**THE HIGH COURT**

**[2002 No. 15436P]**

**BETWEEN:**

**CONRAD SUGG**

**PLAINTIFF**

**– AND –**

**IRELAND, THE ATTORNEY GENERAL,**

**THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM,**

**AND THE GOVERNOR OF MOUNTJOY PRISON**

**DEFENDANTS**

**JUDGMENT of Mr Justice Max Barrett delivered on 21st February, 2017.**

**I. Background**

1. Mr Sugg is an unemployed roofer, a father, a onetime resident of St Patrick's Institution for young offenders and a past inmate of Mountjoy Prison. He has not been especially fortunate in life; and, by going down the path of criminality, he has to some extent been the author of his own misfortunes. But he is as entitled as the next man to justice; and that is what he seeks now. Of course the State is entitled also to justice; but as a long-experienced party to civil litigation, it does not come to court handicapped by that unawareness of the manifold requirements of civil procedure and/or that want of understanding as to the need for the assiduous pursuit of court proceedings which can afflict those who, through circumstance or education, are less well equipped than others to navigate their way through court proceedings.

2. The injuries in respect of which Mr Sugg makes his claim for damages in the present proceedings are shocking in nature, if true – and at this point, the court emphasises, Mr Sugg's allegations stand unproven. Mr Sugg maintains that while he was a prisoner in Mountjoy Prison, serving a sentence for one or more offences of a type not revealed in the pleadings, he was attacked by a number of fellow inmates and forcibly taken to a cell where he was slashed with a knife or blade about the face, neck and wrist. The particulars of personal injury pleaded but not proven make for quite gruesome reading. Thus it is alleged as follows:

> *"The Plaintiff [Mr Sugg] was initially treated by means of first aid and thereafter taken to the Accident and Emergency Department of the Mater Hospital with lacerations to the left side of his face, neck and left forearm. Examination showed that of the three areas the left forearm was the less seriously injured. There were three parallel incisions already treated with steri-strips in this area. A full thickness of skin was involved but no damage was noted to the underlying tendons, nerves or blood vessels and the strips were left in situ and a dressing applied. Two major incisions of full thickness of the skin were found over the side of the face and a third flap laceration was found behind the left ear. A 6cm laceration extended horizontally across the side of the ;left cheek at the level of the ear lobe. At its mid-point a further 16cm laceration passed downwards and backwards below the ear across the angle of the mandible and onto the side of the neck. The Plaintiff was admitted to Hospital under the care of the Plastic Surgery team where he underwent, inter alia, suturing of his lacerations and was discharged as an Outpatient the following day. When reviewed the Plaintiff reported being extremely nervous and suffering panic attacks following the attack upon him and was referred for assessment. When reviewed on 1st May 2003 by Doctor [-], the left side of the Plaintiff's face was noted to be extensively scarred with the wounds noted to be red and obvious. In addition some retraction of the skin was noted where the two lacerations meet. In addition a transverse 6cm scar was noted at the junction of the middle and lower one third of the dorsum of the left forearm. Doctor…[–] is of [the] opinion that the Plaintiff suffered significant injuries to the left side of his face and that he will be scarred for life…".*

3. The alleged attack occurred on 29th August, 2002. By notice of motion of 27th June, 2016, the State parties seek, inter alia, (a) an order pursuant to O.122, r.11 of the Rules of the Superior Courts (1986), as amended, dismissing Mr Sugg's claim for want of prosecution, and (b) an order pursuant to the inherent jurisdiction of the court dismissing Mr Sugg's claim for inordinate and inexcusable delay and/or for want of prosecution.

**II. Mr Sugg's First Affidavit**

4. Mr Sugg, in his first affidavit, gives as good an account as any as to what happened between 2002 and 2013. He avers, inter alia, as follows:

> *"5. The within claim arises out of an incident on the 29th August, 2002, in which I was attacked by a number of fellow inmates and slashed about my face, neck and wrist while in the custody and care of the defendants….*
>
> *6. As a result of the attack I was permanently disfigured.*
>
> *7. In or about November, 2002, I engaged Mr Tom Murphy of the firm of Thomas J Murphy & Co. Solicitors to act on my behalf in respect of the claim the subject matter of these proceedings.*
>
> *8. Initially Mr Murphy acted in accordance with my instructions and pursued my claim with due diligence. The following is a chronology of steps taken in the proceedings:-*
>
> *a) Plenary summons issued on…3rd December, 2002.*
>
> *b) Notice for particulars dated…7th February, 2003.*
>
> *c) Appearance 27th February 2003.*
>
> *d) Statement of claim delivered on…22nd August, 2003.*
>
> *e) Replies to particulars dated…12th January, 2004.*

*f) Defence delivered on…25th February, 2004.*

*g) Affidavit of discovery (on behalf of the defendants) sworn on…9th April, 2005.*

*h) Notice for further particulars dated 23rd April, 2007.*

*i) Replies to particulars dated 28th June, 2007.*

*j) Amended defence delivered on…24th December, 2008.*

*k) Notice of intention to proceed served on…21st February, 2012.*

*[Certain further significant events have since occurred that are recounted later below]….*

*10. In or about September 2009 during a consultation with Mr Murphy at which my father was present I was advised by Mr Murphy that an expert report would be required in relation to the case. However, the cost of such a report was significant and I was not in a position to put my solicitor in funds to obtain the necessary report.*

*11. I am unemployed and I have significant health problems for which I receive disability benefit. In this regard I have been attending my GP Dr [–]…and the…[–] Unit of…[–] Hospital.*

*12. I finally managed to put my solicitor in funds to obtain the necessary report at the beginning of 2012. To this end I made a cash payment to my solicitor in the sum of €1,140 on the 23rd January, 2012. This payment was financed by way of a loan taken out by my parents from the credit union."*

5. The last-quoted averment seems to confirm a couple of points of relevance to the court's considerations as to where the balance of justice lies in the within proceedings, viz. that the court is presented with circumstances of real indigence in which money has had to be borrowed from a credit union by parents so that their son's proceedings might continue; and that there is a strong familial sense that a wrong has been done for which no good remedy has yet been forthcoming, but with every effort being made by people of clearly limited means to try and secure proper relief.

6. Mr Sugg's affidavit evidence continues as follows:

"*13. On receipt of these funds my solicitor served a notice of intention to proceed with the action.*

*14. In or around the same time the defendants initiated the correspondence exhibited by Ms Potterton [a solicitor with the State Claims Agency] at exhibit 'PP1' of her Affidavit in which the defendants invited me to withdraw my claim.*

*15. In a letter to Ms Potterton dated the 30th of March 2012 Mr Murphy stated that he had advised me to accept the State Claims Agency's offer to discontinue legal proceedings.*

*16. The first time I had sight of this letter was when I read Ms Potteron's Affidavit. I was never consulted nor did I approve the contents of the letter. At no time did I instruct Mr Murphy to disclose what I am advised and believe are privileged advices regarding the case. Quite frankly I am shocked that Mr Murphy took it upon himself to make known these advices to the defendant's representatives.*

*17. Despite having been put in funds Mr Murphy never obtained the necessary expert report and subsequently returned the monies to me.*

*18. Mr Murphy died in August, 2012.*

*19. I say that at no point did I intend to withdraw my claim. On the contrary I have at all times been eager to prosecute my claim, but regrettably I believe that I was badly served by my former solicitors."*

7. Mr Sugg then moves on to aver as to his change of solicitors, that having instructed these solicitors he will proceed with all due expedition and that the State Claims Agency has failed to identify any prejudice arising as a result of any delay presenting.

**III. Ms Potteron's Affidavits**

8. Subsequent to the above-quoted affidavit, Ms Potterton, for the State Claims Agency, has sworn a couple of affidavits in which the alleged prejudice arising is outlined in some detail. Thus Ms Potterton avers, that (1) the Governor, Acting Assistant Governor and Chief Officer at Mountjoy Prison at the time of the alleged attack have since retired and that it would be "*most unfair*" to ask them to give evidence at this time and that "*there will be difficulties in respect of witness recollection*"; and (2) it is "*of great inconvenience*" to the State parties that these proceedings should be allowed to continue and that they should be "*obliged to devote resources to provide for the defence of these proceedings*"; (3) the longer the delay the worse the issue of witness memory will become; and (4) "*the passage of time has affected the recollection of those witnesses that are available to the Defendants to give evidence*."

9. As to (1), the fact that someone has retired does not mean that he is unavailable to give evidence; there is no suggestion that any relevant witness has died or is suffering, for example, from some form of senility; and what Ms Potterton does not mention is that there are, the court understands, contemporary prison records from the time of the alleged attack. Those records, the particularly savage nature of the alleged attack, and the fact that no witness has died make point (1) rather less persuasive. As to (2), this is an inconvenience that generally arises; and while it is an inconvenience that will no longer manifest if the proceedings are struck out, that does not seem, per se, to be an especially persuasive basis on which to grant any of the orders sought. As to (3), this is undoubtedly so. As to (4), even if this is true, the court would make much the same points as it did regarding (1).

**IV. Mr Sugg's Second Affidavit and the High Court's Previous Decision**

10. On 3rd December, 2012, the State parties issued a first motion to dismiss. This was refused by the High Court (Hanna J.) on 22nd July, 2013. Hanna J. found the delay arising to that time to be inordinate but, so Mr Sugg has sworn in his second affidavit (which was doubtless drafted under advice) that it was excusable. Although there is no mention in the affidavit evidence as to where Hanna J. considered the balance of justice to lie, it is obvious that he saw it to lie in refusing the application before him. Notably perhaps, no attempt was made by the State parties to appeal the decision of Hanna J.

11. It seems to the court that in now approaching the issue of whether the delay arising in this case is inordinate and inexcusable, it must look afresh to the entirety of the delay arising (and not just to any delay since 2013) and determine whether the entirety of that delay now arising is inordinate and/or inexcusable. However, it seems to the court that it can have regard, as a relevant factor in its considerations, to the fact that Hanna J. found that the delay to 2013 was excusable. All that said, given that Hanna J. was considering a different and shorter delay, the court does not, with respect, consider that it is bound by his decision as to the inordinacy and/or inexcusability of the longer period of delay that is now under consideration by this Court, notwithstanding that it overlaps with the shorter period that was considered by Hanna J.

12. Mr Sugg's second affidavit expands upon what has happened since 2013 and also fills in some gaps in what happened before that time, providing certain helpful information that it is not clear was before Hanna J. in July, 2013 but which, the court hazards, would very much have buttressed him in the conclusions he reached at that time, had that evidence been available to him. Certainly this Court finds itself buttressed by its regard to Mr Sugg's second affidavit as to where it considers the balance of justice to lie in the within application. However, because the second affidavit contains some rather personal information, the court considers it best to note its contents (which, of course, are known to the State parties) without recounting them in any detail. Suffice it for the court to note three points at this juncture in light of all the facts now known to it. First, Mr Sugg is a recovered drug addict; and some allowance it seems to the court has to be made for the fact that a person who is addicted to so-called 'hard' drugs is just not in a mental, and oftentimes physical, condition to pursue litigation assiduously, though, of course, if justice is properly to be done, due allowance also has to be made for a counterparty's interest in seeing a timely closure to such proceedings as have been commenced. Second, it is clear that since 2012/2013, there have been a couple of family-related developments that have undoubtedly been a source of some distraction to Mr Sugg. It behoves the court not unduly to count against an individual difficulties that are simply not of his making, albeit that a counterparty's countervailing interest in continuing promptitude of action in the context of court proceedings must ever be borne in mind. Third, and not really a point of relevance but one nonetheless worth mentioning, the court cannot but note by reference to Mr Sugg's first and second affidavits that he seems blessed to be supported by good parents and a notably good sister through all that he has endured.

**V. Applicable Legal Principles**
(i) Cassidy.

13. The law on strike-out for inordinate and inexcusable delay was visited comprehensively by the Court of Appeal in *Cassidy v. Provincialate* [2015] IECA 74. In terms of stating the applicable law, it appears to this Court that it suffices to quote paras. 29–40 of the judgment of Irvine J. for the Court of Appeal in that case:

> *"Principles to be applied*
>
> *29. There are two separate, but often described as overlapping, lines of jurisprudence which fall to be considered. The first, the Primor test, involves an examination by the court of whether or not there has been inordinate and inexcusable delay on the part of the plaintiff. If both such elements are established, and the onus is on the defendant in this regard, the Court then moves on to consider whether the balance of justice nonetheless rests in favour or against the dismissal of the proceedings. This three strand test was first described in some detail by Finlay P. in Rainsford v. Limerick Corporation [1995] 2 I.L.R.M. 561 and later considered in greater depth by Hamilton C.J. in Primor plc v. Stokes Kennedy Crowley [1996] 2 I.R. 459 where he advised at pp.475-476 as follows:-*
>
> *"The principles of law relevant to the consideration of the issues raised on this appeal may be summarised as follows: –*
>
> *(a) the courts have an inherent jurisdiction to control their own procedure and to dismiss a claim when the interests of justice require them to do so;*
>
> *(b) it must, in the first instance, be established by the party seeking a dismissal of proceedings for want of prosecution on the ground of delay in the prosecution thereof, that the delay was inordinate and inexcusable;*
>
> *(c) even where the delay has been both inordinate and inexcusable the court must exercise a judgement on whether, in its discretion, on the facts the balance of justice is in favour of or against the proceeding of the case;*
>
> *(d) in considering this latter obligation the court is entitled to take into consideration and have regard to:*
>
> *(i) the implied constitutional principles of basic fairness of procedures,*
>
> *(ii) whether the delay and consequent prejudice in the special facts of the case are such as to make it unfair to the defendant to allow the action to proceed and to make it just to strike out the plaintiff's action,*
>
> *(iii) any delay on the part of the defendant – because litigation is a two party operation, the conduct of both parties should be looked at,*
>
> *(iv) whether any delay or conduct of the defendant amounts to acquiescence on the part of the defendant in the plaintiff's delay,*
>
> *(v) the fact that conduct by the defendant which induces the plaintiff to incur further expense in pursuing the action does not, in law, constitute an absolute bar preventing the defendant from obtaining a striking out order but is a relevant factor to be taken into account by the judge in exercising his discretion whether or not to strike out the claim, the weight to be attached to such conduct depending upon all the circumstances of the particular case,*
>
> *(vi) whether the delay gives rise to a substantial risk that it is not possible to have a fair trial or is likely to cause or have caused serious prejudice to the defendant,*
>
> *(vii) the fact that the prejudice to the defendant referred to in (vi) may arise in many ways and be other than that merely caused by the delay, including damage to defendant's reputation and business."*
>
> *30. It is clear from this decision that the third leg of the Primor test requires the court to carry out a balancing exercise in the course of which it will put the interests of each of the parties and their conduct into different sides of a scales for the purpose of deciding whether the balance of justice favours allowing the case to proceed to trial. In this regard it is to be noted that one (emphasis added) of the factors that may go into that scales is whether the delay relied upon*

*gives rise to a real risk that it is not possible to have a fair trial. This question however constitutes the sole consideration of the court when engaged with the alternative line of jurisprudence to which I will now refer.*

*31. In addition to its right to dismiss a claim on the grounds of inordinate and inexcusable delay, the court also retains a jurisdiction to dismiss a claim, in the absence of culpable delay on the part of the plaintiff, if satisfied that the interests of justice require such an approach, as was explained by Geoghegan J. in McBrearty v. North Western Health Board [2010] I.E.S.C. 27. This latter jurisdiction was first considered in detail by the Supreme Court in O'Domhnaill v. Merrick [1984] I.R. 151 where Henchy J. expressed himself satisfied that a court might dismiss an action if it was satisfied that to ask the defendant to defend the action would place that defendant under an inexcusable and unfair burden. He explained the potential consequences for justice in cases which were substantially delayed in the following manner at p. 158 of his judgment:-*

*"While justice delayed may not always be justice denied, it usually means justice diminished. In a case such as this, it puts justice to the hazard to such an extent that it would be an abrogation of basic fairness to allow the case to proceed to trial. For a variety of reasons a trial in 1985 of a claim for damages for personal injuries sustained in a road accident in 1961 would be apt to give an unjust or wrong result, in terms of the issue of liability or the issue of damages, or both. Consequently, in my opinion, the defendant, who has not in any material or substantial way contributed to the delay, should be freed from the palpable unfairness of such a trial."*

*32. While the Primor jurisdiction is usually exercised in proceedings where there has been post-commencement delay or a combination of pre- and post-commencement delay, the O'Domhnaill jurisdiction is most usually employed where, at the time the application to dismiss is brought, such a significant length of time has elapsed between the events giving rise to the claim and the likely trial date that the defendant can maintain that, regardless of the absence of blame of the part of the plaintiff for that delay, it would be unjust to ask to the defendant to defend the claim. The question most commonly considered by the court when exercising its O'Domhnaill jurisdiction is whether, by reason of the passage of time, there is a real or substantial risk of an unfair trial or an unjust result.*

*The difference between the Primor and O'Domhnaill Tests*

*33. Many of the more recent decisions which have considered the O'Domhnaill jurisdiction have been delivered in what may be described as historic sexual abuse cases in which proceedings were commenced very many years after the acts of abuse were alleged to have been perpetrated. Three such decisions are those of Kelly J. in Kelly v. O'Leary [2001] 2 I.R. 526, Hardiman J. in Whelan v. Bridget Lawn and Others [2014] I.E.S.C. 75 and Hogan J. in I.I. v. J.J [2012] I.E.H.C. 327.*

*34. It is clear from the relevant case law that a defendant may be able to rely upon the O'Domhnaill jurisprudence where it might otherwise fail the Primor test due to its inability to establish culpable delay on the part of the plaintiff. For example, in a case of alleged sex abuse where for all of the period of delay a plaintiff may maintain that they lived under the dominion of their abuser, the defendant would be unlikely to succeed in a Primor application, particularly if the plaintiff had evidential support for the allegation regarding dominion. However, that defendant could nonetheless maintain that, regardless of the absence of any culpable delay on the plaintiff's behalf, they should not be required to defend the claim because the period of delay since the events complained was such that it was at real risk of an unfair trial or an unjust result.*

*35. Having reflected upon many of the authorities in relation to the "delay" jurisprudence, I am satisfied that the third leg of the Primor test, which obliges the defendant to prove that the balance of justice favours the dismissal of the claim, does not carry the same burden of proof in terms of the degree of prejudice that must be established in order to have the claim dismissed as that which falls to be discharged by the defendant seeking to engage the O'Domhnaill test.*

*36. While the O'Domhnaill test, i.e. is there a real risk of an unfair trial or an unjust result, is one of the factors which may be relied upon by a defendant in seeking to prove the third leg of the Primor test, the defendant relying on that test does not have to establish prejudice to the point that it faces a significant risk of an unfair trial. Once a defendant establishes inordinate and inexcusable delay, it can urge the court to dismiss the proceedings having regard to a whole range of factors, including relatively modest prejudice arising from that delay. That this is so seems clear from the decision of Kearns J. in Stephens v. Flynn [2008] 4 I.R. 31 where he accepted that the defendant need only establish moderate prejudice arising from delay as justification for dismissing the proceedings on the third leg of the Primor test. In the following brief passage at p.38 para.22 he summarised the findings that that been made by Clarke J. in the court below:-*

*"In considering where the balance of justice lay, he concluded that there had been a very significant delay. Not only had the plaintiff failed to render that delay excusable, he had failed to do so by a significant margin. He also concluded that the defendant, were he to be compelled to meet the case, would suffer prejudice, although he did not place that prejudice at a higher degree than moderate. He also held that there was no significant delay on the part of the defendant in exercising his right to apply for the dismissal of the action for want of prosecution."*

*37. Clearly a defendant, such as the defendant in the present case, can seek to invoke both the Primor and the O'Domhnaill jurisprudence. If they fail the Primor test because the plaintiff can excuse their delay, they can nonetheless urge the court to dismiss the proceedings on the grounds that they are at a real risk of an unfair trial. However, in that event the standard of proof will be a higher one than that imposed by the third leg of the Primor test. Proof of moderate prejudice will not suffice. Nothing short of establishing prejudice likely to lead to a real risk of an unfair trial or unjust result will suffice. That this appears to be so seems only just and fair. Why should a plaintiff found guilty of inordinate and inexcusable delay be allowed to say that just because it is possible that the defendant may get a fair trial that the action should be allowed to proceed when the evidence establishes that they would have been in a much better position to defend the proceedings if the action had been brought within a reasonable time? Likewise, why should a plaintiff who has not been guilty of any culpable delay have their claim dismissed where the court is satisfied that the defendant is not at any significant risk of an unfair trial or unjust result but where, by reason of the passage of time it has become moderately more difficult to defend the claim?*

*38. Considering its jurisdiction having regard to the test in O'Domhnaill, a court should exercise significant caution before granting an application which has the effect of revoking that plaintiff's constitutional right of access to the court. It should only grant such relief after a fulsome investigation of all of the relevant circumstances and if fully satisfied that*

*the defendant has discharged the burden of proving that if the action were to proceed that it would be placed at risk of an unfair trial or an unjust result.*

*European convention Article 6*

*39. In some of the more recent decisions concerning prejudicial delay, reference has been made to the constitutional imperative to bring to an end a culture of delays in litigation so as to ensure the effective administration of justice and the application of procedures which are fair and just.*

*40. Further, the Courts own obligations, stemming from Ireland's obligations under Article 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, have been deemed to be material to a decision as to whether or not proceeding should be dismissed on the grounds of delay. In a number of recent decisions, including those in Gilroy v. Flynn [2005] 1 I.L.R.M. 290 (Hardiman J.), Michael McGrath v. Irish ISPAT Limited [2006] I.E.S.C. 43 (Denham J.), and Rodenhuiz and Verloopb v. The HDS Energy Limited [2011] 1 I.R. 611 (Clarke J.), the court has considered in some detail whether a recalibration or tightening up of the criteria relevant to delay applications is warranted. The upshot of such discussion, which it is not necessary to recite in the context of this judgment, is that the court, when dealing with an application to dismiss a claim on the grounds of delay, should factor into its considerations Ireland's obligations under Article 6 of the Convention."*

(ii) Primor.

14. Is there inordinate delay arising in the prosecution of the within proceedings? Undoubtedly so.

15. Is that delay inexcusable? It appears to the court that having regard to Mr Sugg's relative indigence, his period of drug addiction, and the difficulties that he has belatedly encountered and which are referred to in his second affidavit, the entirety of the period of delay in the within proceedings is excusable. Courts must implement the law, but if the scales of justice are properly to be evened, if our court system is to enjoy the widest legitimacy, then attention is ever required to the personal lot of individual litigants, and understanding and occasional leeway extended to those for whom the process of civil litigation is both alien and expensive (with the means to meeting such expense not always being immediately to hand or otherwise readily sourced, and the procurement of same thus inevitably being a cause of some delay). In passing, the court notes as a relevant factor in its considerations the fact that Hanna J. appears previously to have found that the period to July, 2013 was likewise excusable.

16. Even if the court is wrong and the delay arising is inordinate and inexcusable, where in any event does the balance of justice lie? On the one hand, the court is presented with State defendants that, for the reasons identified previously above have identified alleged prejudice which the court does not consider to be especially great, to the extent that it pertains. Witnesses are older but they are available; no witness is identified to have died; and it appears that there are some contemporary records available. On the other hand, the court is presented with a relatively indigent individual, who has recovered from drug addiction, suffered certain further challenges in life, and comes to court seeking relief for an alleged attack which, if the above quoted account is proven, appears quite horrific in nature. The court considers that the balance of justice lies greatly in favour of allowing the within proceedings to continue, albeit that they may or may not prove ultimately to be successful.

(iii) O'Domhnaill.

17. For much the same reasons as have been identified by the court in the context of the Primor test above, the court does not consider that the State parties should not be required at this time to defend the claim because the period of delay since the events complained is such that for the proceedings now to continue would place the State parties at real risk of an unfair trial or an unjust result.

(iv) Article 6 ECHR.

18. It seems to the court that the requirements of Art. 6 largely find expression through the proper application of the Primor and O'Domhnaill tests. However, as will be seen in the concluding part of this judgment, Mr Sugg has likely come to the outer limits of such latitude as he enjoys concerning the continuation of the within proceedings and it is now necessary that they prosecuted with the utmost diligence.

VI. Conclusion

19. The court declines to grant the State parties any of the reliefs sought at this time. However, it is clearly necessary that these proceedings should now continue with every expedition. So the court's refusal of the reliefs now sought shall be made on terms designed to ensure that there is no further delay of any kind on Mr Sugg's part. Mindful of the approach adopted by Hogan J. in *Casserly v. O'Connell* [2013] IEHC 391, the court will adjourn this matter, in the first place for a period of two weeks, so as to allow Mr Sugg's legal advisors to prepare a proposed, expedited sequence and chronology of steps to be taken by and for their client hereafter. The court will then hear the parties briefly on what is proposed and make such case management order as seems appropriate. To borrow from the judgment of Hogan J. in Casserly, at para. 21, in "*sporting terms*" Mr Sugg should consider himself as being "*shown the equivalent of a yellow card. But that colour might easily turn red if there were to be any further delay*".