



Gníomhaireacht Bainistíochta an Chisteáin Náisiúnta
National Treasury Management Agency

An Ghníomhaireacht um Éilimh ar an Stát
State Claims Agency

Legal Update – What’s been happening?

Presented by:

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Key Cases

Kirwan v Connors and Others [2025] IESC 21

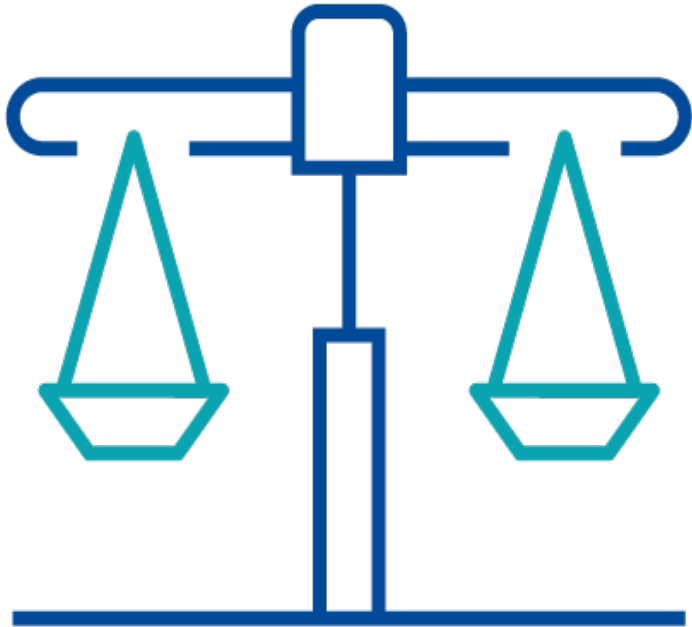
Kemmy v Murray & Tusla [2025] IEHC 421

**V Media Doo & First Click Marketing Operations Management Ltd v
Techads Media Limited [2025] IEHC 430**

Dillon v Irish Life Assurance PLC [2025] IESC 37



Kirwan v Connors and Others [2025] IESC 21



Supreme Court decision on striking out cases for failure to prosecute in a timely manner

Key Details

- Sets out a clear road map for strike out of inactive cases
- Order 122, Rule 11 Rules Superior Courts 1986; jurisdiction to dismiss for want of prosecution where there has been no proceeding for two years
- Considered by an extended panel of seven judges and the Attorney General
- Pre Kirwan – principles for delay set out in *Primor v Stokes Kennedy Crowley* [1996] 2 IR 459

Kirwan v Connors and Others [2025] IESC 21

Timeline

2005/2006:
Property deal

May 2013:
Proceedings issued

December 2013:
Defence delivered;
No further steps
taken by Plaintiff

2018:
Application made
to strike out the
proceedings;
success in High
Court and Court of
Appeal

2025:
Ruling of Supreme
Court confirming
High Court and
Court of Appeal
were correct

Kirwan v Connors and Others [2025] IESC 21

Consideration of *Primor* test

Subjective, lengthy hearings

Inconsistent outcomes

Frequent appeals

Increased costs

Rules of the Superior Courts should be revisited

New test proposed

Defendant's obligations?

Chief Justice O Donnell -

'the clue here is in the name: the defendant's function is to defend a claim which is brought to court'

New approach

Consider periods of inactivity, any excuses, any acquiescence.

Is oral or documentary evidence irretrievably lost?

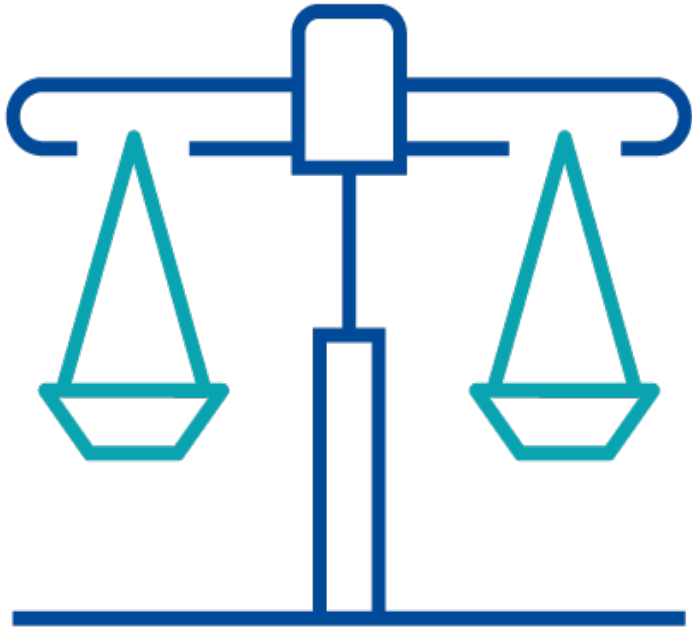
Is there prejudice?

Is there inactivity?

Kirwan v Connors and Others [2025] IESC 21

	Tests for dismissal
Delay of <2 years	Only dismissed if case is an abuse of process or a risk of an unfair trial
Delay of 2-4 years	May be dismissed if as well as inactivity, there is prejudice or some additional factor OR case may be strictly case managed and non-compliance would result in dismissal.
Delay of 4-5 years	Specific prejudice will strengthen the defendants' case for dismissal but it is not necessary to show prejudice. Onus on the plaintiff to establish that there are reasons the case can properly proceed.
Delay of 5+ years	The court should have a generous power to dismiss the case unless there is a pressing compelling and urgent reason of justice which necessitates it go to trial. The court gave examples of such exceptional circumstances; in the public interest or where there has been serious misconduct by the defendant.

Kemmy v Murray & Tusla [2025] IEHC 421



Personal Injury Guidelines (PIGs) do not expressly deal with damages for child sexual abuse

Key Details

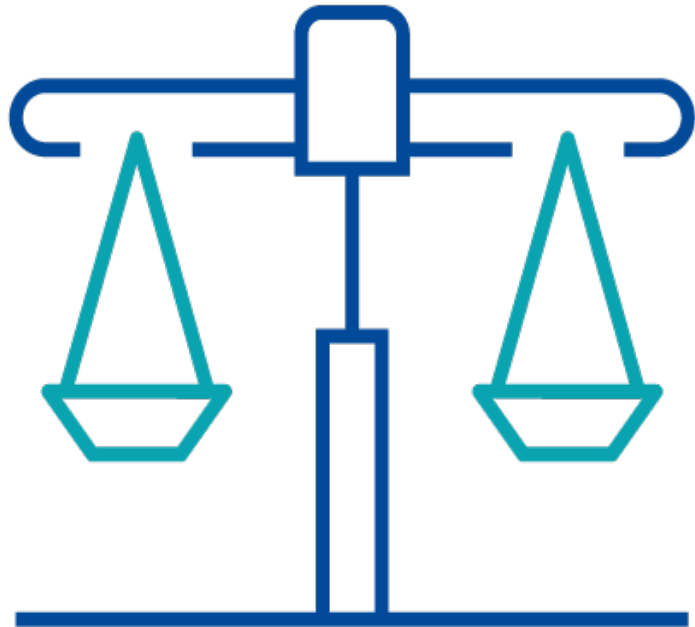
- Plaintiff taken into care by TUSLA and placed in care, sexually abused from the age of 11-18, resulting PTSD, depression.
- Case against TUSLA mediated and settled in the amount of €250,000 and High Court costs – case maintained against Murray (the abuser).
- Previous case law – *MN v SM [2005] 4 IR 461*, Denham J; a continuum of abuse over years will have consequences greater than the sum of the individual assaults. It also occurred at a critical time in a child's life and can subvert development.
- PIGs do not expressly deal with damages for child sexual abuse, but does include recommended awards for psychiatric injury.
- Abuse as part of a continuum is not captured in the PIGs

Kemmy v Murray & Tusla [2025] IEHC 421

- Egan J pointed out that the definition of a ‘civil wrong’ in the Personal Injuries Assessment Act 2003 (PIAB Act) differs from the definition of a ‘personal injuries action’ in the Civil Liability and Courts Act 2004. The 2004 Act specifically excludes from its scope actions which seek damages for trespass to the person and false imprisonment.
- Egan J; claims for child sexual abuse do fall within the PIRB Act but are not classified as personal injuries actions under the 2004 Act. Therefore, section 22 of the 2004 Act (obliging the court to have regard to the book of quantum/ personal injuries guidelines when assessing damages) does not apply.
- Conclusion : PIGs do not apply to cases of child sexual abuse.
- Agreement between Attorney General and Egan J that the upper limit for general damages in case of the most serious injuries is €550,000.
- Egan J awarded €325,000 to date and €125,000 into the future, a total of €450,000 general damages and €128,000 special damages.
- Murray and TUSLA found to be concurrent wrongdoers



V Media Doo & First Click Marketing Operations Management Ltd v Techads Media Limited [2025] IEHC 430 Twomey J



Plaintiffs should have been required to consider mediation prior to significant costs being incurred

Key Details

- Parties made multi-million euro claims against each other.
- Twomey J: examined the requirements of the Mediation Act 2017, in particular Section 14:
 - *14 (1) Prior to issuing proceedings, a practicing solicitor shall advise the client to consider mediation as a means of resolving the dispute.*
 - *14(2) If proceedings are to issue, they shall be accompanied by a mediation declaration evidencing that the mediation advice was given to the client.*
 - *14(3) If the proceedings issue without the mediation declaration, the court must adjourn the proceedings; in effect it must refuse to hear the case.*
- Twomey J: Litigation must be viewed as a last resort in order to save litigants costs and years of lost time and effort. The mediation declaration is not just a box ticking exercise for solicitors and there is a heavy onus on solicitors to consider mediating rather than litigating.

V Media Doo & First Click Marketing Operations Management Ltd v Techads Media Limited [2025] IEHC 430 Twomey J

- Twomey J: Mediation is means of reality checking the Plaintiff's claim.
- Here neither party was entitled to an award and he concluded ' the only winners in the case are the lawyers'.
- Twomey J echoed sentiments of Kennedy J in Byrne v Arnold [2024] IEHC 308.
- In Arnold, Kennedy J imposed cost implications for a failure by the solicitor to advise the client about the advantages of entering into mediation.
- Kennedy J rejected arguments about urgency and the chances of parties engaging as being low. He emphasised even if chances of a successful mediation were low, the plaintiffs should have been encouraged to consider an option prior to significant costs being incurred.
- Kennedy J stated the Courts should consider a breach of Section 14 and a provision should be introduced as a public interest measure to avoid unnecessary litigation and unnecessary recourse to the courts.

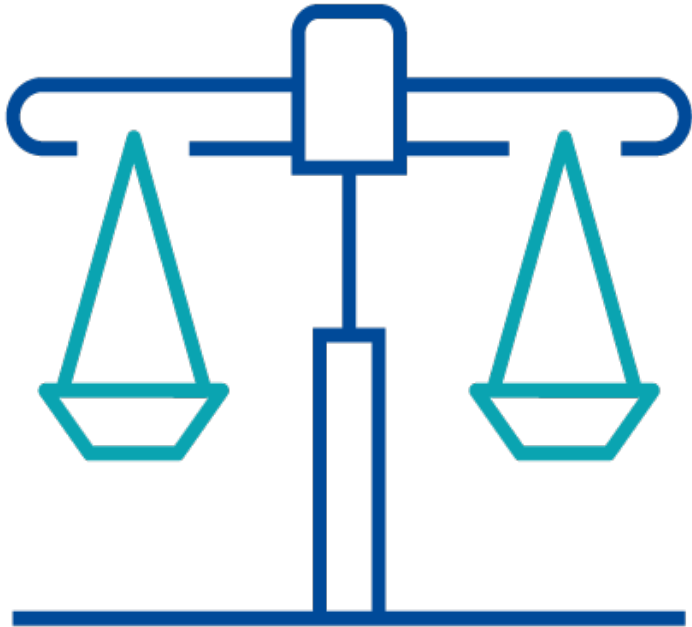


Byrne v Arnold [2024] IEHC 308

- Kennedy J: Default regarding Section 14 can be considered in exercising court's decision on legal costs. The court is entitled to consider the party's conduct before and during the proceedings pursuant to subsections 169(1) (a) and (c) of the Legal Services Regulation Act 2015.
- In *Arnold*, Kennedy J applied a 5% cost penalty; the plaintiffs could only recover 95% of their party-and-party costs due to the failure of the plaintiff's non compliance with Section 14 of the Mediation Act 2017.



Dillon v Irish Life Assurance PLC [2025] IESC 37



Courts examined when PIAB authorisation is required in a Data Protection Claim

Key Details

- Case has been through Circuit Court, High Court and now the Supreme Court.
- The plaintiff brought an action for damages against the defendant alleging negligence and breach of duty, and breach of including statutory duty causing “*distress, upset, anxiety, inconvenience, loss and damage*” after the defendant sent letters containing the plaintiff’s personal data to the wrong address on six occasions, in breach of the GDPR.
- Plaintiff did not suffer beyond ‘distress, upset and anxiety’.
- The defendant argued that this was essentially a claim for ‘personal injury’, and the Plaintiff ought to have issued personal injuries proceedings and obtained an authorisation from the Personal Injuries Resolution Board before issuing proceedings.
- Success for the defendant in the Circuit Court and High Court.

Dillon v Irish Life Assurance PLC [2025] IESC 37

- The Plaintiff was granted leave to appeal to the Supreme Court to allow consideration of compatibility of the requirement to have a PIAB authorisation with Article 82 of GDPR (right to compensation - strict liability)
- The Supreme Court considered:
 1. whether non-material damage in the form of distress, upset and anxiety falls within the definition of “*personal injury*” ; and
 2. if so, whether a requirement to apply to PIAB would render it excessively difficult for the appellant to exercise his right to compensation for non-material damage under the GDPR, in breach of Ireland’s obligation to give full effect to EU law.

The plaintiff’s appeal was allowed by the Supreme Court.

- The Supreme Court found that emotional distress such as anxiety, upset and inconvenience, without a medically recognised psychiatric disorder is **not** a ‘personal injury’ as defined under the PIAB Acts.
- Therefore a PIAB authorisation was not required for such claims.
- Note these would result in ‘*very modest awards*’
- **However**, if a claimant suffers a medically recognised psychiatric injury as a result of a Data protection breach, this would constitute a ‘personal injury’ and a PIAB authorisation would be required in that scenario.

Horizon Scanning

What's coming down the track?

- September 2025, Government published an action plan on competitiveness and productivity.
- Contains 85 actions to enhance the Irish economy's competitiveness and productivity.
- Highlighted the "Review of the Administration of Civil Justice Report" published in 2020 chaired by the Honourable Justice Peter Kelly, former President of the High Court and instrumental in founding the Commercial Court.
- The action plan resolves, as a matter of priority, to implementing the outstanding recommendations of that report to include discovery reform, reform of the Judicial Review process and the development of scale fees for civil litigation.
- Let's watch this space!





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FAQs, articles and upcoming
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Further questions, training
requests e.g. Discovery

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