Neutral Citation Number: [2023] EWHC 3221 (KB)

Case No: QB-2021-003882

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/12/2023

Before :

MASTER DAGNALL

- -

Between :

JXH	**Claimant**
- and -	
THE VICAR, PAROCHIAL CHURCH COUNCIL AND CHURCHWARDENS OF THE PARISH CHURCH OF HOLCOMBE ROGUS	**Defendants**

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Iain O'Donnell (instructed by **Slater & Gordon (UK) LLP**) for the **Claimant**
Catherine Foster (instructed by **DWF Law LLP**) for the **Defendants**

Hearing dates: 5-6 June 2023; further submissions received in and up to 20 October 2023

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APPROVED JUDGMENT

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MASTER DAGNALL:

Introduction

1. In this case, the Claimant, whose identity I have anonymised, with reporting restrictions, as "JXH", and who appears by Mr O'Donnell of counsel, claims damages for the injury and harm caused to him by two sexual assaults committed upon him in the period 1979-1981 by Reverend Vickery House, whom I will call "House".

2. The Claimant has brought this claim for damages against the Defendant, which is named in these proceedings as "The Vicar, Parochial Church Council and Churchwardens of the Parish Church of Holcombe Rogus", and which appears by Ms Foster of counsel, and which I will call "the Defendant". During the relevant period, House was the incumbent vicar of the Parish of Holcombe Rogus (which I will call "the Parish"), Devon, having previously been a curate at a parish church in Crediton, Devon (which I will call "the Crediton Church").

3. The parties are agreed (as I am in any event going to find happened) that the sexual assaults occurred, and that in consequence the Claimant has suffered damage, including mental harm, as a result, and that the appropriate damages award would be £12,000.

4. However, the real question before me is whether the Defendant is liable for these serious wrongs of House committed against the Claimant on the basis of what is known as vicarious liability. Shortly before this trial, the Supreme Court delivered judgment in *Trustees of the Barry Congregation of Jehovah's Witnesses (Appellant) v BXB (Respondent) 2023 UKSC 15* (which I will call "*BXB*") and which is now the leading authority in this area of the law.

5. The parties are agreed that the Supreme Court confirmed that for there to be vicarious liability, the claimant must establish both limbs of a two stage test being, essentially, that: (1) the relationship between the Defendant and House was one of employment or sufficiently akin to employment to attract the principles of vicarious liability and (2) the wrongful conduct (i.e. the sexual assaults) was so closely connected with acts that House was authorised to do that it can fairly and properly be regarded as done by House while acting in the course of (here) the quasi-employment (see paragraphs 58(ii) and (iii) of *BXB* to which I will return below). The parties are agreed that, on the facts of this case, stage (1) is satisfied, but the Claimant asserts and the Defendant disputes that stage (2) is satisfied.

Undisputed History

6. It is common-ground, and in any event I find on the basis of what is effectively unchallenged evidence before me, the following elements of the history.

7. The Claimant and his family moved to Crediton when he was a child and they attended the Crediton Church. House was the curate of the Crediton Church from 1969-1976 and involved in its youth work including leading a youth group known as "the Young Communicants" and which the Claimant joined while being still in his early teenage years. House was then and subsequently an ordained minister of the Church of England and a man of considerable charisma whom others, especially if younger or less forceful than him, would be inclined to treat with respect.

8. House was appointed and became the vicar of the Parish in 1976 and moved with his wife to live in the Rectory in the Parish. However, they also retained a family house some 30 miles away in Hittisleigh Mill ("the Hittisleigh House").

9. House was instrumental in organising for there to be made available through a private arrangement in the Parish, a cottage ("the Cottage") at which lived, first, two young men (whose names I have anonymised, with reporting restrictions, as "SGZ" and "SPZ"; and where first "SGZ" came and then he was joined by "SPZ"), both of whom had known House (and the Claimant) from the Crediton Church, and then also, from 1979 (when the Claimant was aged about 19), the Claimant. The occupiers of the Cottage regarded themselves as being something of a monastic community (although at least one witness before me regarded the situation as being outwith any true principles of monasticism); and House attended there from time to time and had a role in practice as to what happened there.

10. House wrongfully sexually assaulted the Claimant in about 1979 at the Hittisleigh House, and at some point in 1980-1981 at the Wellington public swimming-pool located some miles away from the Parish.

11. Some years later, House became part of another quasi-monastic community in the Chichester area as did, eventually the Claimant, and where he and at least one other senior member of the Church of England clergy committed sexual assaults including upon the Claimant. In 2015 House was convicted of various sexual assaults including certain which he had committed while he was curate of the Crediton Church.

The Trial

12. The Trial took place before me on 5 and 6 June 2023. The Claimant's side called oral evidence from the Claimant, from SPZ, and from another, whom I have anonymised, with reporting restrictions, as SVZ, who had visited the Cottage on various occasions. The Defendant's side called oral evidence from Jean Palfrey and Michael Brooke-Webb. They gave evidence in chief and verified their witness statements; and they were cross-examined and re-examined and answered questions from me.

13. I also received under the hearsay evidence provisions of the Civil Evidence Act 1995, and to which there was no objection, witness statements of Ann Rowlands, Andrew Beane and Hugh Palfrey. I was also provided with a Bundle of documents.

14. I heard detailed submissions from Counsel on 6 June 2023 in which they supplemented their written Skeleton Arguments and Submissions.

15. I reserved judgment. However, prior to my finalising my judgment, there were decided, by the Court of Appeal the case of *MXX v A Secondary School [2023] EWCA 996* (which I will call "*MXX*") and by the Court of Session in Scotland the case of *C & S v Norman Shaw and Live Active Leisure [2023] CISH 36* (which I will call "*C&S'*""). Both decisions considered *BXB* in the context of sexual assaults and so I sought further written submissions and responsive submissions from counsel and solicitors, and which were provided in October 2022 and which I have also taken fully into account. Both sides appeared to go somewhat beyond merely dealing with those two authorities in their supplemental written submissions (leading to the Claimant to somewhat object to those of the Defendant) but, where *BXB* has authoritatively reviewed and restated the

law, I do not consider that any real prejudice has been caused and I do consider that both sides have had full opportunity to state their own case and to respond to that of the other side.

Procedural Matters

16. Following the trial, I have noted that the Claim was only ever stated (in the Claim Form and following) to be a claim for damages "not exceeding £15,000". It seems to me, at least provisionally, that under paragraphs 4, 4A and 5 of The High Court and County Courts Jurisdiction Order 1991 (SI 1991/724) paragraphs 4, 4A and 5 (and Civil Procedure Rules ("CPR") Practice Direction 7A paragraphs 2.1 and 2.2 (and where paragraph 2.4 is subject to those preceding paragraphs) which reflect those provisions), the Claim should have been commenced in the County Court. This is notwithstanding that it is common, because of their subject matter, that sexual abuse cases are brought in the High Court.

17. I have not sought any submissions as to this because (having considered sections 40 and 41 of the County Courts Act 1984, CPR30.3 and also my judgment in *Taylor v Evans [2023] EWHC 2490*) it seems clear to me, in the circumstances of this case, and where I have conducted the Trial and heard the evidence (and any re-hearing of evidence would potentially occasion trauma to the Claimant's witnesses), and where the statutory provision only relates to where a Claim should be commenced (and does not relate to an exclusive jurisdiction of the County Court as was the case in *Taylor*) that the Claim should be heard and determined in the High Court, and either that there is an operative statutory waiver under CPR11(5) (no application ever having been made under CPR11, and where this is a very different statutory situation to that in the *Taylor* case) or that I should make a combined transfer to and re-transfer back from the County Court under section 41. The parties have decided, following my circulating a draft of this judgment which raised these points, not to take up my invitation to consider this aspect further when dealing with the consequential orders to follow this judgment, and so I am going to include a protective re-transfer provision in my consequentials order. I repeat, as this point may be relevant to other cases which have been or are desired to be commenced in the High Court, that I have not heard argument on the point, but it does seem to me to be sensible and appropriate to make a protective order.

18. At both the case management stage of the Claim and at the Trial I referred the parties to the facts that I have been in the past a Churchwarden (and ordinary Parochial Church Council member) in the Anglican (Church of England) church and am still an active member of an Anglican (Church of England) church, and afforded the parties opportunities to make a recusal application(s). Both the Claimant and the Defendant indicated that they were content for me to hear both the procedural hearings and the Trial itself, and, although I carefully considered from my own perspective any possibility of actual (conscious or unconscious) or apparent bias, I was and am satisfied that there is and was no potential for such and no reason to recuse myself.

Approach to factual matters and the evidence

19. In considering the factual issues between the parties, although they are limited and, to an extent, to matters of nuance rather than as to whether or not specific events occurred, I have had to consider whether the relevant party (the Claimant in relation to his case, but on some issues the Defendant where the Defendant has advanced facts relied on in

defence), on whom the burden of proof lies, has shown to the civil standard of proof, being that on the balance of probabilities (i.e. whether it is simply more likely than not) that any particular historical fact or event occurred. That is something which I have had to do and have done taking into account all the evidence, oral and documentary, as well as counsel's submissions, and where I have been able to come in all respects to actual conclusions (i.e. that particular facts and matters have been proved i.e. been shown to have been more likely than not to have occurred) rather than ever being in a situation where I could not come to an actual conclusion either way (and when I would have had to fall back on considering upon whom the burden of proof lay in relation to establishing the relevant asserted fact or matter).

20. In considering the issues regarding fact, I have borne in mind that the Court:

    i) Takes into account and tests all of the evidence, oral, hearsay, documentary and expert, considering what weight to give it and then weighing it altogether as an holistic exercise in coming to its conclusions

    ii) Bears in mind:

        a) with regard to witnesses, and especially those who are saying what they believe to be the accurate truth, that the process of human memory is fallible and that it is easy for a witness to have mis-remembered or to have created a false memory by, for example, continually thinking about the subject or trying over-hard to remember it or discussing it with others or simply through the ordinary processes of the subconscious including the natural desire (to some extent) to justify oneself and one's past conduct. This is all the more so when events have taken place a substantial time ago (and in this case the key events took place over 30 years ago), or were fleeting in nature, although it is possible for witnesses to refresh their memories helpfully, for example from contemporaneous documents. It is also potentially so where the event or its consequences were traumatic (as the various abuse and assaults inflicted upon the Claimant and others were), as the trauma itself might affect both the recording and recollection mental processes. However, none of this means that a recollection should be simply disregarded as the memory may be perfectly genuine, and there may be particular reasons why a particular conversation or event may have "stuck", and accurately so, in a person's mind

        b) Contemporaneous documents are likely to have reflected what their creator was actually thinking at the time of their creation. Thus they can, to an extent, "speak from the past" although subject to the reliability of the creator's memory and their desire and ability to record accurately at that time. Likewise if the creator is recording what someone else has told them, if that was also contemporary then there is an increased likelihood that first the recording and second the communicated statement are accurate, although again subject to such matters as timing, general reliability and conscious or subconscious desires to influence. Thus, although the Court must be careful to avoid over-reliance upon them, contemporaneous documents can have an important weight

c) Inherent likelihoods of events are also important (although these can only be assessed in the light of the other facts thus emphasising how this is an holistic exercise). If an event is inherently unlikely to have occurred then there should be evidence of sufficient weight to displace that unlikelihood before the event will be proved to have occurred. This can be especially true in relation to certain types of misconduct, as it is usually likely that people will conduct themselves in accordance with social norms but again this is highly fact sensitive and especially where people's social norms may differ

d) The actual giving of their evidence by a witness is important, and it needs to be assessed. Although there are dangers in seeking to assess a witness' demeanour when giving evidence as such an assessment may be affected by numerous factors (including cultural, educational, psychological and psychiatric), there may be matters of demeanour which may affect the weight to be given to oral evidence including whether and how the witness was prepared and able to engage with the questioning process. In this case, all the witnesses did seek to answer the questions put to them and were readily prepared to accept where they did not have direct knowledge of an event (and were relying on what others had communicated) or were drawing inferences. I regarded all the witnesses as appearing to be trying to be open to the court and not appearing to be seeking to mislead it especially when faced with a direct question

e) Counsel are generally expected to put to a witness any suggestion that they are deliberately saying what they actually believe to be untrue (and, in fact, no such suggestions were put and neither side has suggested that any witness was seeking to mislead the court; and, had any such suggestion been made, I cannot see that it would have had any foundation or basis). That is important both for fairness and to enable the accusation to be responded to and tested. However, the fact that a witness believes something to be true does not mean that it necessarily is true, and the assessment of actual truth is a matter of considering all the evidence together.

21. Certain of the evidence before me is technically "hearsay evidence" being in terms of what someone has been told by another, or what a person has said through a written document. Such evidence is admissible before the Court under the provisions of the Civil Evidence Act 1995 ("the 1995 Act"). However, the weight to be given to it is dependent upon all the circumstances, including that the relevant persons have not been called to court to swear an oath or affirm (and be subject to both giving a solemn promise to tell the truth and to potential penalties if they do not) or to be cross-examined and have their evidence tested.

22. Section 4 of the 1995 Act provides that the Court has regards to all the circumstances in considering whether any inferences can be drawn as to the reliability or otherwise of the hearsay evidence including particular factors set out in section 4(2) which reads as follows:

"(2) Regard may be had, in particular, to the following—

(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;

(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;

(c) whether the evidence involves multiple hearsay;

(d) whether any person involved had any motive to conceal or misrepresent matters;

(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;

(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight."

23. I have applied the above considerations and approaches in coming to my various factual conclusions.

The Evidence

The Claimant's Witnesses

24. The Claimant gave evidence on affirmation verifying both his written witness statements of 14 November 2018 and of 19 April 2023 and orally. He appeared to be me to be vulnerable, and especially in that he was having to relive, while giving his evidence, his highly traumatic experiences of being abused, both by House at the times which are the subject of this Claim and, by indirect extension, by House and others at a later time. I took various steps, including the provisions of breaks, to seek to ameliorate the effects of his vulnerability in accordance with Civil Procedure Rules ("CPR") Practice Direction ("PD") 1A.

25. However, the Claimant gave his evidence both courageously and, it seemed to me, honestly. He sought to address and answer the questions put to him. He himself expressed concern as to the precision of his recollections, and stated that his appreciation of what had occurred in the past had developed over recent years as he had come to address, with professional help, the abuse and consequent trauma that he had suffered and undergone.

26. I set out what I regard as being the important elements of the Claimant's written and oral evidence as follows although I have taken all of his evidence into account.

27. He said that his family were religious, were keen to be involved in the Crediton Church from when he was aged about 12, and that he had first met House when House was curate and he was 13 and a member of the Young Communicants. He said that House had had "the way with young people".

28. He said that the Young Communicants had met at the "Organ House" being a structure in the Crediton Church churchyard where they met on Friday and Sunday evenings as well as going on outings and trips, and playing games, elsewhere. In 1973 or 1974 the Claimant and others had been taken by House on a camping trip to the pilgrimage city of Santiago de Compostella in Spain, and where the Claimant had felt uncomfortable about touching and also sexual references in conversation on the part of House. House left to go to Holcombe Rogus in 1976. A new vicar of the Crediton Church took over the Young Communicants but did not have House's ability to relate to the young people.

29. SGZ and SPZ had both been members of the Young Communicants. SPZ was a few years older than the Claimant and eventually left to go to university; and JXH had been more friends with SGZ who was a year younger than the Claimant.

30. When House was appointed to become vicar of the Parish, a group of the Young Communicants, including the Claimant, had gone to the Rectory of the Parish, a building next to that Church, to help decorate what was House's new home, and at which he thereafter lived. The Claimant remained in intermittent contact with House then and thereafter.

31. In 1978 the Claimant had failed his A-Levels, and his parents had moved away and his friends had left for university, leaving him in a detached, lonely and unhappy situation living on his own. He obtained a civil service job in Exeter and moved to a bed-sit there. He remained in touch with SGZ who was now taking his A-Levels and to some extent with SPZ.

32. In 1979 House invited the Claimant to go on a camping trip to France with young people from the Parish and surrounding areas. At some point during it, House explained that SGZ and SPZ were now both living at the Cottage in what was, in some way, said to be a "monastic" environment, and House invited the Claimant to come and live with them as part of a community (and which I will call "the Community") in order to explore his religious and spiritual vocations. The Claimant said that he found this proposals to be more interesting and exciting than his own then life and experience, and therefore accepted, and so that he came to move into the Cottage.

33. The Claimant said that it was House who had set up the Community at the Cottage and had arranged for the Cottage to be made available for that purpose. At some point House explained that he had trained at an institution called Kelham College which had at least monastic overtones, and that the Community was intended to have something of a monastic life and involve a simple life of discipline. The Claimant made clear that he did not regard the community as having been set up by the three young men or any of them but rather by House, and that House invited him to become part of it. He understood that House would be, and indeed was, the spiritual leader in circumstances where House was a strong, powerful and charismatic figure. He said that House very much directed the young men in not only their spiritual activities but also their general day-to-day lives, including what other activities they undertook including work, physical labour, house maintenance, cleaning and gardening.

34. Once the Claimant had joined the Community he lived in the Cottage with SGZ and SPZ. He said that the Community was a communal organisation, and where the young men did not have girl-friends or (generally) other company. The Community operated on a basis of holding communal money which was kept in a Tupperware box in the

kitchen, and into which the young men paid their earnings from working in the locality. The young men would spend the communal cash in a communal way. However, House kept some oversight over the expenditure, and if he regarded any expenditure as being frivolous or made without some appropriate discussion he would censure the young men; the Claimant recalling particular incidents where SPZ was heavily censured for spending money on a pair of trousers without advance discussion and agreement, and where the Claimant was censured for reading a "Beano" comic.

35. The Claimant said that House made clear from the start that the three young men were to be actively involved in House's "team" and ministry in the Parish. House required them to attend, except on Mondays which were House's days off, not only the public Sunday services, but also both morning and evening services daily in the Parish Church during which House would pray with them. House expected them to be present at all such services rather than their attendance merely being optional although from time to time their work commitments would prevent their attendance. House also required them to perform the role of "servers" (in relation to services of Holy Communion) in the Parish Church and also other churches (and at one of which churches SPZ would preach) within the ambit of his Team Ministry (the situation being that House was "the Team Minister" for a number of parishes each of which had their own parochial church council and structure). House required the Claimant to assist with the Parish Church's youth group which convened in a local hall.

36. The Claimant said that young men did not have to pay rent for, although they were expected to look after, the Cottage which was a two up two down building but which did not have any mains electricity or gas (and so that they used a gas canister for cooking and heating) or bathroom although it did have a tap with running water. It had a door into a Baptist Chapel located next to it.

37. The Claimant identified various activities which he and the other young men engaged in some of which generated cash for the community. These included working in local public houses (as the Claimant did), and in a local abattoir. The Claimant also helped in a school located in another parish of which House was the team vicar. The Claimant also engaged in babysitting and which had the advantages that he might be provided with food or washing facilities as part of that activity. The Claimant would come to know various of the locals through these and other activities.

38. The Community also made efforts to become self-sufficient. There were gardens both at the Cottage and at the Rectory and which the Community used to grow vegetables and keep chickens, ducks and geese. The young men reared the turkeys in order to fatten them up and sell them to the persons in the village and to the public house in the run up to Christmas. House encouraged them to engage in manual work saying that was part of the monastic ideal.

39. The Community had a communal motor-bike and a car, for which the Claimant eventually obtained his licence to drive.

40. The Claimant said that, every few weeks, on Saturdays, House would convene a planning meeting at the Cottage at which there would be discussed what was happening in the community and which would be led by House. House would maintain a degree of financial control through these discussions. The Claimant said that House spelt out from the start and continually made clear that House was to be the director and leader

of the monastic Community and was to obeyed without question, with House controlling the lifestyle of the young men and their daily routine so that they could develop spiritually under his guidance.

41. As well as engaged in the above activities, the Claimant worked on retaking his A-levels, studying at a college in Tiverton and receiving some tutorship from a person in the village. The other young men also pursued their own educations and studies.

42. The Claimant said that he was told by House, and viewed himself, that the Community had a monastic nature; and that it was indeed an environment in which the Claimant was able to explore in his own mind as to whether he had any vocation to become a member of the Anglican priesthood, although he came to decide that he did not feel any such call.

43. The Claimant said that the Christian community in the Parish were fully aware of the Community and of the three young men and what they did; and that House described all this in the Parish's parish magazine ("the Magazine" although no direct excerpts from this were included in the evidence before me) and where the community was a tight-knit local one.

44. In his witness statements, the Claimant described being sexually assaulted twice during this Community period by House. The first was in late 1979 when House had directed the Claimant to go to (and in his oral evidence the Claimant said that House had driven the Claimant to) the Hittisleigh House to do maintenance work on it, and there committed an entirely unprovoked and uninvited sexual touching of the Claimant. The second was in 1980 or 1981 when House had invited the Claimant to the Wellington swimming-pool so that the Claimant could learn to swim, and there committed an entirely unprovoked and uninvited sexual touching of the Claimant. The Claimant was not challenged at all as to any of these matters.

45. The Claimant referred to and there was put to him a newspaper article ("the Article") which had appeared in the local press in autumn 1979. The Article contained statements:

    i) "Three young men have set up a religious community… while they decided whether or not they have a vocation for the ministry."

    ii) "Their arrival… has been welcomed by the Vicar of Holcombe Rogus, the Rev. Vickery House."

    iii) "Urging parishioners to make them feel at home in the community the Vicar writes in his parish magazine "Although they will be continuing with their education, they will take an active part in parish life and explore living a disciplined and ordered Christian life. The cottage will provide a context to develop a Christian lifestyle and also as a place to draw and exchange from and with the Christian community in this team. They will be a great help to me by joining in the prayer life and worship of the church and of great practical help to the team as they join our congregations in the task of living the gospel." "More important however will be the goodwill and welcome each one of us can extend these young men. I hope you will make a point of personally interesting yourselves in them and their work and show to them warmth and hospitality.""

iv) Referring to various of the local activities that the three young men were engaging in.

v) Quoting SGZ as saying that "They had soon settled into a routine at the cottage. Their weekdays start with matins, and a midday office is held, with evensong later at Holcombe Rogus church The last service of the day is compline."

46. The Claimant said that the reality was that House had set up the Community and invited the Claimant (and indeed SGZ and SPZ) to be part of it, rather than the Community being the project or having been set up by the young men.

47. The Claimant referred to the facts that after 1981 House left the Parish to become part of a different "monastic" community in Sussex ("the Sussex Community") which the Claimant joined and during the course of which House and another committed various sexual assaults upon the Claimant. The Claimant eventually left that community and went forward with his life.

48. It was only following revelations in the 1990's and then police investigations in the 2010's relating to those involved in the Sussex Community that the Claimant came both to realise what had happened to him and to be able to both understand and complain about it. He had a "cathartic" meeting with the Church of England's then lead safeguarding Bishop in 2018 where he was able to ventilate the history and his grievance and anger as to what had happened, and as to the Church of England's lack of support and care for him and others, and which led to him accepting a settlement of £16,000 in relation to what had happened at the Sussex Community but with this claim remaining outstanding.

49. The Claimant was not subject to particular challenge in cross-examination. I regard the Claimant as an honest witness who sought to assist the Court. His evidence is also supported by that of SPZ and SVZ to which I will come and the contents of the Article (although I have treated those contents insofar as they emanate from House with some care). Subject to some important elements of nuance (to which I will return) regarding the degree of connection between the Parochial Church Council ("the PCC") and (and the degree of knowledge of the PCC of) the Community and the three young men, I accept his evidence.

50. SPZ gave evidence on oath verifying both his written witness statements of 14 April 2021 and of 18 April 2023 and orally. He appeared to be me to be vulnerable, and especially in that he was having to relive, while giving his evidence, his own highly traumatic experiences of being sexually abused by House. I took various steps, including the provisions of breaks, to seek to ameliorate the effects of his vulnerability in accordance with Civil Procedure Rules ("CPR") Practice Direction ("PD") 1A.

51. SPZ gave his evidence both courageously and, it seemed to me, honestly. He sought to address and answer the questions put to him, and did so in a thoughtful and reflective manner.

52. I set out what I regard as being the important elements of SPZ's written and oral evidence as follows although I have taken all of his evidence into account.

53. SPZ had located very shortly before the trial a handwritten document and a typed document ("the SPZ Documents") which he believed that he had created in summer 1979 at about the time of the discussions between him and House regarding the initial setting-up of the Community, and in which he had sought to set out his own visualisation framework of what, he said, House was proposing should be the Community and life at the Cottage; this being at a time when it was being discussed between House and SPZ, and neither SGZ nor the Claimant was then a part of the contemplated project. SPZ described the SPZ Documents as being "aspirational" in nature rather than recording agreements or what turned out to be the practical reality, although he did say that House had had some input into them.

54. SPZ said that House had been curate of the Crediton Church from 1969 to 1976 and that SPZ had been a member of the church choir there from age 8 and then, from when he was about 12 a member of the Young Communicants. He stated that even then House had had a strong charismatic personality, and had run the Young Communicants exercising total control over the group, and, in consequence, achieving great authority and influence over its members including SPZ and younger members such as SGZ and the Claimant.

55. Following his completing A-levels at school, SPZ had studied theology at Durham University and at while still there had remained in contact with House, who had provided him both with family hospitality and mentoring, and who at times had discussed various monastic concepts with SPZ. It was once House had become vicar of the Parish that House, either verbally or by letter, invited SPZ to become part of the Community which House proposed to establish in the Parish, House saying that he had had a long-standing desire to accommodate a Christian community alongside his parochial responsibilities and was now able to do that.

56. House had agreed with the Baptist community within Holcombe Rogus, and in particular a Mr North, that they would provide the Cottage for the purposes of creating a monastic and formational community. House was only able to do this because of his status and role as Vicar of the Parish; and the fact that he was the local ordained Church of England minister gave him credibility both in dealing with the Baptist community and in commanding the obedience of the three young men who became the Community.

57. SPZ referred to the fact that the Cottage lacked electricity and only had gas lighting downstairs as contributing to a "Spartan" element which was important as part of the monastic concept. SPZ referred to the community having a basis of simplicity of lifestyle, including shared finances, chastity and obedience; and a further value of self-sufficiency and which led to the Community using the Rectory's garden (with House and his wife) as something of a small holding, and where in return for its use the young men "paid" by providing a pig each to the House family.

58. SPZ was clear that the day-to-day life of the community was directed very closely by House who expected obedience and who was the community's spiritual leader and guide. SPZ himself was working for a doctorate at Exeter University and his grant money was paid into the Community's communal finances.

59. SPZ referred to attendance at daily morning prayer in the Parish Church as being compulsory, and he said there was often attendance by the young men at evening prayer. SPZ's own study and work commitments meant that he did not attend midday weekday

services. He referred to the claimant and SGZ being required to act as servers at weekday communion services at the Parish Church and also at other churches within House's Team Ministry.

60. SPZ stated that the three young men did not take any formal vows but that it had been and was made clear as being the basis of their involvement that there was expectation that they would defer to House completely, and allow him to direct them both spiritually and practically. In consequence, it was expected that House would be able to require them to carry out work including on the Rectory and within the church life of the Parish including the Parish Church's youth group. SPZ emphasised the extent of House's control and which extended to the common financial pool and how the money was used.

61. SPZ was cross-examined on the basis that the SPZ Documents suggested a degree of independence being enjoyed by the members of the Community free from their spiritual director (i.e. House). SPZ agreed that the concept of the Community as described in the SPZ Documents was non-coercive and more of an open Franciscan Friary than a close Benedictine rule; but he said that the SPZ Documents were merely of an early and aspirational nature, and the reality of the Community was a coercive one of three impressionable young men being dominated by House. The young men were beholden to House, who was authoritative and would "micro-manage" their lives and the uses of their time and money, and censure them for any perceived failures (including on one occasion when they slept in and missed an 8am church service. SPZ accepted that there were no formal vows made, that he was not present "under protest", and that he enjoyed and valued elements of the Community's life, but did say that he gradually came to feel that the model was unhealthy for those involved in it.

62. SPZ said that Holcombe Rogus was a small village; and that the fact that the three young men while living in the cottage and receiving direction from the vicar (i.e. House) was well known, if perhaps not universally so, in the locality; and that various members of the PCC and the congregation were very well aware of the Community and what it was doing. He said that House referred to the Community in at least one sermon delivered at the Parish Church, and that the three young men were a regular presence at the services. SPZ himself preached at the Parish Church as well as leading services.

63. SPZ referred to the Newspaper Article, and said that it was factually accurate apart from his reiterating that it was House who set up the Community and who involved the three young men. SPZ referred to the various jobs which the young men carried out in the locality.

64. SPZ was unable to confirm the Claimant's evidence that the Claimant was sexually abused by House. However, he did give evidence that on various occasions he, SPZ, was sexually abused by House, and added that he regarded this as being an extension of a period of "grooming" which House had engaged in starting from at least the time of the Young Communicants. SPZ made clear that he regarded what House had done both as being a perverted distortion of the monastic ideal and concept and as having been grossly abusive of both SPZ and of the Claimant; conclusions which, on the evidence before me, I regard as being self-evident (although I also bear in mind that, although no permission for expert evidence has been granted, SPZ is clearly a person who could express something of an expert view). SPZ too regarded the Church of England as having failed to provide proper support or care.

65. SPZ was not subject to particular challenge in cross-examination. I regard SPZ as an honest witness who sought to assist the Court. His evidence is also supported by that of the Claimant and SVZ, to which I will come, and the contents of the Article (although I have treated those contents insofar as they emanate from House with some care). Subject to some important elements of nuance (to which I will return) regarding the degree of connection between the Parochial Church Council ("the PCC") and, and the degree of knowledge of the PCC of, the Community and the three young men, I accept his evidence.

66. SVZ gave evidence on oath remotely from abroad (although I did not see this as in any way affecting the content or reliability of his evidence). He verified his written witness statement of 18 April 2023. He appeared to me also to be vulnerable, and especially in that he was having to relive times of trauma and sexual abuse by House and others. I took various steps, including the offer of provisions of breaks, to seek to ameliorate the effects of his vulnerability in accordance with Civil Procedure Rules ("CPR") Practice Direction ("PD") 1A.

67. SVZ was older than SPZ (and the Claimant and SGZ). He described how he had come from abroad and been provided with accommodation in the Crediton Parish by House, and had spent much time with him, and had assisted him in running the Young Communicants where he had met the claimant and SGZ.

68. SVZ joined the Sussex Community from 1977 onwards and sometimes went to Devon to visit House, including on a number of occasions going to Holcombe Rogus following House's being appointed vicar in 1976. He recalled going to the cottage and meeting the Claimant. SGZ and SPZ, and discussing their daily life and activities with them. He said he spent about 3 hours each day for a week at the Cottage with them, praying with them and observing their work in the gardens. He said that he remembered the cottage as being small with the result that he would stay in the Rectory rather than there.

69. SVZ said that in his view it was obvious that the activities of the Community were totally integrated with the Christian life of the Parish Church; and that the members of the Parish Church community knew about the Community and that the three young men were each fully involved in the Christian life of the Parish Church, praying daily there and taking part in religious ceremonies there, as well as being involved in the local parish community. He said that he saw the young men at services in the Parish Church, including public services on a Sunday, and observed local people stopping by at the Cottage to talk to the young men when they were out in its garden.

70. SVZ regarded the Community as being monastic; and thought that anyone who had been involved in the selection process whereby House became the Vicar of the Parish would have known of House's interest in monasticism both from House's time at Kelham College and subsequent life.

71. SVZ regarded the life of the Community as being highly structured and directed in accordance with a form of monastic principle (albeit one not known to the Church of England); where the structure, order and direction was being provided by House, and that all the activities they engaged in, whether explicitly religious or not, were part of this. He regarded the thrust of the Newspaper Article as being very accurate.

72. SVZ referred to his having been sexually assaulted by House (and others) from 1978 onwards, and as to House having been convicted of one assault upon him. Although House was acquitted of another assault that was, presumably, with the jury applying the "beyond reasonable doubt" standard of proof while I am concerned only with the "balance of probabilities" standard of proof and the evidence before me.

73. SVZ was not subject to particular challenge in cross-examination. I regard SVZ as an honest witness who sought to assist the Court. His evidence is also supported by that of the Claimant and SPZ, and the contents of the Article (although I have treated those contents insofar as they emanate from House with some care). Subject to the fact that he was often only expressing an opinion (although I also bear in mind that, although no permission for expert evidence has been granted, SPZ is clearly a person who could express something of an expert view in relation to "monastic" matters), and subject to some important elements of nuance (to which I will return) regarding the degree of connection between the PCC and, and the degree of knowledge of the PCC of, the Community and the three young men, I accept his evidence.

The Defendant's Witnesses

74. The PCC advanced evidence from five witnesses.

75. The first was Jean Palfrey who gave evidence on affirmation and verified her witness statement of 28 September 2022. She gave evidence remotely with a poor Internet connection but it seemed to me that I was still able to receive her evidence, and she appeared to be an honest witness.

76. She said that her husband Peter Palfrey, who was now incapacitated, had been a church warden and a member of the PCC for over 40 years including the period while House was the Vicar of the Parish Church and a vicar (she said he ranked second) of the Team Ministry.

77. She said that the Cottage was located half a mile outside of the village. She had no knowledge of the expression "Young Communicants". She remembered the three young men coming to live in the village and that she had understood that they were being mentored by House while they were deciding whether they wished to pursue a future in the church.

78. She recalled the three young men acting as altar servers on occasions of regular services but said that that role was also performed by other members of the congregation and was confined to preparing bread and wine for the services of Holy Communion. She said that in her view what the three young men were doing was nothing to do with the Parish or the PCC, and had not regarded them as being part of "the Parish team".

79. She said that in her view it was for the vicar of the parish to arrange the services conducted in the parish church while the PCC dealt with the organisation and the maintenance of the church building.

80. She recalled there as having been a camping trip to France but she did not know who had instigated it or whether or not it was linked to the PCC. She had helped to organise a jumble sale which was intended to help to fund House's expenditure with regards to

the France trip but which had been boycotted by people in the village as they had considered that this was a personal matter of House's and nothing to do with the Parish.

81. She had not seen the Newspaper Article at the time and did not see the young men as having been particularly involved in the work of the Parish Church, at least in comparison with others who were also involved.

82. Jean Palfrey was not subject to particular challenge in cross-examination. I regard her as an honest witness who sought to assist the Court. Subject to the facts that she was often only expressing an opinion or stating her own views, including as to legal roles, I accept her evidence.

83. The second was Michael Brooke-Webb who gave evidence on affirmation and verified his witness statement of 10 March 2023. He gave evidence remotely and appeared to be an honest witness.

84. He said that he had been treasurer of the PCC from 1978 onwards for a period of 25 years. He stated that when the post of vicar fell vacant, the post would be advertised by the Exeter Diocese in the Church Times newspaper, the applicants deemed suitable by the diocese would be referred to the PCC to interview and choose the one considered best but with the PCC's decision having to be confirmed by the Bishop.

85. He stated his understanding of the responsibilities of the PCC as being for the general administration of the Parish, including such matters as maintenance, repairs and cleaning of the Parish Church; as well as arranging services and rotas for services, liaising with the Vicar, operating the income and expenditure of the Parish Church, and being responsible for its general upkeep and running. He said that the PCC's role was an organisational rather than an operational or spiritual; and accepted that it was more concerned with keeping the church building watertight and paying outgoings. He said that House would chair each PCC meeting in his capacity as Vicar or Team Vicar.

86. He said that each parish within the team ministry would have its own PCC, and that they would contribute from their own funds into a common fund from which they would make payments in relation to diocesan and Church of England expenses but that otherwise the various parishes would not be connected organisationally apart from sharing clergy. He said that House had served as Team Vicar of three parishes, including the Parish, from 1976 onwards while those three parishes were in a team ministry with a further two parishes. He said, as did Jean Palfrey, that there was a Team Rector, one Basil Nelson, who had an overall senior responsibility for all five parishes, and who would have liaised with House as a team (and as House's line manager) regarding the running of the Parish, but who in fact had no active involvement in the Parish.

87. He referred to the Cottage being nearly half a mile away from the Parish Church and to Holcombe Rogus being 20 miles away from Crediton. He said that the "Young Communicants" at Crediton had no connection with Holcombe Rogus or its team ministry.

88. He said that the Cottage and the Community had not been regarded in the locality as being some form of monastic community; and that whatever was done by the three young men, or organised by House with regards to them, was simply done on a private

basis by House and was not sanctioned by the PCC, and that the PCC had very little if any meaningful knowledge of the arrangements and no control over them or House's actions. He assumed that House had had a private arrangement with the owners of the Cottage but only from observing what happened.

89. He accepted that the Claimant did appear reasonably regularly in the Church and acted as an altar server but said that so did other young men in the village and that his role as altar server was nothing to do with the Community. He did say that he had been told that the young men were considering some form of life in the church. He did recall that the Claimant had engaged in babysitting for the Brooke- Webb family, and working in a local school; but said he had no recollection of their being involved in other work or their being some form of religious community. He accepted that the presence of the three young men was run and controlled by House.

90. He had no direct knowledge or recollection of the trip to France (or of other trips organised by House) but had been Parish Treasurer at the time and did not recollect that the PCC made any contribution towards it. No reference was made to it in PCC minutes and he therefore concluded that the trip must have been organised by House in a personal capacity. He had no knowledge of the Sussex community.

91. Mr Brooke Webb said that he had regarded House as being a friend, and had regarded what was happening with regards to the three young men as nothing to do with the PCC which had had no reason to have any involvement with it.

92. When the Newspaper Article was put to him, with its references to the Parish Magazine, he accepted that the Community must have had some organisational structure, although he said that it was not apparent at the time, and that the PCC must have been informed of the existence of the Community. He accepted that but said that the PCC would not have been told any more and would have had nothing to do with the Community.

93. Mr Brooke-Webb accepted that House, as Vicar, ran the religious side of the Parish, and that the PCC would delegate day-to-day matters to House in order to enable him to do so. He said that any monastic community was not for the PCC to deal with, and would simply be a private arrangement of House's in which the PCC would not be interested.

94. Although Mr Brooke-Webb clearly held strong views and, in my view, is in his own mind disparaging of the Claimant's claim and which he views as nothing to do with or to affect the PCC, he was not subject to particular challenge in cross-examination, and I regard him as an honest witness who sought to assist the Court. Subject to the facts that he was often only expressing an opinion or stating his own views, including as to legal roles, I accept his evidence.

95. The witness statement of Ann Rowlands of 24 August 2022 was accepted into evidence under the 1995 Act unchallenged.

96. In the witness statement Ann Rowlands, said that she had lived in Holcombe Rogus for some 70 years and been a regular member of the congregation of the parish church since she moved there. She did not recall any group called "Young Communicants" and said that she had not come across the term "monastic community".

97. She did recall the three young men coming to live at the Cottage and thought that they were undergoing training so that they could join the priesthood. However, that had never been formally announced, and she did not think that it could have anything to do with the PCC or the Parish, but rather that House was simply supporting them with regards to their own possible religious vocations.

98. She referred to two of the young men having ridden motorcycles with her own son. She recalled sending her son on a camping trip to France in about 1980 but could not recall whether any of the young men went on it. She recalled that House was very effective in persuading youth to be involved and engaged with the Parish Church.

99. I bear in mind that to an extent Ann Rowlands was simply stating her own views and opinions.

100. The witness statement of Andrew Beane of 17 April 2023 was accepted into evidence under the 1995 Act unchallenged.

101. In the witness statement, Andrew Beane, the present Archdeacon of Exeter, set out that he had no personal knowledge of the facts or history relating to the case, but did advance various documents and understandings relating to the operation of the Exeter diocese and diocesan records. He further set out his understanding of Church of England structures to which I will revert.

102. He confirmed that Holcombe Rogus was within a united benefice of five parishes from 1976 onwards, and that Crediton was in a different Deanery.

103. He supplied letters confirming that House had been appointed as a Team Vicar of the united benefice which included, and with House having responsibility for, Holcombe Rogus on 1 December 1975, and with House actually moving to the Rectory at the end of June 1976; and that at that point and onwards Basil Nelson, as Team Rector, had most responsibility for overseeing the pastoral work of House as one of the various team vicars. He then referred to House having accepted an appointment within the Diocese of Chichester in 1981 and then leaving Devon.

104. He added that he had been told by the Defendant's solicitors that a file relating to House and, in effect, his personal history whilst working in the Church of England, and which is known as a "Blue File", had been inspected and made no reference to any "monastic community".

105. I bear in mind that Andrew Beane was simply producing documents and stating his own understandings rather than giving direct evidence.

106. The witness statement of Hugh Palfrey of 1 March 2023 was accepted into evidence under the 1995 Act unchallenged.

107. In the witness statement, Hugh Palfrey refers to his having been a member of the Parish Church since he was a teenager. He had been in the Parish Church choir with other teenagers and also an altar server at both the Parish Church and other churches in the united benefice to which House had transported him. He recalled Basil Nelson as being a vicar of one of the other parishes in the united benefice. He said that he was not familiar with the terms "Young Communicants" or "monastic community".

108. He said that at the relevant time when the young men occupied the Cottage he did not live in the village itself and he did not actually recall them. He did recall some 15-16 teenagers attending a camping trip to France and that he had understood that, as not all of them were associated with the PCC, neither was the trip which was something which had been organised by House of his own volition. He did not recall if any of the three young men went on that trip.

The Sexual Assaults

109. The Defendant does not contest, and I think accepts, that the two sexual assaults in 1979 at the Hittisleigh House and 1980/1 at the Wellington Swimming-Pool took place. In any event, I am satisfied that the Claimant has proved that they did occur, and to at least the balance of probabilities standard.

110. I bear in mind that these assaults were serious criminal matters, although the Defendant has chosen not to seek to call House (who was described by some witnesses as being strongly homophobic in his speech and teaching) to (possibly) deny them, and that the Court should be cautious before deciding that such events have actually occurred.

111. However, the evidence before me is overwhelming, albeit that I only have to be satisfied that it is more likely than not that they occurred. The Claimant's evidence is clear and I regard him as an honest and accurate witness whose recollections as to other matters is confirmed by both SPZ and SVZ but also by contemporaneous documentary evidence in the form of the Newspaper Article (and the SVZ Documents). It is also supported by the medical report of Professor Dr John Morgan, consultant psychiatrist, dated 27 May 2019, which is uncontested, and where Professor Morgan recites a history given to him which is entirely consistent with the Claimant's evidence, and where Professor Morgan opines that: the Claimant's recall was detailed and vivid; the Professor is fully cognisant of the potential and circumstances for creation of false memories; and the Claimant's memories are consistent and full, and his memory generally is unimpaired. The Professor regarded the Claimant and his memories as entirely credible.

112. There is further the unchallenged evidence of House having sexually abused both SPZ and SVZ, and of House having been convicted of a contemporary sexual assault on SVZ, and House having been, and having been convicted of being, an abuser (with others) within and without, and before, the Sussex Community (of males). I have borne in mind that House has been acquitted by a criminal court of at least one sexual abuse charge, but bear in mind that the prosecution there would have had to prove the fact of the assault on the basis of the much more stringent ("beyond reasonable doubt") criminal law test rather than the civil ("balance of probabilities") test which I have to apply.

113. I conclude (and I have every reason to believe that the same occurred with regard to both SPZ and SVZ) that House sexually assaulted, without invitation, without consent and without any justification whatsoever, the Claimant (who was in no way whatsoever at any fault at all) on each of the two occasions in and by the circumstances recited by the Claimant in his evidence. Such assaults were each tortious wrongs (and very probably also, although I do not need to decide this, criminal offences) and have caused the Claimant substantial psychiatric and mental damage (and which is fully evidenced by Professor Morgan's report), and it is agreed that an appropriate quantification for such damage is £12,000.

The Defendant

114. The fundamental question, though, in this case is whether the Defendant is vicariously liable for House's wrongs. The fact that the Claimant has not sought (at least as yet) to seek to pursue House (and neither has the Defendant sought to make any Part 20 Claim against House) is neither here nor there to that question. I also make clear that the Defendant is not being sued for some failure to control House or to prevent his wrongdoing, as no such claim (in negligence or otherwise) is being advanced; rather the question is whether the law imposes (vicarious) liability upon the Defendant for House's wrongs.

115. Although of great antiquity (albeit that to some extent it only came into existence in the reigns of Henry VIII and Elizabeth I), the Church of England and its component elements and structure are creatures of statute (in this context usually entitled "Measure(s)"). I accept Andrew Beane's general descriptions of the structure insofar as it is relevant to this case, and having considered it and relevant statutes set out the relevant structure and roles as follows.

116. The Church of England is a member of the wider Anglican communion, but is itself: divided into dioceses, each being overseen by a Bishop; and subdivided into Archdeaconry(ies) (each overseen by an Archdeacon); and further subdivided into Deanery(ies) (each overseen by an Area Dean or a Rural Dean); and further subdivided into Parish(es). The Crediton parish and the Holcombe Rogus parish were both within the Exeter diocese but within different Deaneries.

117. For each Parish there is a Parochial Church Council ("PCC") which is established under the Parochial Church Councils (Powers) Measure 1956 ("the 1956 Measure") and which succeeded (see Article 4) to the powers, duties and liabilities which were previously enjoyed by "the vestry of the parish" and "the churchwardens of the parish", and which has powers to hold property (see Articles 5 and 6).

118. I stress that in this Church of England context, the Parish and the PCC are altogether distinct from "the Parish Council" which is a local government secular statutory body. While there is some historical (and local) relationship between them, I am only concerned with the Church of England, and nothing in this judgment relates to or bears upon the local "Parish Council".

119. Article 3(1) of the 1956 Measure provides that:

"3(1) Every council shall be a body corporate by the name of the parochial church council of the parish for which it is appointed and shall have perpetual succession."

120. Article 2 of the 1956 Measure sets out the functions of the PCC to be exercised with the minister of the Parish as follows:

"**2 General functions of council.**

(1) It shall be the duty of the [incumbent] and the parochial church council to consult together on matters of general concern and importance to the parish.

(2) The functions of parochial church councils shall include—

(a) co-operation with the [incumbent] in promoting in the parish the whole mission of the Church, pastoral, evangelistic, social and ecumenical…"

The word "incumbent" was replaced with the word "minister" in 1983 i.e. after the events with which I am concerned. However, there is no dispute but that House was the "incumbent" of the Parish at the relevant time.

121. Article 7 provides for the PCC to have various particular powers (in addition to the previous powers of the vestry and the churchwardens) as follows:

"**7 Miscellaneous powers of council.**

(1) The council of every parish shall have the following powers in addition to any powers conferred by the Constitution or otherwise by this Measure:—

(i) Power to frame an annual budget of moneys required for the maintenance of the work of the Church in the parish and otherwise and to take such steps as they think necessary for the raising collecting and allocating of such moneys;

(ii) Power to make levy and collect a voluntary church rate for any purpose connected with the affairs of the church including the administrative expenses of the council and the costs of any legal proceedings;

(iii) Power jointly with the minister to appoint and dismiss the parish clerk and sexton or any persons performing or assisting to perform the duties of parish clerk or sexton and to determine their salaries and the conditions of the tenure of their offices or of their employment but subject to the rights of any persons holding the said offices at the appointed day;

(iv) Power jointly with the [incumbent] to determine the objects to which all moneys to be given or collected in church shall be allocated

(v) Power to make representations to the bishop with regard to any matter affecting the welfare of the church in the parish.

(2) The objects referred to in subsection (1)(iv) may be determined either generally or by reference to particular occasions or occasions of a particular class."

122. The PCC comprises elected and ex officio members. The incumbent will be an ex officio member and generally the chair of the PCC.

123. It is possible for Parishes to be grouped together into "(united) Benefices" although the individual parishes remain as distinct entities. In this case, the Parish was grouped into a united benefice of five parishes (not including Crediton) and where each parish had its own incumbent.

124. The (then) "incumbent" (now "minister") of the Parish will occupy an ecclesiastical office which will usually have the title of "Vicar" or "Rector" (these being historic terms). They will be an ordained member of the clergy appointed by whoever (usually some entity associated with the Church of England but this is also historic) has the patronage of the Parish (but very usually in consultation with PCC) but they have to be licensed by the Bishop (who thus has, effectively, a veto over their appointment). The incumbent with the PCC could appoint other ordained members of the clergy to be curate(s) of the Parish to assist and under the direction of the incumbent, and who would also require the licence of the Bishop to be able to officiate.

125. In the particular situation of the Parish, House was the incumbent (with the title of "Vicar") of the Parish and also of two other parishes within the united benefice. Basil Nelson had the title of "Team Rector" and would have been Rector (or Vicar) of at least one of the other parishes but with a general supervisory role over all of them; but where, technically, House was the Vicar and the "incumbent" of the Parish.

126. It is somewhat dubious as to whether the "name" given to the Defendant of "The Vicar, Parochial Church Council and Churchwardens of the Parish Church of Holcombe Rogus" is appropriate. However, that "name" was used on the Claim Form and no different "name" was given on the Acknowledgment of Service filed on 24 January 2022. There was some correspondence regarding this in April and May 2023 and in a letter of 2 May 2023 the Defendant's solicitors referred to elements of the above statutory framework and said that: (i) the words "The Vicar, Parochial Church Council and Churchwardens of the Parish Church of Holcombe Rogus" were what appeared as the identity of "the insured" on the relevant insurance policy; (ii) the offices of "the Vicar" and "the Churchwardens" had no separate legal identities (and where there was obviously no intention to sue the present Vicar or Churchwardens); and (iii) it was accepted that the PCC (as and being a legal entity) was potentially vicariously liable for House (within what I have terms as Stage 1 of the requirements for vicarious liability set out in *BXB* and the other case-law).

127. At the close of legal submissions during the trial, Ms Foster for the Defendant clarified that "the Defendant" is the PCC (as a legal entity) and that they accepted that they "Are liable, potentially for Stage 1 liability purposes, for the Vicar's activities in furthering the work of the Church of England in that parish which are parish-related activities." Ms Foster added that: (i) she accepted that those activities could take place in or outside the parish; but (ii) the activities had to be pursued with the authorisation of the PCC i.e. are pursued in the interests of the Parish rather than the Church of England (or Christianity) generally. Mr O'Donnell for the Claimant said that he did not quarrel with that formulation.

128. The peculiar nature of the Church of England and its structure causes difficulties in the legal analysis of this case, although they are limited in the light of the concession as to

Stage 1 of *BXB* to which I will come further below. However, it does seem to me: (i) that there is a misnomer in the pleaded identity of the Defendant and which should be "The Parochial Church Council of the Parish of Holcombe Rogus" as that it is the technical legal entity which is sued (and where there is no legal entity of either "the Vicar" or "the Churchwardens"; and House is not himself being sued), although this can simply be corrected; (ii) it is important, as is effectively common-ground, to consider what is within the statutory remit of the PCC and in particular what is described in Article 2(1)(a) and is, to an extent, reflected in Ms Foster's agreed formulation (above).

The law of vicarious liability and *BXB*

129. The facts of *BXB* were that the claimant victim ("V") had (with her husband) formed a strong friendship with the wrongdoer ("MS") who was an "elder" in the defendant "Congregation of Jehovah's Witnesses"). Following a morning of V and her husband engaging with MS and his wife in the religious activity of witnessing from door-to-door, they returned to MS's home where, when MS and V were in a room alone together, MS raped V. V sued the defendant "Congregation" for damages contending that the defendant was vicariously liable for MS's wrong.

130. Lord Burrows delivered the judgment of the Supreme Court, holding that vicarious liability did not exist in that case in relation to the particular wrong which had been committed upon V.

131. In paragraphs 1-7, he introduced the concept of vicarious liability, saying at the end of paragraph 4 that:

> "Alongside the redrawing of the boundaries, there has also been a clearer recognition that there are two stages of the inquiry into vicarious liability: stage 1 looks at the relationship between the defendant and the tortfeasor; and stage 2 looks at the connection between that relationship and the commission of the tort by the tortfeasor."

132. At paragraph 24(iii) he referred to aspects of the lower courts judgments regarding Stage 2 as follows saying that those judgments stated that:

> "(iii) the second stage of the vicarious liability inquiry was also satisfied. "The rape was … sufficiently closely connected to Mark Sewell's [MS] … [position as elder] to make it just and reasonable that the defendants be held vicariously liable for it" (para 174). The judge's more precise reasoning (see para 173) included that: (a) Mark Sewell's position as a ministerial servant was an important part of the reason why Mr and Mrs B [V] started to associate with Mark and Mary Sewell; (b) "but for" Mark Sewell's (and Tony Sewell's) position as elder, Mr and Mrs B would probably not have remained friends with Mark Sewell by the time of the rape; (c) the defendants significantly increased the risk that Mark Sewell would sexually abuse Mrs B by creating the conditions (including by Tony Sewell's implied instruction that she continue to act as Mark's confidante) in which the two might be alone together; (d) the rape took place in circumstances closely connected to the carrying out by Mark Sewell and Mrs B of religious duties; and (e) one of the reasons for the rape was Mark Sewell's belief that an act of adultery was necessary to provide scriptural grounds for him to divorce Mary."

133. In paragraph 29 he referred to factors identified by Males LJ in the Court of Appeal which might suggest that the Stage 2 test was not satisfied in the circumstances of the BXB case, saying:

"29. It is important to add that Males LJ had earlier made clear at para 103 that there were significant factors pointing against vicarious liability:

"As the judge acknowledged, Mrs B was an adult married woman who was 29 years old and it was her decision to continue to associate with Mark Sewell despite his unacceptable behaviour. In fact she did have a choice whether to continue to associate with him, although it is fair to say that ending the friendship might have made it difficult for her and her husband to remain as members of the Barry Congregation and would therefore have carried a considerable spiritual cost. Moreover, the rape did not occur while Mark Sewell was performing any religious duty. It is true that, earlier in the day, the two couples had been "pioneering" (evangelising door-to-door), but since then much had happened … It can therefore be said that the rape occurred when the two couples were choosing to be together on an essentially social occasion, albeit one which must have been awkward in view of what had occurred. There is, therefore, at least an argument that by the time of the rape Mark Sewell's status as an elder had somewhat faded into the background. Further, the rape itself did not involve, as the child grooming cases have, any kind of acquiescence by Mrs B because Mark Sewell was an elder. On the contrary, he forced himself on her violently."

He also clarified that, unlike the judge, he was not relying on the factors set out at para 24(iii)(a) and (d) above."

134. In paragraphs 30-47, Lord Burrows considered the development of the law up to the decisions in *Barclays* and *Morrisons*.

135. In paragraph 38 he referred to the speech of Lord Phillips in the *Christian Brothers* case stating:

"38. Throughout his analysis, Lord Phillips referred both to the criteria for satisfying vicarious liability and the policy reasons for the doctrine, and he expressed the view, at para 34, that it was important to consider both. At para 35, he identified five policy reasons (or "incidents" as he referred to them at para 47) explaining the vicarious liability of employers: the deep pockets of the employer, that the activity is being undertaken on behalf of the employer, that the activity is part of the business of the employer, that the employer has created the risk of the tort, and the control of the employer over the employee. In his words at para 35:

"The relationship that gives rise to vicarious liability is in the vast majority of cases that of employer and employee under a contract of employment. The employer will be vicariously liable when the employee commits a tort in the course of his employment. There is no difficulty in identifying a number of policy reasons that usually make it fair, just and reasonable to impose vicarious liability on the employer …: (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."

136. In paragraph 42, he said that:

"42. Lord Reed (with whom Lord Neuberger, Lady Hale, Lord Dyson and Lord Toulson agreed) took his lead from the judgment of Lord Phillips in *Christian Brothers*. Primarily concentrating on the five policy reasons underpinning vicarious liability, articulated by Lord Phillips at para 35 of his judgment (see para 38 above), Lord Reed made clear that the first and fifth of those policy factors (deep pockets and control) were of limited importance and it was rather the other three policy factors that were helpful in understanding the modern rationale for the doctrine. They were that the tort had been committed while acting on behalf of the employer and as part of the employer's business and that the employer had thereby created the risk of the tort. Lord Reed pointed out that those three policy factors are inter-related and together give an underlying rationale for vicarious liability which, going beyond a relationship of employment, he expressed in the following way, at para 24:

"a relationship other than one of employment is in principle capable of giving rise to vicarious liability where harm is wrongfully done by an individual who carries on activities as an integral part of the business activities carried on by a defendant and for its benefit (rather than his activities being entirely attributable to the conduct of a recognisably independent business of his own or of a third party), and where the commission of the wrongful act is a risk created by the defendant by assigning those activities to the individual in question.""

137. In paragraph 47 he said that:

"47. In looking at the justification for vicarious liability, Lord Reed noted that "deterrence" has not been advanced in the English case law as part of the policy behind vicarious liability. Instead, he referred to what has been termed in the academic literature as "enterprise risk" or "enterprise liability" (see, eg, Anthony Gray, Vicarious Liability: Critique and Reform, 1998, chapters 5-6) in the following passage at para 67:

"The most influential idea in modern times has been that it is just that an enterprise which takes the benefit of activities carried on by a person integrated into its organisation should also bear the cost of harm wrongfully caused by that person in the course of those activities.""

138. Lord Burrows then turned to consider the *Barclays* and *Morrisons* decisions, saying in paragraph 48:

"… One may detect behind them an anxiety that the scope of vicarious liability was being widened too far and, in both cases, the Supreme Court reversed the Court of Appeal and held that there was no vicarious liability."

139. In paragraphs 49-52, he considered the *Barclays* decision which dealt with Stage 1, and the need for the relationship between the wrongdoer and the defendant to be one of "employment or akin to employment".

140. In paragraphs 53-57, he considered the *Morrisons* decision which dealt with Stage 2, and where it was held that there was no vicarious liability where an employee had wrongfully released the data of other employees with the aim of damaging the employer. It was held that he motive of the employee was highly material to the Stage 2 question of whether the act was "so closely connected with acts which he was authorised to do that, for the purposes of [the employer's] liability to third parties, it can fairly and properly be regarded as done by him while acting in the ordinary course of his employment."

141. In paragraph 58, he summarised the law as follows:

"58. Having examined the main 21st century decisions on vicarious liability of the highest court, it is now possible to pull together the legal principles applicable to vicarious liability in tort that can be derived from those authorities particularly the most recent cases of *Barclays Bank* and *Morrison*.

(i) There are two stages to consider in determining vicarious liability. Stage 1 is concerned with the relationship between the defendant and the tortfeasor. Stage 2 is concerned with the link between the commission of the tort and that relationship. Both stages must be addressed and satisfied if vicarious liability is to be established.

(ii) The test at stage 1 is whether the relationship between the defendant and the tortfeasor was one of employment or akin to employment. In most cases, there will be no difficulty in applying this test because one is dealing with an employer-employee relationship. But in applying the "akin to employment" aspect of this test, a court needs to consider carefully features of the relationship that are similar to, or different from, a contract of employment. Depending on the facts, relevant features to consider may include: whether the work is being paid for in money or in kind, how integral to the organisation is the work carried out by the tortfeasor, the extent of the defendant's control over the tortfeasor in carrying out the work, whether the work is being carried out for the defendant's benefit or in furtherance of the aims of the organisation, what the situation is with regard to appointment and termination, and whether there is a hierarchy of seniority into which the relevant role fits. It is important to recognise, as made clear in *Barclays Bank*, that the "akin to employment" expansion does not undermine the traditional position that there is no vicarious liability where the tortfeasor is a true independent contractor in relation to the defendant.

(iii) The test at stage 2 (the "close connection" test) is whether the wrongful conduct was so closely connected with acts that the tortfeasor was authorised to do that it can fairly and properly be regarded as done by the tortfeasor while acting in the course of the tortfeasor's employment or quasi-employment. This is the test, subject to two minor adjustments, set out by Lord Nicholls in *Dubai Aluminium*, drawing on *Lister*, and firmly approved in *Morrison*. The first adjustment is that, to be comprehensive, it is necessary to expand the test to include "quasi-employment" as one may be dealing with a situation where the relationship at stage 1 is "akin to employment" rather than employment. The second adjustment is that it is preferable to delete the word "ordinary" before "course of employment" which is superfluous and potentially misleading (eg none of the sexual abuse cases can easily be said to fall within the "ordinary" course of employment) and was presumably included by Lord Nicholls because "in the ordinary course of business" were the words in section 10 of the

Partnership Act 1890. The application of this "close connection" test requires a court to consider carefully on the facts the link between the wrongful conduct and the tortfeasor's authorised activities. That there is a causal connection (ie that the "but for" causation test is satisfied) is not sufficient in itself to satisfy the test. Cases such as *Lister* and *Christian Brothers* show that sexual abuse of a child by someone who is employed or authorised to look after the child will, at least generally, satisfy the test. But, as established by *Morrison*, the carrying out of the wrongful act in pursuance of a personal vendetta against the employer, designed to harm the employer, will mean that this test is not satisfied.

(iv) As made particularly clear by Lady Hale in *Barclays Bank,* drawing on what Lord Hobhouse had said in *Lister*, the tests invoke legal principles that in the vast majority of cases can be applied without considering the underlying policy justification for vicarious liability. The tests are a product of the policy behind vicarious liability and in applying the tests there is no need to turn back continually to examine the underlying policy. This is not to deny that in difficult cases, and in line with what Lord Reed said in *Cox,* having applied the tests to reach a provisional outcome on vicarious liability, it can be a useful final check on the justice of the outcome to stand back and consider whether that outcome is consistent with the underlying policy. What precisely the underlying policy is has been hotly debated over many years by academics and judges alike. See, for example, PS Atiyah, *Vicarious Liability in the Law of Torts* (1967) chapter 2; Jason Neyers, "A Theory of Vicarious Liability" (2005) 43 Alberta Law Review 287; Anthony Gray, *Vicarious Liability: Critique and Reform* (2018); *Vicarious Liability in the Common Law World* (ed Paula Giliker, 2022). As we have seen at para 38 above, Lord Phillips referred to five policies in *Christian Brothers* but, as Lord Reed recognised in *Cox*, a couple of those have little, if any, force. At root the core idea (as reflected in the judgments of Lord Reed in *Cox* and *Armes*: see paras 42 and 47 above) appears to be that the employer or quasi-employer, who is taking the benefit of the activities carried on by a person integrated into its organisation, should bear the cost (or, one might say, should bear the risk) of the wrong committed by that person in the course of those activities.

(v) The same two stages, and the same two tests, apply to cases of sexual abuse as they do to other cases on vicarious liability. Although one can reasonably interpret some judicial comments as supporting special rules for sexual abuse, this was rejected by Lord Reed in *Cox*. The idea that the law still needs tailoring to deal with sexual abuse cases is misleading. The necessary tailoring is already reflected in, and embraced by, the modern tests."

142. In paragraphs 59-69, he concluded both that the named defendant was the appropriate legal entity (with the Jehovah's Witnesses umbrella of entities) to be sued and that the Stage 1 test was satisfied in that the relationship of MS to it was sufficiently "akin to employment".

143. Lord Burrows went on to seek to apply the Stage 2 test to the facts of that case. In paragraphs 70 and 71, he criticised elements of the approach of the judges below as follows:

"70. At the second stage of the inquiry, with respect, a number of errors were made by Chamberlain J some of which were repeated by Nicola Davies LJ and Males LJ.

Neither Chamberlain J nor Nicola Davies LJ set out that the correct "close connection" test was that laid down in *Dubai Aluminium* drawing on *Lister*, as strongly confirmed, subsequent to Chamberlain J's judgment, by Lord Reed in *Morrison*. Moreover, factors (a) to (e) set out in para 24(iii) above should not have been regarded as important by Chamberlain J; and Nicola Davies LJ was wrong to rely on factors (a)(b) and (c) and Males LJ was wrong to rely on factors (b) (c) and (e). These were errors because, for example, the early flowering of the friendship should have had no relevance to vicarious liability except as background; "but for" causation should not have been given the prominence it was given; the role of Tony Sewell was essentially irrelevant except as part of the background because he was not the person who committed the tort; the fact that, before lunch on the day of the rape, Mrs B and Mark Sewell had been on pioneering activities was again essentially irrelevant except as background; and Mark Sewell's distorted view, equating rape and adultery, should have had no significance.

71. Males LJ's judgment correctly recognised (see para 29 above) that there were important factors that pointed against vicarious liability. But he was persuaded to find vicarious liability by some factors that, as I have just explained, were either irrelevant or should not have been given the significance he gave them. Moreover, the test he ultimately applied was not the correct test as confirmed in *Morrison*. While as I have indicated (see para 58(iii) above) some minor adjustment is needed to that test, Males LJ in effect replaced it by a different test when he said, at para 106, "The rape was sufficiently closely connected with Mark Sewell's status as an elder that it may fairly and properly be regarded as an abuse of the authority over Mrs B conferred on him by that status, such that the defendants who had conferred that authority on him should be vicariously liable." The correct test that should have been applied (see para 58(iii) above) was whether the wrongful conduct, the rape, was so closely connected with acts that the tortfeasor, Mark Sewell, was authorised to do, that the rape can fairly and properly be regarded as committed by him while acting in the course of his quasi-employment as an elder."

144. He then went on to apply the Supreme Court's analysis of the Stage 2 test in paragraphs 73-81:

"73. In my view, applying the correct close connection test as set out in para 71 above, the claimant fails to satisfy that test. This is for the following reasons.

74. First, the rape was not committed while Mark Sewell was carrying out any activities as an elder on behalf of the Jehovah's Witnesses. He was at his own home and was not at the time engaged in performing any work connected with his role as an elder. So, eg, he was not conducting a bible class, he was not evangelising or giving pastoral care, he was not on premises of the Jehovah's Witnesses and the incident had nothing to do with any service or worship of the Jehovah Witnesses. The lack of direct connection to the role assigned to him as an elder makes these facts significantly different from the institutional sex abuse cases where, eg, as part of their jobs the warden was on the institutional premises looking after the children in *Lister* or the Brothers were living in the same institution as their victims in *Christian Brothers*. It is also significantly different from the facts of *A v Trustees of the Watchtower Bible and Tract Society* where the sexual abuse of the child by the ministerial servant took place, after a grooming period, during or after book study, on field service, at Kingdom Hall or at a

Convention of Jehovah's Witnesses and all when he was "ostensibly performing his duties as a Jehovah's Witness ministerial servant" (para 90).

75. Secondly, in contrast to the child sexual abuse cases, at the time of the rape, Mark Sewell was not exercising control over Mrs B because of his position as an elder. It was because of her close friendship with Mark Sewell and because she was seeking to provide emotional support to him, and not because Mark Sewell had control over her as an elder, that Mrs B went to the back room. The driving force behind their being together in the room at the time of the rape was their close personal friendship not Mark Sewell's role as an elder. Put another way, the primary reason that the rape took place was not because Mark Sewell was abusing his position as an elder but because he was abusing his position as a close friend of Mrs B when she was trying to help him.

76. Thirdly, James Counsell KC submitted that Mark Sewell never took off his "metaphorical uniform" as an elder. It was put to him by the court that that would mean that there would be vicarious liability even if he committed the tort of negligence, injuring a customer, while carrying on his cleaning business. He accepted that that would not be so and qualified his submission by saying that the metaphorical uniform was never taken off in his dealings with members of Barry Congregation such as Mrs B. But that is also an unrealistic submission. It cannot seriously be suggested that there would be vicarious liability if, for example, Mark Sewell was driving Mr and Mrs B and their children in his own car to the airport for their holidays and Mrs B was injured in an accident caused by his negligent driving. In my view, Mark Sewell was not wearing his metaphorical uniform as an elder at the time the tort was committed.

77. Fourthly, I accept that Mark Sewell's role as an elder was a "but for" cause of Mrs B's continued friendship with Mark Sewell and hence of her being with him in the back room where the rape occurred. However, as we have seen, "but for" causation is insufficient to satisfy the close connection test.

78. Fifthly, I do not accept that what happened in this case was equivalent to the gradual grooming of a child for sexual gratification by a person in authority over that child. James Counsell KC submitted that there was an analogous progression from Mark Sewell's flirty behaviour with Mrs B, including hugs, holding hands and kisses and his confiding in her, through to his suggestion that they should run away together, and leading finally to the rape. In my view, the violent and appalling rape was not an objectively obvious progression from what had gone before but was rather a shocking one-off attack. In any event, the prior events owed more to their close friendship than to his role as an elder.

79. Sixthly, as I have indicated, there is no relevance, except as background, in, for example, the role played by Tony Sewell or the fact that inappropriate kissing on the lips with female members of the congregation when welcoming them was not condemned. One is not talking about vicarious liability for any tort of Tony Sewell and, as regards the latter, one is not talking about liability in the tort of negligence.

80. It will be apparent that I agree with what Males LJ said at para 103 of his judgment (see para 29 above) when he was articulating reasons why it might be thought that stage 2 was not satisfied (before he went on to the factors that convinced him the other way).

81. In my view, therefore, the close connection test is not satisfied. The rape was not so closely connected with acts that Mark Sewell was authorised to do that it can fairly and properly be regarded as committed by him while acting in the course of his quasi-employment as an elder."

145. He then in paragraph 82 applied a "back-check" of considering whether the underlying policy of "enterprise liability" should result in there being vicarious liability in that case, and held that it did not, saying:

"82. As a final check, if I stand back and consider the policy of enterprise liability or risk that may be said to underpin vicarious liability (see paras 42, 47 and 58(iv) above), that consideration of policy confirms that there is no convincing justification for the Jehovah's Witness organisation to bear the cost or risk of the rape committed by Mark Sewell. Clearly the Jehovah's Witness organisation has deeper pockets than Mark Sewell. But that is not a justification for extending vicarious liability beyond its principled boundaries."

146. I note that it was made clear that the principles set out and explained in *BXB* apply to cases of sexual abuse without there being any special rule (see paragraph 58(v). However, notwithstanding the importance given to the wrongdoer's subjective motivations in *Morrisons* (approved in *BXB*), it would seem that the mere fact that the wrongdoer was implementing an illegitimate desire simply to benefit (e.g. by stealing their employer's client's money) or gratify (by way of the sexual abuse) themselves in ways which are (and would have been known by them to be) entirely contrary to what their employer has authorised does not prevent Stage 2 being satisfied. I see there to be a considerable tension in this area, but, if *Morrisons* had had that effect, *BXB* would both itself have been decided on a much more simple basis and have referred to sexual abuse cases in a very different way.

147. *BXB* has now been considered in two subsequent cases. The first was *MXX* where a former pupil of the defendant school was engaged in a work experience placement ("WEP") at the school during which he met the claimant victim; and after the conclusion of the placement he contacted the claimant victim and sexually assaulted her. The Court of Appeal at paragraphs 53-61 set out the previous case-law as to when vicarious liability is imposed including citations from *BXB*. At paragraphs 64-75 it was held that the work experience placement was "akin to employment."

148. However, the Court of Appeal held that the Stage 2 "sufficient connection" test was not satisfied. They referred to what was the *BXB* summation of that test at paragraphs 80 and 81:

"80. The "close connection" test has been clarified in *BXB* as being "whether the wrongful conduct was so closely connected with the acts that the tortfeasor was authorised to do that it can fairly and properly be regarded as done by the tortfeasor while acting in the course of the tortfeasor's employment or quasi-employment" (para 58(iii)). "But for" causation is not sufficient. A close connection is required, for example those placed in a position of authority over a child being responsible for the child's pastoral care and using that position to commit sexual abuse. Sexual abuse cases do not form a special category (para 58(v)). The status of the tortfeasor without more does not satisfy the test of close connection (para 71).

81. The Judge did not have the benefit of the judgment in *BXB* but it is accepted that she correctly identified the close connection test and applied it to the facts of the case using guidance from the authorities."

149. They applied those principles to the facts of that case at paragraphs 85-88:

"85. The Judge's starting point was identified as her finding that the entirety of the wrongdoing occurred many weeks after PXM's relationship with the defendant had ceased [236]. Given the court's conclusion in respect of ground 1, this is no longer applicable. The Judge thereafter considered the position upon the basis that PXM was in a relationship with the defendant that was akin to employment but found his role was extremely limited. He had no caring or pastoral responsibilities in relation to the claimant and he was not placed in a position of authority over the pupils. At [239] the Judge found that it had not been proved that the claimant was influenced even by a perception that PXM had authority or status within the defendant's organisation.

86. The findings and assumptions of this court on grounds 1 to 3 as to the time when the grooming started and the role of PXM during the WEP differ from those of the Judge. It follows that I approach stage two of the vicarious liability test on the basis that grooming commenced when PXM was at the school, and his role at the school was akin to employment.

87. In respect of stage two, I agree with the assessment of the Judge as to the limited nature of PXM's role at the school. He had no caring or pastoral responsibility for the pupils, a factor to which considerable weight is given in previous cases. PXM's access to the claimant at school was limited as he was, or should have been, kept under close supervision at all times. Even allowing for the fact that PXM was to be addressed as if he was a member of staff, he held no position of authority over the pupils in the school. It was not until PXM left the school that any communication took place on Facebook and such communication was specifically prohibited by the school.

88. In my judgment, given the limited nature of PXM's role during the course of one week, the facts do not begin to satisfy the requirements of the close connection test. The grooming which led to the sexual offending was not inextricably woven with the carrying out by PXM of his work during his week at the defendant's school such that it would be fair and just to hold the defendant vicariously liable for the acts of PXM. It follows that ground 4 of the appeal is dismissed."

150. *BXB* was also considered and applied in the Scots (Court of Session appeal court) case of *C&S* (a decision which is, at most, only of persuasive effect as far as I am concerned). There the caretaker (the first defender) of a leisure centre (operated by the second defender employer) sexually abused boys (the reclaimers) for a number of years both before and while he was in employment as the caretaker.

151. The Scots courts found the following facts:

"2. The Lord Ordinary heard evidence from both reclaimers and the first defender. The reclaimers resided with their single mother and two older half-brothers. Their mother knew the first defender, who ran the local garage in the 1970s when they first became acquainted. It was not disputed that his purpose in fostering the friendship was to gain access to the reclaimers with a view to

abusing them sexually. He often visited the family home and brought presents for the children. He ran a boys' football team in which one of the reclaimers was involved. In short, both reclaimers spoke to abuse occurring in the family home, and in the caretaker's house which the first defender had occupied as a condition of his employment with the second defenders. The abuse began in 1979/1980 and continued until about 1985/1986. They both regularly accompanied the first defender to the sports centre, during hours when it was open to the public and otherwise. This would be two or three times a week during school holidays and once a week during term time. They would help him set out equipment, setting up badminton nets and stands; fetching bags of footballs; and so on. The most serious abuse occurred in the caretaker's house. The first defender gave evidence admitting the abuse libelled in the criminal proceedings.

3. The precise dates when the first defender was employed by the second defenders could not be ascertained, but HMRC employment records show that he commenced employment as Head Caretaker in the tax year 1983/84 until July 1987. A job description for the Head Caretaker role from 16 October 1987, noted seven duties: supervision and direction of staff under his control; setting out/dismantling equipment; controlling stock; general security of the building; routine maintenance of equipment, plant and machinery; enforcing adherence by users of the sports centre to its rules; and other duties as defined by his manager. Under the heading "Conditions of Service", the following is noted:

"(1) The post is a residential one and the postholder is required to live in the accommodation provided …
(2) The Head Caretaker is required to deal with emergencies outwith normal opening hours of the Centre."
The Head Caretaker's standard working hours were 8am until 5pm. However, it was noted that hours may vary and "include evening and weekend duties"…

4… "Whilst no finding is made on the precise nature and extent of the abuse perpetrated upon the reclaimers by the first defender, it has been established (i) that the first defender sexually abused the reclaimers in their family home at an address in …, Perthshire and in the caretaker's house at Bell's Sports Centre; and, (ii) that, without prejudice to the ability of the Lord Ordinary to hear evidence regarding the precise nature, frequency and extent of the abuse at any further Proof on the question of causation, quantification and apportionment of damages, the abuse carried out in the caretaker's house was, in general terms, of a more serious nature than that carried out in the family home.""

152. At paragraph 7 it was said:

"7. A distinguishing feature of the present case was that the abuse commenced prior to the first defender's employment. The circumstances of *BXB* v *Trustees of the Barry Congregation of Jehovah's Witnesses* [2023] 2 WLR 953 , relied upon for the reclaimers, were very different."

153. The Court of Session rejected the reclaimer's case on Stage 2, holding:

"18. We do not take issue with any aspect of the submissions in law made for the reclaimers. We accept, of course, the contention that authority over the abused individual is not a "touchstone", of vicarious liability, and that a wrongdoer need not have stood *in loco parentis* in respect of his victims for liability to attach. The circumstances which present themselves are of such infinite variety that there can be no one test, nor one list of factors which will always be relevant. As Lord Nicholls noted in *Dubai Aluminium Co Ltd v Salaam, [2003] 2 AC 336* , para 26:
"This lack of precision [in the test for vicarious liability] is inevitable, given the infinite range of circumstances where the issue arises. The crucial feature or features, either producing or negativing vicarious liability, vary widely from one case or type of case to the next. Essentially the court makes an evaluative judgment in each case, having regard to all the circumstances and, importantly, having regard also to the assistance provided by previous court decisions. In this field the latter form of assistance is particularly valuable."

19. That a factor was present in one case where vicarious liability was established does not mean that the same factor must always be present; that a factor was absent in a case where liability was established does not mean that its presence in another may not be highly relevant to the establishing of liability.

20. However, whether the abuser was in a relative position of authority over the abused, and had been placed so by his employer, may be an important element in assessing vicarious liability. Here the reclaimers were brought into the orbit of the first defender by his effectively being put in the position of babysitter, by their mother. For most of his interactions with the reclaimers he was in reality *in loco parentis;* the situation did not come about because of his employment, the nature of his duties; or his occupation of the caretaker's house. Looking at the evidence in this case in its entirety, we are unable to say that the Lord Ordinary reached the wrong decision. It is clear to us that this is a case where the evidence justified the conclusion that the second stage of the test had not been met. The Lord Ordinary was fully entitled to conclude that the conduct was not so closely connected with authorised acts that it could fairly and properly be regarded as done in the course of the employment. Virtually none of the factors identified in the reclaimers' summary of the law can be identified in the present case.

21. The submissions for the reclaimers hinge on taking a partial and incomplete view of the facts of the case, and in particular the elements which facilitated or enabled the abuse. A critical element of the reclaimers' submissions was that the aspect of his employment which connected his job to the abuse carried out in the house was the contractual requirement obliging him to live in the house for the better performance of his duties. However, that requirement, as part of his contract of employment, and the occurrence there of abuse which may be considered more serious than that which had occurred previously within the home, cannot be assessed in isolation from the whole circumstances in which the first defender came to know the reclaimers; came to be trusted by them, and their mother; came to spend time with them, to have the care of them; and to be able to perpetrate serious abuse against them. The circumstances which made these elements possible all point away from a

conclusion that it would be fair, just and reasonable to attach vicarious liability to the abuse. In fact the circumstances all point to the fact that it was the relationship with the reclaimers' mother through which he came to know the reclaimers; came to be trusted by them, and their mother; came to spend time with them, to have the care of them; and to be able to perpetrate serious abuse against them. We accept that there was a degree of grooming of the reclaimers by the first defender when he was at his place of work, but the "progressive stages of intimacy", that is, the grooming of the reclaimers, had commenced and progressed substantially before the first defender was employed by the second defenders. The first defender did not obtain any authority over the reclaimers by virtue of his role as head caretaker, it all derived from his familiarity and ingratiation with the family. The risk of his sexually abusing the reclaimers was not created, nor significantly enhanced, by what he was authorised to do by the second defenders. Rather the behaviour at the caretaker's house was a progression from the lesser abuse perpetrated in the family home, and a regrettably familiar form of grooming of those who were already within his orbit and sphere of influence. Indeed, the reclaimers gave evidence that they had been groomed by the first defender since the beginning of their relationship with him (e.g. Appendix Bundle, p 28-29 and 81), something which was thus directly attributable to his relationship with their mother. He had no special responsibility towards child users of the sports centre, and any special responsibility he had towards the reclaimers, in particular when they accompanied him there, arose from his relationship with their mother and the fact that she entrusted the reclaimers' care to him when she was working. There was sufficient evidence available to suggest that the reclaimers had been entrusted to his care whenever they attended the caretaker's house or accompanied him around the sports centre. Both reclaimers gave evidence to this effect (e.g. *ibid* , p 47, 54, 62, 70-71, 93 and 114). They were never at the house without their mother's knowledge.

22. In the language used by Lord Burrows in *BXB* (para 78), the more serious sexual abuse was an "objectively obvious progression" from the grooming and less serious abuse which occurred within the family home. We reject the submission that the circumstances were in any way comparable to the evidence in *BXB* about the "flowering" of a friendship which Lord Burrows described as merely background: the circumstances are entirely different. *BXB* involved a single episode of rape on an adult by a friend who was a spiritual leader in the congregation of which they were both members. Unlike the present case, the individual in question had not had the care of his victim in his charge; the incident was a sudden and shocking attack by one friend on another. For these reasons the friendship was only relevant as background. There was no progression from lesser to more serious conduct, and no evidence of "grooming" of the kind which exists in the present case. In *BXB* the court specifically noted that what happened was not equivalent to the gradual grooming of a child for sexual gratification by a person in authority over that child (para 78).

23. In these circumstances the reclaiming motions must fail."

The Parties' Submissions

154. For the Claimant, Mr O'Donnell submitted in essence (although I have taken account of all of his submissions) that:

i) House (by the Article, the parish magazine and in the church services) plainly advertised the fact, existence and nature of the Community to the Parish and thus to the PCC. The PCC thus knew of what House was doing with regard to the Community and did not in any way object to it

ii) The BXB Stage 2 test was satisfied, and including as:

a) The Claimant only joined the Community because House was the Vicar of the Parish

b) Setting up and heading (and by extension dominating) the Community was all part of House's roles as Vicar of the Parish, just as would have been running a church youth group, praying with a parishioner, or even opening, or just being present at, a village fete. It should not be seen as some "frolic of House's own" but rather as being within his "authorised activities". It is for the incumbent of the Parish to decide what should be done within their "operational" role, and the Community so fell

c) House could not have set up the Community had he not been Vicar of the Parish. It was, or at least purported to be, an extension of his work as the incumbent of the Parish, and an apparent carrying forward of the Christian mission within the Parish; and further benefitted the Parish and its church as the young men took active religious and secular parts and roles in both the services and in the parish community. House was effectively "wearing his clergy and Vicar uniform"

d) The nature and operation of the Community was such that it involved a relationship of dominance by House over the Claimant, and dependence (including financial and emotional) by Claimant upon House; this all being of a very different nature to the personal friendship in *BXB*

e) There was a degree of "grooming" in that House had been forming and developing the relationship of dominance from before the Claimant joined the Community, but also while the Claimant was a member of the Community

f) The Claimant went to the Hittisleigh House, being the occasion of the first sexual assault, and to the Swimming-Pool, being the occasion of the second assault, because of his and House's positions and roles in the Community. Such attendances resulted from House's coercive control arising from the existence of the Community and not (as in *BXB*) from any personal friendship. The Claimant would never have attended on either occasion had it not been for his being a member of the Community and House being the Vicar of the Parish. However, while the "but for" requirements of the Stage 2 test are satisfied, these various facts take this case beyond that so that, unlike in *BXB* and the other cases, Stage 2 is satisfied

g) The Hittisleigh House episode was in the context of the Claimant being required to perform physical work on House's property being work expected, or analogous to that expected, in the context of the Community. The Swimming-Pool episode involved the Claimant complying with an instruction from House, as head of the Community, to learn to swim

h) House used his position as Vicar to set up the Community, and to become and remain head of the Community; and his position as head of the Community, to set up situations in which House felt that he could sexually assault the Claimant. Further there was no natural break in the sequence of the events which could be said to involve House ceasing to be acting as Vicar of the Parish

i) There was no separate friendship or other relationship between House and the Claimant which could be regarded, as in *BXB*, of enabling the situation to be one outside of the "akin to employment" situation

j) All this is simply analogous to a vicar running a church youth group and assaulting teenage or other child members of it, and which assaults might take place during youth group activities within or outside the parish or as a result of grooming which had taken place during such activities

iii) The situation was very different from that in *MXX* as (a) House as Vicar had a pastoral role with regard to the Claimant, notwithstanding his being an adult, and especially in the light of the existence of the Community within the Parish, (b) House had a general discretion as to how to perform his role as Vicar and without supervision (c) House's role within the Community was an authoritative one (d) the assaults occurred while House was Vicar of the Parish (e) the assaults were "inextricably woven" (paragraph 88 of that judgment) into both the fact and the activities of House as Vicar. Thus *MXX* indirectly supports there being vicarious liability in this case

iv) The situation was very different from *C&S* where (a) the real grooming and initial assaults had taken place before the employment commenced (b) House had great control over the Claimant's life while he was a member of the Community.

155. The Defendant, by Ms Foster, submitted in essence (although I have taken account of all of her submissions), that:

i) The Community was not, and would not reasonably have been, seen or perceived by the parish or the PCC as being a specific "monastic" or other entity either generally at all or as being one set up and run by House

ii) Whatever role House may have had in facilitating the establishment of the Community, it had become the creation of the three young men, and House's role was peripheral with House only visiting occasionally

iii) In fact House had not been especially controlling or dominating within the Community where House only visited occasionally and the young men each had

their own educational and other interests and activities. The Claimant's recollection is influenced by the abuse, passing of time and his therapy. Further, the Claimant accepted that his theological position at the time was that he owed loyalty to God/Jesus Christ rather than to House

iv) The Community, assuming it to be capable of being viewed as some sort of entity, was not something which the PCC had authorised House to establish or to run, whether or not it was "monastic" in nature. The PCC took no role with regard to the Community, never discussed it, and, indeed, could not have interfered with either it or House's role in it in any way. Insofar as House had established it and had a role in it, such was a personal matter distinct from his role as Vicar. This was similar to House's taking children/youth to France where the PCC had made clear that this was a personal matter for House. These were matters "alongside" rather than "part of" House's duties and work as Vicar

v) The assaults did not take place in the context of any situation in which House was present in his role as Vicar or while carrying out any activity authorised by the PCC. Essentially the Community, and House's dealing with the Claimant in that context, were a private venture on the part of House derived from House's personal relationships, dating from the time of House's being curate of the Crediton Parish, with the three young men

vi) The fact that House was an ordained clergyman is not enough as it is the PCC which is the Defendant, and what happened was outside the ambit of House's "akin to employment" relationship with the PCC. An ordained clergyman may pursue various interests, some of which may be within the Church of England generally, but this case concerns only what sufficiently connected with acts authorised by the PCC. Even if House could be said (which the Defendant would dispute) to have been "wearing his clergy uniform", he was not "wearing his Vicar uniform"

vii) Where the relevant action, here sexual assault, is clearly for the perpetrator's (House's) own benefit and obviously not authorised by the PCC, the connection with what was authorised by the PCC needs to be a genuinely close one; and such was not the case here. That is so notwithstanding that the victim (the Claimant) is to some extent in the thrall of the perpetrator (House)

viii) The situation is not one of "grooming" of habituating a victim to increasingly more abusive behaviour but rather one of unprovoked and unheralded assaults

ix) The young men were not, as far as the PCC were concerned, other than persons who happened to be church members and whom House decided to abuse away from the Parish church and outwith its activities. If some other wrong had occurred e.g. an accident due to negligent driving on the part of House, Stage 2 would not be satisfied, and intentional sexual assault should not be seen as being different

x) The Claimant and the other young men were all adults, and Stage 2 is much more likely to be satisfied in a child victim case where the wrongdoer has been authorised to carry out some sort of caring role

xi) The assaults did not involve House's asserting any authority as Vicar of the Parish. Even if they had, that would not have been of importance as (a) the question is whether what occurred was within what the PCC had authorised expressly or impliedly, and (b) a similar contention was rejected in *BXB*. I do not think that point (b) is correct; as what was rejected in *BXB* (see paragraphs 29(iii)(e) and 70) was a contention only regarding the relevance of the wrongdoer's own mind-set (however distorted) as to their own justification (as opposed to their motivation) for the assault and wrongful conduct

xii) The locations of the two assaults were outside the Parish and had nothing to do with the Parish or its church, or the PCC or its mission. While, as in *Mohamud*, Stage 2 can be satisfied where the wrongdoer has carried over their authorised activity into another location (there by way of pursuit from a petrol station to the public highway), the situation here is too remote

xiii) It would not be "fair, just and reasonable" to impose vicarious liability upon the PCC in these circumstances. This was particularly so where the relevant actions would not have been of benefit to the PCC (see *BXB* at paragraph 58(iv)). The Court should not be influenced by a desire to have the Claimant compensated for what was House's personal wrongdoing

xiv) While this was a "but for" situation in that the particular assaults were enabled to take place because House was the Vicar of the Parish, that was not sufficient in *MXX* as it was likewise not sufficient in *BXB*. The Court must concentrate on what was actually authorised by the entity sought to be made vicariously liable and the degree of connection between the wrongs and the authorised activities. The Court of Appeal were right in *MXX* to rely upon the fact that there, as here, any grooming and the assaults was not "inextricably woven" (paragraph 88 of that judgment) with the carrying out of House's authorised activities

xv) *C&S* is also an example of a situation where, as here, "grooming", or something equivalent, had commenced before the relevant employment; and the facts that it continued during that employment and that abuse took place at premises required to be occupied by the wrongdoer for the purposes of that employment, and which were stronger facts than this case, were not sufficient for Stage 2.

<u>Discussion</u>

<u>Introduction</u>

156. I have reminded myself that each case must depend upon its own facts. While *BXB* sets out the principles, it, and *MXX* and *C&S*, each concerned only a particular set of facts. While the application of the principles to each set of facts by the relevant court is of considerable potential value in seeking to clarify both the principles themselves and as to how they should, or might, be applied (which is essentially an extension of the principles), each case is potentially distinguishable from these situations by reason of the differences in fact.

157. I have further reminded myself that I am only considering the actual factual situations before me and not any other factual situation. While other hypothetical factual

scenarios are useful for the purposes of testing what are the appropriate ways to apply the principles, my essential task is to apply the correct principles rather than to seek to state or resolve what might be the outcomes in other factual situations.

The Law

158. In terms of the law, it seems to me that *BXB* makes clear the essential approach:

i) The essential question ("the Essential Question") is whether "the wrongful conduct [here the two sexual assaults, although I have to consider them individually] was so closely connected with acts that the tortfeasor [here House] was authorised to do that it can fairly and properly be regarded as done by the tortfeasor while acting in the course of the tortfeasor's quasi-employment" – see *BXB @ paragraph 58(iii)*

ii) In answering the Essential Question:

a) The court must "consider carefully on the facts the link between the wrongful conduct and the tortfeasor's [House's] authorised activities." – see *BXB @ paragraphs 58(iii) and 71 and then 73-81*

b) "That there is a causal connection (i.e. that the "but for" causation test is satisfied) is not sufficient in itself to satisfy the test." - *BXB @ paragraphs 58(iii), 70 and 77*

iii) There is something of a final check to be applied as to whether a particular judicial outcome is consistent with an underlying policy of the common-law that "the quasi-employer [the Defendant], who is taking the benefit of the activities carried on by a person [House] integrated into the organisation, should bear the cost (or… the risk) of the wrong committed by that person in the course of those activities" *BXB @ paragraphs 58(iv) and 82*.

159. *BXB* also makes clear that the personal motivation of the tortfeasor [House] is relevant, and can mean in some circumstances (e.g. the facts of *Morrisons*) that there is no sufficient close connection. However, the fact that the motivation is subjective sexual gratification does not prevent vicarious liability for sexual abuse of a child; at least when the employment or authorisation extends to the looking after of that child. On the other hand, there are no special rules for sexual abuse cases - *BXB @ paragraphs 58(iii) and (v).*

160. There is some tension here between the concept that subjective motivation is relevant and the Essential Question being dependent upon the link between the wrongful conduct and the authorised activities where the situation of the sexual abuser of a child (and, I think, but do not have to decide, of the employee who fraudulently persuades a client of a firm to send them money so that they can steal it) can give rise to vicarious liability, albeit that in *Morrisons* the vengeful release of data held by the employer did not. It may be that any principle established by *Morrisons* is to be confined to a motivation of desire to harm the employer, although I do not need to decide whether or not that is correct. However, it does seem to me that a key to the approach is asking

what were the "authorised" activities, and that that assists in determining the closeness of the links to and connections with the wrongful conduct for the purposes of the Essential Question. That is, effectively, what is said in *BXB @ paragraph 58(iii)* in the words "sexual abuse of a child *by someone who is employed or authorised to look after the child* [my emphasis] …" and developed to an extent @ *paragraphs 74 and onwards*.

161. *BXB* is also useful in that it stresses, amongst other things that:

i) facts which form part of the background are likely to go no further than that – see @ *paragraphs 70 and 79*. However, past facts can form part of a progressive history which brings them into the foreground as with "grooming" of the victim – see @ *paragraph 78*

ii) There is a need to consider what were the "authorised activities". There is a distinction and contrast between "the authorised activities" and matters such as the status of the wrongdoer within the organisation, which status might give the opportunity for wrongful conduct but which status is only a factor in considering what were the "authorised activities" and the link between them and the wrongful conduct – see @ *paragraph 71*. However, the status may itself assist in determining what were the "authorised activities" e.g. in the case of a Jehovah's Witnesses' elder (or Anglican Vicar) the status might involve them (a) carrying out various activities such as pastoral care (b) commanding respect and (c) exercising (at least spiritual) direction, oversight and (even) discipline over members of the congregation. The status might also assist in showing how acts within the "authorised activities" have indirectly formed part of the wrongful conduct e.g. status may have facilitated a course of "grooming" leading to acquiescence by the victim in their abuse to which they would otherwise have objected – see e.g. the final sentence of Males LJ's reasoning @ *paragraph 28*

iii) There is a need to consider the context of the wrongful conduct and the degree of the connection of that context with the authorised activities – see @ *paragraph 74* (the nature of the factual situation) and @ *paragraphs 74 and 75* (the nature of the role being taken by the wrongdoer within that factual situation)

iv) It can be useful to ask whether the wrongdoer was "wearing his metaphorical uniform" (being that belonging the quasi-employment) when committing the wrongful conduct – see @ *paragraph 76*.

162. *BXB* concludes that on the facts of that case, a single violent and unprovoked assault from a wrongdoer who both was and was acting in the context of their being a personal friend of the victim, at a time and in a place unconnected with any "authorised activity" or of their being a Jehovah's Witnesses elder in the congregation of which that victim was member, was not wrongful conduct which would attract vicarious liability because the necessary "close connection" did not exist between that wrongful conduct and the "authorised activities" so as to lead to the Essential Question being answered in the affirmative. Those facts also did not satisfy the underlying policy in view of the distinctions between what had occurred and the activities which that quasi-employer had authorised.

163. However, *BXB* is on its facts something of a strong case close to one end of a spectrum. It was a case where the wrongdoer's role in the quasi-employer's organisation was almost altogether peripheral to the wrongful conduct, and that was so even though the necessary (but insufficient) "but for" test was held to have been satisfied. I have to bear in mind that the Supreme Court's list of matters @ *paragraphs 73-80* are cumulative in coming to the negative answer to the Essential Question @ *paragraph 81*, with none of them being identified as being determinative, and that a holistic approach of considering all the relevant facts in answering the Essential Question is required in this, as in any other, case.

164. I consider that *MXX* simply applies the *BXB* approach of asking the Essential Question in the terms which I have set out above rather than adding to it. Its facts are clearly distinguishable for those before me as there the abuse occurred some time after the cessation of the quasi-employment and where the wrongdoer had not been in any real position of authority. However, I do note that @ *paragraph 88* it was held that the grooming which led to the sexual abuse "was not inextricably woven with the carrying out" of the authorised activities, and that that was said to be the (or at least a) reason why it would not be fair and just to impose vicarious liability upon the quasi-employer. It is somewhat dangerous to extrapolate from that negative a concomitant positive principle that vicarious liability should be imposed where the purported carrying out of the authorised activity had involved "grooming" as a precursor to sexual abuse, but it does give some support to such a contention. In my view such a factual situation, should it exist, would be potentially distinctly material to answering the Essential Question as it might well suggest a necessary "close connection" between the wrongful conduct and the authorised activities even if the history giving rise to that connection was somewhat strung out.

165. I see the *C&S* decision, which being a Scots case can only be persuasive at most, as adding little to the *BXB* decision for the purposes of this case. There the abuse had commenced prior to the employment in the context of a personal relationship between the wrongdoer and the victim's family, and where it was held (see @ *paragraph 21*) that the risk of further abuse was not affected by the "authorised activities" which did not involve any care of or responsibility for the victims. That, it seems to me, led the Court of Session to answer the Essential Question in the negative.

166. At first sight, the conclusion reached in *BXB* to dismiss the *BXB* claim, where that wrongful conduct arose from and in the context of a personal relationship, would seem to be highly supportive of the decision to reject the *C&*S claim. However, I do find *paragraph 22* of the Court of Session's judgment slightly puzzling. The Court of Session were clearly correct to say that *BXB* was a weaker case in some ways because it involved a single attack on an adult rather than a grooming of a child; in my view because each of those matters tended to point to an absence of connection with the relevant authorised activities. However, I am unclear why the Court of Session saw it as necessary to so forcefully reject any comparison with *BXB* when the underlying principled approach and answer seem to me to have been similar in each case, and to have been based upon the wrongful conduct emanating from a personal relationship separate from the authorised activities. Nevertheless, that was a matter for them, and it does not seem to have affected their eventual decision and outcome.

167. On the other hand, *C&S* is an example of a case where the mere fact that there had been grooming of children was insufficient to establish the close connection with the authorised activities which can lead to a positive answer to the Essential Question.

Disputed Facts

168. There are few disputes of fact in this case, and I have made clear above that I generally accept the evidence of all those who have given oral or written witness statement evidence. However, there are two particular areas of fact which have been to some extent in dispute, and where I have considered all the evidence (and submissions) holistically in accordance with the principles and approaches which I have set out above, and which I consider have been proved as "more likely than not" on the balance of probabilities.

169. First, I find that the existence of the Community, and of House's involvement with it was never brought by House before and never considered by the PCC let alone expressly authorised by the PCC. I accept the witness evidence that that did not occur and which is supported by the various minutes of the PCC which have been placed before me.

170. On the other hand, I regard the evidence of the Claimant's witnesses, the documents in the form of the Article and its references to what House had written in the parish magazine, and the inherent probabilities (arising from the existence of the Community and the widespread activities of the three young men), as proving that both the existence of the Community and of House's having some role in connection with it was well known within the parish and to at least some members of the PCC.

171. Second, I find that House did have and exert a highly controlling and directing role in relation to the activities of the three young men, and so that they were likely to obey any express direction from House, and that this was particularly the case in relation to the Claimant. I regard this as proved by the evidence of the Claimant and the other witnesses called by him, as well as inherently likely from: (a) the evidence as to the charisma of House and of his dominant and domineering personality, (b) the spartan conditions of the Community which would tend to induce a regimented and severe regime, (c) the discouragement of financial independence and independent decision-making by House, (d) the discouragement of girl-friends by House, and (e) the relatively young ages and limited experience of the young men when balanced against the age, experience and seniority within the Anglican Church of House; and all of which would tend to induce habits and a culture of obedience to House. It further seems to me that the Claimant's personal situations of seeking to recover his education after his A-Level failures, and his relative youth and obedience, would have exacerbated this as far as he was concerned, and rendered him all the more vulnerable to exploitation by House.

172. I have taken into account the following points (but which I do not see as outweighing the foregoing or justifying a different factual conclusion):

i) The fact that the three young men had freedom to engage in educational activities and some real choice as to their income earning activities. However, these were all, and especially the latter, to some degree controlled, and in any event, authorised by House

ii) Ms Foster's point that the Claimant, at that point, and also the other young men, regarded themselves as serving God/Jesus Christ rather than House. However, that does not prevent them, and in particular the Claimant, being dominated by and being subservient to House. There are many (perhaps even countless) examples within the history of the (actual or purported) Christian faith (and I suspect in other faith cultures) of individuals regarding their perceived call and duty to serve God as involving, as a matter of practical reality, a duty to subordinate themselves to the rule and direction of others (and where, as here in the case of House, those others have encouraged, and indeed, required that mindset). Such circumstances do not necessarily lead to abuse in themselves, although some might characterise them as abusive simply in their nature, but they are circumstances which readily lend themselves to abuse by wrongdoers exerting a position and role of dominance.

173. In my judgment, House exerted a very considerable dominance and control over the Claimant and the others in the Community, albeit not such as resulted in the Claimant resisting and objecting to the two sexual assaults which occurred during this period (but which dominance and control is likely to have contributed to the Claimant not seeking to report them to the police or other authority (although that is not to say that any particular authority would have taken any particular step had such a report(s) been made) at that time.

174. Third, and although I do not think that this was really in dispute, I do see it as clear that the Community only came into existence and operated because House was the Vicar of the Parish. It was House who was the driving force behind the creation of the Community and he was able to obtain the Cottage (which was necessary for the Community to exist) for its use, and to arrange many of the activities of the young men (including their farming at the Rectory, their attending their own services at the church, and various of the external activities) because he was the Vicar (and occupied the Rectory and had the connections, in that role, to arrange their assisting in schools etc.).

<u>The Authorised Activities</u>

175. In order to answer the Essential Question, it is necessary for me to return to my consideration of what were the "authorised activities" of House's admitted quasi-employment by the Defendant.

176. I have to bear in mind that this Claim is brought against the Defendant and not against "the Church of England" in some general sense. That must follow from the particular organisation of the Church of England and which organisation, as I have set out above, is itself a creature of statute.

177. It is perfectly possible for ordained clergy of the Church of England, even for those who hold some position within a Parish (which may be stipendiary (paid) or not), to carry on all of some of (i) activities within a quasi-employment by a PCC within a Parish, (ii) activities which have nothing to do with the Church of England at all but are wholly secular (for example, a cleaning business or driving a personal friend to an airport as considered in *BXB @ paragraph 76*), and (iii) activities which may be related to their being ordained but have nothing to do with their post within the particular Parish e.g. their spending holiday carrying on a missionary or caring activity in a different area which activity and area have no connection with the Parish. I do not have to (and do

not) decide this, but it may very well be that, even though they have used their ordained status (and possibly their position in the Parish) to justify their carrying on of a section (iii) activity, if they commit a wrong, such as a sexual assault, as part of that activity, no vicarious liability will exist because there is simply no relevant quasi-employment and no relevant quasi-employer. However, that would be a consequence of what is a combination of the statutory scheme and the common-law of vicarious liability. This case, however, is more complex and including because of the location of the Community within and its asserted connections to the Parish, and the role of House as Vicar of the Parish.

178. It seems to me that there are various classes of "authorised activities" within the quasi-employment by the Defendant of House as Vicar of the Parish. These would include those activities which were expressly authorised by a resolution (formal or informal) of the PCC but also those which were impliedly authorised by the PCC (and to which concept I return below).

179. However, it seems to me that the parties are correct to agree that there is also a general range of "authorised activities" which arise from the 1956 Measure (in particular its Article 2(2)(a)), from the position of Vicar within the Parish and the local community, and the fact that it is the Vicar who has operational responsibility for the work of the Church of England within the Parish. That range of "authorised activities" does not require any express or implied authorisation from the PCC; rather it flows from the statutory organisation of the Church of England, within its factual and historical context, which provides, in effect, for the different roles of the incumbent minister (i.e. the Vicar, House) and the PCC with respect to the Parish.

180. As stated above, the parties agree that that general range of "authorised activities" is accurately summed up as activities "furthering the work of the Church of England in that parish which are parish-related activities". I think that they are right to adopt that formulation. The work has to be, or at least to purport to be, that of the Church of England (as that is essential to the general nature of the quasi-employment) and to be that parish-related (as that is essential to the Defendant and the nature of the quasi-employment by it and the words "in that parish" appear in Article 2(2)(a); even though it is possible for a PCC to support activities external to the geographical parish e.g. missionary work or churches elsewhere, but its doing so would require some specific resolution and authorisation).

181. Mr O'Donnell contends, in effect, that the establishment of and the role of House within the Community fell very much within the range of "authorised activities" in one of two main ways.

182. First, because it was part of the general range as the work of the Church of England within the Parish included promoting the Christian gospel, faith and mission generally, and the Community was directed towards that, and including by: enabling the young men to live out their lives as Christians and to explore their own faith and callings; having the young men hold and engage in services in the church; and providing the young men to carry out external activities which could be seen as part of general Christian mission.

183. While there is some force in this, I need to balance against it the facts that: the Community had no existence as such within the Church of England; the Community

had no connection with the PCC or the Parish apart from through House and its location; the young men were brought in by House from outside the Parish; the young men had no special roles or positions within the Parish or its church (their being altar-servers and SPZ a very occasional preacher seem to me to incidental as being activities which any member of the congregation might engage in on occasion); and the Community was set up and operated so that it was exclusive to the young men, visitors and House rather than being "opened-up" to the Parish and the members of the church.

184. I do not see the establishment (or the running) of something of the nature of the Community as something which would normally be expected to be an ordinary activity of the Vicar of the Parish. In my judgment, the Vicar would be expected to be directing their mission to the people of the Parish and the operating of its church rather than bringing others from outside the Parish into it to form a self-contained Community within the Parish, and whether or not that might provide incidental benefits of a manpower, Christian or religious nature to the Parish and/or its church. I therefore do not see the establishment (or the running) of the Community as having been with the general range of "authorised activities" of House as Vicar of the Parish.

185. On the other hand, once House had set up the Community and the young men had become part of it, they were inhabitants of the Parish and members of its church, and House, as Vicar, would ordinarily be expected to afford them Christian teaching (and hence religious instruction) and pastoral care as he would any other parishioner (or at least one who was a church attender as the young men appear to me to have been in view of their attending services etc. although I heard no evidence as to whether or not they joined the Parish's Electoral Roll (which would have enabled them to vote in the Parish's elections and has something of a membership nature)).

186. Second, Mr O'Donnell would submit that the PCC had impliedly authorised House to establish and take a role regarding the Community (I have already held above on the facts that there was no express authorisation). He can point to the knowledge (see above) which the PCC had of this and that, while they did not (see above) expressly assent to it, they raised no objection to it.

187. However, I do not see this as a situation of implied authorisation by the PCC of what House was doing with regard to the Community. The mere fact of knowledge and silence, would not, in my judgment, be sufficient acquiescence to "cross the line" (see, in the context of estoppel, such cases as *K.Lokumal v Lotte Shipping ("The August Leonhardt") [1985] 2 Lloyd's Rep 28, 35*) into implied authorisation. Unless the amount of time spent by House, or the activities which he permitted and encouraged the Community to engage in, were such as to interfere with the general range of his "authorised activities" such that the PCC would be expected to object if it did not consent, and neither of which I see on the evidence to have been the case here, I do not see this as a situation of implied authorisation of House by the PCC to take these steps so as to render them part of the "authorised activities" of the quasi-employment. That is all the more so where the PCC had made clear (in the context of the French trip) that House should not just assume that any activity which could be said to be of a religious nature (here a foreign trip involving the church youth which might have been expected to involve some religious aspects and pastoral care or "team-building") he engaged in should be regarded as being authorised by the PCC (even though, which I do not decide, it might be said to be within the general range of "authorised activities"). Further the PCC did not seek, have, give, obtain or sanction any supervisory, financial or

administrative role or support of or for the Community. For the same reasons I do not think that this is a case in which the PCC, even impliedly, in any way "adopted" the Community as part of the Parish or the Parish Church's activities.

188. It seems to me, therefore, that (i) the Community was effectively separate from the PCC and the Parish and the Parish Church, although (ii) it happened to be located within the Parish, and that "happening" arose from House being the Vicar of the Parish because that facilitated, and indeed enabled, House's making the private arrangement regarding the Cottage, House's presence and various of the Community's (i.e. the three young men's) activities. I do not see House's setting up of or House's role in and with regard to the Community as being within activities "furthering the work of the Church of England in that parish which are parish-related activities" (using Ms Foster's agreed formulation) or Article 2(2)(a) of the 1956 Measure and its words "in that parish" so as to be within the general range of "authorised activities", or as having been either expressly or impliedly authorised or adopted by the PCC. I do, though, bear in mind that the three young men, and in particular the Claimant, were resident within the Parish and attending the Parish Church, and I refer to that further below.

189. I therefore do not see the establishment (and running) of the Community as being within the "authorised activities" of the quasi-employment by the Defendant of House. However, I do see that "pastoral care" and "religious instruction", depending upon what they involved, could potentially come within such "authorised activities".

<u>The Essential Question</u>

190. I return to the Essential Question, in relation to each of the two sexual assaults, of whether "the wrongful conduct was so closely connected with acts that House was authorised to do that it can fairly and properly be regarded as done by House while acting in the course of House's quasi-employment".

191. It seems to me that the Claimant's strongest argument (although I have taken all his arguments into account and refer to various below) is that the assaults can be said to have taken place within the context of the Community concept (i.e. when the Claimant was present at the Hittisleigh House to do physical labour which was, or was seen to be, within the Community concept of working; and when the Claimant was at the Swimming-Pool in the context of learning to swim under House's direction which might, just, be seen to be within the Community concept); and where such matters might be said to be extensions of but within concepts of "pastoral care" and "religious instruction."

192. It can be said that those events were somewhat analogous to some of the situations mentioned as not being the case in *BXB @ paragraph 74* "… conducting a bible class… evangelising or giving pastoral care…" even if not ostensibly directly religious (and which pastoral care, at least, may not always be).

193. However, those situations are only mentioned in *BXB* as being distinguished from the situation in *BXB* itself. The Supreme Court do not say that vicarious liability would necessarily exist from an assault upon an adult in such a context, although I can see how it might well do so; for example, if the wrongdoer was to have used their role and status to assert during a bible study or course of religious instruction that the bible required or advised the victim to engage in or submit to sexual conduct with or from

the wrongdoer, and the victim allowed a wrongful sexual assault or abusive conduct to occur as a result. That and other circumstances mentioned by in *paragraph 74 of BXB* might be classic situations of "grooming", although it may be that even a simple unprovoked assault taking place in such a context would be enough for there to be vicarious liability. However, I do not need to, and I do not decide, whether vicarious liability would exist in any of those situations, as I am only concerned with the facts of his case.

194. More importantly, the index events are only *somewhat* analogous to those situations. The Essential Question remains as to the degree and nature of connection between the wrongful acts and the authorised activities.

195. I have come to the conclusion that each of the wrongful acts (i.e. each of the two sexual assaults) were not so closely connected with the authorised activities of House in his quasi-employment by the Defendant as Vicar of the Parish to be fairly and properly regarded as having been done in the course of that quasi-employment, and therefore that the Essential Question has to be answered in the negative. I have taken account of all the evidence and submissions, and have considered all the evidence and points holistically, but analyse and weigh the various elements as follows.

196. First, the two assaults took place well away from and in locations which were well outside the Parish, and not on any Parish premises (not even at the Rectory) or its church. That as regarded in *paragraph 74 of BXB* as material. I recognise that location does not have the status of being any sort of rule; and especially, as stated in *paragraph 74 of BXB*, because either the location, even if outside the usual geographical ambit of the authorised activities may fall within that appropriate to an authorised activity (such as a field trip), or the wrongful conduct and its location may be the progression or consequence of a series of events which do fall within "authorised activities" (e.g. where a victim has been "groomed" within a church setting and then taken elsewhere to be subjected to sexual assault). However, location is a relevant factor pointing towards a negative answer to the Essential Question, and I give it some weight.

197. Second, the two assaults did not take place during any occasion which could be seen ostensibly to be a "church or Parish occasion" or a "church or Parish activity". The occasions were altogether distinct from both the Parish and its church, and were not even ostensibly religious in nature. I accept that vicarious liability might exist in the context of non-ostensibly-religious activities (e.g. a Parish picnic) although I reach no decisions as to what would be the position in relation to any specific occasion. However, I regard this as a factor of importance and weight, and note that something similar was expressed in the Males LJ reasoning for rejecting vicarious liability in *BXB* which the Supreme Court adopted in *paragraphs 29 and 80* of that judgment.

198. Third, I do not see House as metaphorically having worn "his uniform as" Vicar of the Parish in the contexts of the occasions of these two assaults (see *paragraph 76 of BXB*). He was, in my view, wearing a "uniform" as effective director of the Community, but, in the light of my analysis above, I see his being the Vicar of the Parish as only the occasion for him to be able to become the director of the Community, and I do not see his being the director of the Community as part of his role or within his "authorised activities" as the Vicar of the Parish. I see this as a factor of weight.

199. In the circumstances of the above matters, I see there as having been an absence of a direct connection of the wrongful acts, or their circumstances, with House's role as Vicar of the Parish – and where the equivalent point was seen as important in *paragraph 74 of BXB*. I see this as an overall factor of weight.

200. Fourth, although I can see that House's conduct involved "grooming" in one sense, in terms of habituating the Claimant to comply with his, House's, directions and dominance, I do not see this much as a "relevant grooming" case; and where my analysis is as follows:

   i) The "grooming" began prior to the Community and the coming of either the Claimant or House to the Parish. To that extent this case is similar to *C&S* where the equivalent was regarded as being a factor against there being vicarious liability; although I see the key points against vicarious liability in *C&S* as being that the sexual abuse, and the occasions for it, arose from the personal relationship between that wrongdoer and the victim's family and not from the authorised activities of that wrongdoer's employment. I do not actually think that this timing point has much direct importance, as any "grooming" continued during the period of and within the Community. However, this again draws attention to the fact that the history of House's connection with the Claimant, both before and during the period of the Community, does suggest, although only to a degree, that the true relationship between them was never that of "Vicar of the Parish (i.e. Holcombe Rogus Parish)" and church member/parish resident but always something else

   ii) The sexual assaults were unprovoked, uninvited and unconsented- to serious assaults. They were not situations where a process of "grooming" led the victim (adult or child) to allow the wrongdoer to sexually assault them or even to engage apparently (but not actually as (a) there would be no genuine consent (and a child could not consent) and (b) the circumstances would render it abusive in any event) consensual sexual activity. Rather the Claimant immediately objected to each assault; each of which was a single "shocking attack" (although the second assault was not a "one-off") just as was the case in *BXB* where that being the nature of the relevant assault was seen as significant in *paragraph 78* as part of the reasons for rejection of vicarious liability

   iii) As against the above, I have borne in mind that the process of "grooming" can (a) involve the victim becoming accustomed to and accepting of being assaulted and so that they become vulnerable to future assaults, and/or (b) result in their not complaining and/or (whether or not they do complain) their not leaving the area of presence and influence of the groomer wrongdoer even once an assault, or a series of assaults, has taken place. It may be that the claimant ended up falling into at least such situation (b) (so that he did not leave after the first assault, and also was later to go on to the Sussex Community). However, the claim has not been put before me on either of those bases, and which would only be relevant (if at all) to the second assault, and, in any event, I do not see any "grooming" as really being by House in his role as Vicar of the Parish or as taking place within what were the "authorised activities" of the quasi-employment

iv) Therefore, insofar as this history involved "grooming", I do not regard it as having very much relevance. However, I do see it as having some for the reasons given above, and the majority of which are somewhat against the Claimant's case, even though some could be seen to an extent so as to favour the Claimant's case. I only give it limited weight (and would have come to the same overall conclusion without it).

201. Fifth, the Claimant was an adult when the sexual assaults took place and not a child. I do not regard this as directly relevant because an adult can be "groomed" and/or assaulted in a church context just as can be a child, and the Claimant's history rendered him vulnerable. However, it is somewhat indirectly relevant as this is not a situation of an "authorised activity" of House (as Vicar) of looking after a child (as in some of the cases referred to and in the analysis set out in *paragraph 74 of BXB*). On the other hand, I have to and do balance against that the fact that in both pastoral care and religious instruction contexts there can well said to be a degree of "looking after" an adult. Nevertheless, where I see what occurred as being linked to House's role within the Community (and the historic acquaintance) rather than "Parish" pastoral care or religious instruction, this is a factor against answering the Essential Question in the affirmative albeit I only give it limited weight (and would come to the same overall conclusion without it).

202. Sixth, I see House's dominance over the Claimant so that he could persuade the Claimant to come to and stay at the Hittisleigh House and come to the Swimming-Pool as being derived from a mixture of (to a limited extent) their historic personal acquaintance (which predated House becoming Vicar of the Parish, and which did not relate to the Parish but rather to the Crediton history) and (but much more so) House's role as director of the Community, rather than from House's being Vicar of the Parish. Neither invitation had, in my judgment, any real direct connection with House's being the Vicar of the Parish but everything to do with those other aspects, and which take what occurred outside the sphere of the relevant "authorised activities" of House's quasi-employment by the Defendant. Although this was a relationship of dominance, rather than true friendship, it does seem to me that what occurred was analogous to the facts of *BXB* as discussed in *paragraph 75* of that judgment. House abused the Claimant in and by use of his positions as director of the Community (and to a lesser extent as historical acquaintance) rather than as Vicar of the Parish. I see this as a factor of weight.

203. Seventh, I see House's position, as effective director of the Community, as being sufficiently different and separate from his role as Vicar of the Parish, and for the reasons which I set out above, to render what was said in *paragraph 76 of BXB* to be in point. I see this as a factor of weight.

204. Eighth, I do accept that House's role as Vicar of the Parish was a "but for" cause of the Claimant acceding to House's invitations, and in consequence to the circumstances of the assaults, but, as held in *paragraph 77 of BXB* and in *MXX*, that is insufficient to satisfy the close connection test. The mere fact that House was able to create the overall situation *because* he was the Vicar of the Parish does not mean that his committing the wrongs was sufficiently closely connected with his "authorised activities" *as* Vicar of the Parish.

205. Ninth, I do not regard the events of and surrounding the two assaults as having been "inextricably woven" with the carrying out of the "authorised activities" of House as Vicar of the Parish (see *paragraph 88 of MXX*). For the reasons given above, I regard them as being somewhat "inextricably woven" with the activities of the Community (although they can also be said to derive from the Claimant's historical acquaintance of House) but not with the "authorised activities" of the Defendant's quasi-employment.

206. I have not regarded any question as to whether the Community was truly a "monastic" concept as one which is necessary to decide; although insofar as it was "monastic" I accept SPZ's evidence that how House operated the Community and how House himself acted was a perversion of "monasticism". However, I do regard the closed and directed nature of the Community as being matters which show and evidence how it was separate from, and in my judgment should be seen as distinct from, the Parish and its church, and in consequence how it (and its consequences and events relating to it, and thus the two sexual assaults) was outside House's authorised activities as Vicar of the Parish.

207. I have been concerned, in coming to my overall conclusion, in particular with the fact that the contexts in which the sexual assaults occurred can be argued to fall within some possible types of pastoral care which would, or at least could, be an "authorised activity" of the Vicar of the Parish. Pastoral care may well involve, for example, home visits to church members, and, in some circumstances, meetings in various locations. However, the surrounding contexts of the two sexual assaults (working on the Hittisleigh House away from the Parish, and learning to swim at a Swimming-Pool outside the Parish) were not, in my judgment, ordinary "pastoral care", such as to be or to be part of an "authorised activity" of the Defendant's quasi-employment.

208. Likewise I have been concerned as to whether the two contexts, and especially the first, could be said in any way have a nature of "religious instruction", and where House was directing that the three young men had duties as part of the Community to engage in physical labour. However, again, I think that this is too remote from any ordinary understanding of "religious instruction" so as to be an or part of an "authorised activity" of the Defendant's quasi-employment.

209. In relation to both of these last two points, the two situations arose essentially from the Claimant's being a member of the Community. I have been further concerned by the fact that the Claimant's coming, at House's invitation, to the Community can be seen to have placed him at a disadvantage, in terms of vicarious liability, as compared with a resident of the parish or ordinary member or attender of the Parish church. However, the Claimant's resultant difficulty is one of law, arising from the fact that the Community, and hence these contexts, were not, in my judgment, part of the "authorised activities" of House's quasi-employment by the Defendant.

210. I have also borne in mind that what I have termed "historic personal acquaintance" was originally in the context of House as curate of the Crediton Church and the Claimant as a teenage member of it, and then afterwards when the Claimant was in Exeter. Thus "acquaintance" may not be the right word and "pastor" might be more appropriate. It is true that a pastoral relationship can continue from persons moving from one church/location to another, and that the PCC of a new Parish may need to take on board that their Vicar has continuing relationships with persons from a previous clergy post (as well as from their general previous life), but I do not see that that renders the Vicar's

continuing to relate to and dealing with such persons as being part of the "authorised activities" of the Vicar of the (new) Parish post.

211. I have also been concerned that the outcome to which I have come creates something of a "randomness" in that House could have chosen to assault the Claimant during an occasion which would have been much more of a "Parish church" one, such as at one of their services in the Parish church itself, and which might have led to a different outcome in law. However, those are not the facts of this case, and the same argument could have applied to *BXB* where the wrongdoer could have chosen a different occasion and location (e.g. the Jehovah's Witnesses Meeting Hall) to perpetrate the rape or engage in other abusive sexual assault or activity. I regard *BXB* as requiring me to concentrate on the particular wrongful conduct which occurred.

212. For all these reasons, applying an holistic approach of taking them all together (although I have identified above factors to which I have given particular weight), I have reached the same conclusion as did the Supreme Court in *paragraph 81 of BXB* i.e. that the "closely connected" test is not satisfied and the Essential Question should be answered in the negative.

213. I have also carried out the policy "back-check", as did the Supreme Court in *paragraph 82 of* BXB, but I do not see it as fair and just to impose vicarious liability upon the Defendant. This was not a context of activities for the benefit of the Parish or the Parish church, or the promoting of the Christian faith, gospel and mission within the Parish, but a separate and distinct context relating to the Community (and, to a lesser extent, an historic personal acquaintance). Any benefit to the Parish or the Parish church from the Community was no more than incidental; the Community was, essentially, a separate personal project on the part of House.

214. I would add that I consider that, on its facts, this Claim was a stronger case than that of *BXB* which was closer to the far end of the spectrum of degree of possible connectivity of the wrongs with the "authorised activities" of the quasi-employment. However, I still consider that the connectivity in this case is insufficiently "close" to attract vicarious liability. Rather the factors which could amount to or support a case of "connection" are outweighed by the matters which I set out above and which render the connectivity insufficiently "close". Standing back, I see these wrongs as having been committed by House (i) not as Vicar of the Parish but as director of the Community, and as having really been connected with his directorship of the Community and, to a lesser extent his historic acquaintance with the Claimant, and (ii) not as part of or sufficiently connected with his "authorised activities" as Vicar of the Parish to attract vicarious liability, even though the "but for" test is satisfied.

Conclusion

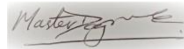
215. In all these circumstances, I have to dismiss the Claim against the Defendant.

216. I do, however, wish to record my sympathy for the Claimant who was subjected, as I have found, to unprovoked, uninvited and unconsented-to sexual assaults, and where this was to lead on to his being further assaulted, and where he is, simply, a victim. The Claimant may well feel (although I in no way decide or even comment upon) that he ought to be able to pursue the Church of England in some way for the wrongs of one of its ordained ministers committed in a purported religious context; but I am concerned with the question of law as to whether he can (or rather cannot) sue this particular

Defendant. I also note that this Claim was commenced well before the Supreme Court decision in *BXB* (which decision was only made a relatively short time before the trial) and where the Court of Appeal decision, if there had been no appeal, might well have favoured a different outcome.

Approved Judgment

This judgment was handed down remotely at 3pm on 15 December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

 15.12.2023

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