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| <b>Neutral Citation No: [2026] NIMaster 15</b>                                                 | <b>Ref: 2026NIMaster15</b>                 |
| <i>Judgment: approved by the court for handing down<br/>(subject to editorial corrections)</i> | <b>ICOS Nos: 22/078032 &amp; 22/078037</b> |
|                                                                                                | <b>Delivered: 14/10/2026</b>               |

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**KING'S BENCH DIVISION**

**Between:**

**SIOBHAN GRAHAM  
&  
BRENDAN GRAHAM**

**Plaintiffs**

**-and-**

**BELFAST HEALTH AND SOCIAL CARE TRUST**

**Defendant**

Mr Ronan Lavery KC (instructed by O'Reilly Stewart) for the Plaintiffs  
Mr Jonathan Park (instructed by BSO Legal Services) for the Defendant

**Master Harvey**

***Introduction***

[1] These are two related applications to amend the plaintiff's pleadings. The applications arise from the same circumstances and seek materially identical amendments. It is therefore convenient to determine them together. While they are brought under Order 20 rule 1 of the Rules of the Court of Judicature (Northern Ireland) 1980 ("the Rules"), the correct provision is pursuant to Order 20 rule 5 and I grant leave to amend the summons accordingly.

[2] The applications were listed for hearing on 21 September 2026 with pre-hearing directions issued on 5 June 2026. This included the filing of affidavit evidence and electronic hearing bundles. The directions were not complied with. Instead, the relevant material contained in two electronic bundles was lodged by the plaintiff's solicitor approximately 40 minutes before the hearing. Rather than adjourn the applications, with the attendant delay and costs consequences, I determined that they should proceed, heard oral submissions from counsel and reserved my decision to permit proper consideration of the late material. The

decision to proceed should not be taken as diminishing the importance of compliance with court directions. It represented an exercise of case management in the particular circumstances of these applications.

### ***Background***

[3] I do not propose to rehearse the tragic underlying circumstances which give rise to these claims as they have been set out in previous applications before the court. The daughter of the plaintiffs, Orlaith Quinn, died on 11 October 2018 while a patient in the Royal Jubilee Maternity Hospital. The defendant admits in each action that her death was caused by its negligence.

[4] Each plaintiff claims damages for psychiatric injury said to have resulted from those events. The defendant disputes that either plaintiff is entitled to recover such damages, contending that neither satisfies the requirements for recovery as a secondary victim. The defendant relies in that regard upon *Paul & Ors v Wolverhampton HA* [2024] UKSC 1. That issue is not, however, the immediate question before me.

### ***Procedural history***

[5] The proceedings were commenced by writs issued on 7 September 2022. Statements of claim were served on 5 October 2023 and defences on 13 November 2023. Significantly, for the present applications, the existing statements of claim already allege breach of Article 2 of the European Convention on Human Rights. The defendant's pleaded response expressly denies the Article 2 claim.

[6] The decision of this court on 16 January 2025 in a separate interlocutory application in these cases (*Quinn, Graham and Graham v BHSCT* [2025] NIMaster 1) observed at paragraph 5 that the parental claims were:

“... grounded solely on negligence, not breach of statutory duty. The statements of claim in their cases, however, include particulars relating to a breach of the European Convention on Human Rights (“ECHR”) but no application has ever been brought pursuant to Order 20 Rule 5 to amend the writ of summons to ground such a claim.”

[7] Subsequent to this judgment, the plaintiff sought the defendant's consent to amendment of the pleadings by correspondence dated 25 March 2025, but this was refused by the defendant on 25 April 2025. The plaintiffs now seek leave to amend their writs and statements of claim by applications dated 8 October 2025. The proposed writs expressly plead breach of statutory duty arising from Articles 4, 7 and 12 of the Mental Health (Northern Ireland) Order 1986 and claims under Articles 2 and 8 of the Convention pursuant to the Human Rights Act 1998 (“HRA”). In substance, therefore, Article 2 is not being raised for the first time. The proposed amendments would place it on the writs, add the asserted statutory breaches and introduce Article 8.

### *The issue to be determined*

[8] The immediate issue is a procedural one as to whether, in the circumstances of these proceedings, the plaintiffs should be permitted to amend their pleadings in the terms proposed. That question requires particular consideration of what is genuinely new in the proposed amendments, the merits of the claim, the limitation issue and whether those questions should be determined finally on an application to amend or left for determination on properly pleaded cases and evidence.

### *Legal principles*

[9] The court's discretion is a wide one, the guiding principle being what is just in all the circumstances. Where an amendment seeks to introduce a new cause of action which would otherwise be statute barred, Order 20 rule 5 permits the court to allow the amendment where the new cause of action arises out of the same or substantially the same facts as a cause of action in respect of which relief has already been claimed.

[10] The court is entitled to have regard to the merits of the proposed claim and may refuse leave where the claim is unarguable or clearly has no real prospect of success (*The Front Door (UK) Ltd (t/a Richard Reid Associates) v The Lower Mill Estate Ltd* [2021] EWHC 2324).

[11] 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.”

[12] A party can “make a change of substance, however major” (see *BJAC Valentine*, Civil Proceedings the Supreme Court (1997) p137 para 11.18). At para 11.20, Mr Valentine 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.”

### *The plaintiffs' submissions*

[13] The plaintiffs submit that the proposed amendments concern the same treatment, the same alleged acts and omissions and the same death which have formed the subject matter of the proceedings from their inception. Their case is that the amendments do not introduce a different factual controversy. They also emphasise that breach of the Convention is not altogether new. Article 2 is already expressly pleaded in each statement of claim. Indeed, the defendant has already

joined issue with that allegation in its defences. The plaintiffs characterise the proposed amendment to the writs, in that respect, as regularising the existing position.

[14] The plaintiffs place some reliance upon the related proceedings brought by Mr Ciaran Quinn, the deceased's widower, including in his capacity as administrator of the deceased's estate. The parties indicated that has now been identified as the lead case and is listed for hearing in January 2027. They submit that the same allegations arise in those proceedings and that the defendant is therefore already required to address substantially the same subject matter. On the issue of the merits of these amended claims, the plaintiffs assert they are unlikely to trouble the court as they will be decided at the hearing of the lead case.

[15] As to limitation, the plaintiffs expressly concede that, if amendment is allowed, the defendant should be entitled to plead limitation. The plaintiffs submit that the appropriate course is therefore to permit the amendments without determining the limitation defence at this interlocutory stage. If necessary, the question whether time should be extended under section 7(5) HRA can then be determined at trial, allowing the court to assess all the circumstances and any prejudice to the respective parties. They further maintain that the defendant has suffered no material prejudice from the proposed amendments.

#### *The defendant's submissions*

[16] The defendant's principal argument is limitation. The cause of action dates back to October 2018, with the writs having been issued in September 2022. It submits that the HRA claims are subject to a one year limitation period pursuant to section 7(5) HRA and that this period had already expired before the writs were issued. The defendant further relies upon Article 73 of the Limitation (Northern Ireland) Order 1989 ("the 1989 Order"). It submits that a new claim made in an existing action is treated as a separate action commenced on the date of the original proceedings. These amendments cannot therefore be rescued by treating them as relating back to the commencement of the proceedings which the defendant asserts were already out of time when issued. It also submits that no sufficient basis has been advanced for exercising the statutory discretion to extend time and that the proposed Convention claims have no obvious merit.

[17] A standstill agreement between the parties dated 16 September 2021 paused limitation for a period to facilitate the parties dealing with the inquest into Orlaith Quinn's death. The agreement expressly only referred to a "personal injury claim" for "nervous shock" and did not appear to envisage a HRA claim. On the defendant's case the HRA claims were already well outside the primary one year limitation period by the time the standstill agreement was concluded and even more so when the writs were issued. The defendant submits that Article 50 of the 1989 Order provides no applicable means of extension for this aspect of the claims. Further, it argues the material grounding these applications does not provide a cogent basis upon which a court could exercise its discretion to extend the one year limitation period.

[18] Finally, the defendant raises the merits of the claim. It distinguishes *Rabone v Pennine Care Trust* [2012] UKSC 2 and submits that there is nothing in the present factual circumstances demonstrating how the plaintiffs' own Convention rights are engaged. It accordingly submits that the proposed claims are both substantially out of time and without obvious merit and that amendment should be refused.

### ***Consideration***

[19] There are three interrelated issues. Firstly, whether in the interests of justice the pleadings may be amended having regard to the wider circumstances including fairness, delay and prejudice. Secondly, whether any newly pleaded cause of action is statute barred and if so, do they arise from the same or substantially the same facts and thirdly whether that cause of action has sufficient merit.

[20] I also consider it important to identify precisely what is being amended. The defendant's submissions understandably describe the application as seeking to add Human Rights claims. That description requires some qualification. Article 2 is already pleaded in both statements of claim and has already been answered in the defences. In both cases, the defendant denies that it acted incompatibly with the deceased's human rights contrary to section 6(1) HRA and denies, alternatively, that the circumstances would justify a separate award of damages.

[21] The amendment must therefore be considered according to its constituent parts. Insofar as Article 2 is concerned, the amendment to the writ principally brings the originating process into line with a cause of action already contained in the statement of claim and already traversed by the defence. Different considerations potentially arise in relation to Article 8 and the alleged breaches of the Mental Health (Northern Ireland) Order 1986, which are additional matters sought to be introduced expressly by amendment.

[22] The defendant raises a substantial limitation issue. Where a proposed amendment introduces a new cause of action after the expiry of an applicable limitation period, the requirements of Order 20 rule 5 must first be satisfied. In the present case that requires consideration of whether the new causes of action arise out of the same or substantially the same facts as causes of action in respect of which relief has already been claimed.

[23] The proposed claims arise from the assessment, treatment and care of the deceased immediately before her death, which already form the factual basis of these proceedings. The defendant has admitted that the death was caused by its negligence and an Article 2 claim is already contained in the statements of claim and traversed in the defences. I am therefore satisfied, for the purpose of Order 20 rule 5, that the proposed claims arise out of the same or substantially the same facts as the existing claims.

[24] That conclusion does not determine the defendant's limitation defence. Insofar as the proposed claims are brought under the HRA, section 7(5) provides for the applicable limitation period and confers a discretion to allow proceedings within such longer period as the court considers equitable having regard to all the

circumstances. The plaintiffs expressly accept that limitation may be pleaded. I do not consider it necessary or appropriate on these applications to determine whether any extension under section 7(5) should ultimately be granted. That question should remain for determination upon the properly pleaded cases and the evidence relevant to the exercise of that discretion.

[25] I further do not consider the defendant's reliance upon the substantive merits of the Convention claims sufficient, at this stage, to justify refusing amendment. The court must be careful not to transform an interlocutory amendment application into the final trial of causes of action which, if otherwise properly capable of amendment, remain contested, principally in this case, as to law rather than fact. That does not mean that the plaintiffs' claims will succeed. It means only that their ultimate merits should not be determined merely by permitting or refusing the pleading amendment.

[26] There is a further factor in that the proposed statutory and Convention issues overlap with issues which the plaintiffs say arise in the related proceedings brought by Mr. Quinn. I do not regard that circumstance as determinative. Nor does the presence of an issue in related proceedings establish its validity in these proceedings. It does, however, provide some context when considering the plaintiffs' contention that the amendments do not introduce a wholly unrelated factual issue. I pause to observe that a pragmatic approach may have been to hold these applications in abeyance pending the outcome of the related case which the parties indicated is listed for hearing in less than four months. Nevertheless, the court must determine the applications before it.

[27] The court has wide discretion in applications such as this. This includes giving effect to the overriding objective to do justice to the case taking into account a range of factors. This can include fairness, delay and prejudice. It is regrettable there is no explanation in the affidavits grounding the applications as to why the matters now requiring amendment to the pleadings were not included in the original writs of summons. This is particularly difficult to explain given they are set out in the writ in the related case of Mr. Quinn. At hearing the plaintiff's solicitor sought to argue that the reason for this was that they were awaiting the outworking of the Supreme Court decision in *Paul* and it was not until 2024 that the issues crystallised. I am unable to reconcile that explanation with the fact that the statements of claim served in October 2023 already included reference to a human rights claim.

[28] There was a period of significant delay between the court first raising the gaps in the plaintiff's pleadings at a related interlocutory hearing on 16 December 2024 and the amendment applications which were eventually brought 10 months later. Nonetheless, as this court recently observed, delay, even where attributable to oversight or even negligence, does not of itself justify refusing a bona fide amendment necessary in the interests of justice, absent prejudice which cannot be compensated in costs (*Robb v Belfast Health and Social Care Trust* [2026] NIMaster 6 at paragraph 40).

[29] On balance, I am satisfied that these are bona fide amendments which correct a defect in the pleadings and clarify the real issues in dispute. The delay, the deficiencies in the applications and the procedural history are matters which, in the circumstances of these cases, are more appropriately reflected in costs arising from this application, than by refusing leave to amend. The defendant is not completely denied a limitation defence and can challenge the merits of the amended claims. The material before me does not suggest that the amendments will require additional witnesses or materially prolong any trial. The issues raised appear to be principally matters of legal argument rather than additional factual controversy. The related action may also materially affect the future course of these proceedings. The defendant has already admitted negligence. According to the principles set out in *Loughran*, I do not consider that the amendments cause the defendant substantive prejudice which cannot be compensated in costs.

[30] In my judgment, the amendments should be permitted. This should not be understood as expressing any view that an extension under section 7(5) HRA ought to be granted, that either plaintiff satisfies the statutory requirements for an award under the HRA, or that the alleged breaches of the Mental Health Order give rise to an actionable claim.

### ***Conclusion***

[31] I therefore grant leave in both actions to amend the writs and statements of claim in the terms proposed, subject to the defendant being at liberty to amend its defences. I award costs of the application to the defendant, taxed in default of agreement and certify for counsel.