



Neutral Citation Number: [2021] EWHC 540 (QB)

Case No: QB-2018-004742

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 March 2021

Before :

MR JUSTICE JOHNSON

Between :

B

Claimant

- and -

DAVID CAGER

Defendant

Justin Levinson (instructed by Goodlaw Solicitors LLP) for the Claimant
Mr Cager appeared in person

Hearing date: 2 March 2021

Approved Judgment

Mr Justice Johnson:

1. The Claimant seeks damages in assault. He says he was sexually assaulted on numerous occasions by the Defendant (on average 2-3 times per week over a 6-7 year period when the Claimant was aged 14-20). The Defendant says that the claim is out of time, denies that the assaults took place, and claims that the damages sought have been exaggerated. The issues are therefore (1) limitation, (2) whether the assaults took place, and (3) quantum.
2. The Sexual Offences (Amendment) Act 1992 applies. No matter relating to the Claimant shall, during his lifetime, be included in any publication if it is likely to lead members of the public to identify him as the person against whom the alleged offences were committed.

The statements of case

3. The Claimant's pleaded case is that on many occasions over a 7 year period the Defendant sexually abused, falsely imprisoned and assaulted him. The allegations include that the Defendant "masturbated the Claimant, performed oral sex on the Claimant, inserted his finger and tongue into the Claimant's anus, and hit the Claimant."
4. The Defendant has not filed a Defence to the claim. It would have been open to the Claimant to secure judgment in default of a defence for damages to be assessed. He has chosen not to do so, recognising that there would, in that event, still have needed to be a court hearing to determine damages. He preferred to secure a judgment on liability on the merits of his claim as opposed to a judgment in default of a defence.

Limitation

5. The Defendant has not filed a defence and has not, thereby, put limitation in issue. He has, however, in correspondence asserted that the claim is out of time. Mr Levinson was content to treat this as if it were a pleaded limitation defence. In response, he seeks a direction under s33 Limitation Act 1980 that the provisions of s11 of the Act shall not apply to this claim.
6. The Defendant has not provided any reasons why such a direction should be refused, beyond asserting that the claim is "extremely late" and that "they should not get what they are asking for" and that "the whole case has made my life a misery." In particular, he has not identified any prejudice that would be occasioned to him by the making of a direction under s33 (beyond the loss of a limitation defence).
7. The delay between the expiry of the limitation period (in respect of the earliest assaults) and the commencement of these proceedings is around 9 years. The Claimant has explained the reasons for the delay, and his account is supported by the medical expert instructed on his behalf. He was afraid of the Defendant and wished to put the events behind him. When he initially disclosed the abuse while he was at University it resulted in a deterioration in his mental health. For a substantial part of the period a criminal investigation into the Claimant's allegations against the Defendant was taking place. There followed a prosecution of the Defendant (which resulted in his conviction – see paragraph 23 below). The Claimant had hoped that this would result in closure for him and enable him to put the events behind him. His mental health during this period was

poor. In the event, he has found that he has not been able to put the events behind him, and he initiated these proceedings within 4 years of the conclusion of the criminal proceedings.

8. The delay has not had a significant impact on the cogency of the evidence. A transcript of the criminal proceedings is available. That represents the evidence that it is likely that the parties would have been in a position to give if these proceedings had commenced within the primary limitation period. Both the Claimant and the Defendant were able to give evidence in these proceedings. The Defendant has not suggested that the delay has resulted in the loss of any documentary evidence, or that there is any other witness that he would have wished to call to give evidence who is now not available.
9. The Claimant has never lacked capacity to bring proceedings, but he has suffered from poor mental health and that is part of the reason for the delay. His poor mental health is, on his account, a result of the abuse he suffered at the hands of the Defendant. So, by that route (if the Claimant's account is true), the Defendant is in large measure responsible for the delay that has taken place.
10. Having taken account of all the circumstances of the case, and in particular the factors identified in s33(3) of the 1980 Act, it is necessary to form an assessment as to whether it is equitable to direct that the limitation bar in s11 should be disapplied, having regard to the impact of such a direction on the Defendant and the impact of not making such a direction on the Claimant.
11. There is an understandable explanation for the delay which (if the claim is otherwise well founded) is ultimately attributable to the Defendant's conduct. The delay has not had any significant impact on the cogency of the evidence. The application of s11 would deprive the Claimant of the right to claim compensation for (on his case) deliberate wrongs perpetrated by the Defendant over many years in circumstances where a fair trial is eminently possible. The effect of a s33 direction on the Defendant would merely be to deprive him the windfall of a limitation defence. I therefore consider that it would be equitable to allow the action to proceed. I direct that s11 of the 1980 Act shall not apply to this claim.

The evidence as to whether the assaults occurred

12. The Claimant is now in his 30s. The Defendant is now in his 60s. They are related.
13. Claimant's evidence: The Claimant has provided detailed accounts of the abuse that he alleges in a witness statement served in these proceedings (which he adopted in oral evidence), in evidence given in the course of the Crown Court proceedings, and in the account he provided to the medical expert instructed on his behalf, Dr Bowskill.
14. The Claimant's parents separated shortly after he was born, although his father moved back to the family home when the Claimant was about 9 or 10. The Claimant has never been close to his father. When the Claimant was about 14 years old he attended the Defendant's 50th birthday party. Following the party, the Defendant invited him to his workplace, a council depot which had recreational facilities, where they could "hang out" playing table-tennis and pool. The Claimant agreed, with his mother's consent. From that point on he regularly attended at the Defendant's workplace, several evenings

a week. The Defendant started to engage the Claimant in an escalating pattern of sexual activity. The Claimant's evidence is that:

“[From the 3rd visit, there were sexual acts each time and the Defendant would, over time, introduce more and more sexual acts and what I would call ‘more serious’ sexual acts. When I say more serious, what I mean is that we graduated through the following:

- i. Masturbation
- ii. full-body massage, using oils the Defendant kept in the office
- iii. regular penetration of my anus, with both his finger and his tongue
- iv. performing oral sex, him on me, never the other way round
- v. all the way to him eventually wanting me to have anal sex with him. This was towards the end of the abuse, when I was probably about 20 years old and he even gave me £3,000 to do it. The Defendant wanted me to try to do it to him first and I did try, but couldn't and we never tried it again.

I would like to make clear that these acts were *always* instigated by the Defendant.

It is important for me to make clear I only did these things because he liked them, never for my own pleasure. As I got older I just tried to do them as quickly as possible...

...

There was no set pattern, but again to give an idea, an ‘average’ night with him would begin with him picking me up about 5pm. We would then drive [to an amusement arcade]. Then we would go to [a fast food restaurant] before going back to the depot where we would have to engage in the sexual acts. He would then take me back home about 8 or 8.30, later on the weekends. As I say though, there was no set routine and sometimes there would not even be any sexual acts; I might just watch TV at the depot...”

15. The Claimant says that on three occasions the Defendant was threatening and/or physically violent towards him. One occasion was when the Claimant said that he did not like what was happening and he was not going to do it any more: “He went mad and started hitting me and saying that he was bigger and stronger than I was.” On another occasion a similar thing happened when the Claimant “tried to avoid the abuse.” The third occasion was when the Claimant called the Defendant a “paedo”: “He just

snapped and went mad again and started hitting the wall, saying ‘I should fucking kill you.’”

16. The Claimant at one point described the acts as being “[o]n the whole... consensual”. In context, it is, however, clear that he meant that he did not physically resist and (with some exceptions) the Defendant did not use physical violence. The Claimant’s clear case is that he did not consent, in the legal sense, to any of the sexual activity with the Defendant.
17. When the Claimant was at University he decided to report the matter to the police. After a considerable delay, the Defendant was charged, prosecuted and convicted of sexual offences committed against the Claimant.
18. The Defendant cross-examined the Claimant. The Claimant fully answered all of the questions he was asked. The main focus of the Defendant’s questioning appeared to be the Claimant’s initial resistance to medical help, putting to the Claimant that the medical records showed that on one occasion in 2014 he had adopted a “really odd monologue” and had been unable to look at the GP, and had used swear words. The Claimant readily accepted that he had initially resisted such help. He considered that he did not initially receive from his GP the help he needed, but that he recognised the need for expert psychiatric support, he had welcomed the medical assistance that he had subsequently been given, and that the only reason that he had not undergone the further treatment recommended by Dr Bowskill was that he could not afford the cost. Nothing in the questions or answers in cross-examination undermined the Claimant’s reliability as a witness. In particular, there was no suggestion of any internal inconsistency in the Claimant’s account, or any inconsistency between the accounts he gave in his witness statement, his oral evidence, his evidence in the Crown Court proceedings, or to Dr Bowskill. Nor was it suggested that anything in the Claimant’s account could be shown to be incorrect by reference to other evidence.
19. Defendant’s evidence: The Defendant has not filed a Defence. He filed a statement which he adopted in his oral evidence. He says “the only reason we are at this state is [the Claimant’s] greed for grabbing money.” As to the convictions, he says “with no evidence at all I was found guilty.” He does not dispute that he spent a lot of time with the Claimant, but he denies that there was any sexual activity between them. He says that he and his wife provided the Claimant with the home that he would not otherwise have had. He asks, rhetorically, why the Claimant went to see the Defendant if the Defendant was abusing him.
20. He was cross-examined by Mr Levinson. He initially appeared to deny the subsequent convictions for offences committed against another boy (see paragraph 24 below). He said that he had never stood trial for any offences other than the offences against the Claimant (for which, he said, there was no evidence). Ultimately, however, he accepted that he had been convicted of the offences against the other boy. He said that the trial had taken place in his absence because he had suffered an injury and was unable to attend court, and explained that this is what he had meant when he had claimed he had never stood trial for these offences. He accepted that 2 further boys (making a total of 4) had made complaints to the police that he had sexually abused them.
21. On a number of points his evidence was, at least at first, inconsistent with the account that he had given during his criminal prosecution. For example, in the Crown Court

proceedings, he agreed with the Claimant's account that they had had little contact before the Defendant's 50th birthday. In these proceedings he said that there had been regular contact before his 50th birthday (suggesting that there was no marked change in the pattern of contact following that birthday). In the Crown Court proceedings, he admitted that he had helped orchestrate a lie to explain to the Claimant's mother why the Claimant was spending so much time with him (he said that he had arranged for a job for the Claimant at the council depot). In his evidence before me he initially denied that he had been party to that lie, but ultimately accepted that what he said in the Crown Court proceedings was correct. In the Crown Court proceedings, he accepted that he had purchased a laptop for the Claimant and had orchestrated a lie to the Claimant's mother about the source of the laptop. Again, he initially denied that this had happened in his evidence before me.

22. The Defendant did not give any reason why the Claimant might make false allegations against him (beyond his assertion that the Claimant is greedy, wanted money and had a gambling addiction). Nor did he give any reason why 3 other boys, who did not know each other, might also make similar false allegations. He was unwilling to engage with questioning on this topic and instead made angry remarks about the Claimant's legal representatives.
23. Convictions: The Defendant was convicted at the Crown Court at Lewes, following a trial, of 11 counts of sexual offences committed against the Claimant, comprising: (1) 4 counts of indecent assault on a male, (2) 2 counts of sexual activity with a male child under 16 (no penetration), (3) 2 counts of indecency with a child under 16, (4) 1 count of causing a child under 16 to engage in sexual activity, (5) 2 counts of sexual activity with a male child under 16 (penetration). These were all the counts on the indictment. It is not clear whether any or all of these counts were specimen counts or multiple-incident counts. The Defendant was sentenced to 9 years' imprisonment.
24. The Defendant was subsequently convicted of a series of sexual offences against another boy, and sentenced to a term of 8 years' imprisonment.
25. Further allegations: The Defendant accepted that 2 other boys have made allegations of sexual assault against him. He denies those allegations. He has not been prosecuted in respect of those offences.

Did the assaults occur?

26. There is a complete conflict in the evidence between the accounts given by the Claimant and the Defendant as to whether the assaults occurred.
27. I am satisfied, on the balance of probabilities, that the Claimant's account is truthful, and that the Defendant's account is not. That is because:
 - (1) The Claimant's account is detailed, internally consistent, and has (so far as I can tell) been consistently maintained over many years.
 - (2) Leaving aside the Defendant's account, no aspect of the Claimant's account has been shown by external evidence to be untrue or unlikely.

- (3) The Defendant's account amounts to a bare denial. He has not provided a plausible explanation for why he spent so much of his time with the Claimant. The fact that he resorted to a lie to account for the time he was spending with the Claimant is consistent with the Claimant's account that he was engaging in sexual abuse.
 - (4) The Defendant's account in these proceedings was inconsistent with the account he gave in the criminal proceedings.
 - (5) Three other boys have made similar allegations against the Claimant. There is no suggestion that the boys knew each other (although the Claimant accepts that he did meet one of them whilst he was in the Defendant's company) or that there was any collusion between them. It is unlikely that 4 boys would separately make similar allegations against the Defendant unless he has indeed engaged in the type of abuse that the Claimant alleges.
28. No question of consent arises. The Claimant's case (and evidence) is that he did not consent. The Defendant simply denies that there was any sexual activity – he does not put forward a case that the Claimant consented to it. In any event, I accept the Claimant's case that he did not consent to the activity. To the extent that he did not positively resist, that is not, in context (and in particular having regard to the grooming process that the Claimant describes), indicative of consent: see *London Borough of Haringey v FZO* [2020] EWCA Civ 180 *per* McCombe J at [126]-[137] (quoting and approving the approach of the trial Judge, Cutts J).
 29. It follows that I am satisfied, on the balance of probabilities, that the Claimant was assaulted by the Defendant in the way that he alleges.
 30. I reach this finding without relying on s11 Civil Evidence Act 1968. The effect of that provision is that the Defendant's convictions are admissible as evidence that he committed those offences and that he shall be taken to have committed those offences unless the contrary is proved. It follows from the findings that I have made that the Defendant has not discharged that burden.

Defendant's lack of assets

31. The Defendant maintains that he does not have the means to pay an award of damages. This is not, however, relevant to any of the issues in the claim.

Evidence in relation to quantum

32. The Claimant says that when the abuse started he was "a very young, vulnerable, naïve and inexperienced child" and that the abuse has "very seriously affected my relationships ever since." He finds intimacy with another person very difficult. He is often very angry. He had done "a lot of binge drinking" but he did not do that any more because all his money went on gambling. The Defendant had introduced the Claimant to gambling, encouraging him to do so and rendering him reliant on the Defendant for the money to feed a gambling addiction. The money was then provided in return for engagement in sexual contact. The Claimant has remained addicted to gambling.
33. The Claimant relies on a report of Dr Bowskill, consultant psychiatrist. Dr Bowskill considers that the Claimant suffered from a moderate to severe depressive episode for

a period of about 17 months from around the time he disclosed the abuse. He also had a gambling addiction and long-term issues relating to self-esteem, anger and irritability, self-harm and difficulties with intimate relationships. Dr Bowskill considered that these difficulties could best be described as a prolonged adjustment disorder. The Claimant required, and received, treatment. The severity of the episode had a major impact on the Claimant's ability to function at University. This resulted in the University course being prolonged and also probably affected his overall grade. The depressive episode is now resolved, and the Claimant does not have a greatly increased chance of further depressive episodes in the future. As to the gambling addition, Dr Bowskill says:

“The mental health condition that has probably had the greatest impact on [B's] life so far is the gambling addiction. The nature of the relationship [B] had with Mr Cager has, in my opinion, been a major contributory factor in the development of [his] gambling addiction. Firstly Mr Cager encouraged [B] to gamble in the first place, with a fruit machine that Mr Cager owned. Secondly Mr Cager also used to take Daniel to [an amusement arcade] and encourage [B] to bet on slot machines, providing [B] with money to enable him to do this. Part of the grooming behaviour that Mr Cager undertook with [B], was to provide him with money and as the abuse progressed, [B] described being paid for various sexual acts in an indirect way, as illustrated by one of his comments “if you stay for another half an hour, I will give you £20”. [B] describes the sexual acts he undertook as being “like prostitution”. My opinion is that the ready availability of money was relevant in fuelling [B's] addiction.”

34. Dr Bowskill considers that substantial treatment is required to address the addiction, which is likely to cost £16,000.

General damages for pain, suffering and loss of amenity

35. I agree with Mr Levinson's submission that the case falls within the moderately severe bracket of the Judicial College's guidelines on the assessment of general damages in personal injury cases (£21,730 - £56,180). The factors to be taken into account are identified in those guidelines. Here, there has been a marked impact on the Claimant's ability to cope with life and education (he had to extend his University course) and a significant effect on his relationships with others. However, the prognosis is good with the intensive treatment that Dr Bowskill recommends. I consider the appropriate award is £30,000. Interest accrues at the rate of 2% from the date of service of the claim form until today's date, amounting to £1,231.23.

General damages for assault, and aggravated damages

36. Aside from the award for pain, suffering and loss of amenity, the Claimant is entitled to damages for injury to feelings occasioned by the many hundreds of assaults themselves (leaving out of account the pain, suffering and loss of amenity that subsequently resulted). I do not consider that a separate award for false imprisonment is merited: the Claimant did not identify any period when he was deprived of his liberty beyond that which was occasioned by the assaults themselves.

37. Aggravated damages are also available to compensate for intangible consequences of an assault, such as humiliation, and injury to pride and dignity. Each individual sexual assault perpetrated by the Defendant was a cause of humiliation. The Claimant was treated by the Defendant as a tool for sexual gratification. He took away the Claimant's teenage years. He maintained a false defence in the criminal proceedings and in these proceedings (albeit without filing a pleaded defence), asserting that the Claimant's account was a pack of lies. The Claimant has therefore twice had to give evidence in public about the abuse and humiliation he suffered. These factors can justify an increase in an award of aggravated damages (see *Thompson v Commissioner of Police of the Metropolis* [1998] QB 498 per Lord Woolf MR at 518F).
38. There is a clear and well-recognised risk of double recovery when considering awards of general damages for psychiatric injury, general damages for injury to feelings, and aggravated damages. It is, however, here not difficult to separate out the appropriate award for psychiatric injury from the other two heads of loss. The former compensates for the depressive episode and the prolonged adjustment disorder that are identified by Dr Bowskill. That is discrete from the humiliation and injury to feelings endured by the Claimant at the time of the individual assaults, and the added impact of having to give evidence in the face of a false defence, including having to face the Defendant directly questioning the Claimant in court.
39. However, I consider it would be artificial to seek to separate out the appropriate award to compensate for injury to feelings on the one hand, and the appropriate award for aggravated damages on the other hand. I have therefore assessed a combined award for these elements.
40. It would also be artificial to seek to make separate awards for each individual assault. Rather, it is necessary to assess a figure which reflects the overall non-pecuniary loss beyond the psychiatric injury. Taking care to avoid double recovery, and recognising that aggravated damages are compensatory and do not have any punitive element, I consider the appropriate award to make for injury to feelings and aggravated damages is £25,000. In assessing this sum I have sought to reflect the situation up to and as at the date of judgment (and part of the award takes account of events that have occurred since the claim was issued, including the persistence in a false defence in these proceedings). I do not therefore consider a separate award of interest on this head of loss is appropriate (see *Rees v Commissioner of Police of the Metropolis* [2021] EWCA Civ 49 per Davis LJ at [47]).

Tuition costs and loan interest

41. These are claimed in the sum of £13,117.56. Dr Bowskill's evidence shows that these costs were attributable to the effects of the assaults, and the costs themselves are supported by documentary evidence. I consider that they are recoverable in full. These sums include interest.

Future medical treatment

42. This is claimed in the sum of £18,400. In part, the costs are for treatment designed to address the Claimant's gambling addiction. I consider that the evidence shows that the addiction was caused, in substantial measure, by the assaults. The Defendant used gambling as part of his grooming technique to facilitate the assaults. The Claimant

became addicted as part of the overall pattern of abuse. If the assaults had not occurred then the Claimant would not have become addicted to gambling. I accept the Claimant's evidence that he wishes to undertake the medical treatment that Dr Bowskill recommends. I therefore accept that this head of loss is recoverable in full.

Outcome

43. The Claimant has established that he was sexually abused by the Defendant over a 6-7 year throughout most of his teenage years and just beyond, in the manner that he alleges. I assess damages in the sum of £87,748.79 inclusive of interest. Judgment will be entered for the Claimant in that sum.