**Neutral Citation No. [2005] NIQB 45** | *Ref:* **HIGF5254**

*Judgment: approved by the Court for handing down* | *Delivered:* **6/5/05**

*(subject to editorial corrections)*

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

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**QUEEN'S BENCH DIVISION**

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**BETWEEN:**

**AC AND BC**

**PLAINTIFFS;**

**-AND-**

**THE BOARD OF TRUSTEES CABIN HILL SCHOOL, SIR PHILIP FOREMAN, A J BOYD, SIR ANTHONY CAMPBELL, C R N HANNIGAN, MRS E LINDSAY, J M R KNOX, H R MCILVEEN, J NICHOLSON, N W SHAW, W B W TURTLE, K G WHEELER, REV PROFESSOR R F G HOLMES**

**DEFENDANTS.**

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**HIGGINS J**

[1] On 14 September 2001 the plaintiffs issued a writ against the defendants claiming -

> "damages for personal injury loss and damages for personal injury loss and damage (sic) sustained by them and each of them by reason of the Breach of Contract and in and about the negligence of the Defendants, their servants or agents in and about the care, management and control of the Plaintiff's son P in and about 1992 wherein he was sexually assaulted whilst a pupil at the said school by a servant or agent of the Defendant's and in and about their breach of duty".

[2] The second and remaining defendants were, at the material time, governors of Cabin Hill School. By a Statement of Claim delivered on 22 November 2002 the personal injury and loss alleged to have been sustained by each of the plaintiffs was stated to be –

> "Particulars of personal injury to AC (sic)
>
> Development of post traumatic stress disorder. Specialist counselling. Nervous shock. Treatment greatly interfered with. Chronic impairment of sleep and hyper vigilance. Unremitting stress.
>
> Particulars of personal injury to BC
>
> Great interference with life. Reduction in self esteem. diminution of quality of life. Continuing stress. Anxiety and mental exhaustion. Development of extreme anaemia requiring operation intervention. Emotional accruement and impairment of sleep.
> Special loss
>
> School fees for P - £2000."

[3] On 27 September 2004 the defendants issued a summons pursuant to Order 33 Rule 3 that the following matters be tried by way of preliminary issues –

1. That the plaintiff's (sic) claim be struck out pursuant to Order 19 Rule 1 (sic) (a), (b) and (d) of the Rules of the Supreme Court (NI) 1980, ( this should be pursuant to Order 18 Rule 19 ) and

2. That the plaintiff's claim as far as it relates to breach of contract and misrepresentation is barred by the provisions of the Limitation (NI) Order 1989.

[4] On 1 October 2004 Master Wilson made an order that the following questions be tried by a Judge, as preliminary issues herein –

1. Do the plaintiffs have a valid claim in law;

2. if not, does the Limitation (NI) Order 1989 bar the plaintiff's proceedings as pleaded in contract and misinterpretation(sic) ;

[5] The plaintiffs are the parents of P who was born on 31 August 1982. In August 1992 the plaintiffs placed P at Cabin Hill School as a pupil and a boarder, where he remained as a boarder until December 1992. During this

period it is alleged that he was subjected to various sexual assaults by a boarding prefect, another boy three years older than himself. The alleged assaults were not reported by P at the time. It is alleged that subsequent to these alleged assaults and as a result of them, P suffered a serious psychiatric illness and experienced a very disturbed childhood and adolescence. These allegations are the subject of separate proceedings against the same defendants.

[6] It is alleged that on 21 May 1999 P told his parents about his allegations of sexual assaults while he was a boarding pupil at Cabin Hill School. It is alleged that the plaintiffs developed significant psychiatric illness due to the stress of dealing with their son's dysfunctional behaviour and psychiatric illness, from learning from their son about his allegations and from their decision to place him in the school in which the abuse is alleged to have occurred. Allegations are made also relating to how those with responsibility for the school in 1992 and thereafter, dealt with the allegations of abuse and its effect on the plaintiffs. The plaintiffs allege negligence, breach of contract and misrepresentation by the defendants.

[7] It is contended on behalf of the defendants that, whatever be the alleged cause of action, the plaintiff's claim is for damages for personal injuries which fall within the category often referred to as 'nervous shock'. Mr Simpson QC who appeared on behalf of the defendants traced the development of 'nervous shock' by reference to several guideline cases, to which I will refer later in this judgment. Mr Simpson QC submitted that the plaintiffs are not primary victims but secondary victims. As such the scope of secondary victims to claim for 'nervous shock' is limited by policy, rather than strict legal principles. It was submitted that in order to succeed the plaintiffs had to establish three factual matters –

1. that their relationship with the primary victim was sufficiently close;

2. that the onset of injury was sufficiently proximate to the alleged incidents in both time and space; and

3. that either they saw or heard the incident in question or that they witnessed the immediate aftermath.

[8] It was submitted by Mr Simpson QC that the plaintiffs are unable to establish either 2 or 3 of the above. They did not suffer 'nervous shock' on seeing or hearing the alleged assaults or the immediate aftermath nor did they suffer injury sufficiently close to those events. The gap of six and a half years between the alleged events and the inception of injury was not sufficiently proximate. In any event it was submitted, claimants could not come forward many years after an incident and seek to claim damages for such injury.

[9] Mr Dermot Fee QC who appeared on behalf of the plaintiffs submitted that the plaintiffs are primary victims and not secondary victims and thus the strictures relied on by Mr Simpson QC did not apply. His primary argument for submitting that the plaintiffs are primary victims was that it was the plaintiffs who, by placing their son at Cabin Hill School, brought him into contact with his alleged abuser. Alternatively even if they were secondary victims, he submitted they should not be prevented from presenting their case in what is a developing area of the law. In addition Mr Fee QC argued that cases in England and Wales do not always provide binding authority as pleadings in that jurisdiction are much more detailed than their counterparts in this jurisdiction. This case was, he submitted, "fact-sensitive" and accordingly the court should allow the facts to be proved and then apply the law to those facts rather than seek to determine the issue on the limited nature of the pleadings. The plaintiffs' case involved more than the allegation that their son was abused, but also that the fact that he was abused and by whom, was concealed from them at the material time and that they sustained psychiatric injury arising from learning of and dealing with their son's psychiatric injury.

[10] The term 'nervous shock' has been applied to many circumstances in which it is alleged a plaintiff has suffered a psychiatric or mental reaction to a particular event or events. While the term may have been appropriate to the circumstances alleged in the early cases in this area, the increase in the occasions in which damages can be recovered for mental reaction to events, renders it no longer appropriate. The term psychiatric damage or psychiatric injury is more appropriate.

[11] Recovery of compensation for psychiatric injury has been a developing area of law throughout the last century. It can be traced through such authorities as Dulieu v White & Sons 1901 2 KB 669, Hambrook v Stokes Brothers 1925 1 KB 141, Hay or Bourhill v Young 1943 AC 92 to McLoughlin v O'Brian 1983 AC 410. In McLoughlin v O'Brien the plaintiff/appellant sought damages for psychiatric injury suffered following a road traffic accident in which her daughter was killed and her husband other children injured. The plaintiff was at home 2 miles away when she was learned of the accident. She went to the hospital where she was informed about her daughter and then saw her husband and other children injured. The trial judge held that the respondents owed no duty of care to the appellant because the possibility of her suffering such injury was not reasonably foreseeable. That judgment was upheld in the Court of Appeal on the grounds of the "floodgates" argument and public policy . The appellant's appeal to the House of Lords was allowed it being held that the injury suffered by the appellant was a reasonably foreseeable result of the injuries sustained by members of her family. Lord Wilberforce relying on Donoghue v Stevenson 1932 AC 562 and Lord Atkins' neighbour principle, stated at page 421 that the general rule is "that recoverable damages must be confined to those within sight and sound of an

event caused by negligence or, at least, to those in close, or very close, proximity to such a situation". He then gave four policy arguments why that general rule should not be extended and added this –

> "But, these discounts accepted, there remains, in my opinion, just because 'shock' in its nature is capable of affecting so wide a range of people, a real need for the law to place some limitation upon the extent of admissible claims. It is necessary to consider three elements inherent in any claim: the class of persons whose claims should be recognised; the proximity of such persons to the accident; and the means by which the shock is caused. As regards the class of persons, the possible range is between the closest of family ties - of parent and child, or husband and wife - and the ordinary bystander. Existing law recognises the claims of the first: it denies that of the second, either on the basis that such persons must be assumed to be possessed of fortitude sufficient to enable them to endure the calamities of modern life, or that defendants cannot be expected to compensate the world at large. In my opinion, these positions are justifiable, and since the present case falls within the first class, it is strictly unnecessary to say more. I think, however, that it should follow that other cases involving less close relationships must be very carefully scrutinised. I cannot say that they should never be admitted. The closer the tie (not merely in relationship, but in care) the greater the claim for consideration. The claim, in any case, has to be judged in the light of the other factors, such as proximity to the scene in time and place, and the nature of the accident.
>
> As regards proximity to the accident, it is obvious that this must be close in both time and space. It is, after all, the fact and consequence of the defendant's negligence that must be proved to have caused the "nervous shock." Experience has shown that to insist on direct and immediate sight or hearing would be impractical and unjust and that under what may be called the "aftermath" doctrine one who, from close proximity, comes very soon upon the scene should not be excluded. In my opinion, the result in Benson v. Lee [1972] V.R. 879 was correct and indeed inescapable. It was based, soundly, upon

> direct perception of some of the events which go to make up the accident as an entire event, and this includes ... the immediate aftermath ..." (p. 880.)"

Later on page 422 he added -

> "Finally, and by way of reinforcement of "aftermath" cases, I would accept, by analogy with "rescue" situations, that a person of whom it could be said that one could expect nothing else than that he or she would come immediately to the scene - normally a parent or a spouse - could be regarded as being within the scope of foresight and duty. Where there is not immediate presence, account must be taken of the possibility of alterations in the circumstances, for which the defendant should not be responsible.
>
> Subject only to these qualifications, I think that a strict test of proximity by sight or hearing should be applied by the courts.
>
> Lastly, as regards communication, there is no case in which the law has compensated shock brought about by communication by a third party. In Hambrook v Stokes Brothers [1925] 1 K.B. 141, indeed, it was said that liability would not arise in such a case and this is surely right. It was so decided in Abramzik v Brenner (1967) 65 D.L.R. (2d) 651. The shock must come through sight or hearing of the event or of its immediate aftermath. Whether some equivalent of sight or hearing, e.g. through simultaneous television, would suffice may have to be considered.
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> My Lords, I believe that these indications, imperfectly sketched, and certainly to be applied with common sense to individual situations in their entirety, represent either the existing law, or the existing law with only such circumstantial extension as the common law process may legitimately make. They do not introduce a new principle. Nor do I see any reason why the law should retreat behind the lines already drawn. I find on this appeal that the appellant's case falls within the boundaries of the law so drawn. I would allow her appeal."

[12] In McLoughlin v O'Brien, Lord Bridge found the correct test to be reasonable foreseeability of psychiatric illness affecting a plaintiff as a result

of the road accident. Lord Scarman agreed with Lord Bridge. Lord Edmund-Davies and Lord Russell of Killowen regarded the policy reasons of the Court of Appeal to be unsound. Otherwise they agreed with Lord Wilberforce.

[13] The next leading case was Alcock v Chief Constable of South Yorkshire Police 1992 1 AC 310 in which the issue was whether those who had witnessed the disaster at Sheffield Wednesday Football Club, in which 92 spectators had died, could claim compensation for psychiatric injury resulting from what they had seen and heard. Some of the plaintiffs were present in the ground and others watched the events live on television and some were relatives of the deceased or injured. Thus the plaintiffs sought to extend the boundaries of this cause of action by removing any restriction on the category of those who might sue, by extending the means by which the injury is caused, to include live television broadcast and to modify the requirement that the aftermath be immediate. The House of Lords held that in order to establish a claim in respect of psychiatric injury resulting from shock it was necessary to show not only that such injury was reasonably foreseeable but that the relationship between the plaintiff and the defendant was sufficiently proximate. That relationship was limited by reference to ties of love and affection and the plaintiff also had to show propinquity in time and space to the accident or its immediate aftermath. In dismissing the appeal their Lordships held that in the cases of those plaintiffs who had been present the mere fact of the relationship shown was insufficient to give rise to a duty of care. Those viewing the incident on television could not be said to be in the same position as those within sight and hearing of the evidence or its immediate aftermath. Four members of the House gave opinions in which the views of Lord Wilberforce in McLoughlin v O'Brian were carefully considered and approved. Lord Oliver in his opinion at page 406 ff divided cases of liability for psychiatric injury into two broad categories. The first category included those plaintiffs who were involved either mediately or immediately as participants and whom he referred to as primary victims and those in which the plaintiff was no more than the passive witness of injury caused to others, whom he described as secondary victims. Adopting this approach Mr Simpson QC described both plaintiffs as secondary victims. It should be remembered that Lord Oliver went on to say at page 411 that –

> "that description must not be permitted to obscure the absolute essentiality of establishing a duty owed by the defendant directly to him – a duty which depends not only upon the reasonable foreseeability of damage of the type which has in fact occurred to the particular plaintiff but also upon the proximity or directness of the relationship between the plaintiff and the defendant".

[14] Thus the state of the law following this decision was that a person who suffered a reasonably foreseeable psychiatric injury as a result of another person's death or injury, could only recover compensation if he could establish a) that he had a close tie of love and affection with the deceased or injured; b) that he was close to the incident in time and space and c) that he directly perceived the incident that led to the death or injury of the another person, rather than hearing of it from a third person.

[15] The next case was Page v Smith 1996 AC 155. The plaintiff was involved in a road traffic accident in which he suffered no physical injury. However he suffered a recurrence of chronic fatigue symptom. It was held that as he was within the range of potential physical injury he was a primary victim and could recover compensation for psychiatric injury even though he suffered no physical injury.

[16] Meanwhile other cases arising from the Hillsborough disaster came before the courts, principally claims by those, mostly police officers, who were involved in dealing with the dead and injured during or after the event. One case entitled White v Chief Constable of South Yorkshire 1999 2 AC 455 was considered in the House of Lords. Lord Steyn in an opinion commencing at p 491 reviewed the state of the law as it was in 1999. He observed that McLoughlin v O'Brian was a decision reached on the basis that few cases of psychiatric injury would arise; in other words that the floodgates would not open. Under the heading "Thus far and no further" he stated that the law on "the recovery of compensation for pure psychiatric harm is a patchwork quilt of distinctions which are difficult to justify" and that any reform should be left to Parliament. In the same case Lord Hoffman said at p 504 that it was "too late to go back on the control mechanisms as stated in the Alcock case".

[17] The issue of the limits imposed on claims for psychiatric damage came before the House of Lords again in W and others v Essex County Council and Another 2001 2 AC 592, in a context with some similarities with the present case. The headnote sets out the alleged facts, the history of the case and the decision of the House of Lords. It states –

> "The parents, the first and second plaintiffs, signed an agreement with the council, the first defendant, to become foster parents. After receiving assurances that no sexual abuser would be placed with them and following a false representation by the council's social worker, the second defendant, that G, a 15-year-old boy, was not a known sexual abuser they agreed to foster him. A month after the placement the parents discovered that G had, during that period, sexually abused their children, the third to sixth plaintiffs, then aged between 8 and 12 years. Proceedings were

commenced by all the plaintiffs against the defendants claiming, inter alia, damages in negligence. The parents alleged that as a result of the abuse of their children they had suffered psychiatric illnesses. The judge struck out all the claims except the children's claim in negligence and the Court of Appeal upheld that decision.

On the parents' appeal against the striking out of their claim in negligence.

Held, allowing the appeal, that on the facts alleged it was arguable that there was a duty of care owed to the parents and a breach of that duty by the defendants; that whether or not the claim was justiciable depended on an investigation of the full facts; that it could not be said that the psychiatric injury the parents claimed was outside the range of psychiatric injury which the law recognised, nor could it be said that a person of reasonable fortitude would be bound to take in his stride being told of the sexual abuse of his young children when he had, albeit innocently, brought together the abuser and abused; that the categorisation of those claiming to be included as primary or secondary victims of negligence was still developing; that it was not conclusively shown that the parents were prevented from being primary victims if the psychiatric injury they suffered flowed from a feeling that they had brought the abuser and the abused together or a feeling of responsibility that they had not detected earlier what was happening; that although there had to be some temporal and spatial limitation on the persons who could claim to be secondary victims the concept of 'the immediate aftermath' of an incident had to be assessed on the particular facts of a situation and it had not been established that it was necessary for the parents to have come across the abuser or the abused 'immediately' after the sexual incident had terminated; and that, accordingly, the parents' claim could not be said to be so certainly or clearly bad that they should be prevented from pursuing it to trial (post, pp 598F-H, 600C-D).

Alcock v Chief Constable of South Yorkshire Police [1992] 1 AC 310 HL(E) and dicta of Lord Steyn in

Frost v Chief Constable of South Yorkshire Police [1999] 2 AC 455, 493, 494 HL(E) applied."

[18] The first observation to make about this case is that it was, like the present case, an application to strike out a claim before trial. For such an application to succeed the party making the application must show that the statement of claim discloses no reasonable cause of action and for that inquiry the averments contained in the statement of claim must be taken as true, though some of them may be denied in the defence served by the defendants. Lord Slynn gave the only opinion with which the other members of the court, who included Lord Steyn, agreed. At page 598 Lord Slynn said –

> "Although the power to strike out a claim which really has no chance of succeeding in law is a very valuable one to protect defendants and to prevent the court's time being used (to the detriment of other cases waiting to be heard) in the investigation of the allegations, it has to be exercised cautiously as has so often been said."

[19] He then referred to X(Minors) v Bedfordshire County C 1995 2 AC 633 in which Lord Browne-Wilkinson had observed at page 740 -

> "Where the law is not settled but is in a state of development (as in the present cases) it is normally inappropriate to decide novel questions on hypothetical facts… if, on the facts alleged in the statement of claim, it is not possible to give a certain answer whether in law the claim is maintainable then it is not appropriate to strike out the claim at a preliminary stage but the matter must go to trial when the relevant facts will be discovered."

[20] Lord Slynn went on to refer to Barrett v Enfield London Borough Council [2001] 2 AC 550 in which Lord Browne-Wilkinson repeated what he had said in the X (Minors) case and went on to add that the development of the law should be on the basis of actual facts found at trial and "not on hypothetical facts assumed (possibly wrongly) to be true for the purposes of the strike out" ( page 557) .

[21] Counsel on behalf of the County Council argued that the Council owed no duty of care to avoid causing psychiatric damage to the parents. Lord Slynn dealt with that by saying at page 598 -

> "It seems to me that it cannot be said here that the claim that there was a duty of care owed to the

> parents and a breach of that duty by the defendants is unarguable, that it is clear and obvious that it cannot succeed. On the contrary whether it is right or wrong on the facts found at the end of the day, it is on the facts alleged plainly a claim which is arguable. In their case the parents made it clear that they were anxious not to put their children at risk by having a known sex abuser in their home. The council and the social worker knew this and also knew that the boy placed had already committed an act or acts of sex abuse. The risk was obvious and the abuse happened. Whether the nature of the council's task is such that the court should not recognise an actionable duty of care, in other words that the claim is not justiciable, and whether there was a breach of the duty depend, in the first place, on an investigation of the full facts known to, and the factors influencing the decision of, the defendants."

[22] It was argued on behalf of the Council that the parents were secondary victims in the same way as the police officers in White v Chief Constable of South Yorkshire, supra. They were not within the range of foreseeable physical injury and, as their claim related to psychiatric injury, they were clearly secondary victims. While they could satisfy the first test in Alcock, supra, namely a close tie of love and affection, they could not establish propinquity in time and space to the incidents of sexual abuse or their aftermath. Furthermore they did not have direct visual or oral perception of the incidents and only learnt of them some time later following which they suffered the alleged psychiatric harm.

[23] Lord Slynn observed that there have been important developments in cases dealing with liability for psychiatric injury, but recognised the limitations imposed upon these claims in the cases to which I have referred. At the same time he acknowledged the need for flexibility in developing areas of the law and the need for a cautious and incremental approach. He described the proper approach to strike out applications in such cases in these terms –

> "On a strike out application it is not necessary to decide whether the parents' claim must or should succeed if the facts they allege are proved. On the contrary, it would be wrong to express any view on that matter. The question is whether if the facts are proved they must fail. It is not enough to recognise, as I do recognise at this stage, that the parents may have difficulties in establishing their claim."

[24] Lord Slynn found that the parents could not satisfy the criteria as 'primary' or 'secondary' victims. However at page 601 he stated that "the categorisation of those claiming to be included as primary or secondary victims is … not finally closed. It is a concept still to be developed in different factual situations." He then observed that none of the cases to which the House had been referred prevented the parents from being primary victims if the psychiatric injury suffered by them flowed from a feeling that they brought the abuser and the abused together or that they had failed to detect what was happening to their children. In relation to secondary victims he accepted that there had to be some temporal or spatial limitation but observed that "the concept of the 'the immediate aftermath' of the incident has to be assessed in the particular factual situation." He then stated at page 601 –

> "I am not persuaded that in a situation like the present the parents must come across the abuser or the abused 'immediately' after the sexual incident has terminated. All the incidents here happened in the period of four weeks before the parents learned of them. It might well be that if the matter were investigated in depth a judge would think that the temporal and spatial limitations were not satisfied. On the other hand he might find that the flexibility to which Lord Scarman referred indicated that they were."

[25] Lord Slynn then concluded that the parent's claim could not be said to be so certainly or clearly bad that they should be barred from pursuing it to trial. The other four members of the House of Lords agreed with his opinion. This decision is very much in line with Barrett v Enfield Borough Council 2001 2 AC 550 in which it was held that in all but the clearest cases the court should not strike out claims based on assumed or hypothetical facts. It is also consistent with maintaining a claimant's rights under Article 6 of the ECHR as provided for in Osman v UK. While W v Essex County Council creates no major change in the law relating to claims for psychiatric injury, it underlines the importance of a cautious approach to applications to strike out in all but the most clear-cut cases. W v Essex County Council was followed in Harrhy v Thames Train Ltd. 2003 EWHC 2286 in which an application to strike out the plaintiffs claim for psychiatric injury arising from viewing corpses in the burnt out carriage of a train was dismissed.

[26] Whether a person who sustains psychiatric injury in this class of case is entitled to recover compensation depends on the existence of a duty of care owed to them by the defendant. The importance of such duty of care was emphasised by Lord Oliver of Aylmerton in Alcock's case when at page 410E he stated –

> "The failure of the law in general to compensate for injuries sustained by persons unconnected with the event precipitated by a defendant's negligence must necessarily import the lack of any legal duty owed by the defendant to such persons. That cannot, I think, be attributable to some arbitrary but unenunciated rule of 'policy' which draws a line as the outer boundary of the area of duty. Nor can it rationally be made to rest upon such injury being without the area of reasonable foreseeability. It must, as it seems to me, be attributable simply to the fact that such persons are not, in contemplation of law, in a relationship of sufficient proximity to or directness with the tortfeasor as to give rise to a duty of care, though no doubt 'policy', if that is the right word, or perhaps more properly, the impracticability or unreasonableness of entertaining claims to the ultimate limits of the consequences of human activity, necessarily plays a part in the court's perception of what is sufficiently proximate."

Once P attended Cabin Hill, the school authorities acted in loco parentis. It does not appear to be in dispute, in the instant application, that the defendants owed the plaintiffs a duty of care in 1992 and 1993 in relation so their son's welfare. While the plaintiffs did not become aware of their son's allegations until 1998, there are allegations relating to events in 1992/3 including the alleged action or inaction of the defendants at that time. It is alleged that if the plaintiffs had been made aware of the alleged abuse around the time it is alleged to have taken place, then steps might have been taken to prevent psychiatric injury to their son and its alleged consequences for these plaintiffs. Only a full investigation of the facts known to the defendants at that time and any action or inaction on their part, will determine whether or not the defendants are in breach of any duty owed to the plaintiffs. Intermingled with the plaintiff's claim are the alleged psychiatric illness to their son and its alleged effects on him and them, as well as their feelings and sense of responsibility for sending their son to Cabin Hill School. It is not possible to determine at this stage whether the plaintiffs are primary victims or secondary victims or, perhaps both in respect of separate elements of their claim. On the alleged facts as presently known, the question for the court is whether the plaintiffs' claim is bound to fail. I cannot say on those alleged facts that it certainly will. This is a developing area of the law and I recognise that it is undesirable to strike out cases before trial on the basis of assumed but not proved "facts". It is not certainly or so clearly bad that it should be struck out at this stage. Therefore I have come to the conclusion that the plaintiffs should be permitted to take their case to trial. But I should add this. It should be recognised that there are difficulties in the case made on behalf of

the plaintiffs. Like Lord Slynn in W v Essex County Council supra, I stress that this judgment provides no indication to the plaintiffs of a favourable outcome of these proceedings. However, whatever those difficulties are or turn out to be, they cannot determine the present application to strike out.

[27] The original Notice of Motion sought orders pursuant to Order 33 Rule 3 of the Rules of the Supreme Court that two matters be tried by way of preliminary issue. The first issue was that the plaintiffs' claims be struck out pursuant to Order 19 Rule 1(a) (b) and (d). I answer that preliminary issue by concluding that the plaintiffs' claims should not be struck out on any of the grounds alleged under Rule 19 (1). This was the essence of the defendants' application to the court. The order made by the Master dated 1 October should be amended to reflect that. A preliminary issue whether the plaintiffs have a valid claim in law is inappropriate when the parties have available to them an application under Order 18 Rule 19. If the court was required to try as a preliminary issue the question whether the plaintiffs have a valid claim in law, that issue would be resolved by stating that the defendants have failed to show that the plaintiffs do not have a valid claim in law.

[28] The second issue raised was whether the proceedings in contract and misrepresentation are statute barred under the provisions of the Limitation (NI) Order 1989. The plaintiffs allege that they were not informed of their son's allegations until May/June 1998 and in those circumstances the proceedings are not statute-barred. The only other issue related to the claim for school fees which Mr Simpson conceded was arguable. Therefore I decline to halt the proceedings at this stage.