

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

STEPHEN LARKIN

Plaintiff;

-v-

DE LA SALLE PROVINCIALATE

Defendant.

MORGAN LCJ

[1] The plaintiff was born on 3 September 1970. He claims damages as a result of sexual abuse which he says he sustained during a 3 month period in 1982 when he was resident at Rubane House, Kircubbin, a children's home run by the De La Salle Brothers. He claims that the perpetrator of the abuse was Patrick Cummins, known as Brother Christopher, who at the relevant time was in charge of the home. Although the case was pleaded in trespass, assault, battery and negligence it was opened and presented as an assault action.

Background

[2] The plaintiff's father was a seaman. His mother developed problems with alcohol. They separated in 1981. By that time the plaintiff was out of control, stealing, breaking into premises and causing damage. An order was made under the Children and Young Persons Act (Northern Ireland) 1968 that he should be provided with a place of safety and after discussion with the plaintiff's parents he was brought to Rubane House on 2 February 1982.

[3] In 1982 Rubane House was a well established children's home. During the 1960s it housed significant numbers of children who had been orphaned but by the

1970s most of the children at the home had been placed there under orders. The main house was a substantial building with accommodation for Brothers and dormitories for the children. Because of the demand for places 4 new chalets were built in the grounds in the late 1960s. Two interconnecting chalets were located on either side of the front of the main building. Behind the main building was a yard and approximately 30 yards across the yard was the school house used by the children. There was also a gymnasium and playing fields in that area. An archway led into a farm in which there were outbuildings which by the 1980s had fallen into disuse.

[4] The layout of each chalet was identical. Each was two storey. The ground floor consisted of an entrance area with an office beside the stairwell leading to the first floor. On the ground floor there were facilities for watching TV and other leisure pursuits. Upstairs there were three dormitories and two single rooms which were available for the boys and two further single rooms which were occupied by Brothers. There were also toilet and shower facilities. Each chalet had an annex in which the house parent associated with each chalet lived. At the material time the plaintiff was housed in chalet 4 and the house parent was Mrs Doran who lived in the annex with her three children. She was assisted by Brother Eugene who was one of the Brothers who resided in the chalet. The office at the foot of the stairs in chalet 4 was occupied by a night watchman, Dan Matchett. He was on duty between 10.00 pm and 8.00 am. Although located in chalet 4 it was his responsibility to check the grounds, including the school, from time to time during the night and to unlock the gates if anyone arrived back late. There was also a back door to each chalet which was located close to the office on the ground floor.

[5] The daily routine was that the children would normally get up at 8.00 am and have breakfast provided by the house parent. During weekdays they were in school from 9.15 am until 3.30 pm. They did not return to the chalets during that period. Most of the children went home for the weekend but those who stayed were encouraged to engage in activities or were taken to the swimming pool or to Portaferry. There was a tea break between 3.30 pm and 4.00 pm. Thereafter activities during the week continued until 5.30 pm. An evening meal was provided in the chalet at 6.00 pm and afterwards various sporting and other activities took place until approximately 8.30 pm. At that stage the boys washed and got into their bed clothes enjoying an hour's television before lights out usually around 10.00 pm.

The plaintiff's case

[6] The plaintiff says that when he arrived in the home he was boisterous and difficult to manage. He was disruptive at night and about 2 months after his arrival he was placed in one of the two single rooms available for boys. About a week later he says that he woke up to find a hand touching his privates. He recognised the abuser as Brother Christopher. When the plaintiff started to cry Brother Christopher put his hand over his mouth and told him to be quiet. He then took out his penis

and masturbated himself. He threatened the plaintiff that if he told anyone he would be sent to borstal in Dublin and would not see his family. The plaintiff was crying and was told to be quiet. Brother Christopher told him to remember what he could do to him. The plaintiff says that he didn't talk to anyone because he was petrified. He remembered going home after this on at least one occasion but did not tell his family because he was too scared. He said the abuse increased so that it was occurring two or three times per week. He claims that Brother Christopher made the plaintiff masturbate him and put the plaintiff's hand on his penis. He says that Brother Christopher put his penis in the plaintiff's mouth on a few occasions. He says that Brother Christopher tried to put his penis inside his bottom but could not. He masturbated over the plaintiff. The plaintiff alleges that he always used a white handkerchief to clean himself. On the plaintiff's account the abuse continued for 4 to 5 months but by the end of the trial it was accepted that if the abuse began at the start of April 1982 it must have ended before the end of June that year.

[7] It is accepted that during this period the plaintiff was at home for 18 days during April, 10 days during May and 8 days during June. Because of his fear he did not report the abuse to any member of his family including his older brother and sister. He was at home for the month of July and returned to the home in August to go on a summer holiday to Glenariff. Because of falling numbers chalet 4 closed at the end of August 1982 and the plaintiff moved to chalet 1 where he stayed until transfer to St Patrick's Training School in 1984. He states that he was not abused on any other occasion. There are records which suggest that he settled down at the home after this but he was involved with others in trying to set fire to the school in May 1983 and in 1984 became disruptive apparently as a result of solvent abuse to the point where he had to be removed to St Patrick's Training School.

[8] In 1986 he obtained employment as an apprentice scaffolder and worked for 2 years on the construction of the Castle Court development in Belfast. He explained that a number of his associates had become involved in the troubles and some were dead. He decided in 1989 to join the French Foreign Legion. He enjoyed the comradeship and the sense of adventure. When he had been in the Legion for approximately 3 years he and at least one other colleague were drinking. Foolishly they decided to test whether they could jump out of a first floor window without injuring themselves. As a result of attempting this manoeuvre the plaintiff sustained a serious fracture to his right ankle as a result of which he was invalided out of the French Foreign Legion and subsequently has been effectively incapable of any work involving mobility. His doctors at present are considering whether he would benefit from a below knee amputation.

[9] He came home in September 1992. Within 6 months he was arrested in relation to a murder although eventually no proceedings were pursued in respect of that. He was then arrested in respect of the attempted murder of a well known paramilitary. He was convicted and sentenced to a period of 16 years imprisonment. He successfully appealed the conviction on the basis that disclosure established that

the identifying witnesses were for various reasons unreliable. He was acquitted on a retrial but spent some 3 years and 3 months in prison before his release in 1996.

[10] On his release from prison he severely abused alcohol and drugs. He has been seen by psychiatric services on a number of occasions and there is no doubt that he suffers from chronic depression. His relationship with his partner with whom he has four children has been volatile. In 2000 he was admitted to hospital as a result of an overdose. In 2008 with the help of a family member he recognised that his life was spiralling out of control and decided to stop drinking alcohol. Although there are a number of detailed psychiatric histories obtained from him between 1996 and 2002 none of these mention the sexual abuse. The first reference in his medical records to abuse is contained in a very short note made by his general practitioner in May 2007. He attended his solicitor in 2009 and was advised to contact the police. He said that his attendance with his solicitor was because he had seen a clip of Brother Christopher on a televised news broadcast about institutional sex abuse in the Republic of Ireland and it brought everything back to him.

[11] In support of his case the plaintiff called Francis Corr. He had been in the home from 1 March 1974 until 30 May 1974 when he was 14 years old. His evidence was that he was out playing in the yard on a Saturday with a friend when he was told by a Brother to go and help Brother Christopher in the laundry in the main house. The laundry was situated in the lower part of the house on the same level as the Brothers' kitchen and TV and dining room. The doors to each of these rooms were either directly opposite each other or at right angles to each other. Mr Corr alleged that when he got to the laundry Brother Christopher told him that his trousers were too tight and suggested he change into a bigger pair. Mr Corr alleges that Brother Christopher then pulled down this pair of trousers and started to rub Mr Corr's penis. Mr Corr alleges that Brother Christopher then took out his penis from the side of his cloak, asked him to stroke it and put it into his hand. He alleges that Brother Patrick came into the laundry while this was occurring. He says that Brother Patrick put him on the table and Brother Christopher went behind him and entered him. He claims that Brother Christopher and Brother Patrick changed places and Brother Patrick abused him in the same way. Brother Christopher then told him to go to his room until Monday.

[12] The plaintiff also relied on the fact that there was a well-established history of sexual abuse within the home. In 1980 police investigated allegations against Brother Florence who had been the head of the home from 1977 until 1980. As a result of these allegations Brother Florence had been removed from his position. He was prosecuted but the proceedings against him were stayed as an abuse of process. It was, however, common case in these proceedings that it was highly probable that he had sexually abused a number of the children in the home. As a result of these disclosures there was a major investigation carried out by Social Services beginning in February 1981 and continuing into 1982. In addition police inquiries continued from 1980 until 1982. A further set of revelations of sexual abuse occurred in or

about 1995. Approximately 5 further Brothers were accused of sexual abuse and again the charges against each of them were dismissed as an abuse of process. Although it is not clear whether each of them was guilty of abuse it is common case that at least some of them were.

The defence case

[13] Brother Christopher entered the Novitiate in 1949 as a 14-year-old boy and qualified as a teacher in 1955. He was assigned to Kircubbin as a special needs teacher in 1964 and in 1971 became Director of the home. In 1977 he moved to Dublin to undertake a degree in sociology and was replaced as Director of the home by Brother Florence. In April 1980 as he was finishing his degree he was informed that Brother Florence had been suspended because of allegations of sexual abuse. He was immediately reassigned as Director of the home. Police investigations were ongoing and immediately thereafter a Social Services investigation commenced. During the period that the plaintiff was in the home in 1982 Social Services placed an embargo on further admissions because of their continuing investigations. There was a high degree of supervision of activities within the home by the Board's social workers. Brother Christopher denied all of the allegations against him. In particular he denied that he entered chalet 4 at night or that there were any circumstances in which he made his way onto the first floor of the chalet at night when the boys were sleeping. The allocation of single rooms was made by Mrs Doran, the house parent. Generally these went to the older boys or those who were undergoing apprenticeships or about to move on from the home. Single rooms were prized and there would have been uproar if boys as young as the plaintiff had got one.

[14] He sought assistance by way of further management support and in June 1980 Brother Camillus was assigned to support him. Brother Camillus subsequently left the order in April 1984 and became officer in charge of a children's home. He subsequently spent 20 years as a training officer and is now the principal officer for training social workers and care staff in a Trust. Brother Camillus described the systems which were put in place soon after his arrival. In discussion with Brother Christopher he instituted the keeping of observation logs which were filled in by each of the Brothers in relation to each boy, the maintenance of log sheets demonstrating what activities and appointments were arranged for the children during the week and six weekly internal reviews to consider the welfare of each of the children. During this period Brother Christopher took on a strategic role in relation to the management of the home whereas Brother Camillus was responsible for the implementation of the strategy. Brother Camillus confirmed that there was a high degree of anxiety among the Brothers to ensure the safety of children and the putting in place of systems which would provide adequate protection for them. Brother Camillus and Brother Christopher spent a great deal of time together during this period dealing with problems of the home. Both lived in the main house. Brother Camillus finds it hard to see how Brother Christopher could have made his way out of the main house at night without him knowing. He confirmed that the

night watchman was located in chalet 4 and that anyone attempting to access the first floor of chalet 4 would have to walk directly past the night watchman's office door.

[15] Mark McQuaid was in chalet 4 at the same time as the plaintiff. During that period his evidence is that he was in a single room and the other single room was occupied by a boy called McConville. Although they were not the two oldest boys in the chalet they were comparable in age to those boys. Mr McQuaid explained that one of the advantages was that he could then smoke in the room. The assistant house parent in chalet four, Brother Eugene, confirmed that it was his recollection that Mr McQuaid was indeed in one of the single rooms and that either McConville or a slightly older boy called Camblin occupied the other single room. Brother Eugene confirmed that the plaintiff did not occupy either single room. Gerard McCann went to Kircubbin when he was 11 in 1968. In September 1969 he transferred from the main house to chalet one which was newly built at that time. In common with the other chalets there were 2 single rooms and his evidence was that these were allocated generally on the basis of age.

Limitation

[16] It is common case that the plaintiffs cause of action was subject to the limitation period prescribed by Article 7 of the Limitation (Northern Ireland) Order 1989. That period accordingly ended on 4 September 1991. In light of the decision in A v Hoare [2008] UKHL 6 the court has a discretionary power to the disapply the time limit in Article 7 by virtue of the provisions of Article 50 of the 1989 Order. The discretion is wide and unfettered (see Horton v Sadler [2007] 1 AC 307). Although article 50 (4) of the 1989 Order sets out particular circumstances which should be taken into account this is not intended to be comprehensive.

[17] In this case there are no eye witnesses to the alleged assaults upon the plaintiff. Both the plaintiff and Brother Christopher are available to give evidence and both purport to be in a position to remember what they say occurred. The defendant has been a position to adduce evidence from Brother Eugene, Brother Camillus, Mr McCann and Mr McQuaid as well as Brother Christopher. There is a wealth of contemporaneous documentation in relation to the children who were in the home at the relevant time. I have also heard evidence from Dr Loughrey and Dr Fleming. I accept that it is not uncommon to see allegations of this sort not reported contemporaneously and to see opportunities for reporting passed up. In light of those factors I consider in this case that it is appropriate to disapply the limitation period.

Consideration

[18] The burden of proof lies upon the plaintiff and the standard of proof is the normal civil standard of the balance of probabilities. Where, as in this case, the

allegation is exceptionally serious the court may have to look at the facts more critically to be satisfied to the requisite standard. In Re CD [2008] UKHL 33 at paragraphs 27 and 28 Lord Carswell gave guidance on the approach which should be followed. In a case of this kind, however, one also needs to bear in mind that there may be particular difficulties in making an allegation of this sort about such a deeply personal matter. To find that a person had fabricated or falsified such an allegation in court even on the balance of probabilities would in my view constitute a serious allegation. The effect of all of this is, therefore, that although there should be a heightened examination of the evidence it must be with a view to a careful consideration taking into account the significant consequences for either side.

Not reporting

[19] The plaintiff was cross-examined in some detail about the fact that he had not reported the abuse in any form to a doctor, social worker or police officer until at the earliest May 2007. He explained that he had not told his family because he was scared. He said that there was an undercurrent of violence at the home. I accept that corporal punishment had in fact stopped at the home by this time but one needs to bear in mind that at this stage the plaintiff was a disturbed young boy who was going through a period of significant emotional crisis on the basis of the separation from his family. I do not, therefore, place any weight on the fact that he did not make disclosures at home nor do I consider that there is any significance in the fact that he only remembered one weekend at home whereas it is clear that he had substantial periods at home during this time.

[20] I also do not place any significance in the fact that the plaintiff failed to disclose these matters to police when they interviewed him in 1995 at a time when he was in custody on remand. As I understand it for his own safety he was living among Republican prisoners and it is perfectly understandable that he would not have wished to disclose either the background or the fact that he was participating in a police investigation.

[21] There are, however, three aspects of his reporting which do cause me some concern about his reliability as a witness. The first is the fact that he was subject to a detailed psychiatric examination by Dr Leonard in 1996 after his release from prison. She explored his personal circumstances and in answer to direct questions about his experience at Kircubbin he said that he enjoyed his time there. Both Dr Loughrey and Dr Fleming considered that it was significant that he had not made disclosure of the sexual abuse in that interview. He also had further opportunities in 2000 and 2002 when he again was subject to detailed psychiatric investigation. Secondly although he gave evidence that he suffered flashbacks as a result of his experience he did not report the flashbacks either to Dr Loughrey or Dr Fleming. Both doctors agreed that if he was experiencing flashbacks these would have been extremely distressing symptoms which they would have expected to have been reported by him during their examinations. The third matter which caused me some concern

was that the plaintiff indicated in evidence that the reason that he did not report these matters to anyone in authority at the time or to his family was because Brother Christopher had threatened him that if he told anyone he would be sent to the borstal in Dublin. He explained that he was well aware of the existence of the borstal because he had participated in a cross country run at that venue. In fact the evidence demonstrated that the first time he visited the borstal was in January 1983 more than six months after he alleged the abuse had occurred. His explanation was not, therefore, convincing.

The supporting evidence

[22] Mr Corr's evidence, if correct, provided powerful support for the plaintiff's case in demonstrating a propensity to interfere with young boys. He was due to give evidence on 15 November 2011. On that date the court was informed that he was on a week's holiday. It was, therefore, arranged that the court would sit on 28 November 2011 to hear this witness. In fact it transpired that Mr Corr had not been on holiday and that he had falsely informed the plaintiff's solicitors that this was the case because he was reluctant to give evidence. It further transpired that on the Sunday before he gave evidence he had the benefit of a consultation with his solicitor and senior counsel who are representing him in a similar action that he is pursuing on the basis of alleged abuse by Brother Christopher. Mr Corr indicated that his reluctance to give evidence was because of the embarrassment it would cause him. He vehemently denied any suggestion that his decision to give evidence was influenced by the fact that his own case would be significantly damaged if he did not. I consider that Mr Corr was being deliberately untruthful in that part of his evidence. The only rational explanation for arranging a consultation with his solicitor and senior counsel on the Sunday before his decision to give evidence was because he wished to discuss the circumstances of his own case. The fact that he wished to do so the day before he gave evidence leads me to draw the inference that his concern was about the impact on that case.

[23] The allegation by Mr Corr was that this abuse occurred on a Saturday afternoon in an area adjacent to the kitchen and TV room that the Brothers would have been using at the relevant time. According to Mr Corr he was distressed at the time and he says that his distress was noticed by Brother Patrick. If that was so it seems likely that it would have been noticed by any Brother who happened to be making his way from the kitchen to the TV room or vice versa. It seems highly unlikely that an abuser would leave himself open to detection so easily. The evidence in this case did not indicate that there was any sense of open abuse of children within the home but rather that the abusers behaved surreptitiously and were able to secure the silence of children.

[24] Mr Corr indicated that he was approached by police in 1995 and asked to indicate whether he had been abused at the home. He said that he had a short conversation with the police officer in his kitchen in which he had not disclosed the

abuse to him. In fact it subsequently transpired that he had made a written statement to police in 1995 in which he expressly stated that he had not been subject to sexual or physical abuse. He claimed to have no recollection of the circumstances in which he made the statement.

[25] He approached his solicitor in December 2010 with a view to pursuing his claim. He says that he got the strength to do this as a result of seeing his daughter provide a statement in relation to an incident where she witnessed a 13-year-old friend of hers being abused by a 31-year-old male. As a result of seeing her courage he felt that he also could do the same. It transpired, however, that the incident reported by his daughter had resulted in a conviction in 2009 which suggests that his daughter's report was some time before that. He was unable to explain why there had been such a long gap between his daughter making her complaint and him getting round to making his complaint.

[26] In the course of his cross-examination he was asked about the other brothers that he remembered at the home. He referred in particular to Brother Florence. He said that he would supervise playing in the garden. He did not remember Brother Florence taking part in sport. He denied any knowledge that Brother Florence had been before the court. There was considerable evidence in relation to whether Brother Florence had been in Kircubbin prior to 1977. During that period it is common case that he was based in St Patrick's. When he was pressed on what he remembered about Brother Florence he suggested that he remembered vaguely his name being mentioned. Evidence was called from Mr Doherty to suggest that Brother Florence visited Kircubbin approximately once per month up to 1970. Mr Doherty accepted that his recollection of events had varied over the years although it is accepted that he was sexually abused during the 1960s at the home. Mr McCann was there at the relevant time and gave convincing evidence that Brother Florence was not at the home during this period and he first saw him some years after leaving Kircubbin in a work environment. That accords with the evidence of Brother Eugene and Brother Christopher. I am satisfied to a high standard that Brother Florence did not visit Kircubbin prior to 1977 and that the reference to him by Mr Corr was with a view to falsely enhancing his credibility.

[27] I conclude, therefore, that Mr Corr provides no supporting evidence for the plaintiff's case. That does not in any way detract, of course, from the plaintiff's evidence nor of itself does it provide any support for the defence case. I also do not accept that the evidence of other cases of abuse, most of which occurred during the period 1977 to 1980, assist the plaintiff. No case was made that within the home there was open abuse of the nature that would have been evident to brothers who were not involved in it. There is no suggestion that Brother Christopher was involved as a person who was alleged to have committed any improper act in any of those cases.

The opportunity

[28] I have already set out some of the detail of the layout of the premises. Brother Christopher lived in the main house. At the relevant time the plaintiff was housed on the first floor of chalet 4. Brother Eugene was the assistant house parent and he indicated that he generally stayed up until approximately 11 p.m. From 10 p.m. until 8 a.m. the night watchman was present and had an office at the bottom of the stairs leading up to the first floor of chalet four. The evidence indicated that he walked around the grounds including the school three or four times per night but that this probably only took him around 10 minutes. It is common case that Brother Christopher had a master key which would have enabled him to gain access to the chalet but the evidence suggests that Brother Christopher could only have safely carried out these attacks if he had kept an eye out for the night watchman on his rounds, made his way without detection from the main house to the chalet, carried out the assault and made good his escape back to the main house without detection. It is doubtful whether even theoretically such a manoeuvre could have been carried out without being noticed.

The allocation of single rooms

[29] It is absolutely vital to the plaintiff's case that he establishes that he was in a single room. If he does not establish that fact it seems to me that his case must inevitably fail. There was considerable evidence about this. It is common case that the allocation of single rooms was determined by Mrs Doran, the house parent. Unfortunately it was not possible to trace her for the purpose of giving evidence. It was, however, possible to trace Mr McQuade who gave evidence that he was in one of the single rooms. A list of the other boys in the chalet at that time was also available and Mr McQuade indicated that he believed that the other single room was occupied by Mr McConville. Brother Eugene recollected that Mr McQuade occupied one room but was uncertain as to whether it was Mr McConville or Mr Camblin who occupied the other. Mr McCann confirmed that when he was housed in a chalet the older boys were given preference in relation to the single rooms and that accorded with the evidence of Brother Christopher. I consider, therefore, that if the plaintiff had been housed in a single room this would have represented a very considerable departure from the usual policy within the chalets and the absence of any documentary evidence to support such a departure provides some further support for the recollection of Brother Eugene and Mr McQuade.

[30] In my view the evidence on this issue was overwhelmingly against the plaintiff. I am, therefore, satisfied to a high standard that the plaintiff did not occupy a single room during the period that he alleges that he was abused. I had already indicated some concerns about the reliability of the plaintiff's evidence at paragraph 21 above but in light of my finding on this issue I am not satisfied on the balance of probabilities that the plaintiff was abused as he alleges. In those circumstances I must dismiss the claim.