Neutral Citation Number: [2022] EWHC 7 (QB)

Case Nos: QB-2017-00857, QB-2018-004708
QB-2018-004709, QB-2018-004749
QB-2018-004762, QB-2018-004763
QB-2018-004764, QB-2018-004765

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/01/2022

Before :

MR JUSTICE JOHNSON

- -

Between :

(1) TVZ
(2) JVF
(3) DDG
(4) FTS
(5) LDX
(6) EJP
(7) HFT
(8) KHT **Claimants**

- and -

MANCHESTER CITY FOOTBALL CLUB LIMITED **Defendant**

- -
- -

James Counsell QC and Benjamin Bradley (instructed by Bolt Burdon Kemp) for the Claimants
Michael Kent QC and Nicholas Fewtrell (instructed by Keoghs LLP) for the Defendant

Hearing dates: 25 October 2021 – 10 December 2021

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Approved Judgment

Mr Justice Johnson:

1. The claimants seek compensation for sexual abuse perpetrated by Barry Bennell ("Bennell") in the early 1980s when they were aged between 10 and 14 and playing for football teams coached by Bennell. They say Bennell was working for the defendant ("MCFC") and that it is liable for his conduct.

2. In each case the claimant is required to prove that Bennell abused him. Beyond that, the issues are:

   (1) Whether the claim should be dismissed because it has been brought outside the 3-year time limit for personal injury claims ("limitation") (paragraphs 163 - 218 below).

   (2) If not, whether MCFC is responsible in law for the abuse ("vicarious liability") (paragraphs 219 - 340 below).

   (3) If so, the amount that should be paid by MCFC to the claimant ("quantum") (paragraphs 341 - 567 below).

The claimants

3. I believe the claimants; they were abused by Bennell in the way they state. They each gave evidence about it in a detailed witness statement. They each gave oral evidence. Each was cross-examined. MCFC does not challenge their accounts of what Bennell did to them. Their accounts are consistent with each other and with other known facts. With two exceptions, their accounts are, broadly, internally consistent. In one case, the claimant initially denied that he had been abused when he provided a statement to the police in 1997. In another case the claimant understated the extent of the abuse when he first reported it to the police. In both cases there are credible and understandable reasons for the change in account.

4. Bennell has been convicted of offences against six of the claimants. Four of the claimants gave evidence in the criminal proceedings. Bennell accused them of lying. They were not. The jury believed them. Bennell has been convicted, on 5 separate occasions, of a total of 90 sexual offences against young boys. He has been sentenced to a total of 49 consecutive years in prison. He is currently serving a term of 34 years' imprisonment. He is now 68 years old. When he gave evidence, he said that he would die in prison.

5. Each of the claimants was a remarkable boy. Each is now a remarkable man. As a boy, each claimant was among the very best footballers of his year group in northwest England. Forty years later, their skill and character as young footballers are vividly remembered by their parents, teachers, team-mates, and others who gave evidence. Contemporaneous team and match photographs, match programmes, newspaper cuttings and letters from well-known clubs such as Arsenal (and, in one instance, from Bobby Robson, the then England manager) speak powerfully to their talent and potential. Each claimant may well have gone on to become a successful professional footballer. It is now impossible to know whether they would have achieved their dreams. Along with so much else, Bennell has robbed them, and their families, of finding out.

6. As men, they have each dealt with the destructive mental legacy of Bennell's depravity. They have shown immense courage. TVZ went on national television to reveal what had been going on. He waived his right to anonymity. He did so because he did not think he would otherwise be believed and Bennell might then escape justice. He may well have been right about that. He was determined to do everything he could to encourage others to come forward and to ensure that Bennell was prosecuted for the offences he committed. Other claimants also gave public accounts of what Bennell had done. It is because of their selfless bravery that Bennell is now in prison. If it were not for their courage, other boys may have been at risk of suffering in the same way. They have saved those boys from that fate. It has come at great personal cost. The evidence demonstrates that the process of disclosing the abuse has, in every case, caused the claimant great anguish and mental suffering. Many or all of the claimants now bitterly regret disclosing the abuse, because of the impact that has had on them.

Anonymity and reporting restrictions

7. The provisions of the Sexual Offences (Amendment) Act 1992 apply to Bennell's offences. No matter relating to a victim whose identity has been anonymised in this judgment shall, during his lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with s3 of the 1992 Act. In addition, reporting restrictions are in place in relation to the identities of the claimants, members of their families, and certain other people connected with this case.

8. TVZ and KHT have previously given public accounts and waived their right to anonymity. Reporting restrictions in respect of their identities were put in place at the outset of these proceedings. After hearing representations from Mr Brian Farmer of the Press Association, and after hearing from their counsel, and (in the event) with the consent of TVZ and KHT, I amended those reporting restrictions in the course of the trial. Their names may be reported but only in respect of the evidence which was given by them orally at the trial. I have maintained their anonymity in this judgment to avoid the need to put some of the content into a confidential annex. This is not a perfect solution, but it was the preferred choice of TVZ and KHT and I consider that it strikes an appropriate balance between their rights to privacy, the principle of open justice, and freedom of expression.

9. The amount of information that is in the public domain creates a risk of jigsaw identification. I have withheld from this judgment biographical details that would unnecessarily increase that risk. In doing so, I have taken account of guidance produced by the President of the Family Division in December 2018 (Practice Guidance: Anonymisation and avoidance of the identification of children and the treatment of explicit descriptions of the sexual abuse of children in judgments intended for the public arena). I have taken account of the same guidance by limiting, to a general outline, the description of the abuse that was perpetrated by Bennell (and have sought to do so primarily by reference to the offences that are now contained in the Sexual Offences Act 2003). Detailed accounts are set out in the witness statements of the claimants. As I have said, I accept those accounts. It is unnecessary (and undesirable) to repeat them in this judgment.

The parties' cases

10. These are eight separate claims that have, for convenience, been heard together following detailed case management directions made by Lambert J in May 2020. There are eight separate sets of statements of case. There are differences in the way in which the individual cases are presented, including on the central question of vicarious liability. The differences in the statements of case were highlighted in opening submissions, but it has not been suggested that any party should be restricted by reference to the narrow differences between the individual statements of case.

11. The essential case that is advanced by the claimants is that Bennell was engaged by MCFC as a scout and coach, that in the course of those duties he ran feeder teams for MCFC, providing a source for future recruitment by MCFC, that each of the claimants played for one or more of these teams, and that in the course of his duties for MCFC Bennell abused each of the claimants. MCFC is therefore vicariously liable for Bennell's torts. Each claimant recognises that his claim was not started within the required time limit (which expired on his 21st birthday). Each claimant says that it is equitable to disapply the time limit because he has a good reason for the delay and the trial can be fairly determined. Brief summary details of each pleaded case are:

Claimant	**Period of abuse**	**Expiry of limitation**	**Claim form issued**	**Teams**
		Delay after expiry of limitation period		
TVZ	1980-82	1990	2017	White Knowl, North West Derbyshire
		28 years		
JVF	1980-83	1989	2018	White Knowl
		29 years		
DDG	1982-85	1991	2017	North West Derbyshire, White Knowl, Adswood Amateurs
		26 years		
FTS	1982-84	1992	2018	North West Derbyshire, Midas, Glossop Juniors, Adswood Amateurs
		27 years		
LDX	1982-84	1992	2018	Pegasus, Midas, Adswood Amateurs, Glossop Juniors
		27 years		
EJP	1981-82	1990	2018	White Knowl
		28 years		
HFT	1980-85	1993	2018	Midas, Adswood Amateurs, Glossop Juniors
		25 years		
KHT	1983-85	1991	2017	Glossop Juniors, Midas, Adswood Amateurs
		26 years		

12. The pleaded cases of TVZ and JVF allege abuse dating back to 1979, but from all the evidence it is unlikely that the abuse started before 1980 (because it is unlikely that Bennell set up White Knowl before then). In their oral evidence TVZ and JVF were (unsurprisingly) unable to be definitive about the dates and accepted that it may have started later than their pleaded cases. I have adjusted the pleaded dates accordingly. There was also some variance between the pleaded cases and the evidence given by individual claimants (which I summarise below) as to the teams for which they played.

13. MCFC accepts that Bennell held himself out as a representative of MCFC. It does not contest the claimants' accounts that this influenced their decisions to play for his teams. Nor does it challenge the claimants' accounts as to Bennell's acts of abuse. MCFC says that any ties between it and Bennell were severed in 1979 when he went to work at Taxal Edge Children's Home in High Peak, Derbyshire. It says the teams he ran thereafter "had no connection whatsoever with MCFC." It argues that MCFC is not vicariously liable for Bennell's torts against any of the claimants. It also contends that the claims were not brought in time, that there has, in each case, been a long delay, and that MCFC has suffered irremediable evidential prejudice. Accordingly, MCFC argues that it would not now be equitable to disapply the time limits for bringing the claims.

The trial

14. There was a considerable degree of cooperation between the legal teams in the preparation for trial and the presentation of the evidence. The bundles ("ebundles") were provided electronically in accordance with the court's directions. Additional documentation that was generated during the trial was added to the existing ebundles. There was (subject to some minor issues that were easily resolved) an agreed generic bundle comprising a core volume and separate volumes for each claimant, and separate volumes for medical literature, book extracts, and authorities. The total page count was in the region of 11,000 pages, indexed, paginated, bookmarked, and hyperlinked in a well-structured and helpful manner.

15. The agreed medical evidence is that each claimant is suffering from a psychiatric disorder and that these proceedings have the potential to impact on their mental health. Each claimant is potentially vulnerable within the meaning of Civil Procedure Rules Practice Direction 1A. I conducted a pre-trial review in July 2021. It was agreed that the trial timetable would be arranged so as to ensure each claimant was given a firm time slot for his evidence, even if that meant re-arranging other witnesses, or interposing witnesses, or short periods when the court would not be sitting. That provided a degree of certainty for each claimant and enabled him to prepare and have in place any necessary support arrangements. Each claimant gave evidence in their allotted slot.

16. The claimants (after being given an opportunity to take advice) all agreed that their names could be used in the course of the oral evidence (but with the reassurance that reporting restrictions were in place to prohibit reporting of their names outside the courtroom). This meant that witnesses were able to give evidence freely without worrying about inadvertently mentioning a name that was subject to reporting restrictions. It also avoided the potential dehumanising effect of using cyphers instead of names.

17. In the course of the opening of the case, MCFC repeated what it had said in correspondence: it would not challenge the claimants' accounts of the abuse. That assurance was given to each claimant at the start of cross-examination. The claimants were not therefore cross-examined in relation to the abuse. There was, to a limited extent, questioning around some of the circumstances surrounding the abuse, but only insofar as that was necessary to test their accounts of subsequent difficulties, and to provide a platform for the expert medical evidence. Arrangements were made to enable the claimants to attend parts of the trial by video-link. That meant that they were able

to participate in the proceedings and provide instructions, but without having to sit in the courtroom (particularly when Bennell was giving evidence).

18. It was clear that many, possibly all, of the claimants found the process of giving evidence, and the proceedings more generally, stressful, and difficult. I am, however, satisfied that the quality of their evidence was not diminished by reason of any vulnerability, and nor was their ability to participate fully in the proceedings and to give their best evidence. Their evidence was vivid, compelling, distressing, and credible. Of course, given the period of time since the events in question there are details such as dates, times, and places where there is obvious scope for error, failings in recollection and false recollections. In some instances, a claimant had a firm recollection of a detail on which it is convincingly shown that he must be wrong (for example, in one case, being abused on their birthday, and going to school the next day, when the next day must have been a bank holiday). There is also the possibility, stressed by MCFC, of reattribution and confirmation bias. None of these matters was due to any vulnerability on the part of any of the claimants.

19. MCFC also made it clear that the accounts given by a number of supporting witnesses would not be challenged. The claimants are critical of the late stage at which this indication was given. But it did avoid a number of witnesses having to give oral evidence (their evidence instead being adduced in unchallenged written form). With helpful cooperation between the parties and their legal teams, the overall length of the trial was shortened from that which had originally been forecast.

20. I received excellent written and oral opening and closing submissions which were tightly focussed on the key issues, and on the matters on which I had invited particular assistance. I am grateful to counsel and the wider legal teams for the manner in which this sensitive case was conducted.

The general background

21. The general background is not controversial. The following is taken from evidence that is not challenged.

22. MCFC is a professional football club, regulated by the rules of the Football Association ("the FA rules"). In the 1970s and early 1980s it played in the first division of the Football League. It was relegated to the second division at the end of the 1982/83 season and was, at that point, in some financial difficulty. Its stadium and headquarters were at Maine Road. It owned Cheadle Town's grounds which it used as a training ground. Later, it had a stake in a ground at Platt Lane which was run by the council, and was available for hire, and which was used by MCFC as a training ground.

23. The FA rules regulated the recruitment of footballers. They prohibited MCFC from allowing boys under the age of 14 to attend at its club for regular training or coaching. Once a boy was 14 years old, he could become an "associated schoolboy" of the club and could then attend for regular training and coaching. An associated schoolboy of one club could not become an associated schoolboy of another club without the consent of the first club. This meant that once a boy was 14, but not before, a club could "lock them in" (to use the language of Griffiths J in another case concerning sexual abuse by a football scout, *DSN v Blackpool Football Club Limited* [2020] EWHC 595 (QB) at [98]).

24. Associated schoolboys were in full time education. Compulsory education ran to the end of the school year in which a boy reached the age of 16. At this point, if a boy left school and was otherwise nominally unemployed, he could become an apprentice at a professional club under the Government's Youth Training Scheme ("YTS"). At the end of an apprenticeship a boy might be signed by the club as a professional player, or might be signed by another club, or might fail to secure employment as a professional footballer.

25. MCFC had a youth development officer. From around late 1979 this was Ted Davies. It also had a youth coach, Steve Fleet, and coaches for its associated schoolboy teams. These were all employees of the club. Like other clubs in the FA, it used "scouts" to identify promising young footballers who could be signed as associated schoolboys once they were 14. At the relevant time, MCFC's head scout was Ken Barnes. He was employed by MCFC and had an office at its Maine Road stadium.

26. Other scouts were not employees of MCFC. They were not paid a salary, although some were paid expenses. They were given a "scout card" which stated that they were a representative of MCFC. Scouts could use their scout card to secure attendance at school grounds to watch boys' football games, or to secure access to Maine Road. Meetings of the scouts would take place in Ken Barnes' office (Bennell quibbled with the word "meetings", but he accepted that he, and other scouts, regularly attended at Ken Barnes' office where matters would be discussed – that seems to me to be aptly captured by the word "meetings"). Some scouts ran football teams (some of which were referred to as "feeder" or "nursery" or "junior" teams) for boys. The boys in these teams were aged between 11 and 14.

27. The terms "scout", "feeder teams", "junior teams" and "nursery teams" are not defined. The claimants say, accurately and reasonably enough, that they are terms that MCFC itself use (including in a compensation scheme that it established for those who played for certain teams and who were abused by Bennell). They are certainly terms that were in use in the 1970s and 1980s (as shown by their use in MCFC's matchday programmes) but, again, there is no clear definition (save that in the compensation scheme certain teams are identified as being feeder teams). It appears that the term "scout" could be applied to anybody who might be in a position to identify footballing talent and make an introduction to MCFC. This might include PE teachers in local schools. The term "feeder team" (and related expressions) appears to have been used to cover teams in which a club took a particular interest and from which it recruited associated schoolboys at age 14. The natural meaning of the terms "junior team" and "nursery team" implies a more direct hierarchical connection to a club, but these terms were often used interchangeably with "feeder team". Some feeder teams could be far afield - an example was given of a MCFC feeder team in Ireland from which MCFC recruited players.

28. It is common ground that Bennell was a scout for MCFC from about 1975. There is an issue as to when he stopped being a scout for MCFC. Bennell says that he stopped in 1978 or 1979 (and MCFC relies on Bennell's evidence in this regard). The claimants say that he remained as MCFC's scout throughout the period when they were abused by him (so until at least late 1984). On any view, however, Bennell moved home in late 1979 when he took employment as a residential child support worker at Taxal Edge.

29. Bennell was, during the late 1970s and early 1980s, involved in the running and/or coaching of a number of boys' football teams. The names of teams that are linked to

Bennell include Senrab, Whitehill, Blue Star, Midas, Pegasus, Adswood Amateurs, White Knowl, Glossop Juniors, New Mills Juniors and North West Derbyshire. There is confusion in relation to the team names because (a) the same group of boys played in teams that had different names at different times, (b) Bennell deliberately used the names of existing teams for his teams, and (c) there would be separate teams (but sometimes with the same name) for separate year groups. Senrab was the first team Bennell established in the Manchester area, followed by Whitehill. Blue Star, Midas and Pegasus were youth teams that were reputed to be connected with MCFC. Adswood Amateurs is a football club based in Stockport with a history going back at least to the 1960s. Bennell is described in a contemporaneous document as the team manager for the Adswood Amateurs "under 14" ("U14") team in the 1983/84 season. It trained at Platt Lane. Bennell's involvement with the White Knowl, Glossop Juniors, New Mills Juniors and North West Derbyshire teams started after he moved to Taxal Edge.

30. Bennell was disruptive and caused trouble in the league in which his team played. For example, he poached players from other teams and put boys into his team without properly registering them. Possibly for that reason, his team would sometimes be managed, nominally at least, by someone other than Bennell (and, on occasion, the father of one of the boys in the team), and that person was the public face of the team so far as concerned the leagues in which they played. In reality, though, Bennell ran the teams, coached the boys, selected who would play in which game, and provided the boys with football kit for each game.

31. The teams Bennell coached were very successful. At least some of them were virtually unbeatable. This was largely because Bennell managed to persuade the most talented boys in the area to play for his team. They often played an age group up (so, for example, an U12 team would play in a U13 league). Even then, they would regularly win the league. The teams also took part in other tournaments, and went on tours, including to the Isle of Wight, Ayrshire, Wales, and Spain. Bennell also ran soccer coaching camps over the summer at Butlins in Pwllheli.

32. Bennell was regarded by boys and their parents as an effective but demanding coach. He had the car, clothes, charisma, and confidence that boys associated with a successful professional footballer. He was seen as a route to a professional football career, particularly with MCFC. Boys were anxious to play for his team, and to please him. Because of the way in which boys would flock to him, he has been described as a "Pied Piper". It is now known that he was a prolific predatory paedophile.

33. Bennell regularly had boys, individually and in groups, to stay at his home. It was an attractive place for young boys who were keen on football. There were large quantities of football kit and other football paraphernalia. There were video games, fruit machines, junk food and pets (including large dogs, a puma, and a monkey). Parents were told that it was convenient for boys to stay at Bennell's home before a game or training, and that it improved their football. They did not question the idea that their sons should stay with him. Once he had them at his home, Bennell would scare boys with horror films, or would show them pornographic videos. He had some sleep in his bed. He then engaged in sexual abuse of escalating severity.

34. It is common ground that Bennell was not, at any stage, an employee of MCFC. He was in full time paid employment with other employers. HMRC records show that in the tax years 1978/79 and 1979/80 he was employed by Justin Fashions Ltd. In the tax years

1979/80, 1980/81 and 1981/82 he was employed by Boys and Girls Welfare Society Central Offices (this is when he was working at Taxal Edge). No employer is recorded by HMRC for the tax years 1982/83 and 1983/84 (and he appears to have run his own video business during this period). In the tax year 1984/85 he was employed by Crewe Alexandra Football Club ("Crewe Alexandra").

35. There was a significant change in the FA rules for the 1984-85 season. At this point, the FA rules allowed boys over the age of 11 to attend "a licensed centre of excellence… for training and coaching." Such a centre was set up by Crewe Alexandra. In early 1985 Bennell was employed by Crewe Alexandra as a manager of a youth team that was trained and coached at a centre of excellence. Bennell sought to persuade a number of the boys in his teams to move to Crewe Alexandra with him. Some did. Bennell worked for Crewe Alexandra until 1992.

36. In 1994 a boy made allegations that he had been sexually assaulted by Bennell while on a football tour in Florida. Bennell was arrested and charged with six offences. He initially entered not guilty pleas, but he subsequently entered pleas to five felony counts of a custodial sexual battery on a child, and one felony count of lewd and lascivious assault on a child. He was sentenced to 4 years' imprisonment. He was released in August 1997, having served 3 years. He was then deported to the United Kingdom.

37. In 1996 Channel 4 made a documentary, "Soccer's Foul Play" as part of its Dispatches series. TVZ took part, waiving his right to anonymity. He gave a powerful televised account of the abuse perpetrated by Bennell. The programme was broadcast in January 1997.

38. During this period Cheshire police carried out an investigation into further offences committed by Bennell. He was charged with these offences in September 1997, following his deportation. He initially pleaded not guilty to all offences. On 1 June 1998, the first day of the trial, he pleaded guilty to 23 offences against boys aged 9-14. He was sentenced to 9 years' imprisonment.

39. In 2012 newspaper reporting linked Bennell to the suicides of former players. MCFC issued a press release stating:

> "Barry Bennell was not an employee of Manchester City although the club was connected to him in his capacity as a 'scout' in youth football at the time in question. The club ceased to deal with Mr Bennell as soon as complaints regarding his alleged inappropriate behaviour emerged."

40. In 2014 Bennell was charged with further sexual offences. He pleaded not guilty. He changed his plea to guilty on the day of the trial. He was sentenced to 2 years' imprisonment.

41. In 2016 there was further media reporting about Bennell. This was precipitated by an account given by Andy Woodward to the Guardian newspaper and to a television programme, presented by Victoria Derbyshire, in November 2016. As a result, a number of further men came forward and said that they, too, had been abused. HFT was one of these. He spoke on the Victoria Derbyshire programme on 25 November 2016.

42. Bennell was charged with a further 50 sexual offences. He pleaded guilty to 7 of the charges but contested the remainder. He was convicted of all 50 offences. He was sentenced to a special custodial sentence for an offender of particular concern of 31 years (comprising a custodial term of 30 years and an extended licence period of 1 year). In sentencing him, the Recorder of Liverpool, HHJ Goldstone QC, said:

> "your behaviour towards those boys… was sheer evil… you were the devil incarnate; you stole their childhoods and their innocence to satisfy your own perversion…"

43. In 2020 Bennell was charged with 9 further offences. He pleaded guilty and was sentenced to a further special custodial sentence of 5 years (comprising a custodial term of 4 years and an extended licence period of 1 year).

44. Bennell has now been convicted of 90 separate offences, all against young boys, ranging from indecent assault contrary to s15 Sexual Offences Act 1956 to offences contrary to s12 of the 1956 Act. The offences for which he has been convicted would now amount to offences that are classified as rape (s1 Sexual Offences Act 2003) (both by way of penetration of mouth and penetration of anus), assault by penetration (s2 of the 2003 Act), sexual assault (s3 of the 2003 Act), causing a person to engage in sexual activity without consent (s4 of the 2003 Act), and the corresponding offences committed against children under 13, contrary to ss5-8 of the 2003 Act. I use the (more modern) terminology of the 2003 Act whilst acknowledging that it was not in force at the time of the offences in question (so Bennell's convictions related to corresponding offences under the 1956 Act).

45. In about 2016 MCFC instructed Pinsent Masons LLP and Jane Mulcahy QC to carry out a review into (amongst other matters) "[t]he parameters of Bennell's relationship with MCFC" ("the Mulcahy review"). The report of the Mulcahy review was published on 17 March 2021. Many of the witnesses who were interviewed for the purposes of the review were anonymised. They had been given assurances of confidentiality. The report sets out the evidence that was secured as to the relationship between Bennell and MCFC. It is accepted by the parties that this evidence is admissible in these proceedings as hearsay. Much of the generic evidence given during the trial was similar to the evidence that was collated by the review team. For the reasons given by Cavanagh J in *TVZ v Manchester City Football Club* [2021] EWHC 1179 (QB) at [70]-[78]) and for the reasons I gave at the pre-trial review on 28 July 2021, the conclusions of the Mulcahy review are not admissible as evidence in these proceedings.

46. At the same time as the publication of the report of the Mulcahy review, MCFC issued a press statement in which it referred to what it called "historic connections" between Bennell and MCFC. It said:

> "…the information identified by the Review Team led to the Club launching the 'Manchester City FC Survivors' Scheme' to offer compensation, paid counselling and personal apologies- face to face where preferred- to eligible survivors as an alternative to often lengthy, costly and arduous litigation processes. The apologies continue to be made directly to those Survivors by a senior Board Director and the scheme remains open for applications until 31 August 2021.

> Importantly, in addition to the personal apologies that have been made, the Club's Board of Directors wishes to apologise publicly and unreservedly for the unimaginable suffering experienced by those who were abused as a result of the Club's association with these men. The Club also extends its heartfelt regret and sympathy to the multiple family members and friends affected by these traumatic events, the ramifications of which are felt by so many to the present day and will continue to be felt for a long time to come."

47. I have been provided with a copy of the MCFC Survivors' Scheme, following the ruling of Cavanagh J in *TVZ* (see at [19]-[78]). It provides a mechanism for those who were abused by Bennell to apply for compensation from MCFC without engaging in litigation. Paragraphs 1.1-1.4 of the Scheme Rules state:

> "1.1 The … Scheme… has been set up by… MCFC… in response to the serious sexual and physical abuse suffered by young football players at MCFC Feeder Teams or MCFC Related Teams in the period 1965 to 1985. The abuse was inflicted by … (ii) by Barry Bennell between 1 August 1976 and 1 November 1979; or (iii) by Barry Bennell between 1 August 1981 and 31 December 1984. The Scheme's purpose is to provide survivors of Relevant Abuse with an alternative pathway to court litigation for the resolution of legal claims they may have against the Club.
>
> 1.2 The Scheme is designed to provide an optional, predictable, Personal Injury Pre-Action Protocol compliant, paid-for and without prejudice save as to costs ADR methodology for the early resolution of Eligible Scheme Claims. The approach to resolution is not designed to be adversarial and the Scheme is designed to provide Redress Offers based on the abuse suffered by each Eligible Scheme Claimant. The Scheme does not seek to apportion legal liability as against the Club or any other entity or individual.
>
> ….
>
> 1.4 Any Redress Offer made by or on behalf of MCFC will have the status of a without prejudice save as to costs offer of settlement made by the Club. Any such Redress Offer, the basis on which a Redress Offer is calculated, and the parties' conduct in making or rejecting a Redress Offer will be referable to any relevant court on the issue of costs (pursuant to Part 44 of the Civil Procedure Rules 1998) arising out of any civil trial relating to Relevant Abuse."

48. The term "Relevant Abuse" was defined to mean:

> "…sexual and physical abuse carried out… (ii) by Barry Bennell between 1 August 1976 and 1 November 1979 or (iii) by Barry Bennell between 1 August 1981 and 31 December 1984, where that abuse took place in the course of [his] scouting or coaching

> work with the MCFC Feeder Teams or MCFC Related Teams and held themselves out as acting for the Club."

49. "MCFC Feeder Teams" were defined to mean any one or all of Whitehill, Whitehill Boys, Bluestar, Pegasus, Xerxes, Midas, and Adswood Amateurs. "MCFC Related Teams" were defined to mean any one or all of Palace, White Knowl and Glossop Juniors.

50. A set of answers to "Frequently Asked Questions" ("FAQs") was published. This stated:

> "2. Why is MCFC paying compensation?
>
> Since November 2016, MCFC has been the subject of a number of civil claims arising out of allegations of abuse conducted by Barry Bennell and John Broome. The Club is offering to pay compensation to eligible survivors under the Scheme Rules as an alternative to those survivors pursuing their claims through the civil courts. The Club considers that, in the context of the allegations made by survivors, paying compensation under the Scheme Rules is the right thing to do in order to give eligible survivors a level of closure as fast as possible.
>
> 3. Does this mean MCFC is liable for the actions of Barry Bennell and John Broome?
>
> The Scheme is intended to operate as an alternative dispute resolution methodology, and as such it does not seek to determine MCFC's liability for the abuse suffered by any of the survivors that make a claim under the Scheme. Instead, it is MCFC's intention that eligibility for the Scheme will be determined on an inquisitorial (i.e. by gathering and analysing all information submitted to the Scheme without costly submissions by both sides) rather than adversarial basis – this is intended to avoid the costs, emotional distress and complexity of a trial within an alternative dispute resolution process. The upshot is that payments under the Scheme do not amount to an admission of liability by MCFC, or a finding of liability against the Club.
>
> ….
>
> 6. Why is Barry Bennell referred to twice in section 1.1 of the Scheme Rules?
>
> Barry Bennell was linked to MCFC for two separate time periods, with a gap of 18 months separating the two. During this gap (between November 1979 and July 1981), MCFC's investigation identified that Barry Bennell was not involved with football. He is therefore referred to twice in order that the claims are allocated to the correct time period. Both sets of claims will be treated, and damages awarded, in exactly the same way."

51. I was told that 64 individuals have received redress payments under the Scheme. The claimants have not applied for payments under the Scheme. That would have required them to abandon these claims. They maintain that MCFC is vicariously liable for Bennell's actions, and that they are entitled to damages assessed on common law principles, rather than the more limited payments that would be made under the Scheme. Moreover, the Scheme only came into effect after they had instructed lawyers and incurred significant legal costs which would not be recoverable under the Scheme.

52. Clive Sheldon QC was instructed by the FA to investigate how the sexual abuse of children had been allowed to take place within the sport of football. His report was also published on 17 March 2021. Pages 386-516 of Mr Sheldon's report are concerned with Bennell. Mr Sheldon secured evidence from a number of witnesses, including TVZ and Ray Hinett. A summary of the evidence he obtained on the question of the links between Bennell and MCFC is set out in his report (in particular at paragraphs 9.2.32 - 9.2.47.26). As with the Mulcahy review, the evidence collated by Mr Sheldon is admissible in these proceedings as hearsay, but his conclusions are not admissible.

The evidence

The claimants

53. I heard oral evidence from each of the claimants. In each case additional witnesses were called (or witness statements tendered) on their behalf. The supporting witnesses included parents and other relatives, teachers, and team-mates. Each of the claimants gave evidence of their footballing career, the abuse they had sustained from Bennell and the impact that abuse had on them. I summarise that evidence below when assessing the quantum of their individual cases.

54. The claimants also gave evidence about the different teams for which they played and the links, as they perceived them, between those teams and MCFC. I accept that they are all truthful witnesses. But at the relevant time they were young boys who were being groomed and manipulated by Bennell. Their perception of events must be assessed in that context. They all say that they believed that Bennell was working for MCFC. They had compelling reasons for that belief which was reinforced by everything Bennell said and did. That does not, however, necessarily mean that their belief reflected reality. I consider their evidence on these aspects in the context of the broader evidence in respect of Bennell's relationship with MCFC. Ray Hinett and AJM, in particular, were adults at the relevant time and were themselves directly involved in running boys' teams. They were more directly involved in the dealings between Bennell and MCFC. They are in a better position to provide evidence about the nature of the relationship between Bennell and MCFC than the claimants who were boys more focussed on playing football than anything else. I will therefore come back to the evidence of the claimants (and the witnesses called in support of their individual claims) after first summarising the evidence of Ray Hinett and AJM, and other witnesses who gave generic evidence that was applicable to all of the claims.

Expert evidence

55. In each case expert evidence was given by Dr Andrew Mogg, who was instructed by the claimants, and Professor Anthony Maden who was instructed by MCFC. They gave oral evidence over 4 days (each day being devoted to two claimants, and their evidence

on that pair of claimants coming after the evidence of those claimants). I address their evidence at paragraphs 349 - 360 below, and, separately, when dealing with the quantum of each claimant's case.

Generic evidence as to the relationship between Bennell and MCFC

56. Evidence was given by witnesses which was not specific to the claim of any particular claimant. This addressed the different football teams that featured in the claimants' evidence, and the links between those teams, Bennell, and MCFC. This evidence is critical to the central issue of vicarious liability. These witnesses were Ray Hinett, AJM, ZAH and GXY (called on behalf of the claimants) and Bennell, Roger Reade, David Small and Ian Carroll (called on behalf of MCFC). In addition, the claimants (and witnesses called in support of their individual cases) addressed the generic issues as well as the facts of their individual claims.

57. Ray Hinett: Mr Hinett is a particularly important witness. He provided a witness statement for the claimants and a separate witness statement for MCFC. He was an adult at the time of the relevant events. His son, from about the age of 11, played for Whitehill and was coached by Bennell. He, himself, became a scout for MCFC, and he managed a team that was coached by Bennell. He was not challenged as to the honesty of the evidence he gave, and he has no apparent motive to mislead on any issue. He gives valuable evidence about the relationship between MCFC and its scouts in the late 1970s and early 1980s. His recollection of precise dates and team names is understandably hazy, and he readily acknowledged instances where he did not know the answer to a question or where he might have got something wrong.

58. In the late 1970s (possibly 1978), while his son was playing for Whitehill, Ken Barnes asked Ray Hinett if he would help run the team. This was because Bennell had got into trouble with the league for playing unregistered players and poaching players from other teams. One or two clubs had complained to MCFC and asked them "not to send him anymore." Ray Hinett therefore became the adult figurehead for the team, but Bennell continued to train and coach the boys. He said that Whitehill was run and funded by Bennell with the help of the parents of the boys who played for the team. Ray Hinett recruited boys from other teams to play for Whitehill. He did so in a more diplomatic manner than Bennell – for example, he would suggest that a boy move teams at the end of the season, rather than mid-way through the season, so as to reduce conflict with other clubs.

59. Mr Hinett thought that a good account of the role of a scout was that contained in a book written by Len Davies (himself a MCFC scout), "My name is Len Davies and I'm a football scout" (published in 2000). The foreword contains a quote from Francis Lee (a former chairman of MCFC):

> "Football Scouts are an integral part of any successful Football Club with an ongoing Youth Policy. Without them, the steady flow of young hopefuls would not be available to the Progressive minded Clubs. They obviously need a constant supply of the right kind of young talent, to be developed, into the right kind of player required for the modern game. That's where the Scout comes in, searching out and finding these talented youngsters as

> early as possible. Finding them early, in order to teach them, the techniques that have been overlooked in years gone by."

60. Ray Hinett said that he went to watch school games, and games between local teams. If he saw a boy that he wanted to recruit he approached the parents. It was entirely up to the individual scout to decide which games he went to watch: "we probably knew more about junior football than MCFC." Part of his role as a scout was "selling" the football club to the boys so they felt they belonged and had a sense of loyalty. This was to reduce the risk that they would sign schoolboy forms with another rival club.

61. Ray Hinett met with other scouts (Bennell, Len Davies, George Woodcock and AJM) about once a month at Ken Barnes' office at Maine Road or at MCFC's social club. Ray Hinett would be allowed entry to Maine Road when he showed his scout card.

62. The teams that were run by MCFC scouts included Whitehill, Blue Star, Pegasus, Midas, and Adswood Amateurs. Blue Star and Midas were also the names, at various times, of MCFC's associated schoolboy teams. Ray Hinett said that some of these names were suggested by Ted Davies. Adswood Amateurs let Ray Hinett run a junior side as part of their club.

63. The boys that played for these teams were aged 11-14. There were three age groups – U12s, U13s and U14s. The boys could thus play in these teams for up to 3 seasons. The teams would use pitches that were owned by MCFC, either at Cheadle Town or, later, Platt Lane. At one stage MCFC arranged for a team to play at a University pitch. Mr Hinett thought MCFC covered the cost of hiring the pitch. He said that the groundsman had previously played for MCFC and he arranged it with Ken Barnes. The mother of one of the boys had a connection with the university, and she was able to help arrange for the team to train at the gym.

64. Mr Hinett was not paid (other than occasional expenses), but MCFC would pay for the cost of the pitches and, he said, would occasionally provide the teams with kits as well as balls.

65. After Ray Hinett had managed Whitehill in the 1977/78 season, Ken Barnes suggested that Ray Hinett set up a new U14 team for the 1978/79 season. This team was called Blue Star. There were already U15 and U16 Blue Star teams. The players in those teams were, mostly, associated schoolboys at MCFC. Ray Hinett was not involved with these older Blue Star age groups – they were run by Mike Grimsley and Dave Norman.

66. Ray Hinett arranged trips for his team, including to a tournament in Ayr, Scotland. MCFC did not provide any funding for these trips: "if we were going to a tournament, we paid our own way." The trips were funded by the parents. It was Ray Hinett's decision to participate in these tournaments.

67. Chris Muir, a Director at MCFC, once donated a set of kit to Ray Hinett for his team to use. He also received another kit donated by someone who was not connected to MCFC. He also bought some kit from a warehouse run by Frank Roper.

68. Ray Hinett says that the connection between MCFC and "feeder teams" like Whitehill and Blue Star was meant to be secret, but inevitably it became widely known. Complaints were made by other clubs in the youth leagues. The teams played in a higher

age bracket (so the U12s Whitehill team would play in an U13s league) which went some way towards levelling the playing field. This was a proposal made by Ted Davies.

69. MCFC did not exercise control over the day to day running of feeder teams – MCFC was "happy to let you run the teams and pick the boys, the days we played on and the league we played in were left to me." He said that the term "feeder team" meant a team where it was hoped the best players would move on to become associated schoolboys at MCFC. He explained how MCFC took steps to engender a sense of affinity to the club in the boys that were playing for these teams:

> "Sometimes a player would come in and be introduced to the boys, speak to them and the boys would be given a tour of the Club. Again, this was quite an effective way of keeping the boys interested in Manchester City and would help cement the connection between the boys and the Club. Part of my role as a scout would be selling the football club to the boys so they felt they belonged and a sense of loyalty - therefore reducing the risk that they would sign schoolboy forms with another rival club. Bennell would have done the same thing and [I] remember he gave me and my son a ticket to the cup final.
>
> Ken Barnes and Ted Davies… would also regularly come down to watch the feeder teams play. They would usually watch Whitehill and Blue Star play and I remember that in particular, Ted Davies would come to watch quite a lot. In addition to this, if any of the boys from these sides ever suffered an injury they would be treated by Manchester City's physiotherapist, a man called Roy Bailey.
>
> Most of the trophies won by the feeder teams would be placed in Barnes's office which would then be put on display…"

70. By these means, MCFC sought to ensure that any boy offered schoolboy forms when he reached the age of 14 would accept. Moreover, if a boy that was wanted by MCFC wished to sign for another club (as sometimes happened) then Bennell and Ken Barnes would try and discourage him. Ultimately, however, there was little they could do to stop him, and sometimes boys signed for other clubs. Examples were given of one boy who signed for Coventry City. Ray Hinett's son signed for Bolton Wanderers. AJM gave evidence of a boy who refused to sign for MCFC and instead signed for Manchester United Football Club ("MUFC"), going on to captain England schoolboys. There was also evidence of this happening "in the other direction": boys from feeder teams for other clubs would sometimes sign associated schoolboy forms for MCFC.

71. Ray Hinett said Bennell was promised a job as the youth development officer at MCFC. Steve Fleet strongly objected and threatened to leave if Bennell got the job (this is corroborated by an account given in Len Davies' book). Ted Davies was given the job. In response, Bennell left for a period of about 2 years from around 1979 to around 1981. During this period, he set up teams in Derbyshire. Ray Hinett still saw him occasionally – Bennell asked Ray Hinett if he could borrow players to play in his team. Ray Hinett agreed but insisted that the arrangements be made between Bennell and the boys' parents.

72. Ray Hinett was clear that Bennell "returned" in about 1981. Ken Barnes asked Ray Hinett if Bennell could coach Ray Hinett's team and Ray Hinett agreed. When asked if this was a request or an instruction from Ken Barnes, Ray Hinett said "it was a strong request… a request that you couldn't refuse." He added that Bennell was not being "imposed" on him. Ken Barnes asked Ray Hinett, and Ray Hinett asked the parents of the boys. The parents could have refused if they had wished to do so - they had the final say.

73. Bennell resumed his coaching of Ray Hinett's teams. He also took over the running of one of the other teams – Ray Hinett thought that was an U13s team. There was no difference, according to Ray Hinett, between Bennell's role before and after the 2-year break. Apart from taking the coaching sessions, Bennell did not have any connection with Ray Hinett's team. He did not attend many of the matches. He was, at the time, still running his own junior teams in Derbyshire – White Knowl, Glossop Juniors and New Mills Juniors. Ray Hinett did not believe that they had any connection with MCFC and said that Bennell had started New Mills Juniors himself. However, he thought that "Bennell had quite a bit of influence over Ken Barnes and that Bennell used this to influence the boys."

74. Ray Hinett said that Ted Davies suggested that they change the name of the team "to cover up who we really were". One of the players in Ray Hinett's team was Paul Warhurst, who went on to become well known as a professional player in first division teams. Paul Warhurst's father was Pete Warhurst. He played for an adult team at the Adswood Amateurs club. Pete Warhurst obtained permission from the committee of Adswood Amateurs to allow the Blue Star players to form youth sides for Adswood Amateurs. Bennell became involved in coaching one of these youth sides.

75. AJM: AJM is the father of a boy who played in a number of training sessions and games organised by MCFC. He first took his son for a training session at Maine Road in September 1976 when his son was almost 10. He attended at the players' entrance and the door was opened by Bennell who was wearing a MCFC tracksuit and who said that he had heard about AJM's son. AJM assumed Bennell was a MCFC coach and says there was no reason to think otherwise. Bennell led the training session. He appeared to have "free rein" around the Maine Road stadium. AJM's son was invited back to further training sessions at Maine Road. In the following summer, 1977, he occasionally played for the Whitehill U12s team. They played in MCFC kit. This team was managed by the father of one of the other boys in the team. It was anticipated that Ray Hinett would become the manager. He duly did, before then going on to manage Blue Star. At the request of Ken Barnes and Ray Hinett, AJM managed Whitehill U12s for the 1978/79 and 1979/80 seasons. Bill Phillips managed the U13s team. Bennell was the coach for both teams.

76. AJM said "we were all volunteers." He had a full-time job. Bill Phillips did too (as did Bennell). His vision, though, was that his son was going to play for MCFC, and that was sufficient motivation to devote much time and effort to the running of a boys' team.

77. AJM found pitches where the Whitehill U12s could train and play. These included Cheadle, which he accessed "by giving the groundsman Fred a quid." He also used pitches that belonged to the council. He secured government grants to help fund the team, and also raised money. He and his wife took responsibility for looking after and washing the boys' kit. He arranged sponsorship for the team. This paid for their kit

when they played at a tournament in the Isle of Wight. He did not require permission from MCFC or anyone else when deciding which pitches to play at, what kit the team should wear, or what tours they should go on. This was all arranged by AJM and Bennell.

78. MCFC did not generally have any input into player selection for the teams, but AJM recalled two occasions when he was asked by MCFC to register a boy (in each case because the boy had a brother that MCFC was interested in). He said he would take on a boy if requested by MCFC, even if he did not think the boy was good enough – he would "absolutely" do what he was asked by MCFC:

> "I was being buttered up, given a scout pass, match tickets, went into Ken Barnes' office, it was all part of the relationship, my ego was massaged… I don't flatter myself that parents would bring boys to play in my team, they were being told by Bennell that keep playing as they are and that they are going to play for MCFC. It was drummed into everyone."

79. Bennell picked the players who would play for the team, and Bennell had the final say as to who would be picked and who would play. On one occasion when it appeared that Steve Fleet would not take on a boy (presumably as an associated schoolboy) that Bennell had recommended, "Bennell gave a blunt warning along the lines of "if you don't take him, I won't send any other boys in MCFC's direction.""

80. The team played in the Worsley and District League, which was the premier division of youth football in the area. AJM had been asked to enter the team into the league. The request was made, indirectly, by Ken Barnes. Just as Whitehill was a feeder team for MCFC, other teams in the league were also known as feeder teams for well-known football clubs: Mancunians and Jubilee were feeder teams for MUFC, Penketh was Everton, Nova Juniors was Blackpool, and Marauders was Bury. One difference, though, was that Whitehill had a wider catchment area with players that were scattered around northwest England.

81. Bennell coached the team almost all the time. AJM became the "conduit" between Whitehill and MCFC. In articles for local newspapers at the time AJM described the team as MCFC's "nursery team". Ken Barnes asked him to "tone down" the connection between MCFC and Whitehill in any publicity, because the FA was "becoming very strict". In subsequent publications Whitehill is referred to as being "formerly connected" with MCFC and it was said that the team had become "independent". AJM explained that this was a ruse and that there was no change in the connection between MCFC and Whitehill. A photograph of the team at the time shows them wearing MUFC (not MCFC) kit.

82. AJM noticed a change in Bennell's apparent relationship with City in (he thought) late 1977 (but this is more likely to have been 1978 or 1979). He was no longer able to use the facilities at Maine Road, such as the training gym, but he arranged training on the asphalt of the outside car park (and managed to persuade someone from the club to turn on the outside lights). Ted Davies had, by then, been made Assistant Chief Scout. Bennell seemed to think that he should have been offered the job. AJM said he believed that Steve Fleet had said that he would resign if Bennell was given the job.

83. At the end of the 1979/80 season, AJM and Bennell attended a presentation evening in the social club at Maine Road which was arranged by MCFC. Ken Barnes gave out trophies. Some of MCFC's young professional players also attended this evening. At around the same time, Ted Davies was the guest at a Worsley & District Presentation evening (held in a club near Bolton) where Blue Star or Whitehill had won their respective league titles.

84. In the summer of 1980, Whitehill and Blue Star were merged to become Midas. That was Ken Barnes' decision and the amalgamation was controlled by MCFC.

85. Bennell ran football coaching camps during the school holidays. During the summers of 1978, 1979 and 1980 Bennell was a resident football coach at the Butlins resort in Pwllheli, North Wales. This had nothing to do with MCFC, though Bennell did wear MCFC kit and Butlins advertised him in their magazine as a MCFC youth coach.

86. ZAH: ZAH's son played for Blue Star from about 1978 or 1979. This was regarded as a nursery or junior side of MCFC. At some point the name of the team was changed to Pegasus. ZAH was aware of Bennell but he did not have a great deal to do with her son's side. The side was initially run by Ray Hinett, and later by Pete Warhurst. ZAH was involved in fund raising for the team. She attended meetings at Maine Road to discuss how to do that. Ken Barnes and Tony Book (who was a celebrated former captain and manager of MCFC) attended those meetings. She also went on tours with the team and managed the boys' finances. As far as she was aware, any spending money came from the parents, and she was not aware of any contribution from MCFC. At some point between 1981 and 1983 her son went on a football trip to Spain with other boys and Bennell. She did not have to pay anything towards the trip. She does not know how it was funded. From some things that her son said, she fears that "Bennell must have tried something on" with him. She cannot now ask him. He took his own life in 2006.

87. ZAH described one occasion when her son had been injured and queued up to see the MCFC physiotherapist with first team players such as the international goalkeeper Joe Corrigan.

88. ZAH knew the name Adswood Amateurs, but (as far as she was concerned) she had not had anything to do with that club. A "news-sheet" that appears to have emanated from Adswood Amateurs indicates that there was an "intermediate team" managed by Pete Warhurst, and that ZAH was involved in collating details of those who would attend a tour to the Isle of Wight. ZAH said that this was the team her son played for, which she knew as Blue Star or Pegasus, and she could not explain the connection with Adswood Amateurs. She helped with fundraising, including in the organisation of a hoedown, and she attended a tour to the Isle of Wight. A programme from an Isle of Wight football festival in 1984 includes Adswood Amateurs, trained by Bennell, in the list of teams. It was the winning team in its age group (and won its group game 25 - nil). There is no mention of Blue Star in the programme (there was reference to a team called Pegasus, but it is common ground that this was a different team altogether).

89. GXY: GXY is a similar age to the claimants. He played football in teams coached by Bennell. He is bringing a separate claim. In 1981, when aged 11, he played in a tournament that had been organised by Bennell. After the game, Bennell asked him to play for White Knowl and New Mills Juniors. He agreed. Bennell said he worked for MCFC and showed his scout card. GXY then played for teams that were run by Bennell

in the period 1981-84. He said the teams were known by different names – New Mills Juniors, Blue Star, Midas, or Pegasus. Bennell used his connections with MCFC to arrange for players from MCFC (by which GXY meant schoolboy players) to come and play in Bennell's teams (this is likely to be a reference to Bennell "borrowing" players from Ray Hinett).

90. GXY played at Platt Lane, usually on a 5-a-side Astroturf pitch. He recalled Ken Barnes and Ray Hinett ("who was the manager"). His team wore MCFC kit, as did Bennell. GXY recalled meetings (a dozen or more) on Friday afternoons when Bennell and other scouts met at Ken Barnes' office at Maine Road. GXY was left in the carpark with a football whilst Bennell went to a meeting. GXY sometimes saw first team players come out of the building. He also saw Bennell collect tickets for games, to give to boys and their parents. GXY gave evidence in the prosecution of Bennell in Florida in 1994. He did not, in the course of his evidence, mention MCFC (but the connection between Bennell and MCFC was not relevant to those proceedings).

91. ANF: ANF has also brought a claim against MCFC. His case has not been listed with these cases because it was started later.

92. When ANF was about 10 he was asked by Ray Hinett to play for "the Manchester City junior team." Mr Hinett came to his house, showed a MCFC scout card, said that he worked for MCFC and that he wanted ANF to play for its nursery team, which was a feeder team for MCFC. ANF was subsequently taken to Maine Road and introduced to players and other members of MCFC staff. He was given MCFC kit, a football, and other gifts from the souvenir shop. He was introduced to Ken Barnes who said he was the Youth Team Development Officer, and that if ANF ever wanted match tickets then Ray Hinett would be able to provide complimentary tickets. ANF played for Pegasus and trained at Platt Lane. The team was coached by Tony Book. After a year, Ray Hinett told ANF that he would move to the next group up and that Bennell (said by ANF to be "the best coach there was at MCFC") would be the coach. This was, ANF thought, the summer of 1983. Bennell showed his scout card. He was wearing a MCFC tracksuit. Bennell regularly told ANF and other members of the team that they could go on to play for the MCFC first team, if they did what he told them to do. Their team had different names: Whitehill, Pegasus, Glossop Juniors, Adswood Amateurs and Blue Star. This was, said ANF, to conceal the fact that it was in reality the MCFC nursery team - otherwise it would not be permitted to play in the leagues. For the same reason, they did not wear MCFC kit when playing in league games (but they did when playing in tournaments). Bennell would sometimes drive the team in a MCFC Youth team minibus, which carried the name of a sponsor. During the summer holidays the team played at Platt Lane against other teams, and the other teams would be presented with MCFC pennants as pre-match gifts. Training sessions would often be led by Tony Book. At one point, ANF suggested he trained with the first team, but he later clarified that he would sometimes be present when the first team were training and that he would help with tasks such as collecting balls.

93. One tournament at Platt Lane was, thought ANF, organised by MCFC, sponsored by Wrangler, and orchestrated by Ken Barnes, Tony Book and Bennell. ANF accepted, however, that documentary evidence showed that this had, in fact, been arranged by a local community centre and had nothing to do with MCFC.

94. When trips were arranged (for example to the Isle of Wight, or Ayrshire, or Norfolk) they were (ANF has since been told) arranged and funded by Bennell, but at the time they were "presented as a Manchester City tour." The boys all believed that they were playing for MCFC. ANF said "this is what was brain-washed into us, by Bennell, Ken Barnes and Tony Book." ANF said that everything was "controlled" by MCFC. He explained what he meant by this: for the schoolboy footballers, their entire dream was to play football for MCFC; they would therefore do anything that was asked of them by anyone who appeared to be connected to MCFC:

> "If they said something to you, you had to obey it. You felt it was an honour. You felt responsibility. The way you dressed. As young boys you would wear a shirt and tie. A normal boy would not do that. You felt that you were part of the club. Someone like Ken Barnes or Tony Book – for them to say nice things to me, you felt honoured."

95. Roger Reade: Mr Reade worked for MCFC between 1975 and 1979 and between 1983 and 1986. During his first period at MCFC he was responsible for paying expenses to the club's football scouts (usually mileage for travel to and from football matches). He would secure Ken Barnes' authorisation and would then arrange payment. He does not recall any payments being made to Bennell. He does remember sometimes seeing Bennell at Maine Road (when he would wear clothing that was similar to that worn by the MCFC coaches). He does not recall seeing Bennell during his second period at MCFC.

96. Mr Reade said he would attend Ken Barnes' "very small" office "once a fortnight" in his first period at MCFC or "every 6 weeks or so" when he returned. He said that there were no trophies in the office.

97. David Small: Mr Small's son played for Blue Star in around 1982. The team was run by Ray Hinett. Bennell occasionally took the coaching sessions. At some point the team changed its name to Pegasus (but the players remained the same, and Ray Hinett was still at the helm). Mr Small does not recall Bennell taking Pegasus coaching sessions but accepts that he may have done. At some point the team either changed its name or was transferred to a club called Adswood Amateurs. By now, Ray Hinett had stopped running the team and Bennell was the coach. Mr Small became (at Bennell's request) the secretary for the U14s. This involved attending league meetings (avoiding the difficulties that would ensue if Bennell attended) and collecting player subscriptions, as well as general administration. The club was largely funded by subscriptions and the proceeds of fundraising events such as hoedowns. This provided for the cost of transport, accommodation, and trips to tournaments in the Isle of Wight and Ayr. Mr and Mrs Small would wash the boys' football kit. There was no financial support from MCFC. Mr Small said that these teams could be described as MCFC nursery teams. Mr Small said that he was present in Ken Barnes' office when his son signed associated schoolboy forms with MCFC. He went into Ken Barnes' office on many occasions because he had become quite close to Ken Barnes who lived nearby. He said the office was "relatively small" and said that there were no trophies there.

98. Bernard Halford: Mr Halford was the secretary of MCFC during the relevant period and was responsible for the day to day running and control of the club. Mr Carroll, the solicitor acting for MCFC, spoke to Mr Halford in August 2016, in connection with a

separate claim that had been intimated against MCFC in respect of abuse perpetrated by Bennell. Vicarious liability was an issue in that intimated claim. In the event, it was dealt with through MCFC's compensation scheme, and no proceedings were issued. Mr Carroll says:

> "…Mr Halford explained that [MCFC scouts] were not on a salary, although some might have been given their expenses for travelling to any games they went to watch. To claim these, they would complete an expenses sheet and send this to Ken Barnes in the first place for approval. ...Ken Barnes could have told these scouts which games to watch or the scouts could have decided for themselves. Mr Halford did not know. How things were organised was up to Mr Barnes and Mr Halford himself had no direct contact with his scouts. There was no bonus scheme at the time. … The scouts would usually have their own day job and may well have been doing similar scouting for other clubs at the same time.
>
> Mr Halford remembered that when he met him Mr Bennell was the coach of a junior team called Whitehill FC which played on a Sunday. As the coach of Whitehill if he spotted any players with potential he would refer them to Mr Barnes for the Club to assess them. Other clubs had a similar set-up at the time.
>
> Mr Halford was not sure if Mr Bennell ever acted as a coach for the Club as well. Ken Barnes would have known about the scouting system far better than him and he could not say with any certainty what Mr Bennell's role or duties were at any time.
>
> … the Club has moved offices a number of times [since the early 1980s] and whilst he could not say for certain he thought that it was highly likely that many records and other documentation no longer required were probably just destroyed or otherwise lost in the course of these moves…."

99. This account is relied on as hearsay evidence under the Civil Evidence Act 1995.

100. Bennell: Bennell gave evidence by video-link from custody. He accepted that he was guilty of some of the offences for which he has been convicted (including offences against TVZ and DDG) but denied that he was guilty of every offence for which he had been convicted, including all of the offences to which he had pleaded not guilty at Liverpool Crown Court. He accepted that his not guilty pleas meant that four of the claimants had to go through the ordeal of giving evidence, but he was defiant: "so they should, I was not guilty… I was amazed at their acting. It was an Oscar performance."

101. Bennell declined to say how many boys he had abused. He accepted that he had pleaded not guilty to some offences for which he was guilty, and he accepted that he had given untruthful accounts to the police, denying offences that he had committed. He said that was because his lawyers had advised him to plead not guilty. He said that he had only entered "a plea of convenience" to the offences in America because it would take 5-10 years for the case to come to court, so he would have spent that time in custody in any

event. He claimed he was unaware that in fact the trial was due to start just a few days after he had pleaded guilty. He alleged there was a "bandwagon" effect - once some convictions had been secured against him others made fabricated claims in order to secure compensation.

102. He denied that he was giving untruthful evidence now in an attempt to maintain the "control and power" he had established over the claimants when they were young boys. He said that he would now die in prison and would plead guilty to any further offences (irrespective of guilt) because there was "no point" in contesting any further allegations.

103. Bennell denied that he had had much to do with Paul Lake (who did sign for MCFC) and said that he was scouted by Ray Hinett. In his CV he claims responsibility for passing Paul Lake to MCFC, but he now says that was a lie on his part. In his CV he also said that he had coached at MCFC for 7 years. That too (he now says) is a lie. He says that he stole MCFC kit (in that he had borrowed the kit, and then did not return it). He agrees that he signed a witness statement in a claim brought by another claimant against Crewe Alexandra in which he gives an account which cannot be reconciled with his present account. He said that the witness statement had been typed out by a solicitor, and he signed it without reading it. He denies that it was based on an account he had given. The statement records that he worked for MCFC in the 1980s. That is, he says, untrue.

104. Despite all this, MCFC relies on Bennell's evidence.

105. That evidence is as follows. In the early 1970s he ran a boys' football club in Manchester called "Senrab" (after a club of the same name that was reputed to have connections with some of the London professional football clubs). The club played in the local Manchester junior football league. It had no connection with the London club. Bennell just used the same name in the hope that it might confer some benefit. He managed to find good players who were willing to play for Senrab. In around 1974 or 1975 Ken Barnes approached Bennell and asked him to become a local scout for MCFC with a view to recommending players. Bennell agreed. Bennell said that no payment was involved, and it was up to him which players he recommended. It was also entirely up to him how he ran his team and who he selected. Part of his motivation was the knowledge that he would be able to use his position as a scout to persuade boys to join his team. Bennell decided to change the name of the team from Senrab to Whitehill Juniors. Bennell said that this was entirely his decision, and he was not asked to do this by Ken Barnes or anyone else. The choice of name was designed to secure a benefit from the fact that another team, which was connected to MCFC, was called Whitehill. Bennell did not receive any funding from MCFC. He raised funds himself, including by charging subs. He arranged training and home matches at Cheadle, MCFC's training ground, in order to reinforce the link with MCFC. The team played in the Worsley and District junior league. Complaints were raised about Bennell poaching players from other teams. Bennell asked AJM to manage the team "to get around this problem". He remained the coach.

106. There are passages in his police interviews where Bennell suggested that at least some of the teams he ran were nursery teams for MCFC:

> "I run a team, it was going through Senrab I recall that and then I went there was a team called Whitehill which was connected

> with Manchester City… I more or less talked to [the son of Ken Barnes] saying… can I sort of get involved at Manchester City… so I then took over Whitehill and Bluestar…
> …
> White Hill… was... a team a bit later on… [T]hey're been messing with Manchester City and [their] junior team were called White Hills so… I had to run their team, called White Hills.
> …
> [In response to it being put that one of the complainants had said that White Hill was linked to Manchester City:] Yeah it was, [inaudible] it was Manchester City so it was only like the best players in the country half of the time. It was all the best players…
>
> [In response to a question as to whether White Hill is a feeder team for MCFC:] Yeah Manchester City yeah that was nearest… …they were the best team in Manchester, all around the area…"

107. In cross-examination Bennell maintained that his teams were only feeder teams in the sense that he had (for the earlier period) been a MCFC scout and that he would recommend players from his teams to MCFC. He denied that MCFC had anything to do with the way he ran his teams. This account was more consistent with other aspects of his police interviews:

> "…although I am not working at Manchester City, I'm still sort of looking out for Manchester City so I would use that... and people would say that about me anyway, there was something in the paper once about me being a coach for Manchester City which I wasn't really.
>
> …I wasn't at Manchester City I was just telling people I was a coach for Man City so they may have thought that there was a connection there… an exaggeration to… I'm playing for Manchester City when really he wasn't; he was just playing for me.
>
> …I was scouting on the premise of Manchester City, I was saying I was from Manchester City but really I was… looking to get those players to play for the team that I was creating and that… was really it, so anything then became… the best players in that team, they would then go on to Manchester City that was the hope."

108. Bennell agreed that he went to Ken Barnes' office at Maine Road. He agreed others would be there. He denied that these were "meetings" or that they had anything to do with the running of the teams and said that they were simply an opportunity to recommend players to MCFC and to discuss arrangements for forthcoming trials.

109. He agreed that so far as the boys were concerned, they were playing for a MCFC team, but he said this was a deception on his part which he practised in order to get them to

play for him. Insofar as he told the police that his team "was Manchester City", he was (as I understood his explanation in cross-examination) saying that from the point of view of the complainant and that it "doesn't really matter" that that was not the case. The truth, he said, was that he was "running the team off my own back." He denied that he exclusively passed players to MCFC. He said that he also passed players on to Bolton, Blackpool, Leeds United and Crewe Alexandra.

110. I return to the evidence of the claimants (and those witnesses called in support of their individual claims) insofar as it relates to Bennell's relationship with MCFC.

111. TVZ: TVZ played for White Knowl and was coached by Bennell. On occasion he played for other teams to which he was "lent" by Bennell - Whitehill Juniors, Adswood Amateurs and Pegasus. He understood White Knowl to be a feeder team for MCFC. They would train in different places. Some of the squad, including TVZ, were sometimes taken to training sessions at Platt Lane. This training would be taken by MCFC coaches and would be watched by Bennell. White Knowl did not have its own premises: "it was run out of Bennell's house." There were also a number of group trips that Bennell organized, including trips to Butlins in Pwllheli, a team trip to Betws-y-Coed where they stayed in an isolated house in the countryside, and trips abroad to Lloret de Mar, Spain. The trips were paid for by Bennell.

112. Bennell supplied the kit for the White Knowl team. TVZ's mother ran a clothing business. Bennell gave her work personalising the football kit with initials and numbers on the tracksuits, kit bags and other items.

113. TVZ said he went with Bennell to Ken Barnes' office at Maine Road on numerous occasions. The trophies that White Knowl had won were displayed there. He cannot now remember why he went to Ken Barnes' office, other than that "Bennell took me everywhere. I think I did go to Ken Barnes office on some occasions."

114. TVZ did not think it strange that he was asked to stay at his coach's home – tactics would be discussed, and it was related to football and White Knowl. Other boys stayed there too, and the understanding was that this was because of the football. Sometimes, over the school holidays, TVZ would spend weeks at a time at Bennell's house.

115. JVF: JVF also played for White Knowl, coached by Bennell. Everyone knew the rumours that Bennell was a MCFC scout. JVF said that training sessions were at different locations in Derbyshire. On about 3 occasions Bennell took JVF to Platt Lane where he "would watch the [first team] players in awe." Bennell took other boys, beside JVF, to watch games. He would park in front of the Maine Road ground and would collect the tickets.

116. Bennell asked the boys to stay at his flat so they could build team morale by watching films and socialising together. JVF stayed at Bennell's flat after training for White Knowl, and before playing matches for them, nearly every weekend from the age of 11 to 13. In 1982/83 Bennell took the team to Butlins in Pwllheli where they stayed in chalets.

117. DDG: DDG played for North West Derbyshire (which he said was possibly also known as White Knowl) coached by Bennell. He described this as "a representative side for Manchester City." He also played for Glossop Juniors, Adswood Amateurs, Whitehill

and Pegasus. When asked how it was that the teams were connected to MCFC he said that they were "connected by Bennell".

118. DDG recalls that on one occasion, on his birthday, Bennell took him to meet the MCFC first team in the home dressing room, and they all wished him a happy birthday and signed a book as a present. DDG produced a copy of the signed page from the book. He also produced two tickets to a MCFC game that Bennell had picked up from the ticket office at Maine Road, both of which are marked as a "guest" ticket. Bennell seemed to have access to the whole MCFC ground, including the players' entrance and changing rooms.

119. Two photographs, much considered in the course of the evidence, were taken by DDG's father. Both show a football team, comprising many of the same boys, with Bennell. The first is endorsed on the back (by DDG's father) as "Glossop Juniors Lancashire County Youth Cup Winner 1984/85." The team are wearing Crewe Alexandra kit (save for the goalkeeper who is probably wearing a MCFC top). The second is endorsed "Manchester Sunday Youth League Under 15s Champions 1984/85." In this photograph all players are wearing MCFC kit, and Bennell is wearing a light blue jacket. Mr Small's son is shown in both photographs. In the first he is on crutches. In the second he is not on crutches, but it appears he is not playing (he is wearing a slightly different top). It was suggested, reasonably enough, that the second photograph therefore likely post-dated that first photograph. Many witnesses gave evidence about what they thought the photographs showed, but, ultimately, little light was thrown on the reasons why the same team might be wearing different kit. For his part, DDG suggested that it was a "cross-over" period when Bennell was changing his allegiances from MCFC to Crewe Alexandra. KHT gave evidence to the same effect.

120. Lots of boys regularly stayed at Bennell's home. This was arranged "for purely football related reasons". DDG would stay at his home for up to a week at a time. Bennell would also invite DDG and other boys on trips and football tours, including to Butlins in Pwllheli and to Snowdonia.

121. DDG's father said that Glossop Juniors only played at Platt Lane infrequently – it was seen as a treat. He also said that the team's name was frequently changed to conceal the connection to MCFC. Asked why, if it was necessary to conceal the connection, they often wore MCFC kit, DDG's father responded: "good question… I don't know." He said that if there was a match on a Saturday then DDG would stay with Bennell on the Friday night. He would also stay with Bennell during school holidays. Not all the stays were football related.

122. FTS: FTS played for North West Derbyshire, Midas, Glossop Juniors and Adswood Amateurs. They trained at different locations, including Cheadle Town. He regularly played at Platt Lane and wore MCFC kit. He assumed that the kit was provided by MCFC, but candidly accepted that he did not know that to be the case and it was not particularly his concern. FTS recalled being taken by Bennell to a warehouse owned by Frank Roper where they could pick up lots of sports kit.

123. LDX: LDX played for Pegasus, Midas, Adswood Amateurs and Glossop Juniors. He said that Pegasus, Midas, and Adswood Amateurs were associated with MCFC. In LDX's head he was playing for MCFC. LDX said that Bennell also had "private teams" who "didn't wear City kit". These private teams were Glossop Juniors and North West

Derbyshire. Those two teams were feeder teams for Midas/Pegasus and were funded by Bennell. When LDX played for Glossop Juniors he never wore MCFC kit. LDX played in a tournament in Ayr. He was not sure which team it was – it could have been Pegasus or Midas – but in his head he was always playing for MCFC.

124. LDX's father met Ken Barnes in his office at Maine Road on a number of occasions. LDX would go too. He remembers the office had trophies from children's matches, but he was not sure which teams.

125. LDX's nephew (who is just 2-3 years younger than LDX) says that they were given free tickets to watch MCFC at nearly every home match. Originally, Ray Hinett got them tickets, but after a while their grandfather called the MCFC office on match days and got tickets put aside for them to collect. LDX's nephew was also invited to stay at Bennell's house, even though he did not play football in any of Bennell's teams.

126. EJP: EJP played for White Knowl. Sometimes they trained at Platt Lane, but they also trained in New Mills. They wore different kit. Bennell supplied the kit. Sometimes they wore MCFC kit.

127. Bennell took him to watch MCFC on a number of occasions and introduced him to first team players. EJP referred, in a police interview, to an occasion when one of the players had been taken to Stoke City Football Club for training which he thought was a "bit odd" because he thought Bennell was a MCFC scout.

128. HFT: HFT played for Midas and Adswood Amateurs. He said he trained at Platt Lane 2-3 evenings a week, from 7/7.30pm to 9/9.30pm. The boys who trained at Platt Lane came from different teams and different age groups. Some matches were also played at Platt Lane, but not league games. He wore MCFC kit when he was training at Platt Lane. On other occasions he wore whatever Bennell gave him to wear – it was not always MCFC kit. HFT considered he was playing for MCFC. When asked how he knew that the team he was playing for was MCFC, he said: "we were training at Platt Lane, nobody else played there so it must have been". HFT did not know that, in fact, Platt Lane was owned by the council and could be hired by anyone.

129. HFT said he did not recall ever playing for Glossop Juniors. However, there is a programme from May 1985 that lists HFT as playing for Glossop Juniors, and there are photographs of him playing for a team that appears to have been Glossop Juniors. HFT did recall playing for New Mills.

130. HFT went with Bennell to Butlins in Pwllheli on a few occasions. He was driven by Bennell in a blue minibus. Other footballers from "the feeder teams" also went. The trip would often be for a week. At Butlins, they played in MCFC kit, and gave it back to Bennell after playing. HFT also went on a trip with Bennell to a place called the "haunted house" in North Wales. Bennell again drove there in a minibus. Again, they wore MCFC kit.

131. KHT: KHT played for North West Derbyshire, White Knowl and Adswood Amateurs. When he was 14, he was asked to sign schoolboy forms with MCFC but Bennell persuaded him to go to Crewe Alexandra with him. When he was playing for Bennell's teams he said he trained at Platt Lane twice a week from around 7pm to 9pm. Trial games were played at Platt Lane, but not league matches.

132. Laurie French: Mr French was called as a witness by TVZ and EJP. He had been their PE teacher and he knew both boys well, clearly remembering them even after all these years. He explained that the team, Glossop Juniors, came about when the teaching unions went on strike in the 1980s and school sports stopped. The parents started a local junior team – it was an initiative of the parents who were concerned that their boys were not getting enough sport. He said that Bennell had never introduced himself to him as a scout, but it was widely known that he was a scout for MCFC.

133. Alan Henderson: Mr Henderson was called as a witness by HFT. He had played for New Mills Juniors but was spotted by Bennell and from 1980 to 1983/4 (when Mr Henderson was aged 11-15) he played for what he called the Junior Blues football team, which, he said, was the nursery team for MCFC. In oral evidence he clarified that Bennell had taken over New Mills Juniors, which had not been a particularly good team, that it became a better team when Bennell was running it, and the name was then changed to White Knowl. Mr Henderson said that the North West Derbyshire team had nothing to do with MCFC.

134. Ian Roebuck: Mr Roebuck was called as a witness by JVF. He said that he was playing for New Mills Juniors when Bennell appeared on the scene. Bennell started cherry picking players for his new team, White Knowl. A number of other boys, including JVF and Ian Roebuck, would go to a Friday night youth centre club in New Mills where all the teenagers would hang out. There was an indoor football pitch. Bennell came to the club with different football shirts and kits. He remembered that JVF got him a Spurs shirt from Bennell.

135. Colin Bradbury: Mr Bradbury was called by DDG. He said that Bennell was known for selling sports clothing out of the back of his vehicle, more cheaply than anyone else.

Documentary evidence

136. A copy of the business card that Bennell provided to the parents of boys that he sought to recruit to his teams was produced by a number of witnesses. Other witnesses described the card with, generally, remarkable accuracy given that in some instances they had not seen it for decades. The card is in MCFC's sky blue colour. It states:

> "MANCHESTER CITY
> FOOTBALL CLUB
> [image of football]
> Barry Bennell
> North West Representative
> Tel. [number given]"

137. In his book, Len Davies says that Bennell came to Manchester from Barnes when he was about 20 years old, that he set up and established a good local team called Senrab, and that this team later became known as Whitehill.

138. In a book, "Teenage Kicks (The Story of Manchester City's 1986 FA Youth Cup Team)" by Phill Gatenby and Andrew Wilson (published in 2013), reference is made to "the Blue Star junior team" which was said to be "a well-known nursery side for would be City signings" as well as to "Whitehill and other City junior sides Midas, Blue

Star and Pegasus" and "Blue Star, a side unofficially regarded as City's satellite team for young players."

139. Articles in MCFC's first team matchday programmes in the early 1980s refer to MCFC's "feeder" / "junior"/ "nursery" sides:

(1) In a programme for a match on 7 October 1981, a "pen portrait" of Nick Read states "In his early teens, played for City's nursery side Whitehill Juniors, as well as Sunday League side Senrab."

(2) In a programme for a match on 4 September 1982, an article about Mike Queenan states that as an 11-year-old he held his own "playing alongside boys much older than himself for City's junior team Whitehill Blue Star."

(3) In a programme for a match on 30 October 1982, Terry Milligan is quoted as saying (and from context he is probably referring to 1980) "…I switched to playing for Whitehill, which is City's junior team."

(4) In a programme for a match on 15 January 1983, a profile of Ricky Adams states that he was playing for a local youth club (and from context this was in 1981 or 1982) when he was "quickly spotted… by City scout Barry Bennell, who promptly invited the youngster to training sessions at Maine Road."

140. MCFC also refers to Whitehill, Pegasus, Midas, and Adswood Amateurs (amongst other teams) as "feeder teams" in the compensation scheme that it established following the Mulcahy review.

141. On 9 September 1994, Mr Gibson, the FA's North-East Regional Director of the Programme for Excellence wrote a memorandum about Bennell to Mr Hughes, the FA's Director of Coaching and Education, which states:

> "After a strange dismissal at Manchester City, where he was working as a junior scout, he arrived at Crewe with Dario Gradi. There were many rumours about why Mr Bennell left Manchester City, but I am not aware of any concrete evidence. However, he ran football teams on behalf of the club which were illegal. He has been known to offer boys gifts and quite a number stayed at his house. He has been like a 'pied piper' to children, he seems to have an attraction for them."

142. In 1996 Channel 4 made a documentary, "Soccer's Foul Play" as part of its Dispatches series. TVZ took part, waiving his right to anonymity. Other participants included Ken Barnes, Chris Muir, and Deborah Davies (the Dispatches reporter). In separate voiceovers, Ken Barnes said that Bennell "was a Pied Piper with youngsters," Mr Muir said "[From context, Bennell said] look I will find you young players" and Ms Davies said:

> "He ran youth squads for Manchester City, feeder teams for the main club… Bennell was never on staff but they paid expenses for the youth teams he ran. He used their training ground at Platt Lane. City took its pick of his players."

143. There was then the following exchange:

> "Davies: But there were problems. When Bennell took players to a holiday camp one family complained their sons were staying late in his bedroom.
>
> Barnes: It was a bit of a sort of nothing. Apparently he'd got about five or six of the lads in his chalet and… he was playing video football teams and talking with them and about this and that and the other you see?
>
> Davies: But this… letter of complaint actually came into Manchester City did it?
>
> Barnes: Yes at the time. But that was just because… it was a bit irresponsible. You'd have thought that he'd… break the thing up and… see the boys back to their chalets at a respectable time.
>
> Davies: It didn't sound any alarm bells to you about anything else?
>
> Barnes: No, no, no."

144. An article on MCFC's website (dated November 2017) quotes Paul Lake as saying:

> "Probably the first major moment was when I played in City's nursery team, called Blue Star.
>
> We used to play in the Isle of Wight tournament and we played in the final against a team called Senrab, which was an associate team of Chelsea. So, it was the first time I felt like I was playing for City.
>
> Playing against another big club and wearing the sky blue kit, we beat them convincingly. I got man of the match and Player of the tournament."

145. A video clip is relied on by the claimants to show the nature of the relationship between Bennell and MCFC. The evidence (a combination of witness evidence, and inferences that can be drawn from the boys who are shown in the video) suggests that it was taken in the early 1980s, probably 1982 or 1983. It is a video that is taken of a television showing a television programme, possibly a local news item. It is short – running to just 2 minutes and 30 seconds. It shows two teams of boys playing football at MCFC's training ground. One team is in MCFC's home kit; the other in MCFC's away kit. A voiceover at the start states:

> "Amongst these hopefuls is Paul Warhurst from Stockport, Paul Jones from Chester and Kim Hart from Vietnam. All of them under the watchful eye of the club trainers and scouts."

146. Three men are on the touchline – Ken Barnes, Tony Book, and George Woodcock. In the course of the video, Bennell is seen amongst a group of players. He is holding a piece of paper, or possibly a sheaf of papers. He says:

> "Like you say, if you can go up front son and then go midfield and we'll see how you do there then, that's where you normally play isn't it? Alright. And then you just, everyone stay the same. Here, just give unchanged, erm lets have a look, it doesn't matter. If you change, start off with, if you change over now, keepers, then erm Richards can you change the last 15 minutes."

147. There is a discussion about trials, which tends to indicate (as a number of witnesses suggested) that the video is of a trial game. Bennell's account, in his witness statement, is as follows:

> "I recall one particular occasion when TV cameras even turned up to a training session for some reason. At the end of the session a game was arranged and as usual whenever there was a game of football, I ended up getting involved somehow. However, on this occasion, I was on the side-line probably shouting instructions or encouragement when Ken Barnes came over and asked me to step in and coach one of the teams that was playing. To my amusement, the TV report made me out to be the Main Coach or Head Coach when in fact I was just doing Ken a favour on the day."

148. This account (that it was a one-off, and happenstance that Bennell became involved) was strongly disputed by a number of other witnesses. Ray Hinett says that what is shown in the video clip is something that happened on a regular basis. It was a trial game that was organised exclusively by MCFC. The only people able to attend would be MCFC officials, the boys, and their parents. Ray Hinett was occasionally invited to attend these games by Ken Barnes or Ted Davies, and Bennell was also invited. The boys were aged between 12 and 14, and the purpose of the games was for MCFC to assess the boys with a view to signing the best as associated schoolboy players once they were 14 years old. Ken Barnes stood on the touchline and would get someone to run the teams (ie choose who would play on each side, and in each position) – in this instance (and in other games too) that was Bennell. He would sort the boys out so that two teams were appropriately matched with the boys playing as close as possible to their normal positions.

149. ZAH says:

> "Having watched the video and been made aware of Barry Bennell's comments on the same, I do not believe that he is telling the truth or that he has provided an accurate description of his attendance and role at this particular training session. What I believe is that it was a pre-arranged game, with certain junior boys in attendance there to be watched by Ken Barnes and Tony Book, with a view to them progressing with Manchester City FC. They would not usually attend regular training sessions.

> The video shows Barry Bennell giving directions to the boys, he appears to be coaching both sets of teams and he would have been in charge of the training session from the outset. This was something that he had done on numerous occasions at previous training sessions, when there were no cameras present. This would be because Bennell, along with Ray Hinett and Pete Warhurst, would train the boys in various feeder teams such as Pegasus, Midas and Bluestar. The boys would play in these teams and train with a view to them signing schoolboy forms with Manchester City FC.
>
> I believe that the attendance of the TV cameras would have also been arranged in advance and I would have thought this is probably why Ken Barnes, Tony Book and the physiotherapist were in attendance. Having watched the footage, I believe that it shows a typical training session in which the boys were split up into teams for a game. You can see in the video that Barry Bennell has a large number of notes in his hands and was coaching the whole group of boys together. Whilst watching the video, I could hear Barry Bennell talking to the boys and state "that's where you normally play isn't it" and refer to boys by name which would indicate that he had done this many times before and that he was familiar with the set up of the team, the boys there and their names.
>
> I could also hear a woman narrating the video and she talks about three boys in particular being watched by Manchester City FC as Ken Barnes, Tony Book and the physiotherapist are in shot. I do not believe it would make sense for Ken Barnes to randomly ask Barry Bennell to coach a one-off session, whilst the cameras were there – from my experience of attending [my son's] training sessions, it appeared that it was set up for Ken Barnes and Tony Book to watch certain players. In 1982 or 1983, [my son] and the other boys in Bluestar would have been around 13 years old and approaching schoolboy age.
>
> I do not believe that Barry Bennell was simply doing Ken Barnes a favour as he has said and that Barry Bennell was in fact coaching the boys as he did at those training sessions. Platt Lane was a gated facility and people could not just walk in with only Manchester City officials, youth players and their parents being allowed to watch the games.
>
> With regards to the year the film was made, based on the appearance of [my son] and the other boys playing, I would say it would have been around 1982 or 1983, when [my son] was 13. At this time, [my son] would have been playing for Bluestar and hoping to sign schoolboy forms with Manchester City FC."

150. GXY said that he thinks he played in the game that is shown on the video, although he is unable to identify himself on the video. He recalls that a player at the trials had come

from Vietnam, that he was the first Asian player to attend trials at a professional football club, and that was the reason that television cameras were there. He said that these trial games would take place during school holidays. In a year there might be 6-12 trial games. Bennell would mainly be the one who arranged the teams. The scouts would get together and discuss things. Players were swapped about a bit. Ken Barnes was involved in those discussions.

Professional footballer career progression, earnings, and pensions

151. Ray Hinett's evidence was that about one in four or five boys from Bennell's teams would go on to MCFC as an associated schoolboy, but sometimes it could be as many as half of the boys. About one in four or five would also go to another professional club. AJM said that about half of the players went on to sign schoolboy forms. DDG and his father each said that about half of the players from DDG's team were expected to go on to sign schoolboy forms. LDX said that, in his year, 6 out of a squad of 15 went on to sign schoolboy forms with MCFC, but others went to Crewe Alexandra with Bennell. ANF gave evidence to like effect (save that he said it was 7 out of 15).

152. Pat Lally gave evidence about the YTS. He has worked for the Professional Footballers' Association for many years. In 1983 he was an Assistant Education Officer and was instrumental in introducing the YTS into professional football. He gave evidence about the process. Apprenticeships ran for 2 years. They usually started in the July of the year that a boy left school. The drop-out rate during the 2 years was very low. At the end of 2 years between 45% and 55% signed as a professional footballer. The decision on whether to sign a player was usually made at the end of December in the second year of the apprenticeship. Definite decisions had to be made by the third Saturday in May.

153. Nick Harris is a sportswriter, researcher, and analyst, specialising in the business and finance of sport, particularly football. He provides evidence about the earnings that might be achieved by professional footballers. There was a lively debate as to whether his evidence amounted to factual or expert evidence. I am satisfied that in all material respects it amounts to factual evidence, for the reasons given by Cavanagh J at a preliminary hearing (see *TVZ* at [122]-[130]) and for the (same) reasons I gave at the pre-trial review on 28 July 2021.

154. Mr Harris explains that the earnings figures of individual footballers are not, generally, publicly available. More general information is available from four sources. First, the Football League has produced average basic wages for professional footballers for each year from 1984 to 2015, broken down by league division. These figures do not include bonus payments and, because they are the average of all players in a division (so including reserve team players), they are not representative of those who regularly play for a club's first team.

155. Second, the annual reports of football clubs filed with Companies House provide information about wage bills (and sometimes give specific information about player wages). Thus, Arsenal's accounts for the 1986/87 season provide information about the number of employees who received a salary in excess of £30,000: six received between £35,001 and £40,000, two between £40,001 and £45,000, and one in each of the £5,000 brackets starting at £30,001, £45,001, £55,001, £65,001, £80,001, £85,001, £90,001, £95,001, and £100,001. This indicates mean and median earnings (for that cohort) of around £57,500 and £42,500 respectively. The corresponding figures for MUFC (which

also comprised 17 employees earning in excess of £30,000) indicate mean and median earnings of around £49,250 and £47,500 respectively.

156. Third, the accounting firm Deloitte produces an annual report, "Annual Review of Football Finance" which is based on the accounts filed by football clubs with Companies House. This report provides figures for the total amount spent on wages by all premier league clubs, and all championship clubs. Deloitte has also, occasionally, identified the proportion of the total wage spend that is attributable to players. In the 2007-08 season 65% of the premier league total wage spend was attributable to player salaries. Mr Harris draws attention to evidence that (as might be expected) the vast majority of the spend on player salaries is attributable to players in the first team. He points to anecdotal evidence in that respect, and evidence that the pay of the first team squad typically amounts to about 60% of the total wage bill. Given that player salaries account for 65% of the total wage bill, this suggests that first team pay accounts for around 90% (≈ 0.6% ÷ 0.65%) of total player pay. This methodology produces indicative first team salaries of a first division club in the 1986/87 season of £41,600.

157. Fourth, The Independent newspaper carried out surveys in 2000 and 2006 of footballers' earnings by writing to every professional footballer (with the support of their union, the Professional Footballers Association). Mr Harris was working for The Independent at the time and carried out the survey. The results were broadly in line with the figures that are derived from the Deloitte reports for those years.

158. Mr Harris produces the figures that are derived from the Deloitte reports. Those reports only started in 1992/93. For the period before that, Mr Harris produces the figures that can be derived from the annual accounts of football clubs by adopting the same methodology. There was no challenge to Mr Harris' arithmetic. By this route, Mr Harris provides an estimate of average earnings for a player in a top tier club (ie first division in the seasons before 1992/93 and premier league thereafter) or a second tier club (ie second division before 1992/93, first division thereafter), for each season from 1985 to 2007:

Season	Top tier	Second tier
1985-86	£41,391	£19,965
1986-87	£41,600	£20,249
1987-88	£42,212	£19,454
1988-89	£54,829	£23,614
1989-90	£61,176	£28,141
1990-91	£76,471	£34,259
1991-92	£87,750	£39,520
1992-93	£112,320	£48,000
1993-94	£136,890	£57,000

1994-95	£169,650	£63,000
1995-96	£190,710	£82,500
1996-97	£255,060	£93,960
1997-98	£356,850	£151,200
1998-99	£457,470	£138,240
1999-00	£559,260	£186,840
2000-01	£657,540	£221,400
2001-02	£826,020	£232,200
2002-03	£890,370	£246,240
2003-04	£948,870	£224,640
2004-05	£918,450	£235,440
2005-06	£999,180	£246,240
2006-07	£1,133,730	£279,720
2007-08	£1,399,320	£314,280

159. Keith Carter is a well-known expert witness in matters relating to the labour market. He provides evidence about the pension schemes for professional footballers over the period 1986-2012. Again, there was a lively debate as to whether his testimony amounted to opinion or factual evidence. Again, for the reasons given by Cavanagh J, and for the (same) reasons I gave at the pre-trial review, I consider that in all material respects it amounts to factual evidence.

160. Until 2006, professional footballers were members of the Football League Limited Players Non-Contributory Cash Benefit Scheme (PBS). This was replaced in 2006 with the Professional Footballers Pension Scheme (PFPS). The PBS provides a tax-free defined benefit at retirement age 35. The defined benefit is three eightieths of the final (capped) salary for each year of employment. The PFPS maintains the retirement age at 35 (for those who joined prior to April 2006). Mr Carter acknowledges that (as he said in evidence in another case), the difficulty in applying a generic approach to pensions in this context is that a footballer's professional career does not typically follow a linear upward trajectory resulting in final peak earnings. A footballer might start in a lower division, progressing to a premier league club for part of their career, and then moving back to a lower division towards the end of the career. Without knowledge of a footballer's specific individual circumstances an exact calculation of the value of the resulting pension is not possible. Nevertheless, an indication could be given based on assumed career progression, for example a career in a second-tier club until retirement age 35.

Evidence as to impact of delay

161. Ian Carroll, a partner in the firm of Keoghs LLP, is the solicitor with conduct of this litigation on behalf of MCFC. He gave evidence about a number of individuals who might have been able to provide evidence if these proceedings had been brought within the time limit:

(1) Ken Barnes was the person primarily responsible for MCFC's use of scouts and would have been a crucial witness as to the nature of the relationship between MCFC and Bennell. He died in July 2010.

(2) Chris Muir was a Director of MCFC during the relevant period. He had responsibility for youth policy and development. He would have been an important witness. He died in March 2004.

(3) Peter Swales was the chairman of MCFC during the relevant time and would, potentially, have been an important witness. He died in May 1996.

(4) Bernard Halford would, potentially, have been an important witness. An account was taken from him in the context of an earlier claim (see paragraph 98 above). He died in March 2019.

(5) George Woodcock, Pete Warhurst, Len Davies, and Ted Davies have all died. Len Davies and Ted Davies both died in around 2020.

(6) Tony Book was the MCFC manager in the 1970s (having previously been the captain of the first team). He remained an employee after ceasing to be the manager. He was involved in the coaching of boys' teams, and in the running of trials. It is likely that he would have been in a position to give evidence as to the relationship between MCFC and Bennell. Mr Carroll was told by MCFC that Mr Book was frail and, for that reason, he was not approached to give evidence.

(7) Steve Fleet was the youth coach. There is evidence that he ensured that Bennell was not offered a salaried position with MCFC. Mr Carroll was aware of an interview that Steve Fleet gave to the Daily Mail newspaper, which was published under the headline, "How I stood my ground to keep monster Barry Bennell out of Manchester City: Former youth team boss Steve Fleet on how 'something wasn't right' about paedophile football coach." Mr Fleet left MCFC in about 1980. Mr Carroll attempted to contact him. He was told (by MCFC) that Mr Fleet did not wish to become involved. It was left at that.

(8) Mike Grimsley was not willing to assist MCFC by providing a witness statement.

(9) Roy Bailey was MCFC's physiotherapist. He might conceivably have been in a position to give evidence about whether (and if so why) he treated boys in Bennell's teams. He could not be contacted.

162. Mr Carroll has spoken to MCFC's archivist, Stephanie Adler. She explains that any records that were in existence when MCFC moved to the Etihad Stadium in 2003 were retained. She has undertaken an extensive search of all MCFC's records for the relevant period. She has found no documents relating to any of the claimants, or to Bennell, or

to any of the teams that Bennell ran. The only potentially relevant documents were the minutes of MCFC Board meetings. These have been disclosed. They do not mention Bennell.

Limitation: Whether the time limits should be disapplied

The test for disapplying the time limit

163. These are each civil claims in which it is alleged that the claimant sustained personal injuries as a result of breaches of duty (not to commit acts of battery) by Bennell. In each case the claimant was, at the time of the breaches of duty, a child under the age of 18. Such a claim may not be brought more than 3 years after the claimant reaches the age of 18 – see ss11 and 28 Limitation Act 1980. In other words, the claim must be brought by the time of a claimant's 21st birthday. That time limit may be disapplied if the court considers that is equitable – see s 33(1) of the 1980 Act:

> "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…;
> the court may direct that those provisions shall not apply to the action…."

164. Here, each claimant seeks a direction that the 3-year time limit should be disapplied because it is equitable to do so. The power to disapply the time limit arises only if it appears to the court that it would be equitable to allow the claim to proceed, having regard, on the one hand, to the degree to which the application of the time limit would prejudice the claimant and, on the other hand, the degree to which the disapplication of the time limit would prejudice the defendant – see s33(1) of the 1980 Act. That exercise must be undertaken separately in respect of each claimant. It is possible for the balance to be struck in the favour of some claimants, but not others. That is because s33 involves a highly fact sensitive judgement, and because the facts of the individual cases differ.

165. Although the language of the section suggests only that the court "may" disapply the limitation period, it is difficult to conceive of circumstances where a court would decline to exercise that power once the threshold test (that it is equitable to allow the action to proceed) is established. The power is not "discretionary" in that sense. To the extent that the authorities refer to an inherent discretion within s33, that is a recognition that it requires an "untrammelled evaluation" of all relevant factors, and the question of the weight to be accorded to different factors is a matter of judgement in the individual circumstances of the particular case – see *Archbishop Bowen v JL* [2017] EWCA Civ 82 [2017] PIQR P11 *per* Burnett LJ at [18].

166. The court is required to have regard to all the circumstances of the case, and in particular the factors set out in s33(3) of the 1980 Act:

> "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."

167. The principles to be applied are explained in many authorities, including *Carroll v Chief Constable of Greater Manchester Police* [2017] EWCA Civ 1992 [2018] 4 WLR 42 *per* Sir Terence Etherton MR at [42]:

> "1) Section 33 is not confined to a "residual class of cases". It is unfettered and requires the judge to look at the matter broadly…
> 2) The matters specified in section 33(3) are not intended to place a fetter on the discretion given by section 33(1), as is made plain by the opening words "the court shall have regard to all the circumstances of the case", but to focus the attention of the court on matters which past experience has shown are likely to call for evaluation in the exercise of the discretion and must be taken into a consideration by the judge…
> 3) The essence of the proper exercise of the judicial discretion under section 33 is that the test is a balance of prejudice and the burden is on the claimant to show that his or her prejudice would outweigh that to the defendant… Refusing to exercise the discretion in favour of a claimant who brings the claim outside the primary limitation period will necessarily prejudice the claimant, who thereby loses the chance of establishing the claim.
> 4) The burden on the claimant under section 33 is not necessarily a heavy one. How heavy or easy it is for the claimant to discharge the burden will depend on the facts of the particular case…
> 5) Furthermore, while the ultimate burden is on a claimant to show that it would be inequitable to disapply the statute, the evidential burden of showing that the evidence adduced, or likely to be adduced, by the defendant is, or is likely to be, less cogent because of the delay is on the defendant… If relevant or potentially relevant documentation has been destroyed or lost by

the defendant irresponsibly, that is a factor which may weigh against the defendant…
6) The prospects of a fair trial are important… The Limitation Acts are designed to protect defendants from the injustice of having to fight stale claims, especially when any witnesses the defendant might have been able to rely on are not available or have no recollection and there are no documents to assist the court in deciding what was done or not done and why… It is, therefore, particularly relevant whether, and to what extent, the defendant's ability to defend the claim has been prejudiced by the lapse of time because of the absence of relevant witnesses and documents…
7) Subject to considerations of proportionality (as outlined in (11) below), the defendant only deserves to have the obligation to pay due damages removed if the passage of time has significantly diminished the opportunity to defend the claim on liability or amount…
8) It is the period after the expiry of the limitation period which is referred to in sub-subsections 33(3)(a) and (b) and carries particular weight… The court may also, however, have regard to the period of delay from the time at which section 14(2) was satisfied until the claim was first notified… The disappearance of evidence and the loss of cogency of evidence even before the limitation clock starts to tick is also relevant, although to a lesser degree…
9) The reason for delay is relevant and may affect the balancing exercise. If it has arisen for an excusable reason, it may be fair and just that the action should proceed despite some unfairness to the defendant due to the delay. If, on the other hand, the reasons for the delay or its length are not good ones, that may tip the balance in the other direction… I consider that the latter may be better expressed by saying that, if there are no good reasons for the delay or its length, there is nothing to qualify or temper the prejudice which has been caused to the defendant by the effect of the delay on the defendant's ability to defendant the claim.
10) Delay caused by the conduct of the claimant's advisers rather than by the claimant may be excusable in this context…
11) In the context of reasons for delay, it is relevant to consider under sub-section 33(3)(a) whether knowledge or information was reasonably suppressed by the claimant which, if not suppressed, would have led to the proceedings being issued earlier…
12) Proportionality is material to the exercise of the discretion… In that context, it may be relevant that the claim has only a thin prospect of success…, that the claim is modest in financial terms so as to give rise to disproportionate legal costs…, that the claimant would have a clear case against his or her solicitors…, and, in a personal injury case, the extent and degree of damage to the claimant's health, enjoyment of life and employability….

> 13) An appeal court will only interfere with the exercise of the judge's discretion under section 33, as in other cases of judicial discretion, where the judge has made an error of principle, such as taking into account irrelevant matters or failing to take into account relevant matters, or has made a decision which is wrong, that is to say the judge has exceeded the generous ambit within which a reasonable disagreement is possible…"

168. Those principles were further explained and applied in *DSN* – see *per* Griffiths J at [23]-[68] and, on appeal, [2021] EWCA Civ 1352 *per* Stuart-Smith LJ at [149]-[188].

169. The question of limitation should be decided before the substantive issues, even where limitation has not been tried as a preliminary issue. Otherwise, an assessment of the impact of delay on the evidential cogency (as required by s33(3)(b)) might be distorted by a blinkered focus on the cogency of the remaining evidence, rather than the extent to which the evidence adduced is less cogent than if the action had been brought within the statutory time frame. What is required by s33(3)(b) is a relative assessment of the available evidence compared to that which would have been available if the claim had been brought in time – see *KR v Bryn Alyn Community (Holdings) Ltd* [2003] EWCA Civ 85 [2003] QB 1441 *per* Auld LJ at [74], *JL per* Burnett LJ at [26] and *Catholic Child Welfare Society v CD* [2018] EWCA Civ 2342 *per* Lewison LJ at [41]-[42]. The evidential burden is on the defendant to show that the evidence is less cogent because of the delay – see *Carroll* at [42(5)].

The parties' submissions

170. Mr Counsell QC, on behalf of the claimants, accepts that "much time has passed" since the expiry of the time limits, but submits that there is very good reason for the delay, that the impact of the delay on the cogency of the evidence is limited, and that the time limit should be disapplied in each case. He suggests that a focus on the prejudice to MCFC due to delay risks insufficient attention being given to the prejudice to the claimants of not being able to proceed with their claims. Moreover, when considering the impact of the delay on the cogency of the evidence, it is necessary to assess the resulting evidential prejudice that is caused both to MCFC and to the claimants. Given that the burden of proof is on the claimants, any degradation of the evidence is likely disproportionately to prejudice the claimants rather than MCFC. He says that the real question is whether a fair trial is possible (see *Bryn Alyn per* Auld LJ at [71] and *Cain v Francis* [2008] EWCA Civ 1451 [2009] QB 754 *per* Smith LJ at [73]). The abuse is, itself, the reason for the delay: the claimants were, in effect, psychologically disabled from bringing a claim because of the fear that they would be disbelieved, the fact that they had compartmentalised the abuse, and the impact of disclosure on their mental health. The delay has had some impact on the available evidence, but, he says, a fair trial remains possible. The key issue on vicarious liability depends primarily on the relationship between Bennell and MCFC. The best person to speak to that relationship is Bennell, who has a good recollection of events and who gave detailed evidence over two days. There is extensive secondary evidence from multiple sources, including documentary evidence. It is unlikely that Ken Barnes (or other witnesses who have since died) could have added significantly to the available evidence, or that documentation relating to vicarious liability ever existed (given that Bennell was not an employee and that there was a strategy of keeping feeder teams at arms-length from MCFC). MCFC set up its investigation into abuse in a way that hindered these

proceedings (because assurances of confidentiality were given to witnesses and claims of privilege are maintained over the evidence that was collated). This is a further factor to be weighed in the balance.

171. Mr Kent QC, for MCFC, submits that the length of delay (which he says is between 32 and 36 years, taking the starting point as the date that the causes of action accrued) is "substantial" and far greater than in comparable cases where the time limit has not been disapplied (he points to the 23 year period in *JL*, the 24 year period in *CD* and the 15 year period in the clinical negligence case of *Dobbie v Medway Health Authority* [1994] 1 WLR 1234). He says it is striking that when other victims of sexual abuse in football went public in 2016, the claimants almost immediately did likewise. That shows that they were not, for practical purposes, disabled from commencing proceedings. Moreover, some claimants had disclosed the abuse at earlier points:

(1) TVZ told his partner in 1989, told the police in 1994, and participated in a documentary – waiving his right to anonymity – in 1997.

(2) JVF told his partner in 1992 (and, according to Ian Roebuck, told him in 1987/88).

(3) DDG told his partner in 1992.

(4) FTS told his partner in 1991 (and told a coach in 1985/86).

(5) KHT had been asked by police in 1997/98 whether he had been abused but decided not to disclose it at that point.

172. The effect of the delay has had a profound impact on MCFC's ability to investigate the claims. Ken Barnes would have been a crucial witness. MCFC has been left having to rely on Bennell, who the claimants argue is discredited. In the case of KHT, the abuse alleged "is comparatively minor and of short duration" and damages are likely to be modest, so it would not be proportionate to disapply the limitation period in his case.

Is it equitable to disapply the time limit?

173. Length of delay: In each case, the 3-year time limit expired on a date between 1989 and 1993, but the claim was not started until 2017 or 2018 (see the table at paragraph 11 above). The period of time between the expiry of the limitation period and the commencement of the claims is, in each case, around 27 years. This is the period of time that falls to be considered under s33(3)(a), rather than the full period since the causes of action accrued – see *Thompson v Brown Construction (Ebbw Vale) Ltd* [1981] 1 WLR 744. I do not consider that the difference in the length of delay in individual cases is significant. So, in relation to the length of the delay, it is not necessary to distinguish between the individual cases.

174. This is a long period of delay both in absolute terms, and compared to the length of the limitation period, and compared to the periods of delay that have been considered in the many authorities that address the application of s33 of the 1980 Act. Long delay does not create any additional presumption against the disapplication of the limitation period (see *Bryn Alyn per* Auld LJ at [79]). It is just one of the factors to which the court must have regard when deciding what is equitable in the particular circumstances of an individual case. The authorities show that even in cases of very long delays the

limitation period can be disapplied (see eg *Jeffery v Bolton Textile Mill Co plc* [1990] CLY 2944, *McLaren v Harland and Wolff Ltd* [1991] SLT 85). In *DSN* the judge's decision to disapply the limitation period was upheld where the delay was 22 years and the perpetrator of the abuse had died. Conversely, as Mr Kent points out, there are other cases where the period of delay was shorter and the time limit was not disapplied.

175. Although the length of the delay is identified as a factor, it is not free-standing. What is important is not just the length of the delay in isolation, but the length of the delay when considered alongside the reason for the delay and the impact that the delay has had on the cogency of the evidence – *Cain per* Smith LJ at [73]. The longer the period of delay the more likely it is that prejudice will be caused to the defendant – *Bryn Alyn per* Auld LJ at [74(iii)].

176. Reasons for delay: In each case, Dr Mogg and Professor Maden have considered whether there was anything to prevent the claimant from bringing a claim within the limitation period. In each case they agree that the claimant has never lacked the mental capacity to complain or to instruct his legal representatives and that he has never been psychiatrically disabled from making a complaint. They add the following in respect of each of the claimants:

TVZ: We agree that confronting the memory of his past abuse has caused him anxiety and that there was a deterioration in his mental health in the late 1990s when he did that for the first time and that there was a further deterioration when he did it again after 2016. We agree however that nevertheless he was able to see a consultant psychiatrist Dr Rosen for a report on the effects of the abuse in 1999 in the context of a claim to the Criminal Injuries Compensation Authority. We agree that… there cannot have been any psychiatric barrier to pursuing a claim after that date.

JVF: We agree that at the time the abuse occurred it is likely that JVF felt he would not be believed if he spoke about what had happened to him, as it was his word against that of Bennell, who was in a position of authority to him.

We note that his friend… says JVF told him about the abuse at the age of 19 years on a lads' trip to Ibiza and that JVF and his wife agree that he told her about it in 1992. We agree that after the 2016 media publicity surrounding another victim, JVF was able to come forward without any untoward delay.

DDG: We agree that it is to DDG's credit that for entirely altruistic reasons he had the courage to come forward and report the abuse in the 1990s. We agree that contacting the police in 1997 was very difficult because of his feelings of shame, which is an almost universal aspect of severe abuse of this nature. We agree however that from a psychiatric viewpoint

there was then no reason why he could not also have made a civil claim since he had already told his wife, he was then able to tell his family, in 2002 he told his treating psychologist, and he was able to make a CICB claim.

FTS: We agree that he told a girlfriend about the abuse when he was about 20 years old and he told his partner about the abuse at an early stage in their relationship. We agree that he was able to come forward without any delay when he saw media publicity about abuse in football. We agree that he has probably never been psychiatrically disabled from complaining or making a claim.

LDX: We agree that at the time the abuse occurred it is likely that LDX felt he would not be believed if he spoke about what had happened to him. Over subsequent years LDX was extremely reluctant to come forwards about the abuse due to embarrassment and a sense of shame. We agree that his involvement in the… church was probably also a deterrent to earlier disclosure.

Dr Mogg's opinion is that additionally avoidance symptoms, characteristic of PTSD, have resulted in LDX trying to bury the abuse rather than discuss it with people close to him. Professor Maden believes that LDX compartmentalised his memories of the abuse, which is the usual and adaptive way in which people deal with abuse and other unpleasant events, and that this compartmentalisation protected him from the earlier development of mental health problems but made disclosure more difficult.

EJP: We agree that at the time of the abuse it is likely that EJP thought he would not be believed if he disclosed the abuse.

HFT: [His ability to make a complaint is] illustrated by the rapidity with which he disclosed widely within a few days of seeing [another footballer publicly disclose that he had been abused].

We also agree that HFT over many years has coped with memories of the abuse by pushing them to the back of the mind and avoiding thinking about what happened. We agree that this would have been a deterrent to disclosure as the latter would have carried the risk of a breakdown and did in fact play a major role in his 2019 breakdown.

KHT: We agree that the disclosure of childhood sexual abuse is often delayed for many years, for a variety of reasons including shame, embarrassment, a fear of not being believed, and a potential perceived adverse effect on one's career.

We note that KHT describes in his police interview the thought processes he went through in 1998 when deciding not to reveal details of the abuse at that time. We agree that there is nothing in that account to suggest that KHT's reasoning was affected by any mental health problem. We agree that in those circumstances it is a matter for the Court to decide why KHT did not disclose the abuse when approached by the police in 1998.

We agree that as soon as KHT saw the publicity in November 2016, he was able to disclose the abuse to his wife and daughter, to issue a public statement and to report the abuse to the police without any apparent delay, which suggests there was no psychiatric barrier to earlier disclosure.

177. I accept the joint evidence that each claimant could have brought a claim within time. Each claimant knew that he had been abused. They all knew (by the time of the expiry of the time limit) that this was wrong. None of them suffered from dissociative amnesia. There is no "date of knowledge" argument under s14 of the 1980 Act.

178. However, none of the claimants consciously or capriciously delayed the issue of proceedings. The abuse and its consequences are, themselves, significant factors in the claimants' delay in bringing proceedings. In each of the cases the claimant had for many years either told nobody about the abuse or had only told a tiny number of people who he trusted. In some cases, the claimant did not think he would be believed. In all cases I consider, on the evidence, that the claimant had, to a greater or lesser extent, "compartmentalised" the abuse – pushed it to the back of his mind. This process was explained by Professor Maden in the context of JVF's case. He said that compartmentalisation is a combination of conscious and unconscious processes. It is a normal and natural protective process "to enable us to live our lives". It is part of the explanation for why some people who have been exposed to severe abuse or trauma do not develop any psychiatric disorders, and why others may not develop as severe a disorder as might be expected. Professor Maden therefore readily accepted that it is entirely understandable that a person who has been abused may not come forward and disclose it or even mention it to loved ones, let alone "go public." He also accepted that a person who has disclosed the abuse, might then "re-compartmentalise" it.

179. The authorities recognise that there are particular features of sexual abuse cases which make it more difficult for a claimant to bring proceedings (when compared, for example, to a case of clinical negligence), and which may provide a good reason for the delay. In *B v Nugent Care Society* [2009] EWHC 481 (QB) Irwin J observed, at [39]:

> "It does seem clear in the speeches in *Hoare*, that some real significance has been attached to the specific factor arising in sex abuse cases, namely, that the tort inflicted by the abuser and for which the defendants are now vicariously liable, has itself the tendency to inhibit the victim from complaining, reporting or suing...", even when the consequences do not include frank psychological and psychiatric injury."

The present cases are, as I have explained, instances of the tort inhibiting complaint, report, or suit.

180. MCFC points out that some claimants were able to disclose the abuse well before they issued proceedings, suggesting that they exercised a free choice to delay the issue of proceedings. MCFC is right that there had been earlier disclosure in some cases (see paragraph 171 above). There is, however, a world of difference between disclosure in confidence to a partner or other close confidante and making disclosure to a stranger for the purpose of seeking legal advice. The evidence shows that in many instances the claimants went to great lengths not to disclose what happened to them, even to their own doctors.

181. TVZ showed great bravery and fortitude in making a public disclosure in 1996/97. Not surprisingly, he found this "really traumatic" and "incredibly stressful" and "awful". His "head was a mess" and he was "worried about people judging [him] and thinking [he] was lying." He says that "somehow I felt worse after the criminal case and felt used and confused…everything was numb and… I now had more issues than I had started with." In this context he explained that he was "not in a proper mental state to go through any further legal proceedings, such as a civil case. The criminal cases had completely broken me and… I could not function mentally."

182. In KHT's case, as the experts noted, he positively decided not to tell the police about the abuse when he was interviewed in 1998. KHT explained, and I accept, that he had tried to push the abuse to the back of his mind, and he was afraid that disclosure would prejudice his professional footballing career or that it might result in an adverse reaction from his team-mates and fans.

183. I consider that each of the claimants has a good and cogent explanation for the delay in bringing proceedings. LDX perhaps has the strongest explanation for delay. He was (and remains) terrified of the potential impact that disclosure would have. Having heard him give evidence, I am satisfied that he was close to being "for practical purposes disabled" (to use the phrase of Lord Hoffmann in *A v Hoare* [2008] UKHL 6 [2008] 1 AC 844 at [49]) from issuing proceedings. TVZ's case may be at the other end of the spectrum of these claims because he had been able to make a public disclosure at a much earlier stage, but he too has a good explanation for the delay.

184. I also consider that, subject to the impact on the cogency of the evidence, the reasons for the delay in each of the cases are sufficiently powerful to justify the long period of delay. If there was no significant impact on the cogency of the evidence, it would be fair to MCFC to face these claims, and I would, in each case, exercise the power under s33 in the claimant's favour to disapply the time limit.

185. Cogency of evidence: Each case depends, to a large extent, on the oral testimony of witnesses given decades after the events in question. The reliability of such testimony requires careful assessment, even where the witness is clearly honest and doing their best to give an accurate account. Human memory is inherently unreliable. MCFC rely on the observations of Leggatt J in *Gestmin SGPS SA v Credit Suisse (UK) Limited and others* [2013] EWHC 3560 (Comm) [2020] 1 CLC 428 at [16]-[22]:

> "16. While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.
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> 17. Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called 'flashbulb' memories, that is memories of experiencing or learning of a particularly shocking or traumatic event. (The very description 'flashbulb' memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.) External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory).
>
> 18. Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time.
>
> 19. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty

(such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.

20. Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness's memory has been "refreshed" by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events.

21. It is not uncommon (and the present case was no exception) for witnesses to be asked in cross-examination if they understand the difference between recollection and reconstruction or whether their evidence is a genuine recollection or a reconstruction of events. Such questions are misguided in at least two ways. First, they erroneously presuppose that there is a clear distinction between recollection and reconstruction, when all remembering of distant events involves reconstructive processes. Second, such questions disregard the fact that such processes are largely unconscious and that the strength, vividness and apparent authenticity of memories is not a reliable measure of their truth.

22. In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral

> testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

186. This was said in the context of a commercial case, but the underlying points are of general application. In the present cases, the features to which Leggatt LJ draws attention at [20] become even more complex because of the criminal proceedings, the press reporting, the Mulcahy review and the report of Clive Sheldon QC.

187. The observations of Leggatt LJ were strongly supported by Professor Maden, and in all material respects Dr Mogg agreed with Professor Maden on this issue. They both said that human memory was just not reliable over this period of time, and that there might well be problems with reattribution and confirmation bias.

188. The impact of delay on the evidence can conveniently be considered by reference to the three issues in each of the cases – whether the abuse occurred, whether MCFC is vicariously liable for that abuse, and quantum.

189. So far as the question of whether the abuse occurred, all the primary witnesses have given evidence: the claimants, and Bennell. It has not been suggested that any other evidence would have been available if the claims had been brought earlier. The passage of time has had an impact on the quality of the evidence, but the issue is not one which depends on fine details of individual recollection. There is no scope for mistake or misunderstanding, and very little scope for fallibility of memory, on the fundamental question of whether the abuse occurred. In all cases there is some contemporaneous documentation (for example, photographs) to support the claimants' case to the extent of showing that they were coached by Bennell. It was not suggested that any of the claimants is dishonest. MCFC does not seek to adduce a positive case from Bennell on this issue. Insofar as he denied the commission of some offences, that was in the course of cross-examination that was designed to test his credit rather than the question of whether the abuse occurred. Anyway, his evidence is not credible (see paragraphs 280 - 281 below). Nor is it suggested that MCFC's decision not to challenge the claimants' accounts of the abuse, and not to adduce evidence from Bennell on this issue, is in any way due to the passage of time. Moreover, the proceedings in the Crown Court at Liverpool show that the issues relating to the abuse can be fairly determined to the criminal standard of proof even after all this time. In these circumstances, I do not consider that the passage of time has caused any real risk of prejudice to MCFC on this issue. Having not challenged the claimants' accounts, it is not open to MCFC now to suggest the abuse did not occur, and it would not have been open to it to do so if the claims had been brought in time. It is for these reasons that I was able to make a finding at the outset of this judgment, irrespective of the question of limitation, that I accept the evidence given by each claimant on this issue.

190. So far as the consequences of the abuse are concerned, each claimant has given evidence as to the impact of the abuse on him. Each claimant has adduced evidence from additional witnesses (parents, spouses, children, teachers, and friends) as to the impact that the abuse has had. The claimants are unable to recollect some details and there are some inconsistencies between their recollections and the contemporaneous records. There is considerable scope for reattribution and confirmation bias. The abuse was a hugely significant event in the lives of each claimant. It would be surprising if they did not naturally attribute subsequent life events to the abuse. But, whether or not there is a history of abuse, some relationships do break up, some people do use illicit drugs and misuse alcohol, and some people do not manage to hold down long-term employment. It is therefore necessary to treat oral recollections of events, and the more so oral evidence as to the cause of events, with considerable caution. That said, it is possible to be satisfied, on the balance of probabilities, that a number of individual pieces of evidence are reliable. This is in part due to the very nature of post-traumatic stress disorder ("PTSD"). So, where a claimant describes recurring nightmares over many years, they are not recounting a single isolated event from many years ago, but something that is a recurrent and ongoing theme in their lives. Where the nightmare itself relates to the abuse, and where the medical literature supports a link between abuse and recurrent nightmares, it is not difficult, on the balance of probabilities, to ascribe a cause (and both medical experts agree with this point). Evidence as to certain avoidance behaviours (taking a long detour to avoid driving past Bennell's house; not going to Kentucky Fried Chicken outlets) is in the same category. So too is evidence of particular triggering events (the smell of Shake'n'Vac carpet cleaner, or a particular type of aftershave, the sound of certain music, or certain forms of intimate contact).

191. There is a considerable body of documentary evidence, particularly medical and employment records. In each case, the two medical experts, Dr Mogg and Professor Maden, have provided lengthy and detailed expert reports and a joint statement identifying the areas on which they agree and disagree. In all cases Dr Mogg and Professor Maden have, jointly, pointed out that they are reliant on the information that they are given. Some of that information is contemporaneous documentary reporting of, for example, difficulties that the claimants reported to their doctors. However, much of the information provided to the experts was based on the history given by the claimants when the experts interviewed them. That history was being given more than 35 years after the abuse started. The experts say:

> "We agree there are bound to be greater difficulties in this respect when dealing with allegations that relate to events some 30 years ago because memory is often not reliable over such long periods of time and there may be problems with reattribution and confirmation bias. …[A] psychiatric expert's concern is … with the recall of symptoms, behaviour and motivations over such long periods of time."

192. In each case, Dr Mogg and Professor Maden agree that the delay "has complicated the work of the expert because of a deterioration in the cogency of the evidence as a result of the passage of time." They add the following in relation to each claimant:

TVZ: …there are important missing records, including educational records and Dr Rosen's report, but on the other hand the

experts are greatly assisted by the records from Halliwick Centre.

JVF: We agree that a comprehensive assessment of his academic achievements would require sight of his full educational records. We agree that it would have been easier to assess this claim had it been brought within the time limits.

DDG: We agree that whilst the psychology records from 2002/3 are helpful, there are still potential problems of inconsistency, retrospective reattribution and confirmation bias which Professor Maden has set out in his report. We agree that since he rarely consulted doctors about his mental health, there are few records referring to his mental health in the period from 2003 to 2016. We agree that it would have been easier to assess this claim had it been bought within the time limits.

FTS: We agree that whilst the psychology records from 2002/3 are helpful, there are still potential problems of inconsistency, retrospective reattribution and confirmation bias which Professor Maden has set out in his report. We agree that since he rarely consulted doctors about his mental health, there are few records referring to his mental health in the period from 2003 to 2016. We agree that it would have been easier to assess this claim had it been bought within the time limits.

LDX: We agree there are important missing documents including education records and contemporaneous records relating to the accident that seems to have ended his semi-professional football career. We agree that in view of the way LDX now describes his football career, it would also be helpful to see employment records relating to his time in football. We agree that it would have been easier to assess this claim had it been brought within the time limits.

EJP: We agree that the assessment of historic abuse in this case has been further complicated by the inconsistencies in the evidence. We agree that it would be helpful to see full educational and unredacted social care records as well as full employment records, especially in relation to the problems he had in the prison service and as a landscaper, which EJP has previously said caused PTSD. We note also that there are references to counselling at various times and we agree it would be important to see the records. We agree that it would

> have been easier to assess this claim had it been brought within the time limits.
>
> HFT: Professor Maden has drawn attention to his reasons for believing HFT has come to see the effects of the abuse as more pervasive with time and he believes it would have been easier to address matters such as the reason for his vasectomy had the issue been considered at an earlier date.
>
> KHT: We agree that the absence of any contemporaneous evidence of mental health problems means the experts are left with only [KHT's] retrospective self-report in the context of a claim for compensation. We agree that it would have been much easier to assess this claim had it been brought within the time limits.

193. There is some missing documentary evidence that may have been available if the claims had been brought in time. For example, TVZ's school reports are no longer available. They may have provided a contemporaneous account of his teachers' perception of a change to his character. They may therefore have corroborated (or otherwise) the accounts given by two of his teachers that they detected a marked change in TVZ during the period when (it is now known) he was being abused by Bennell, and that this pre-dated the tragic death of his brother (and so could not be related to that).

194. Accordingly, there has, in each of the claims, been some impact on the cogency of the evidence relating to quantum as a result of the delay. But this is relatively marginal. In all cases there remains a significant body of evidence, including the evidence of the claimants, and the medical records, and the evidence of the medical experts. MCFC has not identified any additional witness who would have been able to give evidence on quantum that might have made a substantial difference. So far as some records are not available, one can never know for certain, but it is unlikely that they would have made a great deal of difference.

195. In one sense the delay has improved the evidence in relation to quantum. If these claims had been brought in time, then it would have been necessary to make a prognosis, forecasting how the abuse would impact on the claimants' future lives. A consequence of the delay is that there is a much greater retrospective component to the assessment – it is possible to look back over 35 years of lived experiences (with, in some cases, documentary support) to see how, in fact, the abuse had an impact. The claimants have shown remarkable levels of fortitude and resilience. In a number of the cases, it might have been expected that the abuse would have had an even greater impact. The delay has, in that sense, resulted in a clearer evidential picture, and this is, to some extent, to MCFC's benefit (in that the value of the claims that it is facing is less than might have been expected).

196. Accordingly, leaving aside the question of vicarious liability, the extensive period of time which has passed since the time limits expired has not had a very significant impact on the cogency of the evidence. Leaving aside the question of vicarious liability, but

taking account of all other matters, including in particular the length of the delay and the reasons for the delay and the impact on evidential cogency, I consider that it would be equitable to disapply the time limits. It is a long period of delay but there is a reasonable explanation and the impact on the evidence is manageable. It follows that if this were a claim against Bennell, or if it was accepted or clear that MCFC was responsible in law for Bennell's conduct, then I would disapply the time limit in each case.

197. That leaves over the issue of vicarious liability. That issue is highly fact sensitive, and its resolution is not entirely straightforward (as the different outcomes in *DSN* at first instance and in the Court of Appeal show, and as is also shown by the four recent decisions in the Supreme Court, and as is also shown by the narrow distinctions that are sometimes determinative). It depends, in part, on a detailed assessment of the nature of the relationship between Bennell and MCFC. This was not of any real relevance in the criminal proceedings. The claimants at one stage suggested otherwise. They sought to rely on observations made by the Recorder of Liverpool (in relation to Bennell's connection with MCFC) when sentencing Bennell, but I ruled that would be inconsistent with the rule in *Hollington v Hewthorn* [1943] 1 KB 587 (and see *Re Winch* [2021] EWHC 3284 (QB) *per* Warby LJ at [27]), and that it would be necessary to rely on the underlying material which led to those observations. The point was not pressed further. Save for the limited assistance that can be gleaned from some of the police interviews, the criminal proceedings do not therefore help on the question of vicarious liability.

198. There is now no clear contemporaneous documentary record of the relationship between MCFC and Bennell. So far as documents exist (for example matchday programmes that refer to Bennell, and the video of the trial game), they are fragmentary, incomplete, and of limited assistance. So far as documents have been destroyed or mislaid, I do not consider that is due to any irresponsibility on the part of MCFC. At the time the limitation period expired in each of these cases, Bennell had not worked for MCFC for around 6 years and there was nothing to indicate that MCFC might be exposed to liability as a result of his conduct. It is not possible to determine precisely when documentation was destroyed, save that it is likely to have been before 2003.

199. The primary remaining evidence comes from the witnesses. Most of the witnesses were observing the relationship between Bennell and MCFC from a distance, and in circumstances where Bennell was overstating his relationship with MCFC for his own purposes. The only remaining witness who is able to give direct first-hand evidence about the relationship is Bennell. His evidence is worthless (see paragraphs 280 - 281 below). He is not a credible witness.

200. The net result is that there is little or no documentary evidence on matters such as:

(1) How it came about that Ted Davies was appointed to the role of youth development officer and why Bennell was not appointed to that role. The reaction of Bennell to the appointment of Ted Davies. What communications took place between Ken Barnes and Bennell when (a) Bennell took up the job at Taxal Edge in late 1979, and (b) Bennell resumed coaching for Ray Hinett's team in around 1981.

(2) Whether MCFC had any say in Bennell taking on teams like Glossop Juniors, White Knowl, New Mills Juniors and North West Derbyshire.

(3) What became of Whitehill after Bennell moved to Taxal Edge.

(4) What, if any, funding MCFC provided to Bennell's teams.

(5) The extent to which MCFC provided kit, training facilities and tickets for games.

(6) What, if any, say MCFC had over the players that Bennell selected for his teams, the criteria used for selection and his methodology of coaching.

(7) Whether MCFC had any say over the tournaments in which Bennell's teams were entered, the leagues in which they played or the tours they undertook.

(8) What, if any, recourse MCFC had if Bennell introduced players to rival clubs.

(9) The extent and purpose of contact between Bennell and Ken Barnes, and the matters that were discussed by them.

(10) Whether MCFC maintained public indemnity insurance in respect of the activities of its scouts.

201. The evidence on these matters, such as it is, stems from the recollection of witnesses going back over three decades. They are points of detail which those witnesses had no reason to commit to long term memory.

202. If the claim had been brought in time, then it is likely that there would have been a much more extensive matrix of evidence on these matters. This includes documentary evidence (for example, documents relating to Ted Davies' appointment as youth development officer, any application from Bennell for that job, the reasons why Bennell was not appointed, receipts for payments made in respect of boys' teams, written records of communications between Bennell and MCFC, internal MCFC communications on matters relating to youth development, records of complaints made about Bennell and what was done in response, documents relating to the individual teams, correspondence in relation to attendance by club employees at presentation evenings and the like). Although it is not possible to tell when any individual document was destroyed, it is likely that at least some documentation would have been available on some of these issues if proceedings had been brought by, say, 1993 (ie the latest date on which one of these claims could be brought in time, which was still 10 years before MCFC moved to its new stadium). Even if some documentation had been destroyed before the expiry of the limitation period, that may be taken into account when considering all the circumstance of the case under s33 (even though it is not, strictly, relevant to the issue that arises under s33(3)(b)) – see *CD per* Lewison LJ at [36] and *Donovan v Gwentoys Ltd* [1990] 1 WLR 472 *per* Lord Oliver at 479.

203. Ken Barnes would have been an important witness, likely the most important witness on this issue. He would have been much better placed to give credible and reliable evidence on the relationship between Bennell and MCFC than any of the witnesses who have given evidence. There are a number of other witnesses who would also probably have been able to give some evidence about the nature of the relationship between Bennell and MCFC, particularly Chris Muir, Ted Davies, Peter Swales, Bernard Halford, Len Davies, George Woodcock and Pete Warhurst.

204. For present purposes I do not take account of the possibility that Tony Book, Steve Fleet, Mike Grimsley and Roy Bailey would have been able to give evidence if the claim had been brought in time. In respect of Mike Grimsley and Roy Bailey it is unlikely that their evidence would have made a significant difference – they coached the associated schoolboy teams but there is nothing to suggest that they had much contact with Bennell. In relation to Tony Book, the evidence as to whether he is now able to assist is unsatisfactory and any assessment of whether the delay has had an impact on the quality of the evidence that he might give is speculative. In relation to Steve Fleet, it would have been open to either party to issue a witness summons. There is no way of knowing what evidence he might now, decades later, be able to give.

205. The net result is that if the claims had been brought in time it is likely that clear confident and reliable conclusions could be reached about the relationship between Bennell and MCFC. The ability now to do so has been badly compromised by the 27-year delay and the consequential impact on the available evidence. I agree with the submission of Mr Counsell QC that a loss of evidence does not necessarily just prejudice a defendant – it might also prejudice a claimant. Axiomatically, it is almost impossible to know which party is more disadvantaged by a loss of evidence – that depends on what the evidence would have shown. The point is that a loss of evidence is relevant to the question of whether it is fair to require the defendant to face the claim after such a long delay even if it is not known for certain whether the lost evidence would have assisted the defendant's case.

206. The length of the delay, the reasons for the delay and the impact on the cogency of the evidence are all significant factors that must be considered under s33(3). It is also necessary to take account of the other factors identified by s33(3), but I do not consider that any of them carry significant weight in comparison:

(1) Conduct of MCFC after the cause of action arose: there are some minor complaints about disclosure (specifically the late disclosure of documentation), but it is not ultimately suggested that MCFC has retained any disclosable document (and complaints of late disclosure are also made in the opposite direction).

(2) The duration of any disability of the claimant after the date of the accrual of the cause of action: it is not suggested that any of the claimants were ever under a disability after achieving their majority.

(3) The extent to which the claimant 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, and

(4) The steps taken by the claimant to obtain medical, legal, or other expert advice and the nature of any such advice he may have received: the claimants knew from the outset that Bennell was responsible for the abuse, and they knew from the outset that Bennell was linked with MCFC. If they had sought legal advice in the 1980s or 1990s then it may well have been less favourable because of the then state of the law (before *Lister v Hesley Hall* [2002] 1 AC 215). Once they felt able to bring civil claims it appears that they sought legal advice relatively quickly and proceedings were issued without significant delay.

207. Other factors: Beyond the specific factors identified in s33(3)(a)-(f) it is also necessary to take account of all the circumstances of the case.

208. The claimants and MCFC each rely on the Mulcahy review and the resulting compensation scheme. There may be circumstances where this type of factor is significant. It is to MCFC's credit that it set up an investigation into what had occurred and set up a no-fault compensation scheme, but I do not give particular weight to this factor, and I appreciate that the claimants regard it as a piece of cynical reputation management and an attempt to pressurise them not to bring civil claims. By the time the compensation scheme was set up, these proceedings were already underway. The claimants contend that the terms of the scheme (and the limited provision for costs) were such that any compensation paid under the scheme would have been consumed by legal costs. I do not consider that the fact that the claimants could have applied for compensation under the scheme is a factor that weighs against them, or in MCFC's favour, in determining whether the time-limit should be disapplied.

209. There was good reason for the Mulcahy review to be structured as it was, with witnesses being guaranteed anonymity. MCFC are entitled to maintain privilege over the statements that were obtained, and it would be an abrogation of that privilege for the claim to privilege to be held against MCFC when deciding whether to disapply the time limit. The structure of the Mulcahy review is not therefore a factor that weighs in the claimants' favour, or against MCFC, when determining whether the time limit should be disapplied.

210. MCFC suggests that it is significant that it is an "innocent party" that is said to be responsible for the abuse on a "no fault" basis and only through the prism of vicarious liability. It is not necessary to express a view on whether that could ever be a relevant factor. In the present case, I do not consider it is a factor to which any weight should be attached. I have already attached significant weight to the degradation of the evidence that relates to vicarious liability. If account were taken of this further factor, suggested by MCFC, that would amount to double counting.

211. I do not accept MCFC's submission that it would be disproportionate to disapply the limitation period in KHT's case, because the abuse was "comparatively minor and of short duration" and "any award is likely to be relatively modest." This is a significant factor in some cases, particularly where the issue of limitation is determined as a preliminary issue – see *Robinson v St Helens Metropolitan Borough Council* [2002] EWCA Civ 1099 [2003] PIQR P128 *per* Sir Murray Stuart-Smith at [32]-[33] and *Adams v Bracknell Forest Borough Council* [2004] UKHL 29 [2005] 1 AC 76 *per* Lord Hoffmann at [54]-[55]. Here, KHT was the victim of substantial and serious sexual assaults. Even though they were not as horrendous as some of the offending against other claimants, they were still, in their own right, serious infringements of KHT's rights to bodily integrity, personal autonomy, and his rights as a child. I have assessed the value of the claim at over £45,000 (see paragraphs 561 - 567 below). The issue of limitation is being determined at trial. That in itself makes a material difference to the question of proportionality (see *DSN* at [168], and the first instance judgment of Griffiths J at [62]). The costs have already been incurred. A refusal to disapply the time limit will not save costs. KHT's case does not stand alone. It is being tried with seven other claims. The costs in determining the central issue of vicarious liability have been incurred in any event. So far as I can tell, MCFC has not disclosed a single document solely in relation to KHT's case. Nor has it exchanged evidence from any lay witness

solely in relation to KHT's case. The additional costs that can be attributed to KHT's case are the costs of the pleaded defence and amended defence (which largely follow the equivalent documents in the other claims), and the costs of the expert evidence in relation to KHT. These are likely to be modest by comparison to the overall costs of the claims. I do not therefore consider that it is (on these grounds) disproportionate to disapply the time limit in KHT's claim.

212. The merit of the underlying claim is a factor that is sometimes considered, particularly where the court decides whether to disapply the time limit as a preliminary issue. Here, it is not a factor to which I attach any weight. If the claimants, on the available evidence, do not succeed in the claims then the time limit makes no difference to the outcome. In those circumstances it is incapable of impacting on the balance of prejudice that is inherent in s33 and is not therefore a relevant factor to consider. If the claimants would, on the available evidence, succeed in the claims then the application of the time limit would cause overwhelming prejudice to them, but it would also cause overwhelming prejudice to the defendant to disapply the time limit if evidence that might have made a difference to the outcome has been lost. This lies at the heart of s33(3)(b) and has therefore already been addressed.

213. Other factors that were mooted include the availability of an award under the criminal injuries compensation scheme, and the change in the legal framework (particularly in relation to vicarious liability) since the causes of action accrued. It was not, however, suggested that either factor should be taken into account. As to the latter, Mr Fewtrell fairly and helpfully drew my attention to *CD per* Lewison LJ at [75] (and *Murray v Devenish* [2018] EWHC 1895 (QB) *per* Nicol J at [68]-[70]) where it is shown why this is not a relevant factor.

214. Accordingly, I do not consider that there are any other circumstances, beyond those set out in section 33(3)(a) and (b), that carry significant comparative weight. Those factors that do carry weight point in different directions. The claimants' reasons for the delay militate in favour of allowing the application. The impact on the cogency of the evidence, points in the other direction. The opposing factors are incommensurable. Neither has primacy. Even if there is "some unfairness to the defendant due to the delay" it may be fair and just that the action should proceed if the delay has arisen for an excusable reason – see *Cain* at [73].

215. The claimants' formulation that the ultimate issue is whether a fair trial is possible needs to be treated with a little care. It derives from the observation of Auld LJ in *Bryn Alyn* which was a deliberately pithy encapsulation of the test after "stripping away legal niceties." The s33 issue is whether it is fair ("equitable") to disapply the time-limit. The question of fairness needs to take account of all the circumstances. It is not simply a question, in the abstract, of deciding whether a fair trial is possible. It is whether, having regard to all the circumstances of the case, it is fair to expect the defendant to meet the claim after so many years have passed – see *A v Hoare* [2008] UKHL 6 [2008] 1 AC 844 *per* Lord Brown at [86]:

> "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 upon 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."

216. In *Cain* Smith LJ sat at [73]:

> "The basic question to be asked is whether it is fair and just in all the circumstances to expect the defendant to meet this claim on the merits, notwithstanding the delay in commencement."

217. In *DSN* Griffiths J disapplied the limitation period. This decision was upheld by the Court of Appeal. Although the facts of *DSN* bear some similarities to the present cases, the s33 decision in that case does not mandate any particular answer to the s33 question in these cases. Moreover, there are relevant differences. The delay, here, is longer. In *DSN* there was evidence from Sam Ellis, Kenneth Chadwick, and David Johnson (respectively the manager, chairman and company secretary) who were all able to assist on the relationship between Frank Roper (the abuser in that case) and Blackpool FC. There was only one boys' team that was under consideration (Nova Juniors) and the basic way in which that single team operated was tolerably clear. Here, the claimants' cases directly concern six youth teams (and there are further teams to be considered besides). The evidence relating to how they operated is limited, particularly in relation to those with which Ray Hinett and AJM were not directly involved. Griffiths J referred to the "narrow scope of factual dispute" and the "cogency and abundance of the [remaining available] evidence", and he assessed that the testimony of two witnesses who had since died would not have been capable of making a difference. Accordingly, he concluded that the delay had caused "no real risk of substantial prejudice". I reach the opposite conclusions on the different facts of the present cases. Further, Griffiths J was considering the evidential impact by reference to the test for vicarious liability set out in Supreme Court decisions from 2016, before further guidance was given by the Supreme Court in 2020.

218. Here, having regard to the length of the delay and the way in which the delay has affected the available evidence, I do not consider that it is fair and just to expect MCFC to meet any of the claims, even though each of the claimants has a good explanation for the delay in issuing proceedings. I do not therefore consider that it is equitable to disapply the time limit. I decline to do so. It follows that the claims will be dismissed.

Vicarious liability: Is MCFC legally responsible for Bennell's acts of abuse?

219. For the reasons given above, I decline to disapply the time limits for these claims. It follows that each claim will be dismissed. In case I am wrong about that, I turn to the question of whether MCFC is responsible in law for Bennell's abuse of the claimants.

It is not said that MCFC committed any tort against the claimants that gave rise to the abuse. So it is not said to be directly responsible. The issue is whether it is vicariously responsible for Bennell's conduct.

The parties' submissions on vicarious liability

220. Mr Counsell QC, on behalf of the claimants, submits that the central test is whether it is "fair, just and reasonable" to impose vicarious liability in the circumstances of the case.

221. He contends that the evidence amply demonstrates that Bennell's relationship with MCFC is akin to employment and that the abuse was perpetrated in the course of that employment. *DSN* is, he says, helpful to the claimants' case because the principles that can be extracted support a finding of vicarious liability here. The actual result in *DSN* is not relevant, because the facts were materially different:

(1) in *DSN*, the feeder team, Nova Juniors, had been disbanded by the relevant time ([123]). DSN himself had never played for that team.

(2) The abuse took place on a football tour to New Zealand by a team which included boys that had no connection with any team that was connected with Blackpool FC. The tour was not linked to Blackpool FC's youth team operations ([139]).

(3) The operation of both Nova Juniors and the trip to New Zealand was an independent operation entirely of Roper's own making ([139]).

(4) There was no evidence that Blackpool FC had any say in the existence or operation of the Nova Juniors teams ([123]).

(5) There was limited evidence as to how Roper was "appointed" to his role. By contrast, there is good evidence in this case that Bennell was appointed or assigned by MCFC to run its feeder teams and coach the boys for the benefit of MCFC and its youth development.

(6) Blackpool FC did not have even a "vestigial" degree of control over Roper ([137]). By contrast, Bennell was assigned specific coaching duties – helping during the trials.

222. The junior clubs that Bennell (and others) coached were MCFC junior or nursery or feeder teams. Their purpose was to attract and to retain the most talented boys from northwest England. If it were not for the FA rules, they would not have existed in the form in which they were run. That is demonstrated by the fact that when the FA rules changed in the 1984/5 season, Crewe Alexandra was able to create its own school of excellence and Bennell was then employed (under a contract of employment) by Crewe Alexandra. There is no material difference between what Bennell did at Crewe and what he did at MCFC. That in itself shows that his relationship with MCFC was akin to employment. Prior to the 1984/5 season it had been necessary for MCFC to keep "a discreet distance" because what was happening was a breach of the FA rules.

223. Importantly, Bennell was not just a scout and a coach of junior teams, he also had a "central role" in coaching for MCFC. This is demonstrated by the video of the trial held

at Platt Lane which is "the clearest evidence of the important role which Bennell undertook".

224. Bennell, with his "pied piper" ability to attract talented boys, was central to MCFC's youth strategy, and the youth strategy was central to MCFC's enterprise. The involvement of Bennell gave rise to an "enterprise risk" for which MCFC was responsible. This was also an exclusive arrangement – scouts were aligned to only one club (so Bennell was aligned to MCFC and no other club), boys were required to cut any links with other clubs (other than school or county). The arrangement enabled MCFC to have first pick of the best talent so boys would only look at other clubs if they were rejected by MCFC.

225. MCFC exercised significant control over Bennell. He was appointed as a scout by MCFC, and MCFC had a say not just in what a scout and coach could do but how he should go about it. Thus, Mr Barnes asked Mr Hinett, AJM and Mr Small to be managers or secretaries for youth teams, he gave instructions that the team should be entered into a particular league, he decided that two youth teams should be merged, he asked AJM to "tone down" his public suggestions of links with MCFC, he kept some of the teams' trophies in his offices, he told Mr Hinett, in 1981, that he wanted Bennell to take up a coaching role again, and he held regular meetings in his offices. The relationship went well beyond that of an independent contractor. Bennell was integral to the youth set-up and was an important part of the recruitment process which was ultimately carefully controlled and overseen by Ken Barnes. This was shown by Bennell's witness statement in a claim by another claimant against Crewe Alexandra, his CV, the accounts he gave in police interviews, and the content of matchday programmes. The references to a "strange dismissal" and Bennell being "sacked" also show that his relationship with MCFC was akin to employment.

226. There is a sufficient connection between Bennell's relationship with MCFC and the abuse, as shown by the decision in *Maga v Birmingham Roman Catholic Archdiocese Trustees* [2010] EWCA Civ 256 [2010] 1 WLR 1441. The priest in *Maga*, like Bennell, had used his position to gain access to and to facilitate the abuse of his victim.

227. The abuse arose as a direct result of Bennell's connection with MCFC. The claimants would not have been abused by him if it were not for those connections. By assigning Bennell the roles of scout, coach, and an important facilitator of trials, MCFC conferred upon him the authority which he needed to commit the abuse. Otherwise, parents would never have allowed their children to stay with him.

228. Mr Kent QC, on behalf of MCFC, argues that the claimants' approach to vicarious liability amounts to a radical extension of the boundaries beyond those established by the Supreme Court. The decisions of the Supreme Court retain the fundamental and important distinction between employees (for whom the employer is vicariously liable) and independent contractors (for whom the "employer" is not vicariously liable). Insofar as there has been a modest adjustment to the test for vicarious liability, this is to avoid the anomaly that would arise if someone who is not technically an employee (but is to all intents and purposes in a relationship akin to employment) is treated differently from an employee. Here, the relationship between Bennell and MCFC is not akin to employment - the critical ingredient of "control" is missing. In *DSN* Griffiths J found vicarious liability established because Roper was integrated into the business of Blackpool FC as a result of his role as a scout which he discharged by running a feeder

team. That is precisely the position here. Accordingly, the Court of Appeal finding that vicarious liability is not established on the facts of *DSN* requires the same conclusion here, where the facts are not materially different.

229. Even if the relationship is akin to employment, and even if that relationship gave Bennell the opportunity to commit the abuse, MCFC did not entrust activities to Bennell which gave rise to the risk of the torts being committed. In particular, it did not assign the care and welfare of the boys to Bennell. None of the functions that MCFC assigned to Bennell could be expected to result in any close or intimate relationship with the boys in the teams he was running. The overnight stays at his house, especially for prolonged periods (for example during summer holidays) were no part of his discharge of his scouting or coaching activities. There is no evidence that MCFC was ever even aware of these overnight stays, let alone that it approved them. This is critical to the distinctions drawn in the authorities

230. There is no evidence that the trips to Butlins and elsewhere had anything to do with MCFC. There is positive evidence that the Butlins trips were nothing to do with MCFC. This makes the case for vicarious liability weaker than in *DSN* where Blackpool FC was at least aware of the New Zealand trip and contributed to its cost.

The legal principles

231. A master is responsible in law for a tort committed by its servant in the course of employment.

232. This classic and deceptively simple test for vicarious liability involves two stages. The first stage concerns the relationship between the defendant and the tortfeasor – there must be a relationship of master and servant. The second stage concerns the connection between the tort and the servant's duties – whether the tort occurred in the course of the servant's employment. It is for a claimant to establish that both stages of the test are met.

233. Each of the two stages has been the subject of refinement - they have each been "somewhat broadened" - in a line of cases over the last two decades. The principal authorities are *Lister v Hesley Hall* [2001] UKHL 22 [2002] 1 AC 215, *E v English Province of Our Lady Charity* [2012] EWCA Civ 938 [2013] QB 722, *Various Claimants v Catholic Child Welfare Society* [2012] UKSC 56 [2013] 2 AC 1 ("*Christian Brothers*"), *Cox v Ministry of Justice* [2016] UKSC 10 [2016] AC 660, *Mohamud v Wm Morrison Supermarkets plc* [2016] UKSC 11 [2016] AC 677 ("*Morrison 1*"), *Armes v Nottinghamshire County Council* [2017] UKSC 60 [2018] AC 355, *Barclays Bank plc v Various Claimants* [2020] UKSC 13 [2020] AC 973 and *Wm Morrison Supermarkets plc v Various Claimants* [2020] UKSC 12 [2020] AC 989 ("*Morrison 2*"). These, and other important authorities, were all recently considered by the Court of Appeal in *DSN*.

234. *Cox* and *Morrison 1* were decided by the same justices of the Supreme Court on the same day. They are complementary. *Cox* is concerned with the first stage of the vicarious liability test, *Morrison 1* with the second stage. *Cox* was a claim against the prison service in respect of the negligence of a prisoner whilst working in the prison kitchen. *Morrison 1* was a claim against a supermarket for the assault of a customer by

a member of staff. In both cases, vicarious liability was imposed. The decisions were seen as significantly extending the boundaries of vicarious liability.

235. *DSN* was decided at first instance after the decisions in *Cox* and *Morrison 1* and before the decisions in *Barclays Bank* and *Morrison 2*. Applying *Cox* and *Morrison 1*, Griffiths J found that the test for vicarious liability was established.

236. *Barclays Bank* and *Morrison 2* were (like *Cox* and *Morrison 1*) decided by the same justices of the Supreme Court on the same day. Again, they are complementary. *Barclays Bank* is concerned with the first stage of the vicarious liability test, *Morrison 2* with the second stage. In *Barclays Bank* a doctor committed sexual assaults whilst carrying out pre-employment medical checks for the bank. In *Morrison 2* an employee of the supermarket leaked personal data relating to its employees. In both cases vicarious liability was refused. The judgments in the two cases explain how each of the two stages of the test should be applied and can be seen as providing "corrective guidance" so as to prevent an overbroad application of the test for vicarious liability – see the judgment of Stuart-Smith LJ in *DSN* at [109].

237. *DSN* was decided by the Court of Appeal after the Supreme Court decisions in *Barclays Bank* and *Morrison 2*. The appeal was allowed. Stuart-Smith LJ undertook a detailed analysis of all the key authorities, including *Cox* and *Morrison 1*, and *Barclays Bank* and *Morrison 2* and explained how they applied to the factual situation of a football scout who had abused young boys. The Court of Appeal held that, on the facts of *DSN*, the football club was not liable for its scout's acts of abuse.

238. In the light of the way in which the jurisprudence has developed, it is helpful to consider separately the authorities on each stage of the test, taking the authoritative statements of principle from, primarily, *Barclays Bank* and *Morrison 2*, and to review the way in which Stuart-Smith LJ analysed the authorities in order to apply the test in *DSN*. In doing so, it is necessary to bear in mind that the application of the test ultimately involves a synthesis of the two stages.

239. Stage 1: The paradigm relationship of master and servant is that of employer and employee. The antithesis is the relationship with an independent contractor. The former relationship satisfies stage 1 of the test, the latter does not. That leaves open the question of the application of the concept of vicarious liability to relationships that do not neatly fit into the distinct categories of "employee" or "contractor". The short answer is that stage 1 of the test will be satisfied if and only if the relationship is "akin to employment", and not where "the tortfeasor is carrying on business on his own account" - see *Christian Brothers per* Lord Phillips at [47] and *Barclays Bank per* Lady Hale at [28].

240. The question that then arises is how a court should determine whether a relationship is akin to employment so as to satisfy stage 1. That is where considerable assistance can be gleaned from the route through the authorities that was charted by Lady Hale in *Barclays Bank* at [10]-[27] and by Stuart-Smith LJ in *DSN* at [50]-[104].

241. In *E v English Province of Our Lady Charity* [2012] EWCA Civ 938 [2013] QB 722 the Court of Appeal held that a bishop was vicariously liable for a priest's conduct in sexually abusing a girl in a children's home. Lady Hale explained that it was significant that the traditional distinction between an employee and an independent contractor was

not questioned in *E*. That had not been necessary because the tortfeasor was neither an employee nor an independent contractor. Ward LJ therefore considered whether the relationship was closer to that of employment (which would give rise to vicarious liability) or to that of an independent contractor (which would not). The difference was explained by Ward LJ in *E* (at [70]), and quoted by Lady Hale in *Barclays Bank* at [13]:

> "an employee is one who is paid a wage or salary to work under some, if only slight, control of his employer in his employer's business for his employer's business. The independent contractor works in and for his own business at his risk of profit or loss."

The outcome in *E* does not therefore erode the importance of the fundamental distinction between employees and sub-contractors to stage 1 of the test.

242. In *Christian Brothers* the tortfeasor was a lay brother of the Catholic Church who was bound by lifelong vows of chastity, poverty, and obedience and by the rules of the institute of which he was a member. The rules governed all aspects of the life and conduct of a brother - the institute's control over the life of its brothers "was complete". Lord Phillips held that the first stage of the test for vicarious liability was met – see at [56]-[57]:

> "56. …the relationship between the teaching brothers and the Institute had many of the elements, and all the essential elements, of the relationship between employer and employees:
>
> i) The institute was subdivided into a hierarchical structure and conducted its activities as if it were a corporate body.
>
> ii) The teaching activity of the brothers was undertaken because the Provincial directed the brothers to undertake it. True it is that the brothers entered into contracts of employment with the Middlesbrough Defendants, but they did so because the Provincial required them to do so.
>
> iii) The teaching activity undertaken by the brothers was in furtherance of the objective, or mission, of the Institute.
>
> iv) The manner in which the brother teachers were obliged to conduct themselves as teachers was dictated by the Institute's rules.
>
> 57. The relationship between the teacher brothers and the Institute differed from that of the relationship between employer and employee in that:
>
> i) The brothers were bound to the Institute not by contract, but by their vows.
>
> ii) Far from the Institute paying the brothers, the brothers entered into deeds under which they were obliged to transfer all their

> earnings to the Institute. The Institute catered for their needs from these funds.
>
> Neither of these differences is material. Indeed they rendered the relationship between the brothers and the Institute closer than that of an employer and its employees."

243. In *DSN* Stuart-Smith LJ said, at [62]:

> "the elements [Lord Phillips] identified in [56] demonstrated the closeness of the analogy between the relationships of an employer and his employee on the one hand and of the institute and the individual brothers on the other. [They] include elements of control in elements (ii) and (iv); and a modified approach to enterprise risk in element (iii) with its reference to the individual brothers furthering the "objective, or mission, of the institute". The ultimate conclusion was that the relationship between the brothers and the institute was closer than that of an employer and its employees – not least in relation to the power to control and direct. On this basis the policy reasons for imposing vicarious liability on an employer that Lord Phillips had identified in [35] of his judgment were at least equally applicable to the institute. It was therefore a justifiable incremental step to conclude that stage 1 of the test was satisfied despite the absence of an employer/employee relationship."

244. In *Armes*, the Supreme Court held that a local authority was vicariously liable for the actions of a foster-parent. This was described by Lady Hale in *Barclays Bank* (at [23]) as "perhaps the most difficult case." She emphasised the significance of the finding that the foster parents could not be regarded as carrying out an independent business of their own. Again, the important point is that the decision in *Armes* is consistent with the fundamental distinction between an employee and an independent contractor. As to the reasoning in *Armes* that drove the ultimate conclusion that the relationship satisfied the test for vicarious liability, Stuart-Smith LJ, in *DSN*, identified (at [87]) the most important considerations:

> "(a) the specific nature of the local authority's relevant activity, namely discharging its statutory duty to care for the claimant, (b) the measure of control exercised by the local authority over the foster carers, (c) the fact that the local authority chose to place the claimant with the foster carers, (d) the decision to place the claimant with the foster carers represented the local authority's decision about how to discharge its relevant activity and its duty to the claimant, and (e) that decision gave rise to the recognised enterprise risk of physical and sexual abuse. Standing back, these features can justify the conclusion that the foster parents were integral to the local authority's relevant activity and (perhaps less obviously) that the relationship between the local authority and the foster carers could be treated as "akin to employment" and as capable of giving rise to the imposition of vicarious liability."

245. In *Cox* the prisoner was working as a chef in the prison kitchen but was not, technically, an employee of the prison service (but nor could he be regarded as an independent contractor). Lady Hale analysed the judgments in *Cox* and explained that there was nothing "to cast doubt on the classic distinction between work for an employer as part of the business of that employer and work done by an independent contractor as part of the business of that contractor." Lady Hale also drew attention to the observation of Lord Reed in *Cox* that in applying this distinction it is not necessary that "the employer's activities [are] commercial in nature". It follows, as Mr Kent QC points out, that the "independent contractor" exception can apply (depending on the facts) to a person who is running a not-for-profit sporting club or team.

246. This analysis of the authorities shows the importance of the employee / contractor distinction and how it is necessary to focus on that distinction when deciding whether the relationship is akin to employment in order to determine stage 1 of the test.

247. In order to understand the arguments that were advanced in *Barclays Bank*, it is necessary first to return to *Christian Brothers*. Lord Phillips identified, at [35], policy reasons why an employer may be held responsible in law for the tort of its employee:

> "(i) the employer is more likely to have the means to compensate the victim than the employee and can be expected to have insured against that liability; (ii) the tort will have been committed as a result of activity being taken by the employee on behalf of the employer; (iii) the employee's activity is likely to be part of the business activity of the employer; (iv) the employer, by employing the employee to carry on the activity will have created the risk of the tort committed by the employee; (v) the employee will, to a greater or lesser degree, have been under the control of the employer."

248. At [47], Lord Phillips said that where these five "incidents" are present in a non-employment relationship then vicarious liability can arise.

249. In *Barclays Bank* the issue concerned the extent to which *Christian Brothers* had expanded the first stage of the classic test for vicarious liability. The argument on behalf of the defendant was that it was trite law that there is no vicarious liability for the actions of an independent contractor such as the doctor it had engaged, and that principle had not been abrogated by *Christian Brothers*. The counter argument on behalf of the claimants (which finds an echo in some of the arguments advanced on behalf of the claimants in this case) was that the hard-edged distinction between an employee and an independent contractor had been replaced in *Christian Brothers* with "a more nuanced multi-factorial approach", and that it is necessary to apply Lord Phillips' five "incidents" in order to determine whether it is "fair, just and reasonable" to impose vicarious liability.

250. Lady Hale rejected the claimants' argument. She emphasised the distinction between the policy reasons for a rule, and the criteria for its application. She warned against eliding "the policy reasons for the doctrine of the employer's liability… with the principles which should guide the development of that liability into [other] relationships..." She referred to the observations of Lord Hobhouse in *Lister* at [60]:

> "… an exposition of the policy reasons for a rule (or even a description) is not the same as defining the criteria for its application. Legal rules have to have a greater degree of clarity and definition than is provided by simply explaining the reasons for the existence of the rule and the social need for it, instructive though that may be."

251. Lady Hale explained that when, in *Christian Brothers*, Lord Phillips applied the "akin to employment" test, he did so (see paragraph 242 above) by reference to the detailed features of the relationship, rather than by reference to the five incidents that amounted to a policy justification for the imposition of vicarious liability. Stuart-Smith LJ made the same point in *DSN* at [62].

252. Lady Hale stated the test to be applied to stage 1 is as follows (*Barclays Bank* at [28]):

> "The question therefore is, as it has always been, whether the tortfeasor is carrying on business on his own account or whether he is in a relationship akin to employment with the defendant."

253. Accordingly, the focus must be on the nature of the relationship rather than on the policy reasons that justify vicarious liability. Lady Hale said that Lord Phillips' five incidents "may" be helpful in "doubtful cases", but she stressed that "the key" usually lies "in understanding the details of the relationship." She added, "[w]here it is clear that the tortfeasor is carrying on his own independent business it is not necessary to consider the five incidents."

254. *DSN* concerned sexual abuse perpetrated by Frank Roper (see paragraphs 67 and 122 above). He was a scout for Blackpool FC. He was not formally employed by the club and was not paid. His role was to find promising young players and coach them (through the vehicle of a team that he ran, Nova Juniors, which was regarded as a "feeder team" for Blackpool FC). He did this with a view to the boys signing schoolboy forms for Blackpool FC at the age of 14. In June 1987 he organised a football tour to New Zealand. At that time his Nova Juniors team had disbanded (a new Nova Juniors team was created after the tour). DSN went on the tour. He had attended the Blackpool FC School of Excellence. Four Blackpool FC apprentices also went on the tour. The son of the first team manager went on the tour, and the first team manager himself reassured other parents who were nervous about sending their sons on the tour (see paragraph 277 below). Blackpool FC paid £500 towards the cost of the tour. After leaving New Zealand, the group spent 11 days in Thailand. Roper used that part of the trip to purchase a large amount of football kit for the purpose of his sport clothing shop.

255. At first instance, Griffiths J found that Blackpool FC was vicariously liable for Roper's conduct. As to the first stage of the test, he said (at [159]-[162]):

> "159. …the relationship between Roper and the Club was one capable of giving rise to vicarious liability. It is just and reasonable on the facts I have found that this should be so. Roper was an unpaid volunteer, but the Club's dire financial state meant that almost all the non-playing staff were in the same position … Roper was very much doing the work of the Club. There was no more important task for the Club than spotting and capturing

young players and bringing them into a position when they were willing to sign up for a lower division side with limited resources… He was a Blackpool scout, and his Nova Juniors side was a Blackpool feeder team. Its sole purpose was to take boys, so far as possible, into a closed environment in which Blackpool had a better chance than any other club of securing their signatures when they were old enough to sign…

160. Blackpool gave Roper credibility by lavishing tickets and access on him and his protégés. …Blackpool FC kept him supplied with everything that it could, short of money, to confirm that connection and provide that currency to Roper for its own benefit. Roper's activity was not only on behalf of Blackpool, it was exclusively on Blackpool's behalf, and the fact that he was not paid made it all the more striking. Blackpool, by giving Roper the "aura"… he had there, and his own room, and a special place in the stand, and free tickets, and access to the private areas, and association with the older players including first team players, and what was described as "the run of the place", as well as by the track record it gave Roper of taking on his boys time after time, created the trust in Roper that allowed him to abuse the boys.

161. It is true that Roper seemed to control Chapman more than Chapman controlled Roper. But Blackpool FC could have removed Roper's access and all the other incidents of his position with Blackpool FC, at a stroke - and, if it did, Roper would have been nothing. He depended on Blackpool FC, even though he was not employed by them under a contract. He could not do what he did without them. They gave him the tools to do his work for them, the credibility to make promises about them, the perks to buy allegiance to them and the association to build loyalty to them. At any time, they could have taken all that away, refused him access to the Club, stopped his association with [the youth manager] and made it known that Roper no longer had any influence over the selection of boys for schoolboy forms or apprenticeships - and then he would have been finished. He was as dependent on Blackpool's favour and on his integration into Blackpool FC as an employee would have been: he was working for them, and they could have fired him at any time. Truly, the relationship between Roper and Blackpool FC was akin to that between employers and employees between whom there is vicarious liability. Roper was, in reality, part of Blackpool FC's workforce in the youth set up. He was at least as important as [the youth manager] in that respect… Conversely, Nova Juniors was not an independent club. It was a Blackpool feeder club. That is how it was promoted, that is how it was known, that is how it operated, and that is how it maintained its reputation and thrived.

> 162. Roper was so much a part of the work, business and organisation of Blackpool FC that it is just to make Blackpool FC liable for his torts within the first limb of the two-stage test…"

256. The Court of Appeal, with the benefit of the "corrective guidance" of *Barclays Bank*, reversed this decision. The essential reasoning of Stuart-Smith LJ in relation to stage 1 of the test is as follows:

(1) The critical question is whether the relationship is akin to employment as opposed to the scout carrying on business (broadly construed) on his own account ([122]).

(2) The facts that the club was able to initiate and terminate the relationship, and that the work done by the scout was very important for the club, are not material ([123], [125], [135]).

(3) The fact that the club gave free rein and full access to its premises, including desirable areas such as the directors' box and the players' areas shows "close involvement" but provides only limited evidence about the real nature of the relationship, save that the scout was "embedded" in the business ([124]).

(4) There was no evidence that the club had any say in the existence or operation of the team run by the scout ([123]).

(5) None of the normal incidents of a relationship of employment were present:

> "127. …Leaving on one side the fact that he had a completely free hand about how he did his scouting, there is no evidence of any control or direction of what he should do. This appears to be confirmed by the Judge's acceptance that Mr Roper appeared to control Mr Chapman rather than Mr Chapman having control over Mr Roper. The evidence shows no more than an informal association between Nova Juniors and Blackpool FC, that informal association merely being that a number of boys who played for Nova Juniors went to Blackpool FC so that it was generally regarded as a "feeder" for the club. His activity was not exclusively for Blackpool FC, as is demonstrated by the evidence that he was actively involved in assisting boys (including Mark Bradshaw) who were trying to get to other clubs. These are not exceptions that prove the rule of Blackpool exclusivity: they disprove it.
>
> 128. The fact that he was an unpaid volunteer who had a full-time job running his own sportswear business is not determinative; but it is indicative of a person who was in a position to act independently to support a club that was in dire financial straits. Adopting the words of Lord Reed at [21] of *Cox's* case, there was a complete absence even of a vestigial degree of control. This absence of control would become even more apparent if one were to include the 1987 trip as part of Mr Roper's normal scouting activities. With the exception of the

> minimal contribution of £500, every aspect of the planning, running, administration and financing of the trip was exclusively down to Mr Roper. He decided to run the trip (as he had his previous trips) and precisely how it should be run, including the commercial diversion to Thailand."

257. Stuart-Smith LJ considered that *DSN* was a clear case and that it was not necessary to consider Lord Phillips' incidents. In case he was wrong about that, he did address those five incidents. He accepted that if (contrary to the Judge's findings) Roper's activities were exclusively for the benefit of Blackpool FC then incidents (i)-(iii) were present, and that incident (iv) might be said to be applicable to the normal incidents of scouting (but not to the 1987 trip). However, incident (v) was absent because Roper was not, in any meaningful sense, under the control of the club.

258. It follows from these, and other, authorities that relationships that may be akin to employment so as to give rise to vicarious liability include:

(1) The relationship between a bishop and a parish priest – see *E per* Ward LJ at [122], or between the unincorporated association known as "the Brothers of the Christian Schools" and the lay brothers of the Catholic Church that were members of that association – see *Christian Brothers*, or between a congregation of Jehovah's Witnesses and one of its Elders – see *BXB v Watch Tower and Bible Tract Society of Pennsylvania and anor* [2021] EWCA Civ 356 [2021] 4 WLR 42 *per* Nicola Davies LJ at [72]-[81].

(2) The relationship between a prisoner and the prison governor where the former is paid to do work in a prison and for the prison's benefit – *Cox*.

(3) The relationship between a foster-parent and a child placed under local authority control – *Armes*.

(4) The relationship between members of the armed forces and the Crown. The former are not, strictly, employees – see *Newell v Ministry of Defence* [2002] EWHC 1006 (QB) *per* Elias J at [3], but the Crown can be vicariously liable for their conduct – see *Bici v Ministry of Defence* [2004] EWHC 786 (QB) *per* Elias J at [2] and [63] (and see Attiyah on Vicarious Liability in the Law of Torts (1967) at p395: "…it is in practice unthinkable that the Crown would today deny vicarious liability for members of the armed forces.")

(5) The relationship between a police officer and a chief officer of police. Police officers are not (usually) employees, but they fall under the direction and control of their chief officer and must comply with lawful instructions. The relationship might be said to be akin to employment and the chief officer is, by statute, responsible for torts committed by subordinate officers in the course of their functions – see s48 Police Act 1964 and s88 Police Act 1996.

(6) A further possible example is the relationship between a scoutmaster and a scout association. In *Murphy v Zoological Association and another* The Times 14 November 1962, a 10-year-old boy died after being mauled by a lion at Whipsnade Zoo. Atkinson J held that "the Boy Scouts Association could not be said to have been vicariously liable for the acts of scoutmasters and cubmistresses." However,

in the first instance judgment in *JL* (unreported, Manchester County Court, transcript of judgment given on 27 May 2015), HHJ Platts held that the Scout Association was liable for acts of sexual abuse by a scoutmaster (the subsequent appeal on a different aspect of HHJ Platts' decision did not address this issue). The question of vicarious liability was conceded by the Scout Association in *KCR v The Scout Association* [2016] EWHC 587 (QB).

259. In each of these cases the tortfeasor was not the defendant's employee, but nor was the tortfeasor said to be an independent contractor. There was no contract of service, but the relationship was, in material respects, akin to that of employment and the tortfeasor was closer to the position of an employee than an independent contractor.

260. Relationships that have been held not to be akin to employment and so not to give rise to vicarious liability include:

(1) The relationship between a bank and a doctor engaged to carry out pre-employment medical screening for the bank – see *Barclays Bank*.

(2) The relationship between a school and a teacher who was contracted to provide compulsory swimming lessons to the school's pupils – see *Woodland v Swimming Teachers Association* [2013] UKSC 66 [2014] AC 537 *per* Lord Sumption at [3].

(3) The relationship between a debt collection company and a registered bailiff to whom it sent work – see *Kafagi v JBW Group Ltd* [2018] EWCA Civ 1157.

(4) The relationship between a company and a contractor that had been engaged to carry out demolition works on the company's premises – see *Ng Huat Seng v Mohammad* [2017] SGCA 58 (cited in *Barclays Bank* at [26]).

(5) The relationship between the football club and the football scout/coach in *DSN*.

261. There is a wealth of well-known authority on the distinction to be drawn between an employee and an independent contractor. From those authorities that consider that distinction in the context of the test for vicarious liability, the factors that are relevant to assessing whether the relationship satisfies stage 1 of the test include:

(1) Whether the tortfeasor works solely for the defendant, or whether he has a portfolio of activities of which work with the defendant is just one component – *Barclays Bank* at [28], *Christian Brothers* at [47], *DSN* at [128].

(2) Whether profits or losses accrue to the benefit/detriment of the tortfeasor or the defendant (the former is more consistent with an independent contractor, the latter with an employee) – *E* at [70], *Barclays Bank* at [13].

(3) Whether the tortfeasor owes the defendant a duty of obedience (as is an implied term in a contract of employment, and as was replicated by the vows of obedience in *E*).

(4) The nature of the control exercised by the defendant over the tortfeasor, including whether the employer has a right to control not just what a defendant does (that being a factor that may be neutral as between an employee and an independent

contractor), but how he does it, and what he does not do – *Christian Brothers* at [56], *Armes* at [87], *DSN* at [74] and [127].

262. In considering the question of control, the authorities recognise the diversity of modern employment relationships. These include relationships where the employee has considerable autonomy in the performance of tasks allocated by an employer. An NHS trust does not generally control how its employed surgeons perform operations. Close control over the manner of performance of allocated tasks is not therefore essential for a relationship to be akin to employment, so long as, at the very least, there is a right to control what the tortfeasor does ("vestigial control"). Where there is no vestigial control then that militates against a relationship being akin to employment - *Cox* at [21], *DSN* at [101].

263. Mr Counsell QC turns this on its head and submits that where the defendant does exercise a degree of vestigial control then that is sufficient to conclude that the relationship is akin to employment. The authorities do not support that proposition. Vestigial control can be exercised over an independent contractor. Thus, in *Barclays Bank*, the bank allocated the task of undertaking medical examinations to the doctor and required the doctor to complete proforma documents. To that extent, at least, it was exercising control over what the doctor did, if not how the doctor did it. That was not sufficient to satisfy stage 1 of the test.

264. Stage 2 of the test: The test is now authoritatively set out in *Morrison 2*. Lord Reed (who gave the single judgment) approved the test articulated by Lord Nicholls in *Dubai Aluminium Co Ltd v Salaam* [2002] UKHL 48 [2003] 2 AC 366:

> "the wrongful conduct must be so closely connected with acts the partner or employee was authorised to do that, for the purpose of the liability of the firm or the employer to third parties, the wrongful conduct may fairly and properly be regarded as done by the partner while acting in the ordinary course of the firm's business or the employee's employment."

265. Lord Reed emphasised that the words "fairly and properly" do not give rise to a discretionary judgement. Rather, they require the test to be applied in the light of the guidance provided in the authorities. It is therefore necessary to consider how the test has been applied in cases where the facts more closely relate to those in the present case.

266. *Morrison 2* was not a case of sex abuse, but the test approved in *Morrison 2* can be applied to cases such as the present. In particular, the fact that the wrongful conduct is unauthorised, or even that it is criminal, does not prevent it being conduct that is closely connected to acts that are authorised. That is clear from *Lister*, which was not in any way doubted in *Morrison 2*. In *Morrison 2* Lord Reed explained (at [23]):

> "…the close connection test has been applied differently in cases concerned with the sexual abuse of children, which cannot be regarded as something done by the employee while acting in the ordinary course of his employment. Instead, the courts have emphasised the importance of criteria that are particularly relevant to that form of wrongdoing, such as the employer's

> conferral of authority on the employee over the victims, which he has abused."

267. It is helpful to consider *Lister* and the cases that the appellate committee in *Lister* found particularly helpful, because they throw light on the scope of vicarious liability in these types of case. They illuminate what "closely connected" requires in this context.

268. In *Lister* the defendant owned and managed a residential school. A warden, employed by the school to take care of boys who lived in "Axeholme House" (including by making sure that they went to bed at night and got up in the morning), sexually abused the claimants who were boys in his care. The House of Lords held that the defendant was vicariously liable for the warden's conduct – see *per* Lord Steyn (with whom Lord Hutton agreed) at [20] and [28]:

> "20. It [is] possible to consider the question of vicarious liability on the basis that the employer undertook to care for the boys through the services of the warden and that there is a very close connection between the torts of the warden and his employment. After all, they were committed in the time and on the premises of the employers while the warden was also busy caring for the children.
> …
> 28. …the evidence showed that the employers entrusted the care of the children in Axeholme House. The question is whether the warden's torts were so closely connected with his employment that it would be fair and just to hold the employers vicariously liable. On the facts of the case the answer is yes. After all, the sexual abuse was inextricably interwoven with the carrying out by the warden of his duties in Axeholme House. Matters of degree arise. But the present cases clearly fall on the side of vicarious liability."

269. Lord Clyde (at [37]) referred to an observation that could be traced back to the first edition of Salmond on the Law of Torts in 1907 that "if the unauthorised and wrongful act of the servant is not so connected with the authorised act as to be a mode of doing it, but is an independent act, the master is not responsible." Lord Clyde's reasons for finding that the defendant was vicariously liable mirrored those of Lord Steyn – see at [50]:

> "It appears that the care and safekeeping of the boys had been entrusted to the respondents and they in turn had entrusted their care and safekeeping, so far as the running of the boarding house was concerned, to the warden. That gave him access to the premises, but the opportunity to be at the premises would not in itself constitute a sufficient connection between his wrongful actings and his employment. In addition to the opportunity which access gave him, his position as warden and the close contact with the boys which that work involved created a sufficient connection between the acts of abuse which he committed and the work which he had been employed to do. It appears that the respondents gave the warden a quite general authority in the

> supervision and running of the house as well as some particular responsibilities. His general duty was to look after and to care for, among others, the appellants. That function was one which the respondents had delegated to him. That he performed that function in a way which was an abuse of his position and an abnegation of his duty does not sever the connection with his employment. The particular acts which he carried out upon the boys have to be viewed not in isolation but in the context and the circumstances in which they occurred."

270. The "importance of the employee's act being an abnegation of a specific duty imposed upon him by his employment" was stressed by Lord Phillips in *Christian Brothers* at [82] and by Stuart-Smith LJ in *DSN* at [68].

271. Lord Millett's reasoning (at [82]) mirrored that of Lord Steyn and Lord Clyde. Lord Hutton and Lord Hobhouse also agreed with Lord Steyn.

272. The speeches in *Lister* were influenced by two decisions of the Supreme Court of Canada: *Bazley v Curry* 174 DLR (4th) 45 and *Jacobi v Griffiths* 174 DLR (4th) 71 - see *per* Lord Steyn at [27]:

> "I have been greatly assisted by the luminous and illuminating judgments [in *Bazley* and *Jacobi*]. Wherever such problems are considered in future in the common law world these judgments will be the starting point."

Lord Millett made comments to similar effect at [70].

273. The facts of *Bazley* are similar to those of *Lister* – the tortfeasor was employed by a children's home to act as a parent-figure caring for the children, but had, instead, abused them. The test for vicarious liability was met. In *Jacobi*, by contrast, the tortfeasor was employed by a children's club and was responsible for organising recreational activities and outings, and, in doing so, was encouraged to form friendships with the children. Two children from the club visited him at his home, outside working hours, where they were sexually assaulted. The court held that there was not a sufficiently close connection between the abuse and the tortfeasor's employment to give rise to vicarious liability – see *per* Binnie J at [80]:

> "The key to this case, in my view, is that the Club's "enterprise" was to offer group recreational activities for children to be enjoyed in the presence of volunteers and other members. The opportunity that the Club afforded Griffiths to abuse whatever power he may have had was slight. The sexual abuse only became possible when Griffiths managed to subvert the public nature of the activities. The success of his agenda of personal gratification, which ultimately progressed to sex acts, depended on his success in isolating the victims from the group. The progress from the Club's program to the sexual assaults was a chain with multiple links, none of which could be characterized as an inevitable or natural "outgrowth" of its predecessor:

> (1) The Club provided Griffiths with the opportunity to work with children.
>
> (2) While it was undoubtedly part of Griffiths' job to develop a positive rapport with the children, the relationship envisaged by the Club had no element of intimacy comparable to the situation in Children's Foundation.
>
> (3) While Griffiths might come into occasional physical contact with children by reason of his job, e.g., steadying a child on a piece of gym equipment, the authorized "touching" had no more to do with parenting, nurture or intimacy than could be said of a normal adult reaching out to steady a child who, e.g., tripped over a carpet.
>
> (4) Griffiths enticed each child to his home to cultivate a one-on-one relationship. The Club activities did not require the Program Director to be alone with a child off Club premises and outside Club hours. Such a practice was explicitly prohibited after 1988.
>
> (5) Griffiths established his own bait of home attractions, such as video games, that had nothing to do with Club activities. It was not part of his job to entertain children at home after hours.
>
> (6) Unlike the situation in Children's Foundation, the appellants' mother was a parental authority interposed between the assailant and his victims. She gave permission to the children to go to Griffiths' home. No doubt, knowing of Griffiths' job at the Club, she did not regard him as a stranger or as a threat. Nevertheless, it must have been evident to a reasonably cautious parent that Griffiths' home entertainment was not part of the Club's program.
>
> (7) Once the children were drawn into his home-based activities, Griffiths gradually increased the level of intimacy, initially with Randy and subsequently with Jody, in terms of banter and sexually suggestive talk. This was not only unauthorized, it was antithetical to the moral values promoted by the Club.
>
> (8) Eventually, when Griffiths saw his chance, he committed the assaults."

274. In *Lister* Lord Millett drew a distinction between a warden and a groundsman at a residential school:

> "In the present case the warden's duties provided him with the opportunity to commit indecent assaults on the boys for his own sexual gratification, but that in itself is not enough to make the school liable. The same would be true of the groundsman or the school porter. But there was far more to it than that. The school was responsible for the care and welfare of the boys. It entrusted

> that responsibility to the warden. He was employed to discharge the school's responsibility to the boys. For this purpose the school entrusted them to his care. He did not merely take advantage of the opportunity which employment at a residential school gave him. He abused the special position in which the school had placed him to enable it to discharge its own responsibilities, with the result that the assaults were committed by the very employee to whom the school had entrusted the care of the boys."

275. *Bazley* and *Jacobi*, and the warden and groundsman in *Lister*, are cases that lie either side of the boundary. The facts of *Maga* fall somewhere between those of *Bazley* and *Jacobi*. It therefore helps narrow the contours further. The claimant was sexually abused as a child by a Roman Catholic priest. The priest had a number of responsibilities in relation to local young people. He started a disco, a social club (and other clubs) and a number of football teams. This was all done as part of his employment as a priest. The claimant (who was not himself Roman Catholic) had met the priest through church discos, and had done jobs for the priest, including in the presbytery where the priest lived and, on one occasion, in the church itself, where some of the abuse happened. Lord Neuberger MR said (at [43]) that "the issue is not easy to resolve" and that (at [44]) the case was clearly weaker (from the claimant's point of view) than *Lister*. Nonetheless, he considered that there were a number of facts that, taken together, established a sufficiently close connection between the priest's employment by the church and the abuse that he inflicted so as to render his employer vicariously liable for the abuse. These factors were that (1) the priest had a special role, involving trust and responsibility, even more than a teacher, doctor, or nurse. He was never off duty, and was usually dressed in clerical garb to enable him to hold himself out as having a priestly role and authority, (2) his functions included a duty to evangelise and thereby to get to know the claimant in the course of his pastoral duties, (3) the priest was given a special responsibility for youth work, (4) the disco was on church premises, (5) the claimant did work for the priest at the church, (6) the claimant also worked at the presbytery which was owned by the priest's employer and was his home, (7) the abuse took place at the priest's room in the presbytery, and it was part of his priestly duty to spend time alone there with individuals such as the claimant (see at [45]-[50]). Longmore LJ in his "somewhat more panoptic analysis" (with which Lord Neuberger MR agreed (at [54])) said (at [88]):

> "this is a case of Father Clonan inviting the claimant to the presbytery and there abusing him. That displays a strong connection with the church by a priest whose power and ability to exercise intimacy was conferred by virtue of his ordination by the church. Overall that connection with what Father Clonan was authorised to do is sufficiently strong to fit squarely within Professor Salmond's requirements for vicarious liability as approved in *Lister's* case [2002] 1 AC 215, para 36."

276. Smith LJ, at [94], expressed the same point in this way:

> "…there is no doubt that, on the evidence in the present case, the duty to evangelise was clearly established by Monsignor Moran. That duty was one of the factors or circumstances which

> provided Father Clonan with the ostensible authority to befriend and become intimate with the claimant and boys like him. That duty and ostensible authority to befriend the claimant created the opportunity for the abuse and also increased the risk of abuse. So, I do not think that if a priest or pastor of a non-evangelical church had the ostensible authority to befriend and develop intimacy with a young person by reason of his pastoral duties and if he then abused the opportunities given by that ostensible authority, the position of that church would be any different from the position of the Roman Catholic church in this case…"

277. In *DSN*, parents had only allowed their sons to go on the tour because they saw it as part of a "Blackpool FC operation." There had been some concern amongst the parents about letting their sons go on the tour. Blackpool FC's first team manager addressed a meeting of the parents and boys at premises opposite Blackpool FC stadium. He told them that it was a good opportunity for the boys and that he was quite happy for his son to go. His son went on the trip. The father of one of the boys gave evidence (which was accepted by Griffiths J) that this reassured him:

> "If Blackpool had been taken out of the equation… none of the parents would have agreed to their children going on the trip. The involvement and support provided by Blackpool Football Club made the trip legitimate, especially as the first team's manager's son would also be on the trip."

278. Stuart-Smith LJ pointed out that the fact that the parents had perceived that Blackpool FC was involved in the tour did not establish that Blackpool FC was in fact involved. The manager had been speaking in a personal capacity, not as a representative of Blackpool FC. Blackpool FC did not assume responsibility for the boys going on the trip and did not entrust the boys to Mr Roper's care. He concluded that the case lacked "the requisite close connection linking the relationship between the club and Mr Roper and the sexual abuse he inflicted upon the Claimant while in New Zealand." *Christian Brothers* and *BXB* were distinguishable "because of the all-enveloping nature of the relationship between the tortfeasor and the defendant."

279. <u>How to determine if MCFC is vicariously liable for the abuse:</u> In the light of the authorities set out above, the correct approach is as follows:

(1) Undertake a factual examination of the relationship between MCFC and Bennell.

(2) Determine if Bennell was an employee of MCFC (in which case the first stage is satisfied) or an independent contractor (in which case the first stage is not satisfied, and it is not necessary to proceed further).

(3) If the question at (2) does not resolve the first stage of the vicarious liability test, determine whether Bennell's relationship with MCFC is "akin to employment" (in the sense explained in the authorities, particularly *Barclays Bank*), or whether he was carrying on an enterprise on his own account.

(4) If the answer to the question at (3) is not clear, then consider using Lord Phillips' five incidents as an aid to determining whether or not Bennell's relationship is akin to employment.

(5) Undertake a factual examination of the circumstances in which the claimants were abused, and the degree of connection between those circumstances and Bennell's relationship with MCFC.

(6) Determine whether the degree of connection between the circumstances of the abuse and Bennell's relationship with MCFC is sufficient to give rise to vicarious liability, having regard to the explanation of that test in *Morrison 2*, and its application in sexual abuse cases, particularly *Lister*, *Bazley*, *Jacobi* and *Maga*.

The relationship between MCFC and Bennell

280. The witness who is in the best position to know about the detail of this relationship is Bennell himself. I am not able to rely on his evidence. He has (on his own account) demonstrably lied. His case is that he maintained what was a determined and practised deception on the claimants, their parents, and many others that he was a MCFC scout in the early 1980s. He now says that was not true. He maintains his innocence of offences which I am satisfied he committed and for which he has been convicted (in some cases on his own plea, in some cases by a jury following trial). He accepts he lied to the police. He accepts that he lied in his CV. His central account that his ties with MCFC were forever severed when he moved to Taxal Edge is convincingly refuted by a number of witnesses, by video evidence and by contemporaneous documentation.

281. Six of the claimants are responsible for his incarceration. He says that four of them gave dishonest evidence. He displayed a clear hostile animus towards them. There was not the slightest indication of remorse or any recognition of the consequences of his offending. He has no discernible motive to tell the truth. He is not concerned about the consequences of perjury because, as he volunteered, he will, anyway, spend the rest of his life in prison. His evidence is worthless. I am not able to place any reliance on it. I put it to one side. That applies not just to what he says in evidence in these proceedings, but what he has said in the past. The claimants seek to rely on extracts of what Bennell said in police interviews (particularly as to the connection between teams he ran and MCFC) and what he said in a witness statement in previous proceedings. I do not, however, consider that even this material can be relied on – even though it was not obviously self-serving and even though the question of vicarious liability was not in issue when he was being interviewed by the police. There are two reasons why I do not think it is reliable. First, Bennell is so manipulative that even where he says something that might appear to be contrary to his interests, I do not consider that what he says can be considered reliable. Second, the accounts he gave about the connection between his teams and MCFC went in different directions (compare the extracts at paragraphs 106 and 107 above). It is not possible to extract a core, reliable, account.

282. The claimants' primary pleaded case is that Bennell was employed by MCFC. It is now common ground that he was not employed by MCFC. There was no contract of employment. There was, though, a relationship between Bennell and MCFC. That relationship was initiated in 1974 or 1975. At that point he was running his Senrab team and this caught the attention of Ken Barnes. He asked Bennell to become a scout for MCFC. This meant he would seek to identify talented young footballers and draw them

to Ken Barnes' attention. Bennell was provided with a card that identified him as a MCFC scout. The card did not have any legal status and did not confer any legal entitlement on Bennell. It was merely a tool for identifying to others that he was a MCFC scout or representative. The relationship did not involve payment. Nor did it involve any legal obligation from Bennell to MCFC, or vice versa. It was an entirely voluntary arrangement. There was no exclusivity. MCFC was free to use other scouts (and did). There was nothing to stop Bennell from doing other work (and he was employed full time for much of the period from 1975-1984 – see paragraph 34 above). There was nothing to stop Bennell from doing other work in relation to football coaching (and he did – for example his work at Butlins). There was nothing to stop Bennell from recommending players to other teams (save that there was an expectation that Bennell would make recommendations to MCFC first; if he had not done that then it might well have put the continuation of the relationship at risk).

283. The motivation for MCFC was that Bennell was someone who was well placed and able to identify players who might be a good prospect for recruitment when they reached the age of 14. The motivation for Bennell was the kudos, respect and status that came with being a recognised scout for a well-known first division football club and the possibility of a paid career if he secured an appointment as the youth development officer. There was also the hidden sinister motivation that this provided him with a route to groom young boys as a prelude to the commission of serious sexual offences. The level of motivation on each side was high and meant that there was no need for payment or other formality or incentive. Unlike the vows in *E*, however, the respective motivations of the parties to the relationship did not involve ties of obedience and control.

284. It was open to either side to terminate the relationship at any point. MCFC did not have any right to control how Bennell carried out his scouting activities. It was up to him who he recommended to MCFC and how he identified gifted young players. I do not agree that the involvement of MCFC in the appointments of Ray Hinett and AJM demonstrate that MCFC was controlling how Bennell did his job. He could decide which youth matches to go to watch, and how to make an approach to a boy or his parents. MCFC had no right to require him to attend (or not to attend) any particular match, save that it could always terminate the relationship for any reason. He could decide who did and did not get selected to be in the squad, who did and did not play in any particular match, which tournaments were entered, and which tours were undertaken. MCFC did not provide funding. The teams were run by Bennell at his own financial risk – if he did not cover the costs of pitch hire (or accommodation on a tour) from subs or fund-raising activities then he would be out of pocket.

285. In practice, Bennell used his status as a scout to bolster his growing and largely self-promoted reputation as someone who had connections with football clubs, particularly MCFC, and who could provide young boys with a potential route to a professional footballing career. He used that reputation to persuade boys to play for his team. He would then coach them and, in due course, discuss with Ken Barnes which of them might be invited to a trial with MCFC. It was in Bennell's interests to play up his connection with MCFC. But it was also in MCFC's interests to help Bennell to attract the best players. He was able to secure access to Maine Road, including, on occasion, to the gym and the first team dressing room. He was also able to secure from MCFC "guest" tickets for games that he could provide to boys and their parents.

286. At about the time he became a scout Bennell set up Whitehill. As to the status of Whitehill, I leave aside the reference to "feeder teams" in the compensation scheme. That was drawn up as a result of the conclusions of the Mulcahy review. Those conclusions are not admissible in these proceedings, and the compensation scheme was initiated without admission of any liability. There are, however, other references to Whitehill as a feeder team both in documents published by MCFC in the 1980s and in the evidence (including the evidence of Ray Hinett). This is hardly surprising. It is an apt description. I am satisfied that Whitehill was a feeder team for MCFC in that a number of players from Whitehill were invited for trials with a view to becoming associated schoolboys at MCFC, and some did go on to become associated schoolboys at MCFC. It was also a team in which Ken Barnes took a close interest. He saw it as a potential source for future recruitment. He watched some games and initiated and facilitated the appointment of Ray Hinett as manager. When Bennell moved away, Ken Barnes arranged for Whitehill to be merged with an existing team that was connected to MCFC, to form a new team that maintained that connection.

287. On the evidence, Bennell's role as a scout for MCFC came to an end by the summer or autumn of 1979. I reach that conclusion on the basis of:

(1) Ray Hinett's evidence that Bennell "left" from around 1979, after Ted Davies was given the job of youth development officer.

(2) AJM's evidence that he noticed a change in Bennell's apparent relationship with MCFC at the point when Ted Davies was given the job of youth development officer.

(3) Evidence elicited in the Mulcahy review that Steve Fleet left MCFC for a spell from November 1980 (and because Steve Fleet had been influential in the decision to give the youth development job to Ted Davies that must have happened before then).

(4) A letter dated 29 October 1979 in which Bennell was offered employment as a Residential Social Worker at Taxal Edge from 1 November 1979.

(5) Documentation in November 1979 that was addressed to Bennell at Taxal Edge.

Bennell spent the summer of 1979 working at Butlins. It seems likely that once Bennell realised he had not secured the youth development officer job at MCFC he sought alternative employment over the summer or autumn, taking up the Taxal Edge job in November.

288. It is clear that when he was at Taxal Edge, Bennell continued to run boys' teams. Surviving documentation shows that there were complaints about him washing boys' teams' football kit at Taxal Edge. It is likely that in the course of 1980 Bennell became involved with White Knowl, Glossop Juniors, New Mills Juniors and North West Derbyshire. This was not at the instigation of MCFC and was entirely at Bennell's own initiative. The precise sequence is not clear, and Ray Hinett and AJM (who I consider are helpful and reliable witnesses on the teams with which they were involved) are not able to provide much assistance. I think that the most likely explanation for Bennell's involvement in these teams (drawing primarily on the evidence of Alan Henderson, Ian Roebuck, Laurie French and, to a lesser extent, the claimants and GXY) is that:

(1) New Mills Juniors was an existing junior team. Bennell somehow took it over.

(2) Bennell then used the better players from New Mills Juniors to start to form a new team of his own creation, White Knowl.

(3) Bennell used the vacuum created by the teaching strike to launch another new team, Glossop Juniors.

(4) Bennell also took over an existing team, North West Derbyshire.

(5) Bennell continued to use either the scout card with which he had been issued, or business cards that he arranged to be printed himself (or both), to impress boys and their parents that he was a representative for MCFC. That was not, however, true.

(6) He may have arranged some training at Platt Lane, but this is likely to have been through the council rather than MCFC.

(7) Those who thought that there were twice weekly training sessions at Platt Lane for these Derbyshire teams are likely to be mistaken.

(8) MCFC did nothing to associate itself with these teams. To the extent that boys playing for these teams thought that they were playing for a MCFC junior team that was a result of Bennell's deception. It was not because there was any actual connection between MCFC and these teams.

289. In the meantime, MCFC had (according to Ray Hinett) arranged the merger of Whitehill and Blue Star to become Midas. There is no clear evidence about precisely how this happened, but it may have been as simple as Whitehill ceasing to exist at the end of the previous season (Bennell having moved away) and the players for Midas being formed from the best of those who had played for either Whitehill or Blue Star the previous season.

290. It is not possible to know whether Bennell remained in contact with Ken Barnes during the course of 1980, but the balance of the evidence suggests that he was no longer acting as a scout for MCFC, that MCFC had no connection with the teams that Bennell was now coaching, and that those teams were not feeder or junior or nursery teams. Bennell did sometimes "borrow" players from Ray Hinett's team to play in one of his teams (as both Ray Hinett and GXY explained). Bennell asserted that Ray Hinett would have checked with Ken Barnes, but Ray Hinett did not suggest that MCFC had any involvement. Mr Counsell suggests that the only reason why Ray Hinett and Bennell would "share" players is because they were both working for MCFC at the time. That was not, however, the explanation that Ray Hinett gave in evidence. He simply said that Bennell asked to borrow players, and he was content so long as the boys' parents agreed.

291. I therefore accept MCFC's pleaded defence that Bennell stopped being a scout in about 1978/79, and by November 1979 at the latest (which is before the period covered by any of these claims).

292. MCFC does not accept the relationship ever resumed. It relies entirely on Bennell's evidence to support its contention that the relationship did not resume. I have rejected

Bennell's evidence. There is positive evidence, which I accept, that a relationship did resume. In particular, I accept Ray Hinett's evidence that (probably in 1981) Ken Barnes asked him to take Bennell back to coach his team (which was, at this point, known as Blue Star, or Blue Star Pegasus, or just Pegasus). From this point Bennell's role was much as it had been earlier. In other words, he was coaching a team (Blue Star / Pegasus, and then Adswood Amateurs) in which MCFC took a close interest, and which was a feeder team for MCFC, and he was acting as a scout for MCFC. It is also clear (from the video, and the evidence of many of the witnesses) that Bennell attended trials that were run by MCFC for the purpose of identifying those who might be signed as associated schoolboys. He helped organise the teams at those trials. It is not particularly surprising that he should do so. He would often be at the trials (because boys from his team would be among those taking part in the trials), and he knew many of the boys well. It was convenient for him to arrange the teams whilst Ken Barnes and others at MCFC watched the boys play.

293. Bennell also knew many of the players and staff at MCFC. He was able to secure access to Maine Road and to give the impression that he had free rein there. I accept DDG's evidence (and reject Bennell's extravagant denial of this detail) that Bennell took him to the first team dressing room where the team wished him happy birthday and gave him a signed book (which he still has). He was also able to secure tickets for games for some boys in his teams. This was all part of the process of MCFC seeking to build an allegiance towards it in those who might become associated schoolboys.

294. Bennell did attend a number of meetings in Ken Barnes' office. These are likely to have been for the purpose of discussing the most promising players and practical arrangements for trial games.

295. There is conflicting evidence as to whether youth team trophies were kept in Ken Barnes' office. Some witnesses, including Ray Hinett, recollect seeing trophies there. Mr Reade and Mr Small, who were both regular visitors, do not. These accounts cannot be reconciled. Recollections about whether some trophies were in an office 40 years ago are just not reliable. It is possible that some trophies were kept there for forthcoming presentations (there is evidence that Ken Barnes would sometimes make presentations to the winning team of a local league). It is not, though, possible to make definitive findings as to which trophies were there, the teams to which they related, whether they were permanently there or waiting to be presented or collected, the reasons why they were there, or even whether trophies were ever there at all. So far as there is some conflicting evidence about the presence of trophies in Ken Barnes' office it does not help to resolve the degree of connection between MCFC and any particular youth team. I do, however, reject the evidence that trophies won by White Knowl were kept in Ken Barnes' office: there is no reliable evidence linking MCFC to White Knowl.

296. I do not attach significance to the evidence that boys were treated by a MCFC physiotherapist. There is evidence that – at some point – MCFC ran or oversaw a private physiotherapy service at Platt Lane that any member of the public could use. There is evidence of at least one claimant (in the 1990s) using that physiotherapy service without any direct involvement of MCFC. I also do not consider that evidence about the use of a MCFC minibus is reliable. It comes from a single witness. Nobody else suggests that Bennell drove a MCFC minibus. There is clear evidence that Bennell had access to a (non-MCFC) minibus, including when he was working at Taxal Edge. It is possible that the minibus had originally come from a dealership that sponsored MCFC and that there

were markings on the minibus to advertise the dealership, but that does not mean that it was a MCFC minibus. There is considerable scope for error, wishful thinking and confirmation bias.

297. There is a paradox in the evidence that, on the one hand, the link between MCFC and its feeder teams needed to be kept secret (such that the names of the teams were changed to conceal the link), and, on the other hand, the fact that the teams played in MCFC kit and reference was made to the teams in MCFC matchday programmes. I am satisfied that the links were not, in reality, a secret. These were 11, 12 and 13-year-old boys who were achieving their dreams (and, in many cases, their parents' dreams) of playing for a team that was, in their eyes, MCFC. It is not possible to keep that a secret. The evidence shows, as one would expect, that their classmates and friends were well aware of the position and were both proud and jealous of them. Similarly, the claimants were very well aware of the links between the teams that they were playing against and well-known clubs. If it was a secret, it was an open one.

298. It may be that the impression of team-name changes was more apparent than real. Because each team was for a single year age group (U12s/U13s/U14s), it only had a discrete existence for a single season. At the end of a season playing for the U12s, the boys from that team would move to an U13s team. It is possible that there were sometimes different names for the different year groups, and this has played a part in creating an impression that there were frequent changes to the name. In addition, when Bennell took boys on a tour, he may well have allocated a name to the team for that tour whether or not all the boys belonged to that team (there is a photograph of a team on a tour to Spain, all with "North West Derbyshire Schools" emblazoned sports bags, even though some members of the team do not claim to have played for North West Derbyshire Schools).

299. Even so, there were some changes (the move to Adswood Amateurs being a clear example) and it may well be that this had something to do with ensuring a degree of separation, an ability to maintain (rightly or wrongly) that there was no breach of the FA rules, and some form of pretence. That would be consistent with AJM's evidence (which is supported by the contemporaneous articles he wrote) that he had been told by Ken Barnes to "tone down" the link in the pieces he published in local newspapers. It happens also to be consistent with the memo from Mr Gibson that Bennell was running illegal teams on behalf of MCFC (but, for the reasons I will come to, I do not think it appropriate to place weight on that memo).

300. Although the names changed, the nature of the teams and their links to MCFC did not. The identity of the teams did not change so far as the players and their families are concerned. ZAH did not recall Adswood Amateurs even though her name is on their documentation. The reason is likely to be that Adswood Amateurs was just a name of convenience. So far as ZAH was concerned, she was continuing in the role she had when the team had been called Blue Star. To ZAH the team remained the same. The fact that the name on the headed paper was different was not of any consequence.

301. So, the teams were linked to MCFC, and MCFC took a keen interest in them and secured Bennell's return as a coach. He returned to the same role he had before, where he was able to make all the decisions and was not subject to any particular obligation towards MCFC.

302. Many of the findings made by Griffiths J in *DSN* at [160]-[161] (see paragraph 255 above) apply to the present case – adapting the language:

> "[MCFC] gave [Bennell] credibility by lavishing tickets and access on him and his protégés. …[MCFC] kept him supplied with everything that it could, short of money, to confirm that connection and provide that currency to [Bennell] for its own benefit…. [MCFC], by giving [Bennell] the "aura"… he had there, …and free tickets, and access to the private areas, and association with the older players including first team players, and what was described as "the run of the place", as well as by the track record it gave [Bennell] of taking on his boys…, created the trust in [Bennell] that allowed him to abuse the boys.
>
> …[MCFC] could have removed [Bennell's] access and all the other incidents of his position with [MCFC], at a stroke... He depended on [MCFC], even though he was not employed by them under a contract… They gave him the tools to do his work for them, the credibility to make promises about them, the perks to buy allegiance to them and the association to build loyalty to them. At any time, they could have taken all that away, refused him access to the Club, stopped his association with [Ken Barnes] and made it known that [Bennell] no longer had any influence over the selection of boys for schoolboy forms or apprenticeships… he was working for them, and they could have fired him at any time. … [Whitehill/Midas/Pegasus/Adswood Amateurs] was …a [MCFC] feeder club. That is how it was promoted, that is how it was known, that is how it operated, and that is how it maintained its reputation and thrived."

303. There are some differences. There was the work Bennell did at Butlins, and there is evidence that he promoted players to other clubs besides MCFC. He did not have his own room at Maine Road, and he did not have a special place in the stand. The importance of Bennell to MCFC's operation was not as significant as the importance of Roper to Blackpool FC. Roper recruited players who effectively secured the future of Blackpool FC, which had been in dire financial straits and was languishing in the third division. It was heavily dependent on Roper. By contrast, MCFC was a much more successful first division club. Many of the claimants (and many, many others besides) would have leapt at the chance to sign associated schoolboy forms with MCFC without any encouragement from Bennell. Although Ken Barnes viewed Bennell as an asset, Steve Fleet appears to have wanted nothing to do with him and to have vetoed his employment with MCFC. There were other scouts besides Bennell, who were successful in recruiting the best young players in the area, including Len Davies and Ray Hinett. Bennell was adept at self-publicity, but there is little raw evidence of him recruiting many players who went on to play in the MCFC first team. His own CV names just three MCFC players who he said he had brought into the club, but in respect of at least one of those (Paul Lake) he had lied – Paul Lake was recruited by Ray Hinett not Bennell. Conversely, his CV suggests that he had brought 10 players into clubs other than MCFC. In *DSN* Roper was entirely dependent on Blackpool FC – without Blackpool "Roper would have been nothing" and "would be finished." Bennell,

however, was not dependent on MCFC for his footballing activities which started before, and carried on after, his association with MCFC. He established a relationship with Butlins, he secured employment with Crewe Alexandra, and he was able to run teams in Derbyshire even after his relationship with MCFC had (for a time) come to an end. Nor do I think it would be accurate to describe Bennell as part of the MCFC "workforce" in the youth set up. Ken Barnes, Ted Davies, Steve Fleet, Tony Book, Mike Grimsley and Dave Norman were all part of that workforce. They were all employees of MCFC. There was a clear distinction between them and the volunteer scouts like Ray Hinett, AJM and Bennell.

304. Bennell's links with MCFC ended for good when he moved to Crewe Alexandra. This was in around January 1985. The memo from Mr Gibson suggests that he was dismissed by MCFC. There is no other evidence to support that suggestion (either insofar as it carries an implication of employment, or so far as it suggests that the relationship was unilaterally terminated by MCFC). The underlying source for the content of that memo is not clear. It would have been open to either party to call Mr Gibson as a witness but neither chose to do so. I do not therefore consider it appropriate to place any weight on this use of language in the memo, or the reference in the memo to Bennell running illegal teams on behalf of MCFC.

305. The compensation scheme established by MCFC demonstrates that MCFC considered it appropriate to make ex gratia payments to victims of Bennell's abuse. It was, however, established without admission as to liability, and I do not consider that the fact or content of the scheme throws further light on the nature of the relationship between Bennell and MCFC.

306. Nor do I consider that the subsequent relationship between Bennell and Crewe Alexandra assists in the understanding of the relationship between Bennell and MCFC. The claimants' submission was that he was doing the same thing at Crewe Alexandra that he was doing at MCFC. In general terms that is correct – he was coaching a junior side as a way of nurturing future potential talent. However, the formal legal relationship was undoubtedly different, and there was no clear reliable evidence on the detailed nature of the day-to-day relationship at Crewe Alexandra.

Application of the legal principles to these cases

307. It is for the claimants to establish that MCFC is legally responsible for Bennell's abuse. That means that the claimants must show that Bennell was in a relationship with MCFC that is akin to employment (it being conceded that he was not an employee) (ie Stage 1 – paragraphs 239 - 263 above) and that the abuse took place in the course of Bennell's employment in the sense explained in the authorities (ie Stage 2 – paragraphs 264 - 278 above).

308. Mr Counsell QC submitted that there were three aspects to Bennell's relationship with MCFC – his position as a scout, his position as someone who assisted at trial games, and his position as a coach of junior teams. I agree, but it is the latter that primarily provides a platform for a vicarious liability argument. It was his role as a coach that enabled him to develop a relationship with the individual boys that ultimately resulted in abuse. His position as a scout did not, in itself, enable him to do that – that merely involved watching football games and making recommendations to MCFC as to who they might invite for a trial. Nor did his involvement in trial games – that merely

involved helping to arrange a game under the supervision of Ken Barnes and other members of MCFC staff. The primary focus, therefore, is on Bennell's activities as a coach whilst remembering that there were other aspects to his role which might help inform the overall nature of the relationship.

309. Stage 1: I have set out the legal test and the approach to be taken at paragraphs 239 - 263 above.

310. There was no contract between Bennell and MCFC. He was therefore neither an employee nor an independent contractor. It follows that stage 1 cannot be satisfied on the simple basis that Bennell was an employee of MCFC. Nor can the claimants' case fail at stage 1 on the simple basis that Bennell was an independent contractor of MCFC.

311. The nature of the relationship (effectively that Bennell was a volunteer, providing services to MCFC without reward) is such that the employment/independent contractor distinction does not directly apply. The fact that he was not an employee does not preclude the possibility of vicarious liability. As Lord Reed JSC made clear in *Cox* (at [31]), if there is some technical reason that someone is not an employee (here, that Bennell is a volunteer and there was no contract) that does not enable a defendant to escape a finding of vicarious liability if, in reality, they are in a relationship that is akin to employment. Moreover, *DSN* does not foreclose the possibility that (on facts that are materially different from *DSN*) a football club might be vicariously responsible for the actions of its scouts. Stage 1 would clearly be satisfied in respect of the relationship between MCFC and Ken Barnes (or any of its other employees), or in respect of the relationship between Crewe Alexandra and Bennell. The issue, therefore, is whether Bennell was in a relationship with MCFC that was akin to employment.

312. I do not consider that the claimants have established this essential ingredient of their case.

313. First, Bennell was in full-time paid employment (for at least part of the relevant period) working in the children's home at Taxal Edge. His footballing activities were voluntary and undertaken in his spare time. This is far from determinative, but it is indicative of his independence – see *DSN* at [128] *per* Stuart-Smith LJ.

314. Second, Bennell had a portfolio of footballing activities, some of which had nothing to do with MCFC. His activities as a football coach had a distinct existence, independent of MCFC. His football coaching pre-dated any involvement with MCFC and continued after the termination of the relationship. When he moved to northwest England, he first started a team – Senrab – that bore the same name as a team that he had been involved with in London. It had nothing to do with MCFC. When he moved to Crewe Alexandra, he took a number of the boys that he had been coaching with him. During the period in question, he started teams, or took over teams, that did not have any connection with MCFC (Glossop Juniors / North West Derbyshire / New Mills / White Knowl). They were certainly not under the control of MCFC, and MCFC did not have any say in the decision as to whether Bennell ran them (far less how he ran them). The courses he ran at Butlins were the result of a separate, private arrangement, between Bennell and Butlins. The tours to Spain and Wales and the Isle of Wight were undertaken on his own initiative with no direction or control from MCFC.

315. Third, Bennell took the financial risk of the footballing activities that he arranged. He was not even reimbursed expenses. So, if he was unable to recoup the cost of a tour or of team kit or pitch hire from subs or fund-raising activities, he was left out of pocket.

316. Fourth, there is very little evidence of MCFC exercising control over Bennell's activities. MCFC asked Bennell to coach a team, and MCFC arranged for others to manage the team. MCFC could have terminated the relationship. That, however, just shows that there was a relationship which MCFC was able to initiate and terminate. It does not say anything about the nature of the relationship. Control is only an indicium of an employment relationship when it is the sort of control that cannot be exercised over an independent contractor. What is required is evidence that MCFC was able to control how Bennell undertook his coaching activities, or that it told him not just what he should do, but also what he should not do. There is very little evidence of this sort of control. There is nothing to suggest that Bennell had to undertake all coaching sessions personally, and that he could not appoint a substitute to take his place if, for example, he was unwell or had a conflicting engagement. There is no evidence that MCFC instructed Bennell in the style of coaching to be adopted, or where games should be played, or what kit should be worn, or when (or where) training should take place. There is considerable evidence that Bennell recruited players for his teams at his own initiative and (with few exceptions) there is no evidence of any involvement on the part of MCFC. There are one or two instances when MCFC asked Bennell (or the team manager) to take on particular boys, but the evidence does not show that MCFC was able to insist on this if Bennell had taken a contrary view (Ray Hinett said that he "would not" have refused such a request, but that is not quite the same thing). There is no evidence that MCFC ever told Bennell what he should do (beyond the basic allocation of tasks which is equally consistent with a relationship with an independent contractor). As in *DSN*, and adopting the words of Lord Reed in *Cox* (at [21]), there was not even a vestigial degree of control. Bennell had complete autonomy over the planning, running, administration and financing of the teams, save that MCFC had some involvement in appointing the team manager and, after Bennell left, it merged two of the teams.

317. Fifth, an employment relationship involves an implied obligation to comply with an employer's lawful and reasonable instructions. In relationships that are akin to employment, something similar can be identified. Thus, in the cases of religious organisations, it has been observed that the "ties of loyalty and obedience [are] even tighter than those imposed by a contract of employment" – see *DSN* at [54] and *Christian Brothers* at [8]. Police officers and members of the armed services are subject to disciplinary procedures as part of their conditions of appointment. Here, there is no evidence that Bennell was under any obligation to comply with instructions given by MCFC. He agreed to organise the teams at some trial games, but there was no evidence that he was under any obligation to do that.

318. Sixth, one of the features of some relationships that might be treated as being akin to employment is that the quasi-employer retains a degree of disciplinary control short of the ultimate sanction of termination of the relationship. Thus, in the case of some religious organisations, there is the possibility of "internal ecclesiastical judicial action" – see *BXB* at [21(100)]. Police officers and service personnel are likewise subject to disciplinary sanction. Consistent with the lack of any control by MCFC over how

Bennell ran his teams, there is no evidence that he was subject to any form of disciplinary code.

319. Seventh, Bennell's involvement with MCFC was not part of its core business of running a successful first division team. Nor was it part of the work it did to support its core business by running apprentice and associated schoolboy teams that might become a source of recruitment into the adult game. It was one step further removed even than that. It was the running of teams for boys aged 11-13 from which boys might (or might not) be asked to attend trials to see whether they would be suitable for recruitment as associated schoolboys at age 14.

320. For all these reasons, Bennell was not in a relationship with MCFC that is akin to employment. His relationship was that of a volunteer football coach who ran a number of junior teams (including teams with a connection to MCFC) and who, in that context, acted as a volunteer unpaid scout, recommending players to MCFC for them to consider taking on as associated schoolboys, and assisting MCFC in the conduct of trial games. That was his enterprise, undertaken at his own risk, which MCFC did not control, but was a relationship of mutual benefit to MCFC and Bennell.

321. On the available evidence, the answer to the question of whether the relationship is akin to employment is sufficiently clear: Bennell was carrying on his own independent enterprise and was not in a relationship with MCFC that is akin to employment. It follows, as Lady Hale explained in *Barclays Bank* (at [27]), that it is not necessary to consider the five incidents identified by Lord Phillips in *Christian Brothers* at [35]. However, in case I am wrong, and this is a "doubtful" case, then (as Stuart-Smith LJ did in *DSN*) I go on to consider the five incidents identified by Lord Phillips in *Christian Brothers* at [35], which Lady Hale suggested in *Barclays Bank* "may" help to determine which side of the line such cases fall.

322. The first incident is "the employer is more likely to have the means to compensate the victim than the employee and can be expected to have insured against that liability." MCFC has the means to compensate the claimants. Bennell does not. Whether or not MCFC can have been expected to have insured against the liability rather depends on the relationship between MCFC and Bennell. There is thus a risk of circular reasoning. There is no evidence that MCFC ever did insure against any public liability arising from the activities of Bennell or other volunteer scouts and coaches. Nor is there any evidence that other clubs did so.

323. The second incident is "the tort will have been committed as a result of activity being taken by the employee on behalf of the employer." The application of this incident depends on how close a connection is required to satisfy the "as a result of" test, and what one takes to be the "activity." If the activity is the general scouting and coaching that Bennell undertook, and if a long chain of causation is permitted, then the incident is satisfied: were it not for Bennell's connection with MCFC the abuse would not have occurred. That connection provided the opportunity for Bennell to embark on a grooming process that resulted in the abuse. The boys, and to some extent their parents, were blinded by the possibility that Bennell would provide the route to a professional footballing career. The claimants would never have been put in a position where the abuse was able to take place if it were not for that connection. A simple factual causation test is not, though, sufficient for the imposition of vicarious liability. If a more focussed approach is applied to "activity" so that it is more closely connected with the

abuse, then the incident is not satisfied. That is because the activity would then be defined as accommodating the boys overnight. It was that which provided the immediate opportunity for the abuse to take place. In no sense was Bennell accommodating the boys on behalf of MCFC. MCFC had no reason to accommodate the boys, it did not allocate the task of accommodating the boys to Bennell, and there is no evidence that it even knew that Bennell was doing so.

324. The third incident is "the employee's activity is likely to be part of the business activity of the employer." Again, the application of this incident depends on the way in which "activity" is defined. If it is the coaching of footballers, then this is a core part of MCFC's business activity. If it is having 11–13-year-old boys to stay overnight, then that has nothing to do with MCFC's business activities.

325. The fourth incident is "the employer, by employing the employee to carry on the activity will have created the risk of the tort committed by the employee." This approaches the same concept as the second incident but from a different perspective. The activity that Bennell was employed to carry on was that of coaching young football teams. That is a group activity which can be expected to be carried out in the presence of others (other boys, parents, volunteers, the team manager). As in *Jacobi*, there is not a substantial direct and inherent risk of sexual abuse from such an activity. The progress from coaching football teams, effectively in public, under the gaze of parents and others, to the sexual assaults, involves a similar "chain with multiple links, none of which could be characterised as an inevitable or natural "outgrowth" of its predecessor" as that in *Jacobi*. To adapt slightly the language of Binnie J at [80] (see paragraph 273 above):

(1) The coaching provided Bennell with the opportunity to work with children, and to exercise a controlling influence over them.

(2) While it was undoubtedly part of Bennell's job to develop a positive rapport with the children, the relationship envisaged by that of a coach has no element of intimacy (to use the language of *Jacobi*) comparable to the situation in *Bazley* (or, for that matter, *Lister* or *Christian Brothers*).

(3) While Bennell might come into occasional physical contact with children by reason of his job, eg in demonstrating a tackle or shoulder barge, the authorised "touching" had no more to do with parenting, nurture or intimacy than could be said of a normal adult reaching out to steady a child who, for example, tripped over a carpet.

(4) Bennell enticed each of the claimants to his home to cultivate a relationship. His role as a scout or coach did not require him to be with members of the team at his own home, overnight.

(5) Bennell established his own bait of home attractions, such as video games, junk food, movies and exotic pets that had nothing to do with football coaching. It was not part of his job to entertain children at home after hours.

(6) Unlike the situation in *Bazley*, each claimant's parent was a parental authority interposed between the assailant and his victims. They gave permission to the claimants to go to Bennell's home. No doubt, knowing of Bennell's connection with MCFC, they did not regard him as a stranger or as a threat. Nevertheless, it must

have been evident to a reasonably cautious parent that Bennell's home entertainment was not part of MCFC's activities.

(7) Once the children were drawn into his home-based activities, Bennell gradually increased the level of intimacy. This was not only unauthorised, but it was also antithetical to the conduct to be expected of a youth footballing coach.

(8) Eventually, when Bennell saw his chance, he committed the assaults.

326. The fifth incident is "the employee will, to a greater or lesser degree, have been under the control of the employer." For the reasons I have given I do not consider that the claimants have shown that Bennell was subject to even a vestigial degree of control by MCFC, beyond that which MCFC could impose over an independent contractor. It could appoint him. It could terminate the relationship. But (leaving aside his involvement in trial games) there is no reliable evidence that it directed what he did in the course of his coaching duties.

327. It is deceptively easy to apply Lord Phillips' incidents in a way that leads to a conclusion that it is fair, just and reasonable that MCFC should be vicariously liable for the activities of Bennell. It is a big, well-resourced club. It could easily meet the liabilities to the claimants, at a fraction of the amount that it pays its star players. Bennell was connected to MCFC. That connection gave him the opportunity to commit grievous acts of abuse against young, innocent, and vulnerable boys. They have no real alternative remedy. However, that is not sufficient to meet the test for vicarious liability. It is not open to a court to impose vicarious liability on the basis of an intuitive feeling for where the justice of a case lies. Rather, it is necessary to apply the tightly controlled tests set down in the authorities, including the corrective guidance in *Barclays Bank*.

328. Having considered the application of each of Lord Phillips' five incidents to the circumstances of this case, I do not consider that they indicate that the relationship between Bennell and MCFC was akin to employment. Nor is there any other reason to conclude that the relationship was akin to employment.

329. It follows that the claimants have not established the first stage of the test for vicarious liability.

330. Stage 2: The second stage does not arise, because the first stage has not been established.

331. If I am wrong about that, it is necessary to consider the second stage. I do so on the assumption that (contrary to the finding I have made) the relationship between Bennell and MCFC was akin to employment of the former, by the latter, as a scout, and a coach of teams that included the claimants, and someone who would help organise teams at trial games.

332. The abuse generally occurred either at Bennell's homes, or at residential premises occupied by Bennell during a football tour or holiday. The claimants were staying at Bennell's home because he was their football coach and they and their parents had somehow been persuaded that it was sensible and convenient for them to stay with Bennell before or after matches, or even for periods of time during the week. There was therefore a connection (in the sense of a factual causal connection) between Bennell's

role as their coach and the boys staying at his home, in that his role resulted in the claimants staying with him and thus gave him the opportunity to abuse them.

333. Nevertheless, there is a world of difference between the retention of a football coach and a teacher at a residential school. The latter is responsible, as an inherent part of the job, for the welfare of children in the school's care for 24 hours a day. They live in the same accommodation as part of their job. The abuse of children who have been placed in such a teacher's care is an abnegation of the positive duty allocated to the teacher by his employer. So too, a priest is expected, in the course of his priestly duties, to see members of the public, including vulnerable members of the public, on their own in his home. The abuse of a vulnerable boy by a priest in those circumstances is the abnegation of the responsibilities allocated to the priest by his employer.

334. Nothing, on the evidence, suggests that it was ever contemplated by anyone at MCFC that children would stay with Bennell, far less that he was required to accommodate the children in the course of his ordinary duties as a football scout or coach (see the analogy with *Jacobi* at paragraph 325 above). Adopting the language of Lord Millett in *Lister* at [82], and that of Stuart-Smith LJ in *DSN* at [146], there is nothing to suggest that MCFC either had or assumed responsibility for the boys staying with Bennell, or that it entrusted them to his care, or that the abuse of the children was the abnegation of any positive duty allocated to him by MCFC. The fact that the children, and their parents, had been groomed into believing that it was in some way part of Bennell's role as a scout to have boys stay with him at his home does not mean that that was the case.

335. So far as stage 2 of vicarious liability is concerned, the present case is akin to that of *Jacobi* and *DSN* and is materially different from *Bazley, Lister, Maga, BXB* and *Christian Brothers*.

336. I reject Mr Counsell's submission that there is a material distinction between this case and *DSN*. He is right that the feeder team, Nova Juniors, had been disbanded by the time of the abuse. However, the focus is on the relationship between the tortfeasor and the defendant rather than that between the defendant and the football teams in question. The decision of the Court of Appeal in *DSN* did not depend on whether Nova Juniors was active at the relevant time.

337. Mr Counsell is also right that the New Zealand tour was not, on the Court of Appeal's findings, part of Blackpool FC's youth team operations. However, the tours and trips that Bennell arranged were not part of MCFC's operations, and when he had boys to stay at his home that was not part of MCFC's operations either.

338. The finding in *DSN* that Blackpool FC had no say in the existence or operation of the Nova Juniors teams also, to a large extent, reads across to the present case. So too does the finding that there was limited evidence as to how Roper was appointed to his role. There is no evidence that MCFC had any say in the existence or operation of New Mills Juniors, Glossop Juniors, North West Derbyshire or White Knowl. There is some evidence that Mr Barnes was involved in the decision to set up the team that was variously known as Midas, Blue Star, Pegasus and Adswood Amateurs, including the recruitment of volunteer managers for the team, but there is no clear evidence that MCFC had any involvement in the day-to-day operation of the team. The same is true of Whitehill (save that it appears that that team was initially set up by Bennell with no involvement from MCFC).

339. The finding that Blackpool FC did not have even a "vestigial" degree of control over Roper also applies to this case. There is no clear evidence that MCFC was able to tell Bennell how to carry out his duties, or what he should and should not do. The residual power to terminate the relationship does not amount to the type of vestigial control that is contemplated in the authorities (see *Cox* at [21], *Barclays Bank* at [20], and *DSN* at [72], [77]-[82], [87], [101], [121] and [135]). The fact that Bennell was used by MCFC to organise teams in the course of trials is not sufficient to show that it exercised even a vestigial degree of control in respect of his day-to-day coaching duties.

340. It follows that *DSN* cannot be distinguished from the present case. For that further reason, MCFC is not vicariously liable for Bennell's conduct.

Quantum: Compensation for sexual abuse

341. In the light of my conclusions about limitation and vicarious liability, these claims will be dismissed. The question of compensation does not arise.

342. In case my conclusions on limitation and vicarious liability are both wrong, I set out below the approach that I would take to assessing damages in each case, and the awards that I would make to each claimant, on the assumption that the claims had succeeded.

343. The only remedy that a court can order in this type of claim is an award of money - monetary damages. The amount that should be awarded is that which is necessary to put each claimant into the position he would have been in if he had not been abused by Bennell. So, insofar as he has suffered monetary losses, the amount of those losses should be included in the award. Insofar as he has suffered non-monetary losses, a monetary award should be assessed at the level necessary to compensate for those losses (it being recognised that no monetary award can ever make good the damage that has been done). In assessing the award in each case, it is necessary to determine the impact of the abuse. That depends on an evaluation of the evidence of the claimants and those who know them, and the expert medical evidence, all considered in the light of the medical literature that is relied on by the medical experts.

The medical literature

344. I have been provided with many medical papers and book chapters concerned with the impact of child sexual abuse. Two papers and one book chapter are of particular assistance in understanding the psychiatric consequences. They are:

(1) The impacts of child sexual abuse: A rapid evidence assessment (Independent Inquiry into Child Sexual Abuse ("IICSA"), July 2017).

(2) Long-term outcomes of childhood sexual abuse: an umbrella review, by Helen Hailes, Rongqin Yu, Andrea Danese and Seena Fazel, published in Lancet Psychiatry 2019 6 830-839.

(3) Word Health Organisation Comparative Quantification of Health Risks, Chapter 23, Child Sexual Abuse (Andrews et al, 2004).

345. The IICSA paper provides the following summary of the evidence on the impacts of childhood sexual abuse on emotional wellbeing, mental health and internalising behaviours:

> "o The experience of CSA can have a detrimental effect on general emotional wellbeing, leading to low self-esteem and loss of confidence. Mental health outcomes/internalising behaviours include depression, anxiety disorders, post-traumatic stress disorder (PTSD), self-harm and suicide, as well as a range of other mental health conditions.
>
> o Depression has been found in 57 per cent of young people who have experienced CSE. The increased likelihood of major depression following a history of CSA has been shown to be 2.05 in young adults… relative to comparison groups.
>
> o Among victims and survivors of CSE, 37 per cent had generalised anxiety disorder, 58 per cent had separation anxiety disorder, and 73 per cent had PTSD.
>
> o Rates of self-harm have been shown to be as high as 49 per cent among adult survivors in treatment and 32 per cent among CSE victims and survivors. The risk of CSA victims and survivors attempting suicide can be as much as six times higher than the general population.
>
> o There are some gender differences noted in the prevalence of mental health conditions. In particular, it has been argued that females are more likely to demonstrate internalising behaviours and males are more likely to demonstrate externalising behaviours.
>
> o The quality of interpersonal relationships has been shown to be instrumental in mitigating or compounding the impacts of CSA on mental health conditions."

346. The Hailes paper comprises an umbrella review of 19 meta-analyses (which in turn considered 559 primary studies covering 28 outcomes in more than 4 million participants) of the link between childhood sexual abuse and long-term consequences. It states: "Longitudinal cohort studies revealed that 28% of those who suffered childhood sexual abuse went on to develop substance misuse, and 38% developed PTSD." The difference between the 38% cited here, and the 73% cited by IICSA, may be due to the fact that the Hailes paper was looking at all instances of child sexual abuse, whereas the figure cited by IICSA relates particularly to child sexual exploitation. The odds-ratios for suffering disorders such as PTSD, depression, anxiety, borderline personality disorder and conversion disorder are between 2.3 and 3.3 (ie someone who has suffered childhood sexual abuse is that number of times more likely to suffer one of those disorders).

347. The paper identifies the potential benefits of treatment (but this is most pronounced for young people):

> "Research has indicated the effectiveness of interventions for post-traumatic stress disorder in individuals who have experienced childhood sexual abuse… More specifically, research on various treatment modalities for individuals who have experienced childhood sexual abuse provides some support for cognitive behavioural interventions, particularly the efficacy of trauma-focused cognitive behavioural therapy for young people with post-traumatic stress disorder, anxiety, or depressive symptoms who have been sexually abused."

348. The Andrews book chapter explains that the medical literature defines severity of sexual abuse in several ways: "type, frequency, duration, age of onset of abuse, and relationship of victim to offender. Regardless of how it is defined, there is broadly supportive evidence relating the severity of the abuse to the degree of psychiatric or psychological disturbance." It cites a number of underlying papers for the following summary of the consequences of abuse:

> "In terms of the effect that child sexual abuse has on the individual, it is logical that a child exposed to a traumatic event such as sexual assault may function less well psychologically and may develop phobic responses and anxiety-related symptoms, including PTSD… It has been proposed that the sexual abuse, regardless of type, involves four traumagenic dynamics... These are betrayal, powerlessness, traumatic sexualization and stigmatization. Synthesizing the child sexual abuse literature… the various outcomes associated with child sexual abuse [are placed] in the context of emotional avoidance, suggesting that these outcomes are the result of maladaptive coping behaviour. Within this framework, a spectrum of avoidance, anxiety, despair and attempts to control becomes evident. When that fails, it produces anxiety disorders, alcohol and substance abuse, depression and other psychopathology, and suicide at the extreme. Within this context, despite the lack of a biological link between CSA and mental disorders, a causal relationship would certainly be plausible."

The medical expert evidence

349. Dr Mogg is a consultant psychiatrist. He has been a member of the Royal College of Psychiatrists since 1999, and a consultant since 2005. Between 2010 and 2019 he worked in a busy community mental health team. A significant proportion of his patients had psychiatric difficulties in the context of abuse, including historic sexual abuse from childhood or teenage years. He currently works in a secure forensic setting where all his patients are detained under the Mental Health Act 1983. They include victims of sexual abuse. He is an experienced expert witness instructed on behalf of both claimants and defendants (he also receives joint instructions), but the clear majority of his instructions are on behalf of claimants. He is eminently qualified to give expert evidence on the psychiatric consequences of child sexual abuse. His evidence was authoritative and cogent. It was, however, dependent on the accounts given by the claimants. Dr Mogg was disposed to accept those accounts at face value, and to give an opinion accordingly, even where those accounts were not supported by

contemporaneous documents, and even where there was an apparent conflict with contemporaneous documents.

350. Professor Maden is currently an emeritus professor of forensic psychiatry and a consultant forensic psychiatrist in independent practice, having retired from the NHS in February 2012. He was a member of the Sex Offender Expert Group in the Department of Health Victims of Violence and Abuse Programme between 2005 and 2008. He has written a large number of papers and book chapters. The vast majority of these deal with psychiatric disorders in prisoners. He initially said that the CV that he had presented was up to date. That says that about a tenth of his reports are joint instructions and that the defendant:claimant balance of the remainder is about 2:1. His reports in each of the cases says that he is instructed on behalf of both claimants and defendants. It was put to him that a search of reported cases show that he has appeared in a large number of cases in the last 5 years but that, on each occasion, he was instructed on behalf of the defendant. He responded that this aspect of his CV is not up to date, and that in the last 5 years the vast majority of his expert instructions have been on behalf of defendants. He was also challenged about his approach to interviewing the claimants. He saw all of them over the space of just three days (in part because of travel and other problems caused by the Covid-19 pandemic). He did not read all of the material (and in particular did not read the witness statements) before interviewing the claimants. He explained that he preferred to focus first on interviewing a claimant before then considering documentation and identifying apparent inconsistencies. He accepted that this meant that the claimants did not have an opportunity to address those concerns before he completed his reports. He fairly observed, however, that there were subsequent opportunities to address the inconsistencies he highlighted. He was particularly keen to emphasise the fallibility of human memory and the dangers of reattribution and confirmation bias. He cited three books on the subject (each written more in the style of popular science writing than an academic treatise). His broad point is that where a claimant is giving evidence in the context of a high value legal claim for the consequences of child sexual abuse, there is a risk that all of life's trials and tribulations will be seen through that lens. He was challenged that he was obsessed with this issue, to the point that it clouded his opinion on the individual cases. In fairness, however, Dr Mogg accepted the risk of reattribution and confirmation bias and it is an important issue that needs to be taken into account when assessing the evidence (see paragraphs 185 - 186 above).

351. Professor Maden's general approach was in sharp contrast with that of Dr Mogg and was based on a more sceptical view of self-reported symptoms. This contrasting approach was helpful. It provided different perspectives from which to view the evidence. Both experts were entirely candid about the approaches they had taken and recognised the scope for different views. Exploration of the experts' different approaches rapidly led to a debate on the respective merits of diagnosis according to a phenomenological understanding of a patient's experiences, or a checklist of symptoms, and the philosophical underpinnings of psychiatry. I equally rapidly formed the view that it is not necessary to engage with that debate to resolve these claims. Notwithstanding the differences in approach, there was much common ground on the important issues. I have considered the differences between the experts as they arise in the individual claims, but some themes emerge and can be dealt with at a more general level.

352. Medical records: Professor Maden's point that retrospectively self-reported symptoms need to be considered in the context of contemporaneous medical records is perfectly reasonable. The Judicial College guidelines require account to be taken of whether medical help has been sought, when assessing general damages, and the medical records provide the contemporaneous accounts of doctors which avoid many of the problems with memory. There is, however, evidence in the medical literature that victims of childhood sexual abuse are reluctant to seek medical advice. That evidence is reflected in the accounts given by these claimants. Further, where the contemporaneous medical records attribute a cause other than childhood sexual abuse to a particular problem, that may be because it was indeed caused by something else. Or it may be because the patient deliberately concealed the abuse from his doctor and instead provided some other candidate for the cause. That can only be assessed by considering the evidence of each claimant.

353. PTSD: The key features of PTSD, as set out in ICD10 ("International Statistical Classification of Diseases and Related Health Problems 10th Revision"), are an exceptionally threatening trigger event, symptoms of "re-experiencing" the event "in the here and now", deliberate avoidance of things that might trigger such re-experiencing and persistent perception of a heightened threat leading to an enhanced startle reaction.

354. ICD10 states that PTSD "should not generally be diagnosed unless there is evidence that it arose within 6 months of a traumatic event of exceptional severity." This 6-month rule has been applied by the experts in a way that produces diametrically opposite results in cases where a claimant has well-documented classic PTSD symptoms following disclosure in 2016/17, but less pronounced or less well documented symptoms in the period from the time of the abuse until the time of disclosure. At the risk of over-simplifying their evidence:

(1) For Professor Maden, such a person did not have PTSD before 2016 (because there is no objective contemporaneous support for their subjective retrospective account) and cannot be diagnosed with PTSD after 2016 (because of the 6-month rule), so any symptoms after 2016 are likely to be attributable to something other than PTSD.

(2) For Dr Mogg, the 6-month rule, together with the clear evidence of PTSD after 2016 and the subjective reports of PTSD-type symptoms dating back to the time of the abuse, shows that it is more likely that PTSD has been present throughout.

355. Complex PTSD is not listed in ICD10 but will be included, for the first time, in ICD11 which is due to be published this year. The trigger event is "most commonly prolonged or repetitive events" (rather than a single isolated event), and repeated childhood sexual abuse is given as a particular example. It requires all three core elements of PTSD (re-experiencing, avoidance and hypervigilance). It is characterised by:

> "severe and persistent 1) problems in affect regulation; 2) beliefs about oneself as diminished, defeated or worthless, accompanied by feelings of shame, guilt or failure related to the traumatic event; and 3) difficulties in sustaining relationships and in feeling close to others. These symptoms cause significant impairment in personal, family, social, educational, occupational or other important areas of functioning."

356. In assessing the damages that fall to be awarded in these cases the precise psychiatric diagnosis is, at best, of only secondary significance. More important is the practical impact on the claimant, taking account of the factors identified by the Judicial College. If a person has suffered nightmares, avoidance behaviours and hyper-vigilance since the abuse took place, with a deterioration following disclosure, then they fall to be compensated for that suffering and loss of amenity (taking account of the consequential impact on all aspects of their life), whether it is labelled as PTSD, exceptionally late onset PTSD, complex PTSD, an adjustment disorder, some other disorder, or symptoms that fall short of any diagnosis in ICD10.

357. Nevertheless, the 6-month rule is of assistance in assessing the evidence more generally. In conjunction with the well-documented evidence of a link between PTSD and child sexual abuse, and the well-documented evidence that the greater the severity of the abuse the greater the likely consequences, it may tend to provide some support for the accounts given by the claimants that their symptoms did not start in 2016/17 – and that what happened following disclosure was a deterioration of a pattern that was already present, rather than the emergence of an entirely new condition.

358. Further, given that the nature of the symptoms in these cases corresponds to those that are produced by PTSD, it is appropriate to consider the cases by reference to the Judicial College guidance on cases of PTSD. If it is necessary to resolve the debate between Professor Maden and Dr Mogg then this turns, in each case, on whether the claimant's account of his symptoms dating back decades is accepted in the absence of much or any contemporaneous medical records. In each case I do accept the claimant's account, for all the reasons that I have already given.

359. Treatment: There is a difference between the experts as to whether treatment is indicated. In all cases Dr Mogg recommends treatment, but Professor Maden either suggests that treatment is not necessary, or that it is not required to the extent suggested by Dr Mogg. I have considered the debate on its individual merits in relation to each individual claimant, but the same theme emerges in each case. It is common ground, in all cases, that there are ongoing debilitating symptoms. It is common ground, in all cases, that there is likely to be some improvement following the conclusion of the litigation, but it is not suggested that the symptoms will resolve entirely of their own accord. It is common ground that treatment carries risks, and that it may in particular aggravate rather than ameliorate a claimant's symptoms. The medical literature suggests that treatment may be efficacious (see paragraph 347 above). On balance, and in general, subject to any specific points that arise in individual cases, I am inclined to accept Dr Mogg's views as to treatment.

360. That does not mean that the claimants would engage in treatment if it were offered. They have all shown an entirely understandable disinclination to disclose the abuse, even to a trusted professional advisor. None of them have said, unequivocally, that they would undertake the treatment recommended by Dr Mogg, but none have said that they would definitely decline such treatment. The reality is that they themselves probably do not know and cannot know until they need to make the decision. They have, however, shown that they are willing and able to trust professional advisers. They have each been prepared to engage with and trust their legal advisors in these proceedings, and to make the disclosures that have been necessitated by these proceedings. With the exception of HFT (see paragraph 550 below), I think it is likely that they would take

advantage of treatment that is recommended by Dr Mogg if they are provided with the funds to access it.

General damages for pain, suffering and loss of amenity

361. There are different strands to the non-monetary losses. There are the psychiatric disorders that each claimant sustained. That is addressed by an award of general damages for what is conventionally termed "pain, suffering and loss of amenity." The level of the award is assessed according to the particular facts of the individual cases. The Judicial College publishes guidelines which set out the factors that should be considered, and the range of awards that are appropriate for different types of injury. The factors to be considered include the claimant's ability to cope with life, education and work, the effect on their relationships, the extent to which treatment would be successful, future vulnerability, prognosis and whether medical help has been sought.

362. The guideline bracket (inclusive of the 10% uplift that is appropriate here – see *Simmons v Castle* [2012] EWCA Civ 1288 [2013] 1 WLR 1239) for cases of severe psychiatric injury (category (A)(a)) is £51,460 - £108,620. For moderately severe psychiatric injury (category (A)(b)) the bracket is £17,900 - £51,460. In respect of PTSD, the guidelines state:

> "Cases within this category are exclusively those where there is a specific diagnosis of a reactive psychiatric disorder following an event which creates psychological trauma in response to actual or threatened death, serious injury, or sexual violation. The guidelines below have been compiled by reference to cases which variously reflect the criteria established in the 4th and then 5th editions of Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR and DSM-5). The symptoms may include nightmares, flashbacks, sleep disturbance, avoidance, mood disorders, suicidal ideation, and hyper-arousal. Symptoms of hyper-arousal can affect basic functions such as breathing, pulse rate, and bowel and/or bladder control."

363. For severe cases of PTSD, the guideline bracket is £56,180 - £94,470:

> "Such cases will involve permanent effects which prevent the injured person from working at all or at least from functioning at anything approaching the pre-trauma level. All aspects of the life of the injured person will be badly affected."

364. For moderately severe cases, the guideline bracket is £21,730 - £56,180:

> "This category is distinct from (a) above because of the better prognosis which will be for some recovery with professional help. However, the effects are still likely to cause significant disability for the foreseeable future. While there are awards which support both extremes of this bracket, the majority are between… £26,990 and £34,830 accounting for 10% uplift."

365. Questions of apportionment may arise if a claimant's psychiatric injury has resulted not just from Bennell's acts of abuse but also from other factors. For example, LDX was abused by Roper as well as Bennell; HFT was abused by his brother as well as Bennell. The approach to be taken to apportionment is explained by the Court of Appeal in *BAE Systems (Operations) Ltd v Konczak* [2017] EWCA Civ 1188 [2018] ICR 1 *per* Underhill LJ at [56] and [71]-[72]. The correct approach depends on whether an injury is single and indivisible, or whether it can be apportioned between causes for which the defendant is responsible and causes for which it is not. Before concluding that an injury is single and divisible it is necessary to identify a rational basis on which the harm suffered can be apportioned between a part for which the defendant is responsible and a part for which it is not. The divisibility does not depend on the causative contribution played by the defendant. It depends on the divisibility of the harm. If an injury can be apportioned in this way, then the award of damages can be adjusted accordingly. If the injury cannot be apportioned in this way, then it is to be regarded as indivisible. In that event, the claimant is entitled to the full award of damages (subject to any discount to reflect the possibility that an injury would have been sustained in any event).

366. In assessing the appropriate award for pain, suffering and loss of amenity I leave out of account the compensation that is necessary for the individual acts of abuse themselves, and the immediate consequences of the abuse. For the reasons given below, I address those aspects separately.

General damages and aggravated damages for assault/battery

367. Aside from the compensation for pain, suffering and loss of amenity that was suffered by the claimants as a result of the long-term psychiatric disorders that they have sustained, they are entitled to compensation for the assaults and batteries themselves that constituted the abuse, and the psychological impact of the abuse at the time it was perpetuated. This is recognised in the Judicial College guidelines:

> "The fact of an abuse of trust is relevant to the award of damages. A further feature, which distinguishes these cases from most involving psychiatric damage, is that there may have been a long period during which the effects of the abuse were undiagnosed, untreated, unrecognized, or even denied. Awards should take into account not only the psychiatric effects of the abuse on the injured party but also the immediate effects of the abuse at the time that it was perpetrated, including feelings of degradation. Aggravated damages may be appropriate. Cases of prolonged and frequent physical and sexual abuse of a child over many years by a person in a position of trust, involving penetrative violation, are likely to fall into (A)(a) or (B)(a) and reflect aggravated damages, leading to an award towards the top end of the bracket."

368. This assumes that the immediate psychological consequences of the abuse are factored in when assessing the appropriate award for pain, suffering and loss of amenity, and that a single award is then made. The Judicial College is currently considering, more generally, the approach that should be taken to cases of sexual abuse and whether there should be a discrete sub-category – see the Introduction to the fifteenth edition, written by Lambert J.

369. Each individual sexual assault perpetuated by Bennell was (irrespective of the consequences) in and of itself a tort which merits an award of (at least nominal) damages. In breach of privacy cases, substantial (so not just nominal) damages can be awarded for the loss of autonomy occasioned by the breach itself, irrespective of any distress – see *Gulati v MGN Ltd* [2015] EWHC 1482 (Ch) [2016] FSR 12 *per* Mann J at [144] and [2015] EWCA Civ 1291 [2017] QB 149 *per* Arden LJ at [45]-[46], and *Lloyd v Google LLC* [2021] UKSC 50 [2021] 3 WLR 1268 *per* Lord Leggatt JSC at [104]-[105]. It is not easy to see why the law should afford less protection to bodily autonomy and integrity than privacy and autonomy over personal information, or why it should value the protection of children from sexual abuse less than the protection of celebrities from breaches of privacy. It is not, however, necessary to determine whether, absent psychological harm, only nominal damages would be available in an action for assault. That is because in each of these cases Bennell's abuse was also a cause of immediate and substantial psychological harm (which I expand on, using descriptors from the claimants' evidence and also the medical literature, at paragraph 377 below). The claimants were treated by him as tools for his sexual gratification. He took away their teenage years, stole their childhoods, annulled their deep passion for football and left them to endure a lifetime of mental struggle. Irrespective of the development of any recognised psychiatric disorder, the immediate psychological impact (which loosely comes under the label "injury to feelings") may be addressed by an award of general damages for the assaults themselves and/or an award of aggravated damages – see McGregor on Damages (twenty first edition) at 42-001:

> "…beyond [damages for personal injuries] the tort of assault affords protection from the insult which may arise from interference with the person. Thus a further important head of damage is the injury to feelings, ie the indignity, mental suffering, disgrace and humiliation that may be caused. Damages may thus be recovered by a claimant for an assault, with or without a technical battery, which has occasioned no physical injury at all. There may be a basic award of damages for the injury to feelings and if the injury is aggravated by the defendant's conduct an additional award of aggravated damages or, as with many court awards, the two can be run together."

370. Aggravated damages are compensatory, not punitive. A claim for aggravated damages must be set out in the Particulars of Claim, which must state the grounds for the claim – rule 16.4(1)(c) of the Civil Procedure Rules. Here, each claimant advances a claim for aggravated damages on the grounds that the abuse was committed by a man who abused his authority and the status bestowed on him by reason of his connection with MCFC and was particularly harmful and humiliating and robbed the claimant of his self-esteem and dignity at a young age and when he was particularly vulnerable.

371. The potential for overlap between the scope of general damages and aggravated damages makes it important to guard against over-compensation. If separate awards are made for general damages and aggravated damages, then there is a danger of double recovery. *Richardson v Howie* [2004] EWCA Civ 1127 [2005] PIQR Q3 was a case of a single (non-sexual) assault resulting in lacerations, scarring and bruising. The judge made an award of £10,000, including £5,000 aggravated damages. The Court of Appeal reduced the award to £4,500. Thomas LJ said, at [23]:

> "It is and must be accepted that at least in cases of assault and similar torts, it is appropriate to compensate for injury to feelings including the indignity, mental suffering, humiliation or distress that might be caused by such an attack, as well as anger or indignation arising from the circumstances of the attack. It is also now clearly accepted that aggravated damages are in essence compensatory in cases of assault. Therefore we consider that a court should not characterise the award of damages for injury to feelings, including any indignity, mental suffering, distress, humiliation or anger and indignation that might be caused by such an attack, as aggravated damages; a court should bring that element of compensatory damages for injured feelings into account as part of the general damages awarded. It is, we consider, no longer appropriate to characterise the award for the damages for injury to feelings as aggravated damages, except possibly in a wholly exceptional case."

372. In *Vento v Chief Constable of West Yorkshire* [2002] EWCA Civ 1871 [2003] IRLR 102 the Court of Appeal upheld an award of the Employment Tribunal in a discrimination case, which comprised separate sums for injury to feelings, psychiatric damage, and aggravated damages. As to injury to feelings, the Court set out three brackets. These are as follows (using the updated figures set by the Presidents of the Employment Tribunals for England and Wales, and Scotland, in Presidential Guidance dated 26 March 2021):

> "i) The top band should normally be between [£27,400] and [£45,600]. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed [£25,000].
>
> ii) The middle band of between [£9,100] and [£27,400] should be used for serious cases, which do not merit an award in the highest band.
>
> iii) Awards of between [£900] and [£9,100] are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than [£900] are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings."

373. In *Hugh Martins v Mohammed Choudhary* [2007] EWCA Civ 1379 HHJ Bonvin made separate awards for injury to feelings and psychiatric damage (but no separate award of aggravated damages) in a harassment case. On appeal, Smith LJ noted the different approaches in *Richardson* ("in the context of a case of modest damages for assault") and *Vento*, and said at [18]-[20]:

> "18. ….I would venture to suggest that there should be no hard and fast rule about whether separate awards should be made. It

> will all depend on the facts of the individual case. If, for example, as is sometimes the case, the psychiatric harm is very modest and to all intents and purposes merges with the injury to feelings, it will plainly be more convenient to make one award covering both aspects. If, as here, where the psychiatric injury is not insubstantial, it is positively helpful to the parties (and to this Court) if the judge separates the award for psychiatric injury from that for injury to feelings. This leads to a better understanding of the judge's thought processes. However, I do accept that there is a risk of double recovery by overlap if two awards are made and the judge must take care to avoid that.
>
> 19. In the present case, I think the judge was justified in making separate awards as she did. Moreover, she warned herself to avoid double recovery by overlap…
>
> 20 …the judge did not make separate awards for injury to feelings and aggravated damages. …I wish to say that I think she was right not to do so. It seems to me that, in the context of a case of this kind (and for that matter in a discrimination case) where damages fall to be awarded for injury to feelings, the quantum of damage should reflect the aggravating features of the defendant's conduct as they have affected the claimant. As "aggravated damages" are supposed to be compensatory, that seems to me to be the most satisfactory way of dealing with them. If a separate award of "aggravated damages" is made, it looks like a punishment; in other words it looks like exemplary damages. I appreciate that differing views have been expressed on this issue in this Court. I have expressed my view and, in the context of this appeal, it is obiter."

374. Lord Clarke MR added at [28]:

> "…like Smith LJ, I recognise that it may well be appropriate, in a case where there is psychiatric injury, separately to identify the figure to be included to compensate for such injury, as was done in *Vento*… to which Smith LJ has also referred. All thus depends upon the circumstances but, absent identifiable psychiatric injury there is much to be said for the approach in *Richardson v Howie*. Whichever course is adopted, it is of course important to avoid double counting, as indeed the judge did in the present case."

375. These authorities do not lay down a blanket inflexible rule that there should be a single award for all non-pecuniary losses. The appropriate way of structuring an award will depend on the particular circumstances of each case, always taking account of the need to ensure full compensation but to avoid double recovery and to explain how the award has been calculated. In a straightforward assault case where the injuries are minor (as in *Richardson*) a single award may be appropriate, and the making of a separate award for aggravated damages may give the (erroneous) impression that the aggravated award is intended to punish. In cases where the only loss is injury to feelings then, again, it may be appropriate to make a single award to include any element that might otherwise

be covered by aggravated damages. Here, however, it seems to me that damages for the abuse itself, and damages for any psychiatric disorder that flowed from it, are more appropriately assessed as separate awards to reflect what are two conceptually different forms of loss which can be distinctly addressed. In some cases, a relatively minor sexual assault might give rise to catastrophic psychiatric damage. In other cases, the medical literature shows that some of those who suffer abuse do not go on to develop any psychiatric disorder at all. In the present cases there are substantial discrete elements relating, on the one hand, to the immediate psychological impact and, on the other hand, to chronic psychiatric injury. Trying to fit the cases within the brackets set by the Judicial College for psychiatric injury risks failing to give sufficient compensation for the former component (even if they are put at the top of the relevant bracket).

376. It is therefore helpful to separate out the two different strands when assessing damages. Accordingly, I make separate awards for (1) the abuse itself, including its immediate consequences, and (2) the longer-term psychiatric disorder caused by the abuse. This means that the (total) award may be substantially higher than the top of the applicable Judicial College bracket, but that is because, as well as the psychiatric disorder (which might in itself merit an award towards the top of an applicable bracket), there is the immediate injury to feelings occasioned by the abuse.

377. I do not consider it is appropriate to make a separate award of aggravated damages, for the reasons given by Smith LJ in *Martins* at [20]. The (single) award of damages for the abuse itself should take account of the degrading physical violation of the claimants and breach of their personal autonomy, as well as their feelings of terror, confusion, distress, helplessness, degradation, humiliation, guilt, shame, disgrace, indignity, anger, resentment, loss of pride and self-esteem, including the extent to which these feelings were occasioned (or aggravated) by the breach of the trusted relationship between Bennell and the claimants and his exploitation of their vulnerability for his own gratification.

378. Strictly, each act of abuse was a separate tort which, in and of itself, would merit an award of damages. It would be artificial to seek to make separate awards for individual acts of abuse. As Irwin J explained in *AB v Nugent Care Society* [2010] EWHC 1005 (QB) at [94], "the shame and distress and the psychological effects are cumulative, not separate." I have therefore, in each case, made a single award to cover all incidents of abuse.

379. In assessing the awards, I take account of all the circumstances of the abuse in the individual cases, including the age of the claimant, the number of instances of abuse, the period over which the abuse took place, the nature of the individual instances, the extent to which physical coercion or threats were used, the nature of the relationship between Bennell and each claimant, and the evidence of each claimant as to the immediate impact of the abuse on him. In identifying those factors, I have taken account of the medical literature (see paragraph 348 above). In assessing the appropriate amount, I have also taken account of:

    (1) The awards of £30,000 and £35,000 (now £49,000 - £57,000, allowing for inflation and a 10% increase following *Simmons v Castle*), in *AT v Dulghieru* [2009] EWHC 225 (QB) *per* Treacy J at [77] and the county court awards referred to by Treacy J at [63].

(2) The award of £30,000 for aggravated damages (now £63,000) in *Marriott v Parrington* [1998] CLY 1509 in respect of two rapes.

(3) The assumed notional jury award of £35,000 (now £80,000) for aggravated damages for a single offence of rape, upheld by the Court of Appeal in *G v Williams* [1995] CLY 1830, Court of Appeal transcript 21 November 1995 (albeit this included an element to reflect the way in which the defendant had conducted the trial, maintaining that the claimant had consented). Rose LJ indicated that he would not necessarily have made an award at this level, Millett LJ was "seriously concerned" about the level of the award which he considered was "almost certainly too high" and Thorpe LJ also had misgivings.

(4) The guideline awards in *Vento* (see paragraph 372 above). Those were awards for injury to feelings in discrimination cases. The top *Vento* bracket is now £27,400 - £45,600, and this does not include aggravated damages. The separate aggravated award in *Vento* itself was £5,000 (now around £10,000).

(5) Awards in personal injury litigation, particularly for psychiatric damage, which provide a helpful cross-check (as in other contexts – see *Thompson per* Lord Woolf MR at 512C, and *John v MGN* [1997] QB 586 *per* Sir Thomas Bingham MR at 614E-H). However, it must be recognised that, as Rose LJ observed in *G v Williams*, "the circumstances and consequences of rape… place it… in a quite different category from personal injury cases in general."

(6) The guideline awards for non-monetary loss for false imprisonment and malicious prosecution in *Thompson v Commissioner of Police of the Metropolis* [1998] QB 498 *per* Lord Woolf MR at 515E-H (in today's figures a basic award of £5,800 for false imprisonment lasting 24 hours; £19,000 for a malicious prosecution lasting as long as 2 years; aggravated damages starting at around £2,000 with a maximum of around twice the basic award). In Miss Thompson's case the Court of Appeal would have awarded £20,000 (now around £38,000) for basic and aggravated damages. Following a lawful arrest, considerable and unnecessary force was used against her by 4 or 5 police officers. In the course of this, part of her hair was pulled out. She said, "it was like I was being abused physically and sexually by all of them". She suffered bruising and pain in her back and hands. She was then maliciously prosecuted for an offence of assault. She was acquitted 7 months later.

380. In making separate awards for the abuse, and for pain, suffering and loss of amenity, I have taken care to avoid double counting. It is not difficult to separate out the two heads of loss. The former compensates for the psychiatric disorders and associated long term psychological sequelae that are discussed by the medical experts and can be elicited from the factual evidence of the claimants as to their lived experiences over the last 30 years. That is separate from the injury to feelings endured by each claimant at the time of each of the individual acts of abuse. I have not made a separate award for aggravated damages. In including, within the award of general damages for the abuse, an element that might otherwise be awarded as aggravated damages, I have sought only to compensate the claimants for the losses sustained, not to punish MCFC. More generally, I have been careful to ensure that everything is taken into account whilst avoiding double counting. I have not included any punitive element.

381. For the most serious case, where there were over a hundred incidents of abuse over a period of more than a year, including many offences that would now amount to rape of a child (by penetration of anus) under the age of 13 contrary to s5 Sexual Offences Act 2003 (without use of a condom, and causing physical injury) and where the claimant suffered, to a significant degree, the psychological consequences that I have outlined above, I consider that the award should be not less than £75,000. This is more than any authority that I was shown (aside from the award in *G v Williams*, which the Court of Appeal thought was too high for a single offence), including *AT* which is, itself, an extreme case involving horrendous offending. Nevertheless, I consider that an award at this level (at least) is justified having regard to:

(1) the age of the authorities.

(2) the need for awards to stay broadly in line with awards for non-monetary loss in other contexts.

(3) the continuing development in the understanding of the psychological impact of sexual offending, particularly sexual offending against children (see, for example, Foster, J. M., and Hagedorn, W. B. (2014) Through the Eyes of the Wounded: A Narrative Analysis of Children's Sexual Abuse Experiences and Recovery Process. Journal of Child Sexual Abuse, 23(5), and Warrington, C., Beckett, H., Ackerley, E., Walker, M., and Allnock, D. (2017) Making noise: Children's voices for positive change after sexual abuse. Children's Commissioner for England, both cited by IICSA in its report (see paragraph 344(1) above) at paragraph 4.3.1. The Foster report, in particular, draws attention to the paucity of research into accounts given by children of the impact of abuse (as opposed to accounts given by adults, many years later, of the impact of the abuse they sustained as a child).

(4) the age of the claimants (the authorities that were cited mostly concerned adults).

(5) the period of time over which the offending took place.

382. Having regard to these factors, an award at the level of *AT* (broadly, £50,000 - £60,000) seems to me to be now too low. That is around the amount that has been considered appropriate to compensate for loss of liberty of 13 months (see *AXD v Home Office* [2016] EWHC 1617 (QB) *per* Jay J at [43]) and the amount that has been considered appropriate to compensate (two individual claimants) for defamatory statements (made online in the course of a campaign of harassment) that a person had been involved in dishonest and criminal activity (see *Triad Group PLC and others v Makar* [2020] EWHC 306 (QB) *per* Saini J at [45], [51] and [53]). It is substantially less than the awards upheld in *Gulati* for distress occasioned by breach of privacy.

383. At the other end of the scale, so far as these cases are concerned, for a case involving two sexual assaults (which did not involve what would now be an offence under ss1, 2, 5 or 6 of the 2003 Act), I consider that an award in the region of £10,000 is appropriate.

Compensation for loss of earnings and pension as a professional footballer

384. In six of the claims (that is, all of the claims except those of FTS and KHT), damages are sought for loss of earnings and pension as a professional footballer.

385. Mr Harris' evidence as to football salaries is summarised at paragraphs 153 - 158 above. These produce a figure of £41,600 for a first team player in a first division club in the 1986/87 season. That is comparable to the median figure for the top 17 salaries at Arsenal that year (£42,500, see paragraph 155 above), and is less than the mean and median figures for both Arsenal and Manchester United. There are a great number of contingencies and uncertainties, but the methodology that Mr Harris explains produces a reasonable (possibly erring on conservative) estimate of the earnings that would be received by a professional footballer in a first tier club (and, correspondingly, for a player in a second tier club). It produces a figure that is akin (in the sense that it produces a figure for average earnings in a particular sector) to those produced by the Office for National Statistics in its Annual Survey of Hours and Earnings and which are routinely used in personal injury litigation. I accept and adopt Mr Harris' figures.

386. As to pension loss, Mr Carter was right to acknowledge that an exact calculation is not possible without knowledge of the career trajectory. However, once findings are made as to the likely career trajectory, the pension loss can be calculated as a matter of arithmetic without the necessity for any further findings. Again, I accept Mr Carter's evidence.

387. This provides the base figures for loss of earnings and loss of pension. The question is whether these earnings and pensions have been lost.

388. The claimants plead their claims on the basis that they have lost the chance of securing these earnings. In each case they say that they have lost a 25% chance of a professional career in a second tier club (ie in what is now the championship).

389. In *Allied Maples Group Limited v Simmons and Simmons* [1995] 1 WLR 1602 the Court of Appeal held that where a claimant's loss depends on future uncertain events it falls to be quantified on the basis of the court's assessment of the chance of those events materialising – Stuart-Smith LJ at 1610B:

> "Questions of quantification of the plaintiff's loss… may depend upon future uncertain events. For example, …whether, but for the accident, he might have been promoted. It is trite law that these questions are not decided on a balance of probability, but rather on the court's assessment, often expressed in percentage terms, of the… prospect of promotion…"

390. In such a case the claimant must prove that he has lost "a substantial chance rather than a speculative one…" - Stuart-Smith LJ at 1611A.

391. At 1611D-E, Stuart-Smith LJ endorsed the following observation of Parker LJ in *Kitchen v Royal Airforce Association* [1958] 1 WLR 563:

> "If the Plaintiff can satisfy the court that she would have had some prospects of success, then it would be for the court to evaluate those prospects, taking into consideration the difficulties that remain to be surmounted."

392. At 1613D-E Stuart-Smith LJ adopted Lord Lowry's obiter opinion in *Spring v Guardian Assurance PLC* [1995] 2 AC 296 that a claimant only has to show that he has lost a "reasonable chance" albeit it is necessary then to evaluate that chance.

393. The parties agree that the relevant principles are accurately summarised by the authors of Personal Injury Schedules: Calculating Damages (Fourth Edition) at paragraphs H192 – H193:

> "Following *Allied Maples…*, if the claimant's loss depends on the hypothetical actions of an independent third party, that claimant must show that he or she had a not insubstantial chance of reaching a specific goal. Therefore, in the situation of a prospective career, the third party is the hypothetical employer, and the claimant must show a chance of gaining the specific employment. Once a chance is shown, it is for the courts to assess its value. This can be done by awarding a simple lump sum…
>
> The 'substantial' chance mentioned in *Allied* need not necessarily be as high as 50%. The chance must merely be more than 'speculative'. In this respect, it echoes the law's approach to questions of substance and materiality generally – a chance is thought to be material, or substantial, unless it can be dismissed as merely insubstantial, or de minimis. Beyond this, the question is not one of establishing a chance but one of the quantification of the damage."

394. There are two aspects to the loss of a chance claims. One is the question of whether the abuse prevented the claimants from becoming professional football players. The other is to assess the pre-existing chance that has been lost.

395. As to the former, some physical injuries are obviously capable of precluding a professional footballing career. In *Collett v Smith* [2008] EWHC 1962 (QB) the defendant conceded that the claimant had acted reasonably in concluding he could not continue with a professional footballing career after sustaining fractures to his tibia and fibula and failing to regain his former level of play. Here, MCFC contends that there is no necessary reason why the abuse should have prevented the claimants from enjoying a professional footballing career. It points to KHT who has achieved considerable success, including at international level. It also points to EJP who played for the Army, and LDX who secured an apprenticeship at Bury, captained the youth team, and went on to play semi-professionally at other clubs.

396. I agree with MCFC that some men have been able to achieve a successful footballing career even though they have been subjected to childhood abuse. KHT is an example, and there are others. However, in the case of each of the six claimants who advances a claim for loss of a chance, I am satisfied on the balance of probabilities that the abuse did preclude any chance they otherwise would have had of a professional career. In each case, their enjoyment of and commitment to the game was considerably diminished. To the extent that they continued to play, this was (particularly in the case of DDG, LDX and EJP) because they felt they had no option. That was because they felt that "questions would be asked" if they stopped, and this might lead to the abuse

being disclosed (which they were anxious to avoid, at all costs). The level of competition for professional places at top clubs is such that anyone who is not entirely committed and able to focus all their mental energy on the game is unlikely to succeed. As KHT explained, "when you are playing football you have to be 100% focussed – so many people are trying to get my place."

397. It is then necessary to determine the chance that the claimants would otherwise have had of securing a professional contract. The difficulty in these cases is that the abuse took place before the claimants' footballing careers had really begun to take off. Any assessment of the lost chance therefore involves a large number of contingencies.

398. The claimants contend that it can nonetheless be shown that they have lost a substantial, as opposed to a minimal, chance of a career in professional football. Insofar as the number of contingencies makes proof difficult, they say that is an obstacle that has been occasioned by the abuse itself. They seek to rely on the doctrine of "claimant benevolence" – see *JAH v Burne and others* [2018] EWHC 3461 (QB) *per* Martin Spencer J at [65]:

> "In my judgment, in resolving issues of detail such as how long it would have taken for the Claimant to be seen, how long it would have taken for investigations to be carried out and when a competent vascular surgeon would have appreciated that anticoagulation was the appropriate treatment, the court should err in favour of the Claimant where it is the Defendant's negligence which deprives the court of the best evidence and causes the need to delve into this hypothetical world."

399. This approach derives from an observation of Longmore LJ in *Keefe v Isle of Man Steam Packet Co* [2010] EWCA Civ 683 at [19]:

> "If it is a defendant's duty to measure noise levels in places where his employees work and he does not do so, it hardly lies in his mouth to assert that the noise levels were not, in fact, excessive. In such circumstances the court should judge a claimant's evidence benevolently and the defendant's evidence critically. If a defendant fails to call witnesses at his disposal who could have evidence relevant to an issue in the case, that defendant runs the risk of relevant adverse findings see *British Railways Board v Herrington* [1972] AC 877, 930G. Similarly a defendant who has, in breach of duty, made it difficult or impossible for a claimant to adduce relevant evidence must run the risk of adverse factual findings. To my mind this is just such a case."

400. This is analogous to the well-known rule established in *Armoury v Delamirie* [1722] 1 Strange 505 that a bailee who has failed to produce bailed goods should have presumed against him that the goods are of the highest value. It does, however, seem to me that there are difficulties in applying this rule to the assessment of the chance of these claimants becoming professional footballers. In *JAH* the relevant facts had to be proved on the balance of probabilities. It was not sufficient for the claimant to show a loss of a (less than evens) chance. It was in that context, and because of the difficulty of

establishing a loss on the balance of probabilities (rather than a loss of a chance) where the tort had deprived the claimant of the best evidence, that Martin Spencer J applied the approach identified in *Keefe*. In these cases, it is not necessary for the claimants to show, on the balance of probabilities, that they would have become a professional footballer, only that they have a lost a (substantial) chance of doing so. As Rowena Collins Rice (sitting as a Deputy High Court Judge) observed in *Younas v Okeahialam* [2019] EWHC 2502 (QB) at [38] "[a]pplying proper 'claimant benevolence' without reversing the burden of proof requires care." The question of the evidence that will be required to establish a case will always depend on the context, and there are some cases where inferences can be drawn or, possibly, where some allowances can be made. It is, however, still necessary to identify some evidential basis for assessing the chance that has been lost.

401. There are different routes to a career in professional football. Progression towards that end-goal is not always linear. A familiar route (and the trajectory that the claimants were aiming for) is to progress from:

(1) a school team to a local league team, to a team that represents a local area, to a team that is viewed as a feeder team for a professional club,

(2) to associated schoolboy status with a professional club (at age 14),

(3) to an apprentice with a professional club (at age 16),

(4) to a professional contract (at age 18),

(5) to regular appearances in the club's first team squad.

402. Each of the claimants had progressed through most or all of the level (1) stages, and some had progressed further. The issue in each case where it is contended that they have lost earnings as a professional footballer is whether they will have made it all the way to level (5), and at a club in at least the second tier.

403. The evidence of Ray Hinett, AJM, DDG, DDG's father, LDX and ANF (see paragraph 151 above) justifies a finding that a very broad statistical estimate of the prospects of progressing from level (1) to level (2) are around 50% for those who were playing for Whitehill/Blue Star/Midas/Adswood Amateurs.

404. There is no clear direct evidence of the statistical prospects of progressing from level (2) to level (3). The FA rules provided that a club could not sign more than 30 associated schoolboys (see rule 47(1) for the 1980/1981 season, rule 42(1) for the 1981/82 season, rule 44(1) for the 1982/83 season, rule 43(1) for the 1983/84 season, and rule 43(2) for the 1984/85 season). There is some evidence that MCFC signed more than this maximum number (but evaded the rule by withholding the signed documents from the FA, so as to conceal the fact that it had exceeded the maximum). For the years with which this case is concerned the FA rules provided that the maximum number of apprentices was 15 (see rule 48(8) of the 1980/81 rules, rule 43(8) of the 1981/82 rules, rule 45(8) of the 1982/83 rules, and rule 44(8) of the 1983/84 rules and 1984/85 rules). This is slightly lower than the figure of 18, which Pat Lally gave in evidence based on his recollection from the early years of the YTS. There is no evidence that MCFC recruited more than the maximum permitted number of apprentices and it seems

unlikely that it would have been as easy to evade this rule as the rule limiting the number of associated schoolboys. Associated schoolboys would typically be signed for two years (at age 14 and 15), so that would make for a maximum number of 15 new associated schoolboys each year (leaving out of account the evidence that MCFC breached the maximum). Apprentices would also typically sign for two years (at age 16 and 17), so that would make for a maximum number of 7 or 8 new YTS students each year.

405. It appears, therefore, that each year there would be around twice as many retiring associated schoolboys as there were places available for new apprentices. On that basis, the prospect of progressing from associated schoolboy to apprentice was around 50%.

406. As to the progression from level (3) to level (4), I accept Pat Lally's evidence. On that basis, the prospects of a retiring apprentice being signed as a professional footballer were around 50%.

407. This therefore means that there was around a 50% attrition rate at level (1), a further 50% attrition rate at level (2), and a further 50% attrition rate at level (3). On a purely statistical basis, therefore, the prospects of progressing from Whitehill/Blue Star/Midas/Adswood Amateurs to a professional contract is around 1 in 8.

408. A professional contract is not enough to give rise to the substantial earnings claims that are here advanced. They are based on the claimants not just securing a professional contract, but doing so for the first team of at least a second tier club and maintaining that for a full career to retirement at age 35. There is no direct evidence of the prospects of this. On the basis that the first two tiers account for less than 50% of all the teams in the football league, and that the first team squad might typically account for around 50% of the professional players in a league club, the prospects seem to me to be no better than somewhere between 25%-50%. Even that may be an over-generous estimate in the light of the statistical evidence that was deployed in *Collett* (that only 15% of apprentices were still in professional football after the age of 20 - see paragraph 412 below).

409. This means that the overall statistical prospects of progressing from level 1 through all the further levels I have identified might be somewhere between 1 in 32 to 1 in 16. There is then the risk of early termination of a career, for example through injury.

410. Leaving aside a purely statistical analysis, it is not possible to make out a case by reference to how the claimants had performed before their prospects were blighted by the abuse. There are plenty of superlative assessments of their performances. They were, undoubtedly, all amongst the very best in their age group in their area. But they were very young. There is no evidence that relative performance amongst peers at age 12 or 13 is a sufficiently accurate predictor of relative performance at age 18+. I note that six of the claimants were born in the first quarter of the academic year (the other two were born in February, and early April). That relative maturity advantage over most of their year group would have diminished as they got older. Some of the claimants could advance a respectable argument that at age 12 or 13 they were performing at least as well as KHT, but that does not mean that they would necessarily have played at an international level. They may have done, but one just cannot know.

411. This all means that the assessment of the chances of a 13-year-old footballer, however talented they might appear at that age, progressing all the way through to a professional contract and regular first team appearances in a first or second tier club is (unsurprisingly) highly speculative. I do not consider that, for the purposes of assessing damages, it can be said that there is a real and substantial prospect of success. There are simply too many contingencies. The exceptions to this, for the reasons given below, are the cases of DDG and LDX.

412. The further a boy gets in the progression, the easier it may become to assess the chance of a full-time professional career in a top club, both because the number of contingencies will reduce, and because there is a greater evidence base on which to assess his prospects in the light of his playing ability as he matures through his teenage years. This is demonstrated by the decision of Swift J in *Collett*. In that case, the 18-year-old claimant was playing for MUFC's reserve squad when he suffered a career ending injury as a result of a reckless tackle. Swift J had "a wealth of good quality evidence about [the claimant's] abilities and potential", including from Sir Alex Ferguson, the MUFC manager. That meant that it was unnecessary to rely on a crude statistical analysis. Nevertheless, in the course of her judgment, Swift J referred to extensive statistical evidence. This included evidence that the average exit rate across all professional English football clubs, of players that had joined as apprentices at age 16, was around 85% by age 20 (see at [68]). DDG and LDX progressed substantially further than the feeder teams they played in at age 13. I consider their claims separately below.

413. Accordingly, I dismiss the claims for a lost chance of a career as a professional footballer in all cases save for DDG and LDX.

414. In addressing the claims of DDG and LDX I accept the claimant's methodology. That is to assess the earnings that would have been achieved in a second tier club, then deduct the actual earnings, and then multiply by the assessed level of chance (as opposed to multiplying the earnings that would have been achieved in a second tier club by the assessed level of chance and then deducting the full level of the actual earnings) – see *Ministry of Defence v Wheeler* [1998] 1 WLR 639 and *Hartle v Laceys (a firm)* [1999] Lloyd's Rep PN 315.

Interest

415. Interest on general damages for pain, suffering and loss of amenity accrues at 2% from the date of service of the claim form.

416. General damages for the abuse are akin to general damages for pain, suffering and loss of amenity and might have simply been subsumed into that award. It would, in this particular context, be anomalous to treat the approach to interest differently, irrespective of the approach that may be appropriate in other cases of non-pecuniary loss (see *Rees v Commissioner of Police of the Metropolis* [2021] EWCA Civ 49 *per* Davis LJ at [44]-[47]).

417. So far as interest on special damages is concerned, the period of an award of interest may be abridged where there has been unjustifiable delay in bringing a claim – *Birkett v Hayes* [1982] 1 WLR 816 *per* Eveleigh LJ at 825F. I have found that the claimants have a reasonable explanation for the delay and, anyway, MCFC have retained the

benefit of the monies. The claimants have, perhaps generously, limited their claim to interest to 10% in aggregate (otherwise interest for the full period would have exceeded 100%). I consider that they are certainly entitled to interest of 10% and that it is not appropriate to go behind the concession.

(1) TVZ's claim

418. Football career: TVZ was born in the autumn of 1968. He is now 53. He was a talented footballer from an early age. He was scouted by and trained with a Sheffield United side from about the age of 8. When he was 9, he played for an U13s team. Bennell saw him play and approached his father, showing his business card and saying he was MCFC's North West regional scout. He asked if TVZ wanted to have a trial with White Knowl. He did. The trial went well. He scored three goals. He signed up with White Knowl. Bennell said that if his time at White Knowl went well he should secure trials with MCFC. He was required to cut his ties with the other teams that he played for, including Sheffield United. He turned down a trial with Aston Villa. By the age of 14 TVZ stopped playing with White Knowl and ties with Bennell were severed. He played for Cheadle Town for 2 years. He also played in a team associated with Manchester United (but not as an associated schoolboy). In April 1985, around the time when TVZ was doing his O-levels, his brother died in a car accident. There was an incident when he lost his temper during a football match. He was given a 6-month ban. TVZ says that the outburst may have been triggered by his brother's death, but that the abuse had made him so "emotionally stunted" that he could not "process things" and had "no emotional resilience left". He says that, if the abuse had not occurred, he would have been able to keep his temper and would not have been subject to a 6-month ban, which effectively terminated any prospect of becoming an apprentice at Manchester United. TVZ became an apprentice at fourth division Rochdale Football Club. There, he was bullied because of his connection with Bennell. He left professional football at the age of 17.

419. The abuse: TVZ has set out details of the abuse in his written witness statement. I accept his account. It is not necessary to repeat it here. A reporting restriction is in place in relation to the details.

420. Consequences of abuse: TVZ started taking drugs during the time he was being abused. This became a habit. By the time he was playing for Rochdale he was drinking and smoking cannabis up to five times a week. The drinking escalated to heavy binges. The drug taking escalated to include amphetamines, cocaine, ecstasy, and LSD. TVZ says, and I accept, that he was using drugs and alcohol to escape and to block out the emotions generated by the abuse and also his brother's death. He says that during most of his adult life he has experienced long episodes of depression, low self-esteem, anxiety and intrusive thoughts of the abuse and flashbacks. He has self-medicated with drugs and alcohol. He struggles to trust people, particularly those in authority, and often feels "completely numb" to things. He cannot cope with crowds. He avoids going to parties, school plays, Christmas nativities, or holiday destinations like theme parks. If several people are talking this causes anxiety: "I shake, my heart races and it feels like I am out of control. It feels chaotic if I can't manage the situation which is exactly how I felt as a child when being abused… I will walk away to another room. I feel ashamed and guilty and I cannot avoid it."

421. TVZ has been with his partner for over 30 years. They have a good relationship, but certain things can be difficult. They have 4 children. He has been in employment – on

and off – for most of his adult life, including extremely valuable work in the care profession. However, his drug and alcohol use has caused problems and changes in employment. He now works with the Professional Footballers Association helping others through work on the safeguarding advisory panel and the Sport England Advisory panel. Just as he helped expose what had been going on in youth football, he wants now to continue to help to ensure that no survivor of sexual abuse within football will have to go through the same difficulties as he has done in his life. He finds that helping others "actually helps me to take a more reasoned approach to the impact of abuse on my own life."

422. Professor Maden suggests that the misuse of alcohol and drugs was a lifestyle choice. I disagree. Up until the time the abuse started, TVZ had been highly disciplined so as to play football at the highest level for his age, whilst also doing well at school (as his form tutor testifies). The use of drugs and alcohol started at a very young age, and at the same time as the abuse, and at the time when his teachers noticed a significant change in him. The medical literature supports a link between child sexual abuse and drug/alcohol misuse. Dr Mogg says, and I accept, that the use of drugs and alcohol was an attempt to block out emotions that are associated with Bennell's abuse.

423. The experts agree that TVZ has symptoms of chronic complex PTSD. They disagree about the duration. I prefer Dr Mogg's conclusion that they have been present (albeit fluctuating in intensity) throughout most of his adult life. That fits with the accounts given by both TVZ and his partner, although I agree with Professor Maden (and Dr Mogg ultimately agreed on this too) that for most of the time the symptoms have been relatively mild. There is an issue between the experts as to whether a formal diagnosis of PTSD is merited. The argument between them is somewhat technical and depends largely on whether "avoidance" behaviour is critical to the diagnosis and whether it is here present. What really matters, for these purposes, is the symptoms that TVZ suffered rather than the formal diagnosis. If necessary, though, I would find that TVZ has suffered from chronic complex PTSD for most of his adult life. There is evidence of avoidance behaviour (for example, avoiding parties), and Professor Maden accepted that it was a reasonable diagnosis (even though it was not one he would make). The experts agree that the abuse caused permanent damage to TVZ's developing personality.

424. Dr Mogg additionally diagnoses a recurrent depressive disorder, with episodes of mild to moderate severity. Professor Maden agrees that there have been two acute episodes in about 2000 (following the police investigation which TVZ assisted, and which led to a deterioration in his mental health for which he received treatment), and since 2016, but says that they were marked predominantly by anxiety.

425. TVZ has, over the years, sought medical help. There are entries in the GP records that refer to stress, low mood and motivation, poor sleep "linked to problems in past not comfortable describing", work-related stress and burn out. He underwent therapy in 2002. The records show that the focus was on anxiety in the context of sexual abuse. The notes do not refer to PTSD symptoms, but I agree with Dr Mogg's observation that the way in which the notes are written appears rather unusual, and there is no clear list of the symptoms that he was suffering (other than it is clear that he had considerable anxiety).

426. It is not necessary to make a finding as to whether the sending off and consequential six-month suspension was attributable to the abuse. If it was necessary to make a finding about this, I do not consider that it can be proved that it was due to the abuse. It came relatively soon after his brother's tragic death and that, in itself, is capable of providing a complete explanation for it. There is no evidence that, before his brother's death, TVZ had been unable to restrain his anger on the football pitch – he had been able to continue to play for a period of years without obvious discipline problems, despite the terrible abuse that he had endured. On the other hand, I do not consider that TVZ's mental health difficulties can rationally be divided in a way that allocates a portion to the consequences of the death of his brother (and the experts do not suggest otherwise). No question of apportionment therefore arises.

427. General damages for abuse: This case comes within the scope of the most serious category I identify at paragraph 381 above. I award £75,000.

428. General damages for pain, suffering and loss of amenity: It is striking that TVZ has maintained a close relationship with his partner which is now in its fourth decade, that he has close relationships with his children, and that he has managed to remain in employment (including in emotionally demanding jobs) for most of his adult life. Nevertheless, the abuse has had a substantial impact on TVZ's day-to-day life over many years. His working life has been sporadic. Although he has maintained a close relationship with his immediate family, he has difficulty trusting others and coping with crowds or large groups of people. Each of the general factors set out in the Judicial College guidelines at paragraph 4(A)(i) to (iv) is present to some degree. The prognosis remains "guarded…as…some of the psychological damage caused by the abuse… is permanent."

429. TVZ's ability to hold down employment would ordinarily be incompatible with a finding that this was severe PTSD within the meaning of the Judicial College guidelines. Here, however, there is also another disorder besides PTSD. I consider that the overall nature, severity, and duration of the symptoms of PTSD, in conjunction with the recurrent depressive disorder, puts the case in the "severe" category. It does not come close to the top of that category having regard to the ability to remain in employment and maintain close relationships with immediate family. I assess general damages for pain, suffering and loss of amenity at £65,000.

430. Travel: This is agreed in the sum of £860.

431. Loss of earnings: TVZ secured an apprenticeship in a lower division club, but I do not think it can be shown that he had a real prospect of a permanent career in the first team of a second tier club. There are too many contingencies. There is no alternative claim for loss of earnings. I do not therefore make an award under this head.

432. Pension loss: For the reasons given at paragraphs 388 - 411 above I do not make an award under this head.

433. Handicap on the labour market: An award is sought in the sum of £20,000. TVZ is in employment in an important role which enables him to help others, something he understandably finds fulfilling. There is nothing to suggest his employment is particularly precarious. However, there is a link between the abuse and his current employment and there is a real possibility that, for one reason or another, he will not be

able to maintain it until retirement. In that event, his background history is likely to be a modest impediment to re-employment (albeit, as he has shown throughout his working life, he is able to return to employment). He is some 15 years away from retirement. I think the sum claimed is a reasonable assessment of the level of handicap on the labour market. I award it in full.

434. Future treatment and future travel (for treatment): This is claimed in the sum of £5,760. The experts agree that treatment may be helpful. Professor Maden suggests a brief course of cognitive behaviour therapy ("CBT") "aimed at reinforcing what [TVZ] already knows." Dr Mogg's view, which is persuasive, is that the chronicity of TVZ's difficulties, his issues around developing trust with strangers (essential for psychological therapy) and the need to address alcohol and cannabis use as well as the symptoms of PTSD, all mean that a more extensive course is required. I accept that view. I award the sum claimed in full.

435. Interest: I award interest of £11,047 on general damages (2% x 4 x £140,000). I award interest of £86 on past pecuniary loss (10% x £860). The total award of interest is therefore £11,133.

436. Total award: The total award is therefore £177,753.

(2) JVF's claim

437. Football career: JVF was born in late 1968. He is now 53. He played for a local side, New Mills Juniors, at U11s level when he was only 8 or 9. He was also accomplished at other sports, playing basketball at county level whilst at secondary school. Bennell was introduced to JVF as a MCFC scout when he was about 10 or 11. At about the age of 12, JVF started playing for Bennell's White Knowl team. JVF stopped playing football in 1983. He returned a year later, playing for a local team from the age of 15 to the age of 30.

438. The abuse: The abuse went on over a 3-year period. There were over 100 incidents of serious sexual assault, and one incident of attempted rape (penetration of anus). JVF was confused, it felt wrong, he cried as it was happening, he was frightened, he felt stigmatised and like he was keeping a dark secret. He lived in constant fear, and felt guilty for what was happening.

439. Consequences of abuse: JVF says that he regularly has to drive past Bennell's previous house, which triggers memories of the abuse. There has never been a day when he has not thought about it. He tries to push this to the back of his mind, but intrusive thoughts and memories are triggered by the smell of a particular type of aftershave, or the "Shake'N'Vac" carpet cleaner, or certain music, as well as many other matters besides. He wet the bed a lot until he was 18 and had bad dreams. He slept with the light on. Even now, he struggles to fall asleep. He still has "night terrors" about the abuse and will shout "please stop" or "get off me" and will wake crying and breathing rapidly. Sometimes, his wife or daughter will wake him when it is obvious that he is having a nightmare. At work, he does not like sitting with his back to the door.

440. He drinks to excess, particularly when triggered by an external event that brings back memories of the abuse, and especially when Bennell is in the news or during the criminal investigation. JVF has been taking anti-depressants since February 2017 and

has been having weekly psychotherapy sessions since March 2018. Sometimes, the memories of the abuse cause him to vomit. He has had suicidal thoughts but is confident that he would not act on them because he is keenly aware of the impact on his close and loving family: he is married with 3 children.

441. JVF left school at 16 and studied for a diploma in sign writing. He worked as a sign writer for 6-7 years. He then started two companies and became self-employed. Since 1998 he has worked as a graphics manager. A friend of his (who gave evidence) invited him to set up a business. He did not accept – "the negative side of me kicked in… I was worried about letting him down plus I was going to go through a criminal trial which took all my energy and my confidence was again at an ultimate low."

442. I accept Dr Mogg's opinion that JVF has suffered symptoms of PTSD since around the time of the abuse – there is clear evidence of symptoms of avoidance, intrusive thoughts, and hyperarousal. I also accept his opinion that they are sufficient to amount to PTSD. Professor Maden says otherwise, based largely on the absence of contemporaneous medical records to corroborate JVF's account. However, I accept that account, corroborated as it is by his wife (who has known JVF since he was 19). She says, for example, that she cannot play certain types of music, because it reminds him of the abuse, that she has known him to walk out of a shop when he saw a "Shake'N'Vac" product, and that he suffers a lot of nightmares, sometimes shouting in his sleep and making the bed wet from sweating. The nightmares are "not as bad now", but they still occur about once a week. Professor Maden said that if JVF's account of his symptoms is accepted then there would be a strong case for a diagnosis of PTSD.

443. The symptoms have continued over many years, getting worse since disclosure. There has been some impact on work and relationships, but JVF has maintained a long and committed marriage and has sustained long term employment. Aside from the PTSD, the experts agree that there have been two mild episodes of depression.

444. General damages for abuse: Having regard to the factors identified at paragraphs 379 and 438 above, I award £40,000.

445. General damages for pain, suffering and loss of amenity: I consider that the case is appropriately categorised as moderately severe PTSD, and falls towards the top of the bracket. I assess general damages at £50,000.

446. Loss of chance of a football career / pension loss: For the reasons given at paragraphs 388 - 411 above I do not make an award under these heads.

447. Loss of earnings / Handicap on the labour market: JVF has been in employment for most of his life. The only tangible missed opportunity is when his friend offered him employment. I can well understand why, at the particular time of the criminal proceedings, JVF did not wish to embark on a new business venture with a friend. However, I think – on the basis of JVF's own evidence – that the key and predominant reason is that he did not wish to risk letting down a friend. That might, in part, be a consequence of a lack of confidence engendered by the abuse, but it is at least as likely to be due to a natural personal characteristic. I do not think it can be said that the abuse is responsible for any tangible loss of earnings or diminished earning capacity, and nor do I consider that JVF is at a handicap on the labour market as a result of the abuse.

448. Past travel costs: These are admitted. I award them in the sum claimed, £800.

449. Future treatment and travel: JVF has had intrusive symptoms over many years. These have got worse since disclosure in 2017. They may ameliorate following the conclusion of these proceedings but, even with treatment, they are unlikely to dissipate entirely. I accept Dr Mogg's evidence that JVF would benefit from treatment. I award the amount claimed, £5,120.

450. Interest: I award interest of £5,523 on general damages (2% x 3.1 x £90,000). I award interest of £80 on past pecuniary loss (10% x £800). The total award of interest is therefore £5,603.

451. Total award: The total award is therefore £101,523.

(3) DDG's claim

452. Football career: DDG was born in Autumn 1970. He is now 51. He played football for a local U13 side when he was 8/9. He was captain of his primary school football team when he was aged 9/10, so a year ahead of other players in the team. He also excelled at secondary school and was selected to play for, and then captain, North West Derbyshire schoolboys team.

453. Bennell saw DDG play for his school and asked him to play for North West Derbyshire. As a result, DDG played for a number of Bennell teams: North West Derbyshire, Glossop Juniors, Adswood Amateurs, Whitehill, Pegasus and White Knowl.

454. In around 1984 or 1985 there was what DDG described as a "transitional" period when Bennell was considering a move from MCFC to Crewe Alexandra FC. At this point, DDG was aged 14-15. During this period DDG played for Glossop Juniors. DDG says he was asked to sign schoolboy forms by Ken Barnes. He candidly accepts that he did not receive any written request to that effect, and that he was not asked directly. He says Ken Barnes had approached his father. That is corroborated by DDG's parents who also gave evidence. They both say that Ken Barnes phoned them up more than once and said that he would like DDG to sign schoolboy forms. DDG (or his parents) also had discussions with other clubs. It is not necessary to make a finding as to the extent to which he received offers to sign schoolboy forms with any other club, but I accept the evidence of his parents that there was interest from scouts from different clubs. I also accept that DDG would have signed schoolboy forms for MCFC were it not for the hold that Bennell had over him as a result of the abuse. DDG said in evidence that at this point he had felt that he was "in love" with Bennell. Now, he rationalises the position as him having had "a deep-rooted emotional attachment to Bennell that had developed over the years" and "a deep psychological dependence on him." He said, and I accept, that he would have done anything for Bennell. He followed Bennell's instruction and signed schoolboy forms for Crewe Alexandra FC, rather than MCFC. If it were not for the abuse, I am satisfied that he would instead have signed schoolboy forms for MCFC.

455. DDG's mother was astute to the prospect that matters might not work out. She insisted, as a condition of DDG signing, that Crewe Alexandra agree that DDG could be released within the first 12 months if that was what he wanted. When DDG was at Crewe the level of his contact with Bennell lessened because he was no longer being coached by

him. Things came to a head when Bennell sexually assaulted DDG on a journey back from Crewe. DDG resolved to leave Crewe Alexandra, and he exercised the option that his mother had negotiated. I accept his evidence that the only reason he left Crewe Alexandra was to end the abuse. It did have that effect – the abuse stopped immediately, because Bennell had no further contact with DDG.

456. DDG then played for Cheadle Town and had a trial at York City Football Club. This resulted in him accepting an apprenticeship. He was picked for the Great Britain U16s Catholic Schoolboys side. There was a change of management at York City FC and this resulted in the introduction of a different method of play which did not suit DDG. Frustrated, he left York City when he was 18 and moved to Stockport County Football Club where he completed his apprenticeship. He then played for a professional club in Cyprus in 1989/90. By this point, DDG had started to drink excessively and to use illicit drugs. He came back to the UK and had short spells at Hyde United, then Stalybridge Celtic and then Glossop North End. A short spell with a club in Finland did not work out. He returned to play for Glossop North End for a few months, before playing for pub teams until he was about 28 when he stopped playing football.

457. DDG's PE teacher was at DDG's secondary school for 27 years. Over that period, he saw several thousand boys. DDG was the most naturally talented footballer in his year and was one of a very few pupils that his teacher (and others) thought was marked to do great things in the sporting world.

458. The abuse: DDG regularly stayed at Bennell's home. On one occasion, when DDG was about 12, there were boys sitting on the bed with Bennell, with a duvet pulled over them. He did likewise. Bennell sexually assaulted him. DDG did not know what to do. Thereafter, the abuse progressed for around 4 years, increasing in frequency and severity over time. It occurred, to some degree, almost every time that DDG stayed at Bennell's home. It also took place during trips and football tours, including a training trip to Butlins in Wales, and a trip to Snowdonia. There were 2 or 3 instances of offences that would now amount to rape (penetration of anus). This caused DDG extreme physical pain and left him feeling "repulsed, dirty and ashamed." On one occasion DDG blacked out. On another occasion, when DDG was aged 12 or 13, DDG thinks he was used as "bait" to enable Bennell to abuse another boy. The parents of the other boy were reluctant to let him stay with Bennell but were reassured when they realised that DDG was staying there too. That night, DDG heard the boy pleading with Bennell to stop what he was doing. DDG buried his head under the pillow and tried to block it out. As was clear when DDG gave evidence, this experience continues to haunt him and to cause profound distress.

459. Consequences of abuse: DDG's parents and sister noticed a change in DDG when he was about 13. He started purposely missing the bus for school and being very moody. He was having regular nightmares and wetting the bed (and this continued into DDG's 20s). He slept in his parents' or sister's bed because he did not want to be alone. He had regular nightmares but refused to discuss the content with his parents, saying "I will never tell anyone as long as I live."

460. DDG's mother was sufficiently concerned to speak to the Deputy Headmistress. She (the Deputy Headmistress) said that she had asked the class if anyone knew what was going on with DDG and that "their response was like a [dam] bursting the children were so animated." She said that DDG was being bullied and that the children were saying

that he was only good at football "because he was sleeping with his coach." It did not cross DDG's mother's mind that DDG was being abused by Bennell at the time. The Deputy Headmistress also provided a statement in these proceedings. She recalled DDG's behaviour changing dramatically from around the age of 13 – he became very quiet and introverted.

461. Contemporaries of DDG also noticed a change in DDG when they were 12 or 13. DDG was being subject to comments about his relationship with Bennell. At the time they were regarded as "teasing", but they would now be regarded as "bullying". One contemporary was part of this behaviour. At one point, DDG lashed out at the contemporary, punching him on the chin. After this DDG became withdrawn and quiet.

462. DDG has, over many years, abused drugs and alcohol. He has, on occasion, engaged in self-harm. His wife of 10 years (who has known him for 30 years) writes vividly of the impact on him and her and their relationship. His mother also charts his abusive relationship with alcohol. He has, however, managed to hold down a job throughout most of his adult life.

463. In his interview with Professor Maden, DDG referred to involvement in the "rave" dance scene. In DDG's evidence, he suggested that this had taken on an overblown significance in Professor Maden's report. He agreed, however, that he had, on occasion, attended the Haçienda nightclub in Manchester, and had taken recreational drugs. He also agreed that was through personal choice. Professor Maden considers that he had successfully "compartmentalised" the abuse and that the alcohol and drugs was part of his chosen lifestyle. In this respect Professor Maden relies heavily on an assessment that was carried out in 2002 by a psychologist, Carrie Baker. In this report it is said that DDG reported psychological difficulties since 1996 (so from the age of 25) and that he had coped well before that.

464. Dr Mogg takes a different view. He believes that DDG probably suffered from complex PTSD since his twenties, and that his drug and alcohol use has been influenced by attempts to control his symptoms.

465. There is a cogent basis for Professor Maden's view, and it understandable that he should place greater weight on the account that DDG is reported to have given to Ms Baker in 2002 about events in the 1990s, than the account he now gives 19 years later. However, there is a considerable body of evidence from his contemporaries, his relatives (his parents, sister and his now wife), and his teachers about how DDG presented in the 1980s, 1990s and 2000s. This strongly supports a conclusion that DDG did not successfully compartmentalise the abuse, and that he used alcohol and drugs as a way of masking his problems. I accept Dr Mogg's conclusion to that effect. Whether or not one attaches a label of complex PTSD depends on a view as to (a) whether DDG was displaying avoidance behaviour (and there is evidence in both directions on this), and (b) the extent to which avoidance behaviour is critical to a diagnosis of complex PTSD. That is not, however, particularly important for present purposes. What matters is that DDG suffered the symptoms that he and his witnesses describe, and these caused him to take refuge in drink and drugs. That does not mean that all of DDG's drug taking can be attributed to the abuse. He was, to some extent, also taking drugs through loose attachments to the rave dance music culture that was prevalent in Manchester in the early 1990s.

466. Both experts agree, and I accept, that there was then a deterioration in 1996, following publicity about Bennell and DDG's involvement in the criminal proceedings. At some point he took an overdose but was so fearful of the possibility that someone might find out about the abuse that he discharged himself from hospital. When he presented for therapy in 2002, he was suffering from PTSD. The therapy was successful such that after 13 sessions he did not require further treatment. From this point, he was "overtly" well, in the sense that it would not have been obvious to colleagues that he was unwell. However, both experts accept that problems remained, and I accept the evidence of Dr Mogg in particular that there were enduring relationship difficulties.

467. DDG was first able to hold down a permanent job in 1997 when he started working in a contact centre as a customer service call handler, but this was not full time. He remained in that job for 10 or 11 years, before eventually being made redundant. He was off work for around 6 months. He then worked for a local authority, but that only lasted 9 months. He worked in a number of other jobs before setting up his own company to work as a business analyst. I am satisfied that the abuse is a substantial cause of the episodic nature of DDG's employment. Some breaks in employment can directly be linked to the consequences of the abuse – for example, when matters relating to Bennell reached prominence in 2016, and at the end of 2018 following the criminal proceedings.

468. DDG says he made a further suicide attempt in around 2012/13. There was a further deterioration in the period 2015 or 2016. Again, this resulted in post-traumatic symptoms, accompanied by anxiety and depression, and complicated by the harmful use of alcohol. Whereas in 2002 he was able to control his alcohol use, and was not dependent on alcohol, he now has worrying problems with alcohol and is borderline dependent. There is a difference between the experts as to the level of the difficulties. Professor Maden is, again, able to draw attention to contemporaneous documentation that suggests inconsistencies as to the level of consumption. There are 1 or 2 reports in the medical records that suggest a lower level of alcohol intake than is now suggested. That is, however, likely to be due to under-reporting. The evidence of DDG and his wife and other witnesses suggest a more worrying picture. In any event, both experts agree that the case fits the diagnostic criteria for complex PTSD. The experts agree that the main cause (and, I find, the overwhelming cause) of the mental health problems is the abuse that DDG suffered. I do not consider that the problems can be rationally apportioned between the abuse and other causes.

469. As to treatment, I accept Dr Mogg's evidence that further therapy in the form of 20-25 sessions of trauma focussed CBT with the possibility of eye movement desensitisation and reprocessing ("EMDR") is appropriate. Professor Maden's counter-recommendation of 6-8 sessions does not adequately take account of the time that will be necessary to build a relationship of trust with the therapist, or the complex lifetime of difficulties that will be unravelled in therapy.

470. <u>General damages for abuse:</u> This case comes close to the bracket that I describe at paragraph 381 above. It is not, however, quite at that level because the number of incidents of the most egregious acts of abuse is smaller. A striking feature of the grooming is that DDG was left feeling that he was in a relationship with Bennell, giving rise to a dissonance between feelings of a broken relationship and recognition that what happened to him was terrible sexual abuse. Those feelings endure and were evident when DDG was giving evidence. I consider that they are more appropriately

compensated as part of the award for pain, suffering and loss of amenity (because they have contributed to the ongoing psychiatric disorder) rather than as general damages for abuse. For these reasons, the award is not quite at the highest level. I award £65,000.

471. General damages for pain, suffering and loss of amenity: DDG has suffered from chronic PTSD, as well as mixed anxiety and depressive disorder and alcohol dependence. This is all due to the abuse. It has had a significant long-term impact on many aspects of his life, including his ability to form and maintain relationships, difficulties controlling emotions, anger, panic attacks, self-esteem issues and feelings of shame, repeated suicidal thoughts and attempts, and his employment. I consider (taking account of the other disorders) the case comes towards the top of the Judicial College's bracket for severe PTSD. I award £85,000.

472. Travel: Past travel costs are admitted in the sum of £840.

473. Loss of chance of a football career: DDG had the talent at age 14 to be asked to sign schoolboy forms for MCFC. He also had the potential to go on to progress to a professional career. This is demonstrated by a combination of the fact that he was taken on as an associated schoolboy by Crewe Alexandra and was then given an apprenticeship at York City FC. Thereafter he played semi-professionally.

474. DDG's medical records show that he was not entirely free from physical problems during what would have been his prime footballing years. There is reference to shoulder and back problems. I do not consider that these would have entirely prevented a professional career. DDG had recurrent dislocations of his shoulder between 1989 and 1994. These usually resolved spontaneously, but sometimes it would take half an hour and cause considerable pain during that period of time. On at least two occasions it happened whilst playing football. It appears that on both occasions it resolved without medical intervention. There is no evidence that it caused any absence from being able to play football, and he was playing football during the period when he was having these problems.

475. So far as his back is concerned, there is an entry in the medical records in August 2009 with a reference to acute back pain with sciatica. When he was seen he demonstrated full range of movement. It was treated conservatively and seems to have resolved. There was a further problem in 2019. This would have been after the end of any football career. Discharge summaries in 2020 refer to a 25-year history of episodic back pain and sciatica. DDG denies that he had had back problems over that length of time, and there is nothing in the earlier medical notes to suggest otherwise, apart from the isolated problem in 2009.

476. Even amongst his contemporaries who were accomplished footballers, there is considerable evidence that DDG showed an exceptional level of talent. He also showed that, notwithstanding the abuse, he was able to progress to associate schoolboy status, and thereafter to pursue professional opportunities (for example, at York City). The degree of speculation necessary to forecast DDG's likely career is less than in some other cases. Even factoring in the risk of physical injury (noting the injuries that are recorded in the medical records) I consider that DDG lost a substantial chance of pursuing a professional career in a second tier team. A precise statistical calculation is not possible but taking account of all the contingencies I consider that the lost chance

is in the region of 10%. On the basis of the figures put forward by Mr Harris, which I accept, this results in a loss of £113,521.

477. When DDG was playing semi-professionally he was paid a small amount per game (figures of £10 or £15 or £20 were mentioned). I do not consider that these nominal payments fall to be offset against the claim for loss of earnings. MCFC's counter schedule of loss does not require that credit is given for these amounts. Although the point was raised in cross-examination, it was not pressed in written or oral closing submissions. In any event, it has not been shown that these payments even covered DDG's expenses.

478. Pension loss: Assuming a 10% lost chance, and adopting Mr Carter's figures, the loss under this head is £6,503.

479. Future treatment / travel: In this case, the experts agree that treatment would be appropriate. The only disagreement is as to the extent of the treatment required. Professor Maden considers that in the light of DDG's previous good response to therapy he should not require more than 6 - 8 "top up" sessions. Dr Mogg agrees that DDG has made a fairly good response to previous treatment, but he has ongoing chronic symptoms that have been exacerbated by the legal proceedings. A small number of sessions will only be enough to start the process, taking account of the need to build up trust. The type of therapy that is required involves revisiting the events of DDG's early teenage years, and that will take time. I consider that Dr Mogg's reasoning is persuasive, and I award the sum clamed, £4,960.

480. Interest: I award interest of £9,773 on general damages (2% x 3.3 x £150,000). I award interest of £11,436 on past pecuniary loss (10% x £(113,521 + 840)). The total award of interest is therefore £21,209.

481. Total award: The total award is therefore £297,033.

(4) FTS's claim

482. Football career: FTS was born in early 1971. He was adopted as a baby. As a boy, he was a talented all-round sportsman, excelling at swimming (to county level) as well as cricket, badminton, and football. He was also a good writer. He won a national poetry competition when he was about 12 and his poem was published. By that time, he was playing for the Northwest Derbyshire schools side. Bennell approached him, showed his scout card, and said that he was the MCFC area scout. FTS agreed to play for Bennell's team and did so in a team that he says was variously called Midas, Glossop Juniors, and Adswood Amateurs. FTS followed Bennell to Crewe Alexandra where he played for the youth team until he was 15. He then played for a Blackpool youth team, and then an Oldham youth team, before returning to Crewe Alexandra as a YTS apprentice. By this time, FTS says his game was in a mess because his mind was so confused, due to the abuse that he had suffered and the continued presence of Bennell at Crewe Alexandra. His enjoyment in football had gone. He stopped playing.

483. Abuse: There have been some inconsistencies in FTS's previous accounts. In a 1997 statement to the police, he denied that he had been abused. His accounts to the two expert witnesses about the abuse appear to differ in material respects. However, Bennell has been convicted of 4 counts of indecent assault committed against FTS. The account

that he gives in his witness statement was not challenged. I accept that account. FTS explains that the abuse went on over 2 years from the age of 12 to 14. It involved a large number of serious sexual assaults, including some offences now covered by ss2 or 6 of the 2003 Act. It happened every time that FTS stayed at Bennell's home, which was every weekend when he was playing football.

484. The abuse left FTS feeling "very strange" and "uncomfortable" as well as confused, anxious, fearful, and unsure what to do. When it became even more severe, he was "shocked, very scared and upset and it was very painful."

485. Consequences of abuse: There are a number of complicating features in FTS's case. He undoubtedly has had other difficulties, unrelated to the abuse. His relationship with his adopted parents had been difficult. He was prosecuted for growing cannabis in the family home. A fire at the family home, caused by equipment used for growing drugs, destroyed the property and all their possessions. He left his employment in social work in 2012 following a police caution for the possession of class A drugs. The experts agree that, irrespective of the abuse, he has pronounced maladaptive personality traits and probably a personality disorder. Another complicating factor has been the conflation, in the evidence, of separate incidents relating to a suicide attempt, issues in relation to domestic violence, and the respective contributions played by the abuse and alcohol misuse.

486. FTS says that since the time of the abuse he has had repeated flashbacks triggered by certain events, smells and music, intrusive images of abuse, disturbed sleep, and nightmares (approximately weekly since he disclosed the abuse in 2017), doubts about his sexuality, fear of death (thanatophobia), irritability, outbursts of anger and violence, anxiety, self-esteem issues, and feelings of shame. He has been physically sick when driving past Bennell's house. He had to stop coaching football because of the memories it brought back about the abuse.

487. FTS says that he was "a grade A student" but his schoolwork deteriorated as a result of the abuse. He became disruptive and unruly in class. He was suspended multiple times from school and came close to being expelled. He was generally disruptive and argumentative with his teachers. He had constant arguments with his parents at home and, as a result, he had to go to live with his grandparents. Social Services intervened. He ran away from home on many occasions. A contemporary who has known FTS since they were at school gave evidence of FTS's behaviour worsening from about their third year of secondary school.

488. FTS left education at the age of 17. He "got heavily into drugs", taking Ecstasy, LSD, amphetamines, magic mushrooms, and cannabis. His life was chaotic. He had a number of short-term relationships. He says that this was his way of escaping and of "compartmentalising" the abuse. FTS played semi-professional cricket. He received a ban for 10 years in his mid-20s for hitting another player with a cricket stump.

489. The medical notes show that he sought help in 2010 for stress-related problems. He was not sleeping and was drinking more than normal. FTS's symptoms escalated following disclosure of the abuse to the police in November 2016. In March 2017 there is reference in the medical notes to a "stress-related problem". In May 2020, he attempted suicide, being found in a tree, with a ligature around his neck. The experts agreed this was a very serious incident.

490. Dr Mogg makes a diagnosis of PTSD which he considers has been chronic from the time of the abuse. He says that FTS self-medicated with illicit drugs, and that the predominant symptoms have been disturbed sleep, intrusive thoughts and flashbacks, irritability, and anxiety. The symptoms escalated from the time of the disclosure. I accept this evidence, although I also accept the evidence of both experts that FTS was not "overtly" ill for many years following the abuse (so the symptoms of PTSD were at a relatively mild level), that he has a personality disorder that is unrelated to the abuse, and that this is "FTS's fundamental problem." He is now borderline alcohol dependent.

491. The background to FTS's case is complex, and he would have been vulnerable to sustaining a psychiatric disorder (and would have developed a personality disorder) in any event. There is evidence of serious conflict with his adoptive parents which is unrelated to the abuse. Not all of his problems can therefore be attributed to the abuse, and a question of apportionment does arise even though it is not easy to separate out the symptoms between those that are attributable to the abuse and those that would have occurred in any event.

492. General damages for abuse: Having regard to the factors set out at paragraphs 379 and 483 - 484 above, I assess damages at £40,000.

493. General damages for pain, suffering and loss of amenity: It is not possible definitively and precisely to divide FTS's difficulties between those that are, and those that are not, attributable to the abuse. What can be said is that he would, in any event, have suffered from a personality disorder. Having regard to the mild nature of the symptoms for many years and the fact that FTS was suffering from a personality disorder unrelated to the abuse, I consider that the case falls within the moderately severe bracket of the Judicial College's guidelines on PTSD. I assess general damages at £35,000.

494. Loss of chance of a football career / pension loss: There is no claim under these heads.

495. Past travel costs: These are admitted in the sum of £840.

496. Future treatment and travel: This amount claimed is £4,650. The experts agree that urgent treatment is required to address FTS's drinking. Thereafter, there is disagreement as to whether additional treatment would be required to address the broader psychiatric consequences of the abuse. Professor Maden considers that addressing the drinking and the ending of the litigation will result in substantial resolution. He points out that previous therapy appears to have led to what he describes as "inaccurate reporting of PTSD". As with the other cases, I accept Dr Mogg's evidence on the question of treatment. FTS is currently suffering from symptoms of PTSD, and these would not be directly addressed by therapy designed to reduce his drinking. It is likely that additional treatment is required. I therefore allow this element of the claim.

497. Interest: I award interest of £4,603 on general damages (2% x 3.1 x £75,000). I award interest of £84 on past pecuniary loss (10% x £840). The total award of interest is therefore £4,687.

498. Total award: The total award is therefore £85,177.

(5) LDX's claim

499. Football career: LDX was born in Spring 1971 and is now 50. While at primary school, LDX played for his school as well as local clubs. When he was aged 11 Ray Hinett offered him the chance to play for Pegasus, which was portrayed as a team that was affiliated to MCFC. Despite being a fan of MUFC, LDX readily agreed. The team was coached by Bennell. Ray Hinett says:

> "LDX was an exceptionally good player in every way; he had great skill and ability as a midfielder. He was one of the players you would watch and knew he was going to do well. He had an outstanding chance of making it to the Premiership and I remain surprised that he never made it as a professional footballer."

500. When he was 14, LDX signed schoolboy forms for MCFC. Then, at 16, he was offered an apprenticeship with MCFC. He left MCFC by the age of 17 and went to Bury where he was the Head Apprentice (effectively the team captain). He was released from Bury and was then asked to play for a club in New Zealand which he did for 5 months. Then, he played semi-professional football for Buxton and Mossley. He was asked to, and did, sign for Buxton at the end of the 1990/91 season. After the first two games of the following season, he said that he would not play any more games. LDX then took two years off to become an unpaid volunteer for his church following which he returned to play semi-professional football until he was involved in a car accident in 1994.

501. The abuse: LDX regularly stayed at Bennell's home, with other boys. Initially he would be in a different room from Bennell and there was no abuse. On one occasion, LDX was driven away from a match by Frank Roper. He was sexually assaulted by Frank Roper. After that, Bennell approached LDX and his father and said that they should watch out for Frank Roper because he molested boys. This reinforced the trust that both LDX and his parents placed in Bennell.

502. Thereafter, on one night when LDX was staying at Bennell's home, Bennell came into his room. LDX pretended to be asleep. Bennell sexually assaulted him. For his 12th birthday, Bennell arranged for LDX to have the day off school and to go to Maine Road to meet some of the MCFC players. The night before, LDX stayed at Bennell's home. In the morning Bennell attempted to rape LDX, before taking him to Maine Road. Thereafter, there were many occasions (LDX estimates at least 100 occasions) when Bennell sexually assaulted LDX. LDX was brought up within a religious family. The conflict between what Bennell was doing, and the church's teachings, made LDX even more desperate to keep what was happening secret. When Bennell moved to Crewe Alexandra he asked LDX to go with him. LDX refused. The abuse had ended.

503. LDX says the abuse made him feel "dirty" and "unclean". He was ashamed and embarrassed. He was terrified of his parents or others finding out.

504. Consequences of abuse: LDX is in a long-standing committed marriage, has a number of children, and is in full time employment in a demanding and professional career. That does not, however, tell the whole story.

505. LDX had done well in primary school and when he moved to secondary school he was in the top set. He says that as a result of the abuse he "just lost my desire for everything."

He did not do well in his exams and only secured one O level – a grade C in history, when he had anticipated passing all subjects with at least a C grade. Although he continued to play football as an associated schoolboy, and then an apprentice, for MCFC, he had lost his passion for the game, and he deliberately did not play to the best of his ability. It was put to him that he could have simply stopped playing football if that is what he wanted. His response, which is convincing, is that he was terrified of people, including his family, finding out about the abuse. If a young man of his footballing ability had simply stopped playing then it is inevitable that, as he put it, "questions would be asked". He therefore continued to play, but deliberately held back. He was relieved when he left MCFC, and also when he was released from Bury. When he played for Buxton, this involved having to drive past Bennell's house. As a result, there were many occasions when he did not turn up for training and he made up excuses not to play (ultimately ending his footballing career).

506. LDX questioned whether he would become an abuser himself and did not know how to address that. He says that he suffers from body dysmorphia, that he sees himself as weak and as a victim, and that his glass "is always half empty." He is able to gain happiness from his family, but he fears that his wife (who knows, to some extent, about the abuse) will leave him because she knows what happened to him, and that his children (who do not know about the abuse) will think that he is a paedophile if they find out. He was over-protective of his children when they were young.

507. He has recurring nightmares. He does not like any windows to be open, and he cannot sleep if the bedroom door is open. He tapes the door shut so that he can hear if anyone tries to get in. He finds this comforting even though he recognises that "on some level it is totally irrational." If his wife is away, he will have the dog with him – he hates being alone at night. He often does not sleep and goes downstairs. His wife describes him as "look[ing] like he has a lot on his mind."

508. His birthday, certain songs from the 1980s, horror films, and watching football, all trigger flashbacks of the abuse. This has happened weekly since the time of the abuse. When he sought help from his GP, he said that it was due to stress at work, because he was fearful of the consequences of disclosure (there were connections between LDX's family and the GP's family). He had to leave his church (where he had become a senior and respected figure) when he disclosed the abuse. He suffers from a lack of confidence and lack of self-worth. He feels weak because – as he sees it – he "allowed the abuse to happen." He undertakes weight-training almost obsessively – he will not miss a day. His career has been episodic. He has delayed taking professional exams. LDX disclosed the abuse to the police but understated what had happened. In the end, no prosecution was brought in respect of the offences against LDX. This has made him upset and angry, and he now regrets disclosing the abuse at all. He just wants to forget about it, move on with his life, and "be invisible."

509. Professor Maden considers that there is a conflict between LDX stating that he had lost interest in football and was not really trying, and the fact that he was made captain of Bury and went on to play in New Zealand. I do not agree that there is any conflict. Of course, most talented young footballers could only dream of becoming the head apprentice at a side like Bury. For LDX, however, who had been a MCFC schoolboy and apprentice, and who had good reason to aspire to a professional career in the first division, it was a considerable climbdown. I consider it is entirely consistent with him having lost his zest for the game. Professor Maden places much weight on the lack of a

documented mental health history. That is, however, fully explained by LDX's extreme reluctance to disclose what happened to him, even to his GP. The evidence of LDX's wife, nephew, and a senior member of his church, paints a picture that corroborates LDX's account.

510. Dr Mogg considers, and I accept, that LDX has suffered chronic mild PTSD and chronic low mood (dysthymia) over many years which has been exacerbated since disclosure (resulting in a moderate episode of clinical depression). Professor Maden says that LDX's "life history" (by which he means his ability to maintain a long-term relationship with his wife, and to succeed in a professional career) and his medical records do not show that he has a long-term mental illness prior to disclosure. I agree. Professor Maden says that his evidence amounts to "retrospectively reported experience of subjective symptoms." Again, I agree. However, I accept LDX's evidence (which is supported by his wife and nephew and another witness who knows him). The fact that the symptoms are "retrospectively reported" and "subjective" does not make them any less real. As to his "life history" and "medical records", as I explain above, they do not tell the whole story. Since LDX disclosed the abuse, Professor Maden accepts that there have been ongoing PTSD symptoms but would prefer a diagnosis of an adjustment disorder. That is on the basis that there was not earlier mental illness. For the reasons I have explained I consider that there has been chronic PTSD over many years.

511. General damages for abuse: The nature and duration of the abuse (and the age of LDX at the time), and the psychological impact on LDX, were all similar to the case of JVF. I consider that an award should be at the same level, £40,000.

512. General damages for pain, suffering and loss of amenity: The PTSD has, for most of the time, been characterised as mild, but it has still resulted in weekly flashbacks, and it has lasted over very many years. In addition, there is the dysthymia and a moderate depressive episode, possible body dysmorphic disorder (resulting in obsessive attendance at the gym), all of which have had a significant impact on LDX's day to day life, including his relationships and his work. It has had a particular impact on his life in the church, which has been central to LDX's life. I consider that the case falls towards the lower end of the Judicial College's guidelines for severe PTSD. The injury sustained is indivisible and it is not possible to separate any separate part of it to the consequences of (the single act of) abuse by Roper rather than the (sustained) abuse by Bennell. I assess damages at £60,000.

513. Loss of chance of a football career: LDX was in demand as an associate schoolboy and an apprentice. He became the head apprentice at Bury even though, as I accept, he had by then lost his passion for the game. Some of the compound contingencies that make the assessment of the prospects for the other claimants so speculative are not therefore present. The only issues are whether, but for the abuse, he would have taken the extra step of progressing from being the head apprentice at Bury to a professional contract at a second tier club (or whether, perhaps more likely, whether he would never have gone to Bury at all and would have been an apprentice at MCFC and then would have directly secured a contract at a first or second tier club), and whether he would then have proceeded to continue to play at that level. On all the evidence, including Ray Hinett's assessment of his abilities (in comparison to other very good footballers), how far LDX did in fact progress notwithstanding the abuse, and his evidence (which I accept) that this was in circumstances where he was holding back somewhat, I consider that LDX would have had a real prospect of securing a contract at a first tier club, and certainly a

second tier club. That is perhaps fairly reflected overall by a 50% chance of the latter. Whether he would have remained injury free is another matter. He suffered a road traffic accident which resulted in an injury to his neck. A single entry in the medical notes dated 9 May 1994 states "whiplash injury (neck) RTA". A medical report dated 15 August 1995 states that he had not played football since the previous year and he still had symptoms – his neck would become stiff after driving a long distance and would then be painful the following day, and he would get a sharp pain in his neck if he moved it quickly. On examination there was some restriction of movement. He had not received any treatment, but physiotherapy would give a prospect of further improvement. He was not fit to return to football, but he would be fit to do so if he improved. X-ray examination confirmed mild reduction of neck movement but otherwise did not indicate any significant abnormality. LDX's case is that the injury did not stop him playing football (which appears inconsistent with the medical records) and that if he had been playing football at a high level then he would have received intensive treatment which would have meant that this injury would have resolved more quickly. I consider that these questions and contingencies are best reflected by a reduction in the chance of a full career in a second-tier club by a half, so from 50% to 25%. As with DDG (see paragraph 477 above) I do not consider it appropriate to make a deduction for earnings in semi-professional football or, for that matter, for a residual earning capacity. This was not raised in the counter-schedule of special damage and was not explored in evidence.

514. On that basis, and adopting Mr Harris' figures, the loss of earnings is £347,587.

515. Travel costs: I award past travel costs in the sum claimed, £70.

516. Pension loss: On the basis of a loss of a 25% chance of a full career in a second tier club, and adopting Mr Carter's figures, the pension loss is £26,400.

517. Handicap on the labour market: The abuse has had a clear impact on LDX's employment. There have been gaps in employment and it has delayed the development of what is now a professional career. He currently works for his nephew and that appears to have provided a sufficiently supportive working environment for him (it is notable that he previously worked in his brother's gym). There is no immediate risk to his employment, but the business is relatively young. If LDX had to leave his current employment for any reason, then the ongoing effects of the abuse are such that it is likely that it would take him longer to secure new employment than would otherwise be the case. Having regard to his current level of earnings, the length of time until retirement age, and the risk that he will find himself on the labour market, I award the sum claimed under this head, £20,000.

518. Treatment/future travel: The claim for treatment is significant and is more extensive than that for other claimants. Dr Mogg gave three reasons why he considered this was necessary. First, LDX has even more difficulty than other claimants in establishing a relationship of trust with new people – it takes him a long time to "open up." Secondly, LDX's symptoms are not simply those that are classically associated with PTSD. He also has, to a significant degree, very low confidence, and self-esteem. These issues have been long-standing and are entrenched, and have an impact on LDX's relationships, including with his wife. They need to be addressed in treatment. Thirdly, the abuse had an impact on LDX's relationship with his wife, and they would benefit

from having joint therapy. This type of therapy should only take place after LDX has had individual therapy, and it would therefore extend the overall course of treatment.

519. In principle I accept this evidence. The rather more difficult question is whether LDX would embark on this treatment. Both experts observed that LDX would be reluctant to embark on further therapy. That said, he has done so in the past, he is not dogmatically opposed to therapy, there is (the experts agree) likely to be some improvement following this litigation anyway, and Dr Mogg has strongly recommended the therapy. LDX shows insight into the impact of his symptoms on his relationship with his wife. On balance, I consider it is likely that he would accept Dr Mogg's recommendation and would undertake the therapy. On that basis, I award the sum claimed, £25,580.

520. Interest: I award interest of £6,137 on general damages (2% x 3.1 x £100,000). I award interest of £34,766 on past pecuniary loss (10% x £347,657). The total award of interest is therefore £40,903.

521. Total award: The total award is therefore £560,540.

(6) EJP's claim

522. Football career: EJP was born in autumn 1969. At primary school he was very good at football. He played two age groups ahead of himself. He was left-footed and would play left-wing or left-back. In 1981/82, Bennell saw him play in a school match and invited him to a trial with White Knowl. He then captained the White Knowl side. From 1983 he stopped playing for Bennell's team. Instead, he moved to play for another local side. EJP was picked by England scouts to play a trial match when he was about 15. He was the only schoolboy at the trials who was not affiliated to a professional club. He received a letter from Bobby Robson, then the England manager, saying that he had been unsuccessful. He was approached by many clubs, but he was not interested any more. He joined the army at age 16 and became the youngest player in the Tri-Service football team. He left the army at the age of 30 or 31. He has done a series of jobs since.

523. The abuse: EJP stayed at Bennell's home almost every weekend in 1981/82. On one occasion, after watching a horror movie, Bennell sexually assaulted him. Then, on subsequent occasions, EJP was subjected to regular abuse. He was sexually assaulted nearly every time he stayed at Bennell's home. He was raped (penetration of mouth, and on one occasion attempted penetration of anus) on at least 6 occasions. He was also sexually assaulted whilst Bennell drove him to and from matches, and he witnessed Bennell sexually assault other boys whilst EJP was in the car. The abuse stopped in 1983 when EJP was about 13. He hid from Bennell and would refuse to play football for his team.

524. EJP felt that he would not be believed if he reported the abuse, and that he was to blame. He felt disgusted, ashamed, and embarrassed about what was happening. He was terrified about his parents, or others, finding out.

525. Consequences of abuse: EJP had been well behaved at school, but after the abuse started, he lost interest in school and became disruptive. He ran away and stayed out. His parents locked him in his room to try and stop him from running away. He got into fights and started drinking and taking drugs (including class A drugs from the age of 12). He was suspended from school. He was arrested and received police cautions for

assault and robbery. He self-harmed, sometimes requiring hospital treatment. He had frequent nightmares in which he relived what Bennell did to him. He was taken into care and fostered for a year by his Geography teacher. He joined the army at age 16 and that appears to have led to a period of relative stability so far, at least, as employment is concerned. He married at the age of 17, had 2 children by the age of 21, but was divorced (for reasons which cannot be attributed to the abuse) by the age of 27. He is now remarried. His problems got worse after disclosing the abuse to the police in 2017. He has tried to commit suicide on two occasions. Types of music trigger flashbacks of the abuse. The slightest movement in bed startles him and causes him to jump out of bed. He struggles to show his stepchildren affection – he does not feel right doing so. He feels like he is living a lie because, aside from his wife, none of his family know about the abuse. There have been several times when he has separated from his wife, and he has spent periods sleeping rough, but, each time, they have reconciled.

526. Entries in the medical notes suggest that his symptoms of PTSD are attributable to experiences in the Army or, in one instance, a highly threatening incident in a town centre. These experiences (and one whilst in the Army) are certainly capable of amounting to the sort of trigger event that is necessary for a diagnosis of PTSD. However, EJP's evidence, which I accept, is that the problems relate to the abuse – it is the abuse that is the subject of flashbacks, intrusive memories, and relived experience, not what he has seen whilst serving in the Army. He lied to his doctor to avoid having to disclose the abuse.

527. The experts agree that if one takes EJP's account at face value (as I do) then he has suffered from symptoms of PTSD since he was abused at the age of 11, worsening significantly in 2016 when he disclosed the abuse, and continuing to the present day.

528. General damages for abuse: I consider that the appropriate award is £40,000. Although there are differences, the overall scale and nature of the abuse, the period over which it was perpetrated, and the psychological impact, is similar to that in the cases of JVF, FTS and LDX.

529. General damages for pain, suffering and loss of amenity: The abuse has significantly impacted on EJP's daily life, his relationship with his wife and stepchildren and his (lack of) friends and social life. He has suffered suicidal ideation and has made two suicide attempts. He managed to hold down a career in the Army, and this may well have saved him from misusing drugs. The case falls towards the lower end of the Judicial College guidelines for cases of severe PTSD. I consider the appropriate award is £60,000.

530. Loss of chance of a football career: EJP believes that if he had not been abused by Bennell then he would have made it as a footballer and would have played at the highest level. He may well be right about that, but it is simply impossible now to tell. For the reasons given at paragraph 388 - 411 above I do not make an award under this head.

531. Pension loss: For the reasons given at paragraph 388-411 above I do not make an award under this head.

532. Travel: I award travel expenses in the amount claimed of £60.

533. Future treatment and travel: I award the sum claimed of £4,960. Although both experts agree that the ongoing litigation is a major cause of the psychiatric problems, and Professor Maden considers that "the prognosis is good" (irrespective of treatment) EJP has suffered symptoms for decades and neither expert suggests that these will completely and immediately resolve following the litigation. Dr Mogg considers that EJP will experience ongoing symptoms and that these can be treated with a course of trauma focussed CBT and EMDR. I accept that evidence.

534. Interest: I award interest of £6,137 on general damages (2% x 3.1 x £100,000). I award interest of £6 on past pecuniary loss (10% x £60). The total award of interest is therefore £6,143.

535. Total award: The total award is therefore £111,163.

(7) HFT's claim

536. Football career: HFT was born in autumn 1972 and is now 51. At school he struggled academically but he was an accomplished sportsman. He represented Derbyshire in football, cricket, and golf. He played for a local football team when he was 8 or 9. He was scouted by Bennell in (he thought) about 1980 or 1981. He then played for what he said was MCFC's junior sides until 1984 or 1985. The team had different names – Pegasus, Midas, and Adswood Amateurs. At the age of 14, HFT followed Bennell to Crewe Alexandra. He was offered schoolboy forms with Crewe Alexandra but turned this down. He stopped playing football for many years. He played again in his late 20s, but at a much lower level.

537. The abuse: HFT was subjected to repeated (several hundred) serious sexual assaults between the ages of about 9 and 14. There were many incidents of rape (penetration of mouth and penetration of anus). At the age of 12/13 there was one occasion when HFT was raped by his brother (who was around 5 years older). There was also further abuse by Bennell after HFT reached the age of 14 and which falls outside the scope of the claim (because Bennell was then employed by Crewe Alexandra).

538. HFT was worried that nobody would believe him if he said anything about the abuse. The abuse caused pain, and he would be crying during the more serious incidents. He found it repulsive, and he felt disgusted. He was also very confused.

539. Consequences of abuse: HFT says that the rape by his brother was not "as traumatic" as the abuse from Bennell and that he has not had flashbacks relating to it. He has confronted his brother and he now feels that he has "processed" it.

540. HFT is fearful when he drives past Bennell's old home. He has always suffered, and continued to suffer, flashbacks of the abuse. This can be triggered by 1980s music, dogs, and the smell of Bennell's aftershave. He has difficulty sleeping, normally waking after 3-4 hours. He has suffered regular nightmares since the abuse, but these have got worse since he disclosed it – they have become a lot more prominent. He had a breakdown in 2016. Then, 2019 was very bad indeed. He split up with his partner, and, at the same time, his dog died. He was "in a really dark hole." He took an overdose of co-codamol. He was admitted to a mental health unit for a week.

541. HFT says he was never "academic." He left school at the age of 16. He worked as a professional golfer from the age of 16 until he was about 20. Since then, he has been in the same job, working for his brother. He is "happy" in that job and has worked his way up through the different levels of the business. He has been offered a partnership in the business but has declined.

542. He had a number of short-term relationships. He married in 2001, and they agreed to separate in 2012/13. He had a vasectomy because, he says, he did not want to have children who might go through what he had gone through. It was pointed out to him that in a later entry in the GP Notes he had asked for the procedure to be reversed. He says (and I accept) that this was under pressure from his then girlfriend. That was a relationship that lasted 2 years. He met his current partner in 2017.

543. General damages for abuse: Having regard to the factors set out at paragraphs 379 and 537 - 538 above, I assess general damages for the abuse at £70,000.

544. General damages for pain, suffering and loss of amenity: I consider that the injury sustained is indivisible and it is not possible to identify any separate part of it that was caused by HFT's brother rather than Bennell, or any separate part that was caused by Bennell's abuse after Bennell moved to Crewe Alexandra. The case is appropriately categorised as moderately severe PTSD and falls towards the top of the bracket. I assess general damages at £50,000.

545. Loss of chance of a football career: HFT had been offered associated schoolboy forms – so one contingency is removed. He did not, however, take up the offer, and I consider that the number and nature of the remaining contingencies are such that it is not possible to conclude that there was a loss of a substantial chance of a career at a second tier club. Accordingly, I do not make an award under this head.

546. Loss of non-football earnings: In his initial medical report Dr Mogg said that HFT had "not been ambitious in the work setting" and that the abuse had a significant impact on his employment prospects. In his oral evidence, Dr Mogg accepted that this lay outside his expertise. The fact is that the HFT has been in continuous employment throughout his adult life. I do not consider that it has been shown that his earnings are any less than they would have been if he had not been abused.

547. Handicap on the labour market: HFT has been in the same employment, with his brother, for 30 years. There is no evidence that there is any risk to the business. He has considerable experience in the sensitive work that he undertakes. If, for any reason, he had to leave his current employment I consider that it is likely that he would be able to secure employment in the same sector and at the same level of earnings. He is not therefore at a handicap on the labour market by reason of the abuse.

548. Pension loss: For the same reasons, I do not make an award under this head.

549. Past travel: The claim is admitted in the sum of £250.

550. Treatment and future travel: A claim of £5,120 is advanced. It is supported by Dr Mogg. HFT told Professor Maden (after Dr Mogg's report) that he did not believe that he needed any psychotherapy, and that although he had some ongoing post-traumatic symptoms, he had learned techniques for dealing with them, and his natural inclination

is to put problems out of his mind and to focus on other things. Professor Maden considered that there is a real risk that therapy will do more harm than good. Dr Mogg agreed that is a possibility. He also agreed that the litigation is a perpetuating factor in HFT's condition, that further improvement could be expected following the resolution of the proceedings, and that it is a perfectly respectable choice if HFT wishes "to get on with his life and not have further therapy." In the light of the extent to which HFT has managed to cope with his existing problems, the further improvement that can be expected following the end of these proceedings, the risks of therapy, the marginal benefit that might be expected and, most importantly, HFT's disinclination to embark on further therapy, I do not think it is likely that HFT will undergo further treatment. Accordingly, I do not allow this element of the claim.

551. Interest: I award interest of £7,364 on general damages (2% x 3.2 x £115,000). I award interest of £25 on past pecuniary loss (10% x £250). The total award of interest is therefore £7,389.

552. Total award: The total award is therefore £127,639.

(8) KHT's claim

553. Football career: KHT was born in autumn 1970 and is now 51. He started to play football seriously from about the age of 9. He was playing for a district side from the age of 11. Bennell saw him play and asked him to play for his team. KHT agreed. He regarded the team as "Manchester City's nursery team." It had different names, including Glossop Juniors, Adswood Amateurs, Pegasus, and Midas. There was what KHT described as a "crossover period" when Bennell was preparing to move from MCFC to Crewe Alexandra. During this period, he sought to persuade boys to follow him to Crewe Alexandra. He argued that it would be better for them to be a "big fish in a small pond" than a "small fish in a big pond." Some agreed. KHT was one. He signed schoolboy forms when he was 14. At the age of 16 he accepted an offer of an apprenticeship. At the end of his apprenticeship, he left Crewe Alexandra to get away from Bennell. He considered this a bad decision "footballing-wise", but it was for the benefit of his mental health. KHT then played semi-professionally for a club for 3 years (which he captained at the age of 18). He was then signed by a third division club, playing over 100 games for them in 3 years. He then moved to league one club where he played over 200 games, and then a premier league club before then playing for championship sides. He has gained a number of international caps. When playing for a championship side in 2004, he encountered Bennell in the car park (following his release from prison). Two days later, KHT was in the changing room when a message was passed to him that Bennell was at the ground and was asking for tickets. This had a significant impact on KHT. It precipitated a move to another club a few months later and, ultimately, KHT's retirement from football.

554. The abuse: KHT has set out details of the abuse in his witness statement. I accept the account given by KHT in his witness statement. As I explain above, I consider that it was serious, and I reject MCFC's submission that the claim is "disproportionate." It is, however, at the less severe end of the spectrum presented by these 8 claims and amounts to 2 separate incidents that come within the scope of what I describe at paragraph 379 above.

555. Consequences of abuse: KHT has suffered from nightmares since his teens. He has difficulty trusting people. Throughout his career, KHT avoided post-match massages unless he had a muscle injury, because it "could bring on flashbacks of Bennell". He also suffers flashbacks in other scenarios, for example when he smells a certain aftershave. He finds physical closeness difficult and worries that he has been left "a cold and unloving person." This has impacted on his relationships with girlfriends. He married at the age of 18, but the relationship broke down by the time he was 21. He has been with his current wife for 17 years. Following his disclosure of the abuse, he started experiencing panic attacks. He has lost hair due to stress. Counselling was not helpful.

556. The experts agree that KHT suffered a deterioration in his mental health following disclosure of abuse in 2017. They agree that he has suffered from a psychiatric disorder since then (Professor Maden's preferred diagnosis is an adjustment disorder, but he agrees that PTSD is a reasonable alternative diagnosis; Dr Mogg's preferred diagnosis is PTSD). Professor Maden says that this is due to the disclosure. I agree. The disclosure is a direct consequence of the abuse, and therefore the difficulties since 2017 are a direct consequence of the abuse.

557. There is some disagreement about the position before 2017. Dr Mogg considers that KHT has suffered from PTSD throughout. That is partly because late onset PTSD is very uncommon (so it is unlikely that it was initiated in 2017 – it is likely that it was there to some extent from when the abuse occurred), and partly because the symptoms reported are consistent with a diagnosis of PTSD. Professor Maden agrees with the first of these points (which is partly why he diagnoses an adjustment disorder rather than PTSD). He is sceptical about the reported symptoms that date back to the 1980s because there is no contemporaneous record of those symptoms and there is a significant risk that KHT's evidence may be affected by reattribution/confirmation bias.

558. Professor Maden is right that there is no independent, objective, and contemporaneous corroboration of the account that KHT gives of symptoms dating back to the 1980s. If the underlying cause were something other than sexual abuse, and if the symptoms had been more severe, then that might have raised a significant question over the reliability of KHT's account. The fact that the underlying cause was abuse and that the symptoms were mild readily explains the absence of any contemporaneous medical records. The medical literature shows that, unsurprisingly, those who suffer abuse are often reticent about disclosing it, and that is reflected by the evidence in all these cases. In other cases, the symptoms were so prominent that they are reflected in entries in medical or social services or employment records (without necessarily being attributed to an underlying cause). In KHT's case the symptoms were not so severe, and it is not so surprising that there is no documentary evidence.

559. Professor Maden observes that KHT did not tell him about some of the difficulties he had in childhood. He had, though, set that out in detail in a witness statement which had been provided to Professor Maden and which he had chosen not to read. It is not suggested that he said anything to Professor Maden which was inconsistent with that statement. The fact that he did not tell him everything that is in his witness statement does not seem to me in any way to undermine his general reliability or credibility.

560. I therefore find that the symptoms have been present throughout, although prior to 2017 they were mild, becoming much more severe in 2017 following disclosure. I also accept Dr Mogg's evidence that they fulfil the diagnostic criteria for PTSD.

561. General damages for abuse: I award £10,000 (see paragraphs 383 and 554 above).

562. General damages for pain, suffering and loss of amenity: The impact on KHT's ability to cope with life, education and work, and the impact on his relationships, has been milder than in other cases. He was able to hold down an extremely challenging professional sporting career for many years, he is in a stable marriage, and can provide a high level of demanding care to his autistic child. The symptoms became more pronounced in 2017, but the prognosis following the conclusion of the litigation is good. Overall, the case would fit within the Judicial College's moderate category for PTSD (or, for that matter, for general psychiatric damage) were it not for the fact that the trial is taking place so long after the abuse, and that the symptoms have persisted (albeit at a relatively mild level) for so many years. I consider that puts it at the lower end of the moderately severe category. I assess damages for pain, suffering and loss of amenity at £27,500. As with HFT, the abuse continued after Bennell moved to Crewe Alexandra, but I do not consider that the injury is divisible, and I therefore do not apportion the award.

563. Travel costs: This is admitted in the sum of £370.

564. Loss of earnings/pension/handicap on the labour market: No claim is advanced under these heads.

565. Treatment and travel expenses: These are claimed in the total sum of £6,080. Professor Maden points out that there is a risk that therapy will do more harm than good, that KHT has previously tried therapy and it did not help, and that he coped reasonably well before the disclosure. These are each respectable points, and the question of whether treatment is appropriate is marginal. On balance, I accept Dr Mogg's view that it is. There are ongoing significant symptoms. They may reduce following the litigation, but there is, as Dr Mogg explains, likely to be a degree of ongoing disappointment, frustration, and anger that Bennell has not separately been convicted of an offence in relation to KHT. He will not therefore have the same level of closure as some other claimants. The fact that he has tried therapy before shows that he is not averse to it in principle. I make the award sought in full.

566. Interest: I award interest of £2,301 on general damages (2% x 3.1 x £37,500). I award interest of £37 on past pecuniary loss (10% x £370). The total award of interest is therefore £2,338.

567. Total award: The total award is therefore £46,288.

Outcome

568. Each claimant has proved that Bennell abused him. All of them helped to ensure that Bennell was brought to justice. This means that others have been protected from the abuse that he may otherwise have continued to commit. The claimants have shone a light on what was going on in youth football. They have thereby helped to ensure that future generations of children are better protected, not just from Bennell, but also from others whose grooming and abuse can be prevented by better child protection measures.

569. Bennell is a manipulative liar. He is not a credible witness. I am not able to rely on anything he has said. I reject his evidence that his connections with MCFC were severed

in 1980 with no further connection thereafter. The claimants have shown that Bennell did have connections with MCFC: the connections that were in place before 1980 resumed from around 1981.

570. Each claim has been brought more than 25 years after the expiry of the time limit. Each claimant has a good explanation for the delay, but it has meant that the evidence is less cogent than if the claims had been brought in time. That is, in part, because the key witness on a key issue died in 2010. It is not fair, after all these years, to reach a binding determination on MCFC's responsibility for the abuse based on the partial evidence that is still available. I therefore dismiss each claim on the ground that it is out of time.

571. If it had been necessary to determine the issue of vicarious liability, then the evidence that is now available shows that there was a connection between Bennell and MCFC. He was scouting for them, coaching their feeder teams, and helping to organise trial games. But the evidence suggests that Bennell was not an employee of MCFC and that he was not in a relationship with MCFC that is akin to employment. Further, even if his relationship with MCFC is taken to be akin to employment, his abuse of the claimants did not take place in the course of that employment. The work that Bennell did for MCFC did not require him to have children stay at his home overnight. The connection between the abuse and Bennell's relationship with MCFC is insufficient to give rise to vicarious liability. The relationship gave Bennell the opportunity to commit the abuse, but MCFC had not entrusted the welfare of the claimants to Bennell. It follows that it has not been shown that MCFC is legally responsible for Bennell's acts of abuse.

572. Each claim is therefore dismissed.