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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

Between:

DANIEL McAULEY
&
ROSEALEEN McAULEY

Plaintiffs

and

CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND

Defendant

Mr Lavery KC with Mr McLean (instructed by Phoenix Law) for the Plaintiffs
Mr Henry KC (instructed by the Crown Solicitor's Office) for the Defendant

MASTER HARVEY

Introduction

[1] The plaintiffs' cause of action concerns a road traffic accident on 1 December 2007, in which their son Karl tragically lost his life aged 17. He was a restricted driver at the time of the accident when his Seat Leon car left the road, striking a tree. A person driving a Land Rover and towing a trailer was at the scene of the accident. The plaintiffs remain concerned that it was this person who caused the accident by leaving his vehicle in a dangerous position. The Police Service of Northern Ireland ("PSNI") investigated the accident and forwarded a file to the Public Prosecution Service ("PPS"). The PPS issued a decision on 4 July 2008 directing no prosecution.

[2] The parents were not satisfied with the police investigation and complained to the Police Ombudsman for Northern Ireland ("PONI") on 12 January 2009. PONI delivered its report on 10 February 2011. It found there were areas of good practice but that there were also some failings. There was an inquest in relation to Karl's death which delivered its findings on 8 May 2012. The family was legally

represented at the inquest and police witnesses gave evidence. The coroner did not make any referral to the PPS in respect of any alleged offences.

[3] The parents issued a writ of summons on the 5 August 2014 claiming damages for misfeasance in public office arising from alleged failings in the investigation of the accident undertaken by the police. A statement of claim was served on the 6 July 2022.

The applications before the court

[4] The defendant has applied by way of summons dated 9 October 2023 seeking to strike out the claim. It argues the claim taken at its height is incapable of amounting to misfeasance in public office. Further the defendant contends the plaintiffs' cases are chronically out of time.

[5] The plaintiffs apply by way of summons dated 15 November 2024 to amend the statement of claim to focus on misfeasance in public office, withdrawing any human rights claim and making further changes to the pleadings.

Legal principles

Strike out applications

[6] The defendant's application to strike out the claims is pursuant to Order 18, rule 19(1)(a), (b) and (d) of the Rules of Court of Judicature (Northern Ireland) 1980 ("the Rules"). In a recent decision of the Northern Ireland Court of Appeal in the context of an interlocutory order striking out aspects of a defence, in *The Governor & Company of the Bank of Ireland and John Conway* [2024] NICA 80, it was stated that caution should be taken when considering affidavit evidence in such applications and that:

> "Particular alertness is required in those cases where more than one of the listed grounds is invoked in the summons…the prohibition on receipt of affidavit evidence must not be circumvented by dubious pleading devices."

In the present cases, the parties have followed the conventional approach with an affidavit grounding the defendant's application and a replying affidavit from the plaintiff's solicitor. Ultimately, the main focus of this application is the plaintiff's case on the face of the pleadings."

[7] The authorities in relation to strike out applications are well established. As was observed by Gillen J in *Rush v Police Service of Northern Ireland and the Secretary of State* [2011] NIQB 28, for the purposes of the application, all the averments in the

statement of claim must be assumed to be true. In the Court of Appeal decision in *Magill v Chief Constable* [2022] NICA 49 the principles were set out at para 7:

> "(i) The summary procedure for striking out pleadings is to be invoked in plain and obvious cases only.
>
> (ii) The plaintiff's pleaded case must be unarguable or almost incontestably bad.
>
> (iii) In approaching such applications, the court should be cautious in any developing field of law…
>
> (iv) Where the only ground on which the application is made is that the pleading discloses no reasonable cause of action or defence no evidence is admitted.
>
> (v) A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered.
>
> (vi) So long as the statement of claim or the particulars disclose some cause of action, or raise some question fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out…
>
> We would add that a strike out order is a draconian remedy as it drives the plaintiff from the seat of justice, extinguishing his claim in limine."

[8] It has been determined that frivolous and vexatious includes cases which are obviously unsustainable and an abuse of process of the court, taking into account matters outside the pleadings. This was the case in *Rush v PSNI* above. Under the inherent jurisdiction and grounds (b)-(d), evidence by affidavit or otherwise is admissible and the court can explore the facts fully but should do so with caution as per *Mulgrew v O'Brien* [1953] NI 10, at 14 (Black LJ).

[9] In *Ewing (Terence Patrick) v Times Newspapers Ltd* [2010] NIQB 7 Coghlin LJ, at paragraph 37 discussed the court's role when dealing with abuse of process, having regard to the overriding objective and human rights considerations, stating:

> "As Lord Phillips, MR, noted in *Jameel v Dow Jones and Company* [2005] QB 946:
>
> > 'An abuse of process is of concern not merely to the parties but to the court. It is no longer

> the role of the court simply to provide a level playing field then to referee any game the parties choose to play upon it. The court is concerned to ensure that judicial and court resources are appropriately and proportionately used in accordance with the requirements of justice.'
>
> Today it is necessary to clearly bear in mind the overriding objective contained in Order 1 rule 1A of the Rules which requires the court to take into account not just the interests of the parties before the court but also the interests of other litigants and the overall administration of justice including the potential for the costs, expense and time to escalate out of all proportion. In my view such an approach is consistent with the proportionate observation of the Article 6 rights of individuals."

Amendment to pleadings

[10] The plaintiffs apply pursuant to Order 20 rule 5 of the Rules to amend the statement of claim. In *Loughran v Century Newspapers Ltd* [2014] NIQB 26 Gillen J set out the principles to be applied in amendment applications at paras 35-37:

> "[35] A pleading may be amended by leave at any time. The guiding principle is that it will be allowed in order to raise or clarify the real issues in the case or to correct a defect of error, provided that it is bona fide and there is no injustice to the other party which cannot be compensated in costs (see *Beoco v Alfa Labil* [1995] QB 137 and Valentine (Civil Proceedings, The Supreme Court) at 11.18). However, as a general rule, the later the application to amend, the more likely it is to be enquired into, and the greater risk is that it will be refused."

Misfeasance in public office

[11] The ingredients a plaintiff is required to prove to establish a successful claim for misfeasance in public office were set out by Lord Steyn in *Three Rivers v Bank of England* [2000] UKHL 33. Firstly, the defendant (or their servant/agent) must be a public officer. Secondly, they must have been exercising powers in their capacity as a public officer. Thirdly, misfeasance in public office is an intentional tort and the plaintiff must prove that the defendant deliberately acted in bad faith by exercising public powers for an improper or ulterior motive to cause injury or prove an absence of an honest belief that the public officer's own actions are lawful and that they will

probably result in injury. The issue that causes much debate in misfeasance cases is that of intention. The defendant argues that the plaintiffs in the current cases will not be able to prove it, even if their pleadings are accepted as true and taken at their height.

[12] Counsel referred me to *Young v Chief Constable of Warwickshire* [2020] EWHC 308 (QB). That case arose from a murder trial involving nine defendants which collapsed in respect of the fourth man of the nine accused. He subsequently brought a claim against the police for misfeasance in public office as it was alleged the intelligence information leading to the collapse of the trial should have been disclosed at an earlier stage. As with this application, the defendant brought an application to strike out the claim at a preliminary stage. Their application was successful in that case, and this was upheld on appeal; [2021] EWHC 3453 (QB). The court in that case stated there were four elements in misfeasance cases: (a) the defendant must be a public officer; (b) the conduct complained of must be in the exercise of public functions; (c) malice; and (d) damage.

[13] The third element malice, which is the requisite state of mind, is either "targeted malice" or "untargeted malice." For "targeted malice", the conduct is specifically intended to injure a person or persons and involves bad faith, in the sense of the exercise of a public power for an improper or ulterior motive. For "untargeted malice", the public officer acts knowing that they have no power to do the act complained of or acts with "reckless indifference" as to the lack of such power and knows that the act will probably injure the claimant.

[14] While noting the difference between malicious prosecution and misfeasance, para 26 of *Young* sets out a significant challenge for plaintiffs in relation to what is required to demonstrate malice and damage:

> "The requirements at (c) (malice) and (d) (damage) above are onerous. In line with the heavy burden thus imposed, the claimant must specifically plead and properly particularise the bad faith or reckless indifference relied upon. It may be possible to infer malice. But if what is pleaded as giving rise to an inference is equally consistent with mistake or negligence, then such a pleading will be insufficient and will be liable to be struck out. The claimant must also specifically plead and properly particularise both the damage and why the public officer must have foreseen it. A pleading that fails to do so is similarly liable to be struck out. These propositions have been established in a series of cases, including *Three Rivers, Thacker v Crown Prosecution Service* CA, 16 December 1997 (unrep) and *Carter v Chief Constable of Cumbria* [2008] EWHC 1072 (QB)…"

Defence submissions

[15] The defendant asserts that the findings of a Police Ombudsman report are not binding on the High Court and do not amount to bad faith or an intention to act with improper purpose. At their height, the defendant contends the findings are investigative failures and the officers could have done better. That does not amount to misfeasance in public office. The defendant states that the disciplinary proceedings against the officers were at the lowest possible end of the scale and in fact, on appeal, the Senior Investigating Officer was only issued with "advice and guidance." The plaintiffs did not seek to challenge this decision. The defendant argues that the pleadings taken at their height, on any objective analysis, could not satisfy either limb of the third ingredient for misfeasance in public office.

[16] The defendant further contends the plaintiffs' claims are statute barred. The cause of action accrued when the investigation file was completed and submitted to the PPS, which was on 8 May 2008. The writ was issued over six years later, on 5 August 2014. The writ was not then issued until 14 August 2018, which is well outside the three year limit. The defendant points to delay as the claim has not been progressed in a timely manner. The events at issue occurred in 2007 and 2008. Proceedings were not issued until 2014. The defendant also argues the plaintiff's application to amend the pleadings should not be allowed due to inordinate delay as it has been brought seven months after the strike out application was first listed for hearing.

Plaintiffs' submissions

[17] The plaintiffs assert their application to amend the pleadings seeks to clarify the real issues and confines the claim to misfeasance in public office, focusing on the actions and omissions of the police as highlighted in the Ombudsman's report. The plaintiffs do not yet have access to discovery and the outcome of the discovery process may lead to more particularity in the pleadings. They state any issues in the current pleadings can therefore be cured. I pause to observe most of these points were not addressed in written submissions and only emerged at oral hearing during my exchanges with counsel.

[18] The plaintiffs contend that they are entitled to a full hearing and the evidence needs to be heard. These plaintiffs do not have legal aid and if the case fails, the defendant should be reassured it can recover its costs. The plaintiffs argue they need to know the truth as they say there has been reckless indifference by the defendants and an absence of any honest attempts by them to investigate. The plaintiffs contend that it is clearly foreseeable that a failure to investigate would mean the chance of a prosecution of anyone culpable for their son's death, would be lost. They assert this case is more than mere inadvertence as there are a series of unexplained omissions. They argue the defendants wilfully disregarded the risks to them and made a conscious decision not to act, with the knowledge that injury to the plaintiffs was the natural and probable consequence of such a failure.

[19] The plaintiffs argue this case is not a fishing expedition and they are not conspiracy theorists. They claim there have been significant and serious failings, steps were not taken, work was not done, and they need an explanation. They state they are seeking vindication of a wrong.

Delay

[20] Clearly, these are cases of some vintage which have not been pursued with any degree of alacrity on either side. I also note it has taken an inordinate length of time to finally hear these applications. The defendant criticises the slow progress of these claims by the plaintiffs, however, they could have brought an application well before now or simply asked for a review by the court. There appears to have been a court direction in 2018 for service of the statement of claim within a matter of days. This was not done, and it is not clear why such default was not referred to the court. There has clearly been considerable delay in these cases. The cause of action dates back almost 18 years. The Ombudsman's report was prepared almost 14 years ago. It took eight years for the plaintiffs to serve statements of claim. On 12 November 2018, the court ordered the plaintiffs to serve a statement of claim within 12 days. The statement of claim was not served until 6 July 2022, almost four years later. Even at this late stage, there is now only one medical report, obtained on the eve of the hearing of this application. The defence skeleton argument was filed on 14 April 2024, it was a further seven months before the plaintiffs brought an amendment application prior to the hearing of the strike out application. On balance, however, while delay may be a factor when considering all the circumstances of this case, it is not determinative of these applications.

Limitation

[21] The defendant points to the claims being out of time but I observe that no application has been brought pursuant to Order 32 rule 12A of the Rules for this court to deal this as a preliminary issue nor pursuant to Order 33 rule 3 for a direction that it be dealt with as a preliminary issue before the judge. The parties have not fully addressed the court on the factors relevant to the exercise of the court's discretion pursuant to Article 50 of the Limitation (Northern Ireland) Order 1989. The limitation issue is not properly before the court and not the basis of a strike out application under the provisions relied upon. In line with authorities such as *Margaret Roseanna Gordon and McKillens (Ballymena) Limited* [2016] NIQB 32, I consider that at an interlocutory stage in the absence of oral evidence, further documentation and affidavits, it is very difficult to properly have regard to the factors set out in Article 50(4)(b) of the 1989 Order, nor all the circumstances of the case. A discrete application seeking to address this issue could have been brought to deal with it as a preliminary issue. I consider that the issue of limitation is also not determinative of the strike out application.

Discovery

[22] The court directed the defendant to serve a list of documents on the 23 June 2023. There was then a discovery summons issued by the plaintiff on 6 September 2023 which was held in abeyance pending the outcome of these applications. The plaintiffs seek 31 categories of documents from the defendant. It includes material such as control logs, notebook entries, interview notes, photographs, videos, emails and the file that was sent to the Ombudsman. It seems clear the plaintiffs are suspicious that the full facts of the accident which led to the tragic death of their son have yet to be established. Defence counsel highlighted the family had properly interested person status at the inquest meaning they were able to take part and were legally represented, he stated they have the police records and nothing further to be provided will come as a surprise. Upon reviewing the nature of the material sought, I am not persuaded it will help to improve the plaintiff's substantive pleading.

Consideration

[23] In the Court of Appeal decision in *Bank of Ireland v Conway* above, the court warned of the dangers of forming conclusions at a preliminary stage, stating:

> "[18] It is not for this court in the exercise of its circumscribed function to make any judgement about any of the foregoing assertions. Rather, it suffices to recognize that the defendant's evidence at trial could include the foregoing and, further, could be accepted by the trial judge, in whole or in part, giving rise to findings of fact in his favour which, in turn, could establish or contribute to establishing one or more of his causes of action as pleading."

There are a number of factors the court must consider when being asked to deploy a draconian measure striking out a claim. The starting point in these applications are the pleadings. Firstly, I will turn to the application by the plaintiffs to amend their statement of claim.

Amendment application

[24] In the proposed draft amended statement of claim, the human rights claim has been abandoned. As with the original version, the pleading contains allegations relating to alleged failings in the investigation. Some additions have been made seeking to particularise the misfeasance claim, many of them are bare assertions. As was stated by this court in *Oonagh McAleer v Congregation of Our Lady of Charity of the Good Shepherd & Ors* [202] NIMaster 18, the authorities are clear that the court can exercise its discretion to allow an amendment to the pleadings for various reasons including to cure defects and to get to the real issues of controversy. The amendment can be made if it arises from the same facts or substantially the same

facts. The core consideration is to ensure justice is done. The defendant here asserts this late application is clearly in answer to their strike out application, however, I consider that the caselaw makes clear that delay or negligence are not grounds to refuse the amendment unless the defendant cannot be compensated in costs.

[25] On balance, I conclude that the amendments do clarify the nature of the relief sought and arise from substantially the same facts. They refine the issues and do not materially alter the basis of the plaintiff's allegations which have been clear from the outset. The defendant was able to consider the draft amended statement of claim in advance of this interlocutory application and defence counsel ably made oral submissions at hearing. I grant leave to the plaintiff in respect of the amendments and having regard to the overriding objective and the interests of justice, I will deal with the strike out application on the basis of this amended pleading.

The amended statement of claim

[26] I have carefully considered the statement of claim and the amended version which is before the court. At para 7 it sets out the acts and omissions of the police personnel regarding decision making, record keeping and communication. The following paragraphs 8, 9 and 10 set out allegations of a failure to obtain telephone records, alleged breaches of the Police (Northern Ireland) Act 2000, amounting to misfeasance and they set out the alleged damage and distress to the plaintiffs.

[27] In the section setting out particulars of misfeasance in public office, this contains allegations relating to failures to supervise the investigation or the prosecution of criminal activities or to obtain recordings of calls, logs or statements from the Ambulance or Fire Service. There is an alleged failure to maintain a suitable level of record keeping, to conduct an appeal for independent witnesses, or to treat an identified individual as a suspect. It alleges a failure to have Forensic Science Northern Ireland present to examine the scene, failure to seize the mobile phones of named individuals or request their phone records. There was an alleged failure to have regard to the regular complaints and requests for an update from the plaintiffs and acting in a manner which was inconsistent with how a normal police officer, in the normal performance of their functions, would act.

[28] There are also proposed amendments to the particulars of misfeasance. It includes allegations the police were acting in bad faith and operating with reckless indifference as to their statutory obligations and the outcome of the investigation, causing harm to the plaintiffs through an untargeted act of malice. Further the plaintiffs assert there was an alleged failure to subject the investigation to a peer review and the police allegedly failed to report and/or supply evidence in either a timely, adequate, or proper manner to the PPS.

[29] As was stated by the Court of Appeal in *Conway*, at this stage of these proceedings, there is no evidence, no findings of fact or agreed material facts. The onus rests on the defendant to establish that the contentious aspects of the plaintiffs

pleading "could not conceivably in any realistically foreseeable trial circumstances succeed and are incurably vitiated in consequence." Delivering the judgment in that case, McCloskey LJ stated "this entails a hurdle of formidable dimensions."

Are the pleadings capable of improvement?

[30] I must consider if the plaintiffs had additional time and access to further documentation whether there would be a realistic prospect it would lead to improvements in the current pleadings. The possibility that the pleadings are capable of improvement was raised for the first time in oral submissions. Counsel for the plaintiffs asserts they could flesh out the allegations if this case proceeds. I consider that this is unlikely. These proceedings have been ongoing for a decade. There have been various processes already undertaken to date including the PSNI investigation, subsequent disciplinary process, PPS consideration and review of the material, an Ombudsman's investigation and report and an inquest. At each stage the family had opportunities to make representations, and this would have assisted them to plead the case with more particularity. The allegations in this case are grave and the authorities are clear that the more serious the allegations, the more particularity is required.

[31] The statement of claim was directed by the court to be served in 2018, it took a further four years for it to be drafted and another two and a half years before the amended version has been provided. The pleading in this case at its height is of failings by the police in its investigation. They are generalised in nature and, in my view, even having regard to the fact this is at an interlocutory stage and seeking to avoid the danger of forming views at a preliminary juncture before the evidence has been heard, I consider they do not plead sufficient facts from which evidence could be adduced to satisfy the test for misfeasance in public office.

[32] At this point, it is worth noting that the plaintiffs have sought to add to the particulars of misfeasance with a proposed amendment detailing further allegations including that the investigating officers were "recklessly indifferent to the standard and outcome of the investigation" and the distress that would be caused to the plaintiffs as a result. Such an amendment has been drafted a year after the strike out application was issued. It is little more than a bare assertion. It does not alter the inherent flaws in the pleading and remains insufficient in my view to defeat a strike out application.

Damage and foreseeability

[33] There is now a medical report dated 18 November 2024 from Dr Lynch, Consultant Psychiatrist, relating to Mr McAuley, prepared 17 years after the events in question. He diagnoses a grief disorder and offers two possible explanations for its cause, either due to no proper police investigation having taken place, or if there was a proper investigation it is due to preoccupation and anger at the authorities.

By his own admission, he clearly cannot comment on the adequacy of the police investigation.

[34] In *Young* the court determined the claimant must specifically plead and properly particularise not just the damage but also why the public officer must have foreseen it. This was viewed as an onerous and heavy burden. A pleading that fails to do so is liable to be struck out and this was in line with *Three Rivers*. The plaintiffs here plead they suffered harm, damage, upset and distress and this was "entirely foreseeable, probable and avoidable." I consider the amended statement of claim remains insufficient and does not discharge the heavy burden to specifically plead and properly particularise how the police must have foreseen this possibility.

The strike out application

[35] Ultimately, I conclude it is plain and obvious that these causes of action have no realistic prospect of success. As was stated in *Marsh v Chief Constable of Lancashire Constabulary* [2003] EWCA Civ 284 and affirmed in *Young*, allegations of misfeasance in public office are amongst the most serious short of dishonesty that can be made against a public official. The statement of claim and the proposed amendment set out a series of alleged mistakes, failings and shortcomings but ultimately, I do not consider the pleaded case provides sufficient particularity nor has the necessary ingredients which could seek to establish misfeasance. Misfeasance implies dishonesty. The statement of claim in this case contains no positive acts, they are all omissions. Such allegations may well have survived a strike out application in a negligence claim but the reality is that misfeasance sets the bar much higher, and I echo the test set out in *Conway* that they could not conceivably in any realistically foreseeable trial circumstances succeed.

[36] It is exceptionally difficult to infer malice on the basis of the plaintiffs pleading in this case. The purpose of these proceedings instead appears to be to find the truth about what happened to their son and while one cannot fail to have sympathy for these grieving parents, the current civil proceedings for compensation make serious allegations which are not pleaded with the particularity required.

[37] The amended statement of claim references an alleged breach of Section 32 of the Police (Northern Ireland) Act 2000. The relevant section is 32(d) which imposes a duty "where an offence has been committed, to take measures to bring the offender to justice." This duty is broad in scope. The defendant relies on *JR139* [2021] NIQB 76, in which Humphreys J dealt with such duties, known as "targeted duties", at paragraphs 20 and 21 stating they are not directly enforceable by individuals. I am persuaded by the defendant's assertion that these plaintiffs cannot rely on such provision in these cases in order to establish some form of unlawful conduct and I consider it does not support the substantive misfeasance allegation.

[38] In the case of *Carter & Ors v Chief Constable of Cumbria* [2008] EWHC 1072 (QB), also involving a strike out application arising from a misfeasance claim, the

court held the particulars did not support the substantive plea. The same problems arise with the pleadings here which contain bare assertions and are not sufficient to support the allegations. In *Carter* the court cited *Thacker v Crown Prosecution Service CA (Civil Division)* Transcript No 2149 of 1997 C.A. That case involved malicious prosecution, and while noting this differs from misfeasance, the court quoted an apt passage from Judge LJ in which he warned of the dangers of "converting what is in reality no more than allegations of negligence into claims for malicious prosecution." I consider it is also apt in the context of these claims.

[39] I consider the particulars in this case are non-specific and no more than general allegations of negligence. As was stated in *Cannock Chase DC v Kelly* [1978] 1 WLR 1 at p6, when assessing a grave allegation of bad faith:

> "If it has not been pleaded, it may not be asserted at the hearing. If it has been pleaded but not properly particularised, the pleading may be struck out."

[40] The alternative ground relied on by the defendant is under Order 18 rule 19(1)(b) and (d). In other words the statement of claim is purportedly frivolous or vexatious and an abuse of the process of the court. The authorities demonstrate that this can apply to cases that are obviously unsustainable. The pleading must be "so clearly frivolous that to put it forward would be an abuse of the process of the court" (*Young v Holloway* (1895) P. 87 at 90.) I am persuaded that the pleadings in this case fall into such a category. As stated in the authorities above, the court must take into account the overall administration of justice including the potential for the costs to escalate and to allocate court resources appropriately and proportionately taking into account the rights of both parties and the interests of justice. This means in appropriate cases the court can exercise its discretion to strike out a claim albeit this is a power which is sparingly used.

[41] The submissions on behalf of the plaintiffs focus on seeking "vindication" as well as getting "answers" and an "explanation." They feel there should be "no stone left unturned" in the investigation into their son's death. It is regrettably difficult to escape the conclusion these claims are being brought for an ulterior, if not perfectly understandable, motive, indicative of a family seeking answers, not compensation, which would be the only remedy open to the court in these proceedings. At its height I consider the pleaded case relates to mistakes, negligence or failings. The current proceedings and the submissions made in response to this application have an underlying focus on getting answers. The plaintiffs have not obtained satisfaction from various processes to date, and unfortunately, they may well have false hope as to what these claims can deliver. These appear to be negligence claims dressed in the guise of misfeasance and this is reflected in the pleadings.

[42] As pleaded, I consider this action does not stand a realistic prospect of success and it is a plain and obvious case for striking out. The pleadings fall far short of the requirements to plead such grave allegations as are alleged here and I am not

persuaded that further time, or the provision of discovery, will change this. On balance, I conclude the case is unarguable and uncontestably bad. Finally, I would urge the parties to consider alternative means by which to resolve the issues in this case as it may be that through a mediation process or a simple meeting, it could help to alleviate the remaining concerns of the family. Ultimately, this is a matter for the parties to consider.

Conclusion

[43] I grant the defendant's application striking out the claim pursuant to Order 18 rule 19(1)(a), (b) and (d). I will hear from the parties in relation to costs on a date to be fixed in consultation with the court office.