Neutral Citation No: [2023] NIMaster 13 ***Judgment: approved by the court for handing down (subject to editorial corrections)****	***Ref:*** **2023NIMaster 13** ***ICOS No:*** **20/043570** ***Delivered:*** **14/12/2023**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

ANDREW MATTHEW MCGIVERN

Plaintiff

and

SOUTH EASTERN HEALTH AND SOCIAL CARE TRUST

Defendant

Mr Ciaran McCollum BL for the plaintiff.
Mr Michael Lavery BL for the defendant.

Master Harvey

Introduction

[1] This clinical negligence action raises issues in relation to court reviews, directions and most importantly serves as a reminder to practitioners of the risks parties run if they fail to understand the nature and purpose of an unless order, and the potential consequences of non-compliance.

[2] The plaintiff seeks an order pursuant to the inherent jurisdiction of the court and/or Order 3 rule 5 of the Rules of Court of Judicature (Northern Ireland) 1980 ("the Rules") setting aside the judgment for the defendant due to failure by the plaintiff to comply with an unless order.

[3] The cause of action occurred on or around the 26 June 2017 and involved alleged:

> "delay in treatment of the plaintiff's appendicitis, as a result of which his appendix perforated and became gangrenous and the plaintiff had to undergo open surgery as opposed to keyhole surgery,"

[4] The writ was issued on the 25 June 2020 with a letter of claim served some 15 months later on the 21 September 2021.

The court reviews

[5] The case was reviewed three times as part of the case management process in the Master's review court. At the first review on the 15 September 2021, it was directed, inter alia, that a statement of claim was to be served within 16 weeks. At para 5 of the Order, it stated that:

> "any extension of time for compliance with these directions must be sought from the court before the expiry of the prescribed time limit contained therein."

[6] The case was reviewed for a second time on the 29 June 2022. The previous directions were not complied with. It was directed that a statement of claim was to be served by the plaintiff within 12 weeks, time to run during the long vacation. In addition to this, Master McCorry directed that the plaintiff's solicitor was to provide a chronology of all steps taken to secure an expert report and to attach all relevant emails and other correspondence. This is a direction often given in reviews of clinical negligence cases where the court is concerned about delay, and it is not clear what steps a party has taken to progress matters. Once again, the direction was that if the parties required additional time to comply with the directions, it should be sought from the court before the expiry of the time limit. The reason given for delays in the case by the plaintiff's solicitor was "continuing difficulties obtaining expert medical evidence."

[7] The case was reviewed for a third time on the 3 October 2022. The parties were put on notice of the review date in advance and the plaintiff acknowledges this as the notification of listing was on their file. The plaintiff solicitor was not present at the review as it was overlooked, however, her counsel attempted to attend, by accident not design as he was not briefed to do so but the case happened to be brought to his attention while in court on another matter. He was ultimately unable to join the review as it had already been called and dealt with. Once again it was apparent the previous directions of the court had not been complied with. As a result, it was at this review that an unless order was issued in relation to service of the statement of claim which had still not been served.

The unless order

[8] The terms of the unless order issued on the 3 October 2022, were as follows:

> "It is ordered that unless within 4 weeks of the date of service of this order, the plaintiff serves a statement of claim in compliance with the order of the court dated the 29th June 2022, the plaintiff's action shall be struck out, with judgment for the defendant with such costs in the action to be taxed in default of agreement. And it is further ordered the action shall be listed for review before the Master on 9 January 2023."

[9] The defendant served the order on the 10 November 2022, and it was received by the plaintiff firm of solicitors. No issue is taken by the plaintiff in relation to the substance of the order or its service, accepting neither were irregular and that the order accords with Master's Practice Note 1 of 2012.

[10] It bears reminding practitioners as to the nature of an unless order. Too often at review hearings I have seen the parties wrongly believing that the filing of a certificate of non-compliance by the party benefitting from the unless order was the date upon which the order expires and the sanction applied or querying it with the court office in the expectation it should "keep them right." Practitioners should familiarise themselves with the aforementioned Practice Note 1 of 2012 which states:

> "The sanction specified in an Unless order takes effect without the need for any further order of the court if the party to whom it is addressed fails to comply with its terms."

[11] The order was not complied with, within the stipulated time. The defendant thus filed a "certificate of non-compliance" on the 13 December 2022. The case was therefore struck out from the date of expiry which would have been the 8 December 2022.

[12] The plaintiff states in her affidavit that she was unaware of the unless order as it was served on her office while she was "still absent at that stage." This conflicts with the certificate of non-compliance filed by the defendants which notes the date of service of the order as the 10 November 2022, a month after her return to the office.

[13] The court office wrote to the plaintiff solicitor on the 6 October notifying her of the next court review date of 9 January 2023. No evidence was provided to me that contact was made with the court by the plaintiff solicitor to query what had happened at the review on the 3 October or to enquire as what directions had been issued or that any attempt was made to offer an explanation for non-attendance at the review and seek extensions to previous directions dating back over a year at that stage. When the solicitor checked the court list for the review on 9 January 2023 it had been removed in advance by the court office and she was informed it had been struck out due to her failure to comply with the unless order.

Legal principles

[14] The court has powers under the Rules to extend time for compliance with orders, even after the deadline has expired. The relevant provision is Order 3 rule 5, which is in the following terms:

> "RsCJ Order 3 r.5 – Time
>
> Extension, etc. of time

5. – (1) The Court may on such term as it thinks just, extend or abridge the period within which a person is required or authorised by these rules, or by any judgment, order or direction. to do any act in any proceedings.

(2) The Court may extend any such period as is referred to in para (1) although the application for extension is not made until after the expiration of that period.

(3) The period within which a person is required by these rules or by any order or direction to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose.

(4) In this rule references to the Court shall be construed as including references to the Court of Appeal."

[15] The subject of unless orders has been discussed in a number of authorities. As recently stated by Treacy LJ in *McAteer and McElhinney & Ors* [2023] NICA 72 at para 30:

> "The effect of an 'unless' order is a matter of settled law. It is clear that the appellants did not comply with that order and that Master McCorry, Hart J and the Court of Appeal all considered (i) that the 'unless' order was regular and properly obtained and (ii) that the appellants had failed to give full and proper replies and were in breach. Each of those courts had the power to set aside the unless order, extend time for compliance or conclude that it had been complied with…"

[16] While acknowledging that each case had to be considered on its own facts, in the case of *Hytec Information Systems Limited -v- Coventry City Council* [1997] 1 WLR 1666, Ward LJ set out guidelines in relation to applications to extend time to comply with unless orders. This was followed in the Northern Ireland Court of Appeal in the case of *Ritchie v McKee and others* [2016] NICA 8 where at para 13, Morgan LCJ stated that at first instance, the Master was correct to follow the approach in *Hytec*. The principles were summarised in the following way:

> "1. An Unless Order was an order of last resort, not made unless there was a history of failure to comply with other orders. It was the party's last chance to put its case in order.
>
> 2. Because it was the last chance, a failure to comply would ordinarily result in the sanction being imposed.
>
> 3. The sanction is a necessary forensic weapon which the broader interests of the administration of justice required to be deployed unless the most compelling arguments were advanced to exonerate the failure.

4. It seemed axiomatic that if a party intentionally flouted the order he could expect no mercy.

5. A sufficient exoneration would almost invariably require that he satisfied the court that something beyond his control had caused the failure.

6. The judge would exercise his judicial discretion whether to excuse the failure in the circumstances of each case on its own merits, at the core of which was service to justice.

7. The interests of justice required that justice should be shown to the injured party for procedural inefficiencies causing the twin scourges of delay and wasted costs. The public administration of justice to contain those blights also weighed heavily. Any injustice to the defaulting party, though never to be ignored, came a long way behind the other two."

[17] Moreover, in *Hughes v Hughes* [1990] NI 295, Carswell J stated that in order to seek an extension of time in respect of an unless order, the party must put forward some material to serve as a foundation for the court's exercise of its discretion.

[18] In *Hutchinson v Chief Construction Limited,* a case involving a contested unless order following the plaintiff's failure to comply with an earlier order for discovery, Master McCorry, at page 15 of the judgment stated:

"In exercising its discretion whether or not to excuse this plaintiff's failure to comply with the unless order the court must have regard to the circumstances of the case on its own merits, and in so doing it must have regard to the fact that the interests of justice requires that justice should be shown to the injured party as a victim of procedural inefficiencies causing the twin scourges of delay and wasted costs. No party to litigation can put forward its case in a fair and expeditious manner, having regard in particular to the question of cost and delay, if the other party can simply ignore the rules of court and previous orders of the court, in the way the plaintiff has sought to do in this case. Any injustice to the defaulting party, though not to be ignored, must come a long way behind injustice to the innocent party, in this case the defendant."

[19] At page 11 the Master went on to state:

"I am not however convinced that things have moved to the point where there must be a contumacious or intentional element before proceedings can be struck out, and the power to strike out for want of prosecution in cases of inordinate and inexcusable delay causing prejudice remains and will remain, as does the power to strike out proceedings for persisting non-compliance. I think therefore that the guidelines set out in Hytec Information Systems Limited remain the proper basis upon which a court should approach an application such as that in the present case. The Rules of the Supreme Court are

not rules for rules sake, but are there to facilitate an objective which is succinctly described as the overriding objective…A court cannot achieve this objective unless it has at its disposal effective forensic tools to enable it to enforce its authority and compliance with its rules and its orders. Such tools must be used with article 6 in mind at all times, but if the position now urged upon me on behalf of the plaintiff is correct then regardless of the seriousness of a party's misconduct, if that misconduct does not ultimately render a fair trial impossible, then the defaulting party cannot be penalized by the ultimate sanction of striking out their case. This, with respect, cannot be correct because it leaves the court with no effective way of dealing with the situation where a party to proceedings simply refuses to comply with the Rules or with the orders of the court. There is no inconsistency between a proper regard of article 6 and the need for the court to enforce its authority, and indeed, mindful of the fact that the innocent party has article 6 rights too, it may fairly be argued that a court which does not enforce its own authority is by such a failure itself in breach of article 6…"

[20] In *McKenna v Quinn* [2012] NIQB 8 at para 15 Weatherup J stated:

> "…an unless order is effectively a judgment in the action in favour of the party on whose behalf it is made."

The learned Judge went on to state that the requirement to file a certificate or affidavit was:

> "an administrative step to secure final judgment from the office and to satisfy the taxation master on any subsequent claim for costs."

[21] In *Kennedy v Geddis and Ors* [2007] Master 45 at para 13, the Master referred to the Civil Procedure Rules in England in existence at that time in the context of the range of factors which a court might take into account when exercising its discretion whether or not to extend time to comply with an Unless Order. They included similar principles to the *Hytec* case but also the extent to which other rules and directions were complied with:

> "Rule 3.9(i) provides:
>
> On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances including:
>
> (a) the interests of the administration of justice;
>
> (b) whether the application for relief has been made promptly;
>
> (c) whether the failure to comply was intentional;
>
> (d) whether there is a good explanation for the failure;

(e) the extent to which the party in default has complied with other rules, practice directions, court orders and any relevant pre-action protocol;

(f) whether the failure to comply was caused by the party or his legal representative;

(g) whether the trial date or the likely trial date can still be met if relief is granted;

(h) the effect which the failure to comply had on each party;

(i) the effect which the granting of relief would have on each party"

[22] The most recent iteration of the Civil Procedure Rules has been updated as set out below, with the focus on, inter alia, the need to enforce compliance with the rules and orders. It states:

"Relief from sanctions

3.9

(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need –

(a) for litigation to be conducted efficiently and at proportionate cost; and

(b) to enforce compliance with rules, practice directions and orders.

(2) An application for relief must be supported by evidence."

[23] Finally, the overriding objective must be considered when exercising any power or interpreting any rule. It is contained in Order 1, rule 1A of the Rules, which provides:

"(1) The overriding objective of these rules is to enable the Court to deal with cases justly.

(2) Dealing with a case justly includes, so far as is practicable-

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate to-

(i) the amount of money involved;

(ii) the importance of the case;

(iii) the complexity of the issues; and

(iv) the financial position of each party:

(d) ensuring that it is dealt with expeditiously and fairly; and

(e) allotting to it an appropriate share of the Courts resources, while taking into account the need to allot resources to other cases."

Prejudice

[24] Plaintiff's counsel asserted that there was no evidential prejudice to the defendant who could still defend the case ie a fair trial was still possible. However, as noted in the case of *Hutchinson*, it cannot be said that simply because the defaulting party's misconduct does not ultimately render a fair trial impossible, then that party cannot be penalized by striking out their case. The Master strongly rejected this and, in my view, correctly observed that if that were the case, it would leave the court with no effective way of dealing with non-compliance with the rules or the orders of the court.

[25] Defence counsel accepted the notes and records were still available as were the witnesses. The defendant had carried out investigations into the claim, with two emergency doctors in the employ of the defendant reviewing the records and providing reports. The defendant points to prejudice in terms of the impact of delay. I note the litigation has dragged on for three and a half years now with no pre action protocol compliant letter of claim, no statement of claim setting out the substance of the plaintiff's claim and no end in sight for a cause of action dating back six and a half years.

[26] The delay and lack of procedural efficiency in itself results in prejudice, with the stress of a clinical negligence claim hanging over clinicians like a cloud and, as was mentioned at hearing, no doubt something they must disclose in their annual appraisal with their employer and might impact professional indemnity cover. One must also consider the impact on the plaintiff who presumably is left to wonder what is happening with his case. I find it troubling that for several years he has not had the benefit of an expert report indicating whether he even has a case at all. The delay on the part of his legal representatives creates uncertainty and no doubt anxiety for him.

[27] The obvious most significant prejudice to the plaintiff is that if unsuccessful in this application he would lose the chance to have his case heard on the merits. For their part, the defendant could be compensated in costs in respect of the application. The plaintiff is not, however, left without any recourse as he can pursue his solicitors in a professional negligence claim.

Procedural issues and delay

[28] In addition to the procedural issues in the substantive case, this summons was reviewed by the court on the 3 February 2023, directing that the parties should exchange written submissions seven days prior to the hearing. This was not done. The

plaintiff/applicant was directed to file a hearing bundle five days in advance of the hearing. Again, this was not done. The application itself was deficient as the exhibits to the affidavit did not include the court orders, previous directions, various correspondence between the parties and the court. Much of the initial part of the hearing was taken up by the court being drip fed documents by counsel which the court should have been provided in advance. Further documents referred to were not provided at all.

[29] The plaintiff's grounding affidavit is entirely deficient, lacking information in some parts and inappropriately containing legal submissions in others. Paras 12-16 contains legal submissions quoting the various authorities. As previously observed, the various orders of the court, including the unless order in question, among other key documents and correspondence were all absent.

[30] I queried when the plaintiff's solicitor was first instructed but was not informed as to the date. I remain unclear as to what happened in the period from initial instruction of the plaintiff solicitor, presumably some time in or around June 2020 (although this could have been much earlier, I simply do not know) to the review in June 2021 and the first email sent to an expert some three months later. The affidavit simply skips over the first 12 months in the life of the case and nothing appears to have been done for at least 15 months to even approach an expert.

[31] The current application before this court was lodged on the 16 January 2023 and finally listed before me on the 4 December 2023. No good reason was proffered by the plaintiff as to why it took them some eleven months to list it for hearing, in circumstances where the average turnaround time for an interlocutory application in this court is approximately ten weeks from filing to listing.

[32] This summons was administratively reviewed on the 3 February 2023 by Master Bell and the parties were directed to liaise with the Master's office and arrange a date for hearing. The order provided the email address and phone number of the court office to arrange this on a date suitable to the court and the parties. The onus was on the plaintiff to press ahead with the application, but they did so with no alacrity which is all the more difficult to understand given the implications for their client.

[33] While clinical negligence cases are undoubtedly complex, this claim appears to be relatively straightforward in relation to the primary liability issues. I simply cannot accept as credible, the explanation offered that there was "difficulty in engaging an expert." The chronology provided by the plaintiff solicitor on direction of Master McCorry on 29 June 2022 sets out the purported steps taken to secure an expert, however, the solicitor failed to provide the various correspondence to evidence this in line with the court's direction. The summary of the steps taken were:

> "15 September 2021 emails to two clinics in Dublin.

29 September 2021 follow up phone call.

25 November 2021 reply from clinic to say they had no expert.

8 March 2022 consultation with client which gave "continuing authority to instruct/obtain fee estimates."

10 March 2022 letter to another two clinics.

21 April 2022 email and phone calls to two university hospitals.

30 May 2022 email to a clinician.

16 June 2022 chaser email to clinician.

29 June 2022 Master's review.

30 June 2022 chaser to clinician ."

[34] It is not clear when the notes and records were obtained. The expert required was a Consultant in Emergency Medicine, of which there are many locally or outside the jurisdiction as is clear from the large number of cases which come before this court. There are genuine problems and delays in sourcing reports from niche specialisms such as paediatric neurology or neuroradiology and more recently, there are difficulties due to a well-documented dearth of consultant psychiatrists acting as medico legal experts, but not the type of expert as was required in this case.

[35] The plaintiff's solicitor indicated she sporadically attended work from September 2021 due to her mother's ill health and was out of the office between mid-July and mid-October 2022 due to this and the sad passing of her mother in August 2022. While the defendant had sympathy for the plaintiff solicitor's difficulties, there was no evidence of any contact being made with them which might have led to a more collaborative approach. No contact was made with the court to seek an extension of time. It is not clear whether the email account had an "out of office" message alerting those seeking to make contact that she was not in work. She was not a sole practitioner and there were 2-3 other solicitors in the firm. The incoming post was being attended to by a secretary and placed on file but it was not clear what system was in place to cover the cases.

[36] I was advised after the hearing by plaintiff's counsel, on agreement with his defence counterpart, that the plaintiff solicitor had in fact proceeded to obtain a liability report earlier in 2023. Despite this, no draft statement of claim was ever prepared or served, and certainly was not exhibited to the application, nor does it appear the defendant was put on notice of receipt of the report or its contents.

Submissions from the parties

[37] The main assertion from plaintiff's counsel was that there was no "contumelious or deliberate flouting of the rules" by the plaintiff.

[38] Counsel also referred to the principles applied when exercising judicial discretion in applications pertaining to limitation periods. I reviewed the cases relied upon by the plaintiff including *McArdle v Marimon* [2013] NIQB 123. The principles include fairness and justice, the diminishment of the opportunity for the defendant to defend the case and whether it is fair and just in all the circumstances to expect the defendant to meet the claim on the merits notwithstanding the delay in the commencement. This was in the context of the limitation order and not non-compliance with the rules of court. I consider that there are sufficient authorities available on the issue of the extension of unless orders, and the principles to be drawn from those are clear.

[39] The plaintiff contends the defendant's ability to defend the case is not diminished. The core of the exercise of discretion is "the interests of justice," regardless of whether the court is considering limitation issues or unless orders.

[40] The plaintiff also relies on *McKenna*. That case involved a plaintiff suing former solicitors for negligence in a conveyancing transaction. There was a misreading of a court order by the plaintiff and delay on their part but no intentional or deliberate contravention of the court's order, albeit the plaintiff was in breach of other court orders. They believed they had complied with the court's order and ultimately the court exercised its discretion in favour of the plaintiff. The difference in this case is the plaintiff states she was not even aware of the order, despite accepting it was received by her office.

[41] For their part, the defendant relies on *Foster v Police Ombudsman and another* [2021] NIQB 10. In using the court's discretion to reinstate the action, McFarland J at Para 21 stated:

> "…An unless order is an order as last resort, and should be enforced strictly to ensure that litigants, and their representatives understand that the terms of such orders must be complied with. If courts do not enforce unless orders then a practice will soon develop of them being ignored. It will only be in exceptional circumstances that a court will not enforce. I consider that it was within the discretion of the Master to find that tete were such circumstances in this case."

[42] Counsel further stated that no statement of claim has ever been served even at this late stage in draft form.

Consideration

[43] Master's reviews are important milestones in the life of a case and should be treated as such, they ensure the litigation progresses expeditiously and in a manner which is likely to minimise costs which is in line with the overriding objective set out at Order 1 rule 1(a) of the Rules.

[44] In this case, the plaintiff had carriage of the case for almost two and a half years before the review in October 2022 when an unless order was issued. This was the third review of the case and by that stage no real progress had been achieved nor an expert instructed. The plaintiff was funding the case privately, therefore, any delays in applying for legal aid which are often cited, genuinely or otherwise, as reasons to justify a lack of progress, did not apply here. There appears to have been nothing of substance done in the case from issue of the writ to service of a letter of claim some 15 months later. Based on the date of the cause of action it appears the solicitor issued the writ in June 2020 to protect their client's position with regard to any limitation issues but no evidence emerged as to what was done after taking this step as progress came to a halt.

[45] There are three questions for this court. Firstly, has the unless order been complied with. Secondly, should the order be set aside on the basis of some irregularity or that it was improperly obtained. Thirdly, should the court extend time for compliance with the order having regard to the rules and the principles to be applied from the various authorities.

Was the order complied with?

[46] On the 3 October 2022, the court directed that the plaintiff serve a statement of claim within four weeks of service of the order. Time started to run from the date of service of the order as the plaintiff did not attend the review. The order was served on the 10 November 2022. The deadline for compliance was 8 December 2022. A certificate of non-compliance was filed on the 14 December 2022 as the statement of claim was not served. In fact, as of the date of hearing on the 4 December 2023, no attempt had been made to serve it, even in draft form. The plaintiff was clearly in breach of the order.

Was the order regular and properly obtained?

[47] The unless order was in line with the practice direction of 2012, it was in clear terms as set out above. It was issued due to a failure to comply with two previous directions of the court, no extension had ever been sought to comply with the directions and no doubt the plaintiff's position was further not helped by the failure to attend the review or send in a review questionnaire in advance setting out their position. The order was extracted from the court office by the defendant and duly served. There is no valid reason to set aside the order on such grounds.

Are there grounds for extending time for compliance with the unless order?

[48] The authorities make it clear that such a power should be exercised cautiously.

[49] On balance, I conclude this does not appear to be a case of intentional or deliberate flouting of the order of the court and there were clearly issues experienced by the plaintiff solicitor which required her to take time off work. However, the progression of the case and the need to take proactive steps to comply with court rules

and directions or seek extensions of time were within the plaintiff solicitor firm's control. It is unclear what system was in place in the firm to cover the work in her absence or that there was anything resembling a proactive approach.

[50] There were several opportunities to deal with the case. There was the period from June 2020 to the beginning of the plaintiff's personal difficulties in or around September 2021. There is no evidence that any of the problems with locating an expert or the plaintiff's absence from the office was explained to the defendant, no extensions were sought from the court and no expert report was obtained meaning a statement of claim was not served.

[51] It took over 15 months after issuing a writ, for the plaintiff to even serve a letter of claim and the subsequent court directions were not complied with. The authorities are clear that the public administration of justice requires that the blights of delay and wasted costs occasioned by procedural inefficiency weigh heavily. Any injustice to the defaulting party, though not to be ignored, must come a long way behind injustice to the innocent party, in this case the defendant.

[52] While the plaintiff contends the court should exercise its discretion in their favour as there was no deliberate flouting of the order, such non-compliance does not have to be found to be deliberate. Before using a forensic weapon such as an unless order and thereafter refusing to extend time for compliance with it, it is sufficient for the court to determine the rules or orders of the court had not been complied with, in this case on several occasions, while also considering the principles in *Hytec*.

[53] Having regard to the *Hytec* principles, which remain valid and followed recently in this jurisdiction by the Court of Appeal in *Ritchie*, the unless order was clearly used as a last resort due to a history of failure to comply with other orders. Failure to comply with the rules resulted in the sanction being imposed and it was deployed absent any compelling argument having been advanced by the plaintiff to exonerate the failure. The non-compliance was not intentional, and while I recognise the absence from work of the plaintiff solicitor was a contributing factor, I do not conclude given the factual background that something beyond the plaintiff's control caused the failure. In the exercise of judicial discretion as to whether to excuse the failure I have had regard to all the circumstances of the case with service to justice at its core. I consider that the public administration of justice requires the court to contain the blights of delay and wasted costs caused by the many procedural inefficiencies, failures and non-compliance with court directions in cases such as this. In doing so, I do not ignore the potential for injustice to the plaintiff who is the defaulting party in this application, however, the aforementioned blights weigh heavily.

Conclusion

[54] The complexity, sensitivity and financial value of clinical negligence claims together with the strain and emotional impact it places on the parties demands robust

case management. Each case invariably turns on its own unique factual matrix and will require active and frequent case management guiding parties through the procedural steps necessary to achieve resolution of that particular case.

[55] Where an unless order is issued by the court, the authorities to which I have already referred are clear. The filing of a certificate or affidavit confirming non-compliance is merely an administrative step to obtain final judgment from the court office and to satisfy the taxing Master on any subsequent claim for costs.

[56] The court retains the widest possible discretion to remedy irregularities, procedural failings or even non-compliance with court directions and will do so with a degree of caution in appropriate cases. Nevertheless, rules and directions are made to be followed. Orders are made for the purposes of compliance, not to be simply ignored. This case has been plagued by inordinate delay, procedural flaws, serial non-compliance with court directions and the non-observance of the court rules or compliance with the pre-action protocol.

[57] For the reasons set out above and elsewhere in this judgment, the actions of the defaulting party are in my view sufficient to refuse the plaintiff's application and award costs to the defendant and I hereby do so.