



Neutral Citation Number: [2018] EWHC 3584 (QB)

Case No: HQ16P02040

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 20/12/2018

**Before :**

**MRS JUSTICE CUTTS**

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**Between :**

**FZO**

**Claimant**

**- and -**

**Mr Andrew Adams (1) London Borough of Haringey** **Defendants**  
**(2)**

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**Robert Seabrook QC and Justin Levinson (instructed by Bolt Burdon Kemp) for the Claimant**

**Catherine Foster (instructed by Hodge Jones and Allen) for the First Defendant**

**Michael Kent QC and Nicholas Fewtrell (instructed by Keoghs LLP) for the Second Defendant**

Hearing dates: 31st Oct, 1st, 2nd, 5th, 6th, 7th, 9th November  
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**Judgment Approved by the court  
for handing down  
(subject to editorial corrections)**

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**Mrs Justice Cutts :**

## **Introduction**

1. Anonymity orders have been made in this case. I will refer to the claimant in the course of this judgment as “FZO”, to his partner as “FZOR” and to his sister as “FZOJ”
2. The claimant claims damages for personal injury, loss and damage consequent upon sexual abuse and assaults committed upon him by the first defendant, a teacher at Highgate Wood School, Hornsey, London, where he was a pupil from 1980 until 1982 and then again for a short time in 1983/4. It is alleged that these assaults continued after he left the school up until and including 1988. The first defendant was employed at all material times as a teacher of physical education by the second defendant. Proceedings are brought against the second defendant on the basis that the London Borough of Haringey is vicariously liable for his actions.
3. On 13<sup>th</sup> March 2014 at the Crown Court sitting at Wood Green the first defendant pleaded guilty to two counts of indecent assault (one count relating to multiple incidents of kissing and touching between February and September 1980 when the claimant was aged 13 years and the other to a specific occasion when the claimant was required to perform oral sex upon the first defendant at a mosque between 1980 and 1982 when he was aged 14 or 15 years) and two counts of buggery (one count relating to multiple incidents between 1981 and 1982 when the claimant was aged 14 years and a similar count between 1981 and 1982 when the claimant was aged 15 years). On 18<sup>th</sup> July 2014 he was sentenced to a term of 12 years’ imprisonment, later reduced to 8 years’ imprisonment by the Court of Appeal, Criminal Division. He has recently been released on licence, having served half of his term.
4. A letter before claim was sent to the second defendant on the 10<sup>th</sup> August 2015. This defendant agreed to a limitation freeze on 13<sup>th</sup> November 2015. The proceedings were commenced against both defendants on 9<sup>th</sup> June 2016. It is the claimant’s case that shortly upon his arrival at the school he was raped by another man named John Paul Monteil. Badly affected by this and unable to turn to his parents he confided in the first defendant who had encouraged him so to do. The first defendant told him that this meant that he, the claimant, was gay and that if this became known people would not understand and dislike him and his parents would throw him out of the family home. By contrast he, the first defendant, would understand, like him and be his friend. By this means it is alleged that the first defendant groomed and manipulated the claimant into sexual activity with him which included the anal rape of him almost from the start. There then continued frequent sexual activity between them until the claimant was about 21 years with very occasional contact thereafter. The claimant asserts that he has suffered complex post-traumatic stress disorder as a result of the abuse.

5. The first defendant admits that he had “sexual relations” with the claimant from about September 1980, that such activity constituted an assault and that it was abusive by reason of the claimant’s age and his inability to consent to the same. The sexual contact is admitted to have been regular but not daily. There is some dispute as to the precise activity but the first defendant admits raping the claimant. He makes no admissions as to causation or loss. He raises the limitation defence.
6. The second defendant accepts vicarious liability for the first defendant’s assaults while the claimant was first at the school between 1980 and 1982 but not thereafter. It asserts that after the claimant left the school there is clear evidence that he was consenting to the activity. It makes no admissions as to causation or loss. It too raises the limitation defence.
7. By notice dated 4<sup>th</sup> April 2017 the second defendant, should it be found liable to pay damages and/or costs to the claimant, claims indemnity or contribution from the first defendant. This is accepted by the first defendant by letter dated 28<sup>th</sup> June 2017.
8. It is agreed by the parties that the principal issues I am required to determine are these:
  - i) Should the discretion afforded by Section 33 of the Limitation Act 1980 to disapply the limitation period be exercised in favour of the claimant?
  - ii) What was the nature and extent of the sexual abuse and assaults perpetrated against the claimant? Precise findings are unnecessary.
  - iii) Did the claimant give a valid consent to the sexual activity after he left the school up until 1988?
  - iv) To the extent that he could not be said to be consenting is the second defendant vicariously liable for the assaults which occurred after the claimant ceased to be a pupil at the school up until 1988?
  - v) What is the causation and effect of the claimant’s ill-health?
  - vi) What is the level of damages to which the claimant is entitled?

## **Limitation**

9. There is no dispute in this case that this claim is brought outside the applicable limitation period for each assault. By Section 11(4) of the Limitation Act 1980 an action for deliberately inflicted personal injury is subject to the limitation period of three years from the date of knowledge of the person injured. The claimant was a minor when he was first assaulted and for some time thereafter. For that time he was deemed to be under a disability. He reached his majority on 13<sup>th</sup> September 1984. Section 28(1) of the Act provides that “*the action may be brought at any time before the expiration of three years from the date when he ceased to be under a disability notwithstanding that*

*the period of limitation has expired.*” The limitation period for the assaults which occurred before the claimant’s 18<sup>th</sup> birthday thus expired on 13<sup>th</sup> September 1987. The limitation period for any assault that occurred after the claimant’s 18<sup>th</sup> birthday will have expired 3 years after each assault.

10. This claim is therefore brought between 25 and 30 years after the expiry of the applicable limitation period for each assault. It concerns events from up to 38 years ago.

The claimant invites me pursuant to section 33 of the Limitation Act 1980 to disapply the limitation periods in this case. So far as is material section 33 provides:

“Discretionary exclusion of time limit for actions in respect of personal injuries or death.

(1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which—

(a) the provisions of section 11 ... of this Act prejudice the plaintiff or any person whom he represents; and

(b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents; the court may direct that those provisions shall not apply to the action, or shall not apply to any specified cause of action to which the action relates.

...

(3) In acting under this section the court shall have regard to all the circumstances of the case and in particular to—

(a) the length of, and the reasons for, the delay on the part of the plaintiff;

(b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11 ...;

(c) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff’s cause of action against the defendant;

(d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;

(e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of

the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;

(f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.”

### **Guidance on the application of section 33**

11. There have been a number of decisions on the application of the principles in section 33. I do not propose to analyse each of them in this judgment as they are well known and not in dispute. It seems to me that useful guidance on the facts of this case is to be found in the following.

12. In the leading case of *A v Hoare [2008] UKHL 6* dealing with the reasons for the delay Lord Hoffmann at paragraph 49 of the judgment spoke of the unfettered nature of the discretion afforded by S33 and said this:

“The judge is expressly enjoined by subsection 3(a) to have regard to the reasons for delay and in my opinion this requires him to give due weight to evidence, such as there was in this case, that the claimant was for practical purposes disabled from commencing proceedings by the psychological injuries which he had suffered.”

13. In the same case Lord Brown, whose observations Lord Hoffmann expressly found “extremely valuable”, said this at paragraph 86:

“...a substantially greater number of allegations (not all of which will be true) are now likely to be made many years after the abuse complained of. Whether or not it will be possible for defendants to investigate these sufficiently for there to be a reasonable prospect of a fair trial will depend on a number of factors, not least when the complaint was first made and with what effect. If a complaint has been made and recorded, and more obviously still if the accused has been convicted of the abuse complained of, that will be one thing; if however a complaint comes out of the blue with no apparent support for it (other perhaps than that the alleged abuser has been accused or even convicted of similar abuse in the past) that would be quite another thing. By no means everyone who brings a late claim for damages for sexual abuse, however genuine his complaint, may in fact be, can reasonably expect the court to exercise the section 33 discretion in his favour. On the contrary a fair trial (which must surely include a fair opportunity for the defendant to investigate the allegations – see section 33(3)(b) - is in many cases likely to be found quite simply impossible after a long delay.”

14. Baroness Hale at paragraph 60 also placed importance on the reasons for the delay stating that:

“A fair trial can be possible long after the event and sometimes the law has no choice. It is even possible to have a fair trial of criminal charges of historic sexual abuse. Much will depend upon the facts of the particular case.”

15. *AS v Poor Sisters of Nazareth [2008] UKHL 32* concerned a Scottish case on limitation. However as the issues on the disapplication of the limitation period are the same under Scottish and English law it is of assistance on that matter. Indeed English authorities were cited in the course of both argument and Lord Hope’s judgment in which he succinctly set out the test to be applied thus:

“The burden rests on the party who seeks to obtain the benefit of the remedy. The court must, of course, give full weight to his explanation of the delay and the equitable considerations that it gives rise to. But proof that the defender will be exposed to the real possibility of significant prejudice will usually determine the issue in his favour.”

16. I have heard evidence in this case and am thus determining the section 33 issue along with the substantive issues in it. It is clear from paragraph 74 of the judgment of Lord Justice Auld in *KR v Bryn Alyn Community (Holdings) Ltd [2003] EWCA Civ 85*, approved in *B v Nugent Care Society [2009] EWCA Civ 827*, that in such circumstances I should take care not to determine the substantive issues, including liability, causation and quantum, before determining the issue of limitation and, in particular, the effect of delay on the cogency of the evidence. This is because much of such evidence, by reason of the lapse of time, may have been incapable of being adequately tested or contradicted in the course of the trial. That is not to say that my overall assessment of the evidence is irrelevant to the issue of limitation. As was made clear in *JL v Bowen [2017] EWCA Civ 82* the correct approach is for the court to adopt an overall assessment of the evidence, which includes weighing up any adverse findings made against the claimant, and the effect of such delay on the same. The reason is given in the judgment of Lord Justice Burnett, as he then was, at paragraph 26:

“The logical fallacy with which Lord Clarke MR was concerned in paragraph 21 of the *Nugent Care Society* case and Auld LJ in paragraph 74(vii) of the *Bryn Alyn* case was proceeding from a finding on the (necessarily partial) evidence heard that the claimant should proceed on the merits to the conclusion that it would be equitable to disapply the limitation period. That would be to overlook the possibility that, had the defendant been in a position to deploy evidence now lost to him, the outcome might have been different. The same logical fallacy is most unlikely to apply in the reverse situation especially when the case depends on the reliability of the claimant himself”

Burnett LJ then gave the example of a claim brought arising after an alleged accident which the judge, having heard evidence, concluded did not occur. In such circumstances the claimant could not prove that it would be equitable to disapply the limitation period having regard to the balance of prejudice. He concluded that it is not realistic to shut one's eyes to findings and conclusions reached following a full trial. I therefore begin with the evidence.

### **The claimant's evidence of his early life**

17. The claimant was born on 13<sup>th</sup> September 1966. He is now 52 years old. He grew up in Tottenham, North London with his parents and older siblings. In evidence he described a pleasant childhood in which he spent time playing with other children in the park near his family home. He spoke of the family being of modest means, sometimes focussing on the necessities rather than the luxuries of life. In his early childhood the family was poor to the extent of having to put money into meters for gas and electricity. When the money ran out they would go to bed early. Later his father bought their council house and set up in the steel construction business on his own. In terms of their means they were comparable to other families in the area. His father was out at work a lot which made him closer to his mother.
18. Until the age of 11 years the claimant was a pupil at Devonshire Hill Junior School. He enjoyed his time at this school and was a good student. He got on well with the other students and was popular with lots of friends. He was a good swimmer. When he was 10 years of age he achieved his gold, silver and bronze awards in swimming/lifesaving. He would win competitions in swimming galas at the school. Aside from one occasion that he could remember his parents did not come to watch him swim. His father was mostly at work whilst his mother was looking after the other children. On the one occasion they did come he remembered being embarrassed that his father was in dirty work clothes and not as smart as other parents were.
19. He was also a member of the school and church choirs whilst at junior school. He developed an interest in drama and attended the Sylvia Young Theatre School at the weekend. At the age of 9 he played the part of "Oliver" in a production put on by the Scouts gang shows. He was also a member of the cast in the production of "Oliver" in the West End when he was 10 years of age. His mother or older brother would take him to and collect him from the theatre. His family did not come to watch him in the production. He believed this was because of their circumstances and the fact they felt it was all a bit above them. They and his grandparents did come to see him in the Scouts productions.
20. In a text sent to the first defendant many years later the claimant spoke of having been invited to a junior school reunion. He said he was not interested in going as he had no friends and they were all "cunts". When asked about this in evidence he said that he had sent this text when he was upset and thinking about having been bullied later at school. The person who had invited him had not been very nice to him at junior school, teasing

him because he was in “Oliver” and breaking a wood model of a glider his father had made. He accepted that he had overstated it in the text and remained of the view that his Devonshire Hill days were the best of his life.

21. At the age of 11 the claimant followed in his siblings’ footsteps and moved to Wood Green Secondary School. Things did not go so well there. He was bright and felt he was under achieving due to a lack of streaming by the school in the early years. In consequence his parents, on the recommendation of another, moved him to Highgate Wood School.

#### **Other evidence of the claimant’s early years**

22. The claimant’s sister, FZOJ, said that in childhood of all her siblings she was closest to FZO. They spent a lot of time together. He was a happy child. She described how the claimant got on well with his parents, as they all did. Their father was often away working. She described the family as a working class family which was not well off. In answer to a general question she confirmed that they always had food on the table and gas and electricity. She described the claimant’s swimming and acting abilities at this time. She and her parents saw him act locally and in the West End. She could not remember seeing him swim. Her father could not always go as he was at work. As far as she could recall her mother would go to these events. She did not remember the claimant being bullied at junior school.
23. Available school reports from the time speak of a hard-working, polite and pleasant boy. There is mention of him in one report not working as hard as he could, preferring to help others.
24. Chris Bolton was a teacher at Devonshire Hill School at the time that the claimant was there and his form teacher in his final year. In his unchallenged evidence he spoke of the claimant’s superior singing voice and of him singing in the choir and of the claimant being in the school swimming team. He described the claimant as a happy child, as cheerful and a pleasure to teach. He was helpful and not at all precocious. Mr Bolton made a point of looking out for bullying. He did not remember the claimant having any such difficulties or being teased by another at the school although he did remember the boy who snapped the glider perhaps out of jealousy.

#### **The claimant’s evidence of his time at Highgate Wood School and the abuse [1980-1982]**

25. The claimant believed that he went to Highgate Wood School (“the school”) at the beginning of the academic year. A register kept at the time suggests that it is likely to have been at the beginning of February 1980 when the claimant would have been 13½ years old. He described initially being very happy there, receiving encouragement from the teachers and making good friends. The first defendant, then in his early thirties, was the PE teacher at the school. He was friendly and approachable to the claimant.



26. One evening the claimant's parents agreed that he could stay overnight at his friend Justine's house. They performed at the school play together that night. Rather than going straight home to her house they went with others to the flat of a French man named John Paul Monteil. He was known as a regular at the swimming pool used by the school. He allowed Justine and her friends to drink alcohol and to smoke. Justine became very drunk. When the claimant took her home her father, angry at the lateness of the hour and the state of his daughter, took her in and slammed the door in the claimant's face. The claimant was afraid to go home for fear that he would get into trouble for the events that evening. He took shelter in a bus shelter. It was snowing. When he became too cold to remain there he went back to Monteil's flat and asked to stay. Whilst there Monteil raped him.
27. The claimant said that he was scared and confused. He felt he could not tell his parents about what had happened as he was ashamed and afraid that his father would be very angry. He thought he would get into trouble if he told anyone what had happened. He felt physically ill and remained off school for a week.
28. On his return to the school the first defendant noticed immediately that the claimant was not himself and asked him what was wrong. He encouraged him to share the details of what had happened with him. At first he would not tell him. The first defendant spent some time with him at school, sometimes calling the claimant into his office to ask him how he was feeling. He then offered to drive the claimant home which he did every day, picking him up at a bus stop outside of school and dropping him a short distance from home. Sometimes he would stop at a car park en route and talk with the claimant before driving him home. The claimant, trusting the first defendant, then told him what had happened.
29. The first defendant initially reassured him but then began to encourage the claimant to go into graphic detail about it. The first defendant convinced the claimant that because he had been raped by a man he was now gay. This meant that he would be spurned by society and that his family would throw him out of the house and disown him if they found out. If he told anyone he was gay they would hate and despise him. At the same time as telling the claimant this the first defendant said that he would not treat him in this way and that the claimant could rely on and trust him, but only him. He said that he would be his friend.
30. This happened very quickly, over a period of days or weeks. One day when he was driving the claimant home the first defendant stopped in a car park. During a discussion about the rape he put his hand on the claimant's leg and kissed him on the cheek. Not long afterwards, when driving the claimant home from school, he said that he had to collect something from his house. He took the claimant into his bedroom and anally raped him. He then took him home.
31. This became a regular occurrence. The first defendant would also rape him at every opportunity in the car in car parks, in the changing rooms and sports hall in school and on Hampstead Heath. He had taken the claimant there to witness other men having sex.

He never wore a condom at any time throughout the abuse. On one occasion he caused the claimant to perform oral sex upon him on a visit to a mosque.

32. The claimant said that the first defendant would push the boundaries of what he could get away with. This included taking him to public toilets on the A406 to make him watch other men have sex. He attempted on numerous occasions to urinate inside the claimant's anus and would put objects, such as the handles of sports bats, up his anus.
33. The claimant said that he was made to share a tent with the first defendant on a school weekend kayaking trip on the basis that the other boys were of an age when they might start playing with each other sexually in the tents and the first defendant did not want him involved in that. The defendant would discuss with him the bodies and genitals of other boys in his class whilst masturbating and trying to get the claimant to fantasise about having sex with other boys in the school. This led to him feeling further isolated from them.
34. The claimant spoke of one time after the boys at the school had been running when they all shared the communal rugby bath. The first defendant was also in the bath and whilst there inserted his finger into the claimant's anus.
35. The claimant said that the first defendant would often be horrible to him in front of other pupils in the school, including laughing with them at the claimant's expense. He would then be nice to the claimant afterwards.
36. The claimant said that as time wore on he would stay overnight at the first defendant's house. This was known to the first defendant's mother with whom he lived. On occasions after the abuse the first defendant would make himself a sandwich and a coffee, refusing to provide the claimant with such on the basis that it was for his parents to feed him.
37. The claimant said that on one occasion he was half naked in the first defendant's house when the deputy head, Mr Jones, came. Mr Jones could see him in a mirror. He did not intervene. Thereafter he was horrible to the claimant who feared that he would tell his parents what was happening.
38. The claimant said in evidence that he was pre-pubescent at the start of the abuse and that he was sexually naïve to the extent that he thought he could get pregnant. He was frightened and asked his mother about it.
39. He said that at no point did he feel free to resist sexual activity with the first defendant as he was worried that he would expose him as a homosexual if he stopped seeing him. The first defendant had convinced him that his life would be dreadful without him. It became a fundamental part of his psyche that the first defendant was the only person he could trust and who would believe him. He made him feel like he was the only person who would ever be close to him. It felt unthinkable not to continue with the first defendant. He worried if he did not that his evil self would be exposed and his family would throw him out on the street and he would have nothing left in his life.

40. The claimant said that the abuse had a significant impact on his relationship with his family. He would frequently lie about his whereabouts after school, saying that he was spending time at friends' houses when in fact he was with the first defendant. This caused his parents to erroneously believe that he was very popular at the school. The reality was that he was becoming more isolated from both family and his peers there. He was too young to have a key to his house and so, when returning from seeing the first defendant, he would climb through the bathroom window. His father caught him doing so many times. (He initially stated this was hundreds of times but accepted in evidence that this was probably overstating it). When caught he would tell his father that he had changed his mind and no longer wanted to stay with a friend. His parents would argue about his behaviour. This and his lying to them caused him upset. His mother would ask him what was happening to his underwear as it seemed to disappear. He would dispose of them as they were frequently covered in blood and semen as a result of the abuse. On occasion he would stay in a tent in his friend Peter's back garden to facilitate meeting the first defendant later. He found it increasingly difficult to be with his parents as a result of what was happening.
41. The claimant said that because of the abuse he suffered severe anxiety, fear and guilt. This impacted on his ability to concentrate on his studies and his education suffered. He felt isolated from his peers, with whom he spent very little time. This caused him to be called names by the other children and led to him being badly bullied. The first defendant did not protect him from this. The bullying culminated in an incident where there were eight or nine children waiting outside of the school gates to attack him with implements. The deputy headmaster, Mr Jones, refused to help but allowed him to call his mother who came to collect him. After this his parents allowed him to leave the school at his insistence.

**The claimant's evidence of his schooling and the abuse after leaving Highgate Wood [1982-1984]**

42. From the age of 15 years the claimant went to Franklin House School, a private school consisting of some rooms in a church.
43. Although he had moved schools the sexual activity with the first defendant continued as before. The claimant continued to go to his house and attended the weekly Highgate Wood sailing trips with other students and teachers from that school. The first defendant continued to rape and abuse him on those trips.
44. The claimant said that he continued to feel isolated and made no friends at Franklin House. He was terrified that people would find out about the abuse. He had seen a documentary about AIDS and became convinced that he must have it as a result of the abuse and believed that he was going to die.
45. In this period the claimant often stayed overnight at the first defendant's house. He started not going to school at all. He left Franklin House at the age of 16 without qualifications.

46. The claimant said that he tried various jobs after leaving Franklin House. He investigated going to RADA or joining the Navy as an officer. He required qualifications for both. Highgate Wood agreed to take him back into the 6<sup>th</sup> form to take some “O” and “A” levels at the same time. The first defendant did not respond well to his return at the school and made life difficult for him there. When he became 18 the first defendant started to push him away, telling him to spend time with people his own age and to have sex with other men.
47. The claimant said that he was unable to cope with the way he was being treated by the first defendant. He left the school again after the first year of the sixth form and without qualifications. He said by this time he had become totally dependent on the first defendant for a sense of safety and acceptance. He was distancing himself from his family and everyone else in fear of the rejection, disgust and contempt that the first defendant said they would have for him.

#### **Other evidence of the claimant’s time at school [1980-1984]**

48. School reports for March 1981, when the claimant was 14 years of age, detail how the claimant was absent from school far too often and how little effort he was putting into his work. His form tutor spoke of him seeming to think he could do exactly as he wanted even if it was not considered acceptable at the school. Of reports from 17 teachers only those in physics and drama are wholly positive.
49. The only other reports are for March 1984 when the claimant had returned to the school. The reports are mixed, some speaking of his absence from lessons and lack of motivation and others (computer studies and English language) more positive.
50. The claimant’s sister, FZOJ, described the claimant hardly ever being in the house after he started at Highgate Wood. She spoke of how he would climb through the back window late at night to make sure no one knew he was home. She never met any of his secondary school friends, she was not even sure if he had any. She said that her parents had expected the claimant to go to college or university but he could not do so without qualifications. He told his family at the time that he found the work too easy and did not see the point of being at school.

#### **The first defendant’s evidence of the claimant’s time at school**

51. The first defendant was born in 1944. He had been a teacher at Highgate Wood School since 1967. He had been head of PE since 1974. He was popular but maintained discipline – he was firm but fair.
52. He became aware of the claimant coming to the school at the age of 13 years. He believed this was in the spring term of the academic year 1979/1980. He taught the claimant PE. He would keep an eye on him because he was a new boy and others were in established groups. He wanted to make sure he would fit in. He described him as an extrovert although he now realised that he was “one of those extroverts who was probably hiding

his shyness.” The claimant would wear a badge saying “I am a bi-sexual”. In his view the claimant identified himself as a gay man early on in his life. The claimant later joined the running club he thought to be closer to him. The first defendant did not see him as vulnerable or set about befriending him.

53. On occasions the claimant would truant from school. On one occasion the first defendant saw him and got him in his car to take him back to school. The claimant pointed to a building on the way and said that he had gone to a party there and had anal sex with a male lifeguard from the swimming pool. The first defendant assumed this to be consensual as the claimant did not say otherwise. He advised the claimant to tell his parents or the police. He did not want to do so and did not want the first defendant to tell anyone either. He agreed that he would not. This was the professional standard at the time – to maintain a student’s trust and confidentiality.
54. In April or May 1980 he began to give the claimant lifts home, starting when he had hurt his toe in PE. The lifts became regular at the claimant’s request. He would appear when the first defendant was about to go home and ask to be dropped off at a bus stop near to his home as he had lost his bus fare. Near to the end of the summer term the claimant raised the topic of him having sex at the party and asked the first defendant whether he had ever had sex with a man. He said he had.
55. The first defendant said that he started to get strong feelings for the claimant and believed himself to be in love with him. The claimant would put his hand on his leg and hand when he was driving. They first engaged in sexual activity in his car in a car park in October 1980. The claimant had brought some music along. They initially kissed and cuddled, performed oral sex on each other and then the first defendant sought to penetrate the anus of the claimant with his penis but ejaculated before he did so. Although legally the claimant was under the age of consent he in fact consented to all that happened. What happened was gentle and not forced.
56. After this they regularly, although not weekly, met and had anal sex, each penetrating the other. They would also meet socially and on one occasion went roller skating together.
57. The sexual activity mainly took place in the first defendant’s car although he also took him to his home when his mother was in hospital. After she died the claimant would sit on his porch and wait for him to come home. He did not have sex with the claimant when his mother was in the house. The claimant would come to his house when his mother was there to teach the first defendant how to use a computer.
58. They went to Hampstead Heath on one occasion. When the claimant was asking him about sex the first defendant had spoken about meeting men there and the claimant had been curious and wanted to go. He did not like it there and they left immediately. They went to public toilets because the claimant wanted to having heard him speak of meeting men there. It was the claimant leading him on rather than the other way around. The first defendant described himself as gullible and that he let his heart do the talking. The

claimant came over as someone who wanted attention and he was happy to give it to him. It was the claimant who groomed him. The first defendant became the “go to person” for the claimant to get things off his chest.

59. The claimant did stay in his tent on the school kayaking trip. There was an odd number of pupils and, given the way the first defendant felt about him, it made sense for him to be there. There was no sexual activity between them at school. He did not touch him sexually in the communal bath. He did not speak to the claimant about the genitals of other boys. It was the claimant who asked him about the size of the penises of other members of staff.
60. They did visit a mosque. He agreed that they did have oral sex there. The first defendant said that he engineered the visit there. It was quiet and he, the first defendant, took advantage of that.
61. There was a time when the deputy head, Mr Jones came to his house when the claimant was there. The claimant was not half naked at this time. The claimant was always sure he had been seen by the deputy head and over the years would say that this had led to friction between them.
62. The first defendant denied urinating inside of the claimant. He did put objects up the anus of the claimant at his request but this was later and in adult life.
63. They continued in a sexual relationship until the claimant was 21 years of age. He accepted that as a teacher his behaviour was inappropriate with a pupil. That is why he pleaded guilty to the criminal charges immediately.

#### **The claimant’s life 1984-1989**

64. When he was about 18 or 19 the claimant said that he discovered that the first defendant was abusing a younger boy from the school (JKA) who was then aged 16 years. When he challenged him about it the first defendant went into intimate detail. This led to the claimant feeling jealous and upset. He felt rejected and betrayed. He had allowed the first defendant to do whatever he wanted with him and now he was sleeping with a younger boy.
65. Upon leaving school the claimant found work in the IT business. He had an interest in and an aptitude for computers. Between 1984 and 1988 he worked for four such companies in the United Kingdom. He found the work enjoyable and stimulating and was successful. Notwithstanding this the claimant said that he remained convinced that he was an unworthy, evil, toxic person. He feared that if his employers found out he would be thrown out of his job. He felt anxious and was convinced that he had AIDS. He feared that this meant his parents would find out about him and how evil he was. The first defendant had told him how he would be despised and shunned if people discovered the awful person he was and this continued to dominate his thinking.

66. In 1988 his employer, Computacenter, sent its staff to financial specialists to sort out a pension and other financial benefits. The claimant said that he was told that he would need to take an AIDS test as part of his application for life insurance. This made him extremely anxious as he feared that he would be exposed for what he was. Unable to take the test he left the company and went to Australia where he intended to travel and find work. He also expected to die of AIDS and wished to do so in a place far removed from his family, thus protecting them from him.
67. In Australia the claimant found work in IT much quicker than he expected. This came with a generous package and salary. He was successful, quickly becoming a director of the company. The company wished to sponsor the claimant for a working visa so that he could remain with them permanently. This involved taking an AIDS test. The claimant said that once again he was too frightened to do so. He feared that once the company found out that he had AIDS, which he thought he must have because of the abuse, they would fire him and he would be thrown out of the country and humiliated. He feared that he would be deported and his parents would discover why. He became extremely anxious and left both the company and Australia. He returned to the UK.
68. The claimant said that he continued to have sexual activity with the first defendant up to the point that he left for Australia.
69. The claimant wrote to the first defendant on the 22<sup>nd</sup> April 1988. In the letter the claimant said that now he was in Australia he did not know why he had left. He did not know what he wanted to do and felt that by “isolating the no’s I’ll eventually find the ‘yes’”. He said that he felt in one way relieved at leaving his family in that he could now be himself without feeling pretensions [sic]. He also felt alone and did not want success without someone to share it with. He said that he had always taken the credit for developing from a real nothing into someone with a career “but I think we both know who the real credit belongs to”. He told the first defendant that he loved him, always had and always would. The first defendant had been the only person in his life he had both loved and respected.
70. In evidence he said that the reference to being away from his family and able to be himself related not to his homosexuality but to his fear that people would consider him dirty and horrid. He felt very sad and alone in Australia with no one to turn to. At this time he looked up to and respected the first defendant as a father figure and teacher. There were multiple reasons why he went to Australia. He felt abandoned by the first defendant who was with someone else and therefore had no protector. He could not stay with his family because he was toxic. He thought he had AIDS and would die. He ran to Australia to recreate himself. He was trying to be nice in crediting the first defendant with helping him to achieve what he had. He wanted to maintain the first defendant’s friendship and protection as the only person who knew how toxic he was and yet was prepared to offer such. He thought at this time that he did love him.

### **The claimant’s life 1989-2011**

## **Employment**

71. Over these years the claimant worked for at least 17 companies in the IT field. He accepted that most of this employment was on a self-employed contractual basis. He said that he would move from a company once he felt that there was a risk that his employer would find out the real toxic and dirty him. This meant that he often left before the end of the project he was employed to complete. The evidence of his employment record comes largely from the claimant himself. Few records were produced in the course of the trial. It is necessary to look at each employment in summary form.

### ***Computacenter***

72. From 1989-1990 the claimant said that he worked once more for Computacenter in London. It was a good job and it paid well. He found it difficult to deal with others on a personal level particularly as he was not a graduate. This, rather than technical work, became a greater requirement of the job. He continued to worry that he had AIDS and did not have long to live. He decided to leave his employment and move to work in Europe. He wanted to escape his family and protect them from him. He also hoped to find it interesting.

### ***Asystel (Paris)***

73. The claimant said that he contacted a company named Asystel in Paris and was invited for an interview. He was employed for 6-9 months as a Technical Project Manager. This came to an end when the company became bankrupt.

### ***Agena (Paris)***

74. The claimant said he found work quickly with a company named Agena in Paris again as a Technical Project Manager. He worked there for about a year. The pressures of work caused him extreme bouts of fear and anxiety that he would be found out as the toxic person he was. He decided to leave before this happened.

### ***JP Morgan (Paris)***

75. The claimant then began work with JP Morgan in Paris as Trading Support. He was one of only a few non-graduates and felt he was treated differently as a result. He felt he did not fit in and left after three months when he once again started to experience fear and self-loathing.

### ***Cantor Fitzgerald (London)***

76. In 1993 the claimant found work in London as an Analyst Programmer with a company named Cantor Fitzgerald. He remained there until 1996, working in London, New York and Tokyo on what he described as “exciting projects”. He was living in Wapping and earning well. The claimant said at first he was able to manage his “condition”. However



he turned down an opportunity to work permanently in New York as to do so would entail an AIDS test which brought the same worries to the fore. In his last year with Cantor Fitzgerald he was introduced to cocaine. He found that this helped him to completely disassociate from his problems and challenges about being socially different from others. He used it to mask any worry he had of not fitting in at work. However the cocaine, together with his usual fears of being found out, began to affect his employment. He started to underperform and missed a lot of work.

77. In 1996 Cantor Fitzgerald terminated his employment. In a letter I have seen dated 30<sup>th</sup> January 1996 he was told that this was because he did not appear to be able to progress systems projects beyond basic levels so as to provide front office users with the necessary systems support on longer term projects and because of his high absence levels.
78. Ashley Pover was a director of Cantor Fitzgerald at the time of the claimant's employment there. In his unchallenged witness statement he speaks of his first impressions of the claimant as a smart, capable young man who was a little awkward and occasionally "somewhat hyper". They became friends, albeit not close friends and very occasionally socialised with each other. He only ever saw the claimant in small groups when he was "fairly sociable". As time went by there began to be issues with the claimant's work. He was absent a lot and missed the delivery date on a project. He did not take subsequent opportunities offered to him.

### ***1996-98***

79. The claimant sought medical assistance and saw Dr Read (a psychiatrist) in 1996. He said he felt depressed and stressed and was suffering from binge-eating at night and self-destructive behaviours. He could not bring himself to expose who he really was or talk about the abuse.
80. The claimant said that between these years he was unemployed for a period when he was largely financially supported by his partner. He then worked in various short term temporary roles for different companies in many different countries. He did not commit to any permanent work due to his ongoing fears of being exposed.
81. The claimant said that in about 1998 he finally had an AIDS test which proved negative. He had to go through with this as he was buying a property in Paris and such was required. He would have lost a lot of money had he not done so. He was not able to cope with this for about a week afterwards when he was prescribed Valium. His brain still told him that he must have AIDS and the test results were wrong. He continued to feel dirty, unclean, wicked and evil.

### ***Banque Paribas [Paris]***

82. In 1998 the claimant gained employment as a contractor at Banque Paribas as a Project Manager. He remained there until just before 2000 when he was "let go". The claimant

said that he never fitted into the team and was unable to assume the role with confidence. He felt inadequate.

83. Gordon Stewart also worked at Banque Paribas in a similar role to that of the claimant. In his unchallenged witness statement he speaks of seeing the claimant most days as their offices were close to each other. They would sometimes meet for coffee in the mornings. The team would sometimes socialise in the evenings. On these occasions he describes the claimant as always “vivacious and chirpy”. He seemed to get on well with everyone in the office. He describes the claimant as innovative and gifted in matching business needs to new technologies. He saw nothing in their time together to lead him to suspect that the claimant had any psychiatric issues which may impact on his ability to work. He had no doubt that he would go on to have a successful career.

#### ***EDS [Dubai]***

84. The claimant said that in 2001 he was employed by EDS as a Project Manager in Dubai. He began on a temporary contract which was later made permanent. He left in 2002 due to relationship issues at work and his issues with self-esteem. He was unable to fit in with local staff and establish a reputation for himself.
85. Karen Searle was the office manager for EDS in Dubai at this time. In her unchallenged witness statement she speaks of finding him highly intelligent, capable and confident. They enjoyed good banter in the office. She describes the team as “tight knit”. They would socialise and go out for meals together. They, including the claimant, went on a weekend trip to Oman. When they went out the claimant was neither the centre of attention or sat quietly in a corner. “He was definitely one of the gang”.

#### ***KPMG (Amsterdam)***

86. The claimant said that he obtained a position as Global e-Mobility Programme Manager with KPMG. He remained there for a few months. This was a solitary role which enabled him to work away from others. Things fell apart when this came to an end and he was expected to integrate with the team. He left.

#### ***IBM (Dubai)***

87. From 2002 to 2003 the claimant said that he was employed on a short term contract by IBM as a Technical Project Manager in Dubai. The role finished badly as he was obliged by IBM to lie to a client. He already felt that he was lying about his whole life. This made matters worse. His feelings of fear and unworthiness came to the fore and he left before the project was completed.
88. He returned to France feeling a failure. He was unemployed until 2003.

#### ***BetVictor/Victor Chandler (Gibraltar)***

89. In April 2003 the claimant said that he was employed by BetVictor in Gibraltar as an Independent Consultant Project Manager. He worked in this office until 2005. Initially he enjoyed this job but once again found it difficult to fit in with the team. He always felt like an outsider. He was let go when the company reorganised the IT department.
90. Gill Leivesley was the commercial director of the company and the claimant's manager at this time. She saw him every day when she was in the office. In her unchallenged witness statement she spoke of the claimant socialising quite a bit with other colleagues in the team. He was very social and got on with everyone.

***BETonSPORTS PLC (Costa Rica)***

91. In the summer of 2005 the claimant said that he worked for BETonSPORTS in Costa Rica as IT Project Manager. He performed well in the role but did not feel settled. He felt isolated from his colleagues as he always had before and left before the end of his probation period.
92. David Carruthers was the Chief Executive Officer for this company at the time. In his unchallenged witness statement he speaks of the claimant being highly competent for the role. At the end of his probationary period the claimant told him that he felt unsettled and that the working environment was not the best for him. He was disappointed to see the claimant go as he was competent in his job.

***Bowman International (Gibraltar)***

93. The claimant said that in September 2005 he began working for Bowman International in Gibraltar as a project manager. He worked there for a few months until 2006 when he once again felt obliged to leave through fear and self-loathing.

***Reid Minty LLP***

94. The claimant said he began to work in 2006/7 for Reid Minty in a consultant capacity helping them design a rolling presentation for the reception area. They agreed to invest in a gambling application that the claimant was developing. This did not work out and the claimant ended up losing money. Lawyers became involved. This left the claimant in a "bad place". He felt like he had to flee and get out of there.

***GLH Contracting (Australia)***

95. The claimant said that from around March 2007 until November 2008 he worked as a part time fly in/fly out Chief Technical Officer for a mining business called GLH Contracting in Perth, Australia.

***2008-2011***

96. The claimant said that in these years he worked as an independent consultant doing occasional work in Europe. This was part-time and occasional. He spent quite a bit of

time unemployed. He lost all confidence in himself, believing that due to his toxic and poisonous traits he would never work again. He was being offered quality roles but feared that he would eventually only let people down and it was better to protect people from him.

### **Personal life 1989-2011**

97. The claimant said that when he was aged 22 and living in Paris he met his partner FZOR who is 10 years older than him. He has been in a relationship with him ever since. Their sexual relationship has always been difficult. He said that he is repulsed by sex and does not enjoy it. He has never been able to ejaculate with anyone. He avoids showing anyone his body. He and FZOR have never shared a bed or a room.
98. FZOR said that he met the claimant in 1991. Eventually they moved in together. He described the claimant as someone who could be sociable and who was bright and excelled at work. There was however “a dark side” to him that he did not understand. He was terrified of having AIDS but would not get tested. From about 1999 the claimant started to have mood swings with bouts of depression and anxiety about twice per month during which he would shut himself away from the world. The claimant was always anxious about his family. He liked them in some ways but did not want to stay with them for long. FZOR said that the claimant would never stay in any job for long. At the time he would not say why that was. Their sexual relationship had never been easy. They had not had any sex since approximately 2008. They have always had separate rooms at the claimant’s request.
99. FZOJ, the claimant’s sister, said that she tried to stay in touch with the claimant through the years. They would talk regularly even when he was abroad. He never seemed happy. They were always asking each other what it was that he wanted. She and their parents often wondered why he changed jobs so frequently. She would go to visit the claimant in Paris from time to time, as would her parents. She knew he lived with FZOR. There was never a discussion about it but since about 1991 she was aware that he was gay.

### **The claimant’s ongoing contact with the first defendant 1989-2011**

#### ***The claimant’s evidence***

100. The claimant said that after his return from Australia in 1989 there was no further sexual contact with the first defendant save when the first defendant came to visit him in Gibraltar in 2003 and there were a few “fumblings” which the claimant rejected.
101. The claimant said that after he was a child he continued over the years to telephone the first defendant at times of “crisis” or when he had been drinking alcohol. He would reach out to him because he was the only person who knew his full story and to whom he could freely speak. Over the years he had relied on the first defendant as a confidante, a friend with whom he could share his most intimate thoughts, fears and issues. It felt like he was

the only person he could trust as he knew what an evil, toxic person he was and yet was prepared to be his friend.

102. He visited the first defendant's house when he was working for Cantor Fitzgerald in London. This was in around 1996 when he was taking cocaine. It was a difficult time for the claimant. He had to leave Cantors and he was in distress. He did contact the first defendant in later years to ask for help.
103. The claimant said he had called the first defendant in 2003 when he was in a depressed state and "crashing". When he felt this way he could only speak with the first defendant. The first defendant offered to come to see him. He did so and stayed one night. They went to a bar together where they both took cocaine. This was when the first defendant tried to molest him on his terrace.
104. In his police interview in June 2012 the claimant said that he had sex with the first defendant only once or twice up to about 10 years before. This would have been when "I was coked off my face".
105. The claimant was shown screenshots of text messages he had sent to the first defendant said to be in around 2009-2011. Many of these were sexually graphic and involved the claimant saying what he wished the first defendant to do to him sexually. Some involved talk of the insertion of objects into his anus. [It should be noted that there were no copies of any reply or indeed any message sent to the claimant by the first defendant.] The claimant denied that he was sexually attracted to the first defendant and that this was the reason why he had sent the text messages. He said that he would only want to speak to the first defendant in times of trauma. The first defendant would not want to talk with him. The only way to engage with him was to indulge his sexual fantasies and that is why he sent messages in these terms. There would be no response if he said he was depressed. He regressed into the child he had been and sought to make the first defendant think of him as a boy. He did this as the first defendant wanted to talk less and less as the claimant got older. The claimant felt he had no one else to talk to. If he spoke in these graphic terms the first defendant would engage in conversation.
106. In one of the text messages the claimant suggests that the first defendant should invite him to one of his Masonic Lodge meetings. He said he had never socialised with the first defendant. He asked on this occasion but did not get the invitation he sought.
107. The claimant denied that he had any expectation of inheriting the first defendant's estate after he died. He said that on one occasion when his life fell to pieces the first defendant was dismissive. The claimant was worried about losing his house as he was out of work and asked him whether, if it came to the claimant having nothing, the first defendant would help him out. The first defendant said he was leaving everything to his brother. This surprised the claimant as the first defendant had always spoken of his brother as a loser. It affected him as he had thought that he was the first defendant's special friend and he would be there for him when no-one else would yet now he was speaking about his

brother as if he was his best friend. There had been no discussion between them about the claimant inheriting the first defendant's estate and he entertained no hope of doing so.

### ***The first defendant's evidence***

108. The first defendant said that after the claimant relocated to Australia the claimant would stay in touch with him from wherever he was in the world. Sometimes he would bring up the inappropriateness of their relationship. The claimant invited him to stay with him in his house in Paris when his partner was away.
109. When the claimant was living in Wapping when working at Cantor Fitzgerald there was sexual activity between them. It was only at this time that he would insert objects into the claimant's anus at his request.
110. He said that he visited the claimant in Gibraltar in 2004 during which time they both consumed cocaine. This was the last time that there was any sexual activity between them.

### **KPMG and the 2011 breakdown**

#### ***The claimant's evidence***

111. The claimant said that in 2011 he decided he wanted to work as part of a team on a more permanent basis. He wanted to move his career upwards as part of a large company. He contacted Gordon Stewart, with whom he had worked at Banque Paribas. With his assistance he secured a job at KPMG in Amsterdam as a Senior Manager for their international regional adoption services. He was responsible for managing the development, marketing, co-ordination and implementation of new business strategies and solutions within KPMG member firms globally. He lived in Amsterdam during the week and returned to Paris at the weekends.
112. The job did not go well. The claimant said he found himself isolated from colleagues and starting to feel dreadful about himself and how he could manage these longer term relationships. He blamed and hated himself. He constantly feared he would be found out for what he was and that he would be thrown out of the company.
113. After a while the claimant said that he felt suicidal. On one occasion he sat on the ledge of a 13<sup>th</sup> floor hotel room wanting to jump off. He would have periods of crisis for days on end when he would not leave his room. He felt unable to cope with anything from simple domestic chores to his work.
114. From May 2011 the claimant said that he was seeing Dr Raab, a psychiatrist in Paris. This was not helping him. He felt embarrassed and ashamed at letting KPMG down. He felt he could no longer keep running from jobs as he had before. He then had a complete breakdown and in September 2011 attempted suicide by taking an overdose of sleeping pills and antidepressants in Paris.

115. The claimant said that he was referred by Dr Raab for inpatient care, again in Paris. It was here that he disclosed the abuse for the first time. He was not happy in hospitals in Paris, realising that he needed to speak with doctors in English. In November 2011 he was admitted into the Catio Nightingale Hospital in London for the first of what was to be many stays.
116. He was signed off at KPMG as a result of his illness. He hoped he would be able to return after a few weeks. That did not happen.

***Other evidence about KPMG and the claimant's breakdown in 2011.***

117. FZOR, the claimant's partner, said that initially the claimant was excited and enthusiastic about the KPMG job. However he became lonely and isolated in Amsterdam. His mood swings became progressively worse. He became depressed and anxious, often unable to attend social functions. He was constantly in a fragile state which culminated in a suicide attempt in autumn 2011. The claimant was hospitalised in two different Parisian hospitals. He had no therapy there. Eventually he was admitted to the Catio Nightingale Hospital in London. It was during the breakdown that the claimant first disclosed to him in general terms that he had been abused by a PE teacher at school from the age of 13.
118. Gordon Stewart said that the claimant got in touch with him in around 2010/2011 saying that he was back in Europe and looking for work. He assisted him in obtaining the job at KPMG. He had no inkling at this time that the claimant was suffering with any difficulties. He met with him a few times in Amsterdam. The claimant was complaining of not making friends and feeling very alone and isolated. Mr Stewart put this down to him starting a new job in a new city. Within about six months the claimant had something akin to a nervous breakdown and went on sick leave. He said this was due to stress and bad experiences he had been through. He did not specify what these were. His contract with KPMG was terminated in 2012.

**Medical treatment and disclosure to the police.**

***The claimant's evidence***

119. The claimant said that after his suicide attempt he called the first defendant. This was a time of crisis and he needed help. The first defendant appeared unconcerned, talking instead of his every day activities. The claimant said that it was at this point for the first time that he realised that the first defendant had never cared for him and began to feel that he had been manipulated and abused. This was a horrible thought. He wanted to assume responsibility for what had happened because he was an evil person. He wanted to think of the first defendant as someone who wanted to help the awful person that he was. He did not want to think of himself as a victim.
120. In the Catio he disclosed the abuse. His treating psychiatrist, Dr Basquille, told him not to talk to his abuser. Only then did he think that maybe he was not toxic and evil after all. He did not want to go to the police. The doctors and therapists would ask each other in

his presence whether his abuser was still abusing boys. This made him feel guilty and he decided that he would report the matter to the police. He did so by way of a video recorded interview in June 2012. This was the first time he had disclosed to anyone the extent of what had happened. It left him traumatised and in shock. His fear and anxiety increased and his nightmares, from which he had suffered all his adult life, got worse. He could not control his feelings or thoughts and was terrified.

***The medical evidence in summary insofar as it concerns limitation***

121. The claimant had seven further admissions for inpatient treatment at the Capiro between 2012 and 2017. He has been under the care of Dr Rackow in Paris since September 2013. There are copious notes relating to his dealings with the medical professionals. I do not propose to summarise them all, only those which bear some relevance to the limitation issue.
122. There is reference through the medical notes to the claimant's consumption of cocaine.
  - i) On 7<sup>th</sup> November 2011, on the claimant's admission to the Medical Clinic of Chateau de Garches in Paris, there is noted under the heading "Psychiatric history – Reference to alcohol and cocaine abuse".
  - ii) On the claimant's first admission to the Capiro in London on 21<sup>st</sup> November 2011 under the heading "Alcohol/drug/cigarette use" there is noted "Alcohol mainly on weekend, 4 glasses of champagne. Cocaine – 1g on weekends, snorting, last used 3 days ago."
  - iii) A note at the Capiro on 2<sup>nd</sup> December 2011 (where the claimant was then an inpatient) states that the claimant says that when he takes cocaine he feels disinclined to talk. This appears to be in the context of him being unwilling to engage on this day and feeling hungover from the Diazepam he had taken the night before.
  - iv) On admission to the Capiro on 11<sup>th</sup> March 2012 it is noted that the claimant has not had any alcohol since September 2011 and there has been no illicit drug use. On the therapy management plan dated 12<sup>th</sup> March 2012 under the heading "Identified problems/issues" it is noted "Binging on alcohol (sometimes cocaine) at weekend.
  - v) On 8<sup>th</sup> July 2013 the claimant's treating psychiatrist at the Capiro, Dr Basquille, wrote a letter entitled "To whom it may concern" in which he sets out in brief terms the claimant's psychiatric history and his diagnosis, assessment and recommendations. Under the heading "past psychiatric history" he says "In October 2011 [FZO] attempted suicide after a binge on alcohol, cocaine and benzodiazepines...at the time he was taking cocaine weekly which helped him concentrate. Ritalin helped calm him down and sleep and he tended to abuse it."



123. It is clear from the notes that after a number of admissions consideration was being given to whether the claimant should receive trauma based therapy. Dr William Shanahan, the medical director of the Capio, was asked for a second opinion. In a letter dated 9<sup>th</sup> August 2013 he said of FZO “He is obviously a very complicated man with problems going back to childhood. Unfortunately I think the sexual abuse has left him indelibly marked psychologically and has seriously affected his personality structure. He is aware of the emotional instability in this. This presents difficulties for him as he never knows if he is commenting or complaining validly or if it is simply a manifestation of an underlying personality disorder. Not surprisingly this causes him considerable confusion and stress.”

### **Post disclosure to the police**

124. As already indicated at paragraph 3 above the first defendant pleaded guilty to four counts of differing sexual assault upon the claimant in March 2014. He was sentenced in July of that year. He appealed that sentence. His sentence was reduced to one of 8 years by the Court of Appeal Criminal Division on 13<sup>th</sup> February 2015.
125. In relation to the civil claim the claimant said that he first contacted solicitors on 7<sup>th</sup> May 2014. His solicitors requested documents from the Metropolitan Police on 24<sup>th</sup> September 2014. These were to include a copy of his witness statement in order that he did not have to go through all the detail of the abuse once more with his solicitors. On 14<sup>th</sup> October 2014 the police replied that as there was an ongoing police investigation they could not then provide the documents sought. I was told during the course of the trial that this investigation concerned other possible victims. In the event no charges were brought in relation to any other individual.
126. The claimant’s solicitors contacted the police again in January 2015. The police again and for the same reason refused to disclose any documents. It was not until May 2015 that the police said they were willing to disclose the claimant’s statement to his solicitors. This occurred on 17<sup>th</sup> July 2015. The letter before action was then sent on 10<sup>th</sup> August 2015.

### **Expert evidence and opinion that bears on the issue of limitation.**

#### *Areas of agreement*

127. On 3<sup>rd</sup> September 2018 Dr O’Neill, the psychiatrist called by the claimant, and Professor Maden, psychiatrist called by the second defendant, produced a joint report.
128. They agreed that there are problems for the expert arising from the fact that the material events took place well over 30 years ago and memory is often not reliable after such long periods of time. Recall is an active mental process and sometimes the content and meaning of recollections change with time.

129. They agree that in general terms problems with recall are often exacerbated by mental health treatment. Neither expert saw the claimant until after he had several years of intermittent health treatment following a breakdown in 2011. The records of the treating doctors show that his attitude to the first defendant changed during the period of mental health treatment.
130. They agree that over 35 years later and with no references in any record of child sexual abuse until 2011 it is inevitably difficult for an expert to distinguish between the effects of the rape of the claimant by John Paul Monteil and the abuse of him by the first defendant. They agree in general terms a sexual assault is more damaging the younger the victim.
131. They agree that the claimant suffers from an emotionally unstable personality disorder (EUPD). A key feature of this condition is an unstable sense of identity which can lead to inconsistencies in a patient's account of themselves.
132. They agree that the claimant has some features of histrionic disorder including a tendency towards self-dramatisation, theatricality, an exaggerated expression of emotions and a seeking for excitement and activities in which he is the centre of attention, as well as at times a shallow and labile affectivity.
133. They agree that for many years FZO did not complain because he did not regard the relationship as an abusive one. Professor Maden disagrees with Dr O'Neill's assessment that this is as a result of the defendant's grooming behaviour at the time of the assaults. They agree that he has never been psychologically or psychiatrically disabled from making a claim.
134. They agree that whatever the reasons for the delay it has greatly complicated the work of the expert because of a deterioration in the cogency of the evidence as the result of the passage of time. FZO's parents are both dead and there are uncertainties about his early years which would be relevant in establishing the causes of a personality disorder. They agree that there are important missing records relating to his childhood, education, attendance at stage school and details of his employment. They have not seen any records relating to his work in the USA. FZO says that he saw a psychiatrist in 1993 and neither of them has seen any records relating to that. They have not seen any records relating to two years of treatment under BUPA before the claimant's admission in 2011.
135. They agree that it is more difficult to evaluate FZO's claim in the absence of critical information that would usually be seen as important when establishing the causes of a personality disorder. However they disagree about the extent of those difficulties. Dr O'Neill regards them as relatively minor. Professor Maden believes they are major and without reliable information concerning the family background and childhood experiences it is impossible to understand the origins of any personality disorder.

***Professor Maden***

136. Professor Maden is of the view that there are major inconsistencies in the account of the claimant. He concludes that “these inconsistencies and the variations in FZO’s account over time are so great that I would be reluctant to rely on his uncorroborated account as the basis for any diagnosis.” He lists the inconsistencies as follows:
- i) The claimant’s portrayal of money being tight in his childhood is inconsistent with his father’s company working on the Barbican project and sending him to Franklin House, a private school, in or around 1982.
  - ii) He found the claimant’s assertion that his parents never came to watch him swim or act as a child to be implausible.
  - iii) Professor Maden felt it unlikely that the claimant’s account of working in the kitchen of a pub when he was 11 or 12 to get money for things he wanted to buy could be true on the basis that his parents would have been unlikely to let him do it and the pub unlikely to take him on at that age.
  - iv) In Professor Maden’s view the available school records described different problems from those the claimant described to him in that they showed an unmotivated child who would only work when subjects interested him.
  - v) The claimant gave contradictory accounts of abandoning involvement in drama by saying that this was because of mental health issues as a result of the abuse which meant he failed two auditions and also that he did not pursue his ambition because of his abuser’s cynical attitude to drama.
  - vi) The claimant said that he loved junior school and had no problems there. A record from the Capio and a text sent to the first defendant by the claimant make reference to him being bullied there.
  - vii) He has given contradictory accounts of his use of cocaine.
  - viii) The claimant frequently reported a lack of self-worth and assertiveness. This does not sit easily with his presentation in his interview with Professor Maden or with his statement that he knows his partner will never leave him.
  - ix) The claimant told Dr Read in 1996 that he had relationships with women and men. He told Professor Maden that he had no such relationships save with his partner.
  - x) Professor Maden found it difficult to reconcile the claimant’s statement that the only person he could feel comfortable with was the first defendant in the light of his current allegations of abuse and rape. The language of rape is also inconsistent with the claimant remaining in contact with the first defendant over many years.

- xi) The claimant's description of often feeling isolated at work is contradicted by those who were working with him at various times.
137. As a result of these inconsistencies, particularly those concerning the claimant's early life, and the absence of evidence from his childhood Professor Maden said that it was difficult if not impossible to determine the causes of the claimant's mental health problems.
138. Professor Maden interpreted Dr Shanahan's view in 2013 (see paragraph 123 above) as meaning that the claimant had difficulty distinguishing fact from fiction.

***Dr O'Neill***

139. Dr O'Neill perceived any inconsistencies in the claimant's account as minor and arising from his uncertain sense of identity. She believed that Professor Maden exaggerates the inconsistencies, that they are not unusual in historical cases of this nature and nor do they impact on the ability of the experts to form an opinion.
140. Dr O'Neill did not see any inconsistency in the abuse as now described by the claimant and his subsequent association with the first defendant over the years. This in her view is explained by the way that the first defendant groomed the claimant at the time of the abuse.
141. She disagreed with the proposition that the claimant was an unreliable historian. Someone with an unstable sense of identity can put on a façade and fear they are going to be found out. They are emotionally unstable and can be dramatic and be a little inconsistent. This does not mean that the core body of what they say is untrue. She accepted that the claimant could be a little dramatic, describing things in dramatic terms. She was not surprised to find this given his personality structure and his diagnosis of EUPD. She was not of the opinion that this rendered him completely unreliable.
142. There are a number of psychological reasons why the claimant failed to disclose his abuse at an earlier time. He felt unable to confide in his father as he felt he would be blamed for the abuse. He believed if his family found out about his abuse they would reject him due in part to what the first defendant had said to him. He blocked out his abusive experiences by using substances such as alcohol and cocaine as memories were associated with painful emotions and he struggled to trust others which prevented earlier disclosure.

**Application of S33.**

***The claimant's contentions on the exercise of the discretion.***

143. On behalf of the claimant it is contended that I should disapply the limitation period in this case and allow the claim to proceed upon its merits.

144. Mr Seabrook argues that the reason that the claimant did not report the abuse or begin the claim before 2011 is clearly because he did not appreciate until his breakdown in 2011 that he had in fact been abused. He was unable to talk about the abuse and had told no one until this time. This was because he had been “groomed” as a child by the first defendant who caused him to believe that he was the claimant’s only friend following the rape by Monteil. The reasons for the delay are therefore a direct and intended consequence of the grooming strategy deployed by the first defendant. He reaped the benefits of that strategy until 2012, retaining an emotional hold over the claimant until that time. The manner of the commission of the tort and/or its effect has led to the delay in making the claim. The grooming caused the claimant to tolerate the first defendant’s behaviour rather than sue.
145. The psychological reasons identified by Dr O’Neill also explain his failure to disclose the abuse earlier. The claimant has been suffering from psychiatric difficulties (whatever may be found to be the cause thereof) for much of his adult life.
146. It was reasonable for the claimant to await the conclusions of the criminal proceedings before starting his civil claim. He was unwell and could only be expected to deal with so much at a time. The police discouraged a claim until the end of criminal proceedings. Had a claim been issued before that time it would have been stayed. The claimant has been diligent since the conclusion of the criminal proceedings. Any delay has been in obtaining documents from the police.
147. Mr Seabrook argues that the evidence concerning the issues in this case was not materially less cogent than if the action had been brought within the limitation period, so that a fair trial was still possible. Liability is largely not in issue given the first defendant has been convicted of offences against the claimant and has accepted that he raped him. He submits that the claimant is largely a good historian and that Professor Maden has exaggerated such inconsistencies as there are. The largely unchallenged witness evidence and records paint a clear picture of the claimant’s life and it is difficult to see what other evidence would ever be before a court. Although the claimant’s parents have died it is inconceivable that they would have been called by the defendants. Any questions of them could also have been asked of the claimant’s sister. Few questions were asked of her and the defence made no request for her to be interviewed by Professor Maden. Although the defendants made complaint of missing teachers and other people, such as the claimant’s friend Justine, who could speak of the claimant’s early life they produced no evidence of attempts to locate them. Rather their complaint was based on the assumption that such people, if found, would have no memory of events so long ago. The defence were not obliged to take steps to find people but it is unattractive to complain of prejudice through an inability to investigate when they made no attempt to do so.
148. The key issue in the case is the extent to which the sexual abuse contributed to the claimant’s breakdown in 2011 and the cause of his agreed ill health since. These events are comparatively recent. The task of the court in assessing the psychological effects of

the abuse is easier than it would have been when the claimant was a young man of 21 or so. At that time his relationship with his partner, his career and his breakdown would not have been known.

149. Mr Seabrook submits that it would be inequitable for a teacher who has been convicted of repeatedly sexually abusing his pupil in the most serious manner to escape civil justice due to the lapse of time. The second defendant stands in his shoes. It would be inequitable for the defendants to benefit from a limitation defence which only arose by reason of the particular nature and circumstances of the wrongs perpetrated.
150. Although there are claims for past lost earnings pre 2011 and pension loss Mr Seabrook conceded that in the absence of employment records the claimant has not been able to prove these heads of damage. Such a concession means that such claims must fall away.

***The first defendant's contention on the exercise of the discretion***

151. Miss Foster argues that the first defendant would be seriously prejudiced if the action is allowed to proceed.
152. She submits that no good reason for the delay in bringing the claim has been given by the claimant. It is not suggested that he was psychologically or psychiatrically incapable of doing so. The evidence supports the contention that the claim was made in 2011 because of the claimant's anger towards the first defendant due to his perceived lack of support in his time of crisis and his anger that he was being shut out of his inheritance in favour of the first defendant's brother rather than because he suddenly became aware that he had been abused.
153. There has been significant evidential prejudice to the first defendant by reason of the delay in making the claim. She points to the inevitable impact on memory and the real risk that the claimant has come to remember things differently with the passage of time. The question of causation can only be resolved by looking at the claimant's past life. The passage of time has rendered that impossible. The court is faced with disentangling years of life events, about most of which it has no knowledge at all. The experts and the court are largely reliant on the accuracy and reliability of the claimant's account of his life. The numerous internal inconsistencies in his evidence render him unreliable. A feature of the personality disorder from which he suffers is a tendency to exaggerate and dramatise. Had the claim been made in a more timely manner the question of the claimant's early life experiences, his contact with the first defendant and his later work and life could have been properly investigated in a way which is no longer possible. The claimant's parents have died, school records have been destroyed and other witnesses such as teachers could have been asked to provide testimony.
154. There is no good reason for the delay in commencing proceedings once the claimant had been to the police.

155. The first defendant is now 74 years of age and currently released on licence. He faces financial ruin. Had the proceedings been brought at an earlier stage he would have had the opportunity to rebuild his life and make financial provision for his future.

***The second defendant's contention on the exercise of the discretion***

156. Mr Kent argues that the second defendant would be seriously prejudiced if the action is allowed to proceed.
157. He too relies on the fact that the claimant has never lacked the mental capacity to complain or to instruct his legal representatives and has never been psychologically or psychiatrically disabled from initiating a claim.
158. Mr Kent submits that the cogency of the evidence has been affected by the delay. There are missing witnesses – the claimant's parents, the first defendant's mother, teachers, the claimant's friend Justine who he says took him to Monteil's party and other siblings, friends, former partners and work colleagues. There is no forensic evidence in the case. Had a complaint been made at the time of the abuse there could have been evidence to confirm or refute the allegation that the first defendant inserted objects into the anus of the claimant. There are missing documents such as a full set of school reports, employment records, records relating to the claimant seeing a psychiatrist in 1993 and him consulting with a psychiatrist in America in 1996. BUPA records relating to treatment received in the two years before the breakdown in 2011 are also missing.
159. Mr Kent submits that the claimant has been shown to be unreliable and incapable of belief. He points to the inconsistencies identified by Professor Maden and his consequent inability, in the absence of corroboration, to rely upon the claimant's account to reach a diagnosis or a conclusion as to the cause of his mental health problems. Such corroboration is no longer available due to the passage of time. He submits that there are further inconsistencies and questions as to his credibility arising from the claimant's evidence such that the claim should not succeed in any event. These are to be found in his evidence inter alia as to whether he had reached puberty when the abuse started, his relationship with his own family and the first defendant's mother, his fear of pregnancy. These render significant parts of the claimant's case implausible. In those circumstances it would not be just to disapply the limitation period

**Conclusions on limitation**

160. The question I must address is whether it would be equitable to allow the action to proceed. I remind myself that the burden of showing that it would be equitable is on the claimant. With those matters in mind I shall address firstly the general question of the claimant's reliability and credibility and then separately the considerations set out in section 33(3) of the 1980 Act.

***The claimant's reliability/credibility***

161. As was made clear in *JL v Bowen* [see paragraph 16 above] the correct approach is for the court, in resolving whether to disapply the limitation period, to adopt an overall assessment of the evidence, which includes weighing up any adverse findings made against the claimant, and the effect of such delay on the same.
162. The defendants submit that by reason of the inconsistencies in the claimant's account, the implausibility of a significant part of his evidence and indeed his EUPD I should conclude that he is an incredible and unreliable witness. There is no dispute that the abuse occurred but that is not an end to the matter. Causation is in issue. The diagnosis and opinions of psychiatrists are only as good as the information they receive. As the information they received came almost entirely from the claimant this means that causation cannot be properly established and the claimant cannot discharge the burden of proof. In those circumstances the claim must fail and it would be unjust to disapply the limitation period.
163. I accept the evidence of both experts that the claimant suffers from EUPD and that a feature of this condition is an unstable sense of identity which can lead to inconsistencies in a patient's account of themselves. I do not understand either psychiatrist to be saying that the condition of itself renders a sufferer of it so unreliable that he is incapable of belief. That is patently not the case here. The first defendant accepts that much of what the claimant says about the abuse is indeed true, including the fact that oral sex took place in a mosque and that they went to Hampstead Heath together in order to seek out other men who were having sex. The difference between them is as to how a sexual relationship between them came about and the extent of it.
164. In that respect I find the account of the first defendant wholly implausible. I find that sexual activity between him and the claimant began when the claimant was 13 years of age. The claimant had just started at a new school where he knew no one. School reports from Devonshire Hill, his junior school, describe a willing and polite boy. There is no hint of him being precocious or old for his years. The evidence from his class room teacher in his final year, Chris Bolton, bears this out. He describes the claimant as a happy child. He was helpful, respectful and not at all precocious. I accept that the claimant did not go straight to Highgate Wood School, going first to Wood Green School. There are no reports from there but it is clear from the evidence of FZOJ, the claimant's sister, that the claimant's behaviour started to change when he was at Highgate Wood. The idea that the child described by these witnesses would, at the age of 13, have sought out and groomed his 32 year old PE teacher for sex is in my judgment inconceivable. I am fortified in this view by having seen and heard the evidence of the first defendant. Even now, as a 74 year old man recently out of prison, his strong and forceful character is clear. He was popular and well respected at the school. He accepted that he was known to keep discipline amongst the children. I do not accept his evidence that he was effectively pursued by the 13 year old claimant.
165. I find the first defendant's account of how he and the claimant came to be speaking about sexual matters equally implausible. The first defendant accepts that there was



discussion between them about the claimant having sex with a lifeguard from the pool where pupils at the school went swimming. I find it highly unlikely that the 13 year old boy that the claimant was would have casually and out of the blue told his 32 year old teacher who had just caught him truanting that he had had sex with that individual. I accept the evidence of the claimant in relation to being raped by John Paul Monteil and the difficulty he had in coping with that in the immediate aftermath. Professor Maden in evidence expressed scepticism about the claimant's account of this on the basis that he would have expected a 13 or 14 year old boy to have told his parents of it if it had happened given that Monteil was a stranger. I disagree. The claimant's failure to report this has to be judged on the basis that he was a child not on what might logically be expected from the perspective of an adult. He had been taken to a flat in which there had been drinking and smoking. He had chosen to go back to that flat when he was unable to stay with his friend. He feared that he would be in trouble if he told his parents. That seems to me entirely plausible in the circumstances. In the light of my rejection of the first defendant's account in this regard I have come to the conclusion that it was the first defendant who, seeing an upset and troubled child, befriended him and encouraged him to talk to him. This can only have been part of a grooming process. Had it been otherwise I am satisfied that once the claimant told him what had happened the first defendant would have reported the matter at least to the head of the school if not the claimant's parents or the police. I accept that this was 1980 and things were not as they are now. I however reject the first defendant's contention that the policy of the time was to keep the pupil's confidentiality in circumstances where a crime had been committed against a vulnerable child. I am quite satisfied that the first defendant used the claimant's vulnerability to his advantage and that he did tell him that now he was gay, that if this became known others would despise him and that his family would throw him out. By saying in these circumstances that he would be the claimant's friend the first defendant created a feeling of gratitude and indeed dependency in him.

166. Professor Maden has expressed the view that as a result of his personality disorder the claimant has difficulty distinguishing fact from fiction. It is his contention that this is implicitly what Dr Shanahan was saying in his 2013 letter in which he expressed a second opinion. Professor Maden said that this meant, especially in the light of the inconsistencies he identified in the claimant's account, that he was an unreliable historian which made him reluctant to form a diagnosis of his condition.
167. I have given this evidence careful consideration and have concluded that I do not accept this assessment of the claimant. It is not entirely clear what Dr Shanahan, who is not a witness in this case, meant when he said that the claimant "never knows if he is commenting or complaining validly or if it is simply a manifestation of his personality disorder". I do not accept that the phrase leads inescapably to the conclusion that he cannot distinguish fact from fantasy. Had Dr Shanahan meant that I cannot see why he would not have said so. This second opinion was sought because the claimant had been complaining about the treatment or the lack of it which he had been receiving at the Capio. The first paragraph of the letter explains that the claimant felt let down having

had two years of treatment there and that he did not believe that he had a treatment plan that had any meaning for him. It seems to me that Dr Shanahan's comments that the claimant never knows if he is commenting or complaining validly should be seen in that context.

168. Whilst I accept that there are some inconsistencies in the claimant's account I do not accept that Professor Maden is correct on every occasion that he criticises the claimant on the basis of inconsistency. By way of example I do not accept that the school records from Highgate Wood are inconsistent with the claimant's account. They are wholly silent on the issue of whether or not the claimant was disengaged with his education because of the abuse. That is to be expected as the other teachers were unaware of it. It is not in dispute that the abuse was in fact occurring. These teachers saw the claimant as often absent and unmotivated. They do not seek to say why. The two things are not in any sense mutually exclusive.
169. Professor Maden was particularly critical of perceived inconsistencies in the claimant's account of his childhood home circumstances. He was reluctant to accept that the family was as poor as the claimant has made out, pointing to the fact that he went to Franklin House, a private school, when he first left Highgate Wood and that his father was a director of a steel construction company which had a contract for work on the construction of the Barbican. He was sceptical about the claimant's account that in spite of his success his parents did not come to watch him swim or act in the West End. He pointed out in his report that neither FZOJ nor the first defendant make any mention of the claimant appearing in *Oliver* in the West End which he would have thought would be a notable event, thus questioning whether such a thing happened at all.
170. I accept that there are some inconsistencies in the evidence about the claimant's family but they are not in my view of great consequence. I do not accept Professor Maden's criticism of the claimant in this regard. This in part is because he has made assumptions as to what he would expect of parents in the same situation as those of the claimant. Although it is right to say that FZOJ did not speak in her witness statement about the claimant being in a West End production of *Oliver* she confirmed in evidence that he had. This was before he went to Highgate Wood School. There is nothing unusual in those circumstances in my view of the first defendant failing to mention the fact. FZOJ said her parents had been to see him in that production. She was less sure that her parents had been to see him swim. Professor Maden has expressed scepticism that parents would not watch a successful child of the claimant's age saying it is "inherently implausible". I do not accept that this is the case against the background of a hard working self-employed father and a mother with other children.
171. As to the family's means I am prepared to accept that the claimant has described their financial situation in somewhat dramatic terms but in my view this does not distort the general picture that his family were less well off in his younger years, becoming more comfortably off as he got older. There is nothing in FZOJ's account to contradict that. Her evidence that in general terms her family was working class and not particularly

well off but able to afford electricity and gas and put food on the table does not mean that the claimant's account of them getting better off over time is untrue. She was not asked to concentrate on any particular period of her childhood, only asked about this aspect of her evidence in the most general terms.

172. Finally it seems to me that Professor Maden in finding inconsistency in the claimant's account has made assumptions not borne out by the evidence. It may be that the claimant's father was a director of his own steel construction company but aside from the evidence of the claimant who described it as a "one person company" there is no evidence as to the size of it. He may have had a contract at the Barbican but again there is no evidence of the size of that contract in relation to the size of the project overall. There is thus no proper evidential basis to use that fact as gainsaying the claimant's account that money was tight in his childhood. The same can be said for the fact that the claimant went to private school for a short time. Without knowing more about the school beyond the claimant saying that it consisted of two rooms in a church and any fees charged it is not possible to say that this fact again contradicts the claimant's assertions about the means of his family.
173. There are however four areas of the evidence where it seems to me that the defendants' criticism of the claimant in terms of inconsistency or unreliability have greater force.
174. The first concerns the claimant's account that when the abuse started he was pre-pubescent and feared that he may be pregnant to the extent that he believed he felt an arm in the area of his abdomen. He said that his nipples were also getting bigger. He said that he spoke with his mother about this fear and she simply told him that he was not pregnant but going through puberty. The claimant spoke of this to emphasise his naivety concerning sexual matters at the time the abuse began. It is perhaps surprising that a boy of 13-14 years of age even in 1980 would believe he may be pregnant. The claimant's account that he told his mother also does not sit easily with his evidence that he did all he could to avoid his parents finding out what was going on for fear that he would be despised and thrown out. There is no dispute that he was being sexually abused by the first defendant at this time. Whatever the circumstances of that it seems likely to me that he would not have wanted his parents to find out. In those circumstances I have difficulty accepting that he had this conversation with his mother. This is perhaps an example of him exaggerating and being overly dramatic in his anxiety to convey how naïve he was.
175. In 1996 the claimant had one consultation with Dr Read, a psychiatrist, as a result of binge eating, bulimia and feeling depressed. Dr Read in a letter dated 27<sup>th</sup> November 1996 says that the claimant has had relationships with both men and women. The claimant has admitted that this was not true. He said that he could not bring himself to expose who he was or to disclose the abuse. He said in evidence that he told Dr Read that he had relationships with men and women because of his feelings of self-disgust. He did not want the psychiatrist to think of him in that way or to see the real him. He wanted him to be sympathetic with him. I accept this explanation. These lies are

however of importance in this case where the question of causation rests on the accuracy and reliability of the claimant's account to the psychiatrists who gave evidence in the trial. I have given this issue careful consideration and have come to the conclusion that the fact that the claimant lied to a psychiatrist in 1996 does not mean that he lied to the psychiatrists 20 years later in 2016-17. In 1996 the claimant did not disclose the abuse and was plainly not prepared to let the psychiatrist know the real him. In 2016-17 the position was totally different. The claimant had suffered a breakdown in 2011 and has not functioned well since. It is plain from his evidence and in what he has said to his treating psychiatrists that he is now desperate to feel better and to find a way forward with his life. That has caused him to be completely open about his past and to talk about things he has been reluctant to talk about for many years, including the abuse. This is supported in my view by his disclosure to the police in 2012 and the nature of the discussions he has had with his psychiatrists since. It follows that I do not consider that the lies he told in 1996 to Dr Read render him unreliable and incapable of belief now.

176. The claimant in this trial has not hidden that he has in the past been a user of cocaine. There is however a discrepancy between his evidence that he last used cocaine in Spain in 2009 and records of what he said to medical staff at the Capio. A letter written by Dr Basquille, the claimant's treating psychiatrist in the Capio, in July 2013 states under the heading "past psychiatric history" that the claimant in 2011 attempted suicide after a binge on alcohol, cocaine and benzodiazepines at a time when he was taking cocaine weekly which helped him to concentrate. Although it would usually be reasonable to assume that this must have come from the claimant it is in my view far from clear. There is a nearly contemporaneous document in the medical records dealing with the claimant's use of cocaine in the handwritten admission note for his first admission to the Capio on 21<sup>st</sup> November 2011 in which it is noted "cocaine. 1g weekends. Snorting. Last used 3 days ago". This does not however support that which is said by Dr Basquille in his letter two years later. No contemporaneous note from the Capio records any such binge. The claimant disputes that which is in Dr Basquille's letter, saying that he had no such binge. He disputes that he took cocaine 3 days before his first admission to the Capio. In many ways it is difficult to understand why a member of the medical staff would have written that if it was not said. On the other there are other factual inaccuracies in the note. In my view the position is far from clear. I do not consider in those circumstances that the evidence on cocaine renders this claimant unreliable or unworthy of belief.
177. The claimant has repeatedly said that he moved from job to job in his adult life as he found it difficult to integrate with his work colleagues and often felt isolated from them. He feared being found out for the evil person he was. Professor Maden and counsel for both defendants argue that such contemporary witnesses as there are from some of these companies do not support this view. There is force in these submissions. I do not however consider that these discrepancies are such that they should cause me to reject the claimant's evidence as wholly unreliable. It is clear that, aside from a wobble in 1996, until 2011 the claimant was able to function reasonably well at work. He was

clearly talented in the IT field. It is entirely possible that a person can see themselves very differently from the way they are seen by others. It is realistic to assume that the claimant's work colleagues did not see him every minute of every day and that they were not socialising every single night. I do not therefore consider that the failure of some colleagues to see that the claimant felt isolated renders him such an unreliable witness and historian that his claim could not succeed.

178. In conclusion I find that whilst there is some inconsistency in the evidence and that it can properly be said that at times the claimant has exaggerated or over-dramatised aspects of his evidence these are not such that the claimant is rendered so unreliable or incapable of belief that his claim must fail. They are matters to which, if the limitation period is disapplied, I would have careful regard in assessing the claimant's evidence and the extent to which I accept it.

***The length and reasons for the delay on the part of the claimant***

179. Section 33(3)(a) requires the court to have regard to the length of, and the reasons for, the delay on the part of the claimant. The length of the delay in this case is very substantial indeed; about 28 years from the end of the alleged abuse to the commencement of the proceedings. I must give weight to that fact.
180. As to the reasons for the delay all parties are agreed that this was because it was not until his breakdown in 2011 that the claimant came to view what had occurred to him at the hands of the first defendant as abuse. That is where any agreement ends. It is the claimant's case that he was manipulated and groomed as a child into complying with the abuse and into believing that the first defendant was his only friend. This continued to act upon him until 2011 and explains the delay. The first defendant, whilst accepting the abuse, denies that he at any time groomed the claimant. His case is that the claimant groomed him. It was the claimant who engineered meeting with and discussing sex with him. He fell in love and what followed was, save initially due to the claimant's age, a consensual sexual relationship.
181. I have already indicated that I reject the first defendant's account in this regard and accept that of the claimant that after he told the first defendant of his rape by Monteil, having been encouraged so to do, the first defendant told him that he was gay, that if that became known he would be despised and hated for it and that if his parents found out he would be thrown out of home. The claimant was thus groomed into submitting to the abuse. The other effect was to isolate him from his family and peers. His sister, FZOJ, has spoken of how the claimant changed when he went to Highgate Wood and that the family rarely saw him. The claimant has spoken of how he was bullied at Highgate Wood which is why he left to go to Franklin House School before sitting his "O" Levels. His school reports show, to put it neutrally, that he was largely disengaged from his studies.

182. Mr Seabrook submits that the successful grooming of the claimant continued to operate upon him for many years and that this was the reason that he did not come to realise that he was abused until 2011, that the delay was a direct and intended consequence of the grooming strategy of the first defendant. He could not therefore have reported the matter to the police or brought the claim any earlier. The defence argue that is not the case – that the more likely explanation is that the claimant did not see his relationship with the first defendant as adverse and that he saw him as a friend. The claim was made because of his anger at the perceived failure of the first defendant to sufficiently support him at the time of his breakdown in 2011. They point to the fact he was never psychiatrically or psychologically unable to make an earlier claim. It is necessary to consider therefore why it was that the claimant stayed in touch with the first defendant for so long after he left school.
183. The claimant said that his ongoing contact with the first defendant after he left school was largely at times of crisis. He continued to see him as the only person he could turn to at such times as the first defendant was the only person who knew how evil he was and yet accepted him. In other words he said that he continued to think about himself as the defendant had portrayed others would see him when the abuse began. It was not until 2011, when he did not receive the support he expected at the time of his breakdown, that he began to see the abuse for what it was.
184. The evidence of the first defendant was to the effect that communication between him and the claimant after he left school was intermittent. Although he did not say it was only at times of crisis in the claimant's life he did say that he went to see the claimant in Gibraltar in 2004 because he seemed down. He produced the screenshots of the text messages from the claimant as evidence of the way the claimant saw him right up until 2009-2011.
185. The claimant said that the explicit sexual content of many of the texts was simply to get the attention of the first defendant who would not acknowledge him otherwise. This explanation at first blush seemed somewhat unlikely but on analysis of the entirety of the text messages it is one that I accept. Along with the sexually explicit messages are messages asking where the first defendant is and why he is not responding to him. There are messages about football matches when there has been no dispute with the claimant's assertion that he was not interested in football beyond the fact that he was working for a company involved in the gambling business. These must have been sent in an attempt to speak about something the first defendant liked in order to spark a response. I also bear in mind that no responses from the first defendant have been produced, if indeed there were any. It does not seem to me therefore that these text messages show a friendship over the years. I take into account also that there is little, if any, evidence that would suggest a conventional friendship between the two of them. There is little evidence of them socialising together. The claimant spoke of them only going out for a drink together on one occasion. One of his texts suggests that he and the first defendant could go to a Masonic Lodge meeting together as they never had.

186. I accept the evidence of Dr O'Neill that it is impossible to look at the behaviour of the claimant and first defendant after the claimant left school separately from the grooming and abuse of him while he was at the school. I find that the delay in bringing these proceedings was because the claimant did not recognise that what happened to him at the hands of the first defendant was abuse until his breakdown in 2011. Had he done so it is inconceivable that he would have continued to be in touch with the first defendant in the way that he was. He failed to see it as abuse by reason of being groomed by the first defendant while it was happening. The way that he had been conditioned to think by the first defendant continued to operate in his mind. I agree with the submissions of Mr Seabrook that the delay in this case is a consequence of the grooming and emotional manipulation of the claimant which caused him to depend on the first defendant and to tolerate his behaviour rather than to sue.

### *Cogency of the evidence*

187. Section 33(3)(b) requires me to consider the extent to which, having regard to the delay, the evidence adduced by the claimant or either defendant is less cogent than if the action had been brought within the primary limitation period. In particular I must consider the effects of the delay on each of the defendant's ability to defend the action. I bear in mind that said by Lord Hope in the case of *AS v Poor Sisters of Nazareth* that proof that the defender will be exposed to the real possibility of significant prejudice will usually determine the issue in his favour. This is not to reverse the burden of proof. It is for the claimant to satisfy me that the limitation period should be disapplied. The evidential burden is with the defendants to establish that there is the real possibility of significant prejudice.
188. I accept that delay can have an effect on memory and that the longer the delay the greater that effect is likely to be. That is not to say, however, that cases which are brought many years after the events are said to have occurred can never be safely tried. Whilst I accept that there is no limitation of time to bring criminal charges, historic offences of child sexual abuse are regularly tried in the criminal courts notwithstanding long delays. Such happened in this case. The question is not whether in general terms memory may have been affected by delay but whether in each individual case the defendant will be exposed to the real possibility of significant prejudice. In this case both the claimant and the first defendant have been able to give detailed evidence about what happened. I do not conclude that their memory has been affected to such an extent that this matter cannot be safely tried.
189. Liability is largely accepted for the time that the claimant was at the school although there is some dispute about the extent of it. I must nonetheless consider whether the defendants would have been in a significantly better position to establish that the claimant's account was baseless or exaggerated in relation to the extent of the abuse if the trial had taken place at an earlier time.

190. Much of what the claimant says happened is accepted by the first defendant. The detail of sexual “relationships” is nearly always private. How they start and what goes on in the course of them is largely known only to the two people concerned. In this case the first defendant would have had every reason to keep his sexual activities, which were illegal, with the claimant private and hidden from view. It is difficult in those circumstances to see what other evidence there might have been available to the defendants which would assist them in determining the disputed extent of it.
191. It is said on behalf of the first defendant that if the action had been pursued in a timely manner the circumstances of the rape by Monteil could have been investigated with reference to school records (which would address his absence from school after the rape); relevant witnesses from the swimming pool who might have attended the party; the claimant’s parents and any other relevant witnesses. Viewed realistically it is difficult to see that much of that material would have in reality been available to the first defendant. It is highly unlikely that witnesses who attended a party where alcohol and cigarettes were being given to underage school children would have come to his assistance. The claimant’s parents could have assisted little in relation to something they knew nothing about. I accept that Justine, the claimant’s friend, could have been asked about whether a party with Monteil existed and whether she took the claimant along. It is not known what she would have said. I do not however accept that the defendants have been significantly prejudiced by her absence. I note in this regard that they have made no attempt to locate her or ask her whether she remembers this event. The first defendant accepts that he was told something by the claimant about a sexual encounter with the lifeguard at the pool. I have already said that I find his evidence on the nature of the conversation wholly implausible and do not accept that he was truthful about it. I do not accept that there would have been evidence available closer to the events to assist on this point.
192. I am also unpersuaded that there would have been evidence nearer to the time of precisely when the claimant began puberty. The onset of puberty is gradual and is rarely measured. There is no reason to believe that any independent evidence could assist on this point had the claim been brought just before the claimant was aged 21 years.
193. It is necessary also to consider the effect of delay on the cogency of the evidence relating to the psychiatric effects of the abuse on the claimant. Matters have been simplified by the effective abandonment of his initial claim for past lost earnings prior to 2011 and pension loss. The court is no longer being asked to determine where the claimant may have been in his career but for the abuse. The issue of causation is now confined to whether the claimant can establish that the abuse is the reason for the mental health difficulties from which he suffers and his subsequent inability to work.
194. I have considered carefully the agreed position of the psychiatrists that the delay has greatly complicated the work of the expert because of a deterioration in the cogency of the evidence as the result of the passage of time. They point to the fact that both of the claimant’s parents are dead and there are uncertainties about his early years which



would be relevant to establishing the causes of his personality disorder. They agree that there are important missing records relating to his childhood, education, attendance at stage school and details of his employment. They agree they have seen no records of psychiatric treatment in the USA or from a consultation with a psychiatrist in 1993. It is more difficult to evaluate the claim in the absence of critical information that would usually be seen as important when establishing the causes of a personality disorder. Professor Maden considers these to be major difficulties which make it impossible to understand the origins of the disorder. Dr O'Neill regards them as relatively minor.

195. There are clearly documents missing which in an ideal world the psychiatrists would have liked to see. There may be some psychiatric records missing but there are a wealth of such records in existence. The claimant's parents clearly could not be called. That is not to say that there is no evidence about the claimant's childhood. His sister gave evidence, his primary school teacher was available to be questioned. There are school reports. There may be other teachers who could have been called as witnesses. No effort to trace any such witness has been made and it cannot be said that they are unavailable. Notwithstanding the delay both psychiatrists have been able to reach confident conclusions.
196. There is no doubt that there will be some difficulty in determining the reason for the claimant's mental health difficulties following a breakdown which took place some 24-31 years after the abuse occurred. Having said that there is some force in the contention made by the claimant that there would have been difficulty, perhaps even greater difficulty, in predicting when the claimant was 21 or 22 what the effects of the abuse would be on his future life. The burden of proving causation is on the claimant himself. The exercise of determining it will require a detailed scrutiny of the claimant's past life and history, together with an examination of the available evidence, particularly the medical evidence. It will also involve an assessment of the claimant's reliability as a witness. The courts are well used to carrying out such assessments. Given the delay in this case they would require particular care.
197. I have come to the conclusion that the delay has not had such an impact on the cogency of the evidence that the defendants have been exposed to the real possibility of significant prejudice.

***The conduct of the defendants after the cause of action arose***

198. Section 33(3)(c) requires the court to consider the conduct of the defendants after the cause of action arose. The type of conduct relevant for these purposes would be any obstructive behaviour on the part of either defendant which might have prejudiced the claimant.
199. There is no dispute that during the time when the abuse was occurring the deputy head of the school, David Jones, saw the claimant at the home address of the first defendant. There is some dispute as to whether the claimant was half naked at the time. I have

already accepted that on occasion the claimant can over dramatise and I am unable to say whether his assertion that he was half naked is an example of that. I work therefore on the basis that he was not. There is nonetheless force in the claimant's submission that his presence at the house should have aroused suspicion and I accept that it presented the school with a contemporaneous opportunity to make further enquiry which it did not take.

***The duration of any disability of the plaintiff arising after the date of the accrual of the cause of action.***

200. Section 33(3)(d) requires the court to have regard to the duration of any disability of the claimant arising after the date of the accrual of the cause of action.
201. It is accepted that the claimant was not under a legal disability after his 18<sup>th</sup> birthday. Thereafter the limitation period began to run in the usual way. It does not seem to me that these circumstances should have any effect on the exercise of my discretion.

***The extent to which the claimant acted promptly and reasonably once he knew that he might have an action for damages and the steps he took to obtain medical, legal or other expert advice and the nature of that advice.***

202. Section 33(3)(d) and (e) require me to have regard to these issues.
203. There was undoubtedly a delay in the claimant instigating a civil claim after he reported the abuse to the police. It seems to me however reasonable for him to have waited until the conclusion of the criminal proceedings given that, whatever the reason, he was psychiatrically unwell at the time. I accept that it was reasonable in those circumstances for him to deal with one thing at a time. In the circumstances of this case I consider his solicitors to have been entirely right not to have taken a witness statement from him and to have waited to receive his statement from the police. I take into account that had he instituted the civil claim before the criminal proceedings were concluded it would have been stayed in any event. There has been no additional prejudice to the defendants in the additional delay.

**Conclusion on the issue of limitation**

204. I make it clear that I have considered the question of limitation in relation to each defendant separately. Taking into account all the circumstances of this case and in particular the various issues set out in section 33(3) to which I have already referred I am satisfied that the claimant has established that it would be equitable to allow the action to proceed in relation to each. I take the view that, notwithstanding the delay that has occurred, through no fault on the part of the claimant, the ability of each defendant to defend the issue of the extent of liability has not materially been affected and a fair trial of the issue of causation is possible.

205. I therefore direct that the provisions of section 11 of the Limitation Act 1980 shall not apply to this action.

### **The extent of the abuse**

206. I have already indicated that I reject the evidence of the first defendant of how his abuse of the claimant began. I reject his evidence that it was the claimant who groomed him rather than the other way around. I accept the evidence of the claimant that the abuse began after he told the first defendant about the rape by Monteil. I accept his evidence that the first defendant told him that this meant he was gay, that others would despise him if they found out and that his parents would throw him out. By engendering this fear in the claimant and then to promise that he would be his friend notwithstanding that, the first defendant isolated the claimant from his peers, created a dependency by the claimant upon him and groomed him into submission to the sexual acts. I find that this abuse began when the claimant was aged 13. The best evidence of that is the guilty plea by the first defendant to indecently assaulting the claimant when he was that age.

207. The first defendant admits that he indecently assaulted and raped the claimant when he was under the age of 16. He admits that this was rape because of the claimant's age. The tenor of his evidence however was that the claimant was in fact consenting to what occurred. I deal with this point below.

208. The first defendant disputes the evidence of the claimant that during the time he was under age he inserted objects into and attempted to urinate in his anus. It is the first defendant's evidence that he did not insert such objects into the claimant's anus until he was an adult in about 1996 and that he only did so at the claimant's request. He never attempted to urinate in his anus at any time. I again reject the evidence of the first defendant in this respect and consider it more probable that the claimant's evidence about this happening when he was a child is true. The claimant said that the first defendant liked to push boundaries in their sexual activity. There is accepted evidence of this. The first defendant has admitted that oral sex took place between them on the visit to the mosque. He pleaded guilty to this act at Wood Green Crown Court. This was on a day that the mosque was open to other visitors. This is an example it seems to me of risk taking behaviour. The fact that he was prepared to do this makes it much more likely in my view that he did touch the claimant sexually in the sports hall and other areas of the school on occasion notwithstanding there was a risk that others might come in. Another example is the first defendant taking the claimant to Hampstead Heath where other men were having sex. I have already said that I reject the first defendant's account that this was at the instigation of the claimant. It seems to me to show that the first defendant enjoyed pushing the boundaries in his abuse of the claimant. In these circumstances I find it probable that he inserted implements into the claimant's anus at this time.

209. There is however one aspect of the claimant's evidence in this respect that I do not find proved. The claimant said for the first time in his oral evidence in these proceedings

that when he was a child the first defendant tied up his genitals. As this has never been said before I am unable to resolve whether this did occur or whether it is an example of the claimant over-dramatising on occasion to underline his point.

## **Consent**

210. The claimant contends that all sexual behaviour between him and the first defendant was non-consensual up to the point he went to Australia in 1988. It began as a result of the grooming of him at school, such grooming continuing to operate upon him when he left school in 1983/4 until 1988.
211. The first defendant does not seek to argue that for the purposes of liability his sexual activity with the claimant whilst he was at the school was consensual. By his guilty pleas the first defendant accepted that the relevant sexual activity constituted an assault for the purposes of the criminal law. It was made clear that in those circumstances he had taken the view that it would be morally inconsistent for him to argue that he did not commit a “wrong” or that the circumstances in which his “relationship” with the claimant was initiated was not wholly inappropriate. In his defence he accepts that he raped the claimant whilst he was a pupil at the school. He proceeded on the basis that the claimant’s willing participation, as he contended it to be, in the relevant acts does not constitute a defence as such to the present claim but that it is highly relevant to the issues of limitation and causation. He accepted that it was a breach of trust for him, as a teacher, to engage in a “relationship” with the claimant whilst he was still a pupil at the school but this objection diminished in time and ceased to be relevant after the claimant left school in 1984.
212. The second defendants do not in those circumstances contend that it has the defence of consent whilst the claimant was at Highgate Wood School. It argues that the position is different once the claimant had left school and submits that from that point until 1988 any sexual activity between the first defendant and the claimant was consensual. In this regard it submits that the court is presented with conflicting accounts from the claimant himself who on the one hand refers in his witness statement and in conversation with some of the medical professionals to being raped by the first defendant and on the other said to the police in his video recorded interview that there was never any violence or aggression on the part of the first defendant in their sexual activity. He said that it was done sympathetically. There is also a reference in the medical records to the claimant speaking of his relationship with the first defendant as “an affair with a teacher.” It is submitted that the overall tenor of the evidence is that the sexual activity was at all times consensual which is supported by the fact that the claimant continued to seek the first defendant out, went willingly with him to his car and house rather than making efforts to avoid him as he could easily have done. He never lacked capacity to consent. The defence point to the letter from Australia as evidence of a loving relationship rather than non-consensual sex.

213. A person consents to sexual activity with another if they have the freedom and capacity to consent. Submission is not the same as consent. There is no suggestion that the claimant lacked capacity to consent once he reached the age of 16 years. Mr Seabrook argues however that he did not have the freedom to do so, that his freedom was impaired by the grooming and manipulation process. The first defendant had engineered the claimant's dependency upon him and the claimant was required to be used sexually by the first defendant for the dependency to be met.
214. I have already found that the first defendant groomed the claimant from the age of 13 years into believing that he was the only person who, knowing what he was following the rape by Monteil, would be his friend. He isolated him from his peers and family and created a dependency upon him. This dependency explains why the claimant went repeatedly to visit the first defendant in his house and his car and did not seek to distance himself from him. It caused the claimant to feel grateful to the first defendant and willing to do what the first defendant wanted in order to maintain that relationship. With respect to Mr Kent the lack of violence or aggression in the sexual activity is far from determinative of the issue of consent in this case. It is widely recognised that the grooming process obviates the need for either as the child is manipulated by such into submitting to it. That is what I find happened in this case. In those circumstances I consider that the claimant submitted to the sexual activity rather than giving true consent. There was no change in the sexual activity until the claimant went to Australia. I consider that the grooming of him by the first defendant continued to operate at this time such that no true consent was given. I have taken account of the letter written by the claimant to the first defendant when he was in Australia. This does not change my view. Given the nature of the dependency and relationship at the time he went to Australia it is entirely consistent with a young man groomed into sexual activity.

### **Vicarious Liability**

215. The second defendant accepts that they are vicariously liable for the first defendant's actions when he sexually abused the claimant before he left for Franklin House School in 1982. Mr Kent submits that this is not the case after he returned to Highgate Wood in 1983/4. Although the first defendant was still teaching PE at the time he was not teaching the claimant. This means that any sexual activity between them was not sufficiently closely connected to the first defendant's employment as a teacher for the second defendant to be liable for his actions. The test for vicarious liability is plainly not met for the time when sexual activity occurred between them once the claimant had left the school.
216. Mr Seabrook contends for the claimant that the test for vicarious liability is plainly met up to and until the claimant went to Australia in 1988. He submits that the assaults which took place on both occasions when the claimant was a pupil at the school were not part of PE lessons but came about because of the grooming and manipulation by the first defendant in a manner closely connected to his pastoral responsibilities as a teacher. The first defendant had a general responsibility for the claimant as a pupil at

the school and particularly on the weekend sailing trips. This was the case during both times the claimant was at the school. The abuse continued between the times that the claimant was at the school, including him being raped on the sailing trips at the weekend which he continued to attend. The first defendant and indeed any other teacher there would have been responsible for the safety and welfare of the claimant on those trips notwithstanding that he was not a pupil at the school. When considered broadly all of the assaults were closely connected with and arose out of the field of activities entrusted to the first defendant by the second defendants. The first defendant misused his position in a way which injured the claimant. The way that he did so was by grooming the claimant so that he submitted to sexual activity. This was much more closely connected with the first defendant's pastoral role as a teacher than the actual touching. Having so manipulated the claimant as a teacher the location and timing of the actual sexual activity is irrelevant. The later assaults up until the claimant left for Australia were simply a continuation of that behaviour which commenced while and because the first defendant was the claimant's teacher. The conduct was indivisible.

217. The test for vicarious liability was confirmed by the Supreme Court in a review of the law on the matter in *Mohamud v Wm Morrison Supermarkets PLC [2016] AC 677*. I have first to decide whether there was a relationship of employment between the first and second defendant and secondly a sufficient connection between the tort and the relationship such as to make it just that the second defendant should be held legally responsible to the claimant for the consequences of the first defendant's conduct. There is no issue about the former requirement. It is the second requirement which is in issue. In coming to a conclusion I have particular regard to paragraphs 44-46 of the judgment in which Lord Toulson states that these requirements raise two questions for the court's consideration. The first is what "field of activities" were entrusted by the employer to the employee (what was the nature of his job?) and secondly whether the employee misused the position entrusted to him in a way which injured the third party.
218. I have no hesitation in finding that the grooming and manipulation of the claimant by the first defendant was closely connected with his pastoral duties as a teacher. He sought out the claimant after the Monteil rape, asking him what was wrong. Because he was a teacher and trusted the claimant told him. In these circumstances the first defendant clearly misused his position in a way which injured the claimant. Was that connection between the first defendant's employment and his wrongdoing broken when the claimant first left Highgate Wood to go to Franklin House School? I cannot see that it was. The grooming of him took place when he was a pupil and, as I have found, continued to operate upon him until 1988. The claimant continued to go on the sailing trips with his old school which the first defendant supervised. When he returned as a pupil to the school the abuse continued whilst the first defendant was still a teacher there. In my view it makes no difference that he did not directly teach the claimant at this time. He was employed as a teacher. As such he was responsible for the welfare of the children at the school whether he personally taught them or not.

219. I have considered carefully whether the connection between the first defendant's employment and his wrongful conduct was broken after the claimant left Highgate Wood in 1984 such that it would no longer be right for the second defendant to be held liable for them after that time. In my view it was not. The later assaults, as I have found them to be, were simply a continuation of the behaviour that commenced while and because the first defendant was a teacher. This conduct is thus indivisible from that which occurred while the claimant was a pupil at the school. I consider it just in those circumstances for the second defendant to be held liable for it.

### **Causation**

220. There is no dispute that in 2011 the claimant suffered a breakdown such that he could no longer work by reason of his mental ill-health. He has not worked since that time. The reason for his mental health problems and whether they can be attributed to the sexual abuse of him by the claimant some 30-38 years before is very much in issue.

### **The medical evidence on diagnosis and causation**

#### ***Past psychiatric history taken from entries in medical notes***

221. I have already referred to the claimant's consultation with Dr Read in 1996 when he did not disclose the sexual abuse. He described himself in the course of that consultation as bright and flamboyant at school, picked on by his peers and that he left feeling lonely and isolated. Dr Read described him as presenting with symptoms of bulimia. Family history of phobic disorder. Difficulties with maintaining relationships. Low self-esteem, most of his self-esteem comes from his work.

222. On 21<sup>st</sup> November 2011 the claimant was first admitted to the Capio Nightingale Hospital in London for assessment and stabilisation where he remained as an inpatient until 16<sup>th</sup> December.

- i) He was said to have had severe anxiety for two weeks, disturbed sleep, paranoia and irritability. There was a note that he had taken an overdose a few months before, that he was a managing director of KPMG commuting between Paris and Holland and in a civil partnership. A history of abuse of alcohol and cocaine as noted. His mental state examination was noted as obese, anxious, pressure of speech, euthymic/query elated with no suicidal thoughts and no psychotic symptoms.
- ii) An assessment note mentioned "abused/affair with teacher. Still in touch" and that he felt unlovable, lonely and unworthy. There is mention on this note of him being anxious and depressed as a child. Re junior school there is a note that he ran away to go home and that he would go home at play time. "bullied – verbal."
- iii) Dr Basquille, his treating psychiatrist, noted that he had been diagnosed in New York as having ADHD but there was no clinical assessment at that time. Bipolar

Affective Disorder was not the appropriate diagnosis. On discharge Dr Basquille noted the diagnosis as “ADHD and Generalised Anxiety Disorder”.

223. The claimant was admitted to the Capiro again on 11<sup>th</sup> March 2012 where he remained as an inpatient until 25<sup>th</sup> March.
- i) On admission he was noted to have increasing anxiety, panic attacks, irritability, mood swings, no highs mainly lows, loss of interest, poor energy, sleep good. He was still off work, panicking at the thought of it.
  - ii) A mental state examination revealed that he was agitated, pressure of speech, euthymic but anxious including suicidal thoughts. He was said by Dr Basquille to have benefitted from his stay having learnt a lot in group therapy.
224. The claimant was admitted to the Capiro for a third time on 30<sup>th</sup> June 2012 where he remained as an inpatient until 12<sup>th</sup> July.
- i) He presented with panic attacks and anxiety. It was noted that he had recently been interviewed by the police re allegations of child sexual abuse. He had thoughts of life not worth living but denied suicidal intent.
  - ii) On mental examination he had mild agitation, euthymic, no suicidal thoughts and no psychotic symptoms. He was concerned about the impact of the police investigation on his family, particularly his father and considered himself a fraud who was found out by anyone who gets close to him.
  - iii) Dr Basquille noted that he was upset and alienated going through painful revelations and feeling he had no one to support him. He was finding it hard to explore the past. He continued with group therapy.
225. The claimant was admitted to the Capiro for a fourth time on 16<sup>th</sup> September 2012 where he remained as an inpatient until 16<sup>th</sup> October.
- i) He was said to have increasing anxiety and suicidal thoughts precipitated by the ongoing police investigation. The next interview was on 18<sup>th</sup> September. His mental state examination revealed that he was agitated, euthymic and suicidal thoughts. “Concern he may have symptoms of post traumatic stress disorder”.
  - ii) Dr Basquille noted that he felt distressed and empty and was often thinking about death. There is a note from a nurse dated 29.09.12 “Focussing on traumatic experiences. Can experience flashbacks, anxiety and dissociation.”
  - iii) Dr Basquille noted that he was staring and weeping copiously when talking about child sexual abuse by a teacher. He blamed himself for perverting the teacher and found it hard to attribute blame to him. He noted “emotionally unstable personality traits.” The claimant was noted as saying in this period at



the hospital that he feared he would never get better and had the wrong diagnosis. “Intends to seek trauma focussed psychotherapy.”

- iv) In this period of admission the claimant went to Paris for a civil ceremony with his partner FZOR. On his return he was said to have increased panic attacks, depersonalisation and sudden onset of globus hystericus. He wanted to see Barry Small re trauma for one on one therapy. It seems this occurred. It was noted that they had explored the history of the abuse and its effects. It is noted that the claimant “believes the abuse has had a wide spread impact on his life.” Feels disconnected and has difficulty finding a focus for group work. One to one trauma focused therapy was to be considered.

226. The claimant was admitted to the Capio for the fifth time on 18<sup>th</sup> June 2013 where he remained as an inpatient until 26<sup>th</sup> June.

- i) On admission he was noted as having decreased function, poor concentration, desire to run away, feels anxious, low and hopeless, experiencing anger. Panic attacks, poor sleep, preoccupied by different aspects of self.
- ii) Dr Basquille noted “In a state of mental breakdown and incoherence since 2011. Feels worse with loss of confidence.” His diagnosis was “anxiety and depression in the context of emotionally unstable personality disorder and ADHD.”
- iii) A review by the doctor on 22<sup>nd</sup> June is noted “admitted on the 18<sup>th</sup> June, chronic emotional crisis, panic attacks, anxiety, dysphoria, anhedonia, irritable and volatile and minor overdoses.”
- iv) He was discharged at his own request on 26<sup>th</sup> June with a diagnosis of “adjustment disorder F43.2 and emotionally unstable personality disorder F60.3. ADHD F90.0. CSA ICD10 61.5. Note history of substance misuse.” Under past history it is noted that “anxious child, child sexual abuse from eleven to seventeen. For decades fear that he had contacted aids and that he would infect others, constrained by these beliefs. Raped at eleven. Grew to depend on emotional support of his abuser. Believes the episodes of abuse have polluted his life.” It was said that he would benefit from cognitive analytical therapy or dialectical behavioural therapy.
- v) The letter dated 8<sup>th</sup> July 2013 from Dr Basquille, referred to in paragraph 122, details this admission period. It is in this letter that he refers to the claimant having made a suicide attempt after a binge on alcohol, cocaine and benzodiazepines. The letter makes reference to the claimant having experienced hypochondriacal anxiety and panic attacks from the age of 11 following on from the beginning of years of sexual abuse at the hands of a school teacher. It is said to have ended at the age of 17 leaving him socially isolated from his peers and adrift emotionally from his uncomprehending family. For decades he suffered

from a fear of having HIV contracted from the abuser such that his sexual life and career options were constrained. There is reference to none of his family coming to watch him act or swim as a child. He is described as a precocious child, an attention seeker.

227. The claimant was admitted to the Capiro for a sixth time on 27<sup>th</sup> July 2013 where he remained as an inpatient until 24<sup>th</sup> August.

- i) On 31<sup>st</sup> July 2013 Dr Pudukollu, a consultant psychiatrist covering for Dr Basquille, noted “Main problems emotionally unstable personality disorder, child sexual abuse and ADHD. Presenting with low mood. No suicidal thoughts. Should attend group therapy.”
- ii) On 5<sup>th</sup> August the same doctor noted that the claimant felt he has not benefitted from staying in the Capiro. He had a history of child sexual abuse and was unable to have sexual contact. He notes “Has not had trauma focused therapy, it would be of benefit for him to have this. Plan to arrange one on one trauma focused therapy.”
- iii) The doctor noted that a second opinion would be sought. This is what happened and is the reason why Dr Shanahan, the medical director of the Capiro saw him and reported his findings in the letter dated 9<sup>th</sup> August 2013 to which I have already referred at paragraph 123. In that letter he states this “complicated man, problems from childhood, unfortunately I think the sexual abuse has left him indelibly marked psychologically and has affected his personality structure. As is so often the case with abused people, he spent years effectively apologising for having initiated or being complicit in the abuse and with the fact this has left him as a toxic person as he puts it...I think he is keen on a programme that will intensively address his trauma and abuse.” Dr Shanahan advises that a therapist should be identified to give him one to one therapy three times per week and notes the medical centres where there is treatment for emotionally unstable personality disorder.
- iv) The notes record the claimant’s unhappiness in this admission that the therapy at the Capiro has not been beneficial. He felt he needed daily therapy which BUPA were said not to support.
- v) On 22<sup>nd</sup> August Dr Paqualla, a consultant, noted “Borderline Personality Disorder in context of sexual abuse, ADHD, elements of post-traumatic stress disorder.” A referral was made to Dr Rakow, a consultant at the American Hospital in Paris. His diagnosis on discharge was of emotionally unstable personality disorder and ADHD.

228. The claimant’s final admission to the Capiro was on 14<sup>th</sup> to 21<sup>st</sup> January 2014.

- i) On admission he was noted to have low mood, suicidal thoughts precipitated by ongoing hearing in relation to child sexual abuse. He was said to have a history of recurrent depressive disorder, cluster B Personality Disorder, generalised anxiety disorder and ADHD. Prior to admission he was said to have felt low with loss of interest, irritability, guilt, poor self-esteem, poor appetite, withdrawn, suicidal thoughts, anxiety and panic. He had a psychiatric history of hypochondriasis, anxiety and panic in association with child sexual abuse from the age of eleven to seventeen. Socially isolated from his peers and fear of aids.
  - ii) Dr Muller-Pollard, a consultant in general adult and addictions psychiatry, sets out a summary of this admission in a letter dated 8<sup>th</sup> April 2014 at the end of which he sets out the diagnosis of recurrent depressive disorder, generalised anxiety disorder and panic disorder.
229. From 9<sup>th</sup> September 2014 to date the claimant has been seeing Dr Rackow in Paris for weekly therapy sessions. In a report dated 23<sup>rd</sup> February 2016 she concludes that the claimant is suffering from complex post-traumatic stress disorder in the context of sexual abuse by one of his teachers from the age of twelve to twenty one.
- i) She outlines the following symptoms of post-traumatic stress disorder – unstable mood, intrusive memories, reliving and dissociative experiences precipitated by cues which remind him of his abuse. A pervasive sense of guilt and hopelessness. An inability to trust others with dysfunctional interpersonal relationships and social isolation.
  - ii) She outlines the severity and persistence of the first defendant’s abuse, in particular the claimant having to distance himself from his family as he had to constantly lie to them. She outlines his isolation from his peers once the abuse had started.
  - iii) She highlights the development of hypochondriasis, particularly a fear of HIV because of its association with homosexuality he feared would be found out.
  - iv) She outlines his inability to remain in jobs due to a fear of being “found out” and avoidance of blood tests which might unveil his feared beliefs in his HIV.
  - v) Her perception is that the claimant’s suicide attempt occurred in the context of having secured a prestigious job with KPMG and believing his inability to maintain employment would continue.
  - vi) She notes he has been hypervigilant since his teens with feelings of panic and disturbing nightmares. He has feelings of being guilty, shameful and dirty with a fear of being “found out”, such feeling having been present all his life.

- vii) Although he has been in a long-term relationship with FZOR he has never been able to experience any sexual satisfaction within it and is currently repulsed by sexual contact.
  - viii) She concludes that the claimant has experienced profound difficulties in his family, sexual, social and working life which she recognises as sequelae of his prolonged emotional and sexual abuse.
230. Dr Rackow referred the claimant for an admission to the Capiro in September 2017. Her referral letter described the claimant as continuing to suffer from symptoms of PTSD including anxiety, sleep disturbance, feelings of alienation, hopelessness, self-hatred and despair. In 2016, after his interview with Dr O'Neill, the claimant suffered a significant deterioration in his mental health, including suicidal ideation. The request for admission to the Capiro was because he was going to be interviewed in London by Professor Maden and it was thought prudent that he should be admitted at this time. In a letter dated 28<sup>th</sup> November 2017 to Dr Rackow, Dr Muller-Pollard summarises that admission. Under the heading "impression" he states that the claimant has a well-established history of complex PTSD related to childhood sexual abuse, recurrent depressive disorder and harmful use of substances and alcohol. This is his diagnosis at discharge. He was attributed a diagnosis of ADHD in 1996 for which he had treatment for over 10 years. He appeared to have improved since his last admission in terms of his use of illicit substances, alcohol use and self-harming behaviour.

*Agreed expert evidence on diagnosis*

231. In their joint report Dr O'Neill and Professor Maden agree that in relation to psychiatric diagnosis any formulation must address the fact that while the claimant has had some lifelong mental health problems he had only occasionally sought help until in 2011 he suffered a dramatic deterioration in his mental health following which he has extensive treatment and has not yet recovered in the sense of returning to his pre-2011 condition.
232. They agree that before the abuse the claimant's childhood temperament was probably rather hyperactive, attention-seeking, precocious and narcissistic.
233. They agree that the claimant was probably traumatised by the rape by Monteil. They agree that he was probably too frightened to report the attack to his parents, that he was probably worried by the implications of the attack for his own sexuality and probably worried that he had contracted HIV. They agree that following the attack the claimant confided in the first defendant who exploited his emotional distance from his family, his worries about the rape and his emerging homosexuality to lure him into a relationship in which the first defendant sexually and emotionally abused him, such process often being referred to as grooming.

234. They agree that in adult life the claimant suffers from a personality disorder and fulfils the diagnostic criteria for EUPD which is characterised by mood swings and a poorly defined sense of self.
235. They agree that at times the claimant's condition has been complicated by misuse of drugs and alcohol. Assessment of such is complicated as he has given widely differing accounts of this aspect of his life.
236. They agree that the 2011 breakdown was probably an acute deterioration or decomposition of his personality disorder (or complex PTSD if Dr O'Neill's diagnosis is accepted) and that it was similar in nature but more severe than his presentation to Dr Read in 1996. They agree that an alternative formulation would be a depressive episode in the context of personality disorder or complex PTSD.
237. They agree that since the claimant was rejected by the first defendant after the breakdown and since his approach to the police the claimant shifted his attitude and now describes the first defendant as a rapist and the man who caused his mental health problems. He has also described post-traumatic symptoms, some of them presented in florid and extreme terms. They agree that he now says that these symptoms have been present through his life although disagree as to the plausibility of this account. They agree that it is not uncommon for individuals who have been groomed over a prolonged period to perceive the relationship with the perpetrator as trusting and emotionally supportive. They agree it is only when the victim comes to acknowledge the true nature of the relationship that they experience anger and betrayal.
238. They agree that the claimant's present state represents a major change from his pre-2011 state. Dr O'Neill would characterise his present state as complex PTSD. Professor Maden accepts that some experts would call his condition PTSD but points out that the diagnosis is often used loosely. He stands by his formulation of a worsening of personality disorder exacerbated by drug and alcohol misuse or possibly a depressive episode. They agree that for diagnostic purposes the distinction is of relatively minor importance as these diagnoses are different ways of conceptualising a breakdown but they agree that the distinction is important when considering causation and treatment.

***Dr O'Neill's diagnosis of complex PTSD.***

239. Dr O'Neill is of the opinion that the claimant suffers from complex PTSD. The medical profession is currently operating under the International Classification of Diseases (ICD) model 10. ICD-10 is a World Health Organisation publication and the diagnostic manual of choice in European clinical psychiatry. An updated version – ICD-11 - is to be published next year. Complex PTSD is to be accepted as a diagnostic category within that publication. Dr O'Neill produced a copy of the agreed text in the course of her evidence. As there was some dispute in evidence as to the meaning of certain words and phrases it is necessary to set it out in full here.

“Complex post-traumatic stress disorder (Complex PTSD) is a disorder that may develop following exposure to an event or series of events of an extremely threatening or horrific nature, most commonly prolonged or repetitive events from which escape is difficult or impossible (eg torture, slavery, genocide campaigns, prolonged domestic violence, repeated childhood sexual or physical abuse). The disorder is characterised by the core symptoms of PTSD; that is all diagnostic requirements for PTSD have been met at some point during the course of the disorder. In addition Complex PTSD is characterised by 1) severe and pervasive problems in affect regulation; 2) persistent beliefs about oneself as diminished, defeated or worthless, accompanied by deep and pervasive feelings of shame, guilt or failure related to the traumatic event; and 3) persistent difficulties in sustaining relationships and in feeling close to others. The disturbance causes significant impairment in personal, family, social, educational, occupational or other important areas of functioning.”

240. The diagnostic criteria for PTSD are set out in ICD-10 as :

“A. Exposure to a stressful event or situation (either short or long lasting) of exceptionally threatening or catastrophic nature, which is likely to cause pervasive distress in almost anyone.

B. Persistent remembering or “reliving” the stressor by intrusive flashbacks, vivid memories, recurring dreams or by experiencing distress when exposed to circumstances resembling or associated with the stressor.

C. Actual or preferred avoidance of circumstances resembling or associated with the stressor (not present before exposure to the stressor).

D. Either (1) or (2):

(1) Inability to recall, either partially or completely, some important aspects of the period of exposure to the stressor

(2) Persistent symptoms of increased psychological sensitivity and arousal (not present before exposure to the stressor) shown by any two of the following:

- a) difficulty in falling or staying asleep;
- b) irritability or outbursts of anger;
- c) difficulty in concentrating;
- d) hyper-vigilance;
- e) exaggerated startle response.

E. Criteria B, C for some purposes, onset delayed more than six months may be included but this should be clearly specified separately.”

241. Dr O'Neill also produced the NHS guidance for PTSD published on its website. This states that PTSD can be successfully treated, even when it develops many years after a traumatic event. In most cases the symptoms develop during the first month after a traumatic event. In a minority of cases there may be a delay of months or even years before symptoms start to appear. PTSD can develop after a very stressful, frightening or distressing event, or after a prolonged traumatic experience. Prolonged sexual abuse, violence or severe neglect are cited as types of event that can lead to PTSD.
242. The NHS Guidance for Complex PTSD states that this may be diagnosed in adults or children who have repeatedly experienced traumatic events such as violence, neglect or abuse. It states that as it may take years for the symptoms of complex PTSD to be recognised as a child's development, including their behaviour and self-confidence, can be altered as they get older. Adults with Complex PTSD may lose their trust in people and feel separated from others. The symptoms of Complex PTSD are said to be similar as those of PTSD but may include feelings of shame or guilt and difficulty controlling your emotions.
243. Dr O'Neill accepted that PTSD as a diagnosis has its critics who say that it is overused. She agreed that this could happen. It is however a well-recognised condition, appearing in both ICD-10 and the soon to be published ICD-11.
244. Dr O'Neill is of the opinion that the claimant fulfils the criteria for a diagnosis of Complex PTSD which developed in his mid-teens following his abusive experiences and he continues to suffer from this condition. He had been exposed to catastrophic events in the form of severe persistent emotional and sexual abuse, including buggery. This had been lifelong since his mid-teens but there was an exacerbation of his post-traumatic symptoms and depressive symptoms at times of stress or when exposed to cues which reminded him of the abuse such as contact with the police or legal proceedings. He relives his abuse in the form of intrusive memories and flashbacks. He is hypervigilant and avoidant of cues which remind him of the abuse.
245. Dr O'Neill said that the claimant's abuse occurred early in life, was severe, prolonged and associated with emotional abuse. Repeated abuse in childhood at a time of personality development impacts on the normal development of personality. Individuals with Complex PTSD have in addition to classical symptoms of PTSD symptoms of enduring personality change, many of which overlap with EUPD – borderline type. These include disturbance of self-image and identity, difficulty with trust and attachment, fear of abandonment, poor self-esteem, mood instability, self-destructive tendencies and chronic feelings of emptiness.
246. Dr O'Neill is not of the opinion that the claimant suffers from ADHD. A diagnosis of Complex PTSD incorporates symptoms of EUPD, borderline type which include unstable mood, unstable identity, unstable relationships and a fear of abandonment. It also incorporates classical symptoms of PTSD such as reliving experiences, hypervigilance and avoidance. It is a more appropriate diagnosis as it incorporates the

broad range of the claimant's symptoms. It is not necessary for a diagnosis of Complex PTSD for the sufferer to experience PTSD symptoms throughout the illness. The definition states that the sufferer must have experienced each of the symptoms of PTSD at some time in the course of the illness. In her view the claimant had psychological difficulties very early on. He reported anxiety and bulimia and Dr Read noted in 1996 his low self-esteem. A disturbance of his personality was evident early on before the florid symptoms. Flashbacks and hypervigilance came later.

247. Dr O'Neill said that the claimant was in a position at the time the abuse was occurring whereby it was impossible or difficult for him to escape. This phrase in ICD-11 does not mean that the difficulty in escaping has to be geographical. The claimant's relationship with the first defendant was at the time of the abuse the only trusting relationship the young vulnerable boy had. The nature of it meant that he could not escape it – he had no one else to turn to. The child victim of exploitation becomes dependent on the groomer. Early on where the victim is groomed they do not see the relationship as exploitative. They have no proper understanding of the nature of the relationship. That does not mean it is not abusive or not traumatic. It can take time for an individual to understand what happened. It took the claimant a long time to come to a proper understanding of it as he relied emotionally on the first defendant until 2011.
248. The criteria that the individual should suffer persistent difficulty in sustaining relationships is met in this case. Dr O'Neill recognised that the claimant had been with his partner, FZOR, for 25 years. This does not mean that they have a close and fulfilling relationship. They have not shared a bed or room. Both of them described sexual relations as difficult between them.
249. She accepted that the claimant was at pains to say that the abuse of him was neither violent nor aggressive. This she said was why she preferred the diagnosis of Complex PTSD over PTSD. This diagnosis does not just highlight trauma but is applicable where there are PTSD symptoms and damage to personality when the abuse has occurred over a long period of time. It affects self-identification and emotional instability causing the sufferer to struggle with inter-personal relationships.
250. She did not accept that for there to be a diagnosis of Complex PTSD the individual had to be aware at the time of the abuse that it was traumatic. In her view the definition did not require such. Child sexual abuse was very different to one off trauma such as a bomb going off. The repeated nature of the abuse and the emotional component of it is in the context of grooming and a consequent trusting relationship. It is about the damage caused by repeated abuse in that context at a time someone's personality is forming.
251. She said that the diagnosis of PTSD was correct notwithstanding the ongoing relationship between the claimant and first defendant over the years and the texts sent by the claimant in 2009-2011. It was impossible to look at the later events without looking at the earlier ones because of the way the relationship developed.



252. She was not of the view that the symptom of avoidance necessary for a definition of PTSD and therefore of Complex PTSD had to be physical avoidance. This can relate to the avoidance of memories and difficult emotions associated with the abuse.
253. Dr O'Neill accepted that PTSD only started to be mentioned as a possible diagnosis on the claimant's 4<sup>th</sup> admission to the Capio. She said that he only had short admissions to hospital before this when the clinicians would not always get a proper understanding of the patient's difficulties or the chance to carry out any intense psychological work. This 4<sup>th</sup> admission was in 2012, the year that the claimant had gone to the police and started talking about the abuse. This would have brought the past to the forefront of his mind and cause more pronounced PTSD symptoms. An individual does not get flashbacks all at once. These things develop.
254. She said that in 2011 the true nature of his relationship with the first defendant became clearer to the claimant who felt abandoned. He started to reflect on his past. With the lengthy police interviews he became more preoccupied with the past and developed intrusive memories and flashbacks. His illness thus evolved. It was not caused by therapy.
255. Dr O'Neill was also of the opinion that the claimant in the past would have fulfilled the criteria for Harmful Use of Alcohol and Substances but is currently in remission. Many individuals with Complex PTSD will use substances to self-medicate and block out reliving and distressing mood states. His substance misuse therefore arose as a consequence of his abuse.

***Professor Maden's evidence on diagnosis***

256. As already mentioned in paragraph 136 above Professor Maden in his report stated that in his view the inconsistencies and variations in the claimant's account are so great that he would be reluctant to rely on his uncorroborated account as the basis of any diagnosis.
257. He has nonetheless said that as an adult the claimant suffers from a personality disorder and has prominent features of EUPD (category F60.3 in ICD-10). This personality disorder is characterised by: a poorly defined sense of self; mood swings; and a disturbance in the boundary between the internal and external worlds or between fact and fantasy. In addition he has features of a histrionic personality disorder (category F60.4 in ICD-10). They include a tendency towards self-dramatisation, theatricality, an exaggerated expression of emotions, a seeking for excitement in activities in which he is the centre of attention and at times a shallow and labile affectivity. He notes that Dr Read in 1996 identified narcissistic traits which are often found alongside these two conditions.
258. Dr Read recognised the personality disorder but also saw that the claimant functions well for most of the time. He did not need therapy at that time as he bounced back to

his former state. The claimant did not tell Dr Read about his cocaine use at the time. This had probably made his problems worse. The witness statements confirm his usually good level of occupational and social functioning until the 2011 breakdown.

259. At times the claimant's condition has been complicated by misuse of cocaine and alcohol. He sought out other stimulant drugs earlier in his adult life, particularly when he had symptoms of an eating disorder. Bulimia and binge eating are often seen in association with EUPD and are best seen as an aspect of that condition. Assessment of his substance misuse is complicated because the claimant has in his view given widely differing accounts, saying in 2013 that a binge on alcohol, cocaine and benzodiazepines had contributed to his 2011 overdose. The November 2011 notes of his hospital admission identify problems with alcohol and cocaine. In Professor Maden's view on balance he was probably suffering from harmful use of drugs and alcohol before his breakdown, exacerbated by his loneliness and isolation in his work in Amsterdam. It is not surprising that he found this stressful. Excess use of drugs and alcohol is not uncommon in men forced to work away from home, especially when there is a history of such.
260. The 2011 breakdown was probably an acute deterioration or decompensation of his personality disorder, of a similar nature to his presentation to Dr Read in 1996. An alternative formulation would be a depressive episode. Professor Maden preferred the former because features of EUPD are so prominent. Both are forms of affective or emotional disturbance.
261. After the breakdown the claimant felt rejected by the first defendant whom he regarded as his best friend. In a way typical of EUPD he rejected him. Since then, and particularly since the disclosure to the police in 2012, the claimant has come to see the first defendant as a rapist and the cause of all his problems. He has also described post-traumatic symptoms in florid and extreme terms. Professor Maden finds his description of experiencing these throughout his life implausible. Dr Read found nothing of that nature in 1996 when the abuse was relatively recent. Professor Maden would have expected any symptoms to be more florid than 15 years later. He views these claims as a manifestation of the claimant's personality disorder.
262. Professor Maden said that trauma and PTSD had dominated the thinking of mental health professionals in recent years to the extent that adverse life events were now being referred to as trauma. This is what he thought had happened in this case. He did not agree with this approach. He shared with other experts reservations about PTSD and complex PTSD in general. There is extensive discussion amongst professionals about it. By the standards of the rest of medicine psychiatry does not have diseases but symptoms. This is because there is a lack of underlying pathology and objective testing for there to be recognised diseases. A unique feature of PTSD is that it seeks to establish the cause of the symptoms. No other psychiatric diagnosis does that because the causes are unknown. On the basis of empirical research it cannot be said that trauma causes PTSD. Most people who experience trauma do not go on to suffer PTSD. Some who

experience minor trauma do. There are two camps. Those who believe in PTSD and those who do not. He has a problem with PTSD and believes it to be a mistake to create another condition based upon it. The new category (complex PTSD) extends the false claim that we know the cause of the diagnosis to also include EUPD. In his view to say that relationships can lead to EUPD and that can be seen as trauma is misleading and absurd. He said that the job of the World Health Organisation was to reconcile various professional and conflicting interests. The diagnoses and categories were decided by committees. A committee decided to include complex PTSD in ICD-11.

263. Professor Maden would not make a diagnosis of PTSD. The claimant did not find the abuse traumatic at the time so in general terms it is an unlikely cause of PTSD. He did not have PTSD when he saw Dr Read in 1996. The evidence is completely contrary to any avoidance on the claimant's part. He was emotionally attached to the first defendant and sought out contact with him over many years, long after any sexual activity had ceased. Complaints of post-traumatic symptoms first appeared not only many years after the abuse but also a considerable time after the claimant rejected the first defendant and relatively late in the claimant's breakdown.
264. He said that the claimant's current state represents a major change from his pre-2011 state. He accepted that some experts would call it PTSD but the diagnosis is often used very loosely. He stands by his formulation which receives further support from the fact that the case has been treated assertively as one of PTSD and treatment has been ineffective.
265. In evidence Professor Maden clarified that in his view this case does not meet the criteria for Complex PTSD. It is his understanding of the criteria that for such a diagnosis the individual must have been exposed to events of an extremely threatening or horrific nature and perceived them as such at the time. In support of this view he said that this condition was originally diagnosed in those involved in combat situations. If it was intended that the condition could be diagnosed in those who did not recognise events as traumatic at the time he believed this would have been stated in clear terms.
266. Professor Maden interpreted "avoidance" as physical avoidance. The claimant was contacting the first defendant for many years after the abuse. He was not avoiding him. This would be unusual if the nature of the abuse had been traumatic. The tone of the text messages sent is fond and sexually explicit. This is entirely inconsistent with a desire to escape from trauma. The fact that a child may be groomed into accepting certain behaviour within a relationship is precisely why PTSD is not an appropriate diagnosis for someone who was a teenager when this occurred.
267. Flashbacks occur when intrusive memory is accompanied by a sense of reliving the experience with the emotions that accompanied the original experience. It is highly problematic if the claimant is now recalling events from 35 years ago accompanied by very different emotions now from those he experienced at the time. He is not re-experiencing what he experienced earlier.

268. In terms of an inability to escape from the first defendant in adulthood it is not correct to say that the claimant had no one else to turn to. He has been with his partner, FZOR, for 25 years. This appears to be a stable mutually supportive relationship. It is unusual to see with those who have borderline personality disorder, especially with those who have suffered childhood sexual abuse which often damages the ability to sustain intimate personal relationships.
269. It is of note that Dr Muller-Pollard, a trauma specialist, did not diagnose the claimant with PTSD in 2014. The diagnosis appears to have evolved for a range of reasons since the claimant decided to go to the police.

***Parties' contentions on diagnosis.***

*The Claimant*

270. Mr Seabrook submits that where the opinions of Dr O'Neill and Professor Maden diverge the court should accept that of Dr O'Neill, a practising clinician, on the basis of its consistency, coherence and thoughtfulness. Professor Maden's opinion was erratic, unfairly critical and extravagant. Mr Seabrook points to the fact that he has been out of clinical practice since 2012 and submits that his views are out of date and out of touch with what is happening in the world. This, it is suggested, is illuminated by his views on PTSD and complex PTSD which fly in the face of modern thinking and WHO recognition.
271. The diagnostic category of complex PTSD is widely recognised by clinicians as can be seen by the NHS guidance and is a good fit with the claimant's history and condition. In terms of the trauma necessary for a diagnosis of this condition a distinction is clearly drawn between sexual violence or assault and sexual abuse. The terms are used separately and can only be intended to connote different types of experience. Sexual abuse plainly refers to sexual activity submitted to following grooming, notwithstanding that such may amount to a legal assault. Sexual violence or sexual assault refer to an attack. Childhood sexual abuse is more likely to lead to complex PTSD. The diagnostic category is intended to be of greater relevance to cases of sexual abuse than sexual assault. This is why there is now a separate and recognised condition of complex PTSD which caters for more developing situations than one off events. There would be no need for it if PTSD covered every situation.
272. There is nothing in the definition of complex PTSD which says that the victim must be aware at the time of the traumatic nature of the event. Escape in the claimant's case was impossible as he had great difficulty in seeing it as abuse by reason of the grooming of him.

*The first Defendant*

273. Miss Foster submits that the diagnosis of complex PTSD cannot be justified. For that to be right the gatekeeping criteria of PTSD have to be met. They are not. PTSD is

characterised as a delayed or protracted response to a stressful event or situation (of either brief or long duration) of an exceptionally threatening or catastrophic nature, which is likely to cause pervasive distress in almost anyone. Even on the claimant's own case it was not. Whilst the response can be delayed for a matter of weeks or months, any more extensive delay is not within the contemplation of the diagnostic criteria.

274. Dr O'Neill has failed to undertake an objective analysis of the available historical information and imposed her own subjective view on the matter. Professor Maden by contrast has applied an objective analysis and properly concludes firstly that the task of diagnosis is rendered difficult by the passage of time and secondly that the diagnostic criteria of complex PTSD are not met.

#### *The second Defendant*

275. Mr Kent submits that the wording of the new definition for complex PTSD does not cover this case. Dr O'Neill's attempt to explain that it does should be rejected as it is an interpretation that would deprive it of all utility. A sexual act willingly engaged in by a boy old enough to understand the nature of the act cannot be "an event of an extremely threatening or horrific nature". This remains true even if it is repeated many times as long as there is no coercion or violence. In this regard Dr O'Neill agreed that for many years the claimant did not complain because he did not regard the relationship as an abusive one.
276. The requirement that the event must be one "from which escape is difficult or impossible" also cannot be satisfied when the activity has been sought by the claimant and takes place in circumstances where he not just attends voluntarily but is free to leave at any time.
277. It cannot be said that all diagnostic requirements of PTSD are met.

#### **Discussion and findings on diagnosis.**

278. The psychiatrists agree that the claimant suffers from EUPD and that there can be considerable overlap in psychiatric conditions. The question here is whether or not there is, as Dr O'Neill argues, an overlap with complex PTSD.
279. Professor Maden has expressed reservations about whether PTSD is ever an appropriate diagnosis and therefore whether complex PTSD can be. I accept his evidence that there are others in his field of expertise who feel the same way. This is a respected view. However in circumstances where the WHO has included PTSD in ICD-10 and indeed found it necessary and appropriate to include a definition of complex PTSD in the proposed ICD-11 I accept that these are recognised conditions and that the question in this case is not whether such a diagnosis can ever be made but whether it is the correct diagnosis in this case. It is also obvious that there are differences between PTSD and

complex PTSD. Were that not the case there would have been no need for complex PTSD to have been recognised at all.

280. I begin by considering whether complex PTSD as defined in ICD-11 is capable of application in cases such as this where the claimant has come to realise in later years that he was abused, having been groomed in childhood to behave as the first defendant required.
281. The first question is whether, in order for a diagnosis of complex PTSD, it is necessary for the individual concerned to have appreciated at the time the events were happening that they were traumatic. I have considered carefully the opinions of both psychiatrists on this matter and come to the conclusion that Dr O'Neill is probably right on this issue. There is nothing in the wording of the new definition to that effect. It is recognised in the definition that repeated childhood sexual abuse may amount to "a series of events of an extremely threatening or horrific nature." It is a disorder that "may develop following exposure to an event or series of events" of that nature. It seems to me that complex PTSD is designed to cover precisely circumstances where the events evolve over time rather than a sudden dramatic trauma which is adequately and properly covered by PTSD. Children who are groomed have no proper understanding at the time of the nature of the relationship. That does not mean it is not abusive or not traumatic. It can take time for an individual to understand what happened.
282. Next I have considered the related point of whether childhood sexual abuse can be said to be "an event or series of events of an extremely threatening or horrific nature" in circumstances where the child in question has been groomed and is therefore acquiescing to what is happening. I have already found in this case that the claimant was groomed by the first defendant and submitted to the sexual acts rather than consented to them. With respect to Mr Kent his representations that the claimant "willingly" engaged in the sexual acts ignores both the aspect of grooming and the evidence of the claimant himself to the effect that he tolerated what was happening as "just what happened" with the first defendant whom he perceived, at the first defendant's instigation, to be his only friend. I accept that evidence. Childhood sexual abuse is given as an example of such events in the ICD-11 definition. The definition speaks of "childhood sexual or physical abuse". It does not state that the abuse has to be violent to qualify. I do not accept the proposition that childhood sexual abuse following grooming of a teenager who understands the nature of the acts cannot be defined as of either an extremely threatening or horrific nature.
283. For a diagnosis of complex PTSD to be made the event or events have to be such "from which escape is difficult or impossible". I do not accept the defence arguments that this is confined to circumstances where someone is effectively physically imprisoned such that they cannot escape. One of the examples given of such events in the definition is prolonged domestic violence. Rarely in these circumstances is the woman (as it usually but not exclusively is) at all times in the relationship incapable of physically walking out of the door of the house, away from the perpetrator and asking the police for help.

She stays often for a multitude of reasons including because she feels unable to escape what is happening. The same may be said of children who have been groomed. It is often the fact and circumstances of the grooming which leads to a dependence on the perpetrator that makes it difficult or impossible for the child to escape. I accept Dr O'Neill's evidence on this point.

284. It follows that I accept the evidence of Dr O'Neill that complex PTSD is an available diagnosis for those who come to realise in adulthood the nature of their childhood sexual abuse where they were groomed into acquiescence at that time. The question is whether Dr O'Neill is correct in her diagnosis of the claimant suffering from this disorder.
285. For the reasons set out in paragraphs 168-170 above I do not accept Professor Maden's evidence that a diagnosis of the claimant cannot be made because of the number of inconsistencies and variations in his account. I have already rejected his findings of inconsistency in certain areas and found that he has made assumptions not borne out by the evidence. It follows that I do not accept this analysis of the case.
286. Having heard the evidence of both psychiatrists tested over several days I accept the evidence of Dr O'Neill and find it more probable than not that the claimant is suffering from complex PTSD. In so finding I take into account that she is not alone in this diagnosis. Other psychiatrists who have had greater involvement with the claimant, including Dr Rackow and Dr Muller-Pollard, have also come to this view. Before either of them came to be involved, at the claimant's 4<sup>th</sup> admission to the Capiro in September 2014, the professionals were noting concerns that he may have symptoms of PTSD. There was later talk of trauma focused therapy.
287. During the course of the second defendant's cross-examination of the claimant it was suggested to him that it was at his insistence that the clinicians at the Capiro changed their diagnosis from personality disorder to trauma in order that BUPA would meet his claim. The claimant accepted that BUPA had rejected his claim on the basis of the diagnosis of EUPD but denied that he did more than ask Dr Basquille to write to them. This was the reason for the 2013 letter which was not shown to him in advance. He denied that he was the one who had suggested trauma. It was his therapists who first suggested he might benefit from trauma therapy. He was fully confident in his specialists and wanted a proper diagnosis, whatever that might be, to enable him to get better. I accept the evidence of the claimant in this regard. Psychiatrists are professional people. I do not accept that those who have successively diagnosed the Claimant with trauma have done so at his request rather than exercising their own professional judgment.
288. I recognise that the claimant had been an inpatient in the Capiro on three occasions before there is any mention of PTSD but this does not in my view negate the subsequent diagnosis. Nor does the failure of Dr Read in 1996 or Dr Muller-Pollard to make the diagnosis in 2014 do so. The claimant saw Dr Read once in 1996 and did not tell him

of the abuse. He could not have been expected to consider PTSD in those circumstances. It seems that it was as the claimant started to speak with the police and the abuse came to the forefront of his mind that the symptoms became more obvious. It is entirely understandable that in those circumstances the diagnosis was not considered until around that time. The claimant's first three admissions to hospital were short. As Dr O'Neill said the clinicians would not always get a proper understanding of the patient's difficulties or the chance to carry out any intense psychological work. When Dr Muller-Pollard wrote his second letter in 2017 he had the benefit of the claimant's presentation in the three years since his first in 2014. It can be properly assumed that this caused him to come to a different professional view.

289. I am of the view that all the requirements of PTSD have been met at some point in the disorder. In so finding I accept that these requirements do not all have to be present at the same time. The report of Dr Rackow (see paragraph 222 above) sets out all of the symptoms of PTSD suffered by the claimant over the years. There is reference to flashbacks in the earlier notes as well as persistent symptoms of increased psychological sensitivity and arousal shown by difficulty in sleeping, irritability and anger, difficulty in concentrating and hyper-vigilance.
290. I accept the evidence of Dr O'Neill that there is also evidence of internal avoidance on the claimant's part. I reject the suggestion that such has to be physical avoidance. For many years it can properly be said that the claimant did not physically avoid the first defendant. I recognise that the claimant met with the first defendant not only when he was at school but also from time to time through the years before 2011. I have taken into account the texts from him said to be sent 2009-2011. I have already accepted the claimant's account that this was to secure the attention of the first defendant which would not otherwise have been forthcoming. I have accepted the claimant's evidence that he would contact the first defendant in times of crisis. All of this in my view is evidence of the ongoing effect of the childhood grooming of him and his belief, as he was told by the first defendant when young, that he was a horrible person whom most people would despise. It does not preclude a diagnosis of complex PTSD.
291. In determining whether the claimant has had persistent difficulties in sustaining relationships over the years I have looked carefully at his relationship with FZOR. This has been a longstanding relationship. I do not however see it as a close and intimate one. This may in part be because the claimant has lived and worked away for a considerable amount of their time together but it is clear too that there have always been problems with the sexual and intimate side of their relationship. In so saying I have no wish to be critical. FZOR has on any view been wonderfully supportive of the claimant for many years in spite of all of the difficulties. It is this in my view that has kept them together rather than any ability on the part of the claimant to sustain a relationship.

## **Causation of EUPD and Complex PTSD**

### ***Agreed expert evidence on causation***



292. The experts agree that the causation of most psychiatric and psychological problems is multifactorial with both genetic and environmental factors playing a part. They agree that some of the facts relating to the claimant's early childhood are uncertain so it is difficult to know how his pre-abuse temperament came into being.
293. They agree that because of his temperament and the experience of being raped, by the time the sexual abuse at the hands of the first defendant began the claimant had already suffered psychological damage. There is disagreement about the extent of it. They agree that any previous premature sexual experience of a child increases the risk of further sexual abuse.
294. They agree in their joint report that in any event the claimant would have had difficulty coming to terms with his homosexuality. This is on the basis that he concealed the fact from his family until 2011. (In fact the claimant and his sister FZOJ gave evidence that although it was not talked about the claimant's family did go to visit him in Paris and became aware that he was living with FZOR).
295. They agree that the sexual abuse perpetrated by the first defendant is the sort of abuse that one would expect to exacerbate an EUPD or borderline disability. In the joint report it was made clear that Dr O'Neill believed the abuse by the first defendant was the main cause of the claimant's EUPD/Complex PTSD while Professor Maden believed that, although the abuse made his personality disorder worse than it would otherwise have been, it was not the main cause of his mental health problems. This was particularly because the claimant maintained a friendship with the first defendant for decades afterwards. In evidence Professor Maden said that if the court accepted the claimant's account that he was groomed in the way that he said he was his opinion on this matter would be different.
296. They agree that the 2011 breakdown was precipitated by the claimant's loneliness and isolation when commuting to work in Amsterdam and exacerbated by his use of alcohol and drugs. They agree that the abuse was relevant to the extent that it contributed to his personality disorder and therefore to his vulnerability.

***Dr O'Neill's evidence on causation.***

297. Complex PTSD by definition is caused by repeated traumatic events. Clinical evidence to support this in the claimant's case is the timing of the onset of his symptoms which coincided with the abuse, the content of his intrusive memories and flashbacks which reflect his abuse by the first defendant and the cues which precipitate intrusive memories which remind him of it.
298. The rape by Monteil contributed to the claimant's post-traumatic symptoms but it was a one off event, in contrast to the severe and persistent abuse by the first defendant which had a strong emotional component. On the balance of probabilities it was an insignificant factor in the claimant's complex PTSD.

299. When considering the causes in later life created by trauma it is important to consider the question of bullying. It can be very traumatic. Dr O'Neill formed the impression that there was not a lot of bullying of the claimant in junior school. The text sent by the claimant to the first defendant in which he stated that he did not want to go to the reunion in which he says that "Unfortunately for the victims of malice such as me it doesn't quite work that way. We are moulded and traumatised to such an extent that we don't really have a choice in our future. Years of being ridiculed and belittled take a toll." does not change this view. It seems unwarranted on the basis of a text saying he had no interest in attending his junior school reunion to make the assumption that junior school was very traumatic/abusive and could have caused the claimant's complex PTSD. This is especially so against the background of his success in swimming and acting at that school.
300. She accepted that the bullying developed more in Highgate Wood School where it was quite severe. It is difficult to know how much that was tied in with the abuse. Dr Read's report in 1996 said that the claimant had told him that he was bullied at school because he was flamboyant. Dr O'Neill was of the view that this report should carry little weight as the claimant did not disclose the abuse to Dr Read.
301. There are no other traumatic events in the past which could account for the claimant's presentation. The abuse by the first defendant was prolonged, severe and accompanied by emotional abuse. She is of the opinion that the abuse by the first defendant caused the claimant's complex PTSD.

***Professor Maden's evidence on causation***

302. A paper written by Rind and Tromovitch in 1998 entitled "A Meta-analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples" is an early example of studies to tease out the effect of childhood sexual abuse from other adversity in adulthood. Its results showed that child sexual abuse is not always as damaging as is thought. The authors distinguish between abuse in adolescence where the child is fully compliant with that of those who have been abused in early life or where the abuse has been violent. The authors highlight that one possible approach to a scientific definition of child sexual abuse is to focus on the young person's perception of his willingness to participate and his reactions to the experience. A willing encounter with positive reactions would be labelled simply "adult-child sex". "Child sexual abuse" is a more valid term if the young person felt they did not freely participate in the encounter or experienced negative reactions to it.
303. Professor Maden relied on what he found to be the inconsistencies in the claimant's account of the means of his family, in the fact that he said his parents never came to see him swim or act and his account of his problems as opposed to what is contained in the school records as the basis for his opinion that it is difficult, if not impossible, to determine the cause of the claimant's mental health problems. These leave the facts of

his childhood uncertain. Assessment of the causes of personality disorder depends to a large extent on the childhood history.

304. The rape by Monteil, on the claimant's account traumatised him, created or increased distance from his parents, caused him to worry about his sexual orientation and contributed to his fears about HIV. It was a severe assault and is likely to have caused lasting damage.
305. The sexual and emotional abuse by the first defendant occurred later and was at the severe end of the spectrum. It involved penetrative abuse from about the age of 14. It is common ground that it was not aggressive or violent. The claimant's account is of the seduction and manipulation of a teenage boy by an older man. In psychiatric terms any form of previous premature sexual experience increases the risk of further sexual abuse. The claimant, as a result of the rape by Monteil, has substantial psychological problems before he encountered the first defendant.
306. The damage from the abuse by the first defendant would be to the developing personality. It is the sort of abuse which would be expected to exacerbate a developing EUPD or borderline personality disorder that had already been exacerbated by the Monteil rape. The claimant probably had disturbed interpersonal boundaries and a disturbed and uncertain sense of self. The likelihood is that the abuse by the first defendant would worsen those problems.
307. The claimant's early history suggests he was temperamentally predisposed to have histrionic, emotionally unstable and narcissistic personality traits. The rape by Monteil would have worsened those traits. It is likely that the claimant would have developed a personality disorder in adult life even if the abuse by the first defendant had not occurred. That abuse probably made his personality disorder worse than it otherwise would have been. He agreed with Dr Shanahan's view in 2013 that the claimant's personality was "indelibly marked psychologically" by the abuse.
308. Professor Maden expressed in his report his view that the abuse did not make more than a minor contribution to the claimant's mental health problems based on the fact that the claimant maintained what could only be called a friendship with the first defendant for decades afterwards. As I have indicated Professor Maden said that if the claimant's account of how the abuse started and what the first defendant said to him were accepted by the court he would not hold to this view.
309. The text from the claimant to the first defendant relating to the invitation to his junior school reunion is of great importance. It shows that at the age of 40 the claimant still considered himself to have suffered traumatic and life-changing experiences there. The personality is far more likely to be damaged by experiences at junior school than at the age of 14 or later. The text says he had no friends there. Early difficulties in peer relationships are widely acknowledged to be a poor prognostic indicator. The fact that the claimant still felt so strongly about it at the age of 40 indicates that this did in fact

damage his personality. It is now known that bullying has a persistent and pervasive impact with an increased risk of mental health problems in adult life. Professor Maden clarified in evidence that he was not saying this bullying was more likely than the abuse to have caused the claimant's mental health problems but that it was an important factor to consider when looking at the question of causation.

310. The sexual content of many of the texts are inconsistent with the presence of any PTSD symptoms arising from childhood sexual abuse. Rather it confirms the strength of the emotional and sexual intimacy that characterised the adult relationship between the claimant and first defendant.
311. He does not believe that the abuse or the claimant's mental health problems affected his education, relationships to any great extent (particularly that with FZOR) or work until the 2011 breakdown.
312. The claimant managed his personality disorder by constructing an environment in which he functioned adequately and sometimes well. The reasons for the breakdown in 2011 were loneliness at work, exacerbated by commuting between Paris and Amsterdam and "increasing use" of cocaine and alcohol. Cocaine is particularly bad for people with EUPD because it exacerbates mood swings. This view is based on the letter written by Dr Basquille in July 2013 to the effect that prior to the 2011 suicide attempt the claimant had been bingeing on cocaine, benzodiazepines and alcohol. He accepted that if this was incorrect he would have to reconsider this conclusion.
313. Professor Maden does not believe that the abuse by the claimant played any role in the 2011 breakdown. In the immediate aftermath of it he did not attribute it in any way to the abuse. It was only after their row and his rejection of the first defendant that he started to blame the first defendant for his problems. He does not believe that the abuse was of any great or lasting significance to the claimant until after he perceived the first defendant offered him inadequate support on his breakdown. His growing preoccupation with the abuse and its impact since has been encouraged by his treating clinicians who have seized on the abuse as the cause of all his problems.

### ***The parties' contentions on causation***

#### *The claimant*

314. Mr Seabrook submits that the court should reject Professor Maden's view that the abuse by the first defendant was not the main cause of the claimant's mental health problems. It was by a long way the most significant event in the claimant's childhood. The other matters raised by Professor Maden and the defence are minor in comparison.
315. There is no evidence that his home life was anything out of the ordinary. His parents seemed supportive in his wish to attend stage school when at junior school and in moving him to Highgate Wood when he seemed not to be sufficiently intellectually stimulated at Wood Green School.

316. The rape by Monteil was an important adverse event but was a single incident lacking emotional context. Treating clinicians have not regarded it as being of great significance. The rape was compounded by the first defendant's use of it in grooming the claimant who was led to believe that he was a horrible person who would be despised if it got out that he was now gay. This has coloured the claimant's entire life. The rape and the start of the first defendant's abuse were also close together in time.
317. The only evidence about bullying at junior school comes from a single text in which the claimant vents about bullies in general. The claimant gave evidence that the man organising the reunion was the single person at Devonshire Hill who teased him about his swimming and acting. He has been consistent in his account that he enjoyed his time there, such evidence supported by his sister, school reports and his teacher who made a point of looking out for bullying. The text should be seen in the context of the claimant having EUPD which can lead to such outbursts.
318. The evidence regarding the claimant's time at junior school is wholly inconsistent with Professor Maden's opinion that he had substantial psychological problems before he encountered the first defendant.
319. The claimant's developing personality was damaged by the first defendant forcing him to inhabit a world where he did not fit in with teachers or fellow pupils. The isolation from the latter led to severe bullying which forced him out of Highgate Wood before he took any public examinations. By the time he left he was dependent on the first defendant for a sense of safety and acceptance. He was isolated from his family by being forced to lie to them and disrupting family life. His behaviour caused arguments between his parents as his mother would defend his unreasonable behaviour.

#### *First defendant*

320. Miss Foster relies on the evidence of Professor Maden to the effect that it is not possible to conclude that the assaults have any direct relevance to the claimant's breakdown in 2011.
321. She submits that Professor Maden's evidence does not justify the conclusion that the assaults exacerbated the claimant's personality disorder which in turn "materially contributed" to the breakdown in 2011. His evidence is no higher than that the mechanism of exacerbation is a possibility and there is no evidential basis upon which the court could quantify such a contribution.
322. There is no evidence that "but for" the assaults in the 1980s he would not have suffered his breakdown in 2011.

#### *Second Defendant*

323. Mr Kent relies on the fact that studies reveal that childhood sexual abuse does not in most cases lead to mental health problems in later life. There is thus no reason for Dr

O'Neill to make the assumption that childhood sexual abuse caused the claimant's EUPD or Complex PTSD, especially where, as here, the conduct was consensual.

324. There is evidence which contradicts the claimant's account that he was bullied at Highgate Wood School because of his isolation from his peers caused by the abuse. He told the police in interview that he was bullied as he was really entrepreneurial and different and that he had a lonely and isolated childhood. He started being called names such as "weirdo" and "poof or queer" and was generally bullied for being different. This culminated in him being confronted one evening by pupils with chains and other weapons. This was the reason that he left Highgate Wood. He told the court in evidence that it was this that ruined his education.

### **Discussion and finding on causation**

325. I have already indicated that I do not accept Professor Maden's characterisation of some of the evidence as inconsistent. I do not therefore accept his proposition that by reason of the same it is difficult/impossible to reach a conclusion on the probable causes of the claimant's mental health problems.
326. I have found the probable correct diagnosis of the claimant's mental health problems to be complex PTSD. In coming to that conclusion I have rejected Professor Maden's opinion. It does not follow that on that basis I necessarily reject his evidence on the possible causes of those problems. This is because both psychiatrists agree that the claimant suffers from EUPD which has many similar characteristics to complex PTSD. On Dr O'Neill's evidence there is an overlap between the two conditions. It is right in those circumstances that I consider the merits of Professor Maden's opinion when coming to a view on causation.
327. I accept the general proposition that not everyone who has been sexually abused in childhood will go on to experience mental health difficulties as an adult. Both psychiatrists agree that the impact of experiences on an individual will depend on the personality that individual already has. The question is whether and to what extent the accepted abuse impacted on the claimant with the personality he had and caused his mental health problems. In my view both psychiatrists have approached their evidence and opinions on that basis.
328. There is no dispute that the first defendant abused the claimant and I have already indicated that I accept the claimant's account of how that came about and the extent of it. Both psychiatrists accept that this abuse would have contributed to the claimant's EUPD and, in Dr O'Neill's opinion, to his complex PTSD. The dispute is as to what extent.
329. Having considered carefully the opinions of both psychiatrists and the evidence upon which they are based, I conclude on the balance of probabilities that Dr O'Neill is right that it was the abuse of the claimant by the first defendant which caused his disorders.

The rape by Monteil has contributed to his post-traumatic symptoms but not to any great extent. In coming to this view I take into account my finding that this incident and the start of the abuse by the first defendant were comparatively close together in time. It seems to me somewhat artificial in those circumstances to separate the events out in the way that Professor Maden has done. This is particularly so as the first defendant used the fact of the rape to create fear in the claimant that he was gay, would be despised and isolated and thrown out of his home because of it if anyone found out. The rape and the abuse are thus intrinsically linked.

330. It is clear that any bullying of the claimant, particularly at junior school, could have had an impact on his later mental health difficulties. He was clearly bullied at Highgate Wood as this was the reason for him leaving before he took his exams. It may well be that this was in part because he was entrepreneurial and different but it is wholly unrealistic to view such bullying separately from his abuse. I accept that by reason of the abuse the claimant became isolated from his family and from his peers. This in itself would make him seem different to fellow pupils. I find therefore that a large part of the reason that he was bullied was linked to the abuse itself.
331. The question of whether the claimant was bullied at junior school is more difficult. There is no suggestion of it in the school reports from Devonshire Hill School or in the evidence from his teacher, Chris Bolton. The claimant's sister said that he was not bullied there. This evidence supports the claimant's own evidence that he was happy there. On the other hand there is the text sent to the first defendant sometime between 2009-2011 concerning the reunion and mention in the notes taken of his first admission to the Capio of verbal bullying and the claimant leaving junior school to go home sometimes. I have come to the conclusion that if the claimant was bullied at the school it was to no great extent. Had it been so I would have expected the claimant's teacher and sister to know of it. I do not therefore accept that this, rather than the ongoing and serious abuse of the claimant by the first defendant, caused his later mental health difficulties in anything but the most minor way, if at all.
332. In coming to my view I have also taken into account that Professor Maden in his evidence said that his initial view that the first defendant's abuse of the claimant could not be said to be more than a minor cause of his EUPD would alter if the court accepted the claimant's account of the grooming and subsequent relationship with the first defendant. I have so found. Professor Maden also accepted the analysis of Dr Shanahan in 2013 that the abuse had "indelibly marked psychologically" the claimant's personality.

***The 2011 breakdown and the claimant's subsequent ability to work***

333. I have already referred to the agreed position of the experts in the joint statement that the 2011 breakdown was precipitated by the claimant's loneliness and isolation when commuting to work in Amsterdam and exacerbated by his use of alcohol and drugs.

They agree that the abuse was relevant to the extent that it contributed to his personality disorder and therefore to his vulnerability.

334. It is clear from the evidence that the claimant did not consider at the time of the breakdown that it had anything to do with the abuse by the first defendant. It was the failure on the part of the first defendant to give him the support he required that caused him to realise for the first time that he had been groomed and abused. It was this which prompted him to start talking about the abuse to his therapists and to report the matter to the police. I accept the evidence of Dr O'Neill that this caused the claimant to start to reflect on his past. With the lengthy police interviews he became more preoccupied with the past and developed intrusive memories and flashbacks. His illness thus evolved. His complex PTSD is a direct result of the abuse.
335. The claimant has remained unwell since the breakdown and has been unable to work. This is accepted by Professor Maden who agrees in his second report that since the breakdown the claimant has probably not been well enough to work.
336. There is further evidence of this from the witnesses Herve Marchet and Gordon Stewart. In 2013 the claimant was approached by Mr Marchet who offered him a job. They had last worked together in 1988 at Asystel. They had remained in contact since. In 2013 Mr Marchet was employed in Dubai as Chief Technology Officer for GEMS education, an international company running schools and services. As part of his role he was overseeing a project to manage their back office systems of sharing and reporting information. He approached the claimant to head up the project.
337. The claimant seemed pleased and excited and agreed to come to work with Mr Marchet. He went to Dubai to work on a first level mission to prepare the workload. Mr Marchet offered him a permanent position, initially as Senior Project Director. It came with a good remuneration package. The role also had excellent prospects for promotion and career growth. Things did not go well. Before the claimant was to start work he failed to turn up for a meeting saying that he was not well. He eventually told Mr Marchet that he could not take up the job offer.
338. The claimant in evidence said that he was asked by Mr Marchet to put together a project proposal for his employment as Senior Project Director. He was sending the claimant a lot of documents to look at but the claimant panicked and could not concentrate. He reached out to Mr Stewart to ask for his help in putting the project together. Mr Stewart agreed. They met in London. After dinner on the Friday night the claimant had a complete breakdown to the extent that could not leave his hotel room for the rest of the weekend. Mr Stewart ended up completing the proposal on his own which he sent in both their names to Mr Marchet. On receiving the job offer from him the claimant said he could not face going to Dubai only to let him down. He did not respond to Mr Marchet who eventually offered the role to Mr Stewart who accepted it. Mr Stewart confirmed this account.



339. The claimant has not worked since.

## **Treatment and prognosis**

### ***Evidence of Dr O'Neill***

340. She said that although the claimant has had therapy over the years he has not had specialised psychological intervention which is known to be effective in individuals with PTSD. She acknowledged that he had been under the care of Dr Rackow since 2013 but said that he had not received such treatment with her.
341. The required treatment is focussed initially on stabilisation - engendering coping mechanisms and gaining trust. This normally takes about 18 months. The claimant had been through this first part of the treatment with Dr Rackow. He had found it beneficial. The next stage is trauma processing. Some individuals never get to do this because it is too difficult. The claimant has not had much trauma processing with Dr Rackow. The final stage is one of reintegration of the individual into their lives.
342. She disagreed with Professor Maden that six sessions of CBT would be sufficient for the claimant to return to his pre-2011 self. If someone is exposed to a one-off event it is possible to do 12-20 sessions of simple trauma focussed CBT. If someone has been the victim of repeated abuse with the consequent damage to personality longer and different treatment is required.
343. It is not known whether the claimant will be able to cope with trauma processing. He is however motivated to engage in treatment. Dr O'Neill considers that trauma focussed CBT or mentalisation based therapy or a combination is required. This would need to be intensive and lengthy. She advises twice weekly one hour sessions over three years by an experienced psychologist with expertise in treating complex PTSD and borderline personality disorder. Due to the severity of the claimant's PTSD it is her view he will need ongoing treatment following this in the medium term. An alternative option would be a period of residential treatment in a psychotherapeutic setting such as "The Cassel". Her view is that he is likely to need 10-12 months' treatment.
344. Her view is that the prognosis for the claimant is guarded due to the severe damage to his personality structure. In her view following the completion of suitable treatment the claimant is still likely to struggle with forming trusting relationships and have a fear of abandonment and unstable identity. On a balance of probabilities he may experience an exacerbation of his symptoms in the future when he is exposed to stress. At these times he may need psychiatric treatment including monitoring of his mental state and antidepressant medication. It is difficult to anticipate the frequency of depressive relapse. It would be reasonable to anticipate an episode every couple of years. They may last up to six months.
345. The claimant's response to treatment, which is not predictable at this stage will determine the nature of future employment. Dr O'Neill is cautious about his return to

similar employment as personality change in nature is deeply ingrained and persistent. With treatment one would expect improved ability to cope with his emotions, interpersonal relationships and poor self-esteem. However he will continue to have issues with trust, fear of abandonment and difficulty in inter-personal relationships.

346. On the balance of probabilities the claimant may return to some form of employment but it is unlikely he will be able to function in the high pressure environment in which he previously worked. Dr O'Neill does not believe he would be able to return to work immediately following his treatment. It is more likely that he would cope with a graded return to a less stressful position.

### ***Evidence of Professor Maden***

347. Professor Maden said that a personality disorder tends to be a lifelong condition and the prognosis is guarded. However, in most cases of breakdown, the sufferer will regain his former level of function.
348. The usual treatment for EUPD would be cognitive analytical therapy preferably delivered by a specialist community team over a period of one to three years. In general inpatient treatment for EUPD is contra-indicated. In his view the claimant is unlikely to benefit from admission to a hospital that deals with people suffering from PTSD. The only exceptions would be the Cassel or the Henderson Clinic. He does not believe the claimant to be sufficiently prepared to make the commitment required for treatment at either of these. He also does not consider his pre-2011 personality as so severe as to require such treatment.
349. In his opinion treatment for PTSD would be counter-productive in that it would focus on blaming the first defendant for the claimant's problems rather than helping him come to terms with the positive feelings he had towards the first defendant for many years. The claimant has already had "an enormous amount" of treatment, including as an inpatient with no tangible benefit. His preference on balance for treatment is relatively brief CBT over 6-12 sessions aimed at addressing these ambivalent feelings and helping the claimant to move on with his life. With this assistance the claimant should return to his pre-2011 condition. He does not agree that his prognosis is guarded. With the conclusion to the litigation the claimant's symptoms are likely to remit as they are a rather extreme reaction to disclosure and they have become bound up with the civil claim.
350. Professor Maden does not agree that the claimant is likely to experience an exacerbation in the future of his symptoms at times of stress and then may need psychiatric treatment in episodes that last up to six months. He functioned relatively well before the 2011 breakdown and can be expected to do so again. He is bolstered in this view having seen the claimant giving evidence in the trial.

### ***The Claimant***

351. In evidence the claimant said that he was desperate to return to work but was worried that even if he was to get well enough to return to work he would find it very difficult to get a job in IT. He has lost all his professional work contacts, other than those who were also personal contacts. Since the job offer with GEMS no one has got in touch with him to offer him work.
352. He is no longer up to date with the relevant technology which has moved very fast over the six plus years he has been out of work. He has tried to keep up to date by reading tech reviews online and has tried to use his programming skills at home but this has proved harder to do than in a work environment. He has found it difficult to concentrate as a result of his mood swings and periods of depression he has suffered.
353. Even if he were to get an interview it would be difficult to explain his absence from work for so long. He could only hope to get back into IT if a friend gave him the opportunity on a minimum salary to get his foot back in the door. He could not see why someone would do that rather than employ a younger person.

***Evidence of others on employment prospects***

354. Gordon Stewart said that even if the claimant returns to health he would still find it very difficult to get a job at his old level. Given his history he is not likely to get a senior role in the IT industry ever again. Such roles are not given to those who do not come across as robustly confident and assured. The claimant would also have to explain his absence from the industry for the last six or so years. A prospective employer would be likely to consider him too much of a risk. The IT industry is also quite ageist. The claimant is more mature than most candidates would be for the likely roles he would apply for. Unless the claimant comes across a very sympathetic employer Mr Stewart does not see him ever getting a job in the IT industry again. His best chance would be a junior position as a contractor although even then the claimant would be perceived as a risk and would struggle.
355. Ashley Pover, working in the IT field in London, said that once the claimant recovers his mental health, finding a new role will be difficult for him. Mr Pover has managed staff on and off since the late 1980s and looks for consistency, dependability and reliability in his staff. The claimant would also have to show he was up to date with IT which moves very rapidly. The claimant would have difficulty explaining the gap in his CV. This would indicate a problem with reliability and mean the claimant would struggle to compete with others who do not have such gaps.
356. Herve Marchet said that he would never offer the claimant a job again as he is clearly not suitable to work in such an environment. Although it is global the IT industry circles are small and other people already know or will find out the claimant's difficulties before offering him a job. The type of work that the claimant is used to is fast and high pressured and involves investors putting a lot of money into companies. In that sort of

environment you can only work with people that you trust completely to get the job done.

### **Prognosis and treatment**

357. Given that I have found Dr O'Neill's diagnosis of the claimant to be correct I also find that on balance she is right about the claimant's psychiatric prognosis and treatment. The claimant's mental health difficulties have been prolonged and severe since 2011. In those circumstances I do not accept Professor Maden's opinion that within a short time from the conclusion of this case he will have returned to pre-2011 levels and function as he did before. That said it is not known how the claimant will respond to treatment of a sort he has not yet had. I accept Dr O'Neill's evidence that it is probable that he will, after inpatient treatment, relapse from time to time. There is a degree of uncertainty as to how often that will be. I am not persuaded on the balance of probabilities that for the next 15 years that will occur once every two years for potentially six months at a time.
358. I am of the view that the claimant, even if he were to become totally well with no further psychiatric difficulties (which I consider unlikely), would be highly unlikely to find the type of employment that he had before. It is well known that the IT industry is fast moving. As Professor Maden accepts, the claimant has been too ill to work since his 2011 breakdown. It is not surprising in those circumstances that he has been unable to keep up to date with the technology. As a result of this and of the gap in his CV it is difficult to see why prospective employers would take the risk of employing him. I accept the evidence of those in the industry who are well-placed to comment in this regard. That said I find force in the defence submissions that the claimant is an intelligent and capable man who was able to find good employment in the years leading up to his breakdown, notwithstanding his lack of qualifications. In those circumstances it seems to me that to confine his future projected earnings when he is able to work to the minimum wage is unduly pessimistic. It is more likely in my view that we will find better remunerated work albeit not at the level he enjoyed before.

### **Quantum**

#### ***Use of drugs/alcohol***

359. The second defendant, relying on the conclusions of the House of Lords in *Gray v Thames Trains [2009] 1 AC 1339*, contends that for reasons of public policy the claimant is not entitled to claim in respect of the consequences of his breakdown, including loss of earnings, following on from his own voluntary actions including the taking of illegal substances. Mr Kent submits that a part of the cause of the claimant's breakdown in 2011 was his recreational use of drugs and that as a matter of public policy he should not therefore be entitled to claim any subsequent lost earnings.

360. Mr Kent's submission is based on the 2013 letter from Dr Basquille in which he speaks of the claimant having attempted suicide following a binge on cocaine, alcohol and benzodiazepines and on Professor Maden's view (again based on that same letter) that the reason for the 2011 breakdown was isolation at work and the claimant's increased use of these substances. I have already indicated that the evidence on the claimant's use of cocaine is far from clear and that I do not accept that this letter for which there is no contemporaneous supporting medical note necessarily accurately states the position. That said the claimant accepts that he voluntarily took cocaine in 1996 which he then found assisted him in dealing with his feelings of social isolation and self-loathing borne from the abuse. There is a note in the 2011 admission to the Capio that he had been using a small amount of cocaine at the weekends.
361. Having considered the position I do not accept that there has been any injury, loss or expense incurred in this case as a consequence of the claimant's voluntary consumption of excessive amounts of alcohol and or illegal consumption of cocaine. Whatever the immediate reason for the 2011 breakdown it is clear that the claimant was swiftly disclosing the abuse. The reason that he has not been able to work since 2011 and will have difficulty finding work in the future is not confined to the 2011 breakdown. It is attributable to his complex PTSD, diagnosed after that breakdown and caused, as I have found, by the abuse. The damage arises from the sexual abuse.
362. Even if the 2013 letter from Dr Basquille accurately states the matter public policy would not in my view prevent the claim for loss of earnings. This case is wholly different factually from that of *Grey* where the claimant sought damages for loss of earnings because he was in prison having committed an offence of manslaughter which he claimed to be as a result of his PTSD. In the instant case public policy does not in my view require that the claimant be deprived of his lost earnings claim by reason of a minor and transient contribution made by modest offending. This claim is not founded on an illegal act or inextricably linked with criminal activity.

### ***Heads of damage***

363. During the course of the trial all parties concentrated necessarily on the other issues which were raised. I heard more limited submissions on quantum. This was inevitable as much depended on the findings of fact and the resolution of those issues. From this judgment the parties are now aware of the factual basis upon which quantum is to be assessed.
364. For this reason I have decided not to determine quantum at this stage but to give the parties an opportunity for further thought and, if necessary, the chance to make further limited representations. I say if necessary as all parties have the benefit of experienced legal representation and I trust that with sensible co-operation they can come to an appropriate agreement on damages consequent to the findings I have made.

365. I propose to grant the parties sufficient time to see whether resolution can be reached which will take into account the Christmas break. If such can be reached an agreed draft order must be with the court by 2 PM on 25<sup>th</sup> January 2019. The agreement should include the terms of the indemnity from the first to the second defendant. In the event that agreement cannot be reached further written submissions from each party identifying the issues on quantum and their proposals for resolution must be submitted by that date. This is to include any issues there may be as to the indemnity as between defendants. If necessary the matter will be listed on a date thereafter for short oral submissions on quantum, without the calling of further evidence, to be heard. I direct the parties to draw up an order to this effect along with any other directions sought.

