Neutral Citation No: [2025] NIMaster 20	**Ref: [2025] NIMaster 20**
	ICOS No: 24/287472
Judgment: approved by the Court for handing down (subject to editorial corrections)	**Delivered: 27/11/2025**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

Between:

DONNA ALLEN

Plaintiff

and

EDUCATION AUTHORITY

And

DEPARTMENT OF EDUCATION

Defendants

Mr Patrick Lyttle KC leading Mr Eamon Foster (instructed by McCartan Turkington Breen Solicitors) on behalf of the plaintiff
Mr Ian Skelt KC leading Mr Timothy Warnock (instructed by the Departmental Solicitor's Office) on behalf of the first defendant
Mr Aidan Sands KC leading Ms Leona Gillen (instructed by the Departmental Solicitor's Office) on behalf of the second defendant

MASTER HARVEY

Introduction

[1] In this action, proceedings were issued on 25 March 2024. The plaintiff alleges breach of contract, misrepresentation, negligent misstatement and breach of statutory duty against her employer, the Education Authority ("the Authority").

[2] This claim is one of a series of related cases involving 23 plaintiffs who were or are current chief executives, directors or assistant directors employed by the first defendant. The plaintiffs all allege the Authority has failed to honour and fulfil its

obligations in relation to their terms and conditions of employment with regard to remuneration.

[3] The Department of Education ("the Department") was joined as a defendant to this action upon application by the Authority by order of this court made on 7 August 2025. The plaintiffs now apply by summons dated 6 October 2025 to set aside that order on the basis that the order was made improperly due to an error or oversight on their part and that the Department should instead be joined as a third party or as a defendant by counterclaim.

[4] The Authority previously brought a stay application on 11 November 2024. The focus of this interlocutory hearing was largely on the disputed joinder of the Department to this action. I will turn to discuss the stay application later in this judgment.

Legal principles

[5] The plaintiff's application relies on Order 15 rule 6 claiming the Department was improperly joined and should cease to be a party and/or Order 20 rule 11 and/or the inherent jurisdiction of the court that the court orders should be amended to reflect the Department as a third party or defendant by counterclaim.

[6] Order 20 rule 11 is in the following terms:

> "Amendment of judgment and orders
>
> 11. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court on motion or summons without an appeal."

[7] The provisions of Order 15 rule 6(2)(b) are in the following terms:

> "(2) Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter (whether before or after final judgment) the Court may on such terms as it thinks just and either of its own motion or on application-
>
> (b) order any of the following persons to be added as a party, namely-
>
> (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
>
> (ii) any person between whom and any party to the cause or matter there may exist a question or issue

> arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter."

[8] *The Supreme Court Practice* 1999 edition ("The White Book") states at 15/6/8 that generally a plaintiff is entitled to pursue their remedy against a defendant of their choosing and "cannot be compelled to proceed against other persons who he has no desire to sue." The Rules, however, provide an exception to this as a person who is not a party to proceedings may be added:

> "against the wishes of the plaintiff, either on the application of the defendant or on his own intervention, or in rare cases by the court of its own motion. The jurisdiction of the court is entirely discretionary."

It states that the objective of the Rules as to joinder of parties is to:

> "(a) prevent multiplicity of actions and to enable the court to determine disputes between all parties to them in one action and enable the court to deal with disputes in one action, and (b) to prevent the same or substantially the same question or issues being tried twice with possibly different results."

[9] At para 15.6.7, the White Book further states:

> "…a defendant against whom no relief is sought by the plaintiff will generally not be added against the wish of the latter (*Hood-Barrs v Frampton & Co* [1924] W.N 287) a third party notice is in such a case usually the proper course. Such a defendant can, however, be added in a proper case (*Dollfus MIeg et Campagnie S.S v Bank of England* [1951 Ch.33)"

[10] As can be seen from the commentary, the Rules regarding joinder of defendants are sufficiently wide to allow joinder, even against the wishes of the plaintiff, in three scenarios, firstly via an application by a current defendant, secondly by the person who is not yet a party or thirdly by the court itself. The power of the court to do join a party where there is an issue between them and one of the parties to the action was affirmed in *Re Vandervell* [1971] A.C. 912.

[11] Further in *Tetra Molectric Limited v Japan Imports* [1976] R.P.C. 541, a party was joined as a respondent to an appeal even though "no action could lie against the manufacturer concerned because he was beyond the jurisdiction" (see The White

Book p226 at 15/6/8). In *Spelling Goldberg Productions Inc. v B.P.C. Publishing* [1981] R.P.C. 280, CA it was determined that the words "may exist a question or issue" as between the parties does not allow joinder to determine a question a law but rather it must relate to an existing question or issue between the existing parties.

[12] In *Civil Proceedings The Supreme Court* by Mr B Valentine it states at p141 para11.26 that:

> "A defendant can be added on defence application, for example as co-claimant to a counter claim, even if the plaintiff objects and seeks no relief against him.
> …
> Where necessary for the determination of the issues, a defendant can be added though there is no cause of action against him," (citing *TSB v Chabra* [1992] 1 WLR 231)."

[13] A defendant can have himself struck out if he is improperly joined or if he is irrelevant to the issues raised or relief claimed, see *Fuller v Dublin CC* [1976] IR 20.

Submissions

[14] The plaintiff argues the Department was improperly joined as the plaintiff only has a contract with the first defendant. The first defendant is the employer and it is against that party where the plaintiff's dispute lies. The plaintiff asserts they should not be forced to sue a party with whom they have no contractual relationship, no cause of action exists and there is no legal nexus between the plaintiff and the Department. It would be against their wishes as it exposes their client to the risk of additional costs if the case is unsuccessful. The plaintiff accepts the court can add or remove a party to a claim in accordance with the Rules on application or its own motion on such terms as it thinks just. In this application, the plaintiff argues the justice of the case requires amendment of the previous order joining the second defendant and changing the capacity in which they are sued to ensure any dispute as between the Authority and the Department is a third party claim and not part of the substantive action.

[15] In a related series of claims involving senior executives in the health service, the plaintiff asserts the Department of Health in that case is a third party and not a defendant and that the cases involve similar counsel as are engaged in the current action. Moreover, the plaintiff contends that if a cause of action had existed against the second defendant in this case, the plaintiff asserts they would have joined them at the outset.

[16] The defendants adopt a unified position objecting to the plaintiff's application. They both agree the Department is a proper party to the action as a defendant. They assert that while it is correct that the Department is not the plaintiffs' employer and there is no privity of contract between the plaintiffs on the one hand and the Department on the other, it nevertheless has a significant role to play as regards the contractual entitlement to pay, and any remedy obtained by the

plaintiffs in this litigation would ultimately be borne by the Department. They contend the presence of the second defendant is therefore necessary to ensure that the dispute as to the right to pay progression is properly determined, and it would be just and convenient to do so in these proceedings. Although they have not yet filed a defence, it is anticipated the second defendant will assert that the plaintiffs' contractual pay entitlement was at all times subject to the Executive's public sector pay policy, requiring express approval from the Department, and that the concessions made by the first defendant in a collective internal grievance procedure were wrong. As a party with a clear and obvious interest in the outcome, it states that it is entitled to be heard on this issue.

[17] The defendants assert there is no rule that states only parties to a contract can be parties in proceedings relating to the contract; indeed, they argue Order 15 Rule 6(2)(b) expressly provides otherwise. They disagree that third party proceedings would be an appropriate mechanism to deal with the dispute as they would only deal with the question of contribution or indemnity and not the substantive liability issue which would prevent the Department from mounting a defence that the plaintiffs were not entitled to the remedy they obtained. The defendants both argue it is necessary, appropriate and in the interests of justice that the Department should remain as a defendant.

Joinder of the Department in error

[18] There is no evidence the order joining the second defendant on 7 August 2025 was due to a mistake from an accidental slip, omission or clerical error. The application was brought in the appropriate way by the then only defendant under the correct provision of the Rules. If the Department believed it was improperly joined or was irrelevant to the issues raised or relief claimed, it could make an application to be struck out. On the contrary, unlike some joinder applications, the Department consented to being added as a defendant and confirmed this in correspondence to the Authority. The court was under no misapprehension as to what was being sought and there is no suggestion the moving party advanced the application inappropriately or failed to provide all relevant information to the court. The plaintiff accepts they consented to the application but essentially rather unconvincingly argues they did not realise they were consenting to joinder as a defendant rather than leave to issue a third-party notice.

[19] The plaintiff solicitor avers in his grounding affidavit that he was served with the draft summons on the 26 June 2025, and the matter was mentioned in a court review before me on 27 June 2025 in relation to the stay application. I have listened to the court recording. At that review, counsel for the defendant indicated the summons they had issued was seeking to add the Department "as a defendant." Counsel for the plaintiff was asked by me if he took issue with that. He indicated he did not. The plaintiff solicitor now avers that the failure to raise objection at that stage and subsequently, was an "error or oversight." At the review, counsel for the defendant then applied to adjourn their stay application as he indicated it may not proceed, and the remaining issue was solely in relation to costs. It appears therefore

that the plaintiff's solicitor and counsel were on notice of the intended application. Given all parties were in agreement to the order sought, I indicated I could deal with the summons on the papers in order to accelerate matters.

[20] The series of summonses in this action and the related cases, all seeking the same relief, were then issued and served on the 11 July 2025. No issue is taken by the plaintiff that the actual summons which followed was different from the draft or that it was not properly served. There was a period of over two weeks from the serving of the draft application to the filing of the summons. I have reviewed the application, the relief sought was clear. It states the defendant was seeking:

> "An order pursuant to Order 15 rule 6 and or the inherent jurisdiction of the court adding the Department of Education as a defendant."

[21] I do note there appears to be a degree of confusion in the email correspondence where the plaintiff solicitor makes reference to third party proceedings in an email to the first defendant's solicitor. I further note the plaintiff solicitor avers the reason for the previous adjournments of the stay application was to allow time for the Department to be joined, and the plaintiff had understood this was as a third party. All of this was prior to receipt of the draft applications, prior to the review in court on 27 June 2025 and prior to receipt of the various summonses and affidavits which then issued, all of which made clear the intention to join the Department as a defendant.

The court's decision (Order 20 rule 11)

[22] While it is apparent the plaintiff does not wish to pursue a claim against the second defendant, they were served with the joinder application. They did not object and had plenty of time within which to do so. As stated, given the parties were in agreement, the orders were granted in all cases on an ex parte basis on 7 August 2025. The Department was added, and the plaintiff was granted leave to amend the writ and the statement of claim within 28 days. Costs were costs in the cause. None of this occurred due to the type of error as envisaged in the provisions of Order 20 rule 11 and I refuse this aspect of the plaintiff's application.

Was the Department improperly or unnecessarily joined as a defendant

[23] Having determined the order was not made due to a mistake, the court is now asked to revisit this order and amend it on the basis the Department were either improperly or unnecessarily added to the proceedings and the capacity in which they have been added should change. The parties accept the court has a wide discretion in applications under Order 15 rule 6. It is reasonable to argue the time to make such arguments was several months ago, nevertheless, the court is now dealing with the application before it and has the benefit of an interparties hearing. Given pleadings have not progressed, the case is essentially where it was at the time the order was made in August 2025, meaning no party has suffered substantive prejudice and everyone has been heard on the issue.

[24] The test to be applied in this application is therefore essentially the same as the principles applicable in the first summons. On such terms as the court thinks just, the court may now order the Department to cease to be a party or to remain as a party to ensure that all matters in dispute may be effectually and completely determined and adjudicated upon, or there is a question or issue in which it would be just and convenient to determine as between the parties. The plaintiff argues that the use of the words on such terms as it thinks just in the relevant Rule, means the court can amend the status of the second defendant to third party or as defendant to counterclaim.

The relationship between the defendants

[25] The Education Authority was established as a unitary authority by virtue of the Education Act (Northern Ireland) in 2014 in place of the five Education and Library Boards. The Department avers in its affidavit from their director Mark Bailey that although the Authority is the employer of the plaintiff (and her colleagues in the related claims), its powers are not unconstrained. The Department has a statutory role in the approval of pay for directors and assistant directors working for the Authority and therefore has significant involvement in this area. The 2014 Act states that the Authority has power to determine remuneration and allowances for such staff but for chief executives and other specified roles it cannot do so "without the approval of the Department" (para 6 schedule 1). The sponsorship relationship between the Authority and Department is governed by a memorandum from November 2019 (Management Statement and Financial Memorandum) which states that issues such as remuneration are determined subject to the relevant public pay policy including the requirement for approval from both the Department for Education and Department of Finance (para 6.2.2) and further states:

> "The EA Chairperson and members have no delegated power to amend remuneration without prior approval of the DE (and DoF). DE will be represented within the negotiating arrangements, the operation of which will be kept under review…"

The dispute between the defendants

[26] In short, the basis of the dispute between the defendants and therefore the purported question or issue at trial concerns whether the first defendant was correct to uphold the finding from an internal collective grievance procedure which found in favour of the plaintiff and her colleagues regarding executive pay and contracts. This process concluded that the relevant performance management framework was contractual and that revalorisation based on a national agreement from the date of inception of the contract and pay progression linked to satisfactory performance, are contractual entitlements. The second defendant takes issue with this finding. The first defendant has made admissions in its defence in relation to breach of contract for full payment of wages and in principle for loss of pension rights, albeit with regard to the latter, it argues no such loss arises. It denies liability for breach of

contract, misrepresentation and negligent misstatement and indicates that in light of the Department's own legal advice, there is a live issue regarding the plaintiff's wages prior to 1 April 2022. The second defendant disputes that the plaintiffs have an overriding contractual right to pay progression independent of public sector pay policy controls.

[27] The plaintiff accepts in their rejoinder affidavit that the second defendants "are the sponsoring Department of the first defendant and…there is an annual pay remit approval process…in line with the public sector pay policy." The plaintiff disputes, however, that the Department should have an active role in arguments surrounding the contractual rights and entitlement of the plaintiffs to the subject monies allegedly owed as there is no legal basis for this.

Costs and delay

[28] The plaintiff is clearly concerned about the risk of additional costs and is worried their purported acquiescence to the joinder of the second defendant will expose them to further costs should their claim prove unsuccessful. Given the plaintiff has brought this application, no doubt they will make submissions to the trial judge that they robustly opposed the Department's involvement as a defendant. At a very late stage in the interlocutory hearing, the plaintiff advanced the new argument that if the court refused the plaintiff's primary application, the court should make the Department's joinder conditional on no order for costs being sought by the second defendant against the plaintiff. I consider it would not be appropriate to fetter the trial judge's discretion in such a way. I am satisfied that the trial judge has a wide discretion in relation to costs pursuant to Order 62 of the Rules and will hear from the parties on this issue. Whatever the outcome, the parties can be assured of a fair hearing. In any litigation, the parties face a cost risk as is inherent in such matters.

[29] I note there has been delay in bringing this application. It should have been apparent to the Department at a much earlier stage that proceedings in which they were not named but had a significant interest, were being considered and then issued given the grievance procedure outcome was on 27 February 2024. They could have brought an application themselves and instead the Authority waited until July 2025 before bringing the necessary joinder application. While the defendants may argue the plaintiffs were hasty in issuing proceedings, it is unsatisfactory that the defendants took over 15 months to seek to add the Department. While ultimately not determinative in terms of the substance of this application, it is perhaps a more relevant consideration when considering the issue of costs.

The court's decision (Order 15 rule 6)

[30] On balance, I am not persuaded as to the merits of the plaintiff's application. I consider that the presence of all the parties in the current capacity in which they are joined to the proceedings is necessary to ensure all matters may be completely and effectually determined and adjudicated upon. There are procedural issues which would arise if the Department was only joined as a third party including that there

would be no discovery as and between the plaintiff and third party and they could not be ordered to give particulars to each other (per Carswell LJ in *Anglo-Irish Beef* [1994] 4 BNIL 68). The joinder of the Department as a defendant does not change the character of the plaintiff's claim nor force the plaintiff to make a different case. I do not accept the plaintiff's submission that the status of the Department of Health in a series of cases involving senior executive pay in the health service is a precedent which has some influence on the approach to these matters. There is no material before the court which would persuade me that it is a factor which should be given weight in this application.

[31] I consider this is a proper case for the Department to remain as a defendant. There are questions or issues which the trial judge will have to determine and the most cost effective, fair and just way to do so is to have all parties to the dispute in court as substantive participants. In advance of this they can exchange pleadings and discovery and at trial will be able to make submissions, adduce evidence and cross-examine witnesses. This preserves the Article 6 rights of all the parties and avoids the risk of further proceedings arising out of the same facts. Having regard to the overriding objective contained in Order 1 rule 1a, it also ensures the appropriate allocation of court resources and will potentially save costs. The authorities are clear that the court has a wide discretion pursuant to Order 15 rule 6 such that even if the Authority or Department had not brought an application, the court could of its own motion add them to the action.

The stay application

[32] The first defendant's stay application from 11 November 2024 may now prove redundant. It was adjourned on several occasions at the request of the parties and has not yet been determined. The basis for the application was that proceedings were purportedly premature. The various letters of claim were served on the 22 March 2024 purportedly at a time when internal avenues were not yet exhausted, and the Authority claims it was taking steps to implement the findings of the grievance panel including introducing a new pay policy effective from 1 April 2025 which was to be backdated to 2022. Following this, 23 writs were then issued just a few days later between 25 and 27 March 2024 (and served on 12 and 15 April 2024). The Authority had provided letters of response on 11 April 2024 denying liability and in their stay application assert the proceedings were unnecessary as the plaintiffs succeeded in their collective grievance process and criticise the plaintiff for failing to set out the amounts owed or the time period for which the claim relates.

[33] While the parties only briefly addressed me on this issue as the main focus of the hearing was on the joinder application, having considered the papers, my provisional view is that there appears to be no basis for a stay of these proceedings particularly in light of the outcome of the plaintiff's application. I direct the moving party/first defendant to make any written submissions within seven days (by 4 December 2025) and the respondent/plaintiff seven days thereafter. I will then deal with the application on the papers. Alternatively, if the parties request a hearing in order to make oral submissions, I will facilitate this.

Conclusion

[34] I refuse the plaintiff's application. In all the circumstances of this case I consider that the costs of this application shall be reserved for determination by the trial judge. The parties shall indicate their position on the first defendant's stay application as directed above.