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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **01/04/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

Between:

COLETTE ROBB

and

Plaintiff

BELFAST HEALTH AND SOCIAL CARE TRUST

Defendant

Mr Lockhart (instructed by Agnew Andress Higgins) on behalf of the plaintiff
Mr McGarvey (instructed by BSO Legal Services) for the defendant.

MASTER HARVEY

Introduction

[1] The plaintiff in this clinical negligence action has brought an application pursuant to Order 20 rule 5 of the Rules of Court of Judicature (Northern Ireland) 1980 ("the Rules") to amend the statement of claim. The defendant has filed a replying affidavit dated 5 February 2026. The plaintiff subsequently filed a rejoinder affidavit on 9 March 2026. I am grateful to counsel for their helpful oral submissions.

Background

[2] This is a complex case with a lengthy history which I do not propose to rehearse in great detail. In summary the plaintiff underwent various surgeries and treatment with regard to her right hip between 2013 and 2018. There are approximately 4,500 pages of medical notes and records. The plaintiff suffered a fall down a set of stairs on 28 May 2013 sustaining a fracture of the right acetabulum. As

a result, she required surgery in the Royal Victoria Hospital, part of the defendant Health Trust, eight days later. She had further complications with right hip pain and ultimately required total right hip replacement on 9 December 2013. She then suffered a wound infection at the site of the surgery nine months later which did not resolve, leading to further surgery on 3 December 2014. Shortly after this, the plaintiff suffered a fall in hospital while an inpatient on 17 December 2014 sustaining a fracture of her femur, leading to yet more surgery on 16 January 2015 and following which deep infection was identified in the right hip. On 11 March 2015 it was decided to proceed with reimplantation of her right hip when she was allegedly showing signs of a deep infection. The plaintiff's condition deteriorated leading to another surgical intervention and ultimately was informed on 6 June 2018 that reconstruction surgery for her right hip was no longer viable for several reasons including that the risk of mortality was too high. The plaintiff is now wheelchair bound.

[3] The plaintiff alleges negligence in the provision of care and treatment provided by the Royal Victoria Hospital. She alleges that if the reimplantation surgery in 2015 had been delayed until the deep infection was eradicated, it is probable she would have had successful surgery and avoided such serious and life changing complications. The plaintiff has liability reports from an independent medical expert, Mr Brewster, Consultant Orthopaedic Surgeon dated 4 April 2022, 13 May 2022 and 13 November 2022. The defendant has a report from Mr Murnaghan, Consultant in Trauma and Orthopaedic surgery, dated 27 September 2023. It appears the parties also have microbiology reports which are not before the court. The basis of the plaintiff's application is to make a number of amendments to the statement of claim.

The amendments

[4] The draft amended pleading is exhibited to the application and where relevant may be summarised as follows:

i. During the course of her treatment in hospital, the plaintiff suffered a fall getting out of bed on 17 December 2014 causing a serious leg fracture necessitating surgery. The plaintiff seeks to amend the statement of claim to include the correct date of the fall, reference to an alleged lack of supervision and new particulars of negligence.

ii. There were a number of occasions in hospital when the plaintiff had a type of dressing ("VAC dressing") applied which was allegedly inappropriate and caused her unnecessary pain and discomfort. The

plaintiff seeks to raise new particulars of negligence regarding this issue.

iii. The plaintiff will allege she ought to have been made aware of the increased risk of proceeding to reimplantation of her new prosthesis on 11 March 2015 when there remained the possibility of a deep infection as evidenced by an adverse blood result on 4 March 2015. The plaintiff now seeks to assert the risks were not explained to her and therefore the defendant failed to obtain her informed consent.

Procedural history

[5] The plaintiff issued a writ of summons on 18 May 2021, but the initial letter of claim was not served until 17 January 2022. This is a common occurrence where the plaintiff protectively issues proceedings usually to avoid the claim becoming statute barred. It is timely to remind practitioners of the provision for standstill agreements at para 21 of the clinical negligence protocol issued on 1 October 2021, as they are a useful tool available to the parties:

> **"Standstill Agreements**
>
> 21. In the context of litigation, a standstill agreement is an agreement between the intended parties, or their representatives, which has the practical effect of suspending or extending a statutory or a contractual limitation period. For example, a standstill agreement, duly executed between the intended parties to litigation, has the potential to avoid the issue of protective proceedings where a matter remains under investigation, thereby facilitating the completion of the said investigation, avoiding potentially unnecessary expenditure on all parts and the stress on the parties associated with proceedings. Practitioners are encouraged, where limitation is likely to arise, to consider whether the execution of a standstill agreement is appropriate in the particular circumstances of the case and to communicate accordingly with all other parties. It is recognised that no party can be compelled to execute a standstill agreement, but it is an option that may be considered by practitioners in the event limitation presents. A standstill agreement can be executed between intended parties to litigation at any point in the pre-action process, prior to the issue of proceedings."

[6] While each case will differ on the facts, I am repeatedly told by the parties and most notably by defendant representatives at court reviews that they are amenable to entering into such agreements in clinical negligence actions and yet they remain underused. I made this observation in another clinical negligence case *Christina*

Cardy and Belfast Health & Social Care Trust v South Eastern Health and Social Care Trust and Bayer PLC [2023] NI Master 8 stating:

> "[37] I pause to observe that I reminded the parties of the provision for standstill agreements in the clinical negligence protocol which helps to avoid the premature and protective issuing of writs when investigations have not been completed. I have noted with disappointment that there is currently only a limited use of such standstill agreements in clinical negligence claims in this jurisdiction which is unfortunate as cases are appearing before me for first review in the Master's court when there has barely been a letter of claim never mind an expert report obtained. The use of standstill agreements in appropriate cases would allow the plaintiff time to apply for legal aid, obtain medical records, secure expert evidence and take all steps necessary to determine if there is a valid cause of action, thereafter, serving a pre-action protocol compliant letter of claim. The standstill agreement would better protect their client's position, saving the cost of the stamp on a writ, avoiding unnecessary court reviews, escalating costs and from a defendant's perspective, potentially weeding out unmeritorious claims at an earlier stage."

[7] In the current case, it is not clear when the writ was served on the defendant and the hearing bundle does not contain the defendant's memorandum of appearance. The first letter of claim is devoid of any detail and states it was not served in accordance with the clinical negligence protocol as investigations were ongoing. A further, much more detailed letter of claim running to seven pages, was served on 19 August 2022. This letter contains a section entitled "breach of duty" and makes specific reference to "permitting the patient to fall on the ward on 19 December 2014 when she sustained a periprosthetic fracture." (it has subsequently been accepted by both parties the fall was actually 17 December 2024). It also states in a section entitled "causation" that as a result of the fall the plaintiff "required an additional episode of surgery which would not have otherwise been required."

[8] The defendant solicitor wrote to the plaintiff's solicitor on 27 July 2023 to raise a query as to whether the fall in hospital in December 2014 was part of the plaintiff's claim. The plaintiff solicitor replied on 28 July 2023 to indicate he was seeking instructions. The case proceeded and the parties exchanged liability reports on 10 January 2025. This included the plaintiff's report from Mr Brewster in which he stated that the fall in December 2014 arose from a breach of duty by the defendant. The defendant's solicitor again wrote to the plaintiff on 24 February 2025 seeking confirmation whether a case was being made in relation to this fall. The plaintiff

responded the next day to say he would revert to the defendant regarding this query. It appears he never did so.

[9] An agenda was prepared on 5 August 2025 for the meeting of the liability experts and included a specific question regarding the fall in hospital querying whether this was a breach of duty. The defendant's solicitor wrote to the plaintiff's solicitor on 15 September 2025 pointing out there were no particulars of negligence in relation to the fall, nor was the issue of informed consent pleaded and that the plaintiff would have to formally apply to amend their pleadings. On 30 October 2025, the plaintiff sent a draft amended statement of claim and sought consent to the amendments. The defendant replied on the 26 November 2025 disputing the content of this draft pleading.

The defendant's submissions and replying affidavit

[10] The defendant argues with regard to the fall that if the amendment was allowed it will require a nursing expert report and will be denied a more effective limitation defence. They claim it will cause prejudice to the defendant as memories of witnesses "may have faded". The defendant asserts this claim is a new cause of action and the fall arises from alleged lack of supervision and nursing care and therefore different facts.

[11] The defendant states with regard to the VAC dressing issue that there are no specific allegations raised and that while their own expert did refer to issues with the dressings, he did not say it was negligent. The defendant argues this issue is also a new cause of action, again arising from different facts and it will require expert opinion.

[12] Thirdly with regard to the consent issue, the defendant asserts there is no evidence to substantiate this. They contend the basis for this amendment to the claim arises from directions from the plaintiff's senior counsel who appears to have recently been instructed in the case. While the defendant concedes this issue is more related to the substantive cause of action, they contend it would be unjust to allow the amendment. In order to deal with the consent issue, the defendant would need an addendum report from their current expert, input from the involved clinician(s) and it would involve additional time and expense as the agenda for the liability expert's meeting would require amendment.

[13] The defendant asserts the plaintiff's real case all along has not related to these three new issues but rather the decision to proceed with reimplantation of the hip without due regard to the risk of deep infection and waiting until any infection was eradicated. The defendant further asserts the plaintiff could simply issue a fresh writ to raise any new claims and seek to consolidate the actions. The defendant argues

that the advantage in this scenario is that it would be better able to argue limitation in relation to the fall, with 12 years of delay between 2014 and 2026, instead of the seven year period from the date of the fall up to issue of the writ in 2021. This is because the practical effect of allowing the amendment, due to the relation back principle, is that the allegation would be deemed as having been made by way of a separate action commenced on the same date as the original action in 2021.

The plaintiff's submissions and affidavits

[14] The writ endorsement refers to "care and treatment the plaintiff received further to an injury on the 28 May 2013". The plaintiff asserts the writ has been widely drafted and can incorporate these new allegations. Further they contend the amendments are not central issues, but they are important.

[15] The plaintiff argues the defendant will suffer no prejudice from the amendments and they are necessary to fully and accurately plead the plaintiff's case. The plaintiff contends the issues addressed in the amendments arise from medical reports obtained over the last three years, some of which were only available after the statement of claim was served. They claim the fall was already mentioned in the original statement of claim with the amendment seeking to add "basic particulars of negligence". The VAC dressing issue purportedly only became apparent in January 2025 when the plaintiff had sight of the defence expert report which made criticisms in this regard. The consent issue has been pleaded in light of directions received from the plaintiff's senior counsel.

[16] The plaintiff's solicitor filed an "addendum" affidavit which mainly deals with the consent issue. It quotes a passage from the supreme court decision in *Montgomery v Lanarkshire Health Board* [2015] UKSC 11, impermissibly in the context of an affidavit. Regrettably this has become a feature of affidavits lodged in support of interlocutory applications and I would remind parties of the comments of McCloskey LJ in *The Governor & Company of the Bank of Ireland v John Conway* [2024] NICA 80 at para 25:

> "…Furthermore, when affidavit evidence is properly admitted, averments which (again, as here) stray into the impermissible territory of sworn argument should be struck out, with appropriate costs orders to follow."

[17] The plaintiff solicitor avers that the lack of particulars of negligence in the statement of claim concerning the fall only came to light "when the parties were seeking to agree a draft expert meeting agenda" in 2025. This appears to be contradicted by correspondence dating back to July 2023 from the defendant's solicitor raising this very issue and this was followed up again by the defendant in

February 2025. Neither approach appears to have provoked meaningful action on the plaintiff side.

Legal principles

[18] Order 20 rule 5 provides that:

> "(1) Subject to Order 15 rules 6, 7 and 8, and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct."
>
> (2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.
>
> …
>
> (5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as the cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment."

[19] As can be seen, the Court's discretion is very wide, and the guiding principle is what is considered just in all the circumstances of the case. In the case of amendments to include a new cause of action which would otherwise be statute barred, the court can allow them if it is just to do so and they arise from the same or substantially the same facts.

[20] The court is entitled to have regard to the merits of the case if they are readily apparent without detailed investigation into the facts or law per *Kings Quality Ltd v AJ Paints Ltd* [1997] 3 All ER 267). In *The Front Door (UK) Ltd (t/a Richard Reid Associates) v The Lower Mill Estate Ltd* [2021] EWHC 2324 at [29] the court determined the amendment should be refused if it clearly has no real prospect of success. An amendment may introduce a new case, but not a case which is unarguable.

[21] In *Slater & Gordon (UK) Ltd v Watchstone Group plc* [2019] EWHC 2371, it was stated that the party seeking the amendments must show they have:

> "a real, as opposed to fanciful prospect of success…a claim does not have such a prospect, inter alia, where (a) it is possible to say with confidence that the factual basis for the claim is fanciful because it is entirely without

substance and (b) the claimant does not have material to support at least a prima face case that the allegations are correct."

[22] In *Loughran v Century Newspapers Ltd* [2014] NIQB 26 Gillen J set out the principles to be applied:

> "[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."

[23] A party can "make a change of substance, however major", (see BJAC Valentine, "Civil Proceedings the Supreme Court" (1997) p137 para 11.18, "Valentine"). At para 11.20, he goes on to state a party can seek to amend the pleading:

> "at any time including the hearing of the application or the start or even during the trial".

[24] The Civil Procedure Rules in England in so far as they pertain to amendment applications are broadly similar. In the English Court of Appeal decision in *Mercer Limited & Anor v Ballinger & Anor* [2014] EWCA Civ 996 (17 July 2014) the court was dealing with amendment to a claim to introduce a new cause of action after the expiry of the limitation period. The court referred to *Goode v. Martin* [2001] 3 All ER 562 in which the issue of whether a new case involves the same facts was explored:

> "Whether one factual basis is 'substantially the same' as another factual basis obviously involves a value judgment, but the relevant criteria must clearly have regard to the main purpose for which the qualification to the power to give permission to amend is introduced. That purpose is to avoid placing a defendant in the position where if the amendment is allowed he will be obliged after expiration of the limitation period to investigate facts and obtain evidence of matters which are completely outside the ambit of, and unrelated to those facts which he could reasonably be assumed to have investigated for the purpose of defending the unamended claim."

[25] The court then went on to refer to *Lloyd's Bank plc v. Rogers* [1997] TLR 154 in which Hobhouse LJ. said:

"…if factual issues were in any event going to be litigated between the parties, the parties should be able to rely upon any cause of action which substantially arises from those facts."

[26] In the *Mercer* case above the court highlighted that the Rules which provide an exception to allow otherwise statute barred amendments arising from the same facts were there to ensure the party against whom the proposed amendment is directed is "not be prejudiced because that party will, for the purposes of the pre-existing matters [in] issue, already have had to investigate the same or substantially the same facts."

[27] In *Welsh Development Agency v Redpath Dorman Long Ltd* [1994] 1 WLR 1409, Glidewell LJ stated at page 1418, that whether or not a new cause of action arises out of substantially the same facts as those already pleaded is substantially a matter of impression (see para 35 of *Mercer* above). Millett LJ in *Paragon Finance plc v DB Thakerar & Co* [1999] 1 All ER 400, said at page 418, having referred to the passage from Glidewell LJ above:

"In borderline cases this may be so. In others it must be a question of analysis."

It was also stated in the above authorities that the words "the same or substantially the same" is not synonymous with "similar" which "should not be regarded as anything more than a convenient shorthand. It may serve to divert attention from the appropriate enquiry" (se para 38 of *Mercer*).

[27] The Limitation (Northern Ireland) Order 1989 deals with limitation issues arising from new claims in pending actions in the following way:

"73. (1) For the purposes of this Order, any new claim made in the course of any action is to be treated as a separate action and as having been commenced—

(a) if it is a new claim made in or by way of third party proceedings, on the date on which those proceedings were commenced; and

(b) in relation to any other new claim, on the same date as the original action.

(2) Except as provided by Article 50, by rules of court, or by county court rules, neither the High Court nor any county court may allow a new claim within paragraph (1)(b), other than an original set-off or counterclaim, to be made in the course of any action after the expiry of any time limit under this Order which would affect a new action to enforce that claim. For the purposes of this paragraph, a claim is an original set-off or an original counterclaim if it

is a claim made by way of set-off or (as the case may be) by way of counterclaim by a party who has not previously made any claim in the action.

(3) Rules of court and county court rules may provide for allowing a new claim to which paragraph (2) applies to be made as there mentioned, but only if the conditions specified in paragraph (4) are satisfied, and subject to any further restrictions the rules may impose.

(4) The conditions referred to in paragraph (3) are the following—

(a) as respects a claim involving a new cause of action, if the new cause of action arises out of the same facts or substantially the same facts as are already in issue on any claim previously made in the original action; and

(b) as respects a claim involving a new party, if the addition or substitution of the new party is necessary for the determination of the original action…"

Discussion

[28] There are three aspects to the plaintiff's proposed amendments which I will now consider in turn.

The fall in hospital on 17 December 2014

[29] The defendant appears to have known about this incident for several years. It was included in the letter of claim on 19 August 2022 although this letter does not have the status of a pleading. It is also mentioned at para 5 of the original statement of claim dated 8 March 2023 albeit absent any particulars of negligence or breach of statutory duty. At page 13 of the defendant's independent medical report dated 27 September 2023, the expert notes the plaintiff fell in December 2014 on the ward and further sets out at page 25 examples of care which "could have been better", including "…the issues in relation to repeated falls". In the plaintiff's expert medical report of 4 April 2022, it states at para 3.4 the fall is one of two "potential breaches of duty of care". This expert further states in a subsequent report on 13 December 2022, the fall arose from "a breach in duty of care" by the hospital. This report was sent to the defendant as part of the simultaneous exchange of liability reports on 10 January 2025.

The VAC dressings

[30] Turning to the issue of the VAC dressings, at para 4 of the original statement of claim, the dressings are referred to absent any particulars of negligence or breach of statutory duty. Para 7 then goes on to state "the said personal injuries loss and damage were caused by the negligence of the defendant…" The particulars of negligence further state:

"The plaintiff will further rely on such facts in proof of negligence as may be within the knowledge of the defendant but not of the plaintiff and as may appear in the evidence of the defendant…witnesses upon the trial of the action."

[31] The plaintiff contends this issue only came to light when expert reports were exchanged on 10 January 2025. It was the defence expert who raised the matter and opined the dressings were inappropriate "resulting in pain and discomfort" and this represented "poor management". Given the plaintiff knew about this issue in January 2025, it is not clear why they waited until such a late stage to formally plead this. For their part, the defendant appears to have known about the issue for several years as an incident form dated 23 May 2016 was generated and is referred to by their expert.

The lack of informed consent

[32] Turning to the issue of informed consent, this allegation first appeared in the draft agenda prepared by the plaintiff's legal team in August 2025 for the meeting of the liability experts. It is not referred to in the pleadings nor addressed in any of the expert reports thus far disclosed. It has only now been addressed as apparently senior counsel is on board for the plaintiff.

The merits of the proposed amended claim

[33] The authorities indicate a plaintiff may introduce a new case but not one that is unarguable. As things stand, it appears the plaintiff has no supportive medical evidence from an appropriately qualified expert to substantiate two of the new allegations they seek to plead, regarding the fall and the dressings. The court can refuse an amendment that has no prospect of success. The court at this interlocutory stage should not, however, delve into liability issues and make findings of fact. I consider the plaintiff has material to support at least a prima face case that the allegations are correct. I say this because the court has the benefit of two independent medical reports describing the dressings as "poor management" and "inappropriate" (per the defence expert Mr Murnaghan) and there was a "breach of duty" of care regarding the fall (per the plaintiff's expert Mr Brewster) and the care in respect of multiple falls "could have been better" (per Mr Murnaghan). Most of the language used falls short of an express finding of negligence and the allegations may be more appropriately addressed by nursing experts, however, I am of the view there is sufficient material to demonstrate these are serious issues to be tried which have some merit.

Limitation, delay and prejudice

[34] The fall was on 17 December 2014. The plaintiff had three years under the Limitation (Northern Ireland) Order 1989 to bring a claim. The writ was not issued until 18 May 2021, meaning this aspect of the claim would have been out of time then and even more so now as it is 12 years since the accident. The plaintiff's counsel concedes that the plaintiff is vulnerable on this point. The defendant is not completely denied a limitation defence, however. The defendant solicitor avers in his affidavit the defendant will be "denied a limitation defence as effective as the defendant might have enjoyed had this claim been commenced now" due to the relation back principle as stated above.

[35] No material is before the court to suggest any substantive evidential prejudice impacting the defendant in the period from 2021 to date, over and above the delay which had already occurred. The court is being asked to infer or even speculate as to prejudice possibly arising from the additional delay and at its height the defence submission is that memories "may have faded".

[36] The court can allow such amendments even if out of time if they arise from the same or substantially the same facts and I will turn to deal with that issue shortly.

[37] I am at a loss to understand why the plaintiff's legal team did not more fully plead the allegations regarding the fall sooner particularly as the defendant solicitor pointed out their omission on more than one occasion. The plaintiff's counsel rightly accepted this is a hurdle the plaintiff will have to overcome. I consider, however, this is an issue which can be fairly dealt with at trial as the trial judge will be in a better position to hear all the evidence in relation to limitation and assess the impact of any delay on the cogency of the evidence to be adduced.

[38] The dressings claim only came to light after the exchange of expert reports in January 2025 when it was referred to in the defence liability report. The limitation issue does not appear to arise in relation to this issue as the plaintiff can reasonably argue her date of knowledge was just over 12 months ago.

[39] The consent claim has only been raised upon direction from senior counsel on 30 July 2025, and it appears no medical evidence has been obtained to deal with this as yet.

[40] Delay or negligence is not sufficient to refuse a bona fide amendment necessary in the interests of justice unless the opponent is prejudiced in some way that cannot be compensated in costs. Therefore, even if the plaintiff's legal representatives delayed matters due to an oversight or ineptitude, that is not of itself sufficient ground to refuse the application.

[41] The case of *Barr v Southern Health & Social Services Board* [1986] NIQB is referenced at para 11.21 of Valentine and involved a complex clinical negligence case in which a new issue arose in cross examination of a defence witness at trial. The judge invited the plaintiff to amend the pleadings and allowed the amendment on the condition that evidence could be called. When one considers the wording of Order 20 rule 5 that leave to amend can be given "at any time", and there is authority to amend even as late as the trial itself, the court's discretion is very wide and ultimately it comes down to what is just in all the circumstances. In the event the amendments are refused, the alternative scenario is that the plaintiff can issue a fresh writ which I consider will simply add to delay and increase costs.

Do the amendments arise from the same facts

[42] I consider that of the three core issues forming the basis of the amendment application, the consent issue appears to be most clearly intertwined with the facts of the case. It is something that would likely be discussed by the experts even if not expressly referred to in the draft agenda given the importance of informed consent and the scrutiny to which this issue has been subjected in recent years since the supreme court decision in *Montgomery*. Defence counsel candidly conceded the defendant is vulnerable on this point in so far as the amendment application is concerned. On balance, I consider the failure to plead this appears to have been an oversight which has been corrected with input from recently instructed senior counsel.

[43] The VAC dressing claim issue does not suffer the same procedural issues regarding limitation given it appears to have come to light in 2025. As with the fall, both occurred in hospital while the plaintiff was under the supervision of the defendant and during the course of care and treatment forming the overall subject matter of this claim. I consider both these claims arise from substantially the same facts and are not completely outside the ambit of, and unrelated to those facts the defendant could reasonably be assumed to have investigated for the purpose of defending the unamended claim. I say this because the fall was known about by the defendant at least in the context of the claim, since 2022 and the VAC dressing issue was the subject of an incident form in 2016 and picked up by the defendant's liability expert at p6 of his report in a section entitled "Datix report from BHSCT".

Bona fide amendments

[44] On balance I consider the amendments to be bona fide as they clarify the real issues in dispute and correct defects in the pleadings and errors by the plaintiff's legal team. This is a late application which has been subject to careful consideration and robust scrutiny due to its tardiness. It is of some small consolation it has been

brought prior to the meeting of the experts and before the case has been set down for trial. The plaintiff submits the consequence of the various allegations of negligence is that she is now wheelchair bound and this could have been avoided if proper steps were taken by the defendant. I consider the amendments do not materially alter the basis of the plaintiff's case concerning a course of treatment which has led to life-changing complications for her and thus it does not change the character of the action.

The justice of the case

[45] The same experts and witnesses required to deal with the substantive case can address the consent claim. The issues concerning the fall and the dressings may require new witnesses, but in order to deal with cases justly the court must give effect to the overriding objective when exercising its powers under the Rules. I cannot ignore the spectre of a separate set of proceedings if this application is refused. It is incumbent on the court to deal with as many issues as possible at the same time in order to save costs, proportionate to the complexity of the issues and the financial position of each party, ensuring that the dispute is dealt with expeditiously and fairly. In the context of this application, I consider all the issues can be dealt with in the current writ of summons which will best serve the overriding objective. This case has a unique factual matrix, and I consider the amendments should be permitted in the interests of justice and that the defendant can be adequately compensated in costs.

The court's decision

[46] For the reasons set out above, I grant the plaintiff's application and allow the amendment to the statement of claim pursuant to Order 20 rule 5. I now turn to consider the issue of costs.

Costs

[47] At para 11.23 of Valentine with regard to amendment applications such as this, it states "usually the applicant pays the cost of the application…and other costs properly incurred by the other party."

[48] The costs to be incurred by the defendant are as yet unquantifiable. The defendant already has an expert who it appears can adequately address the consent claim. Neither of the current experts on either side appear qualified to comment on the fall in hospital or the adequacy of VAC dressings. It would seem nursing expert input may be required on both sides to deal with this.

[49] The additional costs arising from the amendments which could be properly incurred by the defendant therefore relate to a nursing expert, if they choose to

obtain one, an addendum report from their current medical expert on the consent issue, and some expense arising from the additional time it will take the current medical experts to address further questions in an expert agenda.

[50] On the consent point, I consider the additional costs modest and relate to issues which arise from the same facts and could well have cropped up at any point between now and trial. I would be surprised if the experts had not turned their minds to address such a fundamental issue in this case even if not prompted by the lawyers. I do not consider these costs to be recoverable in the context of this application.

[51] I observe that had the plaintiff issued a fresh writ to plead the additional allegations regarding the fall in hospital and the wound dressings, the defendant would be facing the same potential cost burden of a nursing report in any event. It is not irrelevant in the exercising of this court's discretion that the two medical experts engaged by either party have already criticised the defendant in relation to these issues, concluding they caused harm to the plaintiff. This included a serious fracture arising from the fall in hospital requiring surgical repair, and inappropriate wound dressings which caused pain and discomfort. On balance I consider the justice of the case to require that the costs order should solely relate to dealing with this application.

Conclusion

[52] I grant the plaintiff's application pursuant to Order 20 rule 5, but award costs of the application to the defendant, taxed in default of agreement and certify for counsel.