Neutral Citation No: [2025] NIMaster 1 ***Judgment: approved by the Court for handing down (subject to editorial corrections)***	**ICOS Nos: 2022/078036** **2022/078032** **2022/078037** ***Delivered: 16/01/25***

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

Between

CIARAN QUINN AS ADMINSTRATOR OF THE ESTATE OF ORLAITH QUINN (DECEASED)

&

SIOBHAN GRAHAM

&

BRENDAN GRAHAM

Plaintiffs

-and

BELFAST HEALTH AND SOCIAL CARE TRUST

Defendant

Mr Fitzpatrick (instructed by O'Reilly Stewart Solicitors) for the Plaintiffs
Mr Park (instructed by Directorate of Legal Services) for the Defendant

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MASTER HARVEY

Introduction

[1] The circumstances of this case are heart-rending. Orlaith Quinn was born on the 29 April 1985 and died on 11 October 2018, when aged 33 years. Immediately prior to her death, the deceased was a patient at the Royal Jubilee Maternity Hospital, where she was giving birth to her third child. After giving birth, and while still in hospital, there was a significant deterioration in her mental health, and she suffered post-partum psychosis. Tragically the deceased took her own life in the hospital by hanging. At an inquest in May 2022, the Coroner concluded that the deceased's death was both foreseeable and preventable and there were a number of

missed opportunities in the care and treatment of the deceased including the inadequacy of the psychiatric assessment and care plan. The defendant has admitted breach of duty and filed an admission defence which states; "The defendant admits that the death of the deceased arose from negligence on the part of the defendant." The defendant, however, denies that the three plaintiffs in these actions are entitled to compensation as a matter of law as they are secondary victims.

The application before the court

[2] These are applications by the defendant for a direction pursuant to Order 33 rule 3 of the Rules of Court of Judicature (Northern Ireland) 1980 ("the Rules"), that as a matter of the law, the negligence alleged by the plaintiffs against the defendant does not give rise to a right to damages in respect of the psychiatric injuries alleged by them, in light of the judgment of the Supreme Court in *Paul & Ors –v- Wolverhampton Health Authority* [2024] UKSC1.

[3] The parties submitted helpful written submissions in advance and made detailed oral submissions, all of which were of assistance to the court.

Background

[4] There are three writs of summons and three categories of claims. The plaintiff, Mr Quinn who is the widower of the deceased, has issued a writ of summons on behalf of the estate claiming under the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 for personal injuries, loss and damage sustained by the deceased prior to her death caused by the negligence and breach of statutory duty in relation to the breaches of Human Rights Act 1998 ("the estate claim.") Further, pursuant to the Fatal Accidents (Northern Ireland) Order 1977 this same writ includes a second category of claim for the loss and damage sustained by him and the dependents of the deceased by reason of the death of the deceased ("the dependency claim.")

[5] In addition to the above two categories of claims, there is a third category with separate proceedings brought by the deceased's parents, Mr and Mrs Graham, in relation to the personal injuries, loss and damage suffered by them arising from the tragic death of their daughter ("the secondary victim claims.") In Mr Quinn's case he similarly has a secondary victim claim, but this is pleaded differently in his writ of summons as compared with the deceased's parents. Mr Quinn's writ sets out the basis of his claim as arising from "negligence and breach of statutory duty, being the Human Rights Act 1998 of the defendant, its servants and agents, in and about the provision of medical care, advice and treatment to his wife, Orlaith Quinn, at or about the Royal Jubilee Maternity Hospital commencing on or about 10th October 2018 and continuing until the date of death on 11th October 2018." The cases of Mr and Mrs Graham are grounded solely on negligence, not breach of statutory duty. The statements of claim in their cases, however, include particulars relating to a breach of the European Convention on Human Rights ("ECHR") but no application

has ever been brought pursuant to Order 20 Rule 5 to amend the writ of summons to ground such a claim.

The defendant's application

[6] The defendant's application seeks to have the issue of liability in relation to the secondary victim claims, tried as a preliminary point before the judge. The summons does not reference breach of statutory duty, and as stated above, this is only currently properly pleaded in one of the three claims.

[7] The defendant accepts the broad facts of the case and has admitted that the death of the deceased arose from negligence on the part of the defendant. Breach of statutory duty is not admitted, and the defendant denies that there is any entitlement to claim for damages under the ECHR as incorporated by the Human Rights Act 1998.

[8] The scope of the preliminary issue is defined as:

> "That as a matter of law the negligence alleged by the plaintiff(s) against the defendant does not give rise to a right to damages in respect of the psychiatric injures alleged by the plaintiff(s)."

The defendant's submissions

[9] In light of the Supreme Court decision in *Paul,* the defendant contends it did not owe a duty to the deceased's close family. The duty owed to the deceased did not extend to protecting the deceased's husband and family from exposure to the traumatic experience of learning of the death of the deceased. Moreover, they argue there was no accident in the sense that it was an unexpected and unintended event which caused injury by violent external means to one or more primary victims. The negligence which has been admitted related to the inadequacy of the psychiatric assessment and the inadequacy of the care plan put in place as a result of it. It is submitted that neither of these pieces of negligent conduct could properly be described as an accident within the meaning of that expression as described by the Supreme Court. As a matter of law, the defendant argues the claims for damages as secondary victims by the close family members are bound to fail.

[10] The defendant argues the human rights claim for damages is out of time, being brought by writ of summons three years and almost 11 months after the date on which the act complained of occurred. Section 7(5)(a) of the Human Rights Act provides for proceedings being brought before the end of one year from that date or (b) such longer period as the court considers equitable having regard to all of the circumstances of the case. However, there is no circumstance described to explain why a longer period would be equitable. The defendant states the claim asserting a breach of human rights will also fail as a matter of law as the deceased had been admitted to the Maternity Hospital to deliver her child. She was not admitted as a

psychiatric patient and in their view could not be considered to have been a voluntary or involuntary detained psychiatric patient. I raised with defence counsel that in this application, the defendant does not apply for liability in respect of the human rights claim to be dealt with as a preliminary issue, but he accepted this court may also refer that matter to the judge. I accept this is correct and accords with the wording of Order 33 rule 3 which states that the court "may order any question or issue arising in a cause or matter" to be dealt with as a preliminary issue and "may give directions as to the manner in which the question or issue shall be stated."

[11] The defendant asserts that the trial of the legal question identified in their application is likely to be short and proceed mainly, if not entirely, on submissions. In the event the defendant is successful, it will dispose of the identical arguments in the three cases. It is argued it will obviate the need for both parties to incur substantial costs investigating and addressing quantum and will save a substantial amount of court time.

The plaintiffs' submissions

[12] The plaintiffs contend the application will not provide a knockout blow for either side at an interlocutory stage, and this is a contraindication to allowing a preliminary hearing. They say this summons will not short-circuit or provide an expedient route to the resolution of the issues. This will instead lead to numerous hearings, and they disagree with the defence assertion that oral evidence will not be required. The hearings will need to detail the evidence of the very distressing death of the deceased, which in turn they say will further exacerbate the upset and anxiety of the plaintiffs. The full resolution of all issues before one court will avoid repeated hearings and avoid the need for the plaintiff to hear repeated evidence, argument and discussion relating to the extremely distressing details of the deceased's death.

[13] Further, the plaintiffs claim these cases differ from *Paul* as the secondary victims did not witness a death or manifestation of injury because of the failure to treat a progressive pre-existing injury or disease. The position here was that the deceased had a violent and horrific death by hanging, where she was able to hang herself while in the hospital controlled by the defendant. They assert this was not part of any underlying medical condition for which she was being treated. The Supreme Court made specific reference to the potential for an exception based upon the facts in the particular case. The plaintiffs argue that their cases clearly have the potential for such an exception and the court will need to consider the facts around the death at any hearing. The plaintiffs further assert that at no point in the extensive analysis do any of the Lords of the Supreme Court consider a violent act by another or act of self-harm as within their thinking or the limits that they were establishing within the line of jurisprudence.

[14] The plaintiffs contend that the admitted negligence on the part of the defendant clearly supports claims under article 2 ECHR as there was a failure to protect the deceased's right to life when she required mental health treatment and

care. There is also a claim under article 8, in that the defendant's failures were in breach of the right to a private and family life, a right enjoyed by the deceased and her family.

Legal principles

[15] The defendant's application is pursuant to Order 33 rule 3 which is in the following terms:

> "Time, etc, of trial of questions or issues
>
> The Court may order any question or issue arising in a cause or matter, whether of fact or of law or partly of law, to be tried before, at or after the trial of the cause or matter and may give directions as to the manner in which the question or issue shall be stated."

It is ultimately a case management decision for the trial judge to determine when to deal with the preliminary issue.

[16] This court dealt with a similar application in a recent case of *Gilpin v Chief Constable of the PSNI* [2024] NIMaster 13. The legal principles are stated in that judgment and apply equally in this matter. I will not rehearse them in detail but will summarise the main points briefly. As was stated in that case, there is some helpful commentary from the Court of Appeal in an employment law case, regarding the issue of preliminary points. In *Ryder v NI Policing Board* [2007] NICA 43 Kerr LCJ stated that:

> "the power to determine a preliminary point should be sparingly exercised" as it is "often difficult to segregate in a wholly compartmentalised way a single issue in this field from other material that may have relevance to the matter to be decided."

[17] In the same case, it was observed that the dangers posed by inappropriate preliminary issues can add to the difficulties of courts of appeal and tends to increase the costs and time of legal proceedings. Moreover, Lord Scarman stated:

> "Preliminary points of law are too often treacherous shortcuts. Their price can be, as here, delay, anxiety and expense."

[18] In *Boyle v SCA Packaging* [2009] 4 All ER the court commented that the essential criteria for deciding whether or not to hold a pre-hearing is whether there is a "succinct knockout blow which is capable of being decided after only a relatively short hearing" and this was unlikely to be the case where the issue will require "consideration of a substantial body of evidence" as such a case would require one full hearing on all issues.

[19] An issue of law should only be tried as a preliminary issue if the legal point is short and easily resolved, and the factual issues are complex, and should be designed to lead to judgment for one party or at least to a material shortening of the issues at the trial: *Donaldson v Chief Constable* [1989] 7 NIJB 21.

[20] Though the issue be described as one of law, it may be necessary to hear some factual evidence: *Deighan v Sunday Newspapers* [1987] NI 105, at 107H (Carswell J). Trial of a preliminary issue of law must be based on facts which are proved or at least agreed for the purpose of the preliminary issue: *McCabe v Ireland* [1999] 4 IR 151.

Consideration

[21] An application of this nature is not a mini-trial. The moving party must satisfy the court on the balance of probabilities that this is an appropriate case for a referral of a preliminary issue to the judge. The authorities make clear this is a discretion sparingly exercised. There are a number of factors the court must consider relevant to the exercise of such a discretion, and I will set these out below.

Can the liability and quantum issues be compartmentalised?

[22] The liability issue is clearly defined. The three plaintiffs are secondary victims. These claims arise from the alleged psychiatric injuries suffered by them which they say were caused by the admitted negligence of the defendant in the provision of medical care to their deceased loved one. The separate issue of quantum requires analysis of the various notes, records, expert reports and the hearing of evidence from various experts and the plaintiffs in relation to the alleged injuries suffered.

[23] In relation to liability, the recent Supreme Court decision in *Paul* dealt with the issue of secondary victim claims and clarified the legal position with regard to such claims for psychiatric injury arising from clinical negligence. The majority judgment set out the question they had to determine in the following way:

> "[22] The critical question on which the validity of the claims depends is whether a doctor, in providing medical services to a patient, not only owes a duty to the patient to take care to protect the patient from harm but also owes a duty to close members of the patient's family to take care to protect them against the risk of injury that they might suffer from the experience of witnessing the death or injury of the relative from an illness caused by the doctor's negligence…"

[24] The Lords went on to answer this question as follows:

> "[138] Common to all cases of this kind, however, is a fundamental question about the nature of the doctor's role and the purposes for which medical care

> is provided to a patient. We are not able to accept that the responsibilities of a medical practitioner, and the purposes for which care is provided, extend to protecting members of the patient's close family from exposure to the traumatic experience of witnessing the death or manifestation of disease or injury in their relative. To impose such a responsibility on hospitals and doctors would go beyond what, in the current state of our society, is reasonably regarded as the nature and scope of their role."

[25] Therefore, applying this to the facts of these cases, the defendant credibly asserts that the psychiatrist and psychiatric nurse who performed the assessment of the deceased owed a duty to the deceased but did not owe a duty with regard to their decision-making to the deceased's close family. I consider there is force in the argument that the duty owed to the deceased did not extend to protecting the deceased's husband and parents from exposure to the traumatic experience of learning of the death of the deceased.

[26] The Supreme Court also clarified that in order to succeed with a claim seeking damages as a secondary victim, there must be an accident in the sense that it was "an unexpected and unintended event which causes injury (or a risk of injury) to a victim by violent external means". The Supreme Court stated:

> "[105] The accident is an external event which causes or has the potential to cause injury: it is not the injury, if there is one, caused by that event."

[27] In these cases it is plainly arguable that the admitted negligence of the defendant could not properly be described as an accident within the meaning of this term as described in *Paul*. Therefore, as a matter of law, this calls into question the viability of the three secondary victim claims.

[28] I consider the issues of liability and quantum can be compartmentalised across the three claims meaning the preliminary hearing would focus only on liability in light of the decision in *Paul,* without the need to delve into a substantial body of evidence.

Disposal of the claims

[29] If the defendant succeeds on the preliminary point, the court must consider whether this will this lead to a knockout blow for the secondary victim claims (the claim on behalf of the estate and dependency claims are not the focus of this application). I consider that in two of the cases the actions would be disposed of, as currently pleaded. The case of Mr Quinn would proceed in relation to the human rights claim which may be of modest value and not require reciprocal medical evidence from the defendant. If the plaintiffs succeed, it will no doubt act as an incentive to early settlement discussions, reducing cost and delay.

Costs

[30] In the event the defendant succeeds on the preliminary issue, they will avoid incurring the cost of quantum investigations including the obtaining of medical records and quantum reports. Such reports would be from a consultant psychiatrist who will need to examine the three plaintiffs. The defendants argue this cost may never be recoverable if they succeed at trial. I consider that a trial of all issues will serve to escalate costs as the hearings will prove lengthier, more complex and require the attendance of experts on both sides. In each case that could take several days in relation to liability and quantum. The trial of the preliminary issue would be dealt with in less than a day and save considerable costs if it proves decisive in the defendant's favour.

Delay

[31] The preliminary issue could be listed for hearing relatively quickly as compared with a trial on all issues and may in fact take less than a full day of hearing as it is largely a legal issue. Counsel have been briefed on both sides and the skeleton arguments demonstrate much thought and consideration has already gone into the issues in dispute. The matter would be dealt with largely on submissions from the parties.

[32] It is widely recognised there can be significant delay arising from the obtaining of reports from consultant psychiatrists due to the volume of work and dearth of such experts. It will take several months or longer for the defendant to obtain such reports. The plaintiffs may then require their own addendum reports. This means a trial on all issues could well not take place until 2026. I must take into account the interests of justice and the overriding objective within the provisions of Order 1 rule 1A, and I consider that delay, the strain of prolonged litigation and the escalating costs involved are relevant factors to this application when these cases may be dealt with expeditiously and may largely be capable of disposal at an early stage. The liability case is ready for hearing, the quantum case still requires a significant amount of preparatory work to be carried out, particularly by the defendant.

The allocation of court resources

[33] There are three sets of proceedings. In the event that the cases are dealt with at a short preliminary trial and conclude in the defendant's favour, this would determine one of the categories of claim and potentially end two sets of current proceedings in their entirety, albeit they may be subject to amendment. Any hearing that is required will relate only to the estate claim, dependency claim and any human rights claim, provided they do not resolve in advance. Such a substantive trial would be of shorter duration. There is therefore clearly the potential to save several days of court time, thus reducing the costs of the litigation for the parties. As stated above, if the plaintiffs succeed, it may expedite settlement discussions.

The duration of a preliminary hearing

[34] The plaintiffs state that the liability issue will be complex and time consuming and involve a series of further hearings. I do not share this view. The crux of this case is the viability of the claims in light of the decision in *Paul.* This involves legal submissions and an analysis of the facts of these claims as to whether they are distinguishable. Further, the provisions of Order 4 rule 5 mean that they can be dealt with together at one preliminary hearing given the overlapping issues. The preliminary trial will in my view be short. If the plaintiffs are successful on the preliminary point, there is clearly the risk of some duplicated effort for all concerned, but the defendant has admitted negligence and there is no significant dispute of facts between the parties. It seems to me the facts appear capable of being agreed for the purposes of a preliminary hearing.

Other factors

[35] I was invited by the plaintiffs' counsel to consider the upset and anxiety for these plaintiffs of having to hear lengthy discussion of the circumstances of the deceased's tragic death. I also take into account the undoubted anxiety and inconvenience which would be caused to this grieving family by having to submit to a further, and what may prove unnecessary, lengthy and intrusive psychiatric assessment regarding the state of their mental health and reliving the trauma of losing their loved one. I recognise the defendant may agree the current expert reports and not seek their own, however, in my experience this tends not to happen, and the defendant is of course entitled to obtain reciprocal medical evidence as there are complex causation issues. Subject to the outcome of the preliminary hearing, such difficult medical assessments may be avoided. Furthermore, given the preliminary trial may not require the hearing of factual evidence, this minimises the risk of the plaintiffs having to give evidence twice, if at all, an experience which would understandably be very upsetting for them.

[36] There is no evidence before me of any prejudice which would be caused to the plaintiffs in acceding to this application. Both parties are on an equal footing with experienced legal teams and have instructed senior counsel who can effectively argue the liability issue before the judge. I have also considered the impact of a split trial on the potential for settlement. These cases are distinguishable from the liability disputes one would see in other personal injury claims such as those arising from road traffic accidents where the dispute centres on which driver is to blame for the collision. In such cases, a liability only trial can diminish the prospect of settlement as it is more likely the action would settle if all issues were dealt with at once. In these cases, however, the defendant argues the plaintiffs have no basis in law to bring their secondary victim claims. I do not consider the prospects of settlement will change in light of the direction being sought here. Clearly, if the plaintiffs succeed on the preliminary point, it will incentivise settlement.

Is this an appropriate case in which to exercise a power which is sparingly used?

[37] As was noted by McFarland J in *Gibney v MP Coleman Ltd* [2020] NIQB 68, there are several factors in favour of a split hearing. They include that the issues of liability and quantum are compartmentalised, the liability hearing is ready for hearing and will be much shorter than the quantum hearing, a dismissal of the case will conclude the matter, a finding of liability will operate as an incentive to the defendant to settle the action, reducing costs and delay and there is no evidence to suggest the plaintiff (in that case it was the defendant) will be prejudiced in any way.

[38] I fully endorse the principles applied in *Gibney* and consider they almost entirely apply here. While this power is used sparingly, this is in my view an appropriate case in which to make such an order for all the reasons set out in this decision.

Alternative dispute resolution

[39] I asked the parties whether mediation had been offered or attempted. There is clearly disagreement between them on this issue. While noting the obvious liability dispute in relation to the secondary victim claims, there are two other categories of claims in respect of this matter, and it is disappointing no substantive discussions appear to have taken place. I pause to observe there is nothing to be lost by sitting down to discuss or negotiate, without precondition. Barring full resolution, if all that is achieved is to narrow the issues, it would be worthwhile. I pointed out at the hearing that these cases are highly emotive and challenging for all concerned and I urge the parties to revisit the possibility of an amicable resolution without the additional stress and cost of further court hearings.

Conclusion

[40] I direct that these actions shall be referred to the judge for consideration of the preliminary issue. It is a matter for the trial judge's discretion whether to also deal with liability in respect of the human rights claim. It does not form part of the defendant's summons and is not a relief sought in two of the sets of proceedings, which may be the subject of an amendment application.

[41] For the reasons set out above, I therefore grant the defendant's application pursuant to Order 33 rule 3 and determine the scope of the preliminary issue is as set out in the summons and recited at para 8 above. Further, pursuant to Order 4 rule 5, as there is a common question of law in each case, I direct that these issues shall be referred to the judge for consideration at the same time.

[42] I reserve the issue of costs to the trial judge and certify for counsel on behalf of both parties.