



OUTER HOUSE, COURT OF SESSION

[2021] CSOH 102

PD524/19

OPINION OF LORD BRAILSFORD

In the cause

A

Pursuer

against

GLASGOW CITY COUNCIL

Defender

Pursuer: Milligan QC, McCall; Thompsons

Defender: Mackenzie QC, Campbell; Clyde & Co (Scotland) LLP

13 October 2021

[1] The pursuer, aged 50 years at the date of proof, sought damages from the defenders in respect of loss, injury and damage sustained by him as a consequence of abuse he suffered at the hands of a foster carer, referred to herein as WQ, with whom he was placed by the defenders between dates in 1982 and 1987. The defender is vicariously liable for the acts and omissions of WQ during the period he was the pursuer's foster carer.

[2] Parties entered into a joint minute.¹ In terms of that document certain factual matters were agreed² which enable me to state an outline of the background to this action.

¹ Number 129 of process

² See paragraphs 5-31 of number 129 of process

Background

[3] The pursuer was born on 27 December 1970. On 29 September 1972, when he was about 21 months old, he was taken into local authority care and remained in that position until December 1988 when he was 18 years old.

[4] Whilst under local authority care he was placed in a number of residences. He lived in Atholl House Children's Home, Woodlands Road, Thornliebank, from 25 July 1972 to 10 May 1976. He lived in Barrholm Children's Home, Largs from 10 May 1976 to 3 December 1976 and from 17 November 1977 to 18 December 1981. He was returned to live with his mother at an address in Greenock between 3 December 1976 and 17 November 1977. He was then placed with foster carers, Mr and Mrs S, at an address in Stevenston, between 18 December 1981 and 24 September 1982. He lived with Mr and Mrs F, foster carers, at an address in Paisley between 6 October 1982 and 18 August 1983.

[5] From around 18 August 1983 until 1988 he lived with WQ and sometimes that person's wife CQ, both of whom were designated as his foster carers.

[6] In early 1988 the pursuer resided at a homeless unit in Glasgow.

[7] In April 1988 the pursuer returned to live with WQ and sometimes CQ. He resided with them until at least December 1988.

[8] Whilst at school the pursuer obtained four Highers, two at A level and two at B level. In 1988 he obtained a place at Glasgow College of Printing. At the commencement of that course he did not take up his place but went to Reading and then London.

[9] There are gaps in the pursuer's employment history until September 1997. From September 1997 to 3 December 2002 the pursuer was employed by BT initially as an Area Manager/Job Changer and thereafter as an Executive Assistant to a Director and Wholesale

Service Management Benchmarking Manager. There are further gaps in the pursuer's employment history between 2002 and 2009.

[10] In about 2004 the pursuer applied to Fife Council to adopt a child. In 2006 the pursuer adopted two children. [REDACTED]

[11] From about September 2009 to February 2010 the pursuer worked for Cable & Wireless UK Ltd. From 5 July 2010 to December 2011 the pursuer was employed by NHS Highlands as a Drug and Alcohol Early Interventions Worker and Waverley Care Trust as a Project Sexual Health Outreach Worker. From 2011 to 2014 the pursuer studied a Pathway to Medicine Course at Perth College and for a BSc in Marine Science at the University of Highlands & Islands. From August 2016 to 31 December 2018 the pursuer was employed by the [REDACTED]

[12] The pursuer separated from his partner in or around January 2018 [REDACTED]

[13] On 13 February 2019 said WQ was convicted of lewd, indecent and libidinous practices and behaviour, indecent assault and indecent assault and unnatural carnal connection to injury of the pursuer. He was sentenced to 10 years imprisonment.

[14] The pursuer received a total award of £22,600 from the Criminal Injuries Compensation Authority as compensation for the abuse he suffered at the hand of WQ.

Evidence

[15] The pursuer gave evidence on his own behalf. Evidence was adduced on his behalf from (a) Professor Craig White, Consultant Clinical Psychologist, Glasgow³ (b) Mr Keith Carter, Employment Consultant⁴ and (c) Dr John Pollock, Actuary.⁵ On behalf of the defenders evidence was adduced from (a) Professor Thomas Fahy, Professor of Forensic Mental Health, Institute of Psychiatry, Denmark Hill, London⁶ and (b) Mr Doug Govan, Employment Consultant.⁷

(i) *Pursuer*

[16] In both examination in chief and cross-examination the pursuer was taken through his life in a chronological fashion.

[17] For practical purposes he had no meaningful memories of his earliest years when he was in the care of his mother.

[18] His earliest memories which I found of evidential value dated from his period in Barrholm Children's Home in Largs between May and September 1976 and again between November 1977 and December 1981. His evidence in relation to these periods was positive. He remembered the home as small and run by a woman whom he described as "philanthropic". He was introduced to and experienced theatre and opera. His evidence was clear and to the effect that if he had the choice he would not have moved from this home. He was shown a contemporaneous report from an educational psychologist relative

³ Professor White produced and spoke to 2 reports, the first dated 26 August 2019 [pages 34-110 JB] the second dated 15 February 2021 [pages 64-110 JB]

⁴ Report dated 20 March 2020 [pages 111-150 JB]

⁵ Report dated 19 June 2020 [pages 151-163 JB]

⁶ Professor Fahy produced and spoke to 2 reports, the first dated 21 May 2020 [pages 164-195 JB] the second dated 4 December 2020 [pages 196-234 JB]

⁷ Report dated 26 May 2020, revised 2 December 2020 [pages 235-261 JB]

to his time at the home.⁸ The report indicated that he had been “very unsettled” when he arrived at the home but that he had settled and, at the date of the report, seemed “very happy there”. Whilst he candidly admitted that he could not remember being unsettled on arrival he did state, again recognising this was with the passage of more than 40 years, that he agreed with the psychologist’s opinion that he was happy in the home. He was shown a later report by Mr Stewart⁹, written towards the end of his period of being cared for in the home, in which the author expressed the view that during his period at the home his education had progressed “remarkably well” and that he had “above average potential”. Whilst the pursuer professed no memory of meeting with the author, nor any knowledge of the assessment it did accord with his own memory of his school performance at this time.

[19] The pursuer then gave evidence of the period between December 1981 and September 1982 when he stayed with Mr and Mrs S. Again his memories of this period were a little vague but he remembered it as positive. He remembered schooling in positive terms. He recalled the S’s as being, from the standpoint of an 11 year old, “relatively old” and that he thought that they found it difficult to deal with the demands with five children in the house, they having four children of their own. He said he had “no bad memories of his time with Mr and Mrs S.

[20] He then stayed with Mr and Mrs F between October 1982 and August 1983. His recollection was that this was seen at the time as a short term placement. He did not think it was as “nice” as his stay in the children’s home, he described it as being a “bit rough” but not “difficult or abusive”. Towards the end of his stay the foster carers separated and he was looked after by Mr F for the last month of the placement. He had nothing negative to

⁸ Report by DJW Stewart dated 22 March 1978 [pages 3263-4 JB]

⁹ Report by DJW Stewart dated 9 April 1981 [page 3419 JB]

report about that period. He was specifically asked about sexual or psychological abuse in this placement and was quite clear that there was none.

[21] After leaving Mr and Mrs F the pursuer was placed with WQ and CQ. He stayed in their home between about 18 August 1983 until 1988.

[22] In relation to the couple the pursuer's evidence was that they had married shortly prior to him being placed with them. He could not recall any demonstrable affection between the couple and he remembered there were periods when they would not talk to each other and, further, there were times when CQ would leave the home leaving him in the sole care of WQ. He considered theirs to be a "marriage of convenience". He also remembered two other male children living in the house, DQ and JS. His understanding was that DQ was the adopted son of the couple and JS was either fostered or adopted.

[23] In relation to these other children the pursuer's evidence was that on four or five occasions he saw DQ being abused by WQ. When asked to explain what he meant by abuse he said that on a number of occasions he had seen WQ performing a sexual act on a bed with DQ. He never saw WQ sexually abusing JS but that person openly discussed with him abuse perpetrated to him by WQ.

[24] When questioned about sexual abuse he experienced at the hands of WQ he referred to an impact statement he had prepared for WQ's criminal trial.¹⁰ The document was put to him. The first paragraph was in the following terms:

"I was consistently seriously abused by WQ. I was raped and molested and subjected to daily threats of physical violence and being placed back into care to force me to submit to his constant voracious abuse. Severe abuse and rape was a regular occurrence."

¹⁰ No 132 of process

[25] His evidence at proof was that the paragraph just quoted did not “remotely convey the daily abuse that happened.” His evidence was that the abuse was constant and spanned years. His understanding, which I should indicate was not challenged in cross-examination, was that the charges to which WQ pled guilty and was convicted were “just a little sample.” At proof his evidence was that the abuse was so prolonged and extensive that he had “probably forgotten more than I can remember”. Considering his period living in the home of WQ he said that on arrival he was “quite an innocent”, happy and “very naive”. Whilst living in WQ’s home he said that he “felt helpless”. He thinks that his childhood was “stolen” from him. He was ashamed of what happened to him at the time, he could not understand why it happened. He had no adult he could tell or disclose the abuse to. He felt “trapped” and considered that he had “nowhere to turn.”

[26] The pursuer further stated that towards the end of his period staying in the home of WQ that person became violent and aggressive towards him. The pursuer felt that it was important for him to finish school, which he did. As soon as he had finished with school he left the home of WQ.

[27] The pursuer was questioned about the impact the abuse he received had upon his education during the period of time spent in the home of WQ. He said that it did “a hundred percent”. His evidence was that his experiences at home affected him every day at school. He said that he thought he did well at school but that he would have done better if he had been living “anywhere else”. Over the course of his fifth and sixth years at school he obtained four Highers. He said that he was “a hundred percent sure” that he would have gone to university had he not been abused by WQ. Failing to go to university at this stage was his “biggest regret in life”.

[28] After he left WQ's home he said that for a period that person and CQ remained in the background of his life. CQ showed some consideration to him. He found the whole situation very difficult and on occasion had suicidal thoughts. As a result of this confusion he gave up the place he had obtained at college and, in his own words, "got on a bus and went to Reading." He explained that he took a bus to Reading because the service to that city was available when he went to the Central Bus Station in Glasgow and that the destination was the furthest for which he could afford the fare.

[29] The pursuer's evidence then covered the period between 1989 and 1997 when he resided in Reading and London. The tenor of his evidence was that his life and existence in that period was chaotic. He said he was "just trying to survive". He said he "did what he could" regarding living arrangements and work. He had a number of short-term jobs. He experienced periods of unemployment but could not recall what percentage of the period that state would represent. He did remember two jobs which were more significant during these times. One was with a company named Inmac UK which he thought was in the late 1980s or early 1990s and he described this as his "first proper job". The other more substantial employer he recalled as having the name "Travail". He recalls that he was asked to become a manager by that concern.

[30] The next phase in the pursuer's employment history commenced in September 1997 when he commenced employment with BT. He applied for a post in operational management that was advertised for "graduate job changers". He was interviewed and assessed by a process which he described as "rigorous and difficult". Ultimately he was one of six successful candidates. He said that the other five applicants had degrees. His evidence was that he thrived in the employment of BT. He was promoted on a number of occasions. He enjoyed his work. The work was both interesting and involved travel. He

was successful in attracting business to his employers and won internal awards in the firm in that regard.

[31] The pursuer's evidence then covered problems which he experienced whilst in the employment of BT which impinged upon his ability to work. He said he suffered from flashbacks and intrusive thoughts. When asked to describe these thoughts he said:

"They're always there. In them I am an 8-12 year old boy. I go to bed and can't sleep. I was abused by WQ when he put me to bed. I do not regard bed as a safe place. I lie awake until 3 or 4 in the morning. I find this severely debilitating. It is constant in my life. I just have to manage and not go down the road of alcohol and drugs to cope."

He was asked about the content of the flashbacks and said:

"I'm in the shower. I was raped by WQ in the shower. The first time he raped me was in the shower. When I'm in the shower I think about this and I get panic attacks. They are overwhelming."

He also said that these thoughts and flashbacks affected his relationships with other people.

He experienced and continues to experience severe difficulty with intimacy with other persons. He was clear in both evidence in chief and cross-examination that all his nightmares and flashbacks are about WQ. He never has any intrusive thoughts about anybody else.

[32] His evidence was that these thoughts were present when he was employed by BT. He was asked if he ever told anyone at BT about them and said he did not. He said that he suffered from shame, embarrassment and humiliation because of these thoughts and the events that were giving rise to them. He said that he experienced the feelings of shame to the present day. He had found it shameful and embarrassing and humiliating to speak about them at the criminal trial and, further, in the preparation for and during the course of the current proof.

[33] He left the employment of BT in 2002. He said he was going through a difficult time at that period. The burden of coping with his thoughts became too much, they “just became too heavy”. He thought that he might become unreliable in his employment and that it would be unfair to the organisation to have to “deal with who I had become”. These were his given reasons for leaving the employment. He stated clearly had he not suffered from these thoughts and flashbacks he would have remained in the employment of BT which he regarded as both enjoyable and rewarding.

[34] After leaving BT in 2002 the pursuer accepted there were gaps in his employment history until 2009. In 2009 a former colleague from BT contacted him. That person was at that time working for Cable & Wireless. He asked the pursuer to come and work with him which the pursuer did. He was employed by that company between September 2009 and February 2010. The job was a short term contract. His evidence was that he had the opportunity to take a full time job with Cable & Wireless but thought it would be “dishonest” to avail himself of this opportunity in the knowledge that he continued to experience difficulties with flashbacks and intrusive thoughts which might impinge upon his ability to perform to the best of his ability in an onerous position.

[35] Between July 2010 and December 2018 the pursuer had various employments, first with NHS Highlands as a drug and alcohol early interventions worker, then Waverley Care Trust as a project sexual health outreach worker. He thereafter, between 2011 and 2014, pursued a pathway to medicine course at college and studied for a BSc in marine science at the University of the Highlands and Islands. He accepted that he did not complete these courses but again stated that difficulties caused by his flashbacks and intrusive thoughts impeded his ability to study productively. His job between 2016 and 2018 with the [REDACTED] [REDACTED] was, as with most of his post Cable & Wireless employment, aimed at

his desire to serve the community. Again he accepts that it did not work out because of his ongoing continuing difficulties with flashbacks and intrusive thought patterns.

[36] The pursuer was asked what he considered his future prospects of employment were. He accepted that the situation was “very difficult” having regard to his employment history and the fact that he had sporadic periods of unemployment in that history. He said that he had sought advice from professionals in relation to this and his prospects of future employment. He had applied for jobs. He was essentially willing to consider anything for which he was qualified. He accepted that his continuing flashbacks were an impediment to his ability to obtain employment.

(ii) Professor White and Professor Fahy

[37] As already noted Professor White and Professor Fahy each produced two reports dealing with the psychological/psychiatric consequences of the sexual, physical and emotional abuse perpetrated upon the pursuer by WQ. Subsequent to these reports, and on the instructions of both parties, the professors met and discussed their respective reports on 8 March 2021. Prior to that meeting they had each considered the other’s report. Following that meeting they were able to prepare a “Joint Statement of Experts”.¹¹ The joint statement consisted of a preamble containing eight observations by them, and thereafter their joint answers to ten specific questions posed by the parties’ agents.

[38] The preamble essentially narrated areas of agreement. Firstly, and importantly, it was noted that “[T]here is now a high measure of agreement between the experts.” Thereafter it was recorded that the type of sexual abuse experienced by the pursuer,

¹¹ Joint Bundle pages 26-33

characterised as penetrative abuse occurring in adolescent years, carried a high risk of clinically significant psychological/psychiatric symptoms. It was recorded that the strongest association of this type of abuse was with a subsequent diagnosis of PTSD, but that it could also give rise to other types of mental health problems, including psychosexual difficulties, mood problems and personality difficulties. It was also agreed that childhood problems such as parental abandonment, changes in parental care givers and childhood institutional care all of which the pursuer had suffered were also associated with a substantially increased risk of adult mental health problems including personality difficulties, mood problems and alcohol/substance misuse. It was agreed that the childhood difficulties experienced by the pursuer prior to his sexual abuse at the hands of WQ led to emotional and behaviour problems that were documented in contemporaneous records. Their consensus view was that these childhood problems "... would probably have resulted in some adult mental health problems, including personality-related difficulties, anxiety and relationship problems." It was also agreed that these childhood adversities and emotional problems that the pursuer experienced prior to the sexual abuse increased the severity of psychological harm caused by that sexual abuse. The sexual abuse experienced by the pursuer, in the expert's joint opinion, predisposed him to suffer from specific types of problems in adulthood including PTSD focused on the traumatic experience of childhood sexual abuse and psychosexual difficulties. There was yet further agreement that stressful experiences in the pursuer's adult life, including work related, relationship and family stresses caused exacerbation of his mental health problems and that his reaction to such stressful experiences "... may have been exacerbated by the psychological sequelae of the childhood sexual abuse." Lastly, there was agreement that some of the life choices made by the pursuer in relation to work, relationships and family "could have been influenced by the

adversities that he experienced over the course of his childhood.” It was agreed by the experts that there was “a range of reasonable opinion about the relative impact of individual adverse experiences on his life decisions. They concluded the pre-amble by indicating that in relation to this last aspect there was a difficulty in providing a definitive opinion which was:

“... complicated by the retrospective nature of the information provided by the pursuer, and the possibility of conscious or unconscious bias arising in accounts given in the context of litigation.”

It should be noted that both experts agreed during the course of examination in their oral evidence that the determination of this last feature would be a matter for the court dependent upon the view taken of the pursuer’s evidence.

[39] The second part of the joint statement contained the answers to ten specific questions put to the experts.

[40] The first of these was what was the most appropriate diagnosis of the pursuer’s personality and psychiatric condition. There was agreement that the pursuer fulfilled the diagnostic criteria for PTSD. There was further agreement that he had an anxiety disorder, primarily focused on physical health concerns. Moreover, his anxiety disorder met the criteria for a diagnosis of hypochondriasis/illness, Anxiety Disorder/Somatic Symptom Disorder. Both experts further agreed that in addition to symptoms of PTSD the pursuer experienced problems with emotional regulation and personal identity. Professor White concluded that this combination of problems fulfilled the diagnostic criteria for complex PTSD. Professor Fahy did not disagree with that but wished to note that the combination of problems could also be diagnosed as PTSD together with emotional unstable personality traits. The experts were at one in stating that they did not attach much significance to the difference in diagnostic labelling.

[41] The next question sought a view on the causative impact, if any, that the experts considered parental abandonment and the pursuer's period in care, including fostering, had and, or continue to have on the pursuer's personality and psychiatric condition. In response to this question there was agreement that those experiences were clinically significant and would have led to vulnerable personality characteristics and clinically significant anxiety problems even if the sexual abuse had not occurred. There was further agreement to the effect that the experiences increased his sensitivity to psychological harm caused by subsequent stresses, which was taken to include the sexual abuse and some of his adult stressful experiences.

[42] The third question sought the experts' view on the causative impact, if any, the abuse by WQ had and/or continues to have on the pursuer's personality and psychiatric conditions. In relation to this question there was agreement that the abuse made a substantial contribution to the pursuer's PTSD. It was agreed that had he not been sexually abused it is possible that he would have experienced post-traumatic symptoms related to other childhood and adult adversities but the experience of penetrative sexual abuse was more likely to cause typical PTSD symptoms. They also agreed that the sexual abuse caused the pursuer to experience psychosexual problems which were unlikely to have developed if he had not been sexually abused. They agreed that the sexual abuse contributed to some of the problems that the pursuer experienced in emotional regulation, self-esteem, mistrust and self-image and that those symptoms could be viewed as components of complex PTSD or of a personality related problem. There was further agreement that these difficulties arose from the accumulation of experiences occurring prior to the sexual abuse as well as the experience of severe sexual abuse.

[43] The fourth question was in the following terms:

“What causative impact, if any, do the experts consider that [the pursuer’s] alleged abuse beyond the conviction has had and/or continues to have on the pursuer’s personality and psychiatric conditions?”

There was agreement that the experts could not define a specific psychological/psychiatric contribution arising from these matters. They expressed the joint opinion that the severe nature of the sexual abuse outweighed the influence of those alleged additional experiences.

[44] The fifth question sought their joint view on the causative impact, if any, they considered that adult stress as experienced by the pursuer had or would have on his personality and psychiatric conditions. There was agreement that those adult stresses exacerbated the pursuer’s anxiety problems and that the various adversities that the pursuer experienced in childhood, including the sexual abuse, increased his sensitivity to those adult stressors.

[45] The sixth question sought the answer to which, if any, of the pursuer’s personality and psychiatric conditions would have been avoided had the abuse of which WQ was convicted not have occurred. The answer was also sought to the question which of these conditions would have been reduced had the pursuer not suffered this abuse. In response there was agreement that the pursuer was unlikely to have experienced psychosexual difficulties if the abuse had not occurred. There was further agreement that he would not have experienced PTSD symptoms directly related to the trauma of sexual abuse. They acknowledged the possibility that he might have experienced PTSD symptoms focused on other childhood adversities but noted that even if that was the case the post-traumatic symptoms would have been less severe. Equally other symptoms, including health focused anxiety might have been less severe if the sexual abuse had not occurred. In relation to these matters the experts caveated their views by saying that it was “difficult to be certain about this”.

[46] The seventh question sought a prognosis for the pursuer once the litigation was completed. There was agreement that this was likely to result in some improvement in his condition because he will no longer be required to repeat his accounts of the abuse and will no longer have to undergo legal and medical legal interview. Equally he will no longer face the prospect of court appearances and feelings of mistrust of authority and professionals. They were however clear that: “[T]he benefits of conclusion of litigation will be modest rather than substantial as [the pursuer’s] psychological difficulties are of a longstanding nature.”

[47] The eighth question was in relation to the impact, if any, that the abuse of which WQ was convicted had on the pursuer’s past ability to work. In response to this question the experts found it “difficult to identify a specific effect which the abuse had on [the pursuer’s] past ability to work”. They identified a number of factors which might be relevant but were unable to give any positive advice.

[48] The ninth question sought an answer to the question of the impact, if any, that the abuse of which WQ was convicted had on the pursuer’s future ability to work. The answer was essentially in the same terms as the answer to the eighth question.

[49] The tenth question was treated as already answered and I need not narrate anything about that.

Submissions

(i) Pursuer

[50] On the basis of the evidence senior counsel for the pursuer made the following propositions.

[51] It was acknowledged that the pursuer suffered from parental neglect and as a consequence was taken into care. It was further accepted that this factor made him more vulnerable to the effects of any subsequent psychological trauma, including childhood sexual abuse ("CSA").

[52] In relation to the periods of his childhood it was submitted that when first in care he was sent to a children's home at Largs which he spoke of fondly and where he performed well academically. In that regard reference was made to the report by the educational psychologist dated 9 April 1981 referring to the pursuer as "now a well-adjusted boy with good self-control" and, further, who if "given the right family, stands every chance of success."

[53] Thereafter it was noted that the pursuer had two short-term foster families, Mr and Mrs S and Mr and Mrs F, about which the pursuer made no complaints in relation to the standard of care he was provided. The submission proceeded that thereafter the pursuer was placed in the foster care of WQ and CQ. The submission was that at that stage he was "a vulnerable child needing reassurance, love and protection." This need was then contrasted with the long period, a number of years, in the care of those persons when the pursuer sustained years of sexual abuse, including penetrative anal sex. It was observed that both experts were in agreement that sexual abuse of that type during adolescence was particularly damaging in its consequences for the psychiatric/psychological health of the adult.

[54] It was noted that, again based on the expert's joint view, the risk of developing alcohol or substance abuse in circumstances where a person has been sexually abused in adolescence is very significant. The submission was that the pursuer has "done well" to be able to avoid developing any problems in this regard. It was said that this was indicative, or

demonstrative, of the pursuer having a degree of psychological resilience to the abuse which he sustained.

[55] It was noted that the pursuer concluded his secondary school education and left school with four Highers, two at A and two at B. This was said to be an above average performance and obtained in difficult circumstances and was indicative and demonstrative of the pursuer having “significant academic potential.”

[56] In relation to symptomology it was submitted, on the evidence of the joint report of the experts, that the pursuer now suffers, and has suffered throughout adulthood, from PTSD, psychosexual problems, anxiety and personality related difficulties. The submission was, again based on the joint expert report, that the PTSD was probably caused by the CSA. Similarly the psychosexual problems were probably caused by the CSA. In relation to anxiety and personality related difficulties, the submission was that these were probably caused or at least materially contributed to by the CSA. The CSA was accepted as increasing the pursuer’s sensitivity to interpersonal stresses. The result of this was that the CSA was the cause of him being less able to cope with the normal stresses in adult life, such as bereavement, stress at work and breakdown of relationships.

[57] The submission accepted that the pursuer concealed the fact that he suffered CSA whilst in the employment at BT. This was said to be not unusual, survivors of CSA often suffer from shame and guilt. It was further submitted that the pursuer’s acknowledged psychological difficulties would be brought to the fore by interpersonal relationships at work. Had any person seeking to assist him with his psychological difficulties whilst at work known of that fact it would have assisted their dealing with him. Put another way, it would have been important for anyone assisting him in the employment sphere to have known of the CSA. Counsel drew to my attention the pursuer’s evidence to the effect that

he believed that a combination of low self-esteem and eroded professional self-belief made him insecure and put him in a position of self-doubt. These were the underlying factors causing him to quit his employment with BT.

[58] The same problems continued throughout the remainder of his career to date. The same factors explained his intermittent work record.

[59] The court was invited to regard the pursuer as being “wholly credible and reliable” in giving his evidence. The submission was that his evidence was given in a measured manner and upset shown by him when speaking of the abuse he had suffered was natural. It was said that the pursuer did not attempt to exaggerate either his symptoms or his factual narrative of his background.

[60] In relation to the psychological/psychiatric evidence of Professor White and Professor Fahy, it was submitted that there was little dispute between them on key points. It was acknowledged that there was a difference in the experts’ conclusions. The principal difference was whether the pursuer suffered from PTSD or complex PTSD. The pursuer’s approach to this was to note that it was agreed by the experts that the PTSD was caused by the CSA. Again it was a matter of agreement between the experts that the pursuer’s vulnerability to stress was increased by his experience of CSA. The pursuer regularly lost employment as a result of stress related conditions. Having regard to these factors it was open to the court to infer that the pursuer would have done better in his employment but for the CSA he experienced. It was also advanced that the evidence showed that the pursuer had on a number of occasions been able to obtain remunerative responsible work at a reasonably high level. In these circumstances it was said to be “not difficult” to draw an inference that the CSA experiences were the “straw that broke the camel’s back” in terms of the pursuer’s ability to hold down stressful work, particular reference in this regard was

made to his employment with BT. It was accepted as possible that but for the pursuer's troubled background the CSA alone may not have been sufficient to keep him out of work but having regard to the pursuer's evidence in relation to his time with WQ it was said to be "difficult to argue" that by the stage he was sent to stay with WQ he was irreparably damaged. This chapter of the submission concluded by observing that "ultimately, the psychiatric/psychological evidence will turn largely on the court's view of the pursuer's evidence."

[61] In relation to quantum the evidence of Mr Carter was relied upon in relation to wage loss, counsel observing that there was in his submission "little dispute between the experts" in relation to employment. In relation to pension loss Mr Pollock's evidence was relied upon as providing a figure of about £240,000 for that element of loss, subject to an acknowledgement that pension loss was a function of wage loss.

[62] More generally in relation to quantum of damages counsel submitted that the pursuer was entitled to damages for (a) solatium, (b) past loss of earnings, (c) future loss of earnings, (d) pension loss, (e) treatment costs, and (f) interest.

[63] In relation to solatium the submission was that the appropriate award was at least £150,000. Reliance was placed upon *JM v Fife Council*¹² and *A and B v C*¹³ and to the JCG guidelines¹⁴.

[64] In relation to past loss of wages it was submitted that there was clear evidence that but for the pursuer's psychological problems he would have followed a career in field or project management in the communications sector. Support for this proposition was the

¹² 2009 SC 163

¹³ 2018 SLT 1194

¹⁴ 15th edition, chapter 4(B)

pursuer's lengthy period of employment in that area and capacity with BT and the evidence to the effect that he was able to resume employment in that sector with Cable and Wireless between September 2009 and February 2010. On the basis of this evidence, coupled with the evidence in the joint report of the psychological/psychiatric experts as to the extent of the pursuer's psychological issues, the submission was that he clearly had the potential to earn an above average income. The evidence was sufficient to entitle the pursuer to an award on a multiplier/multiplicand approach rather than what was described as "a random lump sum" for loss of employability or disadvantage on the labour market.

[65] In relation to the quantum of any such award reliance was made on calculations set forth in Mr Carter's supplementary report.¹⁵ In this report the author noted that he had been supplied with a full set of records relating to the pursuer's income and national insurance contributions, from 1986/87 to 2019/20. On the basis of these figures the view was taken by the author that it was possible to split the pursuer's employment history into three distinct periods; 1986/87 to 1996/9, when the pursuer found it difficult to settle into employment, 1997/98 to 2020/21 when the pursuer had an initial fairly lengthy period of employment with BT followed by periods of employment of shorter duration and study and a third period for future employment prospects.

[66] Counsel's approach to wage loss was based on Mr Carter's approach. In the report, calculations were set out¹⁶ based on earnings of two categories of employment, a field manager and a project manager, in which it was submitted the pursuer was qualified, had some experience of and but for his psychological issues would have pursued as a career.

Average earnings between the lower and upper quartile earnings in each of these

¹⁵ Number 6/23 of process

¹⁶ Number 6/23 of process, appendix 2

employment categories for a period covering the years 2002/3 to 2020/1 were stated in the report. On the quoted figures over the stated period the average earnings for a field manager were £757,525 and for a project manager £712,640. Counsel's approach was to take the average of these figures, £735,083. From this he deducted the pursuer's actual earnings in this period, a figure of £135,223 to give a loss of £599,860. Counsel drew to my attention that his approach made no allowance for the possibility that the pursuer may have enjoyed promotion if he had been in employment in this type of employment.

[67] Counsel then addressed the earlier period identified by Mr Carter, that is pre-2002/3 where what was described as "a modest award" of £50,000 based on a multiplicand of £10,000 was submitted as appropriate. In support of this approach reliance was placed upon *Robertson's CB v Anderson*.¹⁷

[68] On the approach outlined counsel's submission in relation to past loss was that an award of £649,860.00 was appropriate. A modest discount of 10% to allow for contingencies was made giving a total claim of £584,874.00 in this respect.

[69] In relation to future wage loss the submission was that again it was appropriate to proceed on a multiplier/multiplicand basis. Support for this was again placed on *Robertson's CB v Anderson (supra)* and the more recent English authority *FZO v Andrew Adams & anr*¹⁸.

[70] The mechanical aspect of this part of the submission was that the undiscounted multiplier for a man of the pursuer's age of 50 to retirement at age 68 was 18.47.¹⁹ The discount factor, uninjured, would normally be 0.83, or 17% but having regard in the present case to the pursuer's increased vulnerability due to his psychological condition, it could

¹⁷ 1996 SC 217 at 216

¹⁸ [2019] EWHC 1286 (QB)

¹⁹ Ogden Tables, 8th ed. Table 11

reasonably be argued that the figure should be higher. A discount factor of 0.7 was said to be reasonable to allow for that factor. The adjusted multiplier would then be $0.7 \times 18.47 = 12.93$. The submission proceeded that but for CSA, the pursuer would probably be earning in the region of £41,022, this figure being based on the average for a field manager at £43,228 and for a project manager at £38,816²⁰. Given his age, his psychological problems, his patchy employment history and the current pandemic, it was unlikely that he will do better than intermittent earnings at £11,296 in research roles or £13,429 as a project officer in the voluntary sector.²¹ The average is £12,363. Deducting this from the figure of probable earning but for CSA would give a multiplicand of £28,665. The total for future wage loss to age 68 would be $12.93 \times £28,659 = £370,561$.

[71] In relation to pension loss it was said to be clear from Mr Pollock's report that the figure of £240,000 was appropriate for this head of claim.

[72] In relation to treatment costs it was submitted that there was no dispute between the parties that the pursuer would require further treatment. The defender's witness, Professor Fahy had estimated that 40-60 sessions would be required at a cost of about £175 per hour. This gave a figure of £8,750 which the pursuer accepted and advanced as reasonable.

[73] The interest calculation was said to be complicated and the court was invited to put the case out by order after reaching its views on the principal matters to address this subject.

²⁰ Figures derived from 6/23 of process at page 21

²¹ Figures derived from 6/23 of process at page 21.

(ii) *Defender*

[74] The defender's whole submission proceeded on the basis that it was established as a matter of proven fact that the pursuer suffered inevitable psychopathology and disadvantage before he was subjected to WQ's abuse. It was said that the causes of the pursuer's psychopathology were complex and multifactorial. Beyond this there were said to be significant and inexplicable gaps in the documentary evidence and in the pursuer's own evidence which was uncorroborated and unreliable. It was acknowledged that the pursuer was entitled to be awarded what was described as "substantial solatium" due to WQ's abuse but that for the difficulties identified the assessment of damages overall, particularly for any patrimonial loss, required to be based on a broad, lump sum basis. It was, ultimately, acknowledged that very much depended upon the court's assessment of the evidence of the pursuer.

[75] In relation to the first part of the submission, that the pursuer suffered inevitable psychopathology and disadvantage before he was subjected to WQ's abuse, it was pointed out that the evidence showed that the pursuer was born into a neglectful family; he was taken into local authority care at the age of 21 months. He suffered behavioural problems; he was said to have suffered "occasional maltreatment" whilst in care; he was briefly returned to his mother where he was neglected and physically and emotionally abused; his behaviour problems continued when he was returned to care in 1977; there were two further failed foster placements and that by 1983 he was what was described as "demanding, distrustful, and defiant".

[76] In relation to the remainder of the submission the argument was advanced that the circumstances of the diagnosis of PTSD have influenced the pursuer's recounting of experience and that his evidence in this regard should be treated with caution. Beyond this

the submission was that WQ's admitted fault was only one disparate factor in the remaining facets of what was described as the pursuer's complex mental health presentation. From this it was said that the pursuer had not proved that WQ's fault caused him to suffer personality, anxiety and relationship problems leading to difficulties in his employment. It was accepted that but for WQ's fault the pursuer was likely to have suffered clinically significant personality, anxiety and relationship problems. But that the sums sued for were excessive. It was said not to have been proved that WQ's fault caused the pursuer to suffer loss of educational attainment, loss of earnings, or a loss of employability. Beyond that it was said that even if he had proved a causal link he had not proved the nature and extent of this head of claim. It was said to be more likely than not that, due to the pursuer's inevitable personality, anxiety and relationship difficulties, his educational and employment history and prospects would have been substantially the same absent WQ's fault. In conclusion it was said that in the event that damages were to be awarded for loss of earnings, the nature and extent of the pursuer's actual earnings, and of any loss arising out of WQ's fault was so vague and indeterminate that the court should "swing a broad axe with a blunt edge" at the pursuer's claim for patrimonial loss and award a lump sum.

[77] In making these submissions considerable reliance was placed upon what was described as an absence of documentation which was said to exist despite substantial efforts on behalf of the defenders to obtain such documentation.

[78] In relation to the quantum of any award it was submitted that solatium should be awarded in the sum of £100,000. A lump sum of £100,000 should be made for past loss of earnings if any are to be awarded. On similar reasoning a lump sum award should be made for future loss of earnings and pension loss. Fifty thousand pounds was said to be the appropriate figure for future loss of earnings and £25,000 for loss of pension rights.

Conclusions

(i) *Reliability and credibility*

[79] This issue arises principally in relation to the pursuer. There was no challenge to the reliability and credibility of the evidence of Mr Carter, Dr Pollock or Mr Govan. Whilst there was some suggestion that there may be criticisms in relation to the reliability and credibility of both Professor White and Professor Fahy these matters were very much resolved by the preparation of the joint statement already referred to. It follows from the foregoing that I consider I only need to consider the reliability and credibility of the pursuer.

[80] The basis of counsel for the defender's challenge to the pursuer's credibility were certain alleged inconsistencies between his reporting of symptoms to Professor White and Professor Fahy. The primary response to this challenge by counsel for the pursuer was that the allegation of inconsistent reporting by the pursuer was not put to either the pursuer or to Professor White. The challenge should therefore be ignored as a matter of fairness. Reliance was placed by counsel for the pursuer on dicta of Lord Clarke in *Currie v Clamp's Executors*.²²

[81] I consider the pursuer's response to the basis of the defender's challenge to the pursuer's credibility to be reasonably based and justified. In my view evidence of a person's reporting of symptoms to different clinicians at different times, in the context of the present case the narration of a history of psychiatric/psychological illness extending over a very extended period, requires to be approached with care. Consideration has to be given not only to the passage of time between the questioning and the events being recounted but to

²² 2002 SLT 196 at paragraphs [10]-[11]

the, in the present case highly relevant, nature of the events and to the frequency which the witness has required to give his account. When these factors are taken into account it may well be that accounts given on different occasions contain inconsistencies. Having regard to that consideration it is in my opinion most important that in the event that clinicians who recorded different accounts of a person's reporting of historic matters are examined in a litigation about what they recorded they are afforded the opportunity to explain the circumstances in which they received the information they recorded and to consider any difference between that which they recorded with that which was recorded by the other clinician. It is equally plain and only fair that the person who gave the narrative to each clinician is permitted to see what was said on each occasion and offered the opportunity to explain these differences or give a reason why different accounts were made. Given that this did not occur in the present case I am not prepared as a matter of fairness to regard this factor as a reason for causing any doubt on the reliability and credibility of the pursuer's evidence.

[82] Given that the pursuer's credibility has been put in question I should however make some further comments in relation to that matter. The pursuer gave evidence over a reasonably prolonged period of time. Throughout his demeanour was polite and thoughtful. He did not rush to answer and when he did gave detailed and considered responses. On a number of occasions throughout his examination he was shown contemporaneous documents. Sometimes they had the effect of confirming evidence he had already given. On other occasions they were provided for his comment. When he was asked to comment on historical events by reference to documents he appeared candid, if he could not remember things because of the passage of time he accepted that factor. On a number of occasions, for example when the reports of an educational psychologist relating

to his early years in school were concerned, he did not dispute what was recorded but offered the comment that that was not his "impression of himself" at the time. He did not appear to exaggerate, and indeed on a number of occasions gave the impression of downplaying for example the significance of some of the abuse he was subjected to. When asked by me about his academic attainment at secondary school and whether this could be adversely affected by the possibility that the school had a poor record in this regard, a proposition he could easily have assented to, he in fact rebutted that proposition and gave positive evidence about the record of academic attainment achieved by pupils who attended his secondary school. His evidence covered the entire span of his life save for the early years before functioning memory developed. He accounted for this entire period in a measured and balanced way which did not seek to avoid periods which plainly could be regarded as potentially problematic for him in the context of this litigation, I have in mind the periods of unemployment and erratic lifestyle with consequent fragmented employment history in his early working life about which he gave as full an account as his memory permitted.

[83] Having regard to the factors that I have adverted to in the previous paragraph, I am satisfied first, that I have no objective basis to reject or doubt any evidence of the pursuer on the basis that it was either incredible or unreliable. Second, that following from that conclusion I am entitled to accept the pursuer's accounts both of his childhood, education and employment history as accurate and reliable. Given that there is no evidence available to the court either by witness testimony or documentary evidence contradicting the pursuer, the results of my conclusions in this matter are that I will accept the pursuer's accounts of those matters. In reaching that conclusion I should record that there was an attempt by counsel for the defenders to use gaps in the records of the pursuer's working history as being a reason for doubting the veracity of the pursuer's account of his employment history.

It is true that there are gaps in the chronological records available to the court in that regard. The defenders' agents sought recovery from all relevant agencies and have been unable to provide more information. There was no evidence that these gaps were the fault of the pursuer. I do not consider that the pursuer has been shown to have any responsibility in this regard and accordingly do not consider it a basis which would entitle me to question the reliability or credibility of his evidence.

(ii) General

[84] On the basis of my conclusions in the immediately preceding paragraph it follows that I accept the pursuer's evidence as narrated in paragraphs [18]-[36] hereof. Further I accept that the propositions advanced by counsel for the pursuer and narrated in paragraphs [51]-[58] are well founded. I am satisfied that the pursuer suffered from parental neglect. I am satisfied that on being taken into care he displayed symptoms associated with such neglect, such as disruptive and bad behaviour. I further accept that after a relatively lengthy stay of approximately five years in a children's home he experienced two further periods of foster care. On the basis of the pursuer's evidence I do not however accept the submissions made by counsel for the defender in relation to those periods in his history.

[85] In my view, whilst the pursuer was neglected by his parents, was disturbed and displayed disruptive behaviour when initially admitted into care and, at a later stage of his development, experienced two periods of foster care, there is no evidence to link those events with psychiatric/psychological illness. It is established in the evidence that this history predisposed him to psychiatric/psychological sequelae but no link to such conditions exists. On the contrary as a matter of probability, the evidence is to the effect that these

events were coped with by the pursuer and that the causes of his subsequent admitted psychological/ psychiatric illnesses were the abuse he sustained at the hands of WQ.

[86] Looking at this matter in a little more detail, the pursuer stated candidly that he had little or no recollection of the periods he was cared for by his mother. Perhaps more importantly he has never experienced flashbacks, nightmares or disturbing thoughts involving his mother or the period he spent in her care. So far as disruptive behaviour was concerned the pursuer accepted, albeit he has limited memory, that his behaviour might be so characterised on his admission to the children's home. The evidence in relation to his time in that home is however almost wholly positive. The evidence of the educational psychologist referred to by counsel for the pursuer, which was reliant upon contemporaneous reports by the psychologist, appear to show a picture of a child settling well and thereafter not only performing well at school, fitting in and thriving in the children's home but showing the potential, if appropriately placed following the completion of his term at the home, to both progress and perform at what was described as an above average level. Beyond this, and more subjectively, the pursuer's evidence was positive about his time in this home. It is notable that in concluding his evidence on this chapter in his life he expressed the view that if it had been left up to his decision he would have remained at the home. Again I consider it of significance that the pursuer has no adverse memories and has never experienced flashbacks, nightmares or disturbing thoughts about his period at the home. In relation to the two periods in foster care the pursuer again expressed no negative views. It is correct that he regarded neither placement as optimum and appears to have expressed no regrets at leaving either placement but equally he expressly stated that he experienced no abuse or neglect in these periods. It is in my view noteworthy that these periods in foster care occurred when the pursuer was between 11 and

13 years of age. The evidence in this case was clear that the pursuer was of at least average intelligence. It is therefore likely that he would have memories of this period and these foster placements. I conclude that an objective assessment of the various periods in the pursuer's childhood, with the exception of that in the care of WQ, left him in the unfortunate position of children who have experienced parental neglect and being looked after in care, that is, on the joint evidence of the psychologists in this case, a predisposition to a number of psychological/psychiatric disorders in adult life. There is however, in this case nothing to link that predisposition to the sequelae suffered by the pursuer to the periods in the care of his parents, the children's home or the first two foster placements. To the contrary, on his, essentially unchallenged, evidence the flashbacks, nightmares and disturbed memories he has experienced throughout his life that have occasioned him difficulty in both development, interpersonal relationships and employment all relate to his time spent in the care of WQ and, more pointedly, the abuse of a sexual nature that he sustained over a lengthy period at that person's hands. It follows that I am satisfied on the balance of probabilities that the difficulties experienced by the pursuer in both his personal life and in relation to employment have been proved to be causally linked to the CSA perpetrated by WQ upon the pursuer and that the defenders are, as a matter of admission, vicariously liable for the consequences of that conduct.

(iii) *Quantum*

(a) *Solatium*

[87] Parties were agreed that an award of solatium was appropriate. Counsel for the pursuer proposed a sum of £150,000. Counsel for the defender advanced a figure of £100,000. Both sides referred to a number of authorities in relation to awards of solatium

for children who had been awarded damages in respect of sexual abuse, and were said to offer guidance as to an appropriate level of solatium in the present case.²³ It is trite that whilst previous awards in other cases can offer some guidance, each case is wholly dependent on its own facts. I consider that consideration to be particularly apposite in cases involving sexual abuse where beyond the fact that the nature of the wrong is of the same category the act giving rise to fault and the consequences thereof upon the victim will almost certainly vary materially. Subject to that caveat the decisions in the cases to which my attention was drawn were issued between 2009 and 2020. Whilst the abuse sustained by the victims in each case was of the same general nature as that sustained by the pursuer in this case the periods over which it was perpetrated ranged from, in two cases, 2 years to 8 years and 11 years in the other two cases. Psychological issues were present in each of the cases but not in a way directly comparable to the present case. The awards of solatium made ranged between £75,000 and £120,000.

[88] In the present case the relevant facts are, in my opinion, that the pursuer was in the care of WQ for a period of approximately five years between 1983 and 1988. There is no dispute that he was the victim of serious sexual abuse during that period and at the hands of WQ. The gravity of WQ's behaviour is plainly spoken to by the fact that he was convicted of offences involving the pursuer and sentenced to a period of 10 years imprisonment. I have to take into account that beyond that conviction the pursuer gave evidence, which was not challenged, that the charges of which WQ were convicted were a sample of more extensive conduct of a similar nature. The evidence available to and accepted by the court was from the pursuer and to the effect that such offending behaviour was a very regular occurrence.

²³ JM v Fife Council (supra), A and B v C (supra), A v N SCLR 2014 SCLR 225 and T v English Province of the Congregation of Christian Brothers 2020 SLT (Sh Ct) 108

The award of solatium I require to make, as was recognised by counsel requires to cover past loss for the period of abuse, past solatium for PTSD, psychosexual problems and anxiety and personality problems and future psychological problems. I did not understand there to be any dispute that the psychological problems that will be experienced in the future by the pursuer will be lifelong. Having regard to all these factors, I would make an award of solatium of £135,000 of which £90,000 would relate to the period of abuse suffered, £25,000 would be in respect of the solatium in relation to the psychological disorders from the end of the pursuer's residence with WQ until the present day and £20,000 for psychological symptoms in the future.

[89] Parties' position in relation to other elements of loss was sharply divergent. Put simply the pursuer's position was that the evidence established that the pursuer had sustained loss of earnings in the past because of his inability to sustain employment in the field where he would have, as a matter of probability, worked but for the problems occasioned by the abuse he suffered and the consequent psychological effects upon him. Equally this factor gave rise to a future wage loss. By contrast counsel for the defender submitted that there was insufficient evidence to enable the court to form the view that the pursuer had established a claim for either past or future wage loss. As I understand the submission there was an acknowledgement that the psychological difficulties experienced by the pursuer might have occasioned him difficulty in the employment market but that this could be adequately recognised by a lump sum loss of employability award.

[90] I am not persuaded that there is merit in the defender's approach. As expressly submitted by counsel for the pursuer and at least tacitly accepted in response by counsel for the defender, the approach the court takes to the award of wage loss to the pursuer will be dependent upon the view of that person's evidence. I have already stated in this opinion

that I accept the evidence of the pursuer. It follows that I am satisfied that the court has sufficient information upon which to base an assessment of wage loss. I further accept that the approach to patrimonial loss and the figures advanced by counsel for the pursuer are a reasonable basis upon which to make an award in this case. I will make awards on the basis of those figures as follows: Past wage loss £584,874; Future wage loss £370,561; Pension loss £240,000; Treatment costs £8,750. When the award for solatium determined in paragraph [88] is added the total award is £1,339,185.

[91] The only matter which remains to be dealt with is the issue of interest. As invited by both parties after the issue of this opinion I will put the case out by order and hear submissions on the question of interest.