**Opinion** Medico-Legal

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# Reeling in the medico-legal year

***Ms Aisling Timoney** provides a summary of judgments of interest to healthcare professionals in 2024*

As the medico-legal landscape continues to evolve, it is important for medical professionals to stay informed about significant legal decisions that may impact their practice. This article provides a concise review of key court judgments from 2024, shedding light on important developments in areas such as professional obligations, procedural issues, and the recoverability of damages.

### Professional obligations

***McGrath v HSE** – Clarification from the Court of Appeal on mandatory reporting of historical sexual abuse.*

Previously, the High Court held that mandated persons were obliged to notify Tusla where an adult retrospectively disclosed harm suffered as a child. The High Court had adopted a broad interpretation of the legislation on the basis that it was consistent with the purpose of the Children First Act 2015 and the legislature's intention to address past failings in child protection. The High Court concluded that to hold otherwise would result in cases of historic abuse disclosed by adults not being reported to Tusla and a gap in the State's reporting mechanisms.

However, the Court of Appeal overturned the High Court judgment. The Court of Appeal confirmed that child protection legislation does not require mandated people to report to Tusla when an adult discloses historic child abuse, provided there is no reasonable suspicion that a child is at risk.

This clarification may be welcomed by healthcare professionals as mandated persons; however, it is incumbent on a mandated person who receives a disclosure of historic child abuse to make reasonable enquiries to find out whether there may be children currently at risk. If there are children at risk, a notification to Tusla is mandatory.

### Procedural issues

***O'Neill v Birthisle** – High Court decision on the importance of having a supportive expert medical opinion underpinning allegations of medical negligence.*

In this case, a hospital succeeded in having a medical negligence claim dismissed because the patient served a summons while in receipt of an unsupportive report. The claim was dismissed even though the patient later obtained a supportive expert report.

In a strident judgment, Judge Seamus Noonan described the pursuit of legal proceedings over an eight-year period in the absence of any supportive expert report as *"a gross abuse of process"* and spoke of *"staggering delay"* on the part of the plaintiff. He accepted that the defendant's ability to investigate and defend the claim had been hampered and prejudiced.

This judgment highlights how the courts will have regard to the implications of legal proceedings, including reputational, for the professional defendant involved. It reminds plaintiff solicitors of their professional responsibilities and the potential consequences of failing to adhere to them.

***Monaghan v Molony** – Statute of Limitations. A court has to consider what a plaintiff "did or did not know on a given date" in deciding whether a case should be statute-barred.*

In this judgment, the claim was held to be statute-barred, even though the plaintiff was waiting on an expert report.

The plaintiff suffered a muscular injury in May 2015. Following three consultations, he was referred by his GP for surgery. He was advised in October 2015 that a direct repair was likely to be unsuccessful because of the delay in referring him for surgery. The surgery took place in January 2016. It failed and he needed an allograft procedure. The plaintiff obtained an expert report in January 2017, but did not issue proceedings until May 2018. His expert report criticised the delayed GP referral which caused the surgery to fail and necessitated the allograft procedure.

The defendant argued that the case was statute-barred and that the plaintiff had the requisite knowledge to bring a case long before he issued proceedings. The High Court considered correspondence between the patient's solicitors and the Medical Council and concluded that he had the requisite knowledge for the statutory limitation period to begin to run, before he obtained an expert report.

This judgment emphasises how crucial it is for defendants and their legal advisors to interrogate and correctly identify the date of knowledge to ascertain whether there may be a limitation period defence available to a claim.

***Delaney v PIAB & Ors** – Supreme Court affirms the legality of the 'Personal Injury Guidelines'.*

The Supreme Court delivered five separate judgments in the case of *Delaney v PIAB & Ors* confirming, by majority, the constitutionality of the *Personal Injuries Guidelines*. The decision brings legal certainty and predictability for those involved in prosecuting or defending personal injury proceedings. The *Personal Injuries Guidelines* replaced the previous *Book of Quantum* and categories various personal injuries by types and severity. The *Personal Injuries Guidelines* are applied in the assessment of compensatory damages and were intended to reduce the levels of awards to plaintiffs.

### Recoverability of damages

***Paul, Polmear, and Purchase** – UK Supreme Court Decision on the question of recovery of damages for psychiatric injury in secondary victims.*

The UK Supreme Court judgment in *Paul, Polmear, and Purchase* dismissed three appeals. The Court held that to recover compensation for psychiatric injury, a secondary victim must have witnessed an *"accident"* in the traditional sense, not death or injury arising out of medical negligence. It was also held that doctors do not owe a duty of care to the loved ones of their patients to protect them from the risks arising from witnessing that patient's medical crisis.

The law in Ireland does not make the same distinction between primary and secondary victims. UK precedents are not binding in the Irish jurisdiction, but they can be of influence so developments in this area of UK law should be of interest to doctors working in Ireland.

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***Germaine v Day** – Nervous shock criteria confirmed by the High Court.*

In *Germaine v Day*, the High Court examined the law on nervous shock claims arising from alleged medical negligence. The judgment will interest doctors because it discusses the unresolved issue of whether healthcare providers owe a duty of care to patients' relatives.

Judge Emily Egan confirmed that *Kelly v Hennessy* is the Irish authority on nervous shock claims and a plaintiff must satisfy the Kelly criteria to succeed in a claim for nervous shock, as follows:

► **A plaintiff must establish that they suffered a recognisable psychiatric illness.** This was not in dispute in this case.

► **A plaintiff must establish that their recognisable psychiatric illness was shock-induced.** This was in dispute. However, Judge Egan concluded that her injury was not sudden, or shock-induced, within the meaning of the law and that there was no *"sudden calamitous or horrifying event in the nature of an accident"*.

► **A plaintiff must prove that the nervous shock was caused by the defendant's act or omission.** Again, this was in dispute. The deceased's cancer was already incurable in October 2018 and Judge Egan concluded that the delayed diagnosis did not cause his deterioration. Judge Egan rejected the argument that the plaintiff sustained injury because she was deprived of the opportunity to learn of the diagnosis earlier. The deceased's deterioration and the plaintiff's exposure to it would have occurred regardless of the admitted negligence.

► **The nervous shock sustained by a plaintiff must be by reason of actual or apprehended physical injury to the plaintiff or a person other than the plaintiff.** This point was not argued before the court.

► **A plaintiff must show that the defendant owed them a duty of care not to cause them a reasonably foreseeable injury in the form of nervous shock.** This was also in dispute, but having dealt with the matters above, it was not necessary for the court to address this point determinatively.

Judge Egan said that a court should not decide such a question of broad import unless it was necessary to resolve the case at hand – and it was not necessary to do so here. She made some comments as to the likely *"contours of future debate"* on the subject, however, and in one passage of note, she commented:

*"Duty of care is no more than a convenient shorthand for a relationship between two parties which makes it fair and reasonable that one owes the other a duty of care. This requires that there is something about the relevant relationship, or in the overall circumstances, which gives rise to the duty of care. Almost all patients have relatives and doctors must be taken to know this. Doctors must also be taken to know that their patients' relatives might foreseeably be negatively impacted by witnessing the result of clinical negligence on the doctor's part. If these factors alone established not only proximity, but also a duty of care, the number of potential plaintiffs in a medical negligence action could be multiplied by the number of potentially impacted family members."*

Judge Egan seems to have sounded a welcome note of caution about extending the scope of the duty of care owed by healthcare providers.

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This article has briefly summarised some case law of interest to healthcare practitioners where the outcomes have been largely favourable for healthcare providers. Medisec members who may require legal advice on the issues addressed above, or any other medico-legal matter are encouraged to contact us. Finally, the Medisec website contains free-to-access medico-legal resources and anyone may subscribe to the Medisec medico-legal e-zine by contacting info@medisec.ie.

***Reference available upon request***