Neutral Citation Number: [2010] IEHC 278

**THE HIGH COURT**

**2009 508 JR**

**G. C.**

**APPLICANT**

**AND**

**S. R. CHAIRPERSON, OF A NATIONAL SCHOOL**

**AND**

**THE HEALTH SERVICE EXECUTIVE (FORMERLY KNOWN AS THE MID WESTERN HEALTH BOARD)**

**RESPONDENTS**

**JUDGMENT of Mr. Justice Hedigan delivered on the 6th of July 2010**

1. At the hearing of these proceedings on the 28th and 29th April, 2010 it was agreed by the parties that the issue of delay should be dealt with by this Court as a preliminary issue. Therefore, this judgment will address this aspect of the case alone.

**The Parties**

2. The applicant is an employee of the first named respondent ("the school"). He commenced employment as a classroom assistant/careworker at the school in September 1995. On the 5th March, 1997 he was suspended from that position following allegations of sexual abuse made by a student at the school, through his parents. The applicant has remained suspended from the school for over thirteen years on full pay.

3. The first named respondent is the chairperson of the board of management of the school. The school in question is a national school for children suffering from intellectual disabilities.

4. The second named respondent ("the HSE") was established in January 2005 as the single body with statutory responsibility for the management and delivery of health and personal social services in this jurisdiction. It replaced *inter alia* the Mid Western Health Board ("the Health Board"), which had dealings with the applicant since 1997.

**Factual Background**

5. On the 12th March, 1997 the applicant was informed by the then chairperson of the board of management, Sr. M., in the presence of the principal at the school, M.D., that a pupil of the school, J.L., had made a complaint of sexual abuse against the applicant through his parents and that he was to be suspended with immediate effect. On the same date Sr. M. wrote to the applicant inviting him to a meeting of the board of management to be held on the 24th March, 1997. She outlined the details of the incident J.L. had alleged and she enclosed a copy of the written statement J.L.'s mother had made in this regard. She also indicated to the applicant that the allegation had been reported by the mother of J.L. to the Health Board.

6. In a reply dated the 20th March, 1997 the applicant's then solicitor wrote to Sr. M. to advise that he would be representing the applicant. He sought an adjournment of the meeting of the board of management to seek further instructions and also sought a number of documents from the school. Sr. M. acceded to the request for an adjournment. The school instructed McCann Fitzgerald Solicitors. They wrote to the applicant's solicitors on the 8th April, 1997 advising them *inter alia* that the applicant's attendance at a board of management meeting would be required and that copies of all documentation pertaining to the matter "*including reports/minutes of all relevant meetings*" would be made available. In addition, that letter indicated that the Health Board was conducting an investigation, involving an assessment of J.L., which would take approximately eight to ten weeks.

7. On the 24th April, 1997 in a further letter from the school's solicitors to the applicant's solicitors, the school advised that the board of management would not be in a position to give its final view on the matter until the Health Board released its report, following its investigation. The letter also suggested that the applicant could meet with the board of management to progress the matter a stage further. On the 9th June, 1997 the school's solicitors noted that the Health Board's report was not yet completed. They stated that the school was compiling a full set of relevant documents in the meantime which it would furnish to the applicant and the letter went on to outline in detail the procedure that would be followed at a meeting of the board of management with the applicant in the following terms:-

> *"1. That Mr. C. would be entitled to attend and be represented by solicitor or solicitor and counsel.*
>
> *2. That an independent practising barrister would be present to advise the Chair as appropriate to ensure that the procedures followed would be fair and reasonable.*
>
> *3. That a stenographer would be present to take a note of any evidence given and of any submissions.*
>
> *4. That the parents of* [J.L.] *would be in attendance to give such evidence as may be appropriate.*
>
> *5. That depending on the content of the report of the Health Board when received, the relevant Health Board personnel involved in its investigation would be asked to be in attendance to give such evidence as may be appropriate.*
>
> *6. That as may be appropriate your client would be invited to give evidence and to call any witness(-es) on his behalf as may be appropriate.*
>
> *7. That any witnesses who give evidence would be subject to questioning by the members of the Board and by (or on behalf of) your client.*

*If you have any comments on the proposed procedure as outlined above, same would be considered by our client."*

The final paragraph of the same letter confirmed that a verbal complaint had been received by the school on the 26th May, 1997 from the parents of another student, N.C., in respect of alleged sexual abuse by the applicant. The letter indicated that the parents of N.C. had been advised that the school would not consider such a complaint unless it was made in writing and that if same was received that it would forward it to the applicant's solicitors.

8. In the meantime the gardaí, with the involvement of the Health Board, had commenced an investigation into the matter. Interviews were conducted with students, teachers and staff of the school in this regard. In total, eight pupils, through their parents, made allegations of sexual abuse to the gardaí and to the Health Board. The complaints related to alleged sexual and physical abuse of those pupils by the applicant and a teacher at the school, P. McG., who had also been suspended in March, 1997. On the 24th June, 1997 the applicant was arrested at his home and then detained and interviewed by the gardaí. He was arrested again on the 16th June, 1998 regarding the same allegations.

9. Between 1998 and 1999 the Health Board carried out an assessment into allegations of sexual abuse made against the applicant by eight students at the school in 1998. The applicant was invited to respond to those allegations by the second named respondent. However, he failed to attend and participate in the investigation.

10. In a letter dated the 25th August, 2000 the applicant was informed that the Office of the Director of Public Prosecutions would not prosecute him in respect of any of the allegations made against him. The school was informed that the applicant was not to be criminally prosecuted in a letter dated the 8th September 2000. On the same date the school wrote to the applicant advising him that it proposed to proceed with its own investigation of the complaints received by the Health Board and the gardaí. The same letter also indicated that it was not in a position to proceed during the currency of the other investigations and that it had written to the parents of J.L. and N.C. requesting them to reconfirm and, if appropriate, to update in writing the original complaints made and that it had written to the Health Board requesting relevant information.

11. Between November 2000 and November 2001 thirty eight High Court writs were issued by pupils, former pupils and their parents against the school, the applicant and P. McG. and the Health Board seeking damages for assault, including sexual assault, battery and trespass to the person.

12. The applicant changed solicitors. He instructed Mr. John Devane, who continues to represent the applicant in these proceedings. Mr. Devane is also the solicitor for P. McG. In a letter of reply to the school dated the 15th November, 2000 Mr. Devane challenged the right of the school to conduct its own inquiry into the complaints against the applicant to the school and to the Health Board. Part of that letter stated as follows:-

> *"… I understand the investigation by An Garda Siochana, the Health Board, the Department of Education and the Director of Public Prosecutions has terminated and that no case to answer was made against my client.*
>
> *I am instructed furthermore that you, your servants or agents have both individually and collectively indicated that my client is still under investigation by yourselves. As indicated in the proceeding [sic.] paragraph the relevant state authorities have carried out the fullest of enquires for over three and a half years and they have totally vindicated my client in respect of any and all complaints that were made against him. It is totally vindictive and malicious on your part that you would further seek to embarrass and humiliate my client by endeavouring to carry out your tribunal as indicated to Mr. C. In the event that you set up a separate tribunal of investigation regarding Mr C. it is quite clear that you still believe that he has a case to answer even after the state has fully concluded its case and this to say the least has had a terrible effect on my client unless there is some other agenda on your part. My client and this writer are totally at a loss as to why you would seek to prosecute my client in the way that you have expressed. …"*

13. P. McG. was tried in respect of charges of sexual abuse in relation to two pupils. He was acquitted of those charges on the 27th November, 2002.

14. Some time later the school also changed solicitors to the firm of Michael Houlihan & Co. They wrote to Mr. Devane on the 23rd April, 2003 and noted the additional complaints that had been made against the applicant together with the complaints that had been made against him in 1997. It stated that the school could not ignore them and had an interest and was under a duty to enquire into them and also that disciplinary procedures and sanctions may be invoked. An assurance that the applicant would be afforded fair procedures was given in the letter. The school indicated that it was awaiting receipt of documentation from the Health Board. The Health Board concluded its inquiry into the allegations of sexual abuse against pupils of the school on the 23rd November, 2003.

15. On the 24th August, 2004 the health board wrote to the applicant advising him that it would be releasing anonymised summary reports of the investigation to the school and their solicitors sent them to the school's solicitor on the 20th September, 2004. A month later, on the 20th October, 2004 the school's solicitors wrote to the applicant again. They indicated that they had received summary risk assessment reports relating to eight former students at the school and that the findings in the reports impacted on the applicant's suitability to continue on in the school's employment. Adverse findings were made against the applicant to the effect that in seven of the eight cases investigated it was found that abuse had occurred and it was concluded that the applicant presented "*an ongoing risk to vulnerable children*". The letter of the 20th October, 2004 went on to state:-

> *"In view of the Mid-Western Health Board's findings, our clients must now proceed with a disciplinary enquiry and you will remain on administrative leave until this enquiry is complete. We wish to advise you that you have a contractual duty to co-operate with this enquiry.*
>
> *The enquiry will proceed pursuant to the Board's own guidelines as set out in the Management Members' handbook. The relevant extract is enclosed. The enquiry will be carried out in accordance with the principles of fair procedures and nature* [sic.] *justice.*
>
> *We wish to advise you that the outcome of the enquiry may have serious disciplinary consequences up to and including summary dismissal. You will be afforded every right to defend yourself.*
>
> *You are invited to a preliminary meeting with the Board at St. V.'s School, at 6.00pm on the 22nd day of November 2004 when you will be furnished with copies of the risk assessment reports. These reports will be furnished to you on a confidential basis and you will be required to sign the* ***enclosed*** *Confidentiality Agreement. Thereafter, you will be given time and an opportunity to respond either in writing or in person at a second meeting, to be arranged to the findings in*

*the reports.*

*You are, of course, entitled to have representation at the preliminary meeting and at any subsequent meetings. A stenographer will be present at all meetings and copies of the transcripts will be furnished to you.*

*You may, at any stage in the process, furnish any independent experts' reports regarding the findings of the Mid-Western Health Board and such reports will be fully considered by the Board of Management.*

*Once our client receives your initial response to the Mid-Western Health Board's findings, the Mid Western Health Board will be invited to a preliminary meeting to allow them an opportunity to present their case against you. Again, a stenographer will be present at this meeting, and a transcript of that meeting will be furnished to you.*

*Our client will then consider any submissions made by you, any relevant witnesses you wish to call and any other relevant evidence you may wish to call in your defence. This will be conducted in a context where the Board will, of course, make such other reasonable or proper provision as you may request, having regard to you entitlement to natural justice and fair procedures.*

*Once all of the evidence has been given, our client will then adjudicate on it and you will be informed in writing of their decision, which shall also be communicated to the Mid-Western Health Board and to the Department of Education.*

*If you do not attend the meeting arranged for 22nd November next, our client will have no option but to make their disciplinary findings on the basis of the information to hand. Furthermore, your failure to co-operate will, in itself, be a disciplinary matter."*

16. Mr. Devane wrote back to the school's solicitors on the 28th October, 2004 explaining that he was in hospital and would be unable to attend at the proposed hearing. He requested an adjournment, to which the school agreed in their reply dated the 3rd November, 2004. The adjourned date was the 26th January, 2005. Mr. Devane subsequently forwarded a signed confidentiality agreement to the school's solicitors.

17. Mr. Devane, in a letter dated the 3rd June, 2005, warned that the applicant would issue proceedings against the order of nuns which ran the school and the Department of Education if there was no resolution of the issues. He wrote to the school's solicitors again by letters dated the 16th November, 2006, the 19th January, 2007 and the 21st February, 2007. In the latter letter he noted that he had not received replies to his previous letters.

18. The applicant was invited to attend a disciplinary meeting on the 10th December, 2007 by letter dated the 13th November, 2007 from the school's solicitors to the applicant's solicitors. A further letter was sent to the applicant's solicitors to attend a meeting on the 18th June, 2007 in respect of a disciplinary meeting. On the 18th January, 2008, Mr. Devane wrote to the school's solicitors indicating his counsel's availability for talks. Some discussions took place.

19. The applicant instituted these proceedings, however, on the 11th May, 2009. He was granted leave to seek the following principal reliefs by way of judicial review by this Court (Peart J.) on the same date:-

1. A declaration that the continued suspension of the applicant is unlawful.

2. An order of *certiorari* to quash the decision and/or decisions of the first named respondent refusing to permit the applicant to return to work as a classroom assistant/care worker.

3. An order of *certiorari* to quash any purported decisions including any unsigned decisions which indicate that the applicant is a risk to vulnerable children in his capacity as a classroom assistant/care worker at St. V.'s School, *inter alia* the Child Sexual Assessment Summary Reports dated 1999 and 2003.

4. Damages for breach of duty including breach of statutory duty, and negligence.

5. If necessary an order extending the time for the bringing of this application.

20. The school agreed to hold an inquiry into the allegations against P. McG by order of this Court dated the 15th May, 2009. That order was made on consent. Terms of reference were agreed between the school and P. McG.

21. The school's solicitors wrote to the applicant on the 18th June, 2009 proposing that an inquiry be carried out on the following terms:-

*"1. To lift the suspension of [G.C.] provided he agrees not to return to work pending the outcome of an inquiry.*

*2. To use the same adjudicator as in Mr. [the teacher who had been suspended]'s case and to hold the inquiry either simultaneously or consecutively, employing the same terms of reference.*

*3. That your client would co-operate fully with the inquiry and if there is any finding against him that he would agree to resign his position with immediate effect.*

*4. There would be no order as to costs.*

*5. That it would be in full and final settlement of all claims.*

*6. There would be confidentiality as to the terms of settlement."*

22. Mr. Devane replied by letter dated the 24th June, 2009 stating that the proposed terms of settlement were not acceptable for the following reasons:-

*"Our client would be foolhardy to agree an in camera form of arbitration wherein he has no say as to the terms of reference or to the arbiter should be agree to resign immediately if there is 'any findings against him' and abandone [sic.] entirely his claim to compensation."*

23. In a letter of the 25th June, 2009 the solicitors for the HSE, Dermot G. O'Donovan Solicitors, stated that the applicant had been offered an opportunity by the school to participate in an inquiry by a senior counsel to be nominated by the Chairman of the Bar Council. The letter continued:-

> *"Implicit in this [the offer], is the absolute guarantee and assurance of fair procedures.*
>
> *He* [the applicant] *has refused this.*
>
> *There is no question yet that anyone has refused to permit his input into the terms of reference but, in general, the terms of reference will mirror the terms agreed in the matter of [P.Mc G.]. Bearing in mind, that you represent both Applicants and that they are also represented by the same Counsel and given that the issues are somewhat similar, it is unreasonable in the extreme to refuse the proposals that have been put forward."*

24. The reply from Mr. Devane to the solicitors for the HSE of the 17th July, 2009 stated *inter alia* as follows:-

> *"Please be advised that it is our intention to continue with this case by way of the present proceedings before the Court with a view to having the matters fully ventilated and our instructions from our client are not to participate in any inquiry."*

**The applicant's submissions**

25. Mr. Forde S.C., for the applicant, submitted that the school had been guilty of delay, in that, it caused the protracted suspension of his client. He submitted that his client had done his best to resolve matters, as he had requested a disciplinary tribunal to be established in May 2009 but to no avail. This led to the institution of these proceedings.

26. Any delay on the applicant's part in instituting judicial review proceedings was explained, he submitted, at paragraphs 27 and 30 of the applicant's second affidavit, sworn on the 2nd March, 2010, which read as follows:-

> *"28. At all times I relied upon the school holding an inquiry into these matters. I did not receive the 1999 Health Board Reports or the 2003 Summary Assessments until 2008, and believed that any findings by the Health Board adverse to me could be challenged at a disciplinary inquiry, but the Health Board failed to co-operate with the school in this regard.*
>
> *…*
>
> *30. I have never prohibited or interfered with the school holding an independent inquiry in accordance with fair procedures, and at all times cooperated. I say that any delay in the holding of a disciplinary inquiry rests with the school. At all times they awaited the cooperation of the Health Board and the Department of Education."*

27. He further argued that account must be taken by this Court of the ordinary limitation period in plenary proceedings involving employment disputes of 6 years. He relied on the case of *De Róiste v. The Minister for Defence, Ireland and the Attorney General* [2001] 1 I.R. 190 in arguing that strict time limits in judicial review cases are not always appropriate and that the nature of the dispute must be considered. He noted that the school's offer to hold an inquiry had not been made until after the within proceedings had been commenced. If his client were to accept that offer, he argued that he would have to abandon any claim to damages. The terms of reference, as outlined by the school, did not, he submitted comply with fair procedures as it proposed that if "*any*" finding was made against him that he would have to agree to resign his position with immediate effect.

28. Mr. Forde contended that he could only have instituted judicial review proceedings against the second named respondent in 2008, once his client had received the validated assessments.

**The respondents' submissions**

29. Mr. Hogan S.C., for the school, pointed to a series of correspondence from 1999 to 2009 from the school to the applicant which set out the school's clear intention throughout to hold an inquiry. He contended that although the applicant had not obstructed the holding of an inquiry that he had not cooperated with the holding of one. The applicant, he submitted, was not entitled to dictate the terms of reference of such an inquiry, provided the procedures were fair.

30. In Mr. Hogan's submission there had been gross and inordinate delay on the part of the applicant in respect of his grounds of challenge. Mr. Hogan pointed out that the explanation put forward by the applicant to explain the delay was not contained in his grounding affidavit but, rather, in his second affidavit. He submitted that, in any event, the purported explanation was contrived and did not address why there was delay in bringing judicial review. He relied on *de Róiste v. Minister for Defence* [2001] 1 I.R. 190 where it had been accepted that delay, in itself, could be a ground for refusing relief. Mr. Hogan acknowledged that the applicant had not actually received the validated reports of the HSE until 2008 but, he contended, that the applicant had been in "*constructive possession*" of those reports since the late autumn of 2004 and had made no effort to obtain them. The discretion of the Court to extend time should not be exercised in circumstances where no proper explanation had been provided, he submitted, and having regard to the interests of third parties, i.e. special needs children and their families.

31. Mr. Connaughton S.C., for the second named respondent submitted that time ran against the applicant in respect of his client from the 23rd November, 2003, the date on which his client concluded its report into the allegations made against the applicant. He also contended that the applicant had failed to explain the delay or afford a justifiable excuse for the delay. The question of whether the Court should exercise its discretion to extend time did not arise, he submitted. However, if the Court deemed that it did, he argued that the Court should take the conduct of the applicant into account. In this regard he referred to the rejection by the applicant of the offer of the school to hold an inquiry, which was endorsed by his client.

**The Decision of the Court**

32. Order 84 r.21 of the Rules of the Superior Courts provides:-

> *"21. (1) An application for leave to apply for judicial review shall be made promptly and in any event within three months*

*from the date when grounds for the application first arose, or six months where the relief sought is certiorari, unless the Court considers that there is good reason for extending the period within which the application shall be made.*

*(2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.*

*(3) The preceding paragraphs are without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made."*

33. I am satisfied that the school was not in a position to set up its inquiry until the gardaí and HSE investigations had been completed. The school received the risk assessment reports from the HSE on the 20th October, 2004 and upon receiving them it invited the applicant to attend at a disciplinary meeting where he would be given sight of these reports. It is not entirely clear what happened from that point onwards although it appears that negotiations took place between the parties.

34. I am satisfied, having regard to the terms of O.84 r.21(1) of the Rules of the Superior Courts 1986 that the applicant should have moved to seek judicial review of the decision to suspend him at the earliest time a ground arose. In my view the highest point of the applicant's case in this regard is that he may be able to justify not instituting proceedings up until the point when the content of the assessments of the HSE were made known to him on the 20th October, 2004. I do not accept the applicant's contention that because he was not furnished with the assessments in 2004 that he could not bring judicial review proceedings until such time as they were sent to him. In this regard I accept Mr. Hogan's submission that the applicant was "*constructively*" in possession of those assessments since 2004. He was aware of their existence and of the findings, adverse to him, contained therein. However, he made no effort whatsoever to procure them. I am satisfied that the latest point at which the applicant ought to have moved to bring proceedings is the 20th October, 2004. Taking this as the relevant date, it is clear that the applicant is considerably out of time in instituting these proceedings. No satisfactory explanation has been proffered to explain this inordinate delay .

35. As to the challenge the applicant makes to the findings of the HSE contained in their report, I am satisfied that the relevant date from which time should run is also 24th October, 2004 when the broad outline of those findings were made known to the applicant. The applicant failed to comply with the duty to move promptly to seek *certiorari* and has not proffered reasons why he failed to do so. It was easily within his power to seek to obtain the reports but he chose not to do so in circumstances where he was broadly aware of what the contents of the reports were. It is plain from the correspondence that the investigation of the HSE was completed. Therefore, if the applicant wished to challenge the findings contained in the reports he should have done so within six months of becoming aware of their existence and conclusions.

36. The Court's discretion to extend time under O.84 r.21(1) of the Rules of the Superior Courts can only be exercised when it is satisfied that there is good reason for doing so. Hederman J. in *O'Flynn v. Mid Western Health Board* [1991] 2 I.R. 223 at p.236 outlined the principles to be applied in considering an application for time to be extended in the context of judicial review proceeding as follows:-

*"…the judge should be furnished with the reasons for the delay in the grounding affidavit and he should decide whether there are grounds for excusing the delay. Even if leave is granted at the ex parte stage, nonetheless, when the trial judge comes to hear the matter he must adjudicate upon whether the delay was reasonable and such as may be excused or not."*

Costello J. explored the meaning of "good reason" in *O'Donnell v. Dun Laoghaire Corporation* [1991] I.L.R.M. 301 at p.315:-

*"The phrase 'good reasons' is one of wide import which it would be futile to attempt to define precisely. However, in considering whether or not there are good reasons for extending the time I think it is clear that the test must be an objective one and the court should not extend the time merely because an aggrieved plaintiff believed that he or she was justified in delaying the institution of proceedings. What the plaintiff has to show (and I think the onus under O. 84 r. 21 is on the plaintiff) is that there are reasons which both explain the delay and afford a justifiable excuse for the delay. There may be cases, for example where third parties had acquired rights under an administrative decision which is later challenged in a delayed action. Although the aggrieved plaintiff may be able to establish a reasonable explanation for the delay the court might well conclude that this explanation did not afford a good reason for extending the time because to do so would interfere unfairly with the acquired rights (State (Cussen) v Brennan [1981] IR 181).*

*Or again, the delay may unfairly prejudice the rights and interests of the public authority which had made the ultra vires decision in which event there would not be a good reason for extending the time, or a plaintiff may acquiesce in the situation arising from the ultra vires decision he later challenges or the delay may have amounted to a waiver of his right to challenge it and so the court could not conclude that there were good reasons for excusing the delay in instituting the proceedings."*

37. Insofar as the applicant makes an application for time to be extended, it seems to me that the explanations put forward by the applicant for the delay on his part are disingenuous and not credible for the purpose of extending time. The delay of the applicant has not been adequately explained. I am also of the view that if the applicant's application to extend time were acceded to there would be prejudice to the HSE, to the school and to the parents of the children involved in the complaints herein.

38. Looking at the history of events post-2004 I note that serious efforts were made by the school to proceed with their inquiry. The letters of the 21st February, 2007 and the 9th March, 2007 are unequivocal in that, the school, at that time, very much wanted to proceed with its investigation. The applicant's responses to those letters demonstrate a desire to delay the matter; to have some type of veto over who should be chairing the inquiry; to dictate the terms of reference and to have it conducted otherwise than in camera.

39. The reality of the situation is that the disciplinary inquiry proposed by the school has been delayed much longer than it ought to have been. This is a most unsatisfactory state of affairs from the point of view of the applicant's right to his good name, the rights of the alleged victims and their families and also from the point of view of the State, in that, it has been paying the applicant his full salary since 1997 pending the completion of the disciplinary process.

40. As to the argument that the school's inquiry ought to be held in public, I am satisfied that it would be perfectly appropriate for the school to hold an inquiry into the allegations made against the applicant *in camera*. Indeed it would be hard to imagine why it would do otherwise, given the private law nature of the relationship between the applicant and the school i.e. employee/employer.

The applicant clearly, also, has no right to choose or dictate the terms of reference adopted by the school for its inquiry, provided that they accord with the requirements of natural and constitutional justice. Indeed, every indication has been given, as is evident from the correspondence emanating from the school's solicitors, that fair procedures will be followed.

41. Finally, it is to be observed that the applicant had the same solicitor as P.McG., the other person accused of sexually abusing children at the school. Mr. Devane, therefore, was aware of the terms of reference offered to that person by the school and has participated in that inquiry. In any event, if the applicant had accepted the procedures proposed by the school, any clarifications needed could have been easily obtained by his solicitors.

**Conclusion**

42. The necessity of having an inquiry into the very serious complaints made against the applicant should have been obvious to all. It is inconceivable in the light of the findings by the HSE that the school could have permitted the return to teaching of the applicant until a full inquiry was held. The safety and welfare of the very vulnerable children in their care seems to have been kept in the forefront of the minds of the school authorities throughout this sorry saga. It is apparent from the evidence in this case that the school, from the outset, was anxious to hold a disciplinary hearing. It put forward proposals which were eminently fair and reasonable to the applicant in respect of the inquiry it proposed to undertake. An unreasonably negative attitude has been adopted by the applicant regarding the holding of an inquiry by the school. I am satisfied that the delay in these proceedings is attributable to the conduct of the applicant himself. The applicant is out of time to bring judicial review proceedings and the circumstances of the case do not warrant extending the time to do so.