Neutral Citation : [2022] NIMaster 8

Ref:	**2022NIMaster8**

Judgment: approved by the Court for handing down
(subject to editorial corrections)

Delivered:	**25/11/22**

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

KING'S BENCH DIVISION

BETWEEN:

JODY NESBITT
and
DIANA NESBITT

Plaintiffs;

and

ROBIN SWANN

First Defendant

and
NAOMI LONG

Second Defendant

and
MIKE NESBITT

Third Defendant

and
JIM SHANNON

Fourth Defendant

Mr and Mrs Nesbitt appeared as Litigants in Person
Mr Fee represented the First and Second Defendants

Master Bell

Introduction

[1] The plaintiffs, Mr and Mrs Nesbitt, have commenced civil proceedings seeking £100 million in damages (together with a variety of other reliefs) against four prominent local politicians in respect of the implementation of the Coronavirus Regulations in Northern Ireland. The first defendant, Robin Swann, is an MLA and formerly the Health Minister in Northern Ireland. The second defendant, Naomi Long, is an MLA and formerly the Justice Minister in Northern Ireland. The third

defendant in this action, Mike Nesbitt, is an MLA in the Northern Ireland Assembly. The fourth defendant, Jim Shannon, is a Member of Parliament at Westminster. (In the pleadings, the order of the defendants differs from the order in which they appear on the writ. In this judgment I shall refer to the defendants according to the order in which they appear on the writ.)

[2] The plaintiffs act as personal litigants. The first and second defendants are represented by Mr Fee, instructed by the Departmental Solicitor's Office. I am grateful to the parties for their helpful written and oral submissions.

[3] The application before the court is an application by the first and second defendants, Robin Swann, and Naomi Long, (hereafter "the applicants") under Order 18 Rule 19 to strike out the action against them. The applicants submit that the plaintiffs' statement of claim discloses no reasonable cause of action, or is scandalous, frivolous or vexatious, or is otherwise an abuse of the process of the court.

[4] The original statement of claim is a brief document. It reads more like a covering letter. Read on its own, it would be difficult to understand what the plaintiffs' case was. When read with the plaintiffs' writ, their discovery document dated 30 June 2021 (though no application for discovery was ever made to the court), and their Affidavit of Truth (a ten-page document which the plaintiffs state will serve as the statement of claim), an outline of their case is as follows:

(i) The plaintiffs state that it is their belief that the defendants have made decisions without due care or attention to the facts. The defendants voted for measures which destroyed 67 million lives over the last 18 months and did not do any form of due diligence to validate this position. In the plaintiffs' view, this amounts to a tort against them.

(ii) When the Northern Ireland Executive passed lockdown measures and measures in relation to vaccination, masks and sanitisation, they did so without a proper scientific basis. Hence, they have done nothing to "justify the destruction of our lives".

(iii) The Northern Ireland Executive has failed to answer questions put to it by the plaintiffs.

(iv) The plaintiffs are the sole and absolute owners of themselves, their bodies and their estates and they renounce all presumptions of power, authority by any government agency over their rights, life, liberty, freedom or property. They have no desire to be the slave of any government agency.

(v) The plaintiffs are seeking remedies from the court for the removal of their rights and freedoms, and for the torts committed against them. The torts identified in their writ, which are alleged to have been perpetrated against

them, are Obstruction of Justice, Misconduct in Office, Malfeasance in Office, Misfeasance in Office, Abuse of Power, Trespass, and Colluding with the Police to Pervert the Course of Justice.

(vi) They now fear for their lives as they have been directly threatened and subjected to intimidation tactics by the PSNI. They have lodged copies of all their paperwork and video testimonies with various trusted bodies who have been granted power of attorney in the event of anything suspicious happening to them "such as, but not limited to, traffic accidents, car bombs, burglaries, home invasions, substance overdoses, suicides, muggings or similar."

(vii) The plaintiffs are witnesses to crimes in office committed by senior ranking members of the government.

[5] The plaintiffs then "resubmitted" their statement of claim on 31 October 2021. The new statement of claim acknowledges that errors were made in their original pleading and seeks to rectify this. This 48-page document is less an amended statement of claim and more an entirely new draft.

[6] The new statement of claim sets out 22 causes of action. I list these now, using the descriptions given to them by the plaintiffs:

(i) Breach of Fiduciary Duty
(ii) Conspiracy
(iii) Assumption of Duty
(iv) Criminal Coercion/Duress
(v) Conversion
(vi) Infliction of Emotional Distress
(vii) Malicious Prosecution/Trespass
(viii) Threat of Kidnap/Assault
(ix) Negligence
(x) Tort of Trespass
(xi) Wilful Neglect/Misconduct
(xii) Constructive Fraud
(xiii) Abuse of Process
(xiv) Breach of Implied Covenant of Good Faith
(xv) False Imprisonment/Duress
(xvi) Undue Influence
(xvii) Misfeasance in Office
(xviii) Tortious Interference
(xix) Misprison
(xx) Preventing the Course of Justice
(xxi) Discrimination
(xxii) Concealment of Private Data

[7] The plaintiffs also submit that the Coronavirus legislation promoted by the defendants is in direct contravention of multiple Articles of the European Convention on Human Rights and that the actions of the defendants fall within the Terrorism Act and hence they request that the court "commit the defendants for trial". At one stage in my deliberation I considered that the plaintiffs were simply being inexact in their language and were referring to the trial of their civil action. However further consideration appears to indicate that this is not what they seek. Page 22 of their statement of claim states that the defendants have committed "crimes against humanity" and that "the defendants should be arrested and tried."

[8] The plaintiffs outline their qualifiable losses due to the introduction of the Coronavirus Regulations by explaining that they had finance approved to build a hotel complex in Newry at a value of £20 million. They then lost the property known as Legacurry Mill valued at £2.5 million. They subsequently lost the property known as Gosford Castle valued at £0.5 million but which had a completed value of £8 million and also lost the property known as The Old Inn, Crawfordsburn, valued at £4 million. The future value of these projects, which would have been their children's inheritance, is, in their view, in the amount of over £100 million.

[9] As former ministers whose conduct in office is under attack, the applicants are represented by the Departmental Solicitor's Office and their legal bills are being paid by the taxpayer. However it is necessary at this stage to observe that the plaintiffs, because they purport to sue Robin Swann and Naomi Long in their private capacities, ask the court to reject any involvement by the Departmental Solicitor's Office on the basis that that Office is an "interloper" which has no standing. They therefore requested in their written submissions that the court remove Mr Fee and his instructing solicitor, Mr Wallace, from the hearing and from any further dealings with the action.

[10] I decline to do so for three reasons. Firstly, if a practising solicitor attends court and states that he appears on behalf of a particular defendant, it is not for the court to consider whether or not that solicitor should or should not represent that client. If the plaintiffs consider that the Departmental Solicitor's Office has acted improperly in accepting a client then they may institute judicial review proceedings, but it is not for this court to overturn a decision by that Office to represent a client. Secondly, the conduct of the applicants which is complained of is so obviously official conduct connected with their ministerial responsibilities that I would have been surprised if they had not been represented by the Departmental Solicitor's Office. Thirdly, the plaintiffs make a nonsensical argument. They claim to sue Robin Swann and Naomi Long in their private capacities. Such an action is of course possible in circumstances, for example, where a minister of the Executive happens to have driven his or her car negligently on a public road and thereby caused damage to another or where a minister has hired a builder to do work on his or her house and then breached the contract with the builder. Yet the plaintiffs' action is aimed squarely at the actions of the ministers in respect of their official duties as ministers

in the Northern Ireland Assembly. It is therefore clearly not in their private capacities that they are being sued.

DEFENDANTS' SUBMISSIONS

The Power to Strike Out

[11] The applicants referred me to Order 18 Rule 19 of the Rules of the Court of Judicature. They also referred me to the decision in *O'Dwyer v Chief Constable of the RUC* (1997) NI 403 as being the leading authority, and to decisions such as *Ewing v Times Newspapers Ltd* [2011] NIQB 63 and *Mitchell and Osula v McElreavy and Gateway Social Services* [2018] NIMaster 4 as examples of how the power has been exercised.

Judicial Review Proceedings

[12] In his initial position paper, Mr Fee asserted that the plaintiffs' claim was an abuse of process as clearly it ought to be taken, if anywhere, in the Judicial Review court where the plaintiffs would have had to satisfy the court at the leave stage that the case was arguable. Later, in his skeleton argument, Mr Fee submitted that in the case of *O'Reilly v Mackman* 1983 UKHL1, the House of Lords held that it was contrary to public policy to allow the claimant to challenge the lawfulness of public authorities for an alleged subsequent infringement of rights by way of ordinary action rather than by way of judicial review.

[13] Mr Fee also argued that, in addition to judicial review proceedings, the plaintiffs are of course at liberty to make a complaint about the actions of any MLA or Minister to the Assembly Standards Commissioner, pursuant to section 17 Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011, as amended by section 5 of the Functioning of Government (Miscellaneous Provisions) (Northern Ireland) Act 2021.

No Reasonable Cause of Action

[14] In terms of the applicants' general submissions on this point, Mr Fee argues that the particulars of all the purported causes of action are entirely confused and do not come close to satisfying the requirements for a pleading. In addition, Mr Fee made a number of points in relation to some of the specific causes of action.

Negligence

[15] The applicants submit that the plaintiffs have not disclosed the basis upon which they allege that they are owed any duty by these defendants, nor how such a duty has been breached. The section of the statement of claim headed "Negligence" makes various assertions but it is submitted that it does not particularise any claim of negligence either adequately or at all.

[16] In *Caparo Industries pIc v Dickman* [1990] 2 AC 605 Lord Bridge of Harwich held that:

> "What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of "proximity" or "neighbourhood" and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other."

It is submitted by the applicants that there is no such proximity or neighbourhood between the plaintiffs and the defendants in this action.

Misfeasance in Public Office

[17] Mr Fee submitted that in *Three Rivers District Council v Bank of England* [2001] UKHL 16, Lord Hutton summarised the elements of the tort of misfeasance in public office as follows:

> "My Lords, the essential ingredients of the tort of misfeasance in public office were stated in the judgment of the House following the previous hearing [2000] 2 WLR 1220 and I do not propose again to restate those elements with precision. But it is clear that a plaintiff must prove (1) an abuse of the powers given to a public officer; (2) that the abuse was constituted by a deliberate act or deliberate omission by the public officer with knowledge that the act or omission was wrongful or with recklessness as to whether or not the act or omission was wrongful; (3) that the public officer acted in bad faith; and (4) that the public officer knew that his act or omission would probably injure the plaintiff or was reckless as to the risk of injury to the plaintiff. In addition the plaintiff must prove that the act or omission caused him loss, but issues of causation do not arise at this stage."

[18] Furthermore, Mr Fee observed that, in the same decision, Lord Millett wrote:

> "[183] Having read and re-read the pleadings, I remain of opinion that they are demurrable and could be struck out on this ground. The rules which govern both pleading and proving a case of fraud are very strict. In *Jonesco v Beard* [1930] AC 298 Lord Buckmaster, with whom the other members of the House concurred, said, at p 300:

> "It has long been the settled practice of the court that the proper method of impeaching a completed judgment on the ground of fraud is by action in which, *as in any other action based on fraud, the particulars of the fraud must be exactly given and the allegation established by the strict proof such a charge requires"* (my emphasis).
>
> [184] It is well established that fraud or dishonesty (and the same must go for the present tort) must be distinctly alleged and as distinctly proved; that it must be sufficiently particularised; and that it is not sufficiently particularised if the facts pleaded are consistent with innocence: see *Kerr on Fraud and Mistake* 7th ed (1952), p 644; *Davy v Garrett* (1878) 7 Ch D 473, 489; *Bullivant v Attorney Genera; for Victoria* [1901] AC 196; *Armitage v Nurse* [1998] Ch 241, [1997] 2 All ER 705 at 256 of the former report. This means that a plaintiff who alleges dishonesty must plead the facts, matters and circumstances relied on to show that the defendant was dishonest and not merely negligent, and that facts, matters and circumstances which are consistent with negligence do not do so."

[19] Mr Fee argued that the plaintiffs have not pleaded any facts which give rise to a proper basis for an allegation of misfeasance in public office. In particular, he submitted that the plaintiffs have not properly asserted or claimed that the defendants have acted with malice.

Fraud

[20] The applicants submitted that the facts relied upon in a claim for fraud have not been adequately pleaded.

Scandalous, Frivolous or Vexatious

[21] The applicants referred me to the decision of Colton J in *Thompson v R P Crawford T/AS R P Crawford Solicitors* [2016] NIQB 83 where the court explained:

> "[14] Self-evidently the onus on the defendant to establish such grounds is a high one. The correct approach has been set out as long ago as 1892 in the Court of Appeal decision in *Attorney General for the Duke of Lancaster v London and North Western Railway Company* [1892] 3 Ch 274, 277; as follows:
>
> > "It appears to me that the object of the rule is to stop cases which ought not to be launched – cases which are obviously frivolous or vexatious, or obviously unsustainable." "

[22] The applicants make the point that, at most, the pleadings contain a series of complaints and observations about the political response to the Coronavirus pandemic and that the attempt to air those grievances through the present claim is an abuse of process.

[23] The applicants further argue that any case against them is hopelessly weak and has no prospect of success. They also submit that it is not sustainable to argue that any act or omission of the applicants has caused the plaintiffs loss or damage.

PLAINTIFFS' SUBMISSIONS

Adjournment Application

[24] In a document filed with the court prior to the hearing, the plaintiffs submitted that, if their case was not clear enough to understand, an unless order, with a one month timeframe, should be granted with clear instructions on what they needed "to fix".

[25] At the hearing itself, after over an hour of submissions, the plaintiffs made an oral application for an adjournment to redraft their statement of claim. When I asked the plaintiffs how long it had been apparent to them that their statement of claim was defective, the reply I received was "a couple of months".

[26] As indicated above, the history of these proceedings is that the plaintiffs have previously amended their statement of claim. To do so without the leave of the court is permitted under Order 20 Rule 3 of the Rules of the Court of Judicature. However, as "*The Supreme Court Practice*", (1999 edition) observes, any further or re-amendment after that can only be made with leave.

[27] In *Ketteman v Hansell Properties Ltd.* [1987] 1 AC 189, an action which concerned whether the third defendants should have been granted leave to amend their defence at trial, Lord Griffiths considered the power to amend pleadings:

> "Whether an amendment should be granted is a matter for the discretion of the trial judge and he should be guided in the exercise of the discretion by his assessment of where justice lies. Many and diverse factors will bear on the exercise of this discretion. I do not think it possible to enumerate them all or wise to attempt to do so. But justice cannot always be measured in terms of money and in my view a judge is entitled to weigh in the balance the strain the litigation imposes on litigants, particularly if they are personal litigants rather than business corporations, the anxieties occasioned by facing new issues, the raising of false hopes, and the legitimate expectation that the trial will determine the issues one way or the other."

Lord Griffiths also said:

> "Another factor that a judge must weigh in the balance is the pressure on the courts caused by the great increase in litigation and the consequent necessity that in the interests of the whole community, legal business should be conducted efficiently. We can no longer afford to show the same indulgence towards the negligent conduct of litigation as was perhaps possible in a more leisured age."

[28] The general guiding principle in relation to amendments is that amendments ought to be allowed "for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in the proceedings" (see Jenkins LJ in *G.L. Baker Ltd v Medway Building and Supplies Ltd* [1958] 1 WLR 1216).

[29] In my view there were factors present in these proceedings which led me to the conclusion that it would be inappropriate to grant leave for a further amendment of the statement of claim. In particular, those factors are whether the plaintiffs have articulated actual causes of action as defined by law and, in respect of those matters which are proper causes of action, whether there were any facts pleaded which show that the cause of action is reasonable.

[30] I declined to grant the application, not least because, as will be dealt with below, I had concluded that the incorrect type of proceedings had been issued. No amendment to the statement of claim in an ordinary civil action would "fix" the fact that any proceedings which were initiated ought to have been judicial review proceedings. Furthermore, given that many of the alleged causes of action were not as a matter of law stand-alone causes of action, and virtually no facts were pleaded to support the others, no adjournment was in my view justified. Hence, I refused the plaintiffs' application for an adjournment.

The Power to Strike Out

[31] On this particular point, as to the power of the court, there is no dispute between the plaintiffs and the applicants. The plaintiffs agreed that the articulation by Mr Fee of the court's power to strike out is a correct statement of the law.

Judicial Review Proceedings

[32] In their submissions on this issue, the plaintiffs failed to grapple with the core issue, namely that there is a Common Law rule that it is contrary to public policy and an abuse of the process of the court for a plaintiff complaining of a public authority's infringement of his public law rights to seek redress by ordinary civil action. Certainly it was clear that they are aware of the problem. The plaintiffs cited *R (Dolan and Others) v Secretary of State for Health and Social Care and Another* [2020]

EWCA Civ 1605, where the applicants challenged the Covid-19 regulations made in response to the pandemic and submitted that the regulations imposed sweeping restrictions on civil liberties which were unprecedented and were unlawful. The Court of Appeal in England and Wales dismissed the claim for judicial review in that case on the basis that the Secretary of State did have the power to make the regulations under challenge.

[33] The plaintiffs' written submissions stated that the defendants and the court would be aware of the decision in *Dolan* and that, to even suggest judicial review as more appropriate than an ordinary civil action, was:

> "a deliberate attempt to prejudice our case by herding us into a court that is doomed to fail."

[34] The plaintiffs also submitted that:

> "As our claim, whether public or private, relates to breach of trust/breach of fiduciary duty and negligence, all of these are actions for the High Court and not judicial review."

Negligence

[35] The plaintiffs agree that the appropriate test in respect of whether there is a duty of care owed to them by the defendants is the three part test laid down in *Caparo Industries plc v Dickman* [1990] 2 AC 605. They submitted that the *Caparo* test was satisfied in this action. Firstly, they argued that it was foreseeable that the defendants' "carelessness" would cause damage to them. Secondly, they argued that as the people vote for the defendants and the defendants agree, by accepting this vote, to represent and to act in the best wishes of the people, it can be concluded that there is a relationship of proximity. Indeed they go so far as to argue that:

> "we, the people, are the employers of public servants."

Thirdly, they argued that it would be fair just and reasonable for the court to find that a duty of care was owed to them by the defendants.

Breach of Fiduciary Duty

[36] The plaintiffs submitted that beyond the established categories of fiduciary relationship, there was no single formulation or description of the circumstances which will give rise to fiduciary duties. The question is fact-sensitive. (See *Instant Access Properties Ltd v Rosser* [2018] EWHC 756 (Ch)21, per Morgan J at [262], citing *Ross River Ltd v Waveley Commercial Ltd* [2012] EWHC 81 (Ch). In the latter case Morgan J, upheld in this respect by the Court of Appeal [2013] EWCA Civ 910, drew together many of the earlier authorities dealing with the circumstances in which fiduciary duties arose. At [235] he said:

"Identifying the kind of circumstances that produce that result is difficult. The decisions of the courts have sought to retain flexibility as to the approach to be adopted. Numerous academic commentators have offered suggestions, but none has gathered universal support. There is said to be growing judicial support for the following two propositions:

(1) a fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence;

(2) the concept encaptures a situation where one person is in a relationship with another which gives rise to a legitimate expectation, which equity will recognise, that the fiduciary will not utilise his or her position in such a way which is adverse to the interests of the principal."

CONCLUSION

Wrong Defendants

[37] For the sake of completeness, I mention that the applicants initially argued that the plaintiffs' complaints relate to matters within the purview of the Executive and its Ministers rather than any private individual. Accordingly, Robin Swann and Naomi Long ought not to have been sued as individuals. This is a minor point and, had it been the only defect in the pleadings, could have been easily corrected by an application under Order 20 Rule 5 which I would have granted.

The Power to Strike Out

[38] Order 18 Rule 19 of the Rules of the Court of Judicature (N.I.) 1980 provides:

"(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-

(a) it discloses no reasonable cause of action or defence, as the case may be; or
(b) it is scandalous, frivolous or vexatious; or
(c) it may prejudice, embarrass or delay the fair trial of the action; or
(d) it is otherwise an abuse of the process of the court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a)."

[39] Where the only ground on which the application is made is under Order 18 Rule 19(1)(a), namely that the pleading discloses no reasonable cause of action or defence, no evidence is admitted. A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered. So long as the statement of claim or the particulars disclose some cause of action, or raise some question fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out.

[40] For applications under Order 18 Rule 19(1)(b)-(d), evidence by affidavit is admissible so that the courts can explore the facts. However a court at this stage must be careful not to engage in a minute and protracted examination of the documents or the facts of the case. As Danckwerts LJ said in *Wenlock v Moloney* (1965) 2 All ER 871 at 874G:

> "There is no doubt that the inherent power of the court remains; but this summary jurisdiction of the court was never intended to be exercised by a minute and protracted examination of the documents and facts of the case in order to see whether the plaintiff really has a cause of action. To do that, is to usurp the position of the trial judge, and to produce a trial of the case in chambers, and affidavits only, without discovery and without oral evidence tested by cross-examination in the ordinary way. This seems to me to be an abuse of the inherent power of the court and not a proper exercise of that power."

[41] The purpose of the striking out provisions is essentially to protect defendants from hopeless litigation. But it may not be invoked to deprive plaintiffs of their right to bring an arguable matter before the courts.

[42] In *Lonrho v Al Fayed* [1992] 1 AC 448 the court held that, on an application to strike out an action on the basis that it discloses no reasonable cause of action, the cause pleaded must be unarguable or almost incontestably bad.

[43] In *O'Dwyer and Others v Chief Constable of the Royal Ulster Constabulary* [1997] NI 403 the Court of Appeal for Northern Ireland reviewed the authorities on the test to be applied in such applications. It held that the summary procedure for striking out pleadings was only to be used in "plain and obvious" cases; it should be confined to cases where the cause of action was "obviously and almost incontestably bad"; and that an order striking out should not be made "unless the case is unarguable".

[44] The Court of Appeal in *O'Dwyer* quoted Sir Thomas Bingham in *E (A Minor) v Dorset CC* [1995] 2 AC 633 at 693-694, a passage approved by the House of Lords:

> "I share the unease many judges have expressed at deciding questions of legal principle without knowing the full facts but applications of this kind are fought on ground of a plaintiff's choosing, since he may generally be assumed to plead his best case and there should be no risk of injustice to plaintiffs if orders to strike out are indeed made only in plain and obvious cases. This must mean that where the legal viability of a cause of action is unclear (perhaps because the law is in a state of transition) or in any way sensitive to the facts, an order to strike out should not be made. But if after argument the court can be properly persuaded that no matter what (within the reasonable bounds of the pleading) the actual facts the claim is bound to fail for want of a cause of action, I can see no reason why the parties should be required to prolong the proceedings before that decision is reached."

[45] The alternative ground relied on by the applicants under Order 18 Rule 19(1)(b) is that the new statement of claim is scandalous, frivolous or vexatious. By these words are meant cases which are obviously frivolous and vexatious or obviously unsustainable. The pleading must be so clearly frivolous that to put it forward would be an abuse of the process of the court.

[46] This is the well understood position in respect of the power of the court to strike out pleadings. It is the approach that I will adopt in assessing the merits of this application.

Ordinary Civil Action or Judicial Review Proceedings?

[47] The first issue which requires to be dealt with is whether the court should strike out the plaintiffs' claim under Order 18 Rule 19 because the plaintiffs have breached the legal rule known as the Exclusivity Rule which was established by the House of Lords decision in *O'Reilly v Mackman* [1983] 2 AC 237. This rule prevents litigation from proceeding as an ordinary civil action when its essence is that the claimant is seeking to establish that a decision by a public authority infringed rights to which they were entitled under public law and the litigation ought therefore to have proceeded by way of judicial review. If the case ought to have proceeded as a judicial review then the plaintiffs require the leave of the court before an application can be made and their application ought to have been made promptly, and in any event within three months unless the court considers that there is a good reason to extend time.

[48] In *O'Reilly v Mackman* the plaintiffs were all prisoners who had been charged with disciplinary offences before the prison's board of visitors. The offences were proved to the satisfaction of the board. The plaintiffs then litigated in the High

Court. Three plaintiffs alleged in Queen's Bench proceedings that, *inter alia*, the board had acted in breach of the rules of natural justice. The fourth alleged in Chancery proceedings that there had been bias. Each of the four plaintiffs sought a declaration that the board's adjudication was void. In each of the cases the defendants applied to strike out the proceedings but those applications were initially dismissed. However the Court of Appeal reversed that decision and struck out the plaintiffs' proceedings on the grounds that they were an abuse of process and that the plaintiffs' only proper remedy was by way of judicial review under Order 53. With his customary clarity, Lord Denning said:

> "In modern times we have come to recognise two separate fields of law: one of private law, the other of public law. Private law regulates the affairs of subjects as between themselves. Public law regulates the affairs of subjects vis-à-vis public authorities. … Now that judicial review is available to give every kind of remedy, I think it should be the normal recourse in all cases of public law where a private person is challenging the conduct of a public authority or a public body, or of anyone acting in the exercise of a public duty. … If a plaintiff should bring an action - instead of judicial review - and the defendant feels that leave would never have been granted under R.S.C., Ord. 53, then he can apply to the court to strike it out as being an abuse of the process of the courts. It is an abuse to go back to the old machinery instead of using the new streamlined machinery. It is an abuse to go by action when he would never have been granted leave to go for judicial review."

[49] The House of Lords subsequently dismissed the plaintiffs' appeals against the Court of Appeal's decision. It held that, since all the remedies for the infringement of rights protected by public law could be obtained on an application for judicial review, as a general rule it would be contrary to public policy and an abuse of the process of the court for a plaintiff complaining of a public authority's infringement of his public law rights to seek redress by ordinary action and that, accordingly, since in each case the only claim made by the plaintiff was for a declaration that the board of visitors' adjudication against the plaintiffs were void, it would be an abuse of process to allow the actions to proceed and thereby avoid the protection afforded to statutory tribunals.

[50] In *O'Reilly* Lord Diplock said:

> "…. it would in my view as a general rule be contrary to public policy, and as such an abuse of the process of the court, to permit a person seeking to establish that a decision of a public authority infringed rights to which he was entitled to protection under public law to proceed by way of an ordinary action and by this means to evade the provisions of Ord 53 for the protection of such authorities.

> My Lords, I have described this as a general rule; for, though it may normally be appropriate to apply it by the summary process of striking out the action, there may be exceptions, particularly where the invalidity of the decision arises as a collateral issue in a claim for infringement of a right of the plaintiff arising under private law, or where none of the parties objects to the adoption of the procedure by writ or originating summons. Whether there should be other exceptions should, in my view, at this stage in the development of procedural public law, be left to be decided on a case to case basis: a process that your Lordships will be continuing in the next case in which judgment is to be delivered today (see *Cocks v Thanet DC* [1982] 3 All ER 1135)."

[51] It is clear that the plaintiffs feel aggrieved by the political actions and decisions of the applicants. The plaintiffs make this obviously political statement in their new statement of claim:

> "Do we live in a Dictatorship where members of the ruling class can act with complete impunity and without accountability, where they do not need to validate their stance or do we live in a democracy, where the defendants would ultimately be answerable to the people? The actions that have transpired since March 2020 would imply we live in a dictatorship. … Although we were advised this would be a futile attempt, our reason for bringing this claim is to make the judiciary aware of the level of unaccountability and negligence/indifference the defendants have displayed."

[52] Having been challenged by the applicants at an early stage that the complaints of the plaintiffs were not appropriate for an ordinary civil action and were better suited to a judicial review, the plaintiffs drafted their new statement of claim to state:

> "If the claim from the defence is 'This case appears to be about Covid and therefore requires a judicial review', we rebut this in advance. Our claim is not about Covid. The issue of Covid-19 is irrelevant. The facts are clear: the defendants are making and advocating for decisions on our behalf. In so doing, they are in breach of all the below without holding any information. They are merely following orders by their own admission. COVID-19 is simply a catalyst that has allowed us to expose the below causes."

[53] Although the remedies sought by the plaintiffs in respect of their causes of action usually include damages, the other remedies sought are clearly not suited to being granted in ordinary civil actions. The remedies being sought include:

(i) To compel the defendants to provide proof and evidence of the claims they are making, as dictated by their oath of office to openness and accountability
(ii) To compel the defendants to issue a statement retracting their statements and acknowledging that they were not factually accurate.
(iii) To instruct Mike Nesbitt and Jim Shannon to stop the proceedings against the plaintiffs as they are without merit.
(iv) To compel the defendants to issue public statements with the correct numbers of unvaccinated people, and those who have had one vaccine, or two vaccines who are hospitalised, along with the reason they presented.
(v) To compel Robin Swan to release all the data and modelling publicly.

[54] In my view it is, in the words of Lord Diplock in *O'Reilly*, contrary to public policy, and as such an abuse of the process of the court, to permit the plaintiffs to seek to establish that a decision of ministers in the Northern Ireland Assembly infringed rights to which they were entitled under public law to proceed by way of an ordinary action and by this means to evade the provisions of Order 53 of the Rules of the Court of Judicature.

[55] I would therefore have granted the defendants' application to strike out the plaintiffs' action on the ground of their breach of the Exclusivity Rule alone. Nevertheless there are also other reasons why their action cannot be allowed to continue.

No Reasonable Cause of Action

[56] In *Magill v Chief Constable* [2022] NICA 49 the Court of Appeal for Northern Ireland has recently summarised the principles to be applied in applications to strike out on the basis that there was no reasonable cause of action. McCloskey LJ said,

> "[7] In summary, the court (a) must take the Plaintiff's case at its zenith and (b) assume that all of the factual allegations pleaded are correct and will be established at trial. As a corollary of these principles, applications under Ord 18 r 12 of the 1980 Rules are determined exclusively on the basis of the Plaintiff's statement of claim. It is not appropriate to receive any evidence in this exercise. Based on decisions such as that of this court in *O'Dwyer v Chief Constable of the RUC* [1997] NI 403 the following principles apply:
>
> (i) The summary procedure for striking out pleadings is to be invoked in plain and obvious cases only.

(ii) The Plaintiff's pleaded case must be unarguable or almost incontestably bad.

(iii) In approaching such applications, the court should be cautious in any developing field of law; thus in *Lonrho plc v Tebbit* (1991) 4 All ER 973 at 979H, in an action where an application was made to strike out a claim in negligence on the grounds that raised matters of State policy and where the Defendants allegedly owed no duty of care to the Plaintiff regarding exercise of their powers, Sir Nicholas Brown-Wilkinson V-C said:

> "In considering whether or not to decide the difficult question of law, the judge can and should take into account whether the point of law is of such a kind that it can properly be determined on the bare facts pleaded or whether it would not be better determined at the trial in the light of the actual facts of the case. The methodology of English law is to decide cases not by a process of a priori reasoning from general principle but by deciding each case on a case-bycase basis from which, in due course, principles may emerge. Therefore, in a new and developing field of law it is often inappropriate to determine points of law on the assumed and scanty, facts pleaded in the Statement of Claim.'

(iv) Where the only ground on which the application is made is that the pleading discloses no reasonable cause of action or defence no evidence is admitted.

(v) A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered.

(vi) So long as the statement of claim or the particulars disclose some cause of action, or raise some question fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out." Thus, in *E (A Minor) v Dorset CC* [1995] 2 AC 633 Sir Thomas Bingham stated at p--:

> "This means that where the legal viability of a cause of action is unclear (perhaps because the law is in a state of transition) or in any way sensitive to the facts, an order to strike out should not be made. But if after argument the court can properly be persuaded that no matter what (within the bounds of the pleading) the actual facts of the claim it is bound to fail for want of a cause of action, I can see no reason why the parties should be required to prolong the proceedings before that decision is reached."
>
> We would add that a strike out order is a draconian remedy as it drives the Plaintiff from the seat of justice, extinguishing his claim *in limine*."

[57] I conclude that the plaintiffs' statement of claim must be struck out on the basis that it contains no reasonable cause of action. Although I will go on to examine a number of the causes of action in detail below, I shall state at this point in general terms that none of the causes of action in the plaintiffs' new statement of claim can survive the application by the applicants. This is so for a number of reasons. Firstly, some of the causes of actions alleged by the plaintiffs are not, as a matter of law, causes of action in civil proceedings. Assumption of Duty, Infliction of Emotional Distress, Abuse of Process, Breach of Implied Covenant of Good Faith, Discrimination, and Concealment of Private Data are simply not stand-alone causes of action which an individual may sue in respect of.

[58] Secondly, those causes of action which are proper causes of action in civil proceedings are not factually supported in a sufficient way which can allow them to survive this application for a strike out. As Humphreys J stated in *McIlroy Rose v McKeating* [2021] NICh 17:

> "A cause of action is a factual situation the existence of which gives rise to an entitlement on the part of one person to a legal remedy against another. In order to disclose a reasonable cause of action, the pleaded case must set out each element required to constitute a particular cause of action."

The statement of claim filed by the plaintiffs does not do this and is simply a mixture of political hyperbole, opinions and disputations in respect of the medical and scientific understanding about Covid upon which the applicants took action during the pandemic, requests for the criminal trial of the applicants, and legal terminology used without proper understanding of those words.

[59] The requirements as to how a statement of claim should be drafted are as follows. Order 18 Rule 7(1) of the Rules of the Court of Judicature provides:

> "Subject to the provision of this rule, and rules 10, 11, 12 and 23, every pleading must contain, and contain only, a statement in summary form of the material facts on which the party pleading relies for his claim or his defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case permits."

[60] The concept of "material facts" is described in *The Supreme Court Practice* (1999 edition), at paragraph 18/7/11:

> "It is essential that a pleading, if it is not to be embarrassing, should state those facts which will put those against whom it is directed on their guard, and tell them what is the case which they will have to meet (per Cotton LJ in *Philipps v Philipps* (1878) 4 QBD 127, p 139. "Material" means necessary for the purpose of formulating a complete cause of action; and if any one material statement is omitted, the statement of claim is bad (per Scott LJ in *Bruce v Odhams Press Ltd* [1936] 1 All ER 287 at 294). Each party must plead all the material facts on which he means to rely on at trial; otherwise he is not entitled to give any evidence of them at the trial. No averment must be omitted which is essential to success. Those facts must be alleged which must, not may, amount to a cause of action (*West Rand Co v R* [1905] 2 KB 399; see *Ayers v Hanson* [1912] WN 193)."

[61] The law reports are replete with explanations as to how pleadings must be drafted. In *Tchenguiz v Grant Thornton UK LLP* [2015] EWHC 405 (Comm) Leggatt J said:

> "Statements of case must be concise. They must plead only material facts, meaning those necessary for the purpose of formulating a cause of action or defence, and no background facts or evidence. Still less should they contain arguments, reasons or rhetoric**.** These basic rules were developed long ago and have stood the test of time because they serve the vital purpose of identifying the matters which each party will need to prove by evidence at trial."

[62] In *NEC Semi-Conductors Ltd v* IRC [2006] STC 606 Mummery LJ made the following observations at [131]:

> "While it is good sense not to be pernickety about pleadings, the basic requirement that material facts should be pleaded is there for a good reason – so that the other side can respond to the pleaded

> case by way of admission or denial of facts, thereby defining the issues for decision for the benefit of the parties and the court. Proper pleading of the material facts is essential for the orderly progress of the case and for its sound determination. The definition of the issues has an impact on such important matters as disclosure of relevant documents and the relevant oral evidence to be adduced at trial. In my view, the fact that the nature of the grievance may be obvious to the respondent or that the respondent can ask for further information to be supplied by the claimant are not normally valid excuses for a claimant's failure to formulate and serve a properly pleaded case setting out the material facts in support of the cause of action. If the pleading has to be amended, it is reasonable that the party, who has not complied with well-known pleading requirements, should suffer the consequences with regard to such matters as limitation."

[63} In the recent decision of *King v Stiefel* [2021] EWHC 1045 (Comm) Cockerill J set out her views on the purposes and requirements of pleadings:

> "145. A pleading in these courts serves three purposes. The first is the best known – it enables the other side to know the case it has to meet. That purpose, and the second are both expressly referenced in the following citation from the speech of Lord Neuberger MR in *Al Rawi v Security Service* [2010] EWCA Civ 482; [2010] 4 All ER 559, [18]:
>
> > "a civil claim should be conducted on the basis that a party is entitled to know, normally through a statement of case, the essentials of its opponent's case in advance, so that the trial can be fairly conducted, and, in particular, the parties can properly prepare their respective evidence and arguments at trial."
>
> 146. The second purpose then is to ensure that the parties can properly prepare for trial – and that unnecessary costs are not expended and court time required chasing points which are not in issue or which lead nowhere. That of course ties in with the Overriding Objective, which counts amongst its many limbs "*(d) ensuring that [the case] is dealt with expeditiously and fairly; (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases…*".
>
> 147. This is a point which feeds into the dictum of Teare J in *Towler v Wills* [2010] EWHC 1209 (Comm), at [18]-[21]:

> "The purpose of a pleading or statement of case is to inform the other party what the case is that is being brought against him. It is necessary that the other party understands the case which is being brought against him so that he may plead to it in response, disclose those of his documents which are relevant to that case and prepare witness statements which support his defence. If the case which is brought against him is vague or incoherent he will not, or may not, be able to do any of those things. Time and costs will, or may, be wasted if the defendant seeks to respond to a vague and incoherent case. It is also necessary for the Court to understand the case which is brought so that it may fairly and expeditiously decide the case and in a manner which saves unnecessary expense. For these reasons it is necessary that a party's pleaded case is a concise and clear statement of the facts on which he relies."
>
> 148. The third purpose for the pleading rules is less well known but no less important. The process of pleading a case operates (or should operate) as a critical audit for the claimant and its legal team that it has a complete cause of action or defence.
>
> 149. Particulars of Claim, in particular, should generally aim to set out the essential facts which go to make up each essential element of the cause of action – and thought should be given to whether any more than that is either necessary or appropriate, bearing in mind the functions which a pleading serves and whether any components of what is pleaded are subject to rules requiring specific particularisation."

[64] In *Sachs v Mayfords* [1997] Lexis Citation 1545 the Court of Appeal for England and Wales heard an appeal from a strike out in the county court. The District Judge had said;

> "At the end of the day the court has got to be (and I hope this court is) sympathetic and helpful to litigants in person. That does not mean that defendants can be put to unlimited expense in actions which are, even at this late stage, so incomprehensible because they are so inaccurately, unscientifically incomprehensible that it is impossible for any defendant to meet them. To allow such proceedings to proceed to trial would, in my judgment, be the clearest abuse."

On the appeal of the strike out decision, Hobhouse LJ said;

> "The position in the present case is that the plaintiff has not formulated a sustainable claim in a way that can be submitted to a trial in this action. The purpose of litigation is to resolve disputes and arrive at just results. The parties have to be prepared to co-operate and provide the material for that conclusion. But the plaintiff, because she is acting in person and does not understand what is involved in representing a legal claim, as opposed to providing a fairly generalised narrative, has not met that requirement. … I consider that there is no reasonable basis for challenging the judge's conclusion. Therefore, her claim must struck out."

[65] Personal litigants will be granted a certain amount of latitude by the courts and cannot be expected to draft with the precision of counsel. Nevertheless, as the courts have indicated on many occasions, the Rules apply to all litigants, whether represented by counsel or appearing on their own behalf. The case before me is not a case where the pleadings are somewhat unclear in places and need to be amended so as to clarify certain aspects of the plaintiffs' claim. It is not therefore a case where an adjournment should be granted to improve matters. Their new statement of claim, which is hopelessly deficient, has been in existence for over a year and no attempt has been made to amend it further and bring it into line with what is required by the Rules.

Breach of Fiduciary Duty

[66] The inclusion of this alleged tort in the plaintiffs' statement of claim simply illustrates they have no understanding of what this term means in law. A helpful summary of the tort can be found in *Glenn v Watson & Ors* [2018] EWHC 2016 (Ch). In that decision Nugee J explained that there are a number of settled categories of fiduciary relationship. The paradigm example is that of trustee and beneficiary; other well-settled examples are solicitor and client, agent and principal, director and company (subject to the impact of the Companies Act 2006), and the relationship between partners. Outside these settled categories, fiduciary duties may be held to arise if the particular facts warrant it. Identifying the circumstances that justify the imposition of fiduciary duties has been said to be difficult because the courts have consistently declined to provide a definition, or even a uniform description, of a fiduciary relationship.

[67] What then are the particular factual circumstances that will lead to the court finding that fiduciary duties are owed? Nugee J summarised the position as follows:

> "Without in any way attempting to define the circumstances in which fiduciary duties arise (something the courts have avoided doing), it seems to me that what all these citations have in

> common is the idea that A will be held to owe fiduciary duties to B if B is reliant or dependent on A to exercise rights or powers, or otherwise act, for the benefit of B in circumstances where B can reasonably expect A to put B's interests first. That may be because (as in the case of solicitor and client, or principal and agent) B has himself put his affairs in the hands of A; or it may be because (as in the case of trustee and beneficiary, or receivers, administrators and the like) A has agreed, and/or been appointed, to act for B's benefit. In each case however the nature of the relationship is such that B can expect A in colloquial language to be on his side. That is why the distinguishing obligation of a fiduciary is the obligation of loyalty, the principal being entitled to "*the single-minded loyalty of his fiduciary*" (*Mothew* at 18A): someone who has agreed to act in the interests of another has to put the interests of that other first. That means he must not make use of his position to benefit himself, or anyone else, without B's informed consent."

[68] I cannot conceive of any instance in which a court would find that a Member of Parliament or an MLA or a Minister would have a fiduciary relationship with individual members of the public. Its inclusion in the statement of claim represents a complete misunderstanding of the concept by the plaintiffs.

Negligence

[69] In order to succeed in a negligence action, the plaintiff must prove that: firstly, that the defendant owed them a duty of care; secondly that the defendant was in breach of that duty; thirdly that the claimant suffered damage, which was caused by that breach of duty; and fourthly that the damage was not too remote. In order for a duty of care to arise in negligence: the harm must be reasonably foreseeable as a result of the defendant's conduct; the parties' relationship must be proximate; and, it must be fair, just and reasonable to impose liability.

[70] Neither the plaintiffs nor the applicants were able to cite any authority where the courts have considered the issue of whether Members of Parliament, Members of the Northern Ireland Assembly or Ministers of the Crown (whether in the Westminster Parliament or in the Northern Ireland Assembly) have a duty of care towards citizens. I am, however, quite satisfied that they do not. Indeed it is ludicrous to suggest that they do. It is an entirely different relationship with entirely different mechanisms of accountability.

Misfeasance in Public Office

[71] As Chadwick L.J. said in *Marsh v. Chief Constable of Lancashire* [2003] EWCA Civ 284 allegations of misfeasance in public office are amongst the most serious, short of conscious dishonesty, that can be made against police officers or any public official.

[72] In *Sandhu v HM Revenue and Customs* [2017] EWHC 60 (QB) Lavender J had regard to what was said by Judge L.J. in the related context of actions for malicious prosecution in *Thacker v. Crown Prosecution Service*, The Times, 29 December 1997; Court of Appeal (Civil Division) Transcript No. 2149 of 1997, C.A. There, Judge L.J. had said:

> "… it is essential that before such actions are allowed to be pursued through the courts, anxious scrutiny should be made of them to ensure that the immunity against action for negligence … is not circumvented by the pleading device of converting what is in reality no more than allegations of negligence into claims for malicious prosecution."

By this reference, Lavender J was suggesting that litigants should not be allowed to convert what are in reality no more than allegations of negligence into claims for misfeasance in public office. In doing so, Lavender J was following Tugendhat J's approach in *Carter v. Chief Constable of the Cumbria Police* [2008] EWHC 1072 QB where Tugendhat J had similarly relied on the dictum of Judge LJ and applied it to the tort of misfeasance in public office before likewise striking out the plaintiff's claim.

[73] A second important point made by Lavender J in *Sandhu* is the importance of pleading matters in the Particulars of Claim which are sufficient to support an allegation of malice. Lavender J referred to what May L.J. said in *London Borough of Southwark v. Dennett* [2007] EWCA Civ 1091, at [21]:

> "… In *Society of Lloyds v Henderson* [2007] WL 2817792 , Buxton LJ emphasised that for misfeasance in public office the public officer must act dishonestly or in bad faith in relation to the legality of his actions. The whole thrust of the Three Rivers case was that knowledge of, or subjective recklessness as to, the lawfulness of the public officer's acts and the consequences of them is necessary to establish the tort. Mere reckless indifference without the addition of subjective recklessness will not do. This element virtually requires the claimant to identify the person or people said to have acted with subjective recklessness and to establish their bad faith. An institution can only be reckless subjectively if one or more individuals acting on its behalf are subjectively reckless, and their subjective state of mind needs to be established. To that end, they need to be identified. As Buxton LJ said at paragraph 49:
>
> > "In this analysis I leave aside the further difficulty that if a case of subjectively reckless failure to act were to be made good, it would have to be demonstrated who took the

> decisions not to act and with what knowledge. Nothing in those terms has been demonstrated, or sought to be demonstrated, even with the assistance of the proposed fresh evidence. That is no doubt why the case falls back on objective recklessness, which could be demonstrated by inference: but such demonstration is not enough for the tort of Misfeasance in Public Office."

[74] Lavender J concluded that the matters alleged in the particulars of claim were insufficient to support an allegation of malice. He observed that as May L.J. had said in *London Borough of Southwark v. Dennett*:

> "… Subjective reckless indifference is a possibility but not a necessary inference. There are other possibilities of which the strain of overwork or incompetence are two. …"

Lavender J therefore noted that this was in itself sufficient reason for striking out the action in *Sandhu*.

[75] I note that the Law Commission for England and Wales reported on the subject of "Misconduct in Public Office" (Law Comm No 397) in December 2020. Although the Law Commission's focus was on criminal law offences, one of its background papers considered the related tort of misfeasance in public office. Appendix B to the Commission's "Issues Paper 1", entitled "Misfeasance in Public Office", highlighted the difficulties with this tort:

> "Pleading bad faith is difficult, because the pleading rules require details, and professional conduct rules forbid practitioners supporting obviously baseless allegations. Proving bad faith is even more difficult. Where they have a choice, the courts are strongly disposed to believing that bureaucratic error was caused by genuine mistake, even incompetence, rather than by bad faith. The result is that of the hundreds of misfeasance claims that are actually filed, very few make it to trial. Most are filtered out for inadequate pleading of bad faith, or because an allegation of bad faith has no real prospect of success. … Misfeasance in public office is an oddity in several respects. Not allowed to trespass on better established torts, it occupies a tiny niche reserved, in essence, for redressing harms caused by public officers who knew or suspected that they were abusing their public power or position to the detriment of the individual."

The Law Commission's background paper went on to explain that the great bulk of misfeasance cases decided have concerned defence applications either to strike out

the claimant's pleadings for failure to pinpoint the alleged bad faith, or even for summary judgment because of the sheer improbability of ever proving bad faith. In practical terms, strike-outs and summary judgments are serving as judicially administered filters, weeding out a very large number of claimants who will never be able to prove bad faith with hard evidence, even where their suspicions are reasonable.

[76] As Megaw LJ said in *Cannock Chase DC v Kelly* [1978] 1 WLR 1, at p6:

> "… bad faith, or, as it is sometimes put, "lack of good faith," means dishonesty: not necessarily for a financial motive, but still dishonesty. It always involves a grave charge. It must not be treated as a synonym for an honest, though mistaken, taking into consideration of a factor which is in law irrelevant. If a charge of bad faith is made against a local authority, they are entitled, just as is an individual against whom such a charge is made, to have it properly particularised. If it has not been pleaded, it may not be asserted at the hearing. If it has been pleaded but not properly particularised, the pleading may be struck out."

[77] The statement of claim filed by the plaintiffs does not in any way come close to meeting the requirements of the tort of Misfeasance in Public Office and must therefore be struck out.

Scandalous, Frivolous, Vexatious or otherwise an Abuse of the Process of the Court

[78] The third basis on which I have concluded that the plaintiffs' statement of claim must be struck out is that it is frivolous and vexatious.

[79] As Mr Wallace asserts in his affidavit sworn on 3 September 2021, the applicants cannot properly or fairly respond to a claim that fails to identify its most basic features. The claim which the plaintiffs are seeking to advance is unintelligible. It does not advance any clear case against the defendants and fails to elaborate on any of the purported causes of action raised in the writ.

[80] Furthermore, the considerable amount of scientific and medical opinion material included in the statement of claim with regard to "scientific fraud", "the descent of science … into scientism", "a phantom virus", "feckless or complicit politicians", and "disaster capitalism" clearly suggests that the allegations which the plaintiffs make are matters not for this court but rather for the UK Covid-19 Inquiry chaired by Baroness Hallett, the function of which is to examine, consider and report on preparations and the response to the pandemic in England, Wales, Scotland and Northern Ireland. It is not the function of this court to hold what amounts to a public enquiry into the government's handling of the pandemic.

The Claim against the Third and Fourth Defendants

[81] I consider, however, that the focus of this decision cannot be limited simply to the application made by the first and second defendants. I must also consider the position of the third and fourth defendants, Mike Nesbitt and Jim Shannon, even though they have made no application to the court. The High Court is enabled to do this by its inherent jurisdiction. In *Ebert v Venvil and Another, Ebert v Birch and Another* [2000] Ch. 484 Lord Woolf MR, giving the judgment of the Court of Appeal for England and Wales, described the inherent jurisdiction of the High Court as an extensive jurisdiction of the court to prevent its procedure being abused. It is clear that the court can act of its own motion and does not require an application to be made in order for it to act.

[82] It is not always immediately clear in the plaintiffs' new statement of claim which causes of action are being alleged against which defendants. This was only clarified in oral submissions at the hearing of this application. Certainly, those elements of the pleadings brought by the plaintiffs against the first and second defendants, which are similar to those struck out in respect of the third and fourth defendants, must also be struck out for the same reasons that I have set out above.

[83] All of the other causes of action against the third and fourth defendants suffer, however, from the same general defects which arise in respect of the pleadings which relate to the first and second defendants, namely that are not factually supported in a sufficient way for them to be allowed to continue. To reiterate what Humphreys J stated in *McIlroy Rose v McKeating* [2021] NICh 17:

> "In order to disclose a reasonable cause of action, the pleaded case must set out each element required to constitute a particular cause of action."

[84] For example, the allegation of trespass against the third and fourth defendants is not particularised in the new statement of claim. Trespass to the person may take three forms: assault, battery and false imprisonment. An assault is an act which causes another person to apprehend the infliction of immediate, unlawful force on his person; a battery is the actual infliction of unlawful force on another person. False imprisonment is the unlawful imposition of constraint on another's freedom of movement from a particular place. (*Collins v Wilcock* [1984] 1 WLR 1172.) None of these elements are pleaded in the statement of claim. The closest that the plaintiffs come to alleging such elements are with their references to the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2021 under which a Justice of the Peace may make an order that, *inter alia*, a person may be removed to a hospital. Yet there is no assertion that any such order was made in respect of the plaintiffs.

[85] I conclude therefore that the court cannot allow public representatives to be harassed by hopeless litigation such as this. It simply takes their focus away from

their important duties in serving the public. Furthermore, to allow court time to be wasted on such matters deprives other litigants of court time to have their cases heard. I therefore strike out the action against the third and fourth defendants in its entirety also.

Costs

[86] In respect of costs I have no hesitation in awarding the applicants their costs against the plaintiffs, such costs to be taxed in default of agreement. It would be appalling if the taxpayers of Northern Ireland were liable for the costs of the former ministers in defending an action which was so utterly misconceived and deluded.