



OUTER HOUSE, COURT OF SESSION

[2018] CSOH 65

PD1142/15 & PD1154/15

OPINION OF LORD DOHERTY

in the cause

A

Pursuer

against

C

Defender

and

in the cause

B

Pursuer

against

C

Defender

**Pursuer: Galbraith; Digby Brown LLP**  
**Defender: Mohammed; Thorley Stephenson SSC**

15 June 2018

**Introduction**

[1] In these personal injuries actions A seeks damages from the defender for sexual abuse which he carried out while she was between the ages of 8 and 19, and B seeks damages from the defender for sexual abuse which he carried out while she was between

the ages of about 8 and 11. A was C's step-daughter. B was A's cousin. At the time of the proof A was aged 40 and B was aged 31. At all material times A, B and C have lived in, or very near to, a Scottish town with a population of less than 20,000 people.

[2] In December 2013 the defender was convicted after trial at the High Court of Justiciary of indecent behaviour and of sexual assault against A when she was aged between about 8 and about 19, and against B when she was aged between about 10 and 11 (including digital penetration on one occasion). The defender was acquitted of a charge of raping A when she was aged about 12.

[3] In Statement of Fact 4 of A's summons she avers that she was sexually abused by the defender from the age of 8 to 19. The averments describing the abuse are:

"The defender put his penis between the pursuer's legs, and ejaculated on her...[H]e would routinely abuse her on a Saturday morning and during school holidays. He touched and kissed her breasts and genitals. He inserted his penis into her vagina. He had full sexual intercourse with the pursuer... The abuse occurred regularly and got worse as the pursuer got older. It continued until she was around 19 ..."

[4] In Statement of Fact 7 A avers:

"The pursuer's loss, injury and damage was (sic) caused by the deliberate acts of sexual assault, and fault, of the defender at common law..."

[5] In Statement of Fact 4 of B's summons she avers that she was sexually abused by the defender from the age of about 8 to 11. The averments describing the abuse are:

"In around 1994 the pursuer visited ... A ... regularly. For a period she stayed overnight every weekend... the defender began sexually abusing the pursuer during her visits... The defender touched her genitals...On one occasion he took down her trousers and rubbed his penis against her vagina. He placed his fingers inside her vagina. On one occasion, penetrative vaginal intercourse took place.... The defender continued abusing the pursuer until about 1997."

[6] In Statement of Fact 7 A avers:

"The pursuer's loss, injury and damage was (sic) caused by the deliberate acts of sexual assault, and fault, of the defender at common law..."

[7] The actions were appointed to proceed to proof together, with A's action as the lead action. The pursuers enrolled motions for, *inter alia*, summary decree in relation to liability and for a proof on quantum. The motions were not opposed. On 7 December 2017 Lady Carmichael granted summary decree in relation to liability in each action and directed that proof be restricted to quantum. The relevant part of the interlocutor in each action was in the following terms:

“...on cause shown grants summary decree in respect of liability only; directs that the diet of proof be restricted to quantum and appoints a proof on quantum on 24<sup>th</sup> May 2018 and the ensuing day; grants diligence for citing witnesses and havers.”

## **The evidence at the proof**

### ***Introduction***

[8] The proof was heard before me on 24<sup>th</sup> May 2018. In terms of a Joint Minute of Admissions (no. 28 of [the A] process) A and the defender agreed (i) that 6/1 of [the A] process is the extract conviction of the defender; (ii) that GP records (6/2 of [the A] process) and hospital records (6/3 of [the A] process) relate to A, are what they bear to be, and may be treated as evidence without being spoken to; (iii) that 6/41 of [the A] process is the Social Work Inquiry Report on the defender prepared following his conviction and is what it bears to be; and (iv) that 6/42 of [the A] process is a medical report from Dr Martin Livingston dated 21 October 2015, is what it bears to be, and may be treated as evidence without being spoken to. In terms of a Joint Minute of Admissions (no. 24 of [the B] process) B and the defender agreed (i) that 6/1 of [the B] process is the extract conviction of the defender; (ii) that GP records (6/2 of [the B] process) relate to B, are what they bear to be, and may be treated as evidence without being spoken to; (iii) that 6/40 of [the B] process is a (further) copy of the Social Work Inquiry Report on the defender prepared following his conviction

and is what it bears to be; and (iv) that 6/41 and 6/42 of [the B] process are medical reports from Dr Martin Livingston dated 8 December 2015 and 27 April 2016, are what they bear to be, and may be treated as evidence without being spoken to. In terms of each joint minute it was agreed that copies are the equivalent of principals.

[9] A was the only witness called to give parole evidence. An affidavit by B was lodged in terms of rule of court 36.1.

### *Examination-in-chief of A*

#### *The abuse*

[10] Abuse by the defender commenced when she was aged 8. She had often been in bed with her mother and the defender "for a cuddle". The defender touched her between her legs. He rubbed his penis against her vagina. He started coming to her room where he did the same, especially on Saturday mornings and on some other days during the school holidays. Usually her mother would be out. Her mother had been unaware of what was happening. Often he rubbed his penis against her clitoris or her vagina until he ejaculated. As she got older he also touched her vagina and breasts and sucked her breasts. When she was about 14 he began to penetrate her vagina with his penis, and this developed into him having full intercourse. The pursuer did not consent to any of this. Frequently she asked him to stop. That would often lead to him becoming angry and he would then be cross with her for days. He would find ways of getting her into trouble with her mother. He was physically strong and he had a bad temper. He was a very intimidating and controlling person. He was well known and influential in the local community. He restricted the pursuer's social activities with friends to keep her at home as much as possible - especially on Saturday nights. He discouraged contact with her natural father. He told her that her

mother would not have the good life she had if it was not for him. He said that if she told anyone about the abuse she would not be believed, and that he would say she had been the one who had made sexual advances to him. The abuse made her feel dirty, disgusted and ashamed. It continued until she finally found the courage to leave home at the age of 19. She had been too frightened to leave before then.

### *Schooling*

[11] The pursuer indicated that as a result of the abuse she was withdrawn. She was unable to engage with anything at school. However, she described feeling relief at going to school in the morning but had increasing dread about returning home as the day went on. She was bullied and threatened by another girl at secondary school. She left school aged 15 with no qualifications. She considered that if she had not been abused she would have engaged more and would have performed better. Had that happened she thought she would have been more likely to "have been in a good steady job, not just one to pay the bills." At school she had "fancied being a hairdresser or a nurse". Her recollection was that her older sister had left school when she was 16, but she could not recall whether she had obtained any qualifications at school. Her sister had trained as a hairdresser and had gone to work with her mother. The pursuer's impression was that her sister had been average at school - she had not struggled.

### *Life after leaving home*

[12] After leaving home the pursuer was able to develop a closer relationship with her natural father. He had not been without his problems, but the relationship had been a positive experience. At times her life had been chaotic - she had abused alcohol and drugs

and had self-harmed. On occasions she had felt suicidal. There had been several instances of her taking overdoses deliberately. Her distrust of others had affected her ability to form enduring stable relationships with partners. She had had three such significant relationships. She was married for about three years in her early twenties. She had a son in 2000. Later she had a partner "for about six years on and off". She had been with her present partner for about two years and they lived together. Her son had recently had a son.

[13] The pursuer had disclosed the abuse to her employer when she was 17. It had gone no further. She had told her partner when she was about 20, but she had asked him not to tell anyone. Her natural father had died on 13 December 2004. She had been very upset by that. Around the first anniversary of his death she had become upset again. She disclosed the abuse to her partner's parents and then told the police. However, she had asked them not to pursue it. She had been trying to protect her mother and family. She had not trusted the police then, and she had been in a poor physical, mental and emotional state. She had made a further complaint to the police in about October 2012. Before she did that she disclosed the abuse to her mother. She was disappointed by her mother's continued support of the defender and her lack of support for her. She resented the detrimental effect which the abuse had had on their relationship. She had little contact with her from the time of disclosure until after the defender's conviction. Even now the relationship was limited to occasional visits and contact through WhatsApp.

[14] The pursuer was shocked when she discovered the defender was pleading not guilty. She had not wanted to give evidence - she found it very difficult. It had been suggested at the trial that she and B had got together and made up their stories. She had subsequently seen the Social Work Inquiry Report and had read that the defender claimed that sexual

contact after she was 16 had been consensual. She had been incredulous, shocked, and disgusted at that.

[15] The abuse had left the pursuer with low self-esteem and had made her untrusting of others. She resented the loss of a normal happy childhood and teenage development. She had developed anxiety and depression. She suffered from regular nightmares and flashbacks related to the abuse. She needed medical counselling and treatment, and still requires this. She had had a number of courses of cognitive behavioural therapy (“CBT”) and other counselling which she has found helpful. She suffers from agoraphobia - with symptoms of anxiety, breathlessness and sickness. She relies on her partner to accompany her to busy places. She is very conscious that people in the community know her as “that person” i.e. a sexual abuse complainer. She dreaded, and dreads, encountering the defender, especially since his release from prison. She feels guilty that B was abused - but she had no knowledge of it at the time. She feels terrible that her son has to cope with the burden that people know what has happened to her. She continues to suffer from anxiety, depression, nightmares and flashbacks, but she does her best to carry on with her life. She is currently prescribed Venlafaxine for her anxiety and depression. She said that the majority of days she gets up and doesn't want to be there. She resents the years she has lost. Putting on a brave face is an effort and is tiring.

*Work since she left school*

[16] On leaving school the pursuer trained as a nursery assistant for two years. It was a Youth Training Scheme. As part of that she got a Scottish Vocational Qualification (“SVQ”) in Childcare and Education. Shortly after she completed her training she applied for her immediate superior's post when her superior left. She had got on well with this colleague.

Her application was not successful. Since she did not get on as well with the person appointed, she left. Thereafter she did factory work, retail work, and she began working as a carer in 2000. In early 2001 she and her husband got a mortgage and bought a flat. She has been responsible for paying the mortgage for it over the years. Between 2005 and 2007 she attended college and qualified as a hairdresser. Part of her motivation had been to please her mother (who had been a hairdresser). She had been student of the year in her first year. After graduating she worked for about six months in a salon, but then returned to work as a carer. For about three years she had been employed to work in a cashmere shop and had been in charge of two young employees. When she returned to care work she got a job with a private care company as a care co-ordinator. At present she works as a care assistant with the local authority for three days a week. Her net earnings from that are about £800 per month. In April 2018 she started her own business as a hairdresser. She had not been in continuous employment since leaving school. There had been spells when she had been out of work, especially between 2000 and 2005, and some of those spells had been long, including a period following the death of her father. That absence had been caused by her depression, anxiety and alcohol abuse.

### *Cross-examination*

[17] Counsel for the defender asked the pursuer to clarify that at his trial the defender had been acquitted of raping her. She replied: "It was found not proven". She confirmed that over her working life she had been in work more than she had been out of work. The longest spell out of work had been six months to a year. She agreed that her former job as a care co-ordinator had involved managerial skills such as doing rotas for staff and liaising with the local authority Social Work Department. She had developed similar skills when

she had run the cashmere shop. The new hairdressing venture was as a sole trader. She opened the shop on days she was not working as a care assistant. The shop lease was a month-to-month rolling lease. She planned to continue working as a care assistant. She enjoyed the work and found it satisfying. She had been devastated when her natural father died. He had given her unconditional love. However, she did not think that life events such as that were responsible for her past or present mental health troubles. She attributed those troubles to the abuse.

*Dr Livingston's report on A*

[18] Dr Livingston is a consultant psychiatrist. He interviewed A on 21 October 2015. He also examined her GP records and her hospital records. He prepared his report 6/42 of [the A] process. Dr Livingston's opinion was:

"...

4. As a result of the abuse which she has experienced, [A] has developed a post traumatic constellation of symptoms involving both anxiety based symptoms and depressive symptoms. She fulfils diagnostic criteria for a generalised anxiety disorder (DSM 5) and a persistent depressive disorder, dysthymic in type (DSM 5). Anxiety symptoms include a continuous feeling of anxiety, palpitations, cold sweats, constant preoccupation with what took place and during periods of intense anxiety "zoning out", experiencing flashbacks. Symptoms of a chronic depressive disorder include low mood, intermittent weight loss, sleep dysfunction, difficulty coping, a pessimistic outlook, on occasions suicidal ideation and a feeling of hopelessness.

5. ... [T]he account she gave of her symptoms is consistent with the extensive information on her mental state available in her case records. My impression of [A] is that she gave a reliable history. She did not, in my opinion, make any attempt to exaggerate her symptoms. On examination significant distress was evident when talking of her experiences and she presented with a markedly labile mood state.

6. [A]'s mental health problems have had a significantly adverse impact on her life. She failed to achieve educationally while at school. She has had great difficulty in coping with relationships, not least in her sexual functioning. During the early years of her son's life she had difficulty coping with his care and required a great deal of support from her son's [paternal] grandparents who continue to be supportive. It is [A]'s opinion that she is struggling to maintain herself in employment.

7. It is likely that [A] will experience episodes during which her symptoms became more acute when she will require more extensive therapy including at times admission to mental health facilities. She continues to resort to non-dependent binge drinking when situations of stress arise. She is however engaging in one-to-one therapy with Children First and I think it is possible to see a degree of improvement in time. I would certainly advise that she remains on a therapeutic dose of anti-anxiety and anti-depressant medication, such as venlafaxine, indefinitely. I note that further CBT was discussed when [A] was seen by a community psychiatric nurse and a psychiatrist in June 2014. Although she does not fulfil full criteria for post-traumatic stress disorder in terms of DSM 5, trauma focused CBT is likely to be an effective treatment. I anticipate that she would require many sessions of therapy, as an approximation at least 24. Despite optimal treatment [A] is likely to have significant mental health problems for the foreseeable future."

### *B's affidavit*

[19] In her affidavit B deponed that the defender had sexually abused her when she was a visitor to his home. The abuse took place over a period of about three years beginning when she was aged 8. He touched her chest and her genitals. He put his finger inside her vagina. He rubbed his penis against her vagina. On one occasion penetrative vaginal intercourse took place. Overall there had been about 10 to 20 occasions of abuse. B considered she has low self-esteem. She has suffered from sleep disturbance. She suffered and continues to suffer nightmares about the abuse. Memories of it are always at the back of her mind. She found it difficult to build relationships and to trust men, or to trust anyone with the care of her own children. She had tended to be over-protective of her children. She found the defender's trial, and giving evidence at it, very difficult. His defence had been that she and A had colluded and had fabricated the allegations. Disclosure had affected the whole extended family. She had lost contact with relatives who had supported the defender. Since the defender continued to live locally following his release from prison she was liable to bump into him. That stopped her wanting to go out. Members of his extended family also

lived locally and she had to interact with them. The town where she lives is “a small place ... everyone knows your business”. As she put it:

“What he did to me will impact on me for the rest of my life. It will affect the way I live for ever.”

***Dr Livingston's report on B***

[20] Dr Livingston interviewed B on 8 December 2015. He also interviewed her mother. He examined B's GP records. In his report (6/42 of [the B] process) he noted she had had episodes of sleep disturbance in connection with the disclosure of sexual abuse, the court proceedings, and attendance at the interview on 8 December 2015. He concluded:

“3. .... Although it is difficult to predict how [B]'s personality would have developed in the absence of the sexual abuse which took place during her childhood I do not think there is clear evidence of a psychiatric disorder resulting from the sexual abuse she experienced. [B] has managed to develop a stable relationship with her partner, a stable career and she is coping with raising her 2 young daughters.

4. ... [S]he may possibly have under-reported her distress regarding the sexual abuse. In line with my opinion that she has not developed a psychiatric disorder in connection with the abuse, there is no record of her presenting to the GP complaining of a mental health problem in connection with the sexual abuse. On examination [B] was tearful at times when talking of the prospect of her abuser's release from prison but there was no evidence of consistent mood dysfunction or indeed of any other mental disorder.

...

6. ... [B], in her quiet way, has in fact been rather resilient in coping with what was a very unpleasant period in her childhood and its ramifications for her adult life, the decision to disclose the abuse and subsequent legal proceedings.”

**Counsel for the pursuer's submissions**

A

*Solatium*

[21] Having regard to *inter alia* the nature and severity of the abuse, its frequency, its duration, A's age at the time, the defender's breach of trust, and the emotional, social,

psychiatric and psychological consequences of the abuse, and the ordeal of the criminal trial, an appropriate award for solatium would be £120,000. 75% (£90,000) of that sum should be attributed to the past with 50% (£60,000) being attributed to the period of the abuse, Interest should run on £60,000 of the award at 2% per year from 1 January 1986 until 23 February 1997, and at 4% per year from that date until the date of decree; and on £30,000 of the award at 2% per year from 23 February 1997 until the date of decree. Reference was made to *J v Fife Council* 2007 SLT 85 (on appeal *JM v Fife Council* 2009 SC 163); and *EA v GN* [2013] CSOH 161. A higher award was appropriate than had been made in either of those cases. In *J v Fife Council* the pursuer had not developed a psychiatric disorder. In *EA v GN* there had been other causes for the pursuer's psychological difficulties.

#### *Loss of earning capacity*

[22] The abuse had had a detrimental effect on A's earning capacity. Had it not occurred she was likely to have engaged better at school and have achieved some qualifications. The lack of such qualifications and the effects of the abuse on her mental health had prevented her from obtaining secure and continuous employment. In the result she had had periods of unemployment, and inability to work through illness, that she would not have been likely to have had but for the abuse. She would continue to be exposed to the risk of such gaps in employment in the future. But for the abuse, she may have done better at school and have obtained steady employment as, eg, a hairdresser, following in the steps of her mother and older sister. Taking a broad approach, an award of £50,000 for this head of damages would be appropriate. Reference was made to *McEwan & Paton on Damages for Personal Injuries in Scotland* (2<sup>nd</sup> ed.), Chapter 6.

*Medical expenses*

[23] The pursuer needed further CBT. A reasonable allowance for that would be £5,000.

**B***Solatium*

[24] Having regard to *inter alia* the nature and severity of the abuse, its frequency, its duration, B's age at the time, the defender's breach of trust, the emotional, social, and other consequences for her, and the ordeal of the criminal trial, an appropriate award for solatium would be £20,000. Reference was made to *B v Quirk* 2008 Manchester County Court, Kemp & Kemp K15-003, though it was accepted that the higher award there of £55,000 included aggravated damages and also reflected the fact that the plaintiff had developed post-traumatic stress disorder. 90% of that sum (£18,000) should be attributed to the past with interest on £15,000 of it at 2% per year from 1 January 1994 to 23 February 1997 and at 4% per year from that date until the date of decree, and with interest on £3,000 of it at 2% per year from 23 February 1997 until the date of decree.

**Counsel for the defender's submissions***Effect of the summary decree*

[25] Counsel submitted that the effect of the summary decree in each case had been that the defender had been found liable to make reparation to the pursuer in respect of the abuse he had been convicted of. That was the basis upon which the motions for summary decree had proceeded. To the extent that there had been evidence at proof of abuse that went beyond the terms of the conviction, the evidence was not relevant and the court should not

take it into account. The evidence of penile penetration of each pursuer fell into that category.

A

*Solatium*

[26] *J v Fife Council* had involved more horrific abuse than the present case, albeit that the pursuer there had not developed any psychiatric disorder. *KCR v The Scout Association* [2016] EWHC 587 (QB) had also involved more severe abuse, albeit over a shorter period and with less significant psychiatric sequelae. In A's case an award of £80,000 would be appropriate. Counsel did not take issue with counsel for the pursuer's general approach to allocation of the award and to the application of interest.

*Loss of earning capacity*

[27] There was no proper evidential basis for concluding on the evidence that the pursuer would have done better at school or would have had a better career but for the abuse. In fact, she had been in fairly consistent employment, had qualified as a hairdresser, had held down responsible jobs in the retail and the care sectors, and now also ran her own business. No award for loss of earning capacity should be made.

*Medical expenses*

[28] Counsel left it to the court to decide whether on the evidence it was reasonable to conclude that A would need CBT in the future.

**B***Solatium*

[29] Counsel submitted that the court should proceed on the basis that there had not been any penile penetration. That would reflect the terms of the defender's conviction, and, he submitted, the underlying basis of the summary decree. *Quirk* was readily distinguishable. The abuse there had been more serious and prolonged, the plaintiff had developed post-traumatic stress disorder, and the award had included aggravated damages. Counsel suggested that an appropriate award in the present case would be £15,000. Once again, he did not take issue with counsel for the pursuer's general approach to allocation of the award and to the application of interest.

**Decision and reasons***Summary Decree*

[30] The effect of the grant of summary decree in each case was that the defender was found liable to make reparation for all of the assaults and wrongs which each pursuer complained of in her summons. In neither case was the finding of liability restricted to the crimes of which the defender was convicted.

[31] Moreover, in A's case she gave evidence, without any objection being taken by counsel for the defender, to the whole gamut of abuse referred to in the summons. Had such objection been taken I would have repelled it standing the pursuer's averments and the terms of the summary decree.

[32] In B's case her evidence was contained within her affidavit. That evidence did not differ materially from the averments in the summons. In any case, the defender chose to

lead no evidence to contradict it (cf. *D v D* 2002 SC 33, per the Opinion of the Court delivered by Lord Coulsfield at para 8).

[33] In these circumstances I proceed in each case on the basis that liability is established for the assaults and wrongs referred to in the summons.

[34] I regard the evidence of each pursuer concerning the course of the abuse as legitimate explication of the averments made in the summons. Having seen and heard A's evidence (which she gave with dignity and moderation), and having had the benefit of considering the other evidence before me, I am satisfied that her evidence is credible and reliable in all material respects. I am similarly satisfied with the evidence contained in B's affidavit. Here too I have had the benefit of considering it in the context of the other evidence. In each case I have also borne in mind that no evidence was led by the defender to contradict either pursuer's account.

A

*Solatium*

[35] It is common ground that a very substantial award is appropriate. The pursuer was the victim of a very serious course of sexual abuse which began when she was 8 and persisted until she was 19. She was robbed of her innocence, and she was deprived of a normal happy childhood and adolescence. The defender grossly abused a position of trust. The abuse has had serious consequences for the pursuer, some of which are enduring. It affected her ability to form and sustain relationships with partners. It seriously disrupted the life she could otherwise have expected to enjoy with other members of her immediate and extended family. She has suffered from anxiety and depression since early adulthood. She has required to be admitted to mental health facilities on a number of occasions, the

longest admission having been for about a week. She had the ordeal of giving evidence at the defender's trial, where the defender put her veracity in issue. He continued to cast doubt on parts of her account even after he was convicted, as terms of the Social Work Inquiry Report show. While the pursuer does not meet the DSM 5 criteria for post-traumatic stress disorder, she has a post-traumatic constellation of symptoms. She has a generalised anxiety disorder and persistent depressive disorder. I am satisfied that the abuse has caused these conditions. Other distressing life events, such as the death of her father, are likely to have contributed to temporary deteriorations in her mental state, but they were not the source of her problems. On the positive side, the pursuer has shown remarkable determination and resilience. She has had three significant relationships with partners. Her relationship with her current partner appears to be a positive one. She has managed to care for her son, who is now approaching adulthood. While she has had some periods where she has not worked, in the main she has been in employment, and she has managed significant responsibilities.

[36] *J v Fife Council* concerned sexual and physical abuse of an atrocious nature while the pursuer was in local authority care over a period of seven years between the ages of 8 and 15. The perpetrator had been in a position of trust. The pursuer suffered serious psychological and social sequelae which had caused him later to have difficulty with his wife, children and others, but he did not suffer from any psychiatric illness or psychological disorder. Despite the abuse he had made a remarkably positive success of his life. He had held a number of high profile and responsible positions. He was aged 54 at proof. The Lord Ordinary awarded solatium of £75,000, all of which was attributed to the past. He indicated (para 55) that if there had been evidence of psychiatric and/or psychological injury, and if the pursuer had not coped so remarkably well with his life, he would have considered

making an award of solatium in excess of £100,000. The award of £75,000 was upheld by the Inner House (*JM v Fife Council*). If the £75,000 is updated for inflation it would represent about £100,000 today. Had an award of £100,000 been made at the time of proof in January 2007 its current value would have been around £135,000.

[37] In *EA v GN* the pursuer was sexually abused by her uncle from the age of 7 up until just before her 16th birthday. At the proof the pursuer was aged 45. It had been a serious course of sexual abuse. The details are described at para 133 of the Lord Ordinary's Opinion. By the age of 10 the pursuer was being subjected to penetrative sex. The Lord Ordinary was not satisfied that further sexual conduct by the uncle towards the pursuer when she was between the ages of 16 and 30 had been abuse (paras 137 to 139). He summarised the consequences for the pursuer at para 174. In addition he found (para 176):

“The pursuer's medical records mention, *inter alia*, anxiety, depression, sleeping problems, inability to cope, insomnia, suicidal feelings, stress, irritability, feelings of isolation, weepiness and agitation. Many of these problems were not related to the defender's delictual acts. However, it would be fair to say that the defender's delictual acts probably caused or materially contributed to the pursuer's stress, anxiety and feelings of depression, from time to time, and to varying degrees over the years.”

The Lord Ordinary was not satisfied that the abuse had caused post-traumatic stress disorder (paras 177 to 180). He awarded solatium of £70,000. He attributed £60,000 of that sum to the past (para 191), with £50,000 of the past element being for the period up until the pursuer's sixteenth birthday and £10,000 being for the period from her sixteenth birthday until the date of the proof. The Lord Ordinary's award was upheld on appeal (*A v N* 2015 SLT 289). In today's money the award would be about £76,000.

[38] In *KCR v The Scout Association* the claimant was 42 at the date of trial. He was groomed and sexually abused by a cub scout leader between the ages of 8 and 15. The abuse was serious. It is fully described in para 6 of the judgment. There was digital anal

penetration, and penetration of the anus using the tongue, but no penile anal penetration.

An unusual feature of the case was that (para 8):

“after a period of time the claimant, together with another boy ... in effect blackmailed the perpetrator ... they obtained increasing rewards of money and material possessions in return for carrying on and submitting to the abuse.”

The frequency and extent of the abuse lessened after the claimant left the cubs and went to secondary school. The trial judge found that, while the claimant had been the victim of serious sexual abuse involving a grave breach of trust, many of the adverse features of his adult life were attributable to other factors. He did not accept that the claimant's education had been impaired. The judge found that the claimant had become a drug user and a drug dealer as a matter of personal choice; that he had left vocational training and jobs because he had preferred to support himself through crime; that he had been able to form relationships with partners; and that the only psychiatric illness which could be attributed to the abuse was an adjustment disorder lasting for about a year while the police were investigating the abuse. The judge awarded £48,000 for pain, suffering and loss of amenity. In today's money that would be about £50,000.

[39] I do not regard *KCR* as being of any real assistance. The sexual abuse of A was more serious, and the consequences for her were more severe. The nature and severity of the abuse in *EA v GN* was much more similar, but the psychiatric and psychological consequences for A have been greater. The award here should be higher than the award in *EA v GN*. The abuse in *J v Fife Council* was even more serious than in the present case, but the psychiatric and psychological sequelae were markedly less.

[40] In the whole circumstances I think that an award of £90,000 for solatium is appropriate. I allocate three-quarters of that sum (£67,500) to the past, and I attribute £45,000 of it to the period up until the pursuer left home and the remaining £22,500 to the

period between her departure from home and the date of decree. Since the solatium award I am making reflects current-day money's worth, the rate of interest awarded on past solatium needs to be discounted to strip out the element which represents protection against the effects of inflation (*JM v Fife Council*, paras 33 - 36). Further, where the particular element of damages to which interest is to be applied has accrued over a period the usual approach is to apply interest to the whole sum for the period during which the damages accrued at half the rate which would otherwise be applicable. Accordingly, here interest will run (i) on £45,000 at 2% per year from 23 February 1986 until 23 February 1997 and at 4% per year from 23 February 1997 until the date of decree; (ii) on £22,500 at 2% per year from 23 February 1997 until the date of decree.

*Loss of earning capacity*

[41] I am not satisfied on the evidence that but for the abuse the pursuer would have left school with formal qualifications. However, I am satisfied had she not had the resultant emotional and psychiatric *sequela* she would have been likely to have had fewer interruptions to her working history to date, and that she would be less likely to experience disruption to gainful employment in the future. I can only assess this in a very broad way. I shall award £10,000 under this head. I shall allocate half of that sum to the past. Interest will run on the past element at the rate of 4 % per year from 23 February 1997 to the date of decree.

*Medical expenses*

[42] I am also satisfied that the pursuer will need further CBT in the future and that it is right that the defender should pay for this. The allowance of £5,000 sought represents reasonable provision in this regard. I shall make an award in that sum.

*Total damages*

[43] Accordingly the total damages awarded to A comprise:

Past solatium	£67,500
Interest on £45,000 at 2% per year from 23 February 1986 until 23 February 1997 and at 4% per year from 23 February 1997 until the date of decree.	£48,247.49
Interest on £22,500 at 2% per year from 23 February 1997 until the date of decree	£9,586.85
Future solatium	£22,500
Past loss of earning capacity	£5,000
Interest on past loss of earning capacity at 4% per year from 23 February 1997 until the date of decree	£4,260.82
Future loss of earning capacity	£5,000
Medical expenses	£5,000
<b>Total</b>	<b>£167,095.16</b>

Interest will run on the total award at the rate of 8% per year from the date of decree until payment.

**B***Solatium*

[44] On any view this was a serious course of abuse. It involved a young child and a gross breach of trust. The gravest elements were digital penetration and sexual intercourse, each on one occasion. The overall duration and the frequency of the abuse were less than in

A's case. The emotional and psychological consequences for B were significant, but they too have been much less severe than in A's case.

[45] Counsel were not far apart in their suggested awards. I agree with counsel for the pursuer that an award of £20,000 is appropriate. In reaching that view I have had some regard to *CD v Catholic Child Welfare Society* [2016] EWHC 3335 (QB). However, in that case there was a single instance of sexual abuse - anal rape of a 12 year old boy - and physical abuse which involved being slapped on several occasions with no significant injury being sustained. I think that a higher award than was made in that case is justified here because there was a sustained course of sexual abuse; because B was younger when the abuse began; and because the psychological effects in *CD* were less significant - they were transient and did not persist beyond the claimant's early adult life. I allocate 85% of the award to the past, with £12,000 of it being attributed to the period of the abuse. Interest will run on that £12,000 at 2% per year from 9 June 1994 until 23 February 1997 (the period of the abuse) and at 4% per year from 23 February 1997 until the date of decree. Interest will also run on the remainder of the past element of the award, £5,000, at the rate of 2% per year from 23 February 1997 until the date of decree.

*Total award of damages*

[46] Accordingly the total damages awarded to B comprise:

Past solatium	£17,000
Interest on £12,000 at 2% per year from 9 June 1994 until 23 February 1997 and at 4% per year from 23 February 1997 until the date of decree.	£10,876.13
Interest on £5,000 at 2% per year from 23 February 1997 until the date of decree	£2,130.41
Future solatium	£3,000
<b>Total</b>	<b>£33,006.54</b>

Interest will run on the total award at the rate of 8% per year from the date of decree until payment.

### **Disposal**

[47] I shall pronounce decree in each case awarding the damages already described (subject to the parties confirming the arithmetic of the interest calculations). I shall reserve meantime all questions of expenses.

[48] Counsel for the pursuer moved the court to allow immediate extract of the decree in each case. I was not persuaded that there was sufficient cause for following that extraordinary course.

[49] Finally, I would like to record my admiration for the fortitude which both pursuers have demonstrated in the face of adversity. No award of damages could replace what they have lost. Nevertheless, I hope that the resolution of these actions will assist them to move forward and to continue the valuable contributions which they are making to their families and to their community.