APPROVED **[2022] IEHC 690**

THE HIGH COURT

2020 No. 4750 P

BETWEEN

ELEANOR LEAHY

PLAINTIFF

AND

ELAINE McNALLY
THE LAW SOCIETY OF IRELAND
KIERAN BUCKLEY SOLICITORS & CO.

DEFENDANTS

JUDGMENT of Mr. Justice Garrett Simons delivered on 21 December 2022

INTRODUCTION

1. This judgment is delivered in respect of an application to dismiss the within proceedings as an abuse of process and/or as bound to fail. It is submitted, variously, that the plaintiff does not have standing to maintain the proceedings; that the proceedings are irregular in form in that they should have been issued by way of a personal injuries summons; that the proceedings are statute-barred; and that the proceedings seek to advance a claim in professional negligence without a supportive report from an independent expert.

TEST GOVERNING AN APPLICATION TO DISMISS

2. The jurisdiction to strike out or to dismiss proceedings is intended to protect against an abuse of process. The principal question for the court in determining such an application is whether the *institution* of the proceedings represents an abuse of process. It is not enough that the court might be satisfied that the case is a very weak one and is likely to be successfully defended. Rather, the court must be satisfied that the proceedings disclose no cause of action and/or are bound to fail.

3. For the reasons explained by the Supreme Court in *Lopes v. Minister for Justice Equality and Law Reform* [2014] IESC 21, [2014] 2 I.R. 301 (at paragraphs 16 to 18), it is important to distinguish between the jurisdiction to strike out and/or to dismiss proceedings pursuant to (i) Order 19 of the Rules of the Superior Courts, and (ii) the court's inherent jurisdiction. An application under the Rules of the Superior Courts is designed to deal with circumstances where the case as pleaded does not disclose any cause of action. For this exercise, the court must assume that the facts—however unlikely that they might appear—are as asserted in the pleadings.

4. By contrast, in an application pursuant to the court's inherent jurisdiction, the court may, to a very limited extent, consider the underlying merits of the case. If it can be established that there is no credible basis for suggesting that the facts are as asserted, and that the proceedings are bound to fail on the merits, then the proceedings can be dismissed as an abuse of process. In order to defeat a suggestion that a claim is bound to fail on the facts, all that a plaintiff needs to do is to put forward a credible basis for suggesting that it may, at trial, be possible

to establish the facts which are asserted, and which are necessary for success in the proceedings.

5. The limitation on the assessment of credibility has been explained as follows by the Supreme Court in *Lopes v. Minister for Justice Equality and Law Reform* (at paragraph 19):

> "It is also important to remember that a plaintiff does not necessarily have to prove by evidence all of the facts asserted in resisting an application to dismiss as being bound to fail. It must be recalled that a plaintiff, like any other party, has available the range of procedures provided for in the RSC to assist in establishing the facts at trial. Documents can be discovered both from opposing parties and, indeed, third parties. Interrogatories can be delivered. Witnesses can be subpoenaed and can, if appropriate, be required to bring their documents with them. Other devices may be available in particular types of cases. In order to defeat a suggestion that a claim is bound to fail on the facts, all that a plaintiff needs to do is to put forward a credible basis for suggesting that it may, at trial, be possible to establish the facts which are asserted and which are necessary for success in the proceedings. Any assessment of the credibility of such an assertion has to be made in the context of the undoubted fact, as pointed out by McCarthy J. in *Sun Fat Chan v. Osseous Ltd.* [1992] I.R. 425, at p. 428, that experience has shown that cases which go to trial often take unusual turns on the facts which might not have been anticipated in advance."

6. The Supreme Court in *Jeffrey v. Minister for Justice Equality and Defence* [2019] IESC 27, [2020] 1 I.L.R.M. 67 held that proceedings should not be dismissed pursuant to the court's inherent jurisdiction in circumstances where the legal issues are complex. The judgment goes on to suggest, without so deciding, that it may be possible to resolve a simple and straightforward issue of law within the confines of an application to dismiss. This was subject to the caveat that, even if that should be possible, it could only be appropriate to do so where the issue was very straightforward and where there was no risk of injustice by adopting that course of action.

FACTUAL BACKGROUND

7. These proceedings were instituted in July 2020. In order to understand the claims advanced in the proceedings, however, it is necessary to commence the narrative at a much earlier point in time. The plaintiff, Ms. Leahy, gave birth to a son, Nathan, in January 2003. Nathan had been delivered by caesarean section at 24 weeks and 3 days and weighed only 725 grammes at birth. As a very premature baby, Nathan suffered from a range of medical conditions and spent the first few weeks of his life in an intensive care unit.

8. The three medical conditions of most immediate relevance to the present proceedings are as follows. First, Nathan suffers from a moderate to severe fluctuating hearing loss affecting both ears. This hearing loss was not properly diagnosed until a number of years after his birth. Secondly, Nathan developed necrosis in his left foot and ultimately lost part of the foot. The necrosis occurred a number of hours after an arterial line (arterial catheter) had been inserted in his left posterior tibial artery. The consensus in the medical reports (referred to below) is that the arterial line may have caused an occlusion of the artery and this resulted in ischemia. Thirdly, it appears that Nathan may have been carrying Methicillin-resistant Staphylococcus aureus ("*MRSA*"). The notes of a meeting between Ms. Leahy and Dr. Boylan on 10 February 2016 record that Nathan had been colonised with MRSA but did not at any stage have an (invasive) infection.

9. Ms. Leahy approached Kieran Buckley Solicitors & Co., the third defendant, in or about June 2003. For ease of exposition, I will refer to this firm as "***the first firm of solicitors***". There appears to be a factual dispute as between Ms. Leahy and the first firm of solicitors as to the extent of the latter's retainer.

10. At all events, the first firm of solicitors obtained a number of medical reports from independent experts during the period 2003 to 2015. The medical reports in respect of Nathan's hearing loss concluded that there had been negligence in the form of a delayed diagnosis.

11. Four reports were obtained in respect of the injury to Nathan's left foot. The general consensus of these medical reports is that the insertion of an arterial line had been necessary and appropriate. The reports recognised the necessity to have regular access to arterial blood to monitor the concentration of oxygen. One of the experts, Dr. Kovar, observed that tissue ischaemia, necrosis and gangrene are uncommon but well-described complications of arterial catheterisation in the neonate.

12. Three of the four reports concluded that there had been no negligence and that the arterial line had been removed in a timely manner when the problem with foot ischaemia occurred.

13. The author of the fourth report, Dr. Fogarasi was highly critical of the fact that there were two contradictory sets of nursing notes. Dr. Fogarasi offered the opinion that the nursing notes may have been tampered with in order to hide medical malpractice in the late removal of the arterial line.

14. In a subsequent response to specific queries raised by the first firm of solicitors, Dr. Fogarasi stated that because of a duplication of the hospital records it was not possible to decide whether there had been a (negligent) delay in observing the necrosis of the limb and in the removal of the arterial line. Dr. Fogarasi did, however, offer the opinion that once the limb became discoloured or showed other signs of possible necrosis, the arterial line should have been immediately removed. See responses dated 22 November 2011 and 31 December 2011.

15. It would appear that a decision was made in or about 2011 to pursue proceedings solely in respect of the delayed diagnosis of the hearing loss. As explained presently, Ms. Leahy now makes complaint as to the circumstances in which this decision came about. At all events, High Court proceedings were issued on 9 March 2011 in respect of the delayed diagnosis of the hearing loss: *Leahy (A Minor) v. Health Service Executive* 2011 No. 2231 P ("***the hearing loss proceedings***").

16. Nathan is named as the sole plaintiff in the hearing loss proceedings. In circumstances where Nathan had not yet reached his age of majority, it had been necessary for an adult to act as his *"next friend"* or *"litigation friend"*. Ms. Leahy took on this role and she is named in those proceedings as Nathan's next friend. As such, she would have been responsible for providing instructions, on behalf of Nathan, to the first firm of solicitors. Importantly, however, Ms. Leahy was not a party to those proceedings.

17. The hearing loss proceedings were ultimately compromised. The proposed terms of settlement involved the payment of a sum of €155,000 together with legal costs. As Nathan was still a minor as of the date of the proposed settlement, it had been necessary to make an application to the High Court for approval of the settlement. This application was made pursuant to the provisions of Order 22, rule 10 of the Rules of the Superior Courts. As is standard practice, the application to approve the proposed settlement was predicated upon an opinion of counsel setting out, for the benefit of the court, the strengths and weaknesses in the case. The High Court (Butler J.) ultimately approved the settlement by order dated 17 July 2015.

18. It appears that the retainer of the first firm of solicitors may have come to an end with the conclusion of the hearing loss proceedings. However, no formal letter to this effect has been exhibited.

19. At all events, following on from the settlement of the hearing loss claim, Ms. Leahy set about seeking legal representation in order to bring a second claim on behalf of her son. The proposed second claim concerned the circumstances leading up to the injury to Nathan's left foot.

20. One of the firms approached by Ms. Leahy was Sherwin O'Riordan Solicitors. For ease of exposition, I will refer to this firm as *"**the second firm of solicitors**"*. The third named defendant, Ms. McNally, appears to have been the solicitor within the firm with whom Ms. Leahy dealt primarily.

21. The second firm of solicitors place much emphasis, for the purposes of the application to dismiss, on what they say was the limited nature of their retainer. Counsel on behalf of the firm submitted that the terms of the retainer are set out in an email of 3 May 2018 to Ms. Leahy. This email, in relevant part, reads as follows:

> "As per our telephone conversation we agreed to commission an expert report on your behalf once we are in receipt of all of the medical records. We advised you if the report was not supportive we would not be taking this matter any further for you and if the report was not supportive we would not be in a position to take this case on, on your behalf.
>
> We understood it was your intention to furnish us with all of Nathan's medical records so we could brief the appropriate expert in this matter. As advised over the telephone we are of the view that the statute will feature greatly in this case in circumstances where there was inordinate delay in bringing any kind of action against the HSE. We will require a statement from you in this regard.
>
> If you require the medical records back, I can send the booklet by post however we will keep them for the purpose of briefing the appropriate expert."

22. The second firm of solicitors sought to obtain a medical report from an independent expert. This was done by making a request to a UK company known as Medical Case Notes Assessment. In response, the company explained that they had, in fact, previously obtained medical reports in respect of Nathan. These reports had been requested by the first firm of solicitors when they had been acting on behalf of Nathan.

23. It is apparent from the exhibited correspondence that the second firm of solicitors' position is that they had not previously been aware of the existence of these earlier medical reports. This is set out as follows in an email of 11 June 2019 to Ms. Leahy:

> "Please see e-mail below from Medical Case Notes Assessment for your attention.
>
> They are looking for instructions from you as to whether you want to instruct Medical Case Notes Assessment to source another Neonatologist and obtain a fee estimate.
>
> We note Kieran Buckley & Company instructed Medical Case Notes Assessment in or around 2006 and a report was obtained from Dr Patrick Cartlidge. Ms Drury has advised that there was no negligence found. The only knowledge we have of an expert report was the one you obtained from a family friend.
>
> We understand Kieran Buckley & Company commissioned a report from Dr Kovar in or around 2008 on your behalf. If a firm of solicitors were previously instructed it is normal practice for the new firm of solicitors to take over the handling of the existing file.
>
> We weren't aware that two further reports were commissioned on behalf of Nathan. We require full disclosure in this matter. We would be obliged if you would furnish us with a copy of the reports so we can consider same."

24. Ms. Leahy responded by email stating that these reports "*go way back*" and that she considered them to be irrelevant at this point.

25. The second firm of solicitors continued to seek a supportive medical report. In the event, they were unable to obtain one. The second firm of solicitors brought their retainer to an end by letter dated 19 July 2019.

THE PRESENT PROCEEDINGS

26. The present proceedings were instituted by way of plenary summons on 3 July 2020. The defendants issued their respective applications to dismiss the proceedings on various dates in 2020 and 2021. Two of these motions had been adjourned generally in consequence of the public health restrictions introduced in response to the coronavirus pandemic. Those motions were subsequently re-entered in November 2021.

27. Ms. Leahy delivered a statement of claim on 22 July 2020. Ms. Leahy has since issued two motions. The principal reliefs sought are, first, an order entering judgment against the defendants by reason of their failure to deliver a defence; and, secondly, an order granting Ms. Leahy leave to amend her statement of claim. A draft of the proposed amended statement of claim dated 10 March 2022 has been handed in to the court.

28. At the commencement of the hearing before me, it was agreed by all parties that the defendants' applications to dismiss should be heard first, and that Ms. Leahy's motion for judgment in default should await the outcome of those applications. The three motions to dismiss were heard over two days commencing on 6 December 2022 and judgment was reserved until today's date.

THE CLAIMS MADE AGAINST THE TWO LAW FIRMS

29. It is well established that, in determining an application to dismiss, the question which the court must ask is as to whether the case as pleaded, or any reasonable amendment of same, is such that it either discloses no cause of action or it is clearly bound to fail. (*Jeffrey v. Minister for Justice, Equality and Defence* [2019] IESC 27, [2020] 1 I.L.R.M. 67). I propose, therefore, to assess the case as set out in the proposed amended statement of claim which has been prepared by Ms. Leahy on 10 March 2022, rather than by reference to the original statement of claim.

30. It has to be said that the proposed amended statement of claim is difficult to follow. Having read and reread same several times, and having had regard to the subsequent elaboration by Ms. Leahy upon her grievances, in her replying affidavits and in oral submission, it seems to me that the claim can be summarised as follows.

31. The overarching allegation made is that the first and second firms of solicitors were negligent in not advancing a medical negligence action in respect of the injuries caused to Nathan's left foot. The essence of the claim is stated as follows at paragraph 20 of the proposed amended statement of claim:

> "In conclusion, I say that the inaction of both the first and second named defendants in not following instruction, inordinate delay and not advancing a case against the HSE and others for medical negligence on behalf of the plaintiffs son is in this case negligent."

32. The reference to the second named defendant appears to be a typographical error, and as intended to refer to Kieran Buckley Solicitors & Co., rather than to the Law Society.

33. The particulars of negligence alleged as against the first firm of solicitors appear to be as follows. First, it is alleged that the firm failed to pursue a claim in respect of the medical treatment provided to Nathan in January 2003. The implication seems to be that the solicitors should have attached more weight to the assertions that the nursing notes had been tampered with, and that Nathan had been infected with MRSA. Ms. Leahy is critical of the decision in 2011 to confine the claim to one in respect of the delayed diagnosis of the hearing loss. Ms. Leahy seems to accept, however, that she participated in this decision at the time.

34. Secondly, Ms. Leahy makes a complaint in relation to the manner in which the hearing loss proceedings were settled. Ms. Leahy alleges that she had expressly asked the first firm of solicitors for advice as to the implications, if any, of the proposed settlement for Nathan's entitlement to receive disability allowance. The first firm of solicitors deny that any such advice was sought. It appears that, for a period of time following his reaching the age of sixteen years, Nathan was refused disability allowance because the settlement amount was reckoned for the purposes of his financial means assessment. This refusal has since been overturned on appeal and Nathan is now in receipt of the allowance.

35. Thirdly, it is alleged that the first firm of solicitors delayed in transferring their files to the second firm of solicitors. There is also an allegation that the first firm of solicitors "*may have made it appear that there was some lien or retainer in the matter, which there was not*". The implication here, and on affidavit, seems to be that the first firm of solicitors had sought to deter other firms from acting on behalf of Nathan in a second medical negligence action.

36. The particulars of negligence alleged as against the second firm of solicitors appear to be as follows. First, it is alleged that the second firm of solicitors had

failed to advise Ms. Leahy as to the procedure for retrieving the files from the first firm of solicitors. Secondly, it is alleged that the second firm of solicitors "*wrongly claimed*" that Ms. Leahy had not mentioned the involvement of the previous solicitor and had not given full disclosure of the hearing loss proceedings.

37. Both firms of solicitors refute these allegations.

STANDING TO MAINTAIN PROCEEDINGS

38. The gravamen of the claim which Ms. Leahy seeks to pursue in these proceedings is that both firms of solicitors were negligent in not advancing a medical negligence action on behalf of Nathan in relation to the injury to his left foot. The implication being that, but for the (alleged) negligence of the solicitors, Nathan would have succeeded in recovering damages for the injury to his left foot.

39. For the reasons which follow, I am satisfied that, if and insofar as any claim for damages is to be made in relation to the conduct of the solicitors, it is for Nathan, and not Ms. Leahy, to pursue same.

40. The claim sought to be pursued in these proceedings is properly characterised as a claim for loss of opportunity. The essence of the claim is that the opportunity to obtain damages for medical negligence has been lost, or at the very least delayed, as a result of the supposed negligence of the two firms of solicitors. The logic of the claim is that had the solicitors acted differently, damages would have been recovered by now for the injured foot. The claim in the present proceedings is parasitic on the existence of a stateable claim for medical negligence.

41. It follows from this interdependence between any claim against the solicitors and the mooted medical negligence action that the proper plaintiff must be the injured person, namely Nathan. The objective of any claim against the solicitors is to compensate Nathan, indirectly, for the personal injuries suffered by him. The claim seeks to recover from the solicitors an amount equivalent to that which would otherwise have been obtained by way of damages in a medical negligence action. For the same reason that Nathan would have been the sole plaintiff in the medical negligence action, so too he is the proper plaintiff in any claim against the solicitors.

42. This analysis is not affected by the fact that Ms. Leahy had previously acted as "*next friend*" in the earlier proceedings taken in respect of the delayed diagnosis of Nathan's hearing loss. The sole plaintiff in those proceedings had been Nathan himself. Even though Ms. Leahy, as next friend, had been responsible for providing instructions, on behalf of Nathan, to the first firm of solicitors, Ms. Leahy was not a party to those proceedings.

43. Nathan has since achieved his age of majority. There is no suggestion that he lacks capacity to pursue proceedings in his own right or is otherwise incapable of managing his own affairs. Indeed, Ms. Leahy explained, in oral submission, that Nathan has recently returned to college.

44. In summary, Ms. Leahy cannot maintain any claim for damages arising, indirectly, from the loss of opportunity on the part of her son to pursue a personal injuries action in respect of alleged medical negligence.

45. For completeness, it should be noted that Nathan has, in fact, instituted a personal injuries action arising out of the injury to his left foot. These proceedings were instituted on 29 September 2022. It should be explained that

the limitation period does not begin to run against a minor until they reach their age of majority. Without deciding the point, it would seem that the personal injuries action may be within time.

DO PRESENT PROCEEDINGS COMPRISE A PERSONAL INJURIES ACTION?

46. Ms. Leahy, in affidavit and submission, contends that she is not, in fact, seeking to make a claim on behalf of her son. Indeed, her submissions go further, and are to the effect that these proceedings are not properly characterised as a professional negligence action at all. Rather, it is submitted that these proceedings take the form of a personal injuries action on behalf of Ms. Leahy herself.

47. With respect, this characterisation of the proceedings is not supported by the plenary summons, the statement of claim nor the proposed amended statement of claim. It is apparent from these pleadings that the overarching allegation is that the first and second firms of solicitors were negligent in not advancing a medical negligence action in respect of the injuries caused to Nathan's left foot. There is nothing in the pleadings which specifies any injuries to Ms. Leahy herself.

48. If and insofar as Ms. Leahy now intends to advance a claim for personal injuries said to have been suffered by her (rather than by her son), she is obliged to do so in accordance with the mandatory procedures prescribed under Part 2 of the Personal Injuries Assessment Board Act 2003. The mandatory procedures entail, *inter alia*, the making of an initial application to the Personal Injuries Assessment Board ("***PIAB***"). There is a statutory preclusion on the bringing of

legal proceedings unless and until an application is made to PIAB in relation to the relevant claim, and an authorisation obtained.

49. Thereafter, the proceedings must comply with the procedures prescribed under the Civil Liability and Courts Act 2004. In particular, the proceedings must be instituted by way of personal injuries summons.

50. Having regard to this legislative framework, any attempt by Ms. Leahy to pursue a claim for personal injuries in the context of the present proceedings is bound to fail. Whereas the statutory preclusion under Part 2 of the Personal Injuries Assessment Board Act 2003 requires to be pleaded (*Clarke v. O'Gorman* [2014] IESC 72, [2014] 3 I.R. 340), the defendants have indicated an intention to do so. Ms. Leahy could have no answer to such a plea and the proceedings would fail.

OTHER GROUNDS RAISED BY THE TWO LAW FIRMS

51. A number of other grounds were relied upon by the two firms of solicitors in support of their applications to dismiss. It is not necessary, however, to rule upon these additional grounds now, having regard to my findings under the two previous headings. These findings are sufficient on their own to justify the making of an order dismissing the proceedings as against the two law firms.

52. I do not propose to say anything further in respect of the additional grounds. This is because certain of the issues raised may, potentially at least, arise for consideration in the context of any proceedings taken by Nathan himself. For example, counsel on behalf of the first firm of solicitors had submitted that the absence of an independent expert report was fatal to any claim for professional negligence against that firm. Counsel cited in this regard the judgment of the

Supreme Court in *Mangan v. Dockeray* [2020] IESC 67 (at paragraphs 89 to 97). In the event that Nathan were to pursue a claim against the solicitors in his own name, then a similar issue might arise. It seems preferable for this court to avoid making any finding on this issue in proceedings to which Nathan is not a party. Whereas any such finding would not necessarily be binding against Nathan, it would involve a court expressing a view on the issue, in the context of proceedings which have been taken by the incorrect plaintiff, and without having heard from Nathan himself. This would be unfair.

CLAIM AGAINST THE LAW SOCIETY

53. The case against the Law Society is bound to fail for the following reasons. Insofar as the complaint made in respect of the first firm of solicitors is concerned, it is apparent from the exhibited correspondence that Ms. Leahy had withdrawn the complaint. In fact, it appears that Ms. Leahy had indicated an intention to withdraw the complaint on two separate occasions.

54. By handwritten letter, received by the Law Society on 24 September 2019, Ms. Leahy indicated that she wished to withdraw her complaint. The Law Society, by letter dated 9 October 2019, furnished Ms. Leahy with a copy of the response which the first firm of solicitors had made to the complaint.

55. Ms. Leahy, rather than reiterating her earlier request that the complaint be treated as withdrawn, chose instead to engage with the process: Ms. Leahy made a submission on 14 October 2019 in reply to that of the first firm of solicitors. There was a further exchange of correspondence over the next number of weeks. Thereafter, on 6 November 2019, Ms. Leahy indicated that she wished to

withdraw her complaint. Ms. Leahy expressly stated that she believed that she had "*made a serious error of judgement about Mr. Buckley*".

56. It appears that the Law Society had sent a letter to Ms. Leahy the previous day (5 November 2019) which concluded that the complaint could not be upheld. Thereafter, the Law Society wrote to Ms. Leahy on 20 November 2019 to confirm that the solicitor had been notified of the withdrawal of the complaint.

57. Having withdrawn her complaint, Ms. Leahy cannot sensibly advance a claim for damages against the Law Society in respect of that complaint.

58. Moreover, and in any event, even if Ms. Leahy had not withdrawn her complaint, the form of proceedings is irregular. The appropriate procedure for challenging a decision of the Law Society would have been to refer the matter to the independent adjudicator pursuant to the Solicitors (Adjudicator) Regulations 1997 to 2005. Prior to the coming into full force and effect of the Legal Services Regulation Act 2015, the independent adjudicator was empowered to examine or investigate any complaint in writing made to him or her by or on behalf of a client of a solicitor against the Law Society concerning the handling by the Law Society of a related complaint about that solicitor. It would have been premature for Ms. Leahy to institute legal proceedings until she had first exhausted this avenue of redress. Even then, it would not have been open to her to institute plenary proceedings. Rather, it would have been necessary to institute judicial review proceedings in accordance with Order 84 of the Rules of the Superior Courts.

59. Turning to the position in respect of the second firm of solicitors, the complaint was, again, withdrawn. The reason for withdrawal in this instance was different: the purpose was that Ms. Leahy wished to pursue her complaint before the Legal

Services Regulation Authority ("***LSRA***"). Under the terms of the transitional provisions governing the coming into full force and effect of the Legal Services Regulation Act 2015, there was a parallel jurisdiction to hear complaints. However, in order for a complaint to be transferred to the LSRA, it was necessary that it be withdrawn from the Law Society. Ms. Leahy did this by email dated 24 January 2020 and that brought the Law Society's involvement in that complaint to an end.

60. Ms. Leahy cannot sensibly advance a claim for damages against the Law Society in respect of a complaint which she chose to withdraw from that body precisely because she wished, instead, to pursue a complaint to the Legal Services Regulatory Authority.

61. Moreover, and in any event, even if Ms. Leahy had not withdrawn her complaint, the form of proceedings is irregular for the reasons already explained.

SUMMARY OF CONCLUSIONS AND PROPOSED FORM OF ORDER

62. The claim against the two firms of solicitors will be dismissed on the following two grounds. First, the proceedings are inadmissible and represent an abuse of process in circumstances where Ms. Leahy lacks standing to maintain a claim for damages on behalf of her son Nathan. Secondly, if and insofar as it is now suggested that the proceedings comprise a personal injuries action on behalf of Ms. Leahy herself, they are bound to fail. The proceedings do not comply with the mandatory procedures prescribed under Part 2 of the Personal Injuries Assessment Board Act 2003. Nor do the proceedings comply with the Civil Liability and Courts Act 2004.

63. The claim against the Law Society will be dismissed on the following three grounds. First, the proceedings are bound to fail in circumstances where, in each instance, Ms. Leahy had withdrawn her complaint to the Law Society. Secondly, Ms. Leahy failed to exhaust her remedies pursuant to the Solicitors (Adjudicator) Regulations 1997 to 2005. Thirdly, the proceedings are irregular in form and do not comply with the requirements for judicial review proceedings pursuant to Order 84 of the Rules of the Superior Courts.

64. This matter will be listed, physically, to address the issue of legal costs on 25 January 2023 at 10:30 o'clock.

Appearances

The plaintiff represented herself as a litigant in person
Hugh O'Flaherty for the first named defendant instructed by Sherwin O'Riordan Solicitors
Elaine Finneran for the second named defendant instructed by David Irwin Solicitor
John Lavelle for the third named defendant instructed by Beale & Company Solicitors

Approved Garrett Simons