of a period of two years from the accrual of the cause of action, was not determined by the High Court judge as is clear form para. 15 of the judgment. Given the approach of the trial judge and in circumstances where the said anterior issue was not comprehensively contested by the appellant—who was a litigant in person—with any degree of rigour it is proposed to consider in the first instance whether the trial judge correctly exercised his statutory discretion in refusing to extend the limitation period. Thereafter the antecedent question will be addressed should the need arise."

20. Whelan J. was ultimately satisfied that there were no good grounds for granting an extension, and it then became unnecessary for the Court of Appeal to consider the procedural issue. See paragraph [87] of the judgment: "this appeal can be disposed of on the basis that the application for a direction was devoid of merit".

21. The procedural issue thus remains open at the level of the Court of Appeal.

22. Having carefully considered the case law, I have come to the conclusion that section 11(2)(c), on its correct interpretation, requires that an application for a direction be made prior to the institution of proceedings outside the initial one- year limitation period. For the reasons set out with admirable clarity by the Court of Appeal in *Morris v. Ryan*, the uniquely short limitation period applicable to defamation actions is indicative of a legislative policy that such proceedings must be instituted and prosecuted with expedition. It would be contrary to this legislative policy were an intended litigant, who has failed to institute proceedings within the one-year limitation period, to be entitled to institute proceedings belatedly without reference to the court. This would have the effect that a defendant against whom proceedings have been issued outside time would be put to the trouble and expense of defending proceedings. The more appropriate procedure is that the issue of delay be determined in advance of the institution of proceedings, i.e. in the context of an application made to the court by the intended plaintiff. This would allow for the issue of delay to be dealt with in short course.

23. This is the procedure prescribed under the Rules of the Superior Courts. Order 1B, rule 3(2) provides as follows.

> "(2) Where a defamation action has not been brought before the Court in respect of the statement in question, an application to the Court for a direction under section 11(2)(c) of the Statute of Limitations 1957 shall be brought by originating notice of

motion, in which the intending plaintiff shall be named as applicant and the intended defendant as respondent. The application shall be grounded upon an affidavit sworn by or on behalf of the moving party."

24. This rule envisages that where a defamation action has not been brought within the one-year limitation period, the prescribed procedure for the making of an application for a direction for a prolongation of the limitation period is by way of originating notice of motion. I do not think that the rule can be interpreted as affording an intended plaintiff the option of instituting proceedings outside the one year period without any reference to the court.

25. I respectfully disagree with the contrary interpretation of section 11(2)(c) of the Statute of Limitations adopted in *Quinn v. Reserve Defence Forces Representative Association*. As appears from the passages of the judgment cited at paragraph 18 above, the rationale for the judgment centres largely on the legal effect of the phrase "shall not be brought". The judgment is undoubtedly correct in its finding that a limitation period has the effect of barring the remedy rather than the right of action. Indeed, the Court of Appeal in its recent judgment in *Morris v. Ryan* [2019] IECA 86 expressly states that defamation actions fall clearly within the category of cases where the operation of the Statute of Limitations extinguishes only the remedy, leaving the right of action otherwise untouched. Accordingly, a limitation period will normally operate to bar a claim in defamation only if successfully raised by way of defence. (See paragraph [44] of the Court of Appeal's judgment).

26. The fact that the use of the phrase "shall not be brought" under section 11(2)(c) does not have the legal effect of barring the right of action cannot be dispositive of the separate question of when an application for a prolongation of the limitation period must be made. An interpretation of the section which required that any application to prolong the limitation period be made *prior* to the bringing of proceedings would be in no way inconsistent with the general principle that a plaintiff is not precluded from bringing proceedings out of time but that such proceedings are liable to be defeated by a plea that they are statute barred.

27. It is worth pausing here to note that the provisions of section 11(2)(c) are unique in that they afford the court a *statutory discretion* to prolong or extend the limitation period. In most other instances under the Statute of Limitations where a limitation period is extended, this is done automatically by reference to objective criteria. Thus, for example, where a person is under a "disability" as defined, the limitation period is extended automatically and runs from the date when the person ceased to be under a disability.

28. The wording of section 11(2)(c) must be considered in its entirety. The section requires that a defamation action shall not be brought after the "expiration of" such longer period as the court may "direct". The use of the term "direct" is significant. It is indicative of the court having a role prior to the bringing of proceedings, i.e. the court is to give directions as to when the proceedings shall be brought. Expressed in positive terms, the section

requires that proceedings be brought *before* the expiration of the prolonged period directed by the court.

29. All of this indicates that the limitation period must be known in advance of the institution of the proceedings. The statutory language does not allow for the possibility of the length of the limitation period being fixed retrospectively,i.e. after a defamation action has already been brought. It would not be possible to say whether or not the proceedings had been brought after the "expiration of" the prolonged period if that period had only been fixed subsequent to the institution of the proceedings.

30. At the risk of belabouring the point, there is no conflict between this interpretation and the well-established understanding of the phrase "shall not be brought". It remains the position that a defendant must expressly plead that proceedings are statute barred if the defendant wishes to rely on the expiration of the limitation period. In principle, therefore, a plaintiff who has failed to apply for an extension or prolongation of the limitation period pursuant to section 11(2)(c) of the Statute of Limitations might nevertheless institute proceedings out of time. In the event that the defendant failed to plead that the proceedings were statute barred, the proceedings would be heard and determined on their merits.

31. An interpretation of section 11(2)(c) which requires that an application to prolong the limitation period be made prior to the institution of proceedings is, for the reasons set out earlier at paragraph 22 above, also more consistent with the legislative policy underlying the uniquely short limitation period applicable to defamation actions.

32. In summary, therefore, I have concluded that an application for a direction pursuant to section 11(2)(c) of the Statute of Limitations must be made prior to the institution of proceedings. As noted earlier, this is the approach which had been adopted on behalf of the Applicant in the present case. The fact that the two-year period was set to expire was expressly relied upon as justification for making the application at a Vacation Sitting. As explained under the next heading below, however, the lateness of the application has proved to be fatal.

Reasons For Refusal Of Application

(i). Ex parte application not permitted

33. The Rules of the Superior Courts expressly provide that an application for a direction pursuant to section 11(2)(c) of the Statute of Limitations must be made on notice to the intended defendant. This is provided for under Order 1B, rule 3(2) as follows.

> "(2) Where a defamation action has not been brought before the Court in respect of the statement in question, an application to the Court for a direction under section 11(2)(c) of the Statute of Limitations 1957 shall be brought by originating notice of motion, in which the intending plaintiff shall be named as applicant and the intended defendant as respondent. The application shall be grounded upon an affidavit sworn by or on behalf of the moving party."

34. The requirement that the application be heard on notice stems not only from the principles of fair procedures, but also from the nature of the consideration to be carried out by the court under section 11(2)(c). The subsection provides as follows.

"(3A) The court shall not give a direction under subsection (2)(c)(ii) (inserted by section 38(1)(a) of the Defamation Act 2009) unless it is satisfied that—

(a) the interests of justice require the giving of the direction,

(b) the prejudice that the plaintiff would suffer if the direction were not given would significantly outweigh the prejudice that the defendant would suffer if the direction were given,

and the court shall, in deciding whether to give such a direction, have regard to the reason for the failure to bring the action within the period specified in subparagraph (i) of the said subsection (2)(c) and the extent to which any evidence relevant to the matter is by virtue of the delay no longer capable of being adduced.

35. As appears, the issues to be considered on an application include

(i) the prejudice that the defendant would suffer if the direction were given, and

(ii) the extent to which any relevant evidence is no longer capable of being adduced by virtue of the delay. Clearly these are matters within the peculiar knowledge of a defendant, and could only properly be considered by a court if the intended defendant has been put on notice of the application and is thus in a position to make submissions in respect of these matters.

36. The fact that the application in the present case was left to the eleventh hour meant that there was not sufficient time to give the requisite notice of the application to the intended defendant. Instead, the Applicant sought to make the application on an *ex parte* basis. As noted earlier, the intended defendant is not even properly identified in the *ex parte* docket.

37. I have concluded that the form of application was irregular. An *ex parte* application is not permitted under the Rules of the Superior Courts, and would, in any event, be contrary to the spirit of the legislation. The application to prolong the limitation period must therefore be dismissed.

38. This procedural irregularity would, on its own, be sufficient to dispose of the application. However, given that counsel for the Applicant had made detailed submissions, by reference to the relevant case law, on the *substance* of the application, I propose to address same below.

(ii). Delay is inexcusable

39. As appears from the wording of section 11(2)(c) (cited at paragraph 34 above), one of the principal matters to be considered by the court is the reason for the delay. The approach to be taken to delay has been summarised as follows by the Court of Appeal in *Morris v. Ryan* [2019] IECA 86.

"74. In determining whether to grant a direction pursuant to s.11(2)(c)(ii) the court must be satisfied that it is necessary to provide a fair and just outcome for the plaintiff in all the circumstances. There is a myriad of reasons why a plaintiff may find himself outside the primary limitation period in the first place. Balanced against that consideration is the long-standing principle that limitation periods provide certainty for respondents."

40. The Court of Appeal approved of the following test as set out by the High Court in *Rooney v. Shell E & P Ireland Ltd.* [2017] IEHC 63.

"...a person seeking to persuade the court to exercise its discretion in his favour must provide full and adequate information as to the particular reasons for delay that he relies upon to support his application."

"...the onus is on the plaintiff to explain the delay, and that the evidence offered in support of the explanation must reach an appropriate level of detail and cogency."

41. On the facts of the present case, the delay arose as the result of a failure on the part of the Applicant's legal representatives to identify the correct defendant. It seems that the Applicant's solicitors initially took the view that the proceedings should be brought against Spar (Ireland) Ltd. In fact, it seems that shops trading under the style of "SPAR" are operated by individual franchisees/ proprietors.

42. The correct identity of the defendant is a matter which should have been attended to by the Applicant's solicitors at an earlier stage. The making of an allegation of defamation is a serious matter, and care should be taken before instituting proceedings to ensure that the correct defendant has been named. It would not have required much by way of inquiry to identify the fact that it is the individual franchisees/ proprietors, and not Spar (Ireland) Ltd., who are responsible for the operation of the individual shops.

43. Moreover, even if the delay prior to the receipt of the letter from Zurich Insurance were reasonable—and I have concluded that it was not—the delay from July to September 2019 was unreasonable. It is inexcusable that an application pursuant to section 11(2)(c) was not made until two days prior to the expiration of the outer limitation period of two years. This additional delay, as indicated already, resulted in the inability on the part of the Applicant to comply with the procedural requirements of the Rules of the Superior Courts.

44. There is some discussion in the case law as to whether a finding of inexcusable delay is sufficient, on its own, to dispose of an application for a direction. The judgment of the High Court (Pilkington J.) in *O'Sullivan v. Irish Examiner Ltd.* [2018] IEHC 625 suggests that it might be.

"44. The applicant's counsel contended that, even if the court were to find that the reason for the delay is inexcusable, it could nevertheless hold for the applicant upon the two statutory criteria, namely (a) the interests of justice and (b) the

balance of prejudice. In my view, the reasons advanced by the applicant on the facts of this case are integral to and directly impact upon an assessment as to whether a direction should be given in all the circumstances. The reasons for the delay and the court's consideration of the validity or otherwise of those reasons is inextricably bound up with any decision it must then make as to where the interests of justice and the balance of prejudice lie. *In none of the cases opened to the court was there a finding by a court of inexcusable delay but nevertheless a determination that the interest of justice and the balancing of the respective prejudices could nevertheless result in a direction to disapply the one-year statutory time limit.*"

*Emphasis added.

45. The subsequent judgment of the High Court (Ní Raifeartaigh J.) in *O'Brien v. O'Brien* [2019] IEHC 591 suggests that it is only if the reason for the delay fails to meet a minimum threshold that that factor on its own could be sufficient to dispose of the proceedings.

46. It is unnecessary for the purposes of the present case to decide whether there is any difference between the approach adopted in these two judgments. This is because I am satisfied that the delay in the present case is inexcusable by reference to any threshold, and it is sufficient on its own to justify the refusal of the application for a direction.

47. Lest I be incorrect, however, I propose to move on to consider briefly the question of prejudice under the next heading below.

(iii). Prejudice to defendant

48. Section 11(3A)(b) requires the court to be satisfied that the prejudice that the plaintiff would suffer if the direction were not given would significantly outweigh the prejudice that the defendant would suffer if the direction were given.

49. This aspect of the statutory test is somewhat difficult to understand in that, in a sense, the prejudice which will each party will suffer if an application for an prolongation of the limitation period is inversely proportionate to that which the other party will suffer. Put otherwise, there is symmetry to the prejudice. In the event that the application for an extension is refused, an intended plaintiff suffers prejudice in that any proceedings instituted by him or her are on hazard of being dismissed on the grounds that same are statute barred. (It will be recalled that the refusal of a direction does not actually preclude the plaintiff from issuing the proceedings, but same are vulnerable to being dismissed). In the event that the application for an extension is *granted*, an intended defendant will be denied a defence which he or she would otherwise have had. The legislation does not provide any guidance as how these respective prejudices are to be weighed in the balance.

50. As it happens, the application of the statutory test to the facts of the present case is straightforward. This is because the alleged defamation is so trivial in nature. As appears

from the extract from the indorsement of claim in the earlier Circuit Court proceedings, the defamation action concerns a statement allegedly made to the Applicant in a retail premises. The publication was to a small number of onlookers. There is no evidence that any of these onlookers where aware of the identity of the Applicant. This is not a case where, for example, a defamatory statement had been published widely in a newspaper or by way of television broadcast. Moreover, the sting of the alleged defamation is not particularly serious in that, at its height, the statement complained of simply suggests that the Applicant had behaved in a rude manner and/or had misbehaved when on the premises on a previous occasion. There was no suggestion, for example, that she had been guilty of shoplifting or of any other criminal conduct. I am satisfied, therefore, that the prejudice to the Applicant in not being allowed to pursue the proceedings is minimal.

51. It is not possible to make a definitive assessment of the prejudice which might be suffered by the intended defendant in circumstances where the failure to comply with the requirements of the Rules of the Superior Courts has had the effect that the intended defendant was not on notice of the application. The court has not had the benefit of any submissions on the part of the intended defendant. Nevertheless, it is apparent that in at least two respects the defendant will be prejudiced. First, on the basis of the affidavit evidence filed on behalf of the Applicant, it seems that the first notification to the defendant on the part of the Applicant's legal representatives of an intention to institute defamation proceedings was in September 2019. As noted earlier, on 9 September 2019, a telephone call had been made to the retail premises by the Applicant's legal representatives, and the owner had identified himself.

52. The fact that the intended defendant is only notified of an alleged defamation some two years after the event has the consequence that he has been denied an opportunity to take steps which might have assisted in the defence of the proceedings.

53. Secondly, the Applicant apparently accepts that the extent of any damages which she might hope to recover is confined to the Circuit Court's jurisdiction. However, as a result of the delay in making the application for an extension of the limitation period, it seems that what is now intended is that proceedings would be instituted in the High Court and then remitted to the Circuit Court. All of this would have cost implications for the intended defendant. The additional costs are a direct consequence of the failure to institute proceedings in a timely manner.

54. In the circumstances, having regard to the minimal prejudice which would be suffered by the Applicant, I am *not* satisfied that the prejudice that the Applicant would suffer if the direction is not given would significantly outweigh the prejudice that the defendant would suffer if the direction were given.

Conclusion

55. The application for a direction prolonging the limitation period pursuant to section 11(2)(c) of the Statute of Limitations had been refused on 10 September 2019 for the reasons set out herein.