

APPROVED

[2022] IEHC 376



THE HIGH COURT

2012 No. 4117 P

BETWEEN

A.B.

PLAINTIFF

AND

HEALTH SERVICE EXECUTIVE
C.D. (FATHER OF A.B.)
E.F. (UNCLE OF A.B.)

DEFENDANTS

JUDGMENT of Mr. Justice Garrett Simons delivered on 30 June 2022

INTRODUCTION

1. This judgment is delivered in respect of a claim for damages arising out of child sexual abuse. The plaintiff had been subject to repeated sexual abuse by her father and uncle, respectively, when she was a child. The sexual abuse ceased in or about October 2004 when the plaintiff was 15 years of age.
2. Both the father and uncle have since been convicted of sexual offences arising out of this abuse. The father was sentenced to two years imprisonment, with the second year suspended. In the case of the uncle, he was convicted, *inter alia*, of

NO FURTHER REDACTION REQUIRED

the offence of rape. The uncle was sentenced to nine years' imprisonment (to include a consecutive two year sentence for sexual assault).

REPORTING RESTRICTIONS

3. At the commencement of the hearing, counsel on behalf of the plaintiff made an application that reporting restrictions be imposed in order to ensure the anonymity of the plaintiff. Counsel explained that whereas his client was not seeking to restrict reportage of the substance of the evidence in the proceedings, she did wish to preclude the publication or broadcast of any material which would identify her. This would include any material which disclosed the names of her father or uncle.
4. In response to a direct question from the court, the two remaining defendants each confirmed that they supported the application for reporting restrictions.
5. There is a constitutional imperative that justice be administered in public save in such special and limited cases as may be prescribed by law. One such exception is provided for under section 27 of the Civil Law (Miscellaneous Provisions) Act 2008. This section allows a court to make an order prohibiting the publication or broadcast of any matter relating to proceedings which would, or would be likely to, identify a party to the proceedings as having a (sensitive) medical condition. Such an order may only be made where the court is satisfied that the following conditions are met:
 - (a) the relevant person has a medical condition,
 - (b) his or her identification as a person with that medical condition would be likely to cause undue stress to him or her, and
 - (c) the order would not be prejudicial to the interests of justice.

6. Having regard to the expert medical evidence summarised at paragraphs 37 to 48 below, I am satisfied that these criteria are fulfilled in this case. The plaintiff suffers from complex post-traumatic stress disorder. It would cause undue stress to the plaintiff were the fact that she suffers from this medical condition to be published or broadcast. The medical evidence establishes that the plaintiff's already unstable mood may decompensate at any stage should further stressors occur in her life. The plaintiff has previously suffered some stigma in her local community as a result of having been identified in gossip as the complainant in the successful criminal prosecutions of her father and uncle. It would cause further undue stress to the plaintiff were she to be identified in any reportage of the present proceedings.
7. Accordingly, I have made an order pursuant to section 27 of the Civil Law (Miscellaneous Provisions) Act 2008. The order precludes the publication or broadcast of any matter relating to the proceedings which would, or would be likely to, identify the plaintiff. This precludes, for example, the publication of (i) the names or addresses of the plaintiff and the two remaining defendants; and (ii) details of the general area where the parties now reside and had resided at the time of the sexual abuse.
8. The imposition of these limited reporting restrictions is not prejudicial to the interests of justice. The underlying principle that justice should be administered in public is respected by the publication of this judgment on the Courts Service's website. Whereas the personal details of the parties have been redacted, the judgment contains a detailed summary of the evidence and records the outcome of the proceedings and the rationale for same. The content of this judgment may be reported by the media.

9. For completeness, it should be explained that the separate statutory power to impose reporting restrictions under section 40 of the Civil Liability and Courts Act 2004 (as amended) is not available in the present case because the within personal injuries action is not a proceeding under a “*relevant enactment*” as defined under section 39 of that Act.

PROCEDURAL HISTORY

10. The within proceedings were instituted by way of a personal injuries summons in April 2012. The proceedings were initially pursued against three defendants: the plaintiff’s father, her uncle and the Health Service Executive (“**HSE**”).
11. The essence of the allegations made against the HSE is that it failed to take adequate steps consequent upon the plaintiff’s disclosure of the sexual abuse suffered by her. It is pleaded that the plaintiff had been “*in the care of*” the HSE since in or about 2004. It is alleged, variously, that the HSE caused or permitted the plaintiff to remain in a high risk situation; caused or permitted the plaintiff to remain living with her father in a wholly inappropriate environment; and caused or permitted the plaintiff’s uncle to continue to enjoy access to the plaintiff as a child. It is also alleged that the HSE failed to have any or any adequate regard to the level of incidents presenting as a threat to the plaintiff’s well-being and health, including incidents of overdosing, self-harm and consequent hospitalisation.
12. The claim as against the HSE has since been settled. A payment of €130,000 has been made in this regard. It is unclear from the papers before me whether this payment was made with or without any admission of liability. The settlement was, however, brought to the attention of the High Court (Cross J.)

and an order was made striking out the proceedings against the Health Service Executive on 11 May 2021. As discussed presently, the fact that the plaintiff has compromised the proceedings against one of the alleged concurrent wrongdoers may have certain implications for the amount of damages which can now be recovered against the two remaining defendants. See paragraph 77 *et seq.* below.

13. The plaintiff's uncle failed to enter an appearance to the proceedings. Accordingly, judgment was entered against him in default of appearance on 21 October 2013. The order directed that the plaintiff recover against her uncle such amount as the court may assess in respect of the claim for damages. The order further directed that the assessment of damages be carried out before a judge without a jury and at the same time and before the same judge as in the trial of the action between the plaintiff and her father.
14. On 25 November 2013, the High Court made an order restraining the plaintiff's uncle from transferring certain lands registered in his name to any other person. This order was made in circumstances where the plaintiff had expressed a concern that her uncle had lodged an application with the Land Registry to effect a voluntary transfer of his lands into the names of his children.
15. The plaintiff's father has entered an appearance to the proceedings and subsequently delivered a defence in short form on 27 January 2015. However, at the hearing before me on 27 May 2022, the father indicated that he did not now wish to contest the action as against him. The father did, however, make a short submission to the effect that he had made an offer to pay €10,000 by way of compensation to the plaintiff and had carried out certain works for the benefit of the plaintiff to the value of between €10,000 and €12,000. These works were

to facilitate equestrian activities on the part of the plaintiff. The father also explained that he is 71 years of age and living on a pension.

16. The plaintiff's uncle also attended at the hearing on 27 May 2022. At his request, I allowed a short oral submission to be made on his behalf by his sister. Strictly speaking, the sister does not have any right of audience in that she is neither a party to the litigation, nor a qualified lawyer. (See generally *Donoghue v. Connolly* [2022] IEHC 386 (at paragraphs 5.8 and 5.9)). However, given the gravity of the proceedings, I took the very unusual step of allowing her to address the court *de bene esse*. A short submission was made to the effect that the family acknowledged that the plaintiff had been sexually abused and that she is entitled to an award of compensation. It was suggested, however, that the sexual abuse might have been "*picked up*" by the HSE much earlier, when the plaintiff was aged 4 or 5 years. It was further submitted that the plaintiff's uncle only has a small farm; has "*lots of outstanding bills*"; and that his two sons are on disability benefit.
17. For completeness, it should be recorded that neither of the two remaining defendants, i.e. the plaintiff's father and uncle, have sought to rely on the Statute of Limitations. The HSE had pleaded that the proceedings were statute-barred in its defence delivered on 21 February 2014. It is apparent from the reply to defence filed on 9 June 2017 and from the report of a consultant psychiatrist (Dr. Elizabeth Cryan) that the plaintiff had intended to rely on section 48A of the Statute of Limitations 1957 (as inserted). However, in circumstances where the proceedings as against the HSE have since been settled, and where neither of the remaining defendants has sought to plead the Statute of Limitations, it is unnecessary to consider the point further. It is well established that the

expiration of a limitation period in tort only bars the remedy and does not extinguish the right, and that the relief or defence given by the Statute of Limitations does not operate unless and until pleaded. See, generally, M. Canny, *Limitation of Actions* (Round Hall, 2nd edition, 2016) at §1-14.

PLAINTIFF'S EVIDENCE

18. The plaintiff gave evidence in respect of the child sexual abuse suffered by her. Given that neither of the two remaining defendants sought to challenge her evidence, nor the fact of the child sexual abuse, it is not necessary to set out her evidence verbatim. It is sufficient to the purpose to summarise her evidence as follows.
19. The plaintiff suffered sexual abuse at the hands of her father for a period of at least eight years, if not more. The plaintiff is unclear as to when precisely the abuse by her father commenced. It seems that, at the very latest, it had commenced when she was 7 years of age.
20. The sexual abuse involved, *inter alia*, the groping and sucking of her breasts; the touching of her vagina; the digital penetration of her vagina and the exposing by her father of his erect penis. The sexual abuse took place in a variety of different circumstances. It seems that the father regularly took advantage of any situation in respect of which he was alone with the plaintiff and unlikely to be disturbed by a third party. The sexual abuse took place in the family home when the plaintiff's mother was at work or otherwise outside the home. It took place in situations where the plaintiff and her father were alone in a car. It also took place in a boathouse or garage on days when the plaintiff and her father had been fishing together.

21. The plaintiff gave vivid evidence in relation to one incident where, having gone to her parents' bedroom at night to seek comfort during stormy weather, she had been left alone with her father and awoke to find him on top of her.
22. The plaintiff was also subject to sexual abuse on a number of occasions when she was taking a bath or a shower in the family home.
23. The plaintiff's father had consistently sought to minimise the sexual abuse, saying to her variously that it was "*normal*", "*no big deal*" and was "*preparing*" the plaintiff for the world. Following his conviction of sexual assault (on a guilty plea), the father requested that the plaintiff prepare a letter in mitigation for submission to the sentencing judge and then sought to change the content of a draft letter prepared by the plaintiff.
24. The plaintiff disclosed the sexual abuse to her mother in or about October 2004. No further sexual abuse was perpetrated after this date. It seems that the mother then informed the social services of the abuse perpetrated by the plaintiff's uncle, but not of that perpetrated by her father. The plaintiff made a statement to An Garda Síochána in respect of her uncle in December 2004.
25. The plaintiff came under intense pressure from her family not to report the sexual abuse by her father to An Garda Síochána. The plaintiff ultimately made a formal statement to An Garda Síochána in respect of her father in July 2007.
26. The sexual abuse by the plaintiff's uncle appears to have commenced at a much later stage than that by her father. Although the plaintiff was not precise in relation to the date of same, it appears to have first been perpetrated in the summer of 2002. The plaintiff would then have been 13 years of age. The sexual abuse ceased in October 2004 following the plaintiff's disclosure of the sexual abuse to her mother.

27. Although the period of time over which the uncle had sexually abused the plaintiff is shorter, the offences involved were even more serious. As noted, the uncle has since been convicted of the offence of rape. The rape occurred on a day when the plaintiff had been at home alone because she was too sick to attend school.
28. As with her father, the plaintiff's uncle also sought to minimise the sexual abuse. The uncle referred to these criminal acts as "*canoodling*" and stated that he was going to give the plaintiff "*experience for the fellas in the future*".
29. The plaintiff gave detailed evidence as to how the child sexual abuse has affected her life. It seems that in the period after she first reported the sexual abuse to her mother, the plaintiff came under sustained pressure from her family to withdraw the allegations. The plaintiff gave evidence that, during the period 2004 to 2007, she engaged in multiple acts of self-harm and deliberate overdosing. The plaintiff states that there had been approximately 50 hospital admissions in relation to overdoses, a significant proportion of which were suicide-motivated. In at least one incident, she had to be admitted into intensive care. Her suicide attempts also included the opening of her veins. The plaintiff has permanent scars on her arms as a result of self-harm including attempts at suicide.
30. The plaintiff has also suffered from eating disorders, with anorexic and bulimic features. Even now the plaintiff restricts, saying that she is guarded about what she eats. She often considers the vomiting of food or the use of another control method. The plaintiff explains that she feels that she can never be thin enough, that she avoids using weighing scales and does not like looking at herself in mirrors.

31. The plaintiff has suffered very significant gynaecological and gastrointestinal difficulties, including polycystic ovaries and endometriosis. The plaintiff has also had multiple surgical procedures, including an adhesiolysis following an appendectomy.
32. To her credit, the plaintiff has been able, with certain accommodations from the college authorities and with the help of an educational psychologist, to complete a third level course at university and was awarded a 2:1 honours degree. The plaintiff has explained in evidence that it was very difficult for her to study in circumstances where her ability to concentrate has been adversely affected by the child sexual abuse. The plaintiff described a loss of attention and intrusive thoughts.
33. The plaintiff also suffers with insomnia. She explained that her sleep patterns are “*terrible*”, and that she is constantly tired. It can sometimes take her hours to fall into a deep sleep. The plaintiff has vivid nightmares of her body being destroyed and degraded, and of “*death squads*” chasing her. She explained that she is always running away from someone in her dreams. One night she awoke thinking that there had been a “*monster lady*” in her bedroom trying to kill her.
34. The plaintiff has described how she must constantly keep busy to avoid intrusive thoughts. This extends both to her working life and to her hobbies. The plaintiff stated that if she is not actively engaged, then she suffers flashbacks which she has likened to seeing the sexual abuse as if it were on a television screen in front of her.
35. The plaintiff has been able to obtain employment with an employer who is a relative and is accommodating towards her mental health difficulties.

36. For completeness, it should be recorded that the plaintiff had also been sexually abused by her paternal cousin over a number of months. This abuse took place when the plaintiff was very young (approximately 7 years of age) and involved a number of incidents of rape. The perpetrator is now deceased.

MEDICAL EVIDENCE

37. The plaintiff's side called oral evidence from two medical practitioners as follows. The defendants were each offered an opportunity to cross-examine the witnesses, but declined to do so.

Dr. Elizabeth Cryan

38. Dr. Elizabeth Cryan is a consultant psychiatrist and had carried out a psychiatric assessment of the plaintiff in February 2012 at the request of the latter's solicitors. Dr. Cryan confirmed that she has neither assessed nor treated the plaintiff since that date.
39. Dr. Cryan confirmed that, as of February 2012, the plaintiff had acknowledged ongoing suicidal ideation and also reported that she had engaged in self-harm as recently as the previous year.
40. Dr. Cryan described the response of the plaintiff's family to the disclosure of the sexual abuse as "a *very major further trauma*" for the plaintiff. Subsequent to the plaintiff's initial disclosure of the sexual abuse, there had been a prolonged period of time during which pressure had been put on the plaintiff not to make complaints to An Garda Síochána in respect of the sexual abuse perpetrated by her father and her cousin. During this period, the plaintiff had engaged in repeated episodes of self-harm in the form of cutting, and overdosing on various

medications available in the family home. These events resulted in the plaintiff having to attend at the local hospital on more than fifty occasions.

41. Dr. Cryan had diagnosed the plaintiff as suffering from complex post-traumatic stress disorder, describing this as the most important presentation. The witness went on to say that she agreed with the view of another medical practitioner—as reported to Dr. Cryan by the plaintiff—that a possible diagnosis of emotionally unstable personality disorder, borderline type, might be appropriate. Dr. Cryan observed that these two diagnoses “*hugely overlap*” with each other. Both diagnoses are related to child sexual abuse and both involve self-harming behaviour, fears of abandonment, inability to trust and sometimes paranoid ideation.
42. Dr. Cryan noted that the plaintiff had exhibited the principal symptoms of complex post-traumatic stress disorder. In particular, the plaintiff had intrusive symptoms (including intrusive thoughts, flashbacks and nightmares); avoidant symptoms (including an intolerance of intimacy: such as touch, the holding of hands or hugging); and cognitive symptoms (including extremely changeable mood, anger and self-harming behaviour). Dr. Cryan described the plaintiff’s loss of capacity for intimacy as one of the saddest aspects of her symptomology.
43. The witness had also diagnosed the plaintiff as suffering from an eating disorder of the mixed type, i.e. consisting of anorexia and bulimia. The plaintiff had been using laxatives and engaging in purging and restricting.
44. Dr. Cryan had also observed that the plaintiff had been suffering from panic attacks, but saw those as part of the PTSD rather than a panic disorder *per se*.
45. In her written report of 8 March 2012, Dr. Cryan had offered the opinion that the post-traumatic stress disorder symptoms and the repeated suicide and

parasuicidal acts directly relate to the plaintiff's experience of abuse and to the intense pressure that she was put under by her family not to make a disclosure, coupled with being placed back in the family home. Dr. Cryan went on then to express the opinion that the decision by (healthcare) professionals, who were aware of the reported sexual abuse by her father, to allow the plaintiff to repeatedly return home following serious overdoses, which related to the conflict about her disclosure of the sexual abuse, added significantly to the plaintiff's trauma.

46. Dr. Cryan concluded her written report as follows:

“At her assessment, it was clear that [the plaintiff] was striving to overcome her tendency to self-harm, and had engaged in a DBT program. She had also invested in education, and although her concentration was impaired, had been coping with her university course. She had also re-established some contact with her family of origin. Despite these positive efforts on [the plaintiff's] part, I remain extremely concerned about her future prognosis, given the severity of her experience of abuse by multiple perpetrators, the denial in relation to her disclosure, evidenced by her mother's failure to act, compounded by her being placed back in the family home following repeated overdoses. In addition, [the plaintiff] described particularly severe psychological symptoms.”

Dr. Mary McGuire

47. The second medical witness called on behalf of the plaintiff was Dr. Mary McGuire. Dr. McGuire is a consultant psychiatrist and had conducted a psychiatric assessment of the plaintiff, via video link, on 2 March 2021. Dr. McGuire subsequently prepared a written report dated 7 March 2021 and she was taken through this report verbatim by counsel on behalf of the plaintiff.
48. Dr. McGuire had offered the following assessment in her written report and reiterated this conclusion in her oral testimony:

“Conclusion:

[The plaintiff] experienced a very traumatic childhood where she was subjected to sexual abuse by her paternal cousin, her father and her uncle. Her distress was compounded when there was huge family conflict regarding her disclosure of these incidents. As a result of childhood trauma, she suffered from a number of psychiatric disorders. She continues to experience Post Traumatic Stress Disorder which she tries to control by keeping herself busy.

She also suffered from an eating disorder which appears to be controlled at this stage but she continues to have a restricted diet. Symptoms of OCD do not appear to be problematic at this stage. Her mood remains unstable and she feels unable to become involved in relationships.

Problems related to emotionally unstable personality disorder persist. [The plaintiff] is attempting to cope on her own with the fallout from childhood sexual abuse and would benefit from supportive psychotherapy should she choose to return to such counselling. The prognosis is guarded because of her fragile mental state and unstable mood. Her mood may decompensate at any stage should further stressors occur in her life.”

PERSONAL INJURIES GUIDELINES

49. In most personal injuries actions, the starting point for the assessment of damages will be the book of quantum published by the Personal Injuries Assessment Board (“*PIAB*”). The Court of Appeal has emphasised that if the trial judge considers that the book of quantum has no role to play in the particular circumstances of the case, then it should be explained why this is so (*McKeown v. Crosby* [2020] IECA 242 (at paragraph 31)).
50. The book of quantum is not of assistance in the present case for the simple reason that it does not address psychological injury. As explained below, however, this type of injury is addressed in the guidelines which will ultimately replace the book of quantum.

51. The Judicial Council, on 6 March 2021, adopted guidelines as to the level of damages that may be awarded or assessed in respect of personal injuries (“*the personal injuries guidelines*”). The personal injuries guidelines were adopted pursuant to section 7 of the Judicial Council Act 2019 (as amended).
52. In proceedings to which the personal injuries guidelines are applicable, a court must “*have regard to*” the same in assessing damages in a personal injuries action. A court is not bound by the personal injuries guidelines, but where it departs from the guidelines, the court must state the reasons for such departure in giving its decision. (Section 22 of the Civil Liability and Courts Act 2004 (as amended)).
53. There is a temporal restriction on the application of the personal injuries guidelines. The guidelines do not apply to proceedings which commenced prior to 24 April 2021, nor to proceedings where the Personal Injuries Assessment Board had made an assessment of damages in relation to the claim prior to that date. The present proceedings were instituted on 25 April 2012, that is some nine years prior to the coming into operation of the personal injuries guidelines. Accordingly, the guidelines are not applicable to the assessment of damages in this case.
54. The personal injuries guidelines may be of relevance to other personal injuries actions arising out of child sexual abuse. This is because, unlike the book of quantum published by PIAB, the personal injuries guidelines expressly address psychiatric injury. The guidelines state that the considerations affecting the level of the award will include the following: (i) age; (ii) interference with quality of life and education; (iii) impact on work; (iv) impact on interpersonal relationships; (v) whether medical assistance has been sought; (vi) nature, extent

and duration of treatment undertaken and/or medication prescribed; (vii) likely success of treatment; (viii) prognosis, to include any future vulnerability; and (ix) the extent and/or nature of any associated physical injuries.

55. The personal injuries guidelines expressly address post-traumatic stress disorder (PTSD). It is explained that, for the purpose of the guidelines, cases within this category are confined to those in which there is a specific diagnosis of a reactive psychiatric disorder following an event which creates psychological trauma in response to either experiencing or witnessing a terrifying event. Symptoms may include distressing memories of the traumatic event, nightmares, flashbacks, sleep disturbance, avoidance, mood disorder, suicidal ideation and hyperarousal. Symptoms of hyperarousal can affect basic functions such as breathing, pulse rate, and bowel and/or bladder control.
56. The range of damages suggested for severe PTSD is €60,000 to €120,000. It is explained that such cases will involve permanent effects which prevent the injured party from working at all or at least from functioning at anything approaching pre-trauma level. All aspects of the injured party's life will have been badly affected.
57. In circumstances where the personal injuries guidelines are not applicable to the present claim, the assessment of damages falls to be considered by reference to the existing case law in respect of damages for child sexual abuse. The learned authors of T. Dorgan and P. McKenna, *Damages* (Round Hall, 2nd edition, 2021) provide a useful summary of the case law: see §7-03 to §7-08. This case law is discussed under the next heading below.

DISCUSSION AND DECISION

58. The question of the assessment of general damages for child sexual abuse has been considered in detail by the Supreme Court in *M.N. v. S.M. (Damages)* [2005] IESC 17; [2005] 4 I.R. 461. The matter had come before the Supreme Court by way of an appeal from a jury award. The injured party had been subject to sexual abuse over a five year period, at a time when she was between 12 and 17 years of age. The severity of the sexual abuse had increased over this period. The sexual abuse had initially involved inappropriate touching and fondling, before progressing to masturbation and culminating in acts of rape.
59. The medical evidence established that the injured party suffered from depression, sleep disorder, hopelessness, loss of energy and loss of motivation. She also suffered from gastro-intestinal problems related to depression. A consultant psychiatrist had given evidence to the effect that the injured party could be expected to have difficulties in emotional and physical intimacy, which would possibly be lifelong.
60. The Supreme Court summarised the nature of the injury inflicted as follows (at paragraph 35 of the reported judgment):

“The nature of the injury to the plaintiff is complex and may be permanent. There are a number of important factors to be considered in analysing this injury. First, in this case the injury did not occur on a single occasion. It was not one sexual assault or one rape. Rather it was a continuum of abuse over years. This had an effect more than the individual assaults – it created a continuum. The consequence to the plaintiff was greater than the sum of the individual assaults. Secondly, the assaults and rape took place at a critical time in the life of the plaintiff; she was an adolescent. The consequence has been that her development was altered and subverted. Thirdly, the consequences to the plaintiff may be lifelong. The injuries inflicted upon the plaintiff have scarred her emotionally and developmentally. She may have emotional and intimacy difficulties for life. Fourthly, while the injuries to the plaintiff arise out of a continuum of sexual

assault over five years at a vulnerable time in her life, this sexual assault ultimately developed into rape of the plaintiff. Rape is a most serious injury to a person. This was described by Finlay C.J. in *The People (D.P.P.) v. Tiernan* [1988] I.R. 250 at p. 253 as follows:-

‘The act of forcible rape not only causes bodily harm but is also inevitably followed by emotional, psychological and psychiatric damage to the victim which can often be of long term, and sometimes of lifelong duration.

...

Rape is a gross attack upon the human dignity and the bodily integrity of a woman and a violation of her human and constitutional rights. As such it must attract very severe legal sanctions.’

Thus, the general damages should reflect the very serious and possibly lifelong injuries.”

61. The jury had made an award of €600,000 in respect of general damages. The Supreme Court held that this sum was so far in excess of a reasonable award of compensation that it was disproportionate and should be set aside. The Supreme Court substituted a sum of €350,000.
62. The judgment of the Supreme Court emphasises that the level of damages awarded in cases of child sexual abuse must be proportionate to the legal scheme of awards made for other personal injuries. In this regard, there is an established line of case law where the Supreme Court has held that there is a limit to the amount of general damages which may be awarded for pain and suffering in a personal injuries action. This limit represents the current view of the appellate courts as to the damages which should be awarded in cases of the most serious injuries. This is the sum by reference to which all less serious damages should be determined on a proportionate basis, having regard to a comparison between the injuries suffered and those which do, in fact, properly qualify for the

maximum amount. The limit is currently fixed at €500,000: see *Morrissey v. Health Service Executive* [2020] IESC 6 (at paragraphs 14.6 to 14.29).

63. The need for proportionality between damages for child sexual abuse and other types of serious personal injuries has been reiterated by the Supreme Court in *Hickey v. McGowan* [2017] IESC 6; [2017] 2 I.R. 196 (at paragraph 71 of the reported judgment):

“There must also be some correlation between the figures awarded for injuries of this nature and general damages awarded for catastrophic personal injuries resulting in some cases in a quadriplegic life from a very young age, or severe brain damage. While very large awards are made in these cases, the bulk of the award relates to special damages in respect of past and future care. The component for general damages for pain and suffering rarely exceeds the amount awarded in general damages in this case. Awards for residential abuse may be a useful point of comparison. There was I think only limited evidence as to these matters which might benefit from greater scrutiny in another case. In the circumstances of this case however, I would reduce the overall general damages to a figure of €150,000. When the deemed contributory negligence under s. 34 is taken into account, this would result in an award of €75,000.”

64. The sexual abuse in *Hickey v. McGowan* had been perpetrated by a religious brother who had taught the injured party, as a child, at national school. The sexual abuse involved the perpetrator rubbing the child’s legs, fondling his anus and genitalia, initially outside his clothes but then inside his clothes, and sometimes involved the insertion of a finger into the child’s anus. The High Court had assessed general damages at €250,000 to date, and awarded an additional €100,000 in respect of general damages in the future. The Supreme Court reduced this overall figure of €350,000 to €150,000.
65. Returning to the judgment in *M.N. v. S.M. (Damages)*, the Supreme Court identified the factors to be considered in assessing general damages as follows (at paragraphs 37 and 38 of the reported judgment):

“The plaintiff has brought this action seeking an award of general damages for her injuries caused as a result of the sexual abuse by the defendant. The remedy available in the courts is monetary, a sum of money, as compensation. It must be recognised, first and foremost, that no award of money will put the plaintiff back in the position she was before the sexual abuse. No award of damages will retrieve her childhood or repair the damage done to her, emotionally, in her formative years. Further, no amount of money will cure her or render her future clear of the effects of these assaults. An award of general damages is an imperfect mode of compensating a plaintiff. However, it is the only method available. It is a recognition of the injuries and damages must reflect the change of circumstances of the plaintiff.

At issue on this appeal is the award of general damages by a jury. In assessing the level of general damages, there are a number of relevant factors to consider. Thus an award of damages must be proportionate. An award of damages must be fair to the plaintiff and must also be fair to the defendant. An award should be proportionate to social conditions, bearing in mind the common good. It should also be proportionate within the legal scheme of awards made for other personal injuries. Thus the three elements, fairness to the plaintiff, fairness to the defendant and proportionality to the general scheme of damages awarded by a court, fall to be balanced, weighed and determined.”

66. Applying these principles to the circumstances of the child sexual abuse before it, the Supreme Court held that the award should be at the higher end of the range of awards of general damages in personal injuries actions generally. At the time, the limit on general damages was in excess of €300,000. The Supreme Court emphasised the gravity of the injury suffered, involving as it did rape, but also attached some limited weight to the subsequent actions of the perpetrator—including his early admission, early plea of guilty, and apology—because they would have helped to alleviate the suffering of the injured party.
67. I turn now to apply these principles to the facts of the present case. The principal factor to be considered is the nature and duration of the psychological injury suffered by the plaintiff. This factor is closely aligned to the nature and duration

of the sexual abuse. The sexual abuse was carried out over a period of at least eight years in the case of the father, and two years in the case of the uncle. The acts of sexual abuse committed by both perpetrators could hardly have been more serious, involving persistent and continuous sexual assault (including digital penetration of the vagina) in the case of the father, and rape in the case of the uncle.

68. The plaintiff has been diagnosed as suffering complex post-traumatic stress disorder. The plaintiff has described in detail the immediate impact of the abuse upon her as a child, including eating disorders, self-harm, overdosing and suicide attempts. Thankfully, in more recent years the plaintiff has, as a result of her own resilience, managed to implement coping mechanisms. However, even now, some eighteen years after the sexual abuse ceased, she continues to suffer ongoing sequelae such as intrusive thoughts, nightmares, insomnia, diminished concentration and recollection. The plaintiff's ability to sustain intimate personal relationships has been adversely affected. Dr. McGuire has stated that the prognosis for the plaintiff is guarded because of her fragile mental state and unstable mood.
69. It is also relevant to the assessment of damages to consider the psychological impact of the grave breach of trust involved. The sexual abuse was committed by the very people who should have been protecting and caring for the plaintiff, namely her father and uncle. The sexual abuse occurred, in many instances, in the plaintiff's own family home, which should have been a place of shelter and refuge for her. In one instance, the abuse took place in the plaintiff's own bedroom when she was laid up sick, and in another in her parents' bed on an occasion when she had sought comfort during stormy weather. It is difficult to

think of a more egregious breach of trust than that committed by the plaintiff's father and uncle. The breach of trust had been exacerbated by the attempts made by the plaintiff's father and mother to prevent the plaintiff from making full disclosure to An Garda Síochána. The plaintiff had been put under intense pressure not to disclose the sexual abuse committed by her father. It also appears that attempts were made to make the plaintiff feel guilty for causing "trouble" for the family. As a result of these breaches of trust, the plaintiff is, understandably, wary of trusting other people and this has adversely affected her ability to sustain intimate relationships.

70. Her uncle put the plaintiff through a criminal trial, including a lengthy cross-examination, and a subsequent unsuccessful appeal to the Court of Criminal Appeal. This is to be contrasted with the approach taken by the perpetrator in *M.N. v. S.M. (Damages)*.
71. Having regard to all of the circumstances of the case, damages for pain and suffering to date are assessed at €275,000. An additional sum of €75,000 will be awarded for pain and suffering into the future. The medical evidence establishes that the period of greatest injury to the plaintiff occurred during the currency of the sexual abuse and in the years immediately following the disclosure of the sexual abuse in October 2004. The more modest sum awarded in respect of pain and suffering into the future is intended to reflect this chronology and the fact that, as a result of her own resilience, the plaintiff has put in place coping mechanisms which have reduced the ongoing impact.
72. The overall figure for damages, €350,000, is reflective of the sum awarded by the Supreme Court in *M.N. v. S.M. (Damages)*. As appears from the summary at paragraphs 58 to 60 above, the facts of that case bear a remarkable similarity

to the present case. In each instance there had been a continuum of sexual abuse over many years, culminating in acts of rape. In each instance, the injured party has suffered significant psychological injury, including anxiety, panic and nightmares. Both injured parties subsequently experienced challenges in completing their college education. Both injured parties suffered depression, sleep disorder, and hopelessness and have had difficulties in forming close relationships as an adult. If anything, the plaintiff in the present case has suffered greater psychological injury, having been diagnosed with post-traumatic stress disorder and having repeatedly engaged in self-harm and attempted suicide.

73. The overall figure for damages of €350,000 is also in proportion to other recent awards for child sexual abuse. As noted earlier, a figure of €150,000 was allowed by the Supreme Court in *Hickey v. McGowan* for sexual abuse involving the fondling of a school child's genitalia and anus, and digital penetration of the anus. In *Walsh v. Byrne* [2015] IEHC 414, the High Court (White J.) allowed a figure of €200,000 (to include aggravated damages) in a case where a child had been groomed for sexual abuse consisting of the regular inspection and masturbation of the victim's genitals on the pretext of supposed medical examination. The High Court (Barr J.) allowed a figure of €105,000 for general damages in *G.F.B. v. T.B.* [2016] IEHC 97. The sexual abuse there was characterised by the court as towards the lower end of the scale, as it did not include acts of rape or oral sex and had not caused any definable physical or psychiatric injury to the victim. Most recently, the High Court (Gearty J.) awarded €170,000 by way of general damages in *Donoghue v. Connolly* [2022] IEHC 386. The sexual abuse there had taken place over a period of years, and included penetration of the vagina by fingers, hand and tongue. The victim

suffered ongoing depression and stress as an adult as a result of this sexual abuse.

The stress contributed to a worsening of a pre-existing bowel condition.

74. A higher award than those summarised above is justified in the present case having regard to the greater severity of both the sexual abuse and the psychological sequelae. The sexual abuse involved two perpetrators and had culminated in rape. Unlike the victims in these comparator cases, the plaintiff here has been diagnosed with post-traumatic stress disorder. The duration of the psychological injury is greater. In particular, the plaintiff has been unable to enter into a committed intimate relationship. This is in contrast to the position of the victims in many of these other cases: it appears from the relevant judgments that most of the victims had subsequently married.
75. Finally, and for completeness, it should be explained that I have not found it helpful to attribute a specific sum for aggravated damages. Whereas the sexual abuse does exhibit what might be described colloquially as aggravating factors, e.g. the egregious breach of trust involved; the significance of same lies in the exacerbation of the psychological injury suffered. The principal objective of an award of general damages is compensatory. Damages should be assessed by reference to the psychological injury caused by the aggravating factor. For example, the fact that the plaintiff had been sexually abused by the very people who should have protected her is likely to have exacerbated her difficulties in forming intimate relationships by undermining her capacity to trust other people. This aggravating factor is reflected in the overall figure of €350,000.
76. Although a claim for exemplary damages is formally pleaded in the personal injuries summons, it was not pursued at the hearing. This was sensible. It is not the function of the court, in civil proceedings, to punish the defendants for

actions which have been successfully prosecuted in criminal proceedings. Both the plaintiff's father and uncle have received custodial sentences in respect of the sexual offences which they perpetrated against her. It would be inappropriate to impose a further penalty by way of exemplary damages. The principal purpose of these civil proceedings is to attempt, insofar as a monetary award can ever do, to compensate the plaintiff for the personal injuries suffered by her as a result of the wrongdoing of the defendants.

77. Finally, it is necessary to address the submission made by both of the remaining defendants that they are of limited financial means. The implication of this submission seems to be that any award for damages should not exceed a level which they might be able to pay. With respect, this is not an answer to the claim for damages. As explained by the Supreme Court in *Hickey v. McGowan* (at paragraphs 44 and 45), the law is meant to apply equally to the rich, the poor, the insured and the uninsured, and questions of liability must be determined on that basis. The function of tort law, and vicarious liability which is a part of it, is to identify a defendant who can justly be called upon to compensate an injured party. There remains in the real world, however, an unavoidable risk that the party or parties deemed liable by the law may not be able to meet an award.
78. It should be observed that the submission of impecuniosity in the present case was not supported by any evidence, and it appears that, until restrained by court order, the uncle had been attempting to effect a voluntary transfer of his lands into the names of his children.

SETTLEMENT WITH HEALTH SERVICE EXECUTIVE

79. The personal injuries action had initially been pursued against three defendants. The plaintiff has since settled her claim as against the Health Service Executive. It is necessary to consider the legal consequences of this settlement for the claim as against the two remaining defendants.

80. It is apparent from the personal injuries summons—and from the further and better particulars furnished on 29 January 2021—that the plaintiff’s case had been that the Health Service Executive bears some responsibility for the personal injuries suffered by her. It is not, of course, suggested that the HSE has any liability for the criminal acts of the two other defendants. Rather, the gravamen of the complaint made against the HSE is that it failed to put in place a plan to safeguard and protect the plaintiff and failed to remove her from a neglectful, abusive and threatening situation. It is also said in evidence that the decision to return the plaintiff to the family home, following the disclosure of the child sexual abuse, added significantly to the plaintiff’s trauma.

81. It is at least arguable, therefore, that the three defendants are “*concurrent wrongdoers*” for the purposes of the Civil Liability Act 1961. The concept of “*concurrent wrongdoers*” is defined as follows at section 11(1) of the Act:

“For the purpose of this Part, two or more persons are concurrent wrongdoers when both or all are wrongdoers and are responsible to a third person (in this Part called the injured person or the plaintiff) for the same damage, whether or not judgment has been recovered against some or all of them.”

82. Section 11(2) provides, relevantly, that it is immaterial whether the acts constituting concurrent wrongs are contemporaneous or successive.

83. The term “*damage*” is defined as including “*personal injury*”; the latter term is defined as including any impairment of a person’s physical or mental condition.

The concept of “*same damage*” is not separately defined under the Civil Liability Act 1961.

84. In the present case, the plaintiff’s claim is that, as a result of the consecutive wrongs of the first, and the second and third, defendants, respectively, she has suffered a significant psychological injury in the form of post-traumatic stress disorder. This is so notwithstanding that the wrongs alleged against the HSE are very different than those alleged against the two remaining defendants, and occurred *subsequent* to the wrongs committed by the other two defendants. It will be recalled that the sexual abuse had ceased by October 2004 following the disclosure by the plaintiff to her mother.
85. If the three defendants are, indeed, concurrent wrongdoers, then this may mean that the proposed figure for overall damages, i.e. €350,000, may have to be reduced to reflect the settlement. The legal consequences of a settlement with one out of a number of concurrent wrongdoers are prescribed by section 17 of the Civil Liability Act 1961. Insofar as relevant to the present proceedings, the practical effect of the section would appear to be that the amount of damages recoverable against the remaining concurrent wrongdoers is reduced by the *greater* of the following: (i) the amount of the consideration paid for the release of the HSE, i.e. the sum of €130,000, or (ii) the amount which the HSE would have been liable to contribute to the plaintiff’s total claim. It may be, therefore, that the sum of €350,000 might have to be reduced by €130,000 or possibly by an even greater figure.
86. The implications of the Civil Liability Act 1961 were not addressed, by either side, at the hearing before me. Given the importance of this issue, and the fact that the two remaining defendants did not have the benefit of professional legal

representation, I propose to reopen the hearing to allow both sides to address the court on the issue. The parties will have an opportunity to address the question of whether the Health Service Executive is properly regarded as a “*concurrent wrongdoer*” having regard to the statutory definition, and, in particular, the requirement that it is responsible for the “*same damage*”, and, if so, the extent that the HSE would have been liable to contribute to the plaintiff’s total claim.

SUMMARY AND NEXT STEPS

87. For the reasons explained herein, damages for the personal injuries suffered by the plaintiff are assessed at €350,000. A decision on whether this overall amount should be reduced to reflect the settlement agreement entered into between the plaintiff and the first defendant, the Health Service Executive, has been deferred to allow the parties an opportunity to make submissions on the implications of the Civil Liability Act 1961.
88. I propose to list the matter for further submissions on 15 July 2022 at 11.00 o’clock. If this date does not suit either party, they should inform the registrar as soon as possible and propose alternative dates.

Appearances

John Shortt, SC and Frank Martin for the plaintiff instructed by John J. Quinn & Co. (Longford)

The second and third defendants appeared as litigants in person

Approved
SHORTT S.M.A.S.