Neutral Citation No: [2026] NIKB 2	*Ref:* **SIM12951**
	ICOS No: **23/032903**
Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:* **20/01/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING S BENCH DIVISION

SARAH STEWART

Plaintiff/Respondent

and

NORTHERN HEALTH AND SOCIAL CARE TRUST

Defendant/Appellant

Liam McCollum KC with Tom Fitzpatrick (instructed by O Reilly Stewart, Solicitors) for the Plaintiff/Respondent
Frank O Donoghue KC with Sean Smyth (instructed by Directorate of Legal Services) for the Defendant/Appellant

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SIMPSON J

Introduction

[1] On foot of a summons dated 8 September 2025, the plaintiff made an application to the Master pursuant to Order 29 Rule 12 of the Rules of the Court of Judicature in Northern Ireland requiring the defendant Trust, the respondent to the summons, to make an interim payment of £500,000 to the plaintiff. On 21 October 2025, Master Bell made an order to that effect, giving the defendant six weeks to make the payment.

[2] This case comes before me as an appeal by the defendant against that order. I will continue to call the parties plaintiff and defendant.

[3] The plaintiff s pleadings assert that in January 2018 she suffered back pain. On 22 January her GP recorded that she had numbness from the umbilicus bilaterally, feelings below the level of the umbilicus being diminished and a description of heavy legs, ongoing back pain, some numbness sitting on the toilet with less awareness when passing urine or opening her bowels. The GP advised her to attend the emergency

department at the Antrim Area Hospital. She attended at 12:59 hours on 22 January 2018. Various examinations took place, and she was discharged later that day having been prescribed no treatment. On the following day the plaintiff contacted her physiotherapist who told her that she thought the plaintiff was suffering from cauda equina syndrome and that she should consult her GP, which she did. On 24 January, having awakened with urinary incontinence, she attended at the Royal Victoria Hospital at 14:30 hours. She was rushed through triage. An emergency MRI scan was carried out at 16:00 hours, and it demonstrated a large ruptured disc at L5/S1 which was compressing the spinal cord. Surgery was carried out at 21:00 hours by a Consultant Orthopaedic Surgeon.

[4] The defendant has not admitted liability in the action, but it has admitted a breach of duty to the plaintiff in failing to diagnose cauda equina syndrome at Antrim Area Hospital on 22 January 2018. Causation remains an issue in the trial. Essentially the question is to what extent is the plaintiff s condition worsened by the delay between her presentation on 22 January and the operative intervention on 24 January?

[5] The defendant has offered an interim payment of £50,000.

[6] In the plaintiff s skeleton argument for this appeal there is a brief outline of the consequences of the breach of duty. Having made the point that the delay was crucial" the skeleton argument says:

(i) Not only has the extent of her lower limb weakness been significantly exacerbated, but had she received appropriate treatment, any degree of foot drop present would have been improved, and surgery would have prevented further progress in relation to the same.

(ii) … she would have avoided persisting sensory disturbance in the right lower limb and the pain she continues to experience would have been significantly reduced; limited to mild back pain associated with low back surgery and any mechanical issues which would have arisen.

(iii) She would also have avoided dysaesthetic pain, which is unpleasant, untreatable and intrusive.

(iv) She would also have had a significantly improved urinary function, retaining continence, although with some urgency, as opposed to her current situation of a hypo sensate bladder with voiding dysfunction.

(v) She would have expected to have avoided the bowel difficulties which she now suffers.

(vi) She could have returned to full-time work, albeit in light, non-physically demanding work with limited driving.

[7] There is a claim for loss of earnings. There is also a claim for care needs which are greater than they would have been if appropriate treatment had been provided at Antrim Area Hospital, and for suitable accommodation.

The relevant legislative provisions

[8] The power to order an interim payment appears in Part II of Order 29 of the rules. The relevant part of the Order provides:

> **II - INTERIM PAYMENTS**
> Interpretation of Part II
>
> 11. In this Part of this Order-
>
> interim payment , in relation to a defendant, means a payment on account of any damages, debt or other sum (excluding costs) which he may be held liable to pay to or for the benefit of the plaintiff; …
>
> **Application for interim payment**
>
> 12.-(1) The plaintiff may, at any time after the writ has been served on a defendant and the time limited for him to enter an appearance has expired, apply to the Court for an order requiring that defendant to make an interim payment.
>
> (2) …
>
> (3) An application under this rule shall be supported by an affidavit which shall—
>
> (a) verify the amount of the damages, debt or other sum to which the application relates and the grounds of the application;
>
> (b) exhibit any documentary evidence relied on by the plaintiff in support of the application;
>
> …
>
> **Order for interim payment in respect of damages**
>
> 13.-(1) If, on the hearing of an application under rule 12 in an action for damages, the Court is satisfied—
>
> (a) that the defendant against whom the order is sought (in this paragraph referred to as the

respondent") has admitted liability for the plaintiff s damages; or

(b) that the plaintiff has obtained judgment against the respondent for damages to be assessed; or

(c) that, if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent; or

…

the Court may if it thinks fit, subject to paragraphs (2) and (3), order the respondent … to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff …

(2) Where an application falls within paragraphs (1)(a)-(c), no order shall be made under paragraph (1) in an action for personal injuries if it appears to the Court that the defendant is not a person falling within one of the following categories, namely-

…;

(b) a public authority;

…"

The approach of the court

[9] The provisions of Rule 13 require the court to consider a number of matters. Since this is not a case in which the defendant has formally admitted liability, the court is constrained to consider whether if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent." If the court concludes that it is such a case then the court has a discretion whether to make an order for an interim payment. It does not have to make such an order. If it exercises that discretion in the plaintiff s favour it can order the defendant to make an interim payment of such amount as it thinks just." However, the amount must not exceed a reasonable proportion of the damages which in the opinion of the court are likely to be recovered by the plaintiff." This is not a case in which the court has to consider any contributory negligence, cross-claim, counterclaim or set-off. Since the defendant is a public body an order can be made.

[10] In *HMRC v GKN Group* [2012] EWCA Civ 57, albeit in wholly different factual circumstances, the issue of interim payments was considered by the Court of Appeal. The following was stated:

> 36. That leads on to the next and more important question: of what does the claimant have to satisfy the court? To which the answer is: that if the claim went to trial,

> the claimant would obtain judgment for a substantial amount of money from this defendant. Considering the wording without reference to any authority, it seems to me that the first thing the judge considering the Interim Payment application … has to do is to put himself in the hypothetical position of being the trial judge and then pose the question: would I be satisfied (to the civil standard) on the material before me that this claimant would obtain judgment for a substantial amount of money from this defendant?
>
> …
>
> 38. The second point is what precisely is meant by the court being satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money ? In my view this means that the court must be satisfied that if the claim were to go to trial then, on the material before the judge at the time of the application for an Interim Payment, the claimant would actually succeed in his claim and furthermore that, as a result, he would actually obtain a substantial amount of money. The court has to be so satisfied on a balance of probabilities.
>
> 39. Next there is the question of what is meant by a substantial amount of money . In my view that phrase means a substantial, as opposed to a negligible, amount of money. However, that judgment has to be made in the context of the total claim made. What is a substantial amount of money in a case where there is a comparatively small claim may not be a substantial amount when the claim is for a much larger claim. It may be that in very small claims an applicant could never satisfy the court that, even if it obtained judgment, the amount of money it would obtain would be substantial. But that is not this case, and each must be decided on its facts.
>
> …
>
> 52. … It is not the claimant s calculation of its entitlements that matters, but the court's assessment of the likely amount of the judgment.

[11] It is clear from the citation above that there are some slight differences in the wording of the English rule and Order 29 Rule 12. However, those differences are not material to my consideration. For example, the English rule refers to a reasonable proportion of the likely amount of the final judgment", whereas the rule in this jurisdiction refers to a reasonable proportion of the damages which in the opinion of the court are likely to be recovered by the plaintiff."

[12] I bear in mind what the judgment of the Court of Appeal provides by way of guidance to the approach of the court.

[13] Mr O Donoghue s skeleton argument says that while liability has not been admitted the court can proceed on the basis that, if the action proceeded to trial, the plaintiff would obtain judgment for damages…" However, he disputes that the damages will be substantial and says that causation, and quantum, remain in dispute.

[14] The application was grounded on an affidavit sworn by Patrick Mullarkey, the plaintiff s solicitor. He states that it is clear that if the matter proceeds to trial the plaintiff will obtain judgment for substantial damages against the defendant. He says, of the plaintiff:

> She has sustained a substantial and life-changing personal injury in the form of a cauda equina syndrome which would have been, by and large, avoided had appropriate care been provided to her at the time of her presentation. She would have received immediate medical care, and she would have expected a better outcome in terms of her long term condition and prognosis. General damages … fall within the usual broad range of £350,000 to £400,000 and it is quite clear that substantial special loss damages will follow…The plaintiff s forensic accountancy report puts her special loss in a broad range of approximately £2,466,000 and £3,289,000. Past loss, plus interest, accounts for £288,000 of that claim. Accommodation costs range between approximately £167,000 and £276,000 depending on whether the plaintiff is to buy and renovate a property or build a new property."

[15] It is within that context that the application was made for an interim payment of £500,000. It is also stated in the affidavit that the plaintiff s current intention is to seek accommodation for herself, and her two young daughters and she has identified a property in her area costing £395,000.

[16] On behalf of the defendant Ms Angela Maguire, Solicitor in the Directorate of Legal Services has sworn an affidavit in which she states that

> 3. The issue in the case are those of (a) causation and (b) quantum. Which, if any, of the symptoms from which the plaintiff now suffers are related to the fact that the defendant failed to recognise the symptoms incomplete caudal equina when the plaintiff presented on the 22 September 2018 (sic: clearly meant to be January 2018)? Further, on the assumption that the plaintiff can prove that she lost the chance of making a better recovery than she has

> made had she been the subject of earlier surgical intervention, how is that loss of a chance to be compensated?
> …
> 5. The defendant does not accept at this time that the outcome would have been markedly different [from that which the plaintiff would have suffered from non-negligent intervention]. All of the evidence, factual and opinion, has to be tested and examined in the complex case. It is not the function of the interlocutory court to make value judgments on issues that fall to be determined at trial and the Trust rejects the approach inherent in the plaintiff s application of inviting the interlocutory court to determine these issues in the plaintiff s favour."

Discussion

[17] In light of the above, in relation to the question as to whether the plaintiff would obtain judgment for substantial damages if the case proceeded to trial, I am satisfied, first, that she will obtain judgment for damages.

[18] As to the question of whether such damages would be substantial, much depends on the outstanding issue of causation. I derive significant assistance from a meeting of two experts: for the plaintiff, Mr Donald Campbell, Consultant Neurosurgeon; for the defendant, Mr Keith Sinnott, Consultant Orthopaedic and Spinal Surgeon. They were described to me as the experts on the issue of causation. They discussed this case on 25 June 2025 and there is a joint minute of the discussion. From that discussion I glean the following:

(i) If MRI scanning had been performed on 22 January (in Antrim Area Hospital) she would have undergone decompressive surgery on that day and there would have been a better outcome.

(ii) On that basis, and while deferring to the opinion of a Consultant Urologist, her bladder function would have recovered to the point of continence, although she might have been left with a degree of urgency.

(iii) On that basis, while any degree of foot drop present on 22 January would have remained, surgery on that date would have prevented further progression of any weakness and she could have expected to have avoided persisting sensory disturbance of the right lower limb.

(iv) The dysaesthetic pain which she suffers from, and which requires complex medication, arises as a result of the death of some nerve cells and appears to be a sequela of the delay in operative intervention. However, any mechanical

back pain which she suffers is often a sequela of the laminectomy, which she would have undergone in any event.

(v) Deferring to an expert in bowel mobility, if the plaintiff suffers from a neurogenic bowel, that would not have occurred but for the events the subject of this action.

(vi) As to future employment, while deferring to an employment expert, the two causation experts consider that she would have been able to undertake full-time, light, non-physically demanding work, with limited driving.

[19] Mr O Donoghue says that the joint minute of the causation experts cannot be treated as being almost a summary judgment on the issue of causation and while the opinion of the experts is helpful to the plaintiff, it is not determinative. He drew my attention to the report of Dr. Michael Stafford, Consultant in Anaesthesia and Pain Medicine, which he says challenges the joint opinion as to the source of the pain being suffered by the plaintiff.

[20] With great respect to Mr Stafford, I consider that it would be wrong of me, for the purposes of what I have to decide in this application, to accept his view rather than the joint view of the causation experts.

[21] In view of the consequences identified by the causation experts in para [18] above, I consider that damages will be substantial.

[22] I then have to consider whether in the exercise of the discretion provided by Order 29 I should order an interim payment.

[23] Mr O Donoghue drew my attention to *Eeles v Cobham Hire Services Ltd*. [2009] EWCA Civ 204, beginning at para [30], where the Court of Appeal made it clear that the discretion is not unfettered. In that case there was discussion about the needs of the plaintiff when it came to housing. I note that that was a case, as the Court of Appeal said, where the damages, when finally assessed, are likely to include one or more periodical payments orders." Much of the decision turned on the question of ensuring that the interim payment did not have the effect of fettering the trial judge s freedom to allocate the heads of future loss. As the court said: In our view, before a judge at the interim payment stage encroaches on the trial judge s freedom to allocate, he should have a high degree of confidence that such a course is appropriate and that the trial judge will endorse the capitalisation undertaken."

[24] That is not the case here. This does not appear to be a PPO case. In my view any discussion in that case referring to need", has to be read in the context of the judgment. It does not, in my view, provide authority for the proposition that in non-PPO cases the court has to consider the needs of the plaintiff before making an interim payment. There is no reference whatsoever in Order 29 of the plaintiff s need

being a factor to be taken into account. I do not consider that there is any warrant for the consideration of needs.

[25] I recognise that no discretion is unfettered. However, in all the circumstances of this case, I consider it would be appropriate that an order be made for an interim payment.

[26] At this stage I have to note that the application made by the plaintiff was for an interim payment of £500,000, not simply for an interim payment, with the amount to be assessed by the court. It is in respect of that application (and the appeal from the Master s order in that application) that the court has to consider whether the amount of £500,000 is one which the court thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the court are likely to be recovered by the plaintiff."

[27] I cannot simply take the plaintiff s solicitor s assessment of general damages as being the basis on which the court makes its decision, nor the mere recitation of the range of calculations of the plaintiff s forensic accountant, as set out in para [14] above. It seems to me that in dealing with this issue it is appropriate that a court should maintain a conservative approach to any assessment.

[28] Mr O Donoghue says that the plaintiff had modest earnings prior to the incident. She was a part-time children s care assistant earning around £8,000. per annum. He says that this is not a case of tetraplegia or paraplegia, it is not a brain damage case or a case involving 24-hour care and that there is no guarantee that the plaintiff would even recover £500,000.

[29] Mr McCollum for the plaintiff says that damages will be vastly above" seven figures. In his skeleton argument he sets out ranges of damages from other cauda equina syndrome cases. His skeleton argument submits that the ultimate award in this case will easily exceed the level of interim damages that is being sought" (para 18) and that the court can be satisfied at this juncture that the plaintiff will recover a figure far in excess of the £500,000…"

[30] There is a significant sum claimed for special loss. This is set out in the plaintiff s accountancy report. There is no accountancy report from the defendant. The accountant sets out a total claim ranging from £2.466 million to £3.289 million depending on a very wide range of imponderables relating to earnings, level of disability, accommodation and care, none of which has been tested in evidence. In due course there will be a report from an accountant retained by the defendant. Experience of this type of case shows that when the accountancy experts meet there is likely to be a significant disparity between their calculations as to loss. Meetings of other experts are likely to reveal significant differences in approach.

[31] With so many imponderables, I am in no position to make an informed evaluation of the likely final award at trial. Even to try to do so would be a foolish

exercise without sight of the defendant s accountancy report, and the reports of other experts retained by the defendant. While I do think it very possible that the plaintiff will recover a sum greater than £500,000, that is not the test that I have to apply. In this case I have to be satisfied that £500,000 is a figure which I think just, not exceeding a reasonable proportion of the damages which in the opinion of the court are likely to be recovered by the plaintiff."

[32] Since I cannot say this with any degree of confidence, I am not so satisfied. As the appeal involves a binary decision (no other sum is before the court) I allow the defendant s appeal and dismiss the application for an interim payment of £500,000.

[33] Having heard the parties, I will reserve the question of costs to the trial judge.