Neutral Citation No: [2026] NIMaster 7	*Ref:*	**2026NIMaster7**
	ICOS No:	**2023 No. 99624**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**22/04/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

Between:

CHARLENE SIOBHAN BEATTIE

Plaintiff

-v-

DR JOHN MANDERSON

First Named Defendant

-and-

SOUTH EASTERN HEALTH AND SOCIAL CARE TRUST

Second Named Defendant

Mr Hugh O'Connor (instructed by HHD Solicitors) on behalf of the plaintiff.
Mr Roger McMillan (of Carson McDowell Solicitors) on behalf of the first defendant.

Master Harvey

Introduction

[1] This is a clinical negligence case involving care, management and medical treatment provided to the plaintiff before, during and after the birth of her son on 23 November 2020.

[2] The first defendant has brought an application dated 22 December 2025, pursuant to Order 12 rule 8 of the Rules of Court of Judicature (Northern Ireland) 1980 ("the Rules") seeking to set aside service of the writ of summons of 22 November 2023.

[3] The second defendant is not involved in the application.

[4] At summons court on 6 March 2026, the court was informed by the moving party (first defendant) that the summons was to be withdrawn but an issue remained as the parties could not agree on the costs of the application. I convened what was intended to be a short hearing on 14 April 2026, at the request of the parties, to deal with the matter. On the day before the hearing the court received a 106-page bundle together with eight pages of written submissions from the first defendant.

[5] I am grateful to the parties for their helpful submissions in a well-argued application on both sides.

The issue in dispute

[6] In short, the first defendant (having waived privilege in respect of a without prejudice email) states he made an offer to the plaintiff on 5 March 2026 that he would withdraw the summons on the basis of no order as to costs, meaning each side would bear its own costs. I do not have sight of the plaintiff's reply but evidently that offer was not accepted and both parties now seek the costs of the application.

Submissions

[7] The first defendant asserts that he should be awarded his costs. His fallback position if not successful in recovering all his costs, is that he should be awarded costs incurred from the date of his offer of 5 March 2026 to the date of hearing. The first defendant claims this offer was unreasonably rejected. The first defendant further states the application was issued on a sound basis, in good faith as there was a clear instruction Dr Manderson did not receive the writ of summons until after the expiry of the period of its validity. In those circumstances, he argues it was entirely appropriate to bring the application and rejects the plaintiff's assertion that it was misconceived.

[8] The first defendant concedes the general principle is that costs normally follow the event. The event here is withdrawal of the summons, which the first defendant candidly accepts amounts to a victory for the plaintiff, but the court has a discretion regarding costs and there are grounds to depart from the conventional approach instead awarding costs to the first defendant. The basis for this is essentially the litigation conduct of the plaintiff solicitor.

[9] In summary, the height of the first defendant's assertions of unreasonable and improper litigation conduct on the part of the plaintiff is that there was delay in issuing proceedings until one day prior to limitation, delay in attempting to serve proceedings until just before expiry of the 12 month period of validity of the writ,

and breaches of the clinical negligence protocol as a letter of claim was not served and Dr Manderson was at no stage put on notice of the claim prior to service of the writ.

[10] The plaintiff argues that any purported breaches of the protocol is a "red herring" and there is no basis to argue the plaintiff has in some way conducted the claim unreasonably or improperly which would lead the court to depart from the conventional approach that costs follow the event. The plaintiff is privately funding the claim, and it is argued she has incurred costs in responding to and resisting the application which has now been withdrawn. The effect of the withdrawal is that the first defendant no longer takes issue with service of the proceedings.

[11] The plaintiff submits the first defendant did not make any reasonable enquiries in advance of issuing the summons to establish whether service of the writ had been properly effected. The plaintiff further asserts there was a series of delays and obfuscation by the first defendant, his medical defence organisation and his lawyers. The plaintiff highlights the fact that Dr Manderson claims he received the writ of summons on 27 November 2024. He then involved his medical defence organisation, but it was not until March 2025 that they engaged their lawyers. It was then a further three months before an application was brought to enter a conditional appearance and a further six months after the appearance was served on 10 June 2025, before a set aside application was brought on 22 December 2025.

[12] The plaintiff contends there was effectively a delay of 15 months from service of the writ until the reasonable enquiries which could have been made prior to issuing the summons, were in fact raised. It was on the basis of the plaintiff's response to the summons, in a replying affidavit of 6 February 2026 and subsequent follow up queries and correspondence between the parties in the weeks that followed that led to the withdrawal of the summons. The plaintiff claims this could have been ironed out without an application and none of these issues were raised with them prior to issuing the summons.

Legal principles

[13] The legal principles are uncontroversial. The court has a wide discretion on costs pursuant to Order 62. The relevant provision can be found at Order 62, rule 3(3) which is in the following terms:

> "If the Court in the exercise of its discretion sees fit to make any Order as to the costs of any proceedings, the Court shall order the costs to follow the event except when it appears to the Court that in the circumstances of the case some other Order should be made as to the whole or any part of the costs."

[14] The first defendant relies on Order 62, rule 10 which provides:

> "10 (1) Where it appears to the Court in any proceedings that anything has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party, the Court may order that the costs of that party in respect of the act or omission, as the case may be, shall not be allowed and that any costs occasioned by it to any other party shall be paid by him to that other party.
>
> (2) Instead of making an Order under paragraph (1) the Court may refer the matter to the Taxing Master, in which case the Taxing Master shall deal with the matter under rule 28(1)."

[15] The court must also give effect to the overriding objective contained in Order 1 rule 1a when exercising its powers and interpreting the Rules. This includes the need to save expense and deal with cases expeditiously, fairly and proportionately having regard to the value, importance and complexity of the issues and the financial position of each party.

[16] In BJAC Valentine, "Civil Proceedings the Supreme Court" (1997) para 17.04 the author restates the general principle that costs follow the event. He goes on to affirm the court retains a discretion and can withhold all or some costs from a successful party or, exceptionally, award costs against them, where it is just to do so. Some of the grounds for departing from the conventional approach are that the claim or defence succeeds due to a late amendment, the case was decided on an important issue which the losing party was justified in contesting or the winning party presented a false or oppressive case. The first defendant referred me to a passage from *Donald Campbell & Co. Ltd –v- Pollak* [1927] A.C. 732 which affirms that costs are at the discretion of the judge and in the absence of special circumstances a successful litigant should receive his costs. It is necessary to show some ground for refusing them. I note the following passage from the judgment of Viscount Cave L.C. at p.811 where he stated with regard to costs:

> "…the court has an absolute and unfettered discretion to award or not to award them. This discretion, like any other discretion, must be exercised judicially, and the judge ought not to exercise it against the successful party except for some reason connected with the case".

Discussion

[17] In answer to the summons, the first defendant was provided with a detailed replying affidavit by the plaintiff's solicitor on 6 February 2026 and further information on 17 February 2026. This variously set out averments from the plaintiff solicitor that the writ was properly served by first class post in accordance with the Rules and included copies of postal log books from the plaintiff solicitor's offices as evidence that service was properly effected. It is evident that this has led to withdrawal of the summons, and the court has not been asked to adjudicate upon it on the merits.

[18] There is no evidence of the first defendant contacting the plaintiff prior to issuing the summons raising queries regarding service or asking for proof of service. His stated aim in issuing the application was "to confirm the position regarding service as this had not been previously clarified" (per the defence solicitor's email to the plaintiff's legal team on 5 March 2026) and that "genuine and reasonable uncertainty existed at the time the first named defendant's summons was issued" (para 26 (g) of the first defendant's written submissions). This is asserted despite no clarification or certainty apparently ever having been sought. While it is not a procedural requirement to give forewarning to the opposing party regarding such a summons, it would generally be best practice to do so as such liaison between the parties probably would have avoided an application to the court thus saving time and expense. Regrettably, although not expressly asked to do so, the plaintiff did not volunteer the information when they ought reasonably to have known a challenge to the service of the writ was coming their way.

[19] There are almost 2,500 active clinical negligence cases in this jurisdiction. At clinical negligence reviews, the court regularly reminds parties that communication, collaboration and cooperation is vital in the effective conduct of this highly sensitive and complex type of litigation. By so engaging, costs and summonses can be minimised. I consider it is regrettable this issue could not have been resolved sooner thus avoiding such a protracted dispute. I do recognise, however, there has been active efforts on both sides to deal with the substantive litigation.

[20] The plaintiff was on notice from November 2024 there was likely to be a service issue raised and the conditional appearance in June 2025 could have prompted them to take proactive steps to demonstrate service was proper. On the defence side, it is regrettable over a year passed from service of the writ until the set aside summons was brought by the first defendant.

[21] While the first defendant makes criticisms of the plaintiff's litigation conduct, I observe that the plaintiff issued proceedings within the limitation period and served the writ within its period of validity. This was done all very last minute, but it is difficult to unduly criticise such a party when in effect they complied with the Rules. The failure by the plaintiff to serve a letter of claim prior to serving the writ is far from best practice and a clear breach of the wording and spirit of the clinical negligence protocol. It is not how such cases should be conducted and while no doubt the plaintiff feels aggrieved about what she views as negligent treatment at the hands of the defendants, it is in my view improper to send no advance notice of the claim but instead serve a writ of summons at the first defendant's place of work. If limitation was a concern, I observe there is no evidence the parties considered entering into a standstill agreement. Provision for such agreements is set out at para 21 of the clinical negligence protocol issued on 1 October 2021, this may avoid such issues arising and is something I once again urge the parties to actively consider in appropriate clinical negligence cases.

The court's decision

[22] There has been regrettable delay in this case and arguably shortcomings in terms of best practice on both sides. Nevertheless, I consider there is force in the plaintiff's submission this summons was unnecessary. I find it difficult not to conclude this whole episode could have been avoided. The first defendant asserts the summons was not only based on instructions but also "the ambiguity in the plaintiff's own documentation and her solicitor's affidavit" (para 26 (f) of their written submissions). Given the affidavit referred to postdated the summons by two months I cannot see how that was a factor underpinning the purportedly sound basis for issuing the application in the first place.

[23] On balance, I am not persuaded there are any special circumstances or sufficient grounds to depart from the conventional approach that the successful party should recover its costs. The matters raised by the first defendant to justify such a departure lack sufficient substance. They do not in my view constitute unreasonable or improper conduct on the part of the plaintiff which would in all the circumstances lead me to determine some other costs order should be made. In this application costs should follow the event. That event was withdrawal of the summons in the plaintiff's favour and costs were reasonably incurred by that party in resisting the application.

Conclusion

[24] For the reasons set out above, I award the plaintiff costs of the application, taxed in default and certify for counsel.