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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **19/01/2024**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

_____

Between:

PATRICIA McCLARNON

Plaintiff

-and-

THE SISTERS OF NAZARETH

Defendants

_____

Between:

LINDSAY O'NEILL AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JOHN MCGUINNESS, (DECEASED)

Plaintiff

-and-

THE SISTERS OF NAZARETH

Defendants

_____

David Ringland KC with Malachy McGowan (instructed by Phoenix Law, Solicitors) for the Plaintiffs
Bernard Brady KC with Gareth Purvis (instructed by DAC Beachcroft (N. Ireland) LLP Solicitors) for the Defendants

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SIMPSON J

Introduction

[1] These cases, each raising issues of historical institutional abuse, were listed together, and it was convenient to hear them both together. Both plaintiffs were represented by the same solicitors and counsel, as were the defendants in each case. Each plaintiff was for a period in the 1970s, while a child, a resident in care in Nazareth Lodge on the Ravenhill Road in Belfast. Both Nazareth Lodge and

Nazareth House, a separate home further along the Ravenhill Road, were run by the defendants who were responsible for the care of children placed in either premises.

[2] Each plaintiff makes allegations of abuse by personnel working in the homes. Each plaintiff's allegations are different, and I will elaborate further on those allegations when dealing individually with each plaintiff's case.

[3] In both actions the defendants plead the provisions of the Limitation (Northern Ireland) Order 1989 ("the 1989 Order"), contending that both actions are statute barred. For the reasons appearing below, the first issue between the parties to be dealt with is whether or not the court should exercise its discretion under the 1989 Order to allow the actions to proceed.

Patricia McClarnon's case

[4] Ms McClarnon was born on 29 August 1964. She is now 59. The Statement of Claim asserts that she was in the defendants' care at Nazareth Lodge between "approximately 1971 and 1976/1977", a period of some 5 or 6 years. The plaintiff relies on the following causes of action: viz, negligence, assault, battery and trespass to the person. She alleges beatings, on the hand and body, threats, forcing her to bathe in barely diluted liquid disinfectant, repeatedly and aggressively scrubbing her body, rubbing soiled bed-linen in her face, rubbing her face in a soiled mattress and forcing her to remain alone inside an unlit storeroom. She also alleges that she was regularly humiliated in front of other residents for having soiled her bed or underwear.

[5] She says that if presents, of toys or food, were given for her benefit, they would never be passed on to her by the staff. At Christmas parties, when presents were given to the children, they were taken away from them after the party was over and any visitor had left.

[6] She specifically identified (i) Brigid Hillman (a lay member of staff) as a person who repeatedly beat her, sometime for no apparent reason, who repeatedly placed her in a bath of overly hot water or cold water and who humiliated her if she wet the bed; (ii); the notorious priest, Father Brendan Smyth, who, she says, sat her on his knee and bounced her up and down [in her pleadings she alleges sexual assault against him, which I deal with later in this judgment]; and (iii) a Terry McAuley as a person who beat her now and again. Although the pleadings identified another man as someone who beat her, in her oral evidence she was unable to remember any physical abuse from this person, and I shall not name him in this judgment.

[7] She told me that she frequently wet the bed, and this would lead to the humiliation in front of others, referred to above, and to her face being rubbed in the wet sheets by Brigid Hillman. She said that Brigid Hillman would beat her every

day, depending on what mood she was in, and sometimes she was beaten with a stick. She said she was used to being beaten and it made her cry.

[8] She also told me that the food was terrible, and if she did not eat what was presented to her, it would be re-presented to her the following day. The children were told not to say anything to anyone about what was happening and anyway, as she said to me, "Who was going to believe me if I told?"

[9] She told me that the whole experience has left her "completely drained" and that she thinks about it on a daily basis. In cross-examination she said, "It's a thing you want to forget about and not talk about".

[10] Part of the plaintiff's case is that there was a wholesale failure by the defendants to have in place appropriate systems, while acting in loco parentis, to ensure that the children were safe and not subjected to the abuses alleged.

John McGuinness's case

[11] Mr McGuinness was born on 17 April 1961. The Statement of Claim in his case asserts that he was in the defendants' care from age seven for about two years, before he was moved to Bawnmore, another such institutional establishment. Sadly, Mr McGuinness died in August 2020, and the case now continues in the name of his personal representative.

[12] He also relies on negligence, assault, battery and trespass to the person. The particulars in the Statement of Claim allege beatings, including beatings with a wooden clog, threats, a rape, and forcing him to perform fellatio. In addition, the allegations include repeated warnings of further beatings if he told his mother or anyone else about the treatment meted out to him.

[13] Although he alleges assault at the hands of a number of nuns, he specifically identifies a Sister Teresa Murphy as someone who beat him, usually by striking him with her knuckles. He also states that he was regularly sexually assaulted in toilets near the back steps of the home by a handyman or janitor, named Francis, who worked at the premises. It was this person whom he alleges committed rape on him, on one occasion, at the same location, and who forced him to perform fellatio, again on one occasion and at the same location.

The defendants' defences

[14] The defence served in each case admits that each plaintiff was a resident in the home — Ms McClarnon from 10 November 1971; Mr McGuinness from 22 April 1970 to 15 December 1972, when he was discharged to another care establishment. In the McGuinness case the defendants assert that "the form of corporal punishment by its servants and agents at the time alleged was appropriate and commensurate to the accepted educational practices." The defence served in each case denies the

particulars of negligence relied on by the plaintiff, and the particulars of assault, battery and trespass to the person.

[15] In both cases the defendants deny the nature and extent of the personal injuries alleged in the Statement of Claim.

[16] In each case the defendants plead that any claim which either plaintiff may have is "statute barred by reason of the lapse of time pursuant to the provisions of the Limitation (NI) Order 1989 and the Limitation Acts (NI) 1957 to 1989." Each Defence alleges that each plaintiff has been guilty of laches and/or inordinate and inexcusable delay in the commencement of proceedings, and that there has been further delay after the issue of the writs; each defence asserts that the maintenance of each claim infringes the defendants' rights to natural justice and its rights under article 6 of the ECHR.

Limitation — the statutory regime

[17] The decision by the House of Lords in *A v Hoare* [2008] UKHL 6 overruled the previous decision in the case of *Stubbings v Webb* [1993] AC 498, in which it had wrongly been determined that the limitation period for deliberate sexual abuse was six years (as in assault) rather than three years (as for other personal injury claims). The effect of the decision in *Hoare* was that a plaintiff could seek the discretion of the court to disapply the limitation period under s33 of the Limitation Act 1980 [the equivalent of Article 50 in the 1989 Order] where previously that remedy had not been available.

[18] Article 7 of the 1989 Order provides:

> **"Time limit: actions for personal injuries**
>
> 7.—(1) This Article applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.
> …
> (3) Subject to Article 50, an action to which this Article applies may not be brought after the expiration of the period specified in paragraphs (4) and (5).
>
> (4) Except where paragraph (5) applies, that period is three years from—

(a) the date on which the cause of action accrued, or

(b) the date of knowledge (if later) of the person injured.

[19] Article 50, where material, provides:

"Court's power to override certain time limits

50.—(1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which—

(a) the provisions of Article 7, 8 or 9 prejudice the plaintiff or any person whom he represents; and

(b) any decision of the court under this paragraph would prejudice the defendant or any person whom he represents,

the court may direct that those provisions are not to apply to the action, or are not to apply to any specified cause of action to which the action relates.

…

(4) In acting under this Article, the court is to have regard to all the circumstances of the case and in particular to—

(a) the length of, and the reasons for, the delay on the part of the plaintiff;

(b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by Article 7, 8 or, as the case may be, 9;

(c) the conduct of the defendant after the cause of action arose, including the extent if any to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;

(d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;

(e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;

(f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

(5) In a case where the person injured died when, because of Article 7 or 8(4), he could no longer maintain an action and recover damages in respect of the injury, the court is to have regard in particular to the length of, and the reasons for, the delay on the part of the deceased.

[20] The limitation issue in these cases is whether the court should exercise its discretion under Article 50 of the 1989 Order to disapply the provisions of Article 7 of the Order and to allow the actions, or either of them, to proceed.

Limitation — some relevant authorities

[21] Authorities relevant to the court's consideration of this issue were reviewed by Gillen J in the case of *McArdle v Marmio*n [2013] NIQB 123. Beginning at paragraph [8] he said:

"[8] The principles governing the manner in which this Order is to be applied and in particular the exercise of the discretion under Article 50 are now well-trammelled in this court, for example in *Walker v Stewart* [2009] NIJB 292, *McFarland v Gordon* [2010] NIQB 84 and *Taylor v McConville* [2009] NIQB 22. Accordingly, I need only make brief reference to them in this case. They include:

- The discretion under Article 50 is expressed in the widest terms.

- The trial judge must have regard to all the circumstances of the case and not merely the six matters set out [in sub-paragraph (4) of article

50]. The exercise of the court's discretion to disapply the time limits is unfettered.

- The burden of proof in an application under Article 50 rests on the plaintiff.

- Ordinarily the court should not distinguish between the litigant himself and his advisors. That said, the prejudice the plaintiff may suffer if the limitation is not disapplied may be reduced by his having a cause of action in negligence against his solicitors.

- Discretion can in an appropriate case be exercised in the plaintiff's favour even where the delay is substantial, but in such cases careful consideration must be given to the ability of the court to hold a fair trial — *Buck v English Electric Company Ltd* [1977] 1 WLR 806. Even 5 or 6 years' delay raises a presumption of prejudice to a defendant but this presumption is rebuttable. As a general rule however the longer the delay after the occurrence of the matters giving rise to the cause of action, the more likely that the balance of prejudice will swing against allowing the action to proceed by disapplying the limitation period.

[9] However, what is at the heart of Article 50 is whether it would be equitable to allow an action to proceed, and in fairness and justice, the obligation of a tortfeasor to pay damages should only be removed if the passage of time has significantly diminished his opportunity to defend himself. The basic question therefore to be asked is whether it is fair and just in all the circumstances to expect the defendant to meet the claim on the merits notwithstanding the delay in the commencement. (See *Cain v Francis* [2009] 3 WLR 551)."

[22] I also note the decision of the Court of Appeal in England & Wales in *RE v GE* [2015] EWCA Civ 287. Giving the judgment of the court, McCombe LJ said:

"[58] The question for the court under [the English equivalent of Article 50] is whether it 'would be equitable to allow the action to proceed', notwithstanding the expiry of the primary limitation period. That question is to be answered by having regard to all the circumstances

> of the case, including in particular the factors identified in [Article 50(4)].
>
> [59] Whether it is 'equitable 'to allow an action to proceed is no different a question, in my judgment, from asking whether it is fair in all the circumstances for the trial to take place … That question can only be answered by reference (as the section says expressly) to 'all the circumstances', including the particular factors picked out in the Act. No factor, as it seems to me, can be given a priori importance; all are potentially important. However, the importance of each of those statutory factors and the importance of other factors (specific to the case) outside the ones spelled out in [Article 50(4)] will vary in intensity from case to case."

[23] In *B & Others v Nugent Care Society* [2009] EWCA Civ 827, paragraph [24], the Court of Appeal approved the following passage from the judgment of Smith LJ in *Cain v Francis* [2008] EWCA Civ 1451:

> "[73] It seems to me that, in the exercise of the discretion, the basic question to be asked is whether it is fair and just in all the circumstances to expect the defendant to meet this claim on the merits, notwithstanding the delay in commencement. The length of the delay will be important, not so much for itself as to the effect it has had. To what extent has the defendant been disadvantaged in his investigation of the claim and/or the assembly of evidence, in respect of the issues of both liability and quantum? But it will also be important to consider the reasons for the delay. Thus, there may be some unfairness to the defendant due to the delay in issue, but the delay may have arisen for so excusable a reason, that, looking at the matter in the round, on balance, it is fair and just that the action should proceed. On the other hand, the balance may go in the opposite direction, partly because the delay has caused procedural disadvantage and unfairness to the defendant and partly because the reasons for the delay (or its length) are not good ones."

[24] Also, in *B & Others* the Court of Appeal gave the following warning, at paragraph [21]:

> "… where a judge determines the [Article 50] application along with the substantive issues in the case he or she

> should take care not to determine the substantive issues, including liability, causation and quantum before determining the issue of limitation and, in particular, the effect of delay on the cogency of the evidence. To do otherwise would … be to put the cart before the horse."

[25] Following that guidance I will seek to determine the issue of limitation in each case separately before, if I come to that, considering issues of liability, causation and quantum. It has to be remembered that in my consideration of the limitation issue in each case I have heard all the evidence given before me and read all the medical reports and other documents in the case.

[26] From the case of *KR v Bryn Alyn Community (Holdings) Ltd.* [2003] QB 1441, paragraph [74], in a passage cited with approval in *B & Others*, paragraph [12], the Court of Appeal said, inter alia:

> "The burden of showing that it would be equitable to disapply the limitation period lies on the claimant and it is a heavy burden. Another way of putting it is that it is an exceptional indulgence to a claimant, to be granted only where equity between the parties demands it."

[27] Finally, I note that the discretion to be exercised needs to be individually considered in the context of the facts of each case.

Limitation — consideration of issues — McClarnon

[28] Time, for limitation purposes, does not begin to run while a person is under 18 years of age, at which point the limitation clock starts. Ms McClarnon was 18 years of age on 29 August 1982. Accordingly, the three-year limitation period in Article 7(4) expired on 29 August 1985. The McClarnon Writ was issued on 15 November 2011. It is clear, therefore, that many years passed between the dates of the alleged abuse, the dates of expiry of the primary limitation period and the date of issue of proceedings, and a further 12 years have passed between the date of issue of the Writ and the hearing before me in November 2023.

Article 50(4)(a)

[29] Article 50(4)(a) of the 1989 Order enjoins the court to have regard to "the length of, and the reasons for, the delay on the part of the plaintiff." The length of delay is clearly very significant. For reasons which I will deal with below I note an important passage from the decision in *KR v Bryn Alyn* (op cit), paragraph [74]

> "Depending on the issues and the nature of the evidence going to them, the longer the delay the more likely, and

> the greater, the prejudice to the defendant." [my emphasis]

[30] As to the reasons for the delay, I consider that I am entitled to recognise that allegations of physical or sexual abuse perpetrated in institutions, particularly religious institutions, in the 1970s (and later) tended not to be complained about by the victims of that abuse. Certainly, allegations of abuse by nuns or priests were not likely, then, to be believed and those making such allegations were entitled to believe that it would leave them open to further abuse by way of punishment. I note that in *Larkin v De La Salle Provincialate* [2011] NIQB 129, also a case involving allegations of abuse in religious institutional care, the former Lord Chief Justice, Sir Declan Morgan, said (paragraph [17]): "I accept that it is not uncommon to see allegations of this sort not reported contemporaneously and to see opportunities for reporting passed up."

[31] During her time in institutional care, Ms McClarnon told me that when social workers visited the premises, the children were told not to say anything, and there was always a member of staff present, so that they could not complain. In her statement to the police, she said: "… I never told anyone about these things that went on in Nazareth Lodge. No-one would have believed me." To Dr Best she said: "nobody spoke about it years ago, nobody would have believed it, nobody talked." In her oral evidence she said: "Who was going to believe me if I told?" I am satisfied that both of those statements are entirely reasonable, and represent her true state of mind.

[32] In cross-examination about the delay in reporting the abuse, she told me that she "saw on the news that people were complaining" [about institutional abuse] and she said, "I thought, why shouldn't I complain?" She became aware of an organisation called "Survivors and Victims of Institutional Abuse" ("SAVIA"). She went to see a lady in that organisation (whom she identified to me) and subsequently made a statement to the police. The statement is dated December 2010. As noted above, the writ was issued in November 2011.

[33] I had the opportunity to see Ms McClarnon in the witness box. Without, I hope, doing her injustice or insult, I considered her to have difficulty articulating matters and I note all that is said in the medical evidence about her mental frailties and troubles. She did not come across to me as a forceful personality, and I can very well understand why she kept silent about the allegations until there was media publicity of other victims' complaints which encouraged her to come forward. I note from her statement to the police, made in December 2010, that she recalled that the police came to her house some years earlier, that she was not in and that a note was left for her to contact the police. That statement records her as saying: "At the time I was feeling low, and I just didn't feel ready to talk about it …". That seems to me to describe an entirely reasonable state of affairs for her.

[34] In all the circumstances of her case I consider that there are good reasons for the delay in reporting the abuse and in bringing proceedings. First, I am satisfied that the actual abuse about which she complains instilled fear of repercussions if she complained while in the care of the defendants. Secondly, I am satisfied that as she grew older a combination of her mental frailties and her entirely reasonable belief in the unlikelihood of anyone believing that she was subject to such abuse in what, outwardly, appeared to be a caring religious institution, led to her not revealing what had happened or raising any complaint about her treatment. Thirdly, I am satisfied that it was entirely reasonable and understandable that it was only when she saw in the media that others had been subjected to similar treatment that she was encouraged to come forward and disclose what happened to her.

Article 50(4)(b)

[35] Next, Article 50(4)(b) provides that the court should have regard to "the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed."

[36] As to the cogency of potential evidence for the defendants, they sought to establish prejudice arising from the delay, and in each case produced an affidavit from the solicitor with carriage of these cases, Mr Fintan Canavan. Mr Canavan also gave evidence before me. In each case, by agreement, his sworn statement stood as his evidence in chief, and he was cross-examined by Mr Ringland KC. The purpose of his evidence in relation to prejudice was to provide the basis for a submission that the defendants could not have a fair trial of the actions. I consider that his evidence is logically to be considered principally in relation to Article 50(4)(b), although I also take it into consideration in the overall assessment of the limitation issue generally.

[37] Mr Canavan told me that he has acted for the defendants "from the late 2000s" first, when he was in the firm of Jones & Co, then when he moved to the firm of BLM (taking all the defendants' cases with him) and now in the firm of DAC Beachcroft (N. Ireland) LLP. In the McClarnon case he has been acting for the defendants since February 2011 (the date of the letter of claim). However, Mr Canavan has been acting for the same defendants in other claims of abuse, which first started emerging in or about 2009/2010. In all, he said, he had in excess of 25 to 30 letters of claim in relation to the Nazareth premises. In addition to acting in litigation for these defendants, he also acted for them in the Historical Institutional Abuse Inquiry.

[38] The prejudice he alleges in the McClarnon case falls into several categories: first, the absence of witnesses; secondly, the absence of records maintained by the defendants; thirdly, the absence of social services records.

[39] Mr Canavan made the point that the letter of claim provided no information, and that further information did not come until the service of the Statement of Claim

in June 2013. In cross-examination he accepted that it would be a fundamental matter to find out the nature of any abuse alleged, and who was responsible for the abuse, but he was unable to say whether or not he wrote to the plaintiff's solicitors seeking any such information when he received the letter of claim, and he did not produce any correspondence to demonstrate that he had sought such information. He was unable to explain this. He also accepted that with staff, formerly at Nazareth Lodge, getting older with the passage of time, it would have been imperative to move quickly to obtain information. He did not do so.

[40] He was able to say that the nature of the allegations which were made by Ms McClarnon against Brigid Hillman fitted with the pattern of allegations made by numerous other former residents against Ms Hillman, and that such allegations first came to his knowledge in 2009 or 2010. He did not at any time interview or seek to interview Brigid Hillman about any of the allegations made against her, and he accepted that it was a failing on his part not to do so. He told me that he did not feel that there was any merit in obtaining what he assumed would be a series of flat denials from her, so there was nothing to be gained by interviewing her. He was asked if during the HIA Inquiry period he could have interviewed her. He accepted that she was available and that he could have done so, but did not "because she was not going to help our case."

[41] Thus, if the defendants were disadvantaged by not having any evidence from Brigid Hillman, even evidence which amounted to a bare denial of the allegations, this was not caused by the effluxion of time, but because a deliberate decision was made that she would not be interviewed. There is therefore no way of knowing precisely what evidence she might have been able to give on behalf of the defendants. There is no way of knowing whether her memory would have been good or bad, as no questions were ever asked of her to test her recollection. For the same reason, there is no way of knowing whether she would have been co-operative with the defendants, although Mr Canavan was of the view that she would not have helped the defendants' case. Finally, Mr Canavan was forced to admit that he could identify no specific prejudice arising from the passage of time in relation to allegations made by the plaintiff against Brigid Hillman.

[42] Mr Canavan asserted that the defendants cannot locate any employment records, and this notwithstanding that they employed an archivist for the purposes of the HIA Inquiry. They are therefore, he said, unable to identify Patsy McCluskey or obtain any response from him. Mr Ringland drew to his attention that Schedule 2 of the List of Documents served by the defendants makes no reference to any employment records, or indeed any other records. The pro-forma List of Documents in the Rules of the Court of Judicature in Northern Ireland (Form No. 22) identifies what should be inserted in Schedule 2. It is — "Here enumerate as aforesaid [ie in a convenient order] the documents which have been, but at the date of service of the list are not, in the possession, custody or power of the party in question." Therefore, there should have been included in Schedule 2, but was not, a reference to

employment records, together with an explanation as to what has happened to those records.

[43] In answer to that challenge, Mr Canavan said that no-one knows whether there were any employment records. The defendants, at the HIA Inquiry accepted that their record-keeping was bad. Mr Canavan admitted that he could not say whether 5, 10 or 20 years earlier there were any records and, therefore, he could not say that the passage of time was responsible for the absence of records. Thus, Mr Canavan's evidence does not persuade me that the passage of time has caused any prejudice in relation to the defendants' ability to access records — which, on his evidence, may never have existed.

[44] He sought also to rely on the absence of a visitors' book ie a book which would contain the names of visitors to the premises and, presumably, when they came and when they left. He said that because of its absence the defendants were unable to ascertain how often Father Brendan Smyth might have visited Nazareth Lodge, and when. Again, there is no reference to a visitors' book in the List of Documents. In cross-examination he accepted that he was unable to say whether there was or was not a visitors' book for any period relevant to this action; all he could say is that one resident had said he was responsible for keeping a visitors' book, but with no indication as to when this might have been. However, as he admitted, there was evidence at the HIA Inquiry that Father Smyth had visited Nazareth Lodge and had abused children there. I note from Volume 3, Chapter 9 Module 4 of the HIA Inquiry report that Father Smyth from time to time used a bedroom made available for priests visiting Nazareth Lodge. In the circumstances I am not satisfied that there is any evidence of prejudice in relation to the visitors' book.

[45] Mr Canavan also sought to rely on the fact that Ms McClarnon did "not name any particular sister in either her Statement of Claim or the Replies to Particulars." He says that he arranged for the preparation of a full note of all the sisters who were in both Nazareth Lodge and Nazareth House. He identified 18 sisters "who were involved with the children during the period identified" by Ms McClarnon. Of these, seven are deceased (but he did not say when they died), and of the remaining 11 sisters, one left the congregation in 1974 and two are still active in the running of the congregation.

[46] As noted above, Mr Canavan told me that he had represented the defendant organisation at that HIA Inquiry. At paragraph 75 of the Findings of the Inquiry I note the following, in relation to the two premises, Nazareth Lodge and Nazareth House:

> "We received evidence from seven social workers, six middle and senior managers in the social services and five members of the Social Work Advisory Group (SWAG) or Social Services inspectorate (SSI). One teacher, one GP,

> one chaplain, one handyman, two volunteers, five houseparents and eight sisters provided evidence. Three of these people did not appear due to ill health; the remainder gave both written and oral evidence. The evidence of all but one related to Nazareth Lodge, mainly because Nazareth House closed in 1984 and they provided evidence concerning enquiries into complaints about Nazareth Lodge in the following years. In addition, one sister who gave evidence had moved from one home to the other, and her evidence related to both homes."

[47] I do not know what this evidence amounted to, and the defendants' representatives did not indicate to me why none of this evidence was now available to the court, if the defendants thought that it could assist their defence of the actions.

[48] Notwithstanding the fact that, according to Mr Canavan, two of the sisters are still involved with the defendants, he made no attempt to interview either those two, or any of the other 11 still living. He told me, "My policy was not to interview anyone who was not an abuser".

[49] Frankly, I fail to understand the logic of this. The sisters who were working in the homes in the 1970s were in a position to have provided potentially highly relevant information. For instance, they could have said that if children had been regularly beaten by Brigid Hillman, this is something that they could not have missed seeing, thus adding strength to any case being made by the defendants that the abuse did not take place at all or as alleged. They could well have given relevant evidence about Patsy McCluskey or the other man or Father Smyth, perhaps even an address for McCluskey or the other man. They could have given evidence as to the systems which were operated by the defendants for the protection of children in the premises at the material times. They might have been able to provide evidence as to record-keeping or a visitors' book. As they were never asked, we shall never know.

[50] Thus, according to his evidence, Mr Canavan made the deliberate decision not to interview or seek evidence from Brigid Hillman, an alleged abuser, because, he said, she would simply have denied matters and would not have assisted. He did not interview or seek evidence from any of the others, merely because no allegation of abuse was made against them. The outcome was that no potential witness was ever interviewed.

[51] Arising from the above, it is my view, therefore, that there is no evidence of prejudice to the defendants by the absence of witnesses, caused either by the passage of time or because the plaintiff did not identify any particular abuser in her letter of claim or pleadings.

[52] In those pleadings Ms McClarnon also made an allegation that outside the defendants' premises, in the public street, she had been accosted by an unnamed

man (not an employee of, or associated with, the defendants) and sexually assaulted. Mr Canavan complains that the absence of police and court records means that the defendants cannot confirm or challenge this allegation. However, when cross-examined Mr Canavan admitted that he did not approach the PSNI to ask if any record exists, nor did he approach Northern Ireland Courts and Tribunals Service to ask if any record exists. This led on to his admission that he could not say whether, if the action had been commenced earlier, he would have been able to obtain such records. Accordingly, there is no evidence of prejudice arising from this complaint.

[53] He made the point that enquiries with the relevant education authority revealed that all education records concerning Ms McClarnon would have been destroyed, in accordance with the general practice, eight years after she attained the age of 18 — ie around 1990. He was unable to identify any specific prejudice which this would have caused.

[54] His conclusion in his evidence was that the trial "is 38 years beyond the expiration of limitation and after the loss of oral and written evidence." I make it clear that as well as the delay up to the issue of the Writ, I have also considered the consequences of the delay from November 2011 to the date of hearing in November 2023. While that has also been lengthy, in light of what I have said above I do not consider that any prejudice has been caused to the defendants by that further delay.

[55] A secondary consideration in sub-paragraph (b) of Article 50(4) is the cogency of the evidence for the plaintiff. Not only does this relate to potential disadvantage to the plaintiff, but I think it must also include the extent to which any lack of cogency impinges on a defendant's ability eg to challenge the plaintiff's evidence in cross-examination.

[56] There was very limited cross-examination of Ms McClarnon. What there was tended to bring out her difficulty with memory in relation only to a couple of issues. There was some slightly extended cross-examination about an allegation she made about being accosted by a stranger on the Ravenhill Road. It was never suggested to her that no abuse took place.

[57] In the circumstances I do not consider that the lack of cogency of the plaintiff's evidence had any real effect on the cross-examination of this plaintiff in this case.

Article 50(4)(c)

[58] The court is constrained to have regard to "the conduct of the defendant after the cause of action arose, including the extent if any to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant."

[59] Conduct of the defendant is clearly multi-factorial, and only includes "the extent to which he responded to requests" etc. No criticisms were made of the defendants in their handling of the litigation. However, within the overall consideration of whether to exercise the discretion to disapply the limitation period, I consider that I am entitled to take into account the failure of the defendants timeously to interview or to seek witness statements from potential witnesses, as I have outlined above.

Article 50(4)(d)

[60] In relation to this sub-paragraph the court is to have regard to "the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action."

[61] In my view 'disability' is capable of including the mental issues which the plaintiff has suffered from. While this provision may probably be more aimed at a time prior to the issue of proceedings, nevertheless insofar as it can be said to apply in this case, I am satisfied that for a very significant period of time the plaintiff has suffered mental problems which have interfered with her judgment as to her rights and how, or even if, those rights could be enforced.

Article 50(4)(e)

[62] The court must have regard to "the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages."

[63] Once the plaintiff saw on the media reports of others coming forward and complaining about acts of abuse at other institutions, she sought help from SAVIA and went to the police. In the circumstances I am satisfied that she acted promptly and reasonably in the particular factual circumstances of this case.

Article 50(4)(f)

[64] As to "the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice she may have received" it is clear that the plaintiff must have attended with a solicitor, certainly within the time period between December 2010 (police statement) and November 2011 (issue of Writ), and perhaps earlier. She obtained appropriate psychiatric evidence relatively soon after the issue of proceedings — the first report of Dr Best is dated October 2012. Medical evidence was updated prior to the imminent trial date (which was subsequently adjourned) of June 2023.

[65] In addition, and importantly, the defendants have been able to obtain medical evidence of their own, and the defendants' medical expert has been able to meet and interview the plaintiff prior to providing his report.

Limitation — consideration of issues — McGuinness

[66] Mr McGuinness was 18 years of age on 17 April 1979, so the three-year limitation period expired on 17 April 1982. The McGuinness Writ was issued on 10 December 2011. In this case, too, it is clear that many years passed between the dates of the abuse, the dates of expiry of the primary limitation period and the issue of proceedings, and some 12 years have passed between the issue of the Writ and the trial of the action.

Article 50(4)(a)

[67] As to "the length of, and the reasons for, the delay on the part of the plaintiff", the length of delay is clearly very significant. I repeat the quotation from *KR v Bryn Alen* (op cit).

[68] In relation to Mr McGuinness I repeat what I said above in paragraph [30] as being equally relevant to his case viz. that I consider that I am entitled to recognise that allegations of physical or sexual abuse perpetrated in institutions, particularly religious institutions, in the 1970s (and later) tended not to be complained about by the victims of that abuse. Certainly, allegations of abuse by nuns or priests was not likely, then, to be believed and those making such allegations were entitled to believe that it would leave them open to further abuse by way of punishment. I note that in *Larkin v De La Salle Provincialate* [2011] NIQB 129, also a case involving allegations of abuse in religious institutional care, the former Lord Chief Justice, Sir Declan Morgan, said (paragraph [17]: "I accept that it is not uncommon to see allegations of this sort not reported contemporaneously and to see opportunities for reporting passed up".

[69] The report from Dr Mangan, discussed in detail below, makes it clear that Mr McGuinness told him that "he was very frightened by his experience in care, particularly his sexual abuse…he would constantly hide in cupboards and under his bed to try to prevent his abuser from finding him…he became defiant of authority figures. He was very angry." In such circumstances I consider that it was entirely reasonable for him not to complain while in care, and entirely understandable that he did not do so.

[70] As he grew older and eventually got married, he found that sexual relationships with his wife brought back distressing recollections of his sexual abuse, which he found very difficult to deal with. He told Dr Mangan that he stopped going to church in his mid-teens, that he finds it difficult to trust people, particularly men, and that he had no confidence in himself. He also told Dr Mangan that it was

not until later in life that he was eventually able to disclose to his mother what had happened to him.

[71] Dr Mangan, as will be seen, diagnosed Complex Post Traumatic Stress Disorder and Alcohol Use Disorder (severe). Manifestations of such a diagnosis include a feeling of shame and that one is not deserving of treatment. I note also that he told Professor Fahy that there are "times when he has felt that the abuse resulted from his failure as a man."

[72] In the particular circumstances of this case I consider there is good reason why Mr McGuinness did not complain of or raise his treatment in care until sometime prior to the issue of the Writ in this case. I consider that his feelings of shame, lack of confidence, his belief in his failure as a man and his disinclination to seek help, in the way of treatment, all go to explain what are understandable reasons for his not airing his complaints until, finally, he was able to tell his mother.

Article 50(4)(b)

[73] Mr Canavan has been acting in this case since August 2011 (the date of the letter of claim). As noted above, however, he has been acting for the defendants since allegations first emerged in 2009/2010.

[74] As to his complaint about the absence of records, Mr Canavan was taken to the List of Documents served by him in the McGuinness case. The List was amended on some unspecified date to include, in Schedule 2: "All files, records, books or notes held by the Sisters during the period of residence of the plaintiff since lost, destroyed or passed to other agencies." No attempt was made to identify, other than in these wholly generic and unhelpful terms, any of the documents, or to identify which have been lost, destroyed or which passed to other agencies; nor is there any indication as to which agency any document might have been passed. It is also to be remembered that Mr Canavan said that "the defendants, at the HIA Inquiry accepted that their record-keeping was bad." Thus, there is no way in which a court could make any finding as to whether any particular document or record ever existed.

[75] It emerged in his cross-examination, anecdotally, that the Superior of each house was responsible for records, and when they moved on to another establishment they would either destroy the records or take the records with them. This meant that he was forced to admit that even if any record existed, it might have ceased to exist within a very short time of the relevant events.

[76] In the circumstances I can identify no prejudice to the defendants because of the absence of records caused by the effluxion of time.

[77] As in the McClarnon case, Mr Canavan gave no evidence of what enquiries he had made of the plaintiff's solicitors to ascertain what allegations were being made

against whom, or what resulted from any enquiry. He said he might have asked for such matters in open correspondence, but he could not say he actually did, and produced no such correspondence.

[78] Broadly his evidence about employment records, in relation to the alleged abuser 'Francis', was the same as his evidence about employment records in the McClarnon case. Again, I can identify no prejudice caused by the passage of time.

[79] It appears from his evidence that Sister Teresa Murphy was interviewed by the police. She died in 2016. He did not make any attempt prior to that date to interview her or to seek evidence from her or to ascertain whether her evidence might be of assistance to the defendants. Having been able to identify another 4 sisters who were in the homes at the material time, he repeated his evidence that he did not seek to interview any of them. Again, these were deliberate decisions on his part. Again, because of the decisions, we shall never know whether any of those sisters could have provided material evidence.

[80] Having noted that during the HIA Inquiry some residents said that they had been given their records when leaving, or that their records went to the next establishment in which they were resident, and noting that it is "possible that [Mr McGuinness's] records went to Bawnmore with him as he was still quite young", Mr Canavan gave no evidence that he contacted Bawnmore or anyone else to ascertain if the records were available.

[81] He gave evidence that some limited social services records have been available, but they are scarce. However, he was unable to identify what "might have been included" in any such records.

[82] As to the second aspect of sub-paragraph (b), clearly due to his death there has been no evidence from Mr McGuinness at the trial, and no opportunity to cross-examine him. However, I consider that it is relevant here that the defendants did have him examined by their own Consultant Psychiatrist during his lifetime and were able to rely on inconsistencies between the histories given to both psychiatrists.

Article 50(4)(c)

[83] Regard is to be had to "the conduct of the defendant after the cause of action arose, including the extent if any to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant."

[84] I repeat what I said in paragraph [59] above, as it applies equally to this case, namely that conduct of the defendant is clearly multi-factorial, and only 'includes' "the extent to which he responded to requests" etc. Again, no criticisms were made of the defendants in their handling of the litigation. However, within the overall

consideration of whether to exercise the discretion to disapply the limitation period, I consider that I am entitled to take into account the failure of the defendants timeously to seek witness statements from potential witnesses, as I have outlined above.

Article 50(4)(d)

[85] In relation to this the court is to have regard to "the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action."

[86] Again, in my view 'disability' can include the mental issues which the plaintiff has suffered from. It is clear, as discussed below, that this was a vulnerable boy prior to his admission to the care of the defendants and that he suffered significantly as a result of their treatment of him. Insofar as this sub-article can be said to apply in this case, I am satisfied that his mental troubles continued to the date of his death and would have affected his judgment about his rights and how, or even if, those rights might be enforced.

Article 50(4)(e)

[87] The court must have regard to "the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages."

[88] There was no evidence before me as to when the plaintiff first considered that what had happened to him might give rise to an action for damages. I can make no finding on this matter.

Article 50(4)(f)

[89] As to "the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received" it is clear that Mr McGuinness obtained appropriate psychiatric evidence relatively soon after the issue of proceedings.

[90] It is important that the defendants were able to arrange for the examination of Mr McGuinness in December 2018 by Professor Fahy. Thus, the defendants have available to them medical evidence which allowed them to draw to the attention of the court potential inconsistencies in the history given to the medical experts.

Conclusion on limitation — both cases

[91] At this stage it is worthwhile repeating what Gillen J said in the *Marmion* case (op cit) at paragraph [9]:

> "However, what is at the heart of Article 50 is whether it would be equitable to allow an action to proceed, and in fairness and justice, the obligation of a tortfeasor to pay damages should only be removed if the passage of time has significantly diminished his opportunity to defend himself. The basic question therefore to be asked is whether it is fair and just in all the circumstances to expect the defendant to meet the claim on the merits notwithstanding the delay in the commencement."

[92] In the defendants' final written submissions, in support of their proposition that "the court should not exercise its discretion to disapply the time limits" the following is stated:

> "It has been recognised that the passage of such a period of time can and does have a detrimental effect on the ability of a witness to provide cogent and reliable evidence to the court. In *Carberry v Ministry of Defence*, at paragraph 171, McAlinden J cited *Kinmathi v Foreign and Commonwealth Office*, which summarised out (sic) a number of authorities which emphasise the negative effect of the passage of prolonged periods of time can have on witness testimony, particularly within the context of civil litigation, and the importance of contemporaneous documentary records."

[93] The problem with this submission is that it wholly ignores the evidence of Mr Canavan in both of these cases, which is that no attempt was made to interview any potential witness, this despite the fact that allegations first began to emerge in 2009/2010 and there were patterns in the many allegations made by residents of Nazareth Lodge — ie the same, or similar, allegations were being made against the same identified persons — and witnesses were alive and available to be interviewed. Further, Mr Canavan was able to give no evidence whatsoever about what records ever existed or when, if they did exist, they may have ceased to exist.

[94] In respect of the cases of both Ms McClarnon and Mr McGuinness I am satisfied that there was no attempt to obtain evidence from witnesses, such as one would expect of a party setting out to refute allegations made against it in a civil case. Having heard Mr Canavan's evidence, I am left with the very clear impression that because of the plethora of similar claims and allegations against the defendants which began to be received from 2009/2010 and continued for a number of years, the defendants simply accepted that seeking to obtain and call evidence to refute allegations was a hopeless task and, therefore, did not bother even to attempt to do so. Whether or not that impression be correct, the result is that the absence of evidence has not been caused by the passage of time, but because the defendants

deliberately made no attempt to garner evidence which might have assisted the defence of the actions.

[95] Having considered carefully the defendants' submissions and the evidence of Mr Canavan, I am satisfied that any prejudice to the defendants has been caused by the actions of the defendants themselves.

[96] In paragraph [26] above I cited *KR v Bryn Alyn* at para [74]

> "Depending on the issues and the nature of the evidence going to them, the longer the delay the more likely, and the greater, the prejudice to the defendant." [my emphasis]

[97] I emphasised the words underlined because when I consider the issues raised in these cases and the evidence going to them, I am satisfied that, although generally the longer the delay the more likely and greater is the prejudice, in fact in the circumstances of these cases the prejudice has come about for reasons other than delay.

[98] Standing back and looking at all the circumstances of each of these cases separately, including those matters particularly set out in Article 50(4) of the Order, and including the oral and documentary evidence in each case, I am satisfied that the defendants can have a fair trial of both actions. In all the circumstances of each case I am satisfied that it is appropriate to disapply the limitation period and, accordingly, each action may proceed. As noted above, the defendants rely on their rights under article 6 of the European Convention on Human Rights. I am satisfied, as I have said, that in the circumstances of these cases, the defendants can have a fair trial of the issues.

[99] I now turn to consider the issues of primary liability, causation and quantum, all of which remained live in the action. I record that the defendants elected to put all their eggs into the limitation basket. In written submissions prior to the trial, no other issue was dealt with. Following the conclusion of the oral evidence I gave the defendants time to provide further submissions in writing. Those submissions dealt only with the issue of limitation.

Liability — both cases

[100] It was never suggested to Ms McClarnon that she was lying about the fact that physical abuse took place. The (limited) cross-examination of her really only sought to test her memory of some specific facts. Neither was it suggested to her that she was wrong about the nature and extent of the physical abuse.

[101] I find, on the balance of probabilities, that she was physically abused while in the care of the defendants. However, I do not find on the evidence before me that

she was subjected to sexual abuse. Her evidence to me about Father Brendan Smyth was rather vague — she only said that he bounced her up and down on his knee. The evidence, therefore, is not sufficient for me to find on the balance of probabilities that she was sexually abused by him.

[102] Clearly no cross-examination of Mr McGuinness could take place. I note that the defence in his case pleaded that "the form of corporal punishment by its servants and agents at the time alleged was appropriate and commensurate to the accepted educational practices." That amounts to an admission that physical punishment was meted out to Mr McGuinness.

[103] The deliberate decision by the defendants not to seek any witness evidence, and consequently not to call any witness, to try to refute the claims of physical and sexual abuse is, in my view, telling. I have indicated above what I think lay behind this decision, and I infer from the failure to seek or call evidence that they believed that they would be unable to refute the case being made by Mr McGuinness.

[104] I am satisfied that Mr McGuinness was subject to physical and sexual abuse while in the care of the defendants. Although the Statement of Claim includes an allegation of rape, he did not mention this to either of the medical experts. If he had been raped, that is likely to have been the worst aspect of the sexual abuse which he suffered, and I would have expected him to mention it to the medical experts when they were taking from him a history of what happened to him while in the care of the defendants. Therefore, the plaintiff has failed to satisfy me that Mr McGuinness was raped.

[105] Each plaintiff succeeds on the issue of primary liability.

[106] I turn now to consider causation and quantum in relation to each.

The medical evidence in Ms McClarnon's case

[107] In this case the following medical reports were before the court: for the plaintiff Dr Best, Consultant Psychiatrist, dated 20 October 2012 and 20 June 2023; for the defendants Professor Fahy, Professor of Forensic Mental Health, dated 2 December 2014; a joint minute prepared by both those experts and dated 24 June 2023. In addition, there are reports from Mr Eakin, Chartered Educational Psychologist, dated 27 May 2015 and 24 August 2016.

[108] I am satisfied from the medical evidence which I have read (and heard), and from the evidence of the plaintiff, that she suffered physically and psychologically as a result of the abuse she suffered at the hands of the defendants. Accordingly, the plaintiff succeeds on the issue of causation.

Ms McClarnon — quantum

[109] First, the plaintiff is entitled to recover damages for the physical assaults while in care — see eg *Carr v Dromore Diocesan Trust* [2021] NIQB 46.

[110] Arising from her time in care the plaintiff was subjected to significant physical abuse. The physical abuse occurred over a period of some five or six years and was regular and the beatings were painful.

[111] I consider that for the physical abuse, over that length of time, the appropriate award is £50,000.

[112] Both Dr Best and Professor Fahy have set out in their respective reports what the plaintiff told them about the psychological effects on her of the physical abuse she suffered and the regime in Nazareth Lodge, and I have read and re-read those reports. I do not intend to rehearse all that was said. When he examined the plaintiff in May 2012 (the report is dated October) Dr Best diagnosed a Recurrent Depressive Disorder. Professor Fahy rejected that diagnosis following his examination in December 2014, concluding instead that the "clinical history is one of occasional coping difficulties, giving rise to mild anxiety and transient low mood."

[113] Dr Best produced a second report dealing with a further assessment of the plaintiff in June 2023. I note that he says (referring to his earlier report):

> "I felt that [the plaintiff] went through bouts of depression. I labelled it as recurrent depressive disorder. Whether that is the best term is of academic interest, her depressive episodes could have been called depressive adjustment disorders at time of challenge, and a consequence of her poor coping strategies and poor self-confidence."

And later

> "Possibly a better term would have been periods of 'depressive adjustment reaction 'or 'moderate depressive episodes.'"

[114] In the joint statement from the two experts, dated 24 June 2023 they record, inter alia:

- That the plaintiff was a vulnerable woman, in the mild to moderate learning disability range and that her educational attainments are commensurate with her IQ of 62;
- Her learning disabilities would have been detrimental to her psychosocial outcome;
- Other factors which had the potential to have an adverse effect on psychosocial outcomes included her childhood family experiences (poor

parental care and physical abuse), the duration she spent in institutional care and the physical and emotional abuse in care;

- She was not clinically depressed when seen by Dr Best and Professor Fahy (and I take this to mean not clinically depressed in May 2012, December 2014 or June 2023);
- The possible sexual abuse by Father Brendan Smyth does not suggest that it was psychologically significant at the time, although later realisation could have caused her some distress;
- Neither thought that psychological treatment, focussed on childhood abuse, would benefit her.

[115] Dr Best concludes that her depressive symptoms "can be characterised as a depressive adjustment reaction or moderate depressive episodes. Professor Fahy considers that her periodic low moods "fall below the severity of a diagnosable depressive disorder."

[116] In his evidence in chief Dr Best said that his view (expressed in his first report) — that she would struggle for the rest of her life with poor self-confidence, a tendency to depression and would find it difficult to relate normally to people — was caused by a combination of factors. A "fairly significant contribution" was caused by her time in the care of the defendants, but he said she had other vulnerabilities. He though the consequences were very significant for her and quite debilitating. Her life would have been different had it not been for her time in Nazareth Lodge, and she was not well prepared for adult life.

[117] In cross-examination he felt that more of the damage was to the plaintiff's self-confidence and ability to face the challenges of life, but that depression was caused by her inability to cope, which itself was due to her time in Nazareth Lodge. It was suggested to him (in relation to vocational training) that one is less likely to progress without support from home, and he agreed that the plaintiff got no encouragement from her family.

[118] Professor Fahy merely proved his report and the agreed minute, but otherwise gave no evidence in chief and was not cross-examined.

[119] I find that the plaintiff was a very vulnerable person before going into care. She had a very low IQ and during her childhood attended special schools. Doing the best I can from the challenged evidence of Dr Best and the unchallenged but only written evidence of Professor Fahy I find, on the balance of probabilities, that she suffered depressive episodes from time to time, but these were never sufficiently serious or long-lasting for her to seek or obtain help on a regular basis from her GP. On balance I think that Dr Best's description of "moderate depressive episodes" better fits the evidence which I have heard and read.

[120] I am satisfied that the consequences of the abuse were to damage her self-esteem, her self-confidence and to contribute to her low moods. However, due to her underlying personality I am satisfied that even if she had not been subject to abuse in Nazareth Lodge, she would have suffered to some extent, although probably to a lesser extent. She has learned to cope as best she can within what were her innate limitations.

[121] The current edition of the Green Book (Guidelines for the Assessment of General Damages in Personal Injury Cases in Northern Ireland) ("the Green Book") is the 5th edition. It is dated 10 December 2018 and was intended to be replaced at the end of five years. This has not occurred, at least at the date of delivering this judgment. I consider that the plaintiff's case falls within the category of moderately severe psychiatric damage in the current edition of the Green Book. I consider that the psychological consequences of the abuse she suffered has contributed to (but is not the sole or major cause) of her limited ability "to cope with life, education and particularly work." I think, from reading the material in the medical reports, that she would have had difficulties with relationships in any event, but this was to some extent exacerbated by the consequences of the abuse. She has seldom sought medical help for her difficulties. There is no prospect of matters improving into the future but, equally, there is no suggestion by the medical experts that matters will worsen.

[122] It is likely that the range for this category in the 5th edition (ie £47,500-£125,000) will increase when the overdue 6th edition is finally published. Bearing in mind that the assessment of general damages is not an exact science, in my view the appropriate figure within the category is £100,000.

Aggravated damages

[123] I turn to consider the issue of whether the award of compensation should include an element of aggravated damages. I bear in mind that aggravated damages are not available for negligence but are available for assault and battery. In *Doherty v MOD* [2020] NICA 9 the Court of Appeal considered the question of aggravated damages, albeit in different factual circumstances. At paragraph [15] McCloskey LJ said:

> "It is common case that an award of aggravated damages is permissible only where two conditions are satisfied:
>
> (i) There must be exceptional or contumelious conduct or motive on the part of the tortfeasor in committing the wrong or subsequent to its commission.
>
> (ii) The plaintiff must suffer mental distress as a result.

> This formulation derives from the Report of the English Law Commission (Law Com No 247, 1997) at paragraph 2.4, cited with approval by Carswell LCJ in *Clinton v Chief Constable of the RUC* [1999] NI 215 at 222f, describing this as 'an accurate statement of the law'".

[125] Having referred to some apparent divergence in cases in England & Wales, and having identified the cases in which it appears, McCloskey LJ said, paragraph [29]:

> "The impact of the decision in *Richardson* in reported cases in England and Wales appears to have been muted. So far as this court is aware, it has had no impact in the jurisdiction of Northern Ireland. It is to be noted that while [23] of the decision purports to promulgate an absolute rule, in [24] the court recognises that an award of aggravated damages for injury to the victim's feelings, including any anger and indignation aroused, might still be appropriate, albeit in a "wholly exceptional case" only. There are two further considerations. The first is that the decision in *Richardson* is not binding on this court. The second is that there is a previous relevant decision of this court which is binding, namely *Clinton*, in the absence of any suggestion that any of the limited grounds for departing from it applies. There a different division of this court endorsed unequivocally the Law Commission's two preconditions for an award of aggravated damages."

[126] I note also what was said by McCloskey LJ in paragraphs [14] and [33] to [35] about the nature of torts involving trespass to the person.

[126] In the Law Commission Report referred to in *Doherty*, the Commission said this:

> "In *Rookes v Barnard* Lord Devlin said that aggravated awards were appropriate where the manner in which the wrong was committed was such as to injure the plaintiff's proper feelings of pride and dignity, or gave rise to humiliation, distress, insult or pain. He thought that conduct which was offensive, or which was accompanied by malevolence, spite, malice, insolence or arrogance, could lead to recoverable intangible loss. In *Broome v Cassell* the House of Lords referred to mental distress, injury to feelings, insult, indignity, humiliation and a heightened sense of injury or grievance."

[127] In the circumstances of this case I am satisfied that the award of general damages should include aggravated damages. The behaviour of the defendants' servants and agents towards the plaintiff warrants such an award. Taking the words of the Law Commission (quoting Lord Devlin) I consider that the assaults and batteries of which the plaintiff complains were "such as to injure the plaintiff's proper feelings of pride and dignity, or [give] rise to humiliation, distress, insult or pain", and that if aggravated damages were not awarded, she would not be properly compensated. Among other insults to pride and dignity which she complained of were being forced to bathe in water with disinfectant, leaving her with strong memories of the smell and the deliberate and repeated humiliation of her in front of others for having wet the bed — quite the antithesis of the concept of Christian love which the defendants would have said they espoused. I bear in mind (i) that aggravated damages are intended to be compensatory, not punitive (ii) that the total award of compensatory damages should not exceed what would be a fair award, and (iii) the necessity to be aware of the risk of double counting.

[128] In the circumstances I consider that the appropriate figure for the aggravating factors is £35,000, in addition to the other sums.

[129] Undertaking the same exercise as that adopted by McAlinden J in *Carr*, and standing back to look at the overall figure arrived at — £185,000 — I ask myself two questions: (i) whether that figure is appropriate properly to compensate the plaintiff for all that she endured at the hands of the defendants during her 5 to 6 years in their care, and all the relevant sequelae and (ii) whether that figure is so large in all the circumstances of the case as to be unfair to the defendants, as being disproportionate to their culpability. Having done that exercise, I consider that the sum of £185,000 is appropriate.

Financial loss

[130] The plaintiff claimed financial loss in her Statement of Claim. No particulars were given. I have read the two reports from Mr Eakin which demonstrate the plaintiff's general ability and educational attainments. I do not intend to set out his findings in detail. He notes that she attended two special schools, that she did no examinations (GCE or CSE), that she undertook no training courses and has no qualifications.

[131] The plaintiff gave no evidence to me whatsoever about this, so I have no idea from her whether she ever made any attempt to seek or gain employment, although I suspect not. Mr Eakin also recorded that she has never had paid employment.

[132] In the conclusion to his first report Mr Eakin said, inter alia:

> "From an educational perspective … it is unlikely that she would have achieved markedly better qualifications, giving her existing learning difficulty. Occupationally,

> with support and encouragement, more positive self-concept and self-esteem, positive expectations, and social and emotional adjustment, it is possible that she could have achieved basic training at Skills Level 1 and found employment."

[133] Notwithstanding what he says in his second report — that "her childhood experiences within the punitive and coercive setting of the children's home was probably a contributory factor to her lack of vocational training and qualifications — I consider that it is more likely than not that the plaintiff would not have achieved paid employment. I base this on (i) Mr Eakin's view, in his first report, that it was only possible that the plaintiff could have achieved basic training, if all the matters which preceded the words" it is possible" had been in place; (ii) my reading of the reports of all the experts in this case; and (iii) my assessment of the plaintiff in the witness box when she gave evidence before me.

[134] Accordingly, I make no award in relation to the claim for financial loss.

Mr McGuinness's case — the cross-examination issue

[135] Before dealing in detail with the medical evidence relating to Mr McGuinness, I need to deal with a discrete issue which arose during that part of the trial dealing with the medical evidence relevant to him, and which affects the approach I will have to take to the medical evidence.

[136] It arose in these circumstances. Only two medical reports were submitted: for the plaintiff a report from Dr Mangan, Consultant Psychiatrist, dated 26 November 2015; for the defendant a report from Professor Fahy, Professor of Forensic Mental Health, dated 19 December 2018. As was agreed by the parties, Dr Mangan gave his evidence and was cross-examined and, immediately thereafter, Professor Fahy was called to give evidence.

[137] At the conclusion of Dr Mangan's evidence I asked the parties if Dr Mangan should be asked to remain in court until after the defendants' expert had given evidence, but neither party sought this; in particular, Mr Brady KC did not ask for this.

[138] A significant thrust of Dr Mangan's oral evidence was that at the date of his report (November 2015) the relevant edition of the International Classification of Diseases ("ICD") was the 10th edition ("ICD-10"). In 2019 there was published the 11th edition, known as ICD-11. Using the diagnostic criteria in ICD-10, Dr Mangan had diagnosed Post Traumatic Stress Disorder ("PTSD") and Alcohol Dependence Syndrome. He said that had ICD-11 been available to him in 2015, the same symptoms demonstrated by the late Mr McGuinness would have led Dr Mangan to the diagnoses of Complex PTSD and Alcohol Disuse Disorder (severe). The

development of Complex PTSD can be caused by repeated exposure to trauma as, says Dr Mangan, happened in this case.

[139] Dr Mangan said that the PTSD from which Mr McGuinness suffered was most damaging to him. He said that what made it Complex in relation to Mr McGuinness, and what was "very striking", was his negative self-concept, feelings of shame and worthlessness and that he was not deserving of treatment. He considered that the Complex PTSD led to Mr McGuinness not engaging in treatment, including for his alcohol issues.

[140] Neither of these new diagnoses was contained in any supplementary medical report. While, ex facie, this evidence could have been objected to on the basis of Order 25 Rule 2(b) and Rule 7, no objection was taken by Mr Brady to this evidence being given to the court. I assume that he was content that the evidence be received.

[141] When Professor Fahy began to give evidence he was specifically asked about Complex PTSD. He said it was not accepted in DSM5. [DSM5 is the fifth edition of The Diagnostic and Statistical Manual of Mental Illnesses]. He began to say that it [ICD-11] was "not sufficiently persuasive to…", but at this stage Mr Ringland objected that there had been no challenge to the diagnosis of Complex PTSD during the cross-examination of Dr Mangan. This was correct — there had been no challenge to that evidence — and was accepted by Mr Brady. The end result was that Mr Brady did not question Professor Fahy any further and indicated that he would simply rely on Professor Fahy's written report. There was no cross-examination of Professor Fahy by Mr Ringland.

[142] Throughout my practice at the Bar I have regarded it as trite that a party who takes issue with a matter given in oral evidence is obliged to challenge the matter in cross-examination. If any authority be needed for that basic proposition, coincidentally the matter has been dealt with in the Supreme Court very recently. In *TUI UK Ltd v Griffiths* [2023] UKSC 48 the issue of cross-examination of witnesses arose. The evidence of an expert witness called by the plaintiff (Griffiths) was not challenged in cross-examination by counsel for the defendant (TUI), who then, in closing submissions, argued, and persuaded the judge, that deficiencies in the expert's report meant that the plaintiff had failed to prove his case on the balance of probabilities.

[143] Lord Hodge (with whom the other justices agreed) said at paragraph [33]:

> "Bean LJ [in the Court of Appeal in the *TUI* case] … described as trite law the statement in *Phipson on Evidence*, which I quote below, that, in general, a party is required to challenge on cross-examination the evidence of any witness of the opposing party if it wishes to submit to the court that that evidence should not be accepted…"

And at paragraph [42]:

> "It is the task of a judge in conducting a trial in an adversarial system to make sure that the trial is fair. It is the task of the judiciary in developing the common law, and the makers of the procedural rules, to formulate rules and procedures to that end. One such long-established rule is usefully set out in the current edition of *Phipson on Evidence* 20th ed (2022). Bean LJ quoted the previous edition, which was in materially the same terms, at the start of his dissenting judgment. At para 12-12 of the 20th edition the learned editor states:
>
> > 'In general a party is required to challenge in cross-examination the evidence of any witness of the opposing party if he wishes to submit to the court that the evidence should not be accepted on that point. The rule applies in civil cases…
> >
> > This rule serves the important function of giving the witness the opportunity of explaining any contradiction or alleged problem with his evidence. If a party has decided not to cross-examine on a particular important point, he will be in difficulty in submitting that the evidence should be rejected.'"

[144] Further, at paragraph [43] Lord Hodge said:

> "I am satisfied that the statement in *Phipson* is correct and, as explained below, it summarises a longstanding rule of general application. It is not simply a matter of extensive legal precedents in the case law. It is a matter of the fairness of the legal proceedings as a whole. "

[145] Lord Hodge went on to consider a number of authorities before concluding at paragraph [70]:

> "In conclusion, the status and application of the rule in *Browne v Dunn* and the other cases which I have discussed can be summarised in the following propositions:
>
> (i) The general rule in civil cases, as stated in *Phipson*, 20th ed, para 12-12, is that a party is required to

challenge by cross-examination the evidence of any witness of the opposing party on a material point which he or she wishes to submit to the court should not be accepted. That rule extends to both witnesses as to fact and expert witnesses.

(ii) In an adversarial system of justice, the purpose of the rule is to make sure that the trial is fair.

(iii) The rationale of the rule, ie preserving the fairness of the trial, includes fairness to the party who has adduced the evidence of the impugned witness.

(iv) Maintaining the fairness of the trial includes fairness to the witness whose evidence is being impugned, whether on the basis of dishonesty, inaccuracy or other inadequacy. An expert witness, in particular, may have a strong professional interest in maintaining his or her reputation from a challenge of inaccuracy or inadequacy as well as from a challenge to the expert's honesty.

(v) Maintaining such fairness also includes enabling the judge to make a proper assessment of all the evidence to achieve justice in the cause. The rule is directed to the integrity of the court process itself.

(vi) Cross-examination gives the witness the opportunity to explain or clarify his or her evidence. That opportunity is particularly important when the opposing party intends to accuse the witness of dishonesty, but there is no principled basis for confining the rule to cases of dishonesty.

(vii) The rule should not be applied rigidly. It is not an inflexible rule and there is bound to be some relaxation of the rule, as the current edition of *Phipson* recognises in para 12.12 in sub-paragraphs which follow those which I have quoted in para 42 above. Its application depends upon the circumstances of the case as the criterion is the overall fairness of the trial. Thus, where it would be disproportionate to cross-examine at length or where, as in *Chen v Ng*, the trial judge has set a

limit on the time for cross-examination, those circumstances would be relevant considerations in the court's decision on the application of the rule.

(viii) There are also circumstances in which the rule may not apply…"

[146] This case was not one "in which the rule may not apply."

[147] As I indicated above (paragraph [137]) I had asked both parties if Dr Mangan could be released after giving his oral evidence, and before Professor Fahy gave evidence. Both parties agreed that he could be released. The first topic introduced by Mr Brady in his soon-to-be-abandoned examination in chief of Professor Fahy was Complex PTSD. Thus, it would appear that Mr Brady expected his witness to criticise the diagnosis. Notwithstanding this, the evidence of Dr Mangan as to the diagnosis was unchallenged in cross-examination.

[148] After the cross-examination issue arose, no application was made by Mr Brady to have Dr Mangan recalled so that he could be cross-examined on the issue of the diagnosis of Complex PTSD or the status of ICD-11. While I have no doubt that such an application would have been strenuously resisted, I consider that if such an application had been made — and bearing in mind that fairness applies to both parties to litigation — I would have found it very difficult, if not impossible, to refuse the application to recall Dr Mangan for further cross-examination.

[149] However, in the way in which the trial developed, the only oral evidence before me relating to the diagnosis of Mr McGuinness's symptoms was the unchallenged oral evidence of Dr Mangan, and I have to deal with the case on that basis. The final written submissions on behalf of the defendants did not touch at all on this issue.

Medical evidence re Mr McGuinness

[150] Having read the medical evidence of both experts and having heard Dr Mangan, I am satisfied that Mr McGuinness was subject to physical and sexual abuse while in the care of the defendants. I am satisfied that he was forced to perform fellatio. I am also satisfied that he suffered recognised psychiatric damage as a result of the abuse suffered by him.

[151] Accordingly, the plaintiff succeeds on the issue of causation.

[152] As noted above, Dr Mangan now considers that the appropriate diagnosis is one of Complex PTSD and Alcohol Use Disorder (severe). By agreement I was provided with relevant excerpts of ICD-11 from which I note the description of Complex PTSD, thus:

> "Complex post-traumatic stress disorder (Complex PTSD) is a disorder that may develop following exposure to an event or series of events of an extremely threatening or horrific nature, most commonly prolonged or repetitive events from which escape is difficult or impossible (e.g. torture, slavery, genocide campaigns, prolonged domestic violence, repeated childhood sexual or physical abuse). All diagnostic requirements for PTSD are met. In addition, Complex PTSD is characterised by severe and persistent 1) problems in affect regulation; 2) beliefs about oneself as diminished, defeated or worthless, accompanied by feelings of shame, guilt or failure related to the traumatic event; and 3) difficulties in sustaining relationships and in feeling close to others. These symptoms cause significant impairment in personal, family, social, educational, occupational or other important areas of functioning.

[153] In his 2015 report Dr Mangan noted that Mr McGuinness was distressed and tearful when talking about the sexual abuse he suffered while in the care of the defendants. He described sleep disturbance and nightmares. He described flashbacks relating to the abuse. Dr Mangan recorded Mr McGuinness saying that he finds it difficult to relax, that he feels down at times, that he has reduced self-confidence, that he has problems with irritability and has difficulties controlling his temper. Mr McGuinness told Dr Mangan that "from an early age he used alcohol to block out flashbacks and feelings in relation to his sexual abuse", first drinking alcohol at age 14 and being a regular drinker from then on. Contrary to this history, Professor Fahy was told by Mr McGuinness that he did not experience intrusive images of his abuser until he was aged 28 years and blames this as the cause for his alcohol abuse.

[154] In his evidence in chief Dr Mangan was taken to paragraph 9 of Professor Fahy's report — which expressed the views (i) that Mr McGuinness's "principal mental health problems derive from his chronic alcoholism"; (ii) that his symptoms amount to "a fluctuating mild PTSD or Chronic Adjustment Disorder" ("CAD"); (iii) that, while the symptoms are "a source of distress" they are not what have rendered Mr McGuinness unfit for work and do not account for his current (ie 2018) predicament. Dr Mangan said of Professor Fahy's view: (i) that PTSD is a most severe psychiatric reaction to trauma, (ii) that Complex PTSD is a separate diagnosis, (iii) that "mild" is never used to qualify PTSD, (iv) that CAD generally only lasts for a couple of years after the trauma, (v) that CAD is much less severe than PTSD and is seen at the mild end of the spectrum of psychiatric problems. In cross-examination it was not put to Dr Mangan that he was wrong about these five matters. If it was the defendants' case that Dr Mangan was wrong about them, I would have expected that to be put to him to give him the opportunity to explain why he held those views.

[155] Dr Mangan disagreed with what Professor Fahy said about the reasons for Mr McGuinness's unfitness for work or current predicament.

[156] Mr Brady suggested that Mr McGuinness had trouble with authority, even before he went into care and asked Dr Mangan about his criminal record. Dr Mangan was unaware of Mr McGuinness's criminal record, which commenced in 1978. This was dealt with by Professor Fahy, who had been provided with what he called a printout of the record, presumably by the defendants' solicitors. I note that Mr McGuinness was sentenced to 3 years imprisonment in 2002. It can hardly be surprising, however, if an already troubled boy, sexually and physically abused by those who are supposed to be caring for him, finds his way into the criminal justice system.

[157] Dr Mangan accepted that before any assaults, such as are outlined in the Statement of Claim, occurred Mr McGuinness was already a vulnerable individual. This is not disputed by Professor Fahy. However, Dr Mangan's view was that Mr McGuinness experienced the subsequent problems, of which he complained, because of the abuse, which was superimposed on his already underlying vulnerability. He said: "At the most vulnerable stage of his life he was then, not healed, but subject to repeated abuse, with no option of escape."

[158] Professor Fahy put the matter in this way:

> "Assuming that his account is truthful and accurate (he delivered his account with persuasive detail and congruent emotion) I conclude that such an experience would be psychologically harmful, especially in an already vulnerable child, giving rise to a risk of exacerbating pre-existing psychological and behavioural problems, reinforcing anti-authority attitudes, disturbing psychosexual development, causing post-traumatic symptoms and contributing to dysfunctional coping mechanisms."

[159] When asked about the differences between the personal and family history provided to him and that provided to Professor Fahy, Dr Mangan said he was not given the extensive family history of alcohol abuse which Professor Fahy elicited, viz." His mother was alcoholic… all of his siblings are heavy drinkers or alcoholic". Notwithstanding this, he disagreed with the conclusion of Professor Fahy in paragraph 2 of his opinion section where he said:

> "In view of the strong positive family history of alcohol misuse and the early onset and persistence of conduct and anti-social behaviours I conclude that Mr McGuinness's adult alcohol dependence and personality problems and

antisocial behaviours would have developed regardless of the alleged childhood sexual abuse."

[160] In cross-examination Dr Mangan said that he would have diagnosed Complex PTSD if it had been available in 2015. [This was the only mention of Complex PTSD in the cross-examination and, as noted above, went unchallenged]. He agreed that Mr McGuinness was not a regular attender with his GP and that there was little in the records to corroborate what he said about his problems, but he asserted that this was often the case. Mr Brady drew to his attention that in 1993 Mr McGuinness appears to have been the victim of a punishment shooting, in both legs, something which did not appear in Dr Mangan's report, and to an entry which said that Mr McGuinness associates this 'kneecapping' with his problems. He agreed that the entry stated so and that this could cause hyper-arousal.

Conclusions on the medical evidence relating to Mr McGuinness

[161] Having carefully read and re-read the two medical reports in this case I have noted that there are discrepancies and inconsistencies in the history given by Mr McGuinness. Clearly some of these will be related to his mental issues, but the fact that they exist means that a court should exercise some caution when assessing the overall evidence.

[162] Having said that, and bearing it in mind, I am satisfied that Mr McGuinness suffered from Complex PTSD and Alcohol Use Disorder (severe). As I have said, Dr Mangan was not challenged on this. I reject the evidence in the report of Professor Fahy, who did not give oral evidence about the matter, that the appropriate diagnosis is "mild PTSD or Chronic Adjustment Disorder." I do so (a) because I accept the unchallenged diagnosis of Dr Mangan given in oral evidence and (b) because it was not put to Dr Mangan that his criticism of Professor Fahy's diagnosis was wrong — see paragraph [154] above.

[163] I am satisfied that Mr McGuinness was a vulnerable and somewhat troubled child before he went into the care of the defendants. I am satisfied that there were alcohol problems in the extended family. I am satisfied that it is more likely than not that Mr McGuinness would have suffered with alcohol issues due to his underlying vulnerability, the death of his father when he was only three and the very fact that he had been put into care, but that such issues would probably not have been as severe as those actually experienced by him. It is clear from the totality of the history elicited by both experts that there were other stressors in Mr McGuinness's life from time to time, and I have to bear those in mind. I am satisfied that, as stated by Professor Fahy, he would have suffered from some significant conduct disorder or personality traits in adulthood in any event.

[164] He died at age 59, and it is clear that the entirety of his life post-care was significantly blighted by what had happened to him while in the care of the defendants.

General Damages

[165] First, the plaintiff is entitled to recover damages on behalf of the estate for the physical and sexual assaults on Mr McGuinness while in care — see what I have said about the case of *Carr* above. No two cases are the same, and I must deal with Mr McGuinness's case on its own facts. He was in care for about 2½ years. In all the circumstances, I consider that an appropriate figure for the two distinct types of abuse which he suffered in care would be £45,000.

[166] As to the psychiatric injury, under the rubric "Post-traumatic Stress Disorder" in the Green Book, the following appear:

> "(a) Severe
>
> Such cases will involve permanent effects which prevent the injured party from working at all or at least from functioning at anything approaching the pre-trauma level. All aspects of the life of the injured person will be badly affected.
>
> £60,000 - £120,000
>
> (b) Moderately Severe
>
> This category is distinct from (a) above because of the better prognosis where some recovery with professional help is anticipated. However, the effects are still likely to cause significant disability for the foreseeable future.
>
> £45,000 - £95,000"

[167] Immediately above category (a) of PTSD, the Guidelines state:

> "There may be exceptional cases [of PTSD] where consequences are so severe, they equate more with the type of damage envisaged in paragraph A above."

[168] That paragraph ie "paragraph A above" appears under the heading "Psychiatric Damage Generally" in which damages for the category "Severe Psychiatric Damage" lie between £82,000 and £210,000. As noted above, the awaited 6th edition of the Green Book is likely to increase those ranges somewhat.

[169] In my view this is a case "where consequences are so severe, they equate more with the type of damage envisaged in paragraph A above". I consider that the appropriate figure for general damages for this plaintiff as diagnosed by Dr Mangan

for the psychological/psychiatric injury lies in a range greater than the £120,000 (being the upper end of the severe PTSD in the outdated fifth edition) and the figure of £210,000 mentioned above. In my view the appropriate figure is £180,000.

Aggravated damages

[170] The Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 deals with the effect of death on certain causes of action. While that Act provides that exemplary damages cannot be awarded to the estate a deceased plaintiff, it is silent on aggravated damages. Therefore, the court has power to award aggravated damages in a case such as this.

[171] I repeat what I said above about aggravated damages in paragraphs [124] to [126] of this judgment, save for that part of paragraph [126] which relates specifically to Ms McClarnon.

[172] I am satisfied that the treatment meted out to Mr McGuinness while in the defendants' care warrants an award of aggravated damages. In view of the sums which I have already awarded, I consider that a figure of £25,000 for aggravated damages would be appropriate and would not amount to an element of double counting.

Conclusion on general damages

[173] The figures, therefore, are £45,000 damages for the physical and sexual abuse visited upon Mr McGuinness during his 2½ years in Nazareth Lodge; £180,000 damages for the psychological/psychiatric injury caused to him by the defendants; and £25,000 aggravated damages, to take into account that "the manner in which the wrong was committed was such as to injure the plaintiffs proper feelings of pride and dignity, or gave rise to humiliation, distress, insult or pain."

[174] Undertaking the same exercise as that adopted by McAlinden J in *Carr*, and standing back to look at the overall figure arrived at — £250,000 — I again ask myself two questions: (i) whether that figure is appropriate properly to compensate his estate for all that he endured at the hands of the defendants, and all the relevant sequelae, and (ii) whether that figure is so large in all the circumstances of the case as to be unfair to the defendants, as being disproportionate to their culpability. Having carried out that exercise, I consider that the sum of £250,000 is appropriate.

Financial loss

[175] The Statement of Claim contains no claim for financial loss.

Disposition

[176] In Ms McClarnon's case there will be an award of damages of £185,000, and I enter judgment against the defendants in that sum.

[177] In Mr McGuinness's case there will be an award of damages of £250,000, and I enter judgment against the defendants in that sum.

[178] Each plaintiff is entitled to the costs of each action, the costs to be taxed in default of agreement.

[179] I award each plaintiff interest at 2% on general damages. However, the period for which interest will be awarded cannot be the 12 years from the issue of the Writ. In submission Mr. Ringland accepted that, and submitted that the appropriate period should be 5 years. Mr. Brady had no contrary submission.

[180] Accordingly, I award each plaintiff interest on the damages at 2% for a period of five years.