



OUTER HOUSE, COURT OF SESSION

[2025] CSOH 23

A154/22

OPINION OF LORD CLARK

In the cause

F

Pursuer

against

(FIRST) GORDON CHALMERS;
(SECOND) RC DIOCESE OF GALLOWAY;
(THIRD) NORTH AYRSHIRE COUNCIL;
(FOURTH) THE ENGLISH BENEDICTINE CONGREGATION TRUST; and
(FIFTH) PAUL MORRISON

Defenders

**Pursuer: Milligan KC, McCaffery; A & WM Urquhart
Second Defender: Primrose KC, Rolfe; Keoghs Scotland LLP**

28 February 2025

Introduction

[1] In the late 1970s, the pursuer was a pupil at St Mark's primary school in Irvine. At the school, when he was about 5-6 years old, he was subjected to physical abuse and very serious sexual abuse by a priest. In the mid-to-late 1980s, he was a boarding school pupil at Fort Augustus Abbey secondary school. When at that school, aged about 14-16, he again sustained physical and sexual abuse. During the period of his childhood, and later, he

suffered other adverse life experiences. He has developed Complex Post Traumatic Stress Disorder (CPTSD), originally diagnosed as severe PTSD in about 2012. In his employment career he carried out various forms of work, but he eventually felt unable to continue to work from about 2012.

[2] In this action, the pursuer originally sought damages from five defenders. However, the case now proceeds against only the second defender, the Roman Catholic Diocese of Galloway. The priest who committed the abuse at St Mark's was within that diocese.

[3] Following the death of the priest in 2021, his estate was declared bankrupt. The first defender is an insolvency practitioner, who was the trustee of the estate of the priest. Decree in absence was granted against the first defender. The case against the third defender, North Ayrshire Council, whose predecessor was said to have been the responsible authority for St Mark's, was abandoned. The fourth defender, the English Benedictine Congregation Trust, is a charity which was responsible for the teaching staff and Benedictine brothers and priests who worked and lived at Fort Augustus Abbey. The fifth defender was the executor-nominate of the member of staff who committed certain abuse of the pursuer at Fort Augustus Abbey. Following discussions, the action against the fourth and fifth defenders settled.

[4] The case called for a proof before answer, with evidence led over eight days. The second defender accepts that the physical and sexual abuse of the pursuer at St Mark's, for which the priest was in due course convicted, took place. Prior to the case calling for proof, the issue of whether the second defender was vicariously liable for the conduct of the priest remained as a potential dispute. However, at the proof, the second defender no longer insisted on that point and accepted that it is vicariously liable for the abuse at St Mark's. As

the case now proceeds only against one party, from now on the second defender is referred to as the defender.

[5] The key issue in dispute between the parties is the extent of loss, injury and damage caused by the abuse at St Mark's, having regard to whole circumstances including the physical and sexual abuse at Fort Augustus Abbey and the other adverse experiences suffered by the pursuer.

[6] At an early stage in this case, a judge granted a motion for the pursuer that his personal details be anonymised. The order of the court prohibits the publication of the name, address and date of birth of the pursuer, or any particulars or details calculated to lead to the identification of the pursuer in connection with the present action. As a consequence, in writing this Opinion, when giving factual information about the pursuer, his background and his working career it is, where necessary, expressed in general and restricted terms with limited reference to dates, years and places.

Undisputed facts

[7] The parties were able to agree a number of facts in their joint minutes. It is also possible to draw certain other undisputed points from their written and oral submissions and from the evidence. What follows is a brief summary of the relevant factual matters agreed or undisputed, in chronological order.

[8] The pursuer was born in England. When he was aged three, his mother passed him over to his maternal grandmother to live with her. The pursuer's mother returned for him when he was aged four years, removing him to Scotland. When at St Mark's primary school, aged about 5-6, he was physically and sexually assaulted by the priest several times and, on various occasions, he was raped by the priest, involving anal penetration. The priest

was convicted of these offences, which took place over a period of about twenty months, as well as sexual offences against other boys.

[9] Parties agree that when at Fort Augustus Abbey the pursuer again suffered physical and sexual abuse. The full details of what occurred are not agreed, given the differences that arose in the evidence. The other adverse experiences include the pursuer being assaulted by a girl, being rejected by his mother, abandoned by his father and assaulted by his stepfather, and having a young friend who went missing. Also, in later years, the pursuer broke his arm when he fell from a horse.

[10] Turning to his education, after leaving school, he attended at a college, obtaining an HNC in microbiology before attending a university to study zoology at degree level. He then attended at another college, to study biology. The pursuer then went to another university and undertook a degree in biology.

[11] In relation to work, for a period over two years or so, the pursuer worked as a sales assistant at a supermarket. He then trained as a nurse for three years or so and was qualified. His advanced diploma as a Registered Adult Nurse was converted to degree level. He worked as a staff nurse at hospitals in England. The pursuer was promoted to the post of senior staff nurse. While working as a nurse, he suffered bullying. He attended a tribunal as a result of the bullying. His employment was terminated by a compromise agreement. Subsequently, the pursuer began working in prisons as a nurse, covering three prisons. He then worked as an agency nurse for 18 months until the commencement of employment with another firm, again in prisons. The pursuer undertook clinical drug treatments at two prisons, reaching the stage of a band 7 nurse.

[12] For a further eight years or so he worked again as a nurse at hospitals in England. At a college, he completed courses in, and gained certificates for, the management of drug

misuse and the management of alcohol problems in primary care. He was admitted as a member of the Federation of Drug and Alcohol Professionals.

[13] In about 2008, the pursuer was referred to his local community mental health team. In 2012, he was referred to, and received counselling, from a service in England. In 2013, he was referred to a centre for psychiatry.

Joint statement of psychiatric experts

[14] The central issue in dispute in this case is the extent to which other factors in the pursuer's life, beyond the abuse by the priest at St Mark's, contributed to the pursuer's psychological issues, which gave rise to loss and damage. This was assessed in some detail by the experts, for the pursuer Dr O'Neill, and for the defender Professor Fahy and Dr de Taranto. Before turning to the evidence, it is worth noting the points agreed in the joint statement of these psychiatric experts and what they disagree about. This will assist in focussing on the points in dispute and indicating each side's position on what was the impact and consequences for the pursuer of the various forms of abuse and the other adverse factors.

[15] The psychiatric experts begin by saying that there is a high level of agreement between them. Where they disagree, this is partly related to the differing accounts that they obtained from the pursuer, his qualities as a clinical historian and the evolving or changing nature of his account, including in relation to the abuse (especially in regard to the severity of abuse at Fort Augustus Abbey).

Matters agreed

[16] The pursuer's account of his childhood family experiences includes risk factors for subsequent attachment and mental health problems, i.e. abandonment by his father, a poor relationship with his mother and physical abuse by his stepfather. The type of abuse described by the pursuer occurring in St Mark's and Fort Augustus Abbey would be psychologically traumatic. Features of the abuse are more likely to cause significant psychological harm and increase the likelihood of childhood and adult mental health problems and poor outcomes in domains of educational achievement, occupational functioning and relationships. These features include prolonged duration, penetrative abuse, helplessness (he states that when he reported the abuse his account was rejected and he was punished), association with violence (especially at Fort Augustus Abbey), and the abuse occurring in more than one school setting.

[17] The pursuer has also described other types of psychologically harmful childhood experiences including poor attachment to his mother and at other schools bullying, physical abuse and attempted sexual abuse.

[18] His account of his psychiatric symptoms meets diagnostic criteria for CPTSD. The cause of his CPTSD is multifactorial, but the most significant contributors are the two periods of reported childhood sexual abuse. Even if one or other period of childhood sexual abuse had not occurred, it is likely that the pursuer would have gone on to develop significant psychiatric problems in adulthood including PTSD and personality-related difficulties.

[19] The pursuer's psychiatric condition deteriorated around 2012/13, and since then his symptoms have been severe and resulted in impairment of occupational functioning and relationships. The likely explanation for this deterioration is his high level of preoccupation

with the abuse and related matters, and the perpetuating effects of the criminal and compensation cases. Personality-related factors such as narcissism, grandiosity and emotional dysregulation appear to have contributed to this process and influenced the clinical and medico-legal presentation of his difficulties. His condition, as presented to the experts, is a severe psychiatric disorder that carries a poor prognosis.

[20] An evidence-based treatment programme for CPTSD would involve prolonged therapy with an experienced psychologist, supplemented by psychiatric support. However, the experts are not optimistic that the pursuer would be able to sustain engagement in intensive or prolonged therapy or that he would be able to cope with challenges to his beliefs and interpretations. Therefore, they would recommend an initial trial of engagement, if practicable, before committing resources to a long-term course of treatment.

[21] The prognosis for the pursuer's future fitness to work is poor, at least for the first few years post-litigation. It is very unlikely that he will become fit or able to resume employment as a nurse. It is possible that he could cope with less demanding work, but in view of his employment history it is likely that he would experience episodic difficulties even if he were to return to some form of employment.

[22] The experts' ability to provide definitive opinions on this case is compromised by the lack of contemporaneous information dealing with the pursuer's school years and the problems he had at work. Therefore, they must rely heavily on his account, which is problematic as it is agreed that there is an issue in relation to his reliability as a clinical historian. In their reports the experts have identified their concerns that include differing accounts of the abuse suffered at Fort Augustus Abbey, incongruities between the clinical records and the pursuer's account of the chronology of his symptoms, his anger, and his

efforts to control the clinical narrative within the medico-legal setting. This causes them difficulties in the analysis of the chronology, severity and causation of his symptoms.

[23] They considered the issue of apportionment of the pursuer's psychiatric symptoms between events at St Mark's, Fort Augustus Abbey, other schools and in the family home. Even with the best quality of information and a reliable clinical historian, apportionment of the type of condition suffered by the pursuer is difficult owing to the limitations of professional and scientific knowledge and his exposure to multiple potentially traumatic events. The task becomes more challenging as he has given differing accounts of the abuse (at Fort Augustus Abbey), the cause of his symptoms (according to the pre- and post-2012/13 clinical records) and of various potentially significant biographical details.

[24] The cause of the pursuer's current psychiatric condition is multifactorial. The reported experiences of sexual abuse at St Mark's and Fort Augustus Abbey are the most significant contributors to his current condition, though other family and adverse childhood experiences have also contributed.

Matters not agreed

[25] Dr O'Neill highlighted that the account of abuse provided to her (and probably initially Professor Fahy) was of severe persistent penetrative abuse by the priest while the pursuer was attending St Mark's school from about 5-6 years of age. The account of abuse the pursuer gave her in relation to Fort Augustus Abbey was of very severe physical and emotional abuse. He outlined inappropriate sexual contact and attempted rape but no penetrative abuse. Dr O'Neill also noted that the content of the pursuer's post traumatic symptoms (intrusive memories, flashbacks and patterns of avoidance) all related to the abuse by the priest rather than the abuse in Fort Augustus Abbey. As a consequence

Dr O'Neill felt the sexual abuse at St Mark's which was severe, persistent and at an early age was the most significant causative factor in the development of his CPTSD.

[26] Dr O'Neill would not feel it is appropriate to give percentage apportionments of causation as there is no scientific basis for such statements, particularly in a case where there is such a wide range of traumatic events throughout his childhood and adolescence.

[27] Professor Fahy and Dr de Taranto rate the contributions of abuse at St Mark's and Fort Augustus Abbey to be of roughly equal measure, noting that the abuse at St Mark's included an account of penetrative sexual abuse and that this experience subsequently gave rise to stressful criminal proceedings and the current litigation, whereas the abuse at Fort Augustus Abbey reportedly included serious violence as well as penetrative sexual abuse (which, although he did not describe this to Dr O'Neill, he has previously described as repeated rapes) and occurred during puberty. Professor Fahy and Dr de Taranto further agree that a reasonable apportionment of causation with regard to the pursuer's psychiatric symptoms would be 35% to 40% to each of the abuse at St Mark's and the abuse at Fort Augustus Abbey and the remainder to other causes.

[28] Dr O'Neill would be of the opinion that the pursuer is academically bright. He struggled to concentrate in school due to being on edge and the constant fear that the priest would come and remove him from the class. He demonstrated his academic ability later in life by completing an access course and a degree in nursing, coming first in his dissertation. However, throughout his vocational career he struggled in his relationships with authority due to low self-esteem and a distrust of authority figures as a consequence of the priest's abuse. Dr O'Neill is of the opinion that in the absence of the priest's abuse the pursuer would have been more successful academically and vocationally.

[29] Dr de Taranto and Professor Fahy conclude that it is possible that, absent the St Mark's abuse, on the balance of probabilities he would have continued working as a nurse for a period, but his preoccupation with the alleged abuse at Fort Augustus Abbey would have led to a deterioration in his condition in any case and he would not have been psychiatrically fit to continue working after 1-2 years. It is likely that he would not be in any different position by now with respect to employment prospects.

Other experts

[30] A medical report for the pursuer was given by Dr Alasdair Rooney, a consultant neuropsychiatrist, and used as his evidence. Dr Alison Harper, an expert psychologist, also prepared a report and gave evidence for the pursuer. For each side, reports were received and evidence was led from a vocational expert, dealing with the pursuer's employment and prospects (Peter Davies for the pursuer and Keith Frost for the defender). These two experts were unable to agree on the pursuer's likely vocational path had he not experienced the abuse at St Mark's. The pursuer's written submissions referred to him being able to work as a nurse and possibly at a higher level, in the medical/scientific field. The updated report by Mr Davies is referred to in the written submissions for the past and future wage loss in that scenario.

[31] However, in the pursuer's final oral submissions on past and future wage loss, the focus was on what the pursuer would have earned if working as a nurse. If I had to reach my own conclusions on his likely mode of employment if the St Mark's abuse had not happened, it would have been as a nurse, in part because of his educational experience and the jobs he decided to take. There was insufficient evidence to support a different career. As a result, nothing of great importance now turns on the evidence of the vocational

consultants. Expert witnesses on actuarial matters were also involved (Dr John Pollock for the pursuer and Kate Angell for the second defender). Again, certain different views were reached, particularly on the proper approach to be taken in calculating the interest to be applied.

Evidence

[32] The evidence was given by three factual witnesses (the pursuer, a friend of his and an Archbishop), and by the experts mentioned above. As the matters have narrowed down, it is not necessary to set out the evidence in detail and it will suffice to give a very brief summary. The evidence of the expert psychiatric witnesses included the points noted above, on which they agreed or disagreed. The headline points of factual and expert evidence relied upon by each side are noted shortly when summarising the parties' submissions. Matters of specific importance are then considered further when I come to explain my decision and reasons.

Witnesses for the pursuer

The pursuer

[33] The pursuer's evidence was given over two days. It is fair to say that, for perfectly understandable reasons, the pursuer found the task of giving his evidence traumatic and wearing. He is plainly a vulnerable individual and the court did what it could to intervene and make sure he was coping with the task of giving his evidence in these difficult circumstances. He used certain expressions that would normally only be tolerated by the court when the witness is just stating what someone else said. However, that was not

interfered with given his serious vulnerability. At times he was somewhat agitated or distraught, but overall he seemed not to be badly affected by having to give his evidence.

[34] In evidence-in-chief, he explained his personal history and background, the events at St Mark's and Fort Augustus Abbey and other matters that have affected him. Details were given about his academic experience, including at school, college and university, and his work experience. It became clear that a number of things said in police statements and to others (such as the defender's expert witness Dr Baker) differed from his account given in court. Indeed he accepted that to be the case on many occasions.

[35] The broad thrust of cross-examination was that he was focussing on the priest abusing him at St Mark's and more importantly the impact that had on the rest of his life, giving less weight to the other causes (assault by an older child, family problems, aggressive behaviour by his stepfather, arm injury, and the sexual and physical abuse at Fort Augustus Abbey). When giving police statements, the Fort Augustus Abbey abuse was quite heavily founded upon by him. He was seriously critical of a number of individuals with whom he worked, or to whom he reported matters.

[36] One example of the points on which his account had changed, and to which he was taken in cross-examination, was a statement given to the police in 2016 in which he said he had taken advice from his SOLO officer to concentrate on the Fort Augustus Abbey abuse. He said to the police that as the abuse happened many, many times over several years at Fort Augustus Abbey, he felt that in comparison the abuse at St Mark's was much lesser in its severity and the impact upon his life. In answering why he had said this to the police, the pursuer explained that this statement occurred when he was close to taking his own life and was in severe distress.

[37] He was taken to what he had said to Dr Baker, including that he had repeatedly been

raped at Fort Augustus Abbey. The pursuer's response was that when describing the events at Fort Augustus Abbey, flashbacks about the abuse at St Mark's would happen and as a consequence that would slip-in to the account given about Fort Augustus Abbey, which he couldn't help, and so there was in fact no rape at Fort Augustus Abbey. His position was that at times in the past when asked about Fort Augustus Abbey he would bring out the St Mark's events. He denied trying to minimise what had occurred at Fort Augustus Abbey, which he described as awful but nothing when compared to St Mark's, where he was raped to his injury on multiple occasions.

[38] The pursuer was taken to other inconsistent information and discrepancies and also asked about the events other than the abuse which impacted upon his mental health. He said that certain of the people to whom he had spoken had, on some specific points in the statements or reports, wrongly understood what he had said to them.

Ms M

[39] The next witness was a friend of the pursuer, who was a former police officer, now retired. She spoke about him being sharp and witty, but quite withdrawn and at times coming across quite shy. He is very guarded and wary, quite suspicious of people. He has no real social life and is quite detached. She spoke of his trauma and distress, including at the time of the trial of the priest. He had explained the abuse at St Mark's to her on several occasion but didn't say much about Fort Augustus Abbey.

Archbishop Nolan

[40] Evidence was led from Archbishop Nolan, who had been the Bishop of Galloway and is now the Archbishop of Glasgow. He explained the duties of Catholic priests and the

roles they play at primary schools. He was taken to a letter he wrote to the pursuer shortly after the conviction of the priest, seeking to assist the pursuer, and he referred to the now revamped safeguarding guidelines used by the Catholic Church.

Mr Peter Davies

[41] The defender's vocational expert, Peter Davies, spoke to the personal history of the pursuer, including academic qualifications and the work done, and gave his opinion on the probabilities of other career moves had it not been for the pattern of abuse and other factors. He gave his calculations of past and future wage loss.

Dr Jane O'Neill

[42] Dr O'Neill, Consultant Psychiatrist, found the pursuer a difficult historian but said that he gave consistent evidence about the abuse that he had suffered at St Mark's. The history he provided of the abuse that he experienced at Fort Augustus Abbey was that it was emotional and physical but, importantly, that he was able to repel attempts at sexual abuse due to him being "older and able to push people off". He did not give a history of repeated rapes at Fort Augustus Abbey. The pursuer advised Dr O'Neill that all of his flashbacks related to the abuse he had been subjected to by the priest at St Mark's. He recalled the priest's smell, pompous voice and bushy eyebrows. Any sexual contact triggered flashbacks to what had happened with the priest.

[43] The pursuer made no mention to Dr O'Neill of flashbacks relating to Fort Augustus Abbey. Dr O'Neill's report proceeded on the basis that the pursuer had not been subjected to repeated rapes at that school. This was an important difference between her opinion and those of the defender's psychiatric experts, Dr de Taranto and Professor Fahy.

[44] The pursuer's age at the time of the abuse at St Mark's meant that he had no means of escape. He tried telling people, including his mother, to no avail. The biggest factor in his CPTSD, albeit there were other contributing factors, was the abuse at St Mark's. This was due to his young age and the fact that the abuse involved repeated penetrative sex at the hands of a person in a position of trust. Absent the abuse, he would have done better at school. In addition to his diagnosis of CPTSD, he struggles to function and has feelings of worthlessness and low self-esteem. He is a bright individual but in employment he comes into conflict. He is also anti-authoritarian.

[45] Dr O'Neill's view is that apportionment of the abuse suffered by the pursuer is difficult because of the limit of knowledge and the differing accounts. However, it was multifactorial. Dr O'Neill would not ascribe a percentage to the periods of abuse at St Mark's and Fort Augustus Abbey.

[46] The pursuer is intellectually bright but his inability to get on with people is what holds him back. He is unlikely to return to work as a nurse but could perhaps manage some voluntary work. His career trajectory was short-term working where he regularly came into conflict with others. He is very damaged and will struggle due to issues in his life.

[47] Dr O'Neill acknowledged that it is very common for victims of childhood sexual abuse to delay reporting. The "c" part of CPTSD is the personality. This can be damaged in many ways. He bigs himself up a lot in terms of his own achievements and brings in lots of irrelevancies all as part of his condition. If he was raped at Fort Augustus Abbey, then this would be factor but it may have been a one-off. He told Dr Baker about rape at that school but he provided no detail of repeated rape. Dr O'Neill remained of the opinion that the pursuer's symptoms are mainly related to St Mark's. The other issues were all taken into account and factored into her opinion.

Dr Alison Harper

[48] Dr Harper is a Chartered Clinical Psychologist. She gave three reports on assessments of the pursuer which she had carried out. He told her that the abuse at St Mark's was the most damaging to him as it involved penetrative sexual contact. Whilst the abuse at Fort Augustus Abbey and other factors have cumulatively had an impact, Dr Harper considered that the vast majority of psychological damage to the pursuer (75%) has been caused by the sexual abuse at St Mark's. That abuse set the pursuer off in the wrong direction. He had very little, if any, positive experience since that time. The abuse which he suffered has damaged him to the core and the very foundations of his self. Those having suffered childhood sexual abuse, and particularly penetrative abuse, are much more likely to develop CPTSD.

[49] Dr Harper expressed certain concerns about the article by Cutjar, Mullen et al, titled *Psychopathology in a large cohort of sexually abused children followed up to 43 years*, in the journal *Child Abuse and Neglect* No 34 (2010) 813 – 822, *Psychopathology*, which was relied upon by the defender's experts as indicating that abuse of an older child can cause more harm than abuse of a young child. She criticised the fact that those victims of sexual abuse who had been examined were not separated out into male and female, and there was no information provided as to what age they were when abused but only when they reported the abuse. A large number of survivors only disclose abuse experiences in adulthood.

[50] Whether sexual abuse occurred at Fort Augustus Abbey or not, the single most important factor that he was raped repeatedly at a very young age at St Mark's with no means of escape. People who are damaged can take a very long time before an actual picture emerges and get extremely confused with remembering what has happened. They can have many things to get over before they are able to give a clear picture of events. It

makes complete sense that his recollection may be more accurate now than ten years ago.

Dr Alasdair Rooney

[51] Dr Rooney is a Consultant Neuropsychiatrist, whose evidence was agreed to be that stated in his report. He was instructed to investigate whether the pursuer's cognitive issues were caused by head injuries sustained during the physical abuse at Fort Augustus Abbey. His conclusion was that the pursuer suffered from a Functional Cognitive Disorder. The cause was "a combination of factors including anxiety, complex PTSD, migraines, and fatigue".

Dr John Pollock

[52] Dr Pollock is a Consultant Actuary. He regularly gives pension loss reports for court actions. He adopted his report and explained the figures on loss of pension. He also commented on the response from the defender's actuarial expert, Ms Angell, explaining why he disagreed with her approach, particularly in relation to calculating the effects of investment for the purpose of determining what interest should be applied on *solatium*.

Witnesses for the defender

Mr Keith Frost

[53] Mr Frost, a vocational expert for the defender, gave evidence. He did not have the benefit of an interview with the pursuer. Had he been given that opportunity, there were further questions he would have asked of the pursuer. Mr Frost could not agree with the career paths for the pursuer suggested by Mr Davies because Mr Frost had no information about the pursuer's academic ability. He considered that the pursuer achieved an above

average level academically, even though he appeared only to be of average ability. For Mr Frost, if the pursuer was able to work, the most likely earning model was that he would simply continue in nursing.

Dr Melanie Baker

[54] Dr Baker is a Consultant Forensic Psychiatrist. She examined the pursuer in January 2015 for the purposes of assessing his fitness to give evidence at the criminal trial. Dr Baker noted that the pursuer's mother abandoned him to the care of his maternal grandmother for a period. His father was unreliable. She noted that the pursuer was emotionally and sexually abused at St Mark's, including being kissed and subjected to digital penetration. She records that while at Fort Augustus Abbey he was emotionally, physically and sexually abused by the monks. This included repeated rape and physical abuse, resulting in injuries. She formed the opinion that the PTSD course was chronic and there was evidence of enduring personality change. While he was at times distressed when recounting his history, she felt he was a reliable historian. Dr Baker rejected the pursuer's evidence that she had been very upset and crying during her interview of him.

[55] When taken to other medical reports and police statements, she accepted that she wasn't sure that the pursuer had told her about rapes at Fort Augustus Abbey. However, she records accurately what she is told and felt that what she had noted about the pursuer's comments was unlikely to be wrong.

Dr de Taranto

[56] Dr de Taranto is a Consultant Psychiatrist. She mentioned difficulties of her interview with the pursuer, who had been abusive and controlling towards her from the

start of the process. She took some time to calm down after the interview. Dr de Taranto found the pursuer “very difficult to understand”. She said that whilst the estimation of the contribution of the various factors to the pursuer’s overall condition was not scientifically precise, the exercise she and Professor Fahy undertook was reasonable. She described the significance of the fact that the pursuer felt trapped at Fort Augustus Abbey for a considerable period. Indeed, he described to the police that he contemplated suicide at that school. Dr de Taranto did not think it essential for the court to find that there had been multiple rapes to explain the significance of the pursuer’s experiences at Fort Augustus Abbey in the overall picture of causation. She thought that the abuse at Fort Augustus Abbey and the abuse at St Mark’s have been of equal contribution to the pursuer’s condition, given his description of how the abuse at Fort Augustus Abbey had affected him and his description of that abuse to the police. She thought that he would have stopped working by 2013 or 2014 due to the effects of the Fort Augustus Abbey abuse alone.

[57] Dr de Taranto explained why abuse as a teenager could be more harmful than abuse perpetrated against a very young child, and indeed this was her experience in her clinical practice. The Cutjar study (in the article mentioned above) simply confirmed the findings of smaller studies. The pursuer has had difficulties with work due to his preoccupation with asserting control over things. Being trapped and unable to get away is an exacerbating factor in sexual abuse. It was put to her that a person in the pursuer’s position, trying to find pieces for two different jigsaws, might find a piece and put it in the wrong jigsaw. She accepted that can happen but it was not likely here when the abuse occurred at different times and the pursuer was less likely to get them mixed up. He demonstrated above average intelligence by virtue of becoming a nurse and gaining entry to university. It is very unlikely that he will work again.

Professor Fahy

[58] Professor Fahy is a Forensic Psychiatrist. He noted that whilst the pursuer had focused his symptoms on the earlier abuse, his narrative has changed over time (in that his original focus was on Fort Augustus Abbey). Thus, Professor Fahy did not find the pursuer's own subjective attribution of causal potency a persuasive point. Professor Fahy said in evidence that the Cutjar study showed that children who were abused at an older age either had no difference in their outcome as compared to those abused at a younger age, or a worse outcome. This was supported by his clinical experience. Professor Fahy also reported that there was no scientific evidence that being abused at a younger age produced a worse outcome.

[59] Professor Fahy gave evidence as to how, after 2013 and the injury by the horse, the pursuer began to display symptoms of CPTSD, but that this seemed to also be in reaction to the press reporting of the abuse at Fort Augustus Abbey. Professor Fahy noted that the pursuer's initial deterioration seemed to be because of what had happened to him at Fort Augustus Abbey and that this in itself would have been sufficient to cause long-term impairment of functioning. Whilst the pursuer might have held onto his employment for a little longer had it not been for St Mark's as well, he thought that things would have progressed the way they did anyway.

[60] In cross-examination, Professor Fahy rejected the suggestion that, if the 35%-40% of the pursuer's difficulties which he attributed to St Mark's had been taken out of the assessment, then it could be said that the pursuer would have maintained a "pretty normal" career. Professor Fahy described the pursuer's problems as "multifactorial" – childhood abuse, neglect, assault, frequent problems at work, then complex health problems coupled

with financial and accommodation problems. Professor Fahy again mentioned how the pursuer's account has changed.

Ms Angell

[61] Ms Angell, a Consultant Actuary, gave evidence to the effect that if it were to be assumed that the pursuer would have invested his solatium award in one year GILTS, then the interest rate set out in *JM v Fife Council* 2009 SC 163 would be excessive. However, she accepted that if any other investment was assumed (particularly investment in equities or buying a house) then the same argument could not be maintained. She also accepted that one year GILTS was one of the lowest returning investment of all the options available.

Submissions for the pursuer

[62] While there are other factors that have contributed to the pursuer's mental health problems, including a subsequent period of physical and sexual abuse at Fort Augustus Abbey, the single biggest contributor to his CPTSD is the child sexual abuse suffered at St Mark's. Penetrative sexual abuse is the most severe form of childhood abuse and repeated abuse is more damaging than one-off abuse.

[63] Despite his CPTSD, the pursuer was able to qualify as a nurse and work at various hospitals over a period of years. As a result of his CPTSD he is no longer able to work as a nurse and is unlikely ever to do so again. If the abuse at St Mark's hadn't happened, the pursuer would have been able to work relatively normally as a nurse (or similar), albeit with some periods out of work.

[64] Victims of child sexual abuse have poorer vocational and academic attainment than average. Those suffering with psychological issues or PTSD and CPTSD also generally have

poorer vocational attainment than average. Having suffered serious child sexual abuse, that would have made the pursuer more vulnerable to subsequent stressors, including further child sexual abuse.

[65] As a consequence, the pursuer suffered lifelong psychological problems, particularly prominent since about 2012. He has suffered CPTSD since at least that year because of child sexual abuse. Those psychological problems would probably have impacted adversely on his educational attainment. Notwithstanding those problems, the pursuer has above average qualifications. He is of above average intelligence. The psychological problems caused by his child sexual abuse have probably impacted adversely on his career, in particular on his interpersonal relationships with work colleagues. These problems would also have made him more vulnerable and less able to cope with the vicissitudes of working life. Having to relive abusive events through police statements, court appearances and medico-legal reports would itself be traumatising.

[66] The pursuer has an abnormally poor working history and the psychological issues have played a significant part. Notwithstanding those issues, he has been able to have periods of employment, sometimes in stressful and demanding positions, but they have prevented him from working at all since about 2012. He is unlikely ever to work again. Even if he did return to work in a less demanding capacity, he would still suffer from episodic difficulties in the future.

[67] The weight of the evidence was that there was at most one incident of very brief anal penetration at Fort Augustus Abbey. Even then, the pursuer was able to escape it, unlike the repeated anal penetrations suffered at the hands of the priest at St Mark's. The pursuer denied that even this incident at Fort Augustus Abbey occurred and said that he had confused this with his experiences at the hands of the priest.

[68] There were various problems with the expert evidence for the defender. A criticism common to all of the defender's experts is that they were prone to attempt to usurp the function of the court.

[69] In relation to the pursuer's evidence, unsurprisingly, there were numerous internal and external inconsistencies. He accepted that some of his previous statements were unreliable because of his mental ill health. Although his evidence was clearly unreliable in a number of respects, the core allegations made by him are not disputed. As regards credibility, there was no reason for him to downplay the abuse suffered by him at Fort Augustus Abbey when undergoing medico-legal examination, as at those points he was still claiming against Fort Augustus Abbey. It is also significant that when giving evidence the pursuer was able to speak to his experiences at Fort Augustus Abbey without evident distress. That can be contrasted with his distress when giving evidence, albeit briefly, in relation to his abuse at St Mark's. His friend who gave evidence, Ms M, spoke to his mental condition and pre-occupation with the abuse by the priest at St Mark's.

[70] The evidence of Dr O'Neill and Dr Harper, to the extent that it differs from that of Dr de Taranto and Professor Fahy, should be preferred. Dr de Taranto accepted that she would not normally give a percentage in other cases and if she did give a percentage it would usually be a range. Although Dr de Taranto (and Professor Fahy) purported to rely on the Cutjar study, this article was not referenced in either of their reports and did not form part of the discussion at the joint meeting of experts. Further, it was not put to Dr O'Neill in evidence. Dr Harper was able to comment on it and found certain difficulties with its approach. In the present case, there was no doubt that the pursuer was aware at the time that what was happening at St Mark's was wrong. Furthermore, the experts all agreed that abuse from which it was impossible to escape would be more traumatising. That would

apply more to the abuse by the priest at St Mark's than events at Fort Augustus Abbey.

[71] Dr Baker ultimately accepted that she wasn't sure that the pursuer had told her of repeated rapes at Fort Augustus Abbey. She was not able to explain why the pursuer told Dr McPherson, three days after seeing her, that he had suffered physical abuse at Fort Augustus Abbey and made no such reference to repeated rapes. Her evidence on this point is inconsistent with all of the other evidence in the case.

[72] Professor Fahy only saw the pursuer once, and that was over four years ago. It was a peculiarity of his report that whilst accepting the abuse had occurred, Professor Fahy still felt the need to question the veracity of the pursuer's account of it. As he ultimately accepted, most of his criticisms were related to the pursuer's delay in reporting, which is a common feature of such cases and applied equally to his reports of abuse at Fort Augustus Abbey.

[73] As to the vocational experts, the evidence of Peter Davies should be preferred over that of Mr Frost whose evidence was unhelpful, largely because he took it upon himself to decide matters that are for the court. He relied almost entirely on the report from Professor Fahy and only referred to the other medical evidence where it concurred with the Fahy report. This is not the approach of an independent and impartial expert witness.

[74] Dr Pollock gave unchallenged evidence that any other form of investment would justify the interest rate adopted in *JM v Fife Council*. For example, average house prices since 1978 have increased. He also gave unchallenged evidence to the effect that had the pursuer followed a career in the NHS, whether as a nurse or a scientist, his pension loss would have been in the region of £500,000. Ms Angell spoke about investing in GILTS but there was no evidence from a financial adviser as to whether her starting assumption was valid. It is not clear why the court should only accept one form of investment as the appropriate starting

point in assessing interest. A pursuer who is awarded *solatium* has unfettered discretion as to how to spend or invest it. The fact is that he has been deprived of that capital for all of his adult life. He could have spent it on travel or some other lifetime experience that cannot be valued in economic terms.

[75] The appropriate approach in the present case is simply to assess the full loss and then discount it for factors over and above the abuse by the priest. This necessarily involves the wielding of a broad judicial axe: *A v Glasgow City Council* 2021 SLT 1577; *FZO v Adams* [2019] EWHC 1286 (QB); *Robertson's CB v Anderson* 1996 SC 217 and *AB v The English Province of the Congregation of Christian Brothers* [2022] SC EDIN 7.

[76] On the basis of the case law on *solatium*, particularly *JM v Fife Council*, and the Judicial College Guidelines (which must be treated with great caution as general damages for abuse case are assessed differently in England) the award for *solatium* should be £150,000 with £90,000 to the past. Of the past *solatium*, £60,000 should be apportioned to the period of abuse and £30,000 from the end of abuse, which is 31 August 1978. Interest should be awarded in the normal way, in accordance with the guidance provided by the Inner House in *JM v Fife Council*.

[77] In relation to loss of earnings, on the basis of the updated report from Peter Davies, the total is £921,025 to date. That sum needs to be discounted for the damage sustained elsewhere. 25% would be an appropriate discount. In relation to the future, it is clear that the pursuer is not going to work again. The multiplier is 10.03 to the age of 67 (full multiplier at current discount rate of 0.5% is 13.88; the discount factor is 0.77). The multiplicand is £41,044. This gives a total of £411,672. Again, a further discount is required and it would be logical to apply the same rate of 25%. If the pursuer's working career had all been in nursing, the total figure would have been approximately £1,000,000, again

discounted by 25%. On pension loss, according to the Dr Pollock the top level figure is approximately £500,000. Using the same discount rate of 25% gives a total of £375,000.

[78] There is no dispute that the pursuer requires extensive psychological treatment.

There was agreement that he would need at least 18 months of weekly sessions at about £200 per session, leading to £15,600.

Submissions for the defender

[79] While it is acknowledged that the pursuer was subject to serious childhood sexual abuse at St Mark's and he has developed CPTSD, numerous other adverse life experiences have contributed to the development of the pursuer's CPTSD including, but not limited to, a serious abduction and sexual assault perpetrated by an older girl whilst he was a child, the serious and sustained physical, sexual and emotional abuse whilst he was a pupil at Fort Augustus Abbey and several assaults by his stepfather and others.

[80] The pursuer's credibility and reliability is at the heart of this case. He was wholly incredible and unreliable. The evidence confirms he is grandiose and narcissistic. The court cannot rely upon the pursuer's subjective assessment of the root cause of his ongoing interpersonal issues, or the vocational impact he asserts was caused by his experiences at St Mark's. As a witness he was hostile, evasive and untruthful. He had behaved in a similar fashion towards Dr de Taranto, who described his aggression and hostility from the very start of her interview. In addition, as well as being untruthful, it is clear that in general, when recounting the various episodes of abuse and the life events which have affected his psychiatric health, the pursuer gives the version of events which most suits his purposes at the particular time.

[81] He clearly sought to minimise the effects of other events in his life which had a bearing on his prospects of recovering damages from this defender. The child sexual abuse at St Mark's and the abuse perpetrated at Fort Augustus Abbey are the most significant contributors to the pursuer's CPTSD and they are of equal causal significance, a reasonable estimate of the causal potency of each being 35% – 40%, respectively. The other life adverse life events suffered by the pursuer can be said to have been of lesser causal significance and in total their causal effect in contributing to the harm sustained can be assessed at around 20% – 30%.

[82] Even if he had not sustained the abuse at St Mark's school, the serious and sustained sexual and other abuse at Fort Augustus Abbey would have rendered the pursuer unable to work within around a year to two years of him first disclosing this abuse, that is by around the end of 2014 at the latest. Due to the other life events suffered by the pursuer, his inconsistencies both in evidence and to the experts in this case as to what he may have done had he not suffered the abuse at St Mark's, and his varied reports over the successes in his careers and the reasons for not continuing in the various jobs he has held, it is not possible on the balance of probabilities to say what he would have done in terms of his work up until 2014, when the abuse at Fort Augustus Abbey would have rendered him unfit to work in any event.

[83] It is not a difficult exercise to separate out the causative effects of the three main factors at play in the pursuer's poor mental health. The defender does not seek to minimise the severity of the abuse at St Mark's. However, so too was the abuse at Fort Augustus Abbey which was much longer than the period over which the abuse at St Mark's occurred, and significantly it took place when the pursuer was a teenager. Reference is made to the evidence of Professor Fahy, Dr de Taranto and to the article by Cutjar, Mullen et al.

[84] The allocation of causative potency between each of the three elements contributing to the pursuer's condition as carried out by the medical experts for the defender was both sensible, in accordance with the common sense approach identified as appropriate to such issues in the case law, and moderate.

[85] The pursuer's contention that St Mark's contributed 75% to the causes of harm to the pursuer is a material and serious underestimation of the causative potency of the pursuer's other life events, including the abuse at Fort Augustus Abbey. The only basis for the suggestion came from Dr Alison Harper, but, as she conceded in her evidence, she had not taken account of what had happened at Fort Augustus Abbey given the pursuer failed to mention abuse there. The agreed records contain ample evidence of prolonged sexual abuse at Fort Augustus Abbey, with at least one penetrative rape. Also, the pursuer spoke of multiple rapes there to Dr Baker, who examined him in January 2015 for the purposes of assessing his fitness to give evidence at the criminal trial.

[86] The defender's medical experts should be preferred. The pursuer would have been in the same position in any event due to the abuse at Fort Augustus Abbey. The firm evidence of Dr de Taranto and Professor Fahy was to this effect.

[87] Whilst the pursuer's advisers seek to criticise Mr Frost, the defender suggests that it was Mr Davies who ought to attract criticism. He was in danger of becoming an advocate for the pursuer and strayed into taking a view of matters that was overly favourable to the pursuer.

[88] On *solatium*, the events at St Mark's do not fall into the severe category used in the Judicial College Guidelines for the purpose of identifying an appropriate award, because that has to have occurred over a "prolonged" period in that "severe" category. *Solatium* in this case can be quantified at £110,000, with 50% to the past.

[89] As to past wage loss, the defender's primary position is that there ought not to be an award, because on the pursuer's own evidence any lack of academic achievement that there may have been, and thus any corresponding degree of professional underachievement, is wholly the result of what occurred at Fort Augustus Abbey and not anything that happened at St Mark's. This factor, taken with the multiple other life problems which the pursuer sustained, means that there ought not to be any award for past wage loss.

[90] Even if the court was minded to award past wage loss on a more generous basis, in any event, past wage loss stops at the very latest two years after the pursuer first disclosed the abuse at Fort Augustus Abbey. If the court is minded to make such an award, and bearing in mind that it is agreed that the pursuer has actually earned £251,808 over his lifetime, an award of £61,500 (1.5 x one year's net earnings as a nurse), would be fair.

[91] On future wage loss, the defender's primary position is that there is none because, even absent the abuse at St Mark's, the causative effect of Fort Augustus Abbey would have become operative by around the end of 2014 in any event. If the court is not with the defender on that then future wage loss cannot ever be calculated on the basis of anything other than a modest lump sum. The multiple other events in the pursuer's life render it impossible to say to any extent what may or may not have happened in the pursuer's nursing career. In the whole circumstances, an award of £125,000 to the future, incorporating an element of pension loss, would be more than generous on the evidence.

[92] Whilst the pursuer claims the cost of treatment at £15,600 it is unclear whether the pursuer will actually undergo such treatment given his reluctance to do so to date and his decision not to undergo certain therapies which may have assisted him in the past. This head of loss should be discounted appropriately to £10,000.

[93] In relation to interest, the court ought to exercise its discretion in terms of the Interest

on Damages (Scotland) Act 1958 and award interest only for two limited periods. Should interest be awarded for any period prior to the enactment of the 2017 Act, it should be at a simple rate of 1.31% p.a. from the date the alleged abuse ceased.

Decision and reasons

[94] Parties were agreed on the legal principles established in a series of English cases as to causation, where the injury suffered can properly be regarded as attributable to more than one cause. This approach should also be applied in Scots law and can be summarised as follows. The onus of proof is on the pursuer and he will succeed if he can prove that the delictual acts made a material contribution to his disability. However, if it is raised in evidence that factors other than those for which the defender is liable contributed to the injury, the defender is only liable for the relevant proportion which the delictual acts made. This was applied in *Holtby v Brigham & Cowan (Hull) Ltd* 2000] ICR 1086 in which asbestosis was regarded as a divisible disease, which is clear given that various exposures to asbestos in different jobs will contribute to the severity of the eventual disease. Other illustrations of taking this approach where the injury is divisible (that is, multifactorial) include *Hatton v Sutherland* [2002] ICLR 613 and *BAE Systems (Operations) Limited v Konczac* ICR 1.

[95] The diagnosed form of psychiatric injury suffered by the pursuer is CPTSD, which as the experts and parties agreed is multifactorial. It is therefore a divisible injury and it is for the court to assess the levels of contribution to this injury by the three main causes: the abuse at St Mark's; the abuse at Fort Augustus Abbey; and the various other adverse factors.

Assessment of the evidence

The pursuer

[96] It is undoubtedly correct that there are significant problems with the evidence given by the pursuer. On various occasions he did not accept that what he had said, for example to the police, was in fact correct. He tried to give reasons for the discrepancies, such as saying that on one occasion he was in a police interview room and "it came out all wrong". He gave details to the police about being attacked, abducted and savagely assaulted by a girl saying that she was absolutely brutal to him. However, in cross-examination he played this down quite significantly. He mentioned it to Dr de Taranto but said it was not traumatic. It was not mentioned to Dr Harper. He said in evidence that what he had earlier stated about there being penetrative sexual assault (rape) at Fort Augustus Abbey had not in fact happened. His position was that, having given specific details about events in Fort Augustus Abbey to the police, he was actually giving an account of the abuse suffered at St Mark's.

[97] The experts for the pursuer said that recall of memory could be disrupted where there had been abuse of the kind in this case. However, both Dr de Taranto and Professor Fahy were of the view that there was no clinical explanation for this apparent conflation of the two episodes of abuse. As was said by Professor Fahy, and largely accepted by the other experts, when trying to gauge the attribution of harm to each of the events the pursuer was subjected to, it does not help that he has given different accounts over time. There were further discrepancies on other matters between what was said in statements or discussions with experts and what he said in evidence. For example, how he performed at school, how his quality of life was before 2012/2013, why he was not successful in his working career and the extent to which he had been able to form relationships.

[98] In assessing the pursuer's position that the vast majority of his current mental health state, and the consequences therefrom, was caused by the abuse at St Mark's, there is, as a result of the discrepancies he gave, real difficulty in drawing that conclusion from his evidence alone. But a key issue is the comparison with the nature, extent and effects of the abuse at Fort Augustus Abbey. While I accept that the pursuer has at times in the past given an explanation that involved either multiple rapes or at least one rape occurring there, the majority of the evidence supports the view that the abuse was less serious than the multiple rapes and other sexual abuse suffered at St Mark's. As I have noted earlier, the priest at St Mark's was convicted of anally raping the pursuer on various occasions. That jury decision, reached beyond reasonable doubt, is convincing evidence. No similar evidence was led of any conviction of those who abused the pursuer at Fort Augustus Abbey. At least one of them was arrested and charged with certain offences on various pupils, but there appears to have been no charge of rape of the pursuer. There may be reasons for that but on the evidence it fits with the view that the abuse at St Mark's was at a greater level of culpability and harm.

[99] While perhaps not of particular significance in relation to assessing credibility and reliability, it is clear that when this case started the pursuer was suing for both sets of abuse at the different schools. The pursuer's averments in relation to Fort Augustus Abbey, undoubtedly drawn at least in part from the account he gave to his solicitors, and also no doubt approved by him, explain quite detailed abuse including an attempted rape. That is his pleaded position, notwithstanding that at the time of bringing this action there is no suggestion that he would have expected those responsible for Fort Augustus Abbey not to be able to pay him the full amount of compensation for those events. In other words, had there been a basis for alleging multiple actual rapes and obtaining substantial damages, one

would expect that to have been pled. I conclude that there was either an attempted rape or possibly anal penetration at Fort Augustus Abbey, but not on a repeated basis.

Other factual evidence

[100] The evidence of Ms M is of some relevance in reinforcing what others said about the personality issues of the pursuer and provides some assistance in relation to how he behaved in court and at the times of being interviewed, in particular when he was with experts for the defender. Archbishop Nolan explained how priests should operate when working in a school. While of broad assistance on certain contextual points, nothing in the evidence of these witnesses has any material significance to the central issues in this case.

Medical experts

[101] In assessing the quality and importance of the evidence of the expert medical witnesses, one has to have regard to the numerous difficulties they faced, and indeed commented upon, in reaching a true conclusion derived from the pursuer's evidence. Each expert gave their evidence based on the information put before them, with the factual content about the abuse taken largely if not entirely from the pursuer.

[102] Dr de Taranto and Professor Fahy each gave their opinions, relying to some extent on why abuse as a teenager could be more harmful than abuse perpetrated against a very young child. However, on my assessment that the abuse at St Mark's was to some extent of greater force in causing the injuries, I am not able to accept the view of the defender's experts that the pursuer would have been in exactly the same position in any event due to the events at Fort Augustus Abbey. Older victims could have more awareness of the violation than younger ones, but it does seem very clear in this case (in light of the

conviction of the priest, based in part on evidence from the pursuer) that the pursuer was aware at the time of the multiple rapes and other sexual abuse at St Mark's. Indeed, he was very seriously traumatised by this abuse, which at that age it was impossible for him to escape from.

[103] Dr Baker did accept, for entirely understandable reasons, that there may be some concerns about whether her record of the pursuer stating that there had been multiple rapes at Fort Augustus Abbey was correct. However, her overall position was that she truthfully recorded what was said. But when I assess the evidence in its entirety, it is clear that the vast majority of what the pursuer said to others about Fort Augustus Abbey involved much lesser forms of assault. Professor Fahy had some concerns with the veracity of the pursuer's account of the abuse at St Mark's, but the charges in the indictment and the resulting conviction make the position clear.

[104] Dr O'Neill's conclusion that the sexual abuse at St Mark's which was severe, persistent and at an early age was the more significant causative factor in the development of his CPTSD, is in my opinion correct, but the abuse at Fort Augustus Abbey also played a part, although in lesser form.

[105] In relation to Dr O'Neill's opinion that in the absence of the priest's abuse the pursuer would have been more successful academically and vocationally, there is some force in that, given the serious nature of the abuse, but the extent to which there would have been more success was plainly hampered by the other abuse and negative incidents.

[106] Dr de Taranto and Professor Fahy's conclusion that the abuse at Fort Augustus Abbey would have resulted in the pursuer not being psychiatrically fit to continue working after one to two years perhaps has some support, but I am unable to conclude that such a limited period would have been the actual result.

Vocational experts

[107] As noted above, there were significant differences between the vocational experts, but as the pursuer's case now proceeds on the basis of him continuing in nursing, the central issue is the likely duration of that period of employment, had there not been the abuse at St Mark's. I will return to that point below.

Actuarial experts

[108] Dr Pollock is a highly experienced actuarial expert and the approach he takes can be described as standard, proportionate and likely to give the correct results. Ms Angell raised some interesting points, but in my view where there are differences the evidence of Dr Pollock is of greater force.

*Causation**Apportionment*

[109] One of the key issues in this case is whether the conventional approach to assessing past and future wage loss should be applied. This would proceed upon the basis of identifying the nature and income of the job which the pursuer would have undertaken, but for the St Mark's abuse. For future wage loss, it is well-established that a multiplier/multiplicand approach is commonly used, assessing the annual income from the work (the multiplicand) and the period over which it would continue, suitably discounted (the multiplier). These factors are set out in the Ogden Tables.

[110] The main alternative approach is explained in *Blamire v South Cumbria Health*

Authority [1993] PIQR Q1. Where there are imponderables, or uncertainties, which make it

not possible to make the findings necessary to support the conventional approach, then the broad-brush approach of awarding an overall lump sum is taken. In *Blamire*, the first aspect was uncertainty as to what the plaintiff would have earned over the course of her working life if she had not been injured. The second aspect was the uncertainty as to the likely future pattern of her earnings. The Court of Appeal concluded that the uncertainties were very great.

[111] The *Blamire* approach has been adopted in a number of cases in England and in Scotland. To be applied, there requires to be no real alternative to doing so, rather than merely some degree of uncertainty about the loss. By way of a recent illustration, in *CAX v PQR* [2024] PIQR Q3 the imponderables or uncertainties were not sufficient. Senior counsel for the pursuer referred to *FZO v Adams* in which, despite the presence of certain imponderables, the judge applied the multiplier/multiplicand approach.

[112] The present case is very different from, for example, *CAX* and *FZO*, each of which involved abuse by one defendant and where there were no serious issues about the credibility and reliability of the plaintiffs. The imponderables in this case are substantial and indeed compelling. For the reasons explained above when assessing the pursuer's evidence, the court does not have reliable factual material as to the separate levels of contribution to CPTSD by the abuse at St Mark's, the abuse at Fort Augustus Abbey, and the other adverse events. The absence of any such reliable factual evidence undermined the experts' analysis, given the different accounts they obtained from the pursuer and their reliance on those accounts in reaching their opinions. In those circumstances, it becomes difficult to find significant force in at least certain aspects of the opinion of any of the experts.

[113] Moreover, it is also challenging to try to reach a proper and balanced view in relation to the work the pursuer would have done prior to 2012, and whether that would have been

carried through without interruptions, and then the work for the period afterwards, had there been no abuse at St Mark's. The difficulties in that arithmetical exercise are compounded by the major disparities between the experts.

[114] While CPTSD is not used in DSM-V (*the American Diagnostic and Statistical Manual of Mental Disorders*, 5th ed.) it is referred to in ICD-11 (the *World Health Organisation's International Classification of Diseases and Related Health Problems*, Eleventh Revision). It is a disorder which may develop following exposure to an event, or series of events, of an extremely threatening or horrific nature, from which escape is difficult or impossible. The pursuer's condition of CPTSD is accepted by the experts on both sides in this case.

[115] Intricate problems therefore arise in working out how long, in the past and future, the pursuer would actually have remained in employment if the abuse at St Mark's had not occurred, when the other impacting factors did occur. The experts agree that the cause of his CPTSD is multifactorial, but the most significant contributors are the two periods of abuse. It is also agreed by the experts that if one or other of these periods of childhood abuse had not occurred, the pursuer would still have gone on to develop significant psychiatric problems, including PTSD and personality-related difficulties. Realistically, it is not possible for the court to accept the submission for the pursuer that but for the abuse at St Mark's he would have proceeded in work for the whole period in the past and future, subject to a discount to take account of the other contributing factors (which the pursuer says should be 25%). Rather, the court is driven to apply the *Blamire* approach.

[116] In weighing up the contributions made by abuse at the two schools, one substantial point in dispute is whether the article by Cutjar, Mullen et al, entitled *Psychopathology in a large cohort of sexually abused children followed up to 43 years*, can be taken as establishing that the fact the abuse occurred during the pursuer's teenage years meant that it was just as

damaging as, or even more damaging than, the abuse perpetrated against him in his younger years. Given the many victims whose conditions were analysed in that investigation, and the detailed reasons stated by the authors, I am satisfied that this can be a helpful piece of medical literature. However, it's relevance to this case very much depends upon the full factual material before the court. It is, in my view, of importance to recognise that the article notes the greater impact of severe sexual abuse involving actual penetration, in this case done repeatedly at St Mark's. Also, it is addressing abuse of a large number of individuals, many of whom did not have abuse from the two separate sources sustained by the pursuer, firstly when very young at primary school and then starting some six years later at secondary school. In addition, where it does occur in these separate phases, the potential contribution of the primary school abuse to the overall impact of the secondary school abuse may also be a factor to be analysed.

[117] As I have noted, on a number of matters I am unable to draw obviously accurate or truthful points from the evidence given by the pursuer. But when the evidence is assessed in its entirety, it seems to me to quite clearly show, at the very least, lesser degrees of sexual abuse (even if there was any penetration) at Fort Augustus Abbey. That said, the pursuer's averments in relation to Fort Augustus Abbey do identify a number of damaging events and extend over a longer period than the abuse at St Mark's. I therefore conclude that it did make a reasonably substantial contribution to his psychological injuries, but less than that caused at St Mark's.

[118] The pursuer was subjected to other incidents that would have impacted upon his life and his employment. One involved falling from a horse, in or around late 2012, which caused an injury to his arm. This appears likely to have restricted his ability to work over the next few years. There were also various other adverse factors, noted earlier. These other

miscellaneous episodes were not as serious as the events at St Mark's or Fort Augustus Abbey, but they can objectively be viewed as causing fear and alarm and contributing to psychological damage (as accepted by the experts). The pursuer himself reported certain events as subjectively terrifying. While I am satisfied that these factors must also have contributed to his psychological injury and loss, it was in my view clear from the evidence that these have a much lower impact than the physical and sexual assaults at school, made by those in a position of trust.

[119] The view I reach is that, on the balance of probabilities, the abuse at St Mark's can properly be taken as having contributed approximately 55% to the injury and resultant loss, with approximately 30% for the abuse at Fort Augustus and approximately 15% for the other factors. But I do not regard this calculation as being of much value when it comes to assessing the amount of loss. That is because, as I explain below, ascertaining just how long the pursuer could properly have worked is very difficult. Accordingly, simply proceeding on the basis of the calculation of past and future wage loss made by Mr Davies, and then deducting 45% from his figure, cannot be appropriate when the figure has been obtained by Mr Davies on the basis of the pursuer working for some 44 years.

Damages

Solatium

[120] As is made clear in *JM v Fife Council* (at para [25]), which was also a sexual abuse case, there can be the following elements on *solatium*: (i) the pain, affront and humiliation experienced by the pursuer at the time, and (ii) the emotional and social consequences he experienced thereafter. It is of importance to note that the Inner House had earlier (at paras [16]-[17]) endorsed the approach taken by the Lord Ordinary in taking into account the

nature, character and severity of the abuse, together with its frequency and duration, the age of the pursuer at the time and the immediate effects on the pursuer. I have already explained my decision on how the abuse at St Mark's contributed on these issues. There was of course no psychiatric illness or psychological condition attributed to the abuse in the *JM* case, but in the present case the pursuer has plainly suffered very serious psychological harm, particularly CPTSD.

[121] I have also considered the sums awarded in previous sexual abuse actions, but of course the specific factual matters in each case are of particular significance. Taking all of the factors in this case and the authorities into account, the award of *solatium* against this defender is £135,000, with £80,000 to the past. From that past *solatium*, £55,000 is apportioned to the pain, affront and humiliation in the period of abuse at St Mark's and £25,000 to the emotional and social consequences experienced thereafter.

Consequential loss

[122] The evidence of the vocational and actuarial experts for each side leads in different directions and gives rise to seriously conflicting outcomes on the values to be awarded. This again largely arises in the context of factual evidence about the impact of these events which comes more or less entirely from the pursuer and has significant problems on reliability. I should make it clear that I am not suggesting that the pursuer's evidence was not credible, in the sense that it included deliberate untruths; rather, it is the unreliability of his evidence that is important. Of course, the reasons for the difficulties with the pursuer's evidence may of themselves have been caused, or at least contributed to, by the abuse and other matters he suffered, but those causes merely explain a potential basis for the unreliability.

[123] As noted earlier, it is simply not possible in this case to arrive at a clear arithmetical outcome based on the multiplier/multiplicand approach. Considering the overall effect of the various elements, I conclude that both the past and future work of the pursuer have clearly been affected by the St Mark's abuse. My calculation of his overall loss must of course have regard to the fact that his major psychiatric problem, CPTSD, cannot be assigned only to the St Mark's abuse. On the other hand, I am unable to find that the other factors, including the abuse at Fort Augustus Abbey, would have resulted in the same past and future wage loss that he has experienced. But also, given the imponderables, I cannot conclude that he would have gone on working from about 1994 without any difficulties and then until he was aged 67 (in 2038) if the St Mark's abuse had not happened.

[124] In short, the view I reach is that he would have had, to a limited extent, a more productive and less interrupted career, likely to be in nursing, but with some quite serious difficulties arising from the other factors. Moreover, after the diagnosis of CPTSD, the focus at the time was on the Fort Augustus Abbey abuse and it has not been established that CPTSD would not have happened if there had been no abuse at St Mark's. The pursuer is, on the balance of probability, unlikely to have continued to work for a very substantial period after 2012. His arm injury caused by the incident with the horse adds a little to the problems. In the circumstances, the precise duration of his working life is not possible to quantify.

[125] As noted, the pursuer's submissions proceed on the basis that the pursuer would have worked, at the very least as a nurse, from 1994 until the age of 67 in 2038, which means for some 44 years. The defender argues that the pursuer would have had hardly any further work after 2012. I reject each side's position. The amount of work he did perform after leaving school, albeit also affected by his attendance at university and college, was

interrupted because of his psychiatric issues arising from the abuse and the adverse experiences. If St Mark's is taken off the equation he would not have had so many interruptions, but would undoubtedly still have had some caused by the other issues. It is quite clear, including from parts of his own evidence and what he said to others, that the abuse at Fort Augustus Abbey had a serious impact on him and would continue to do so during his working career. After 2012, he would not, in my view, have been at all capable of working for the remaining 26 years in full, if the abuse at St Mark's had not happened. He may well have managed to do more work, perhaps for say ten years or so and probably with gaps, but when and at what rate cannot be determined and so again it is not possible to reach any accurate arithmetical figure.

[126] I therefore conclude, taking the *Blamire* approach, that the pursuer should be awarded, in total, for loss of earnings, past and future, the sum of £350,000. For the avoidance of any doubt, this is not the overall loss of earnings caused by the various factors, but only the degree of loss which I estimate was caused by the abuse at St Mark's. The calculation of wage loss at £350,000 does not conflict strongly with the position I would have reached had it been necessary to decide, on the limited information, how many years the pursuer would have worked for after 2012 and what lesser interruption there would have been to his work before 2012.

[127] On pension loss, the pursuer submits, in reliance on Dr Pollock, that the top-level figure is approximately £500,000. In considering that calculation, again I require to take into account the imponderable factors and their impact on the pursuer's assessment of wage loss. Having regard to the more limited period of work the pursuer would have engaged in both prior to and after 2012, in my view the pension loss should come down to £130,000.

[128] On the matter of psychological treatment, on balance the view I have reached is that

the appropriate costs would be £12,000.

[129] This gives rise to a total award in damages of £627,000. However, further questions arise as to what interest is to be added to the *solatium* element. In addition, payments have already been made by the current defender and other defenders.

Interest

[130] The parties differ as to the appropriate approach to be taken to calculating interest. The pursuer submits that the court should follow the guidance of the Inner House in *JM v Fife Council*, and to leave it to parties to see if the level of interest can be agreed, the defender contends that the court ought to exercise its discretion in terms of the Interest on Damages (Scotland) Act 1958 and award interest only for two distinct periods: (i) the period between the abuse and the pursuer's 19th birthday; and (ii) the period from the coming into force of the Limitation (Childhood Abuse) (Scotland) Act 2017 and the start of the proof. Should interest be awarded for any period prior to the enactment of the 2017 Act, the position for the defender is that it should be at a simple rate of 1.31% p.a. from the date the alleged abuse ceased.

[131] The 1958 Act requires the court to award interest on damages for *solatium*, but the court has a wide discretion in terms of the rate of interest to be applied and the period over which such interest accrues: *Farstad Supply v Enviroco Ltd* 2012 SLT 348, at para [20]; *JM v Fife Council*, at para [26]. The first point made for the defender, that the court should award interest only for the two distinct periods, is not in my view well-founded. In essence, it argues that but for the 2017 Act, the claim could not have been made as a result of the three-year limitation period. This argument, if accepted, would result in interest in *solatium* in historical sexual abuse cases to be radically reduced, which would interfere with the wide

discretion of the court. There are also observations in *JM v Fife Council* (at paras [27] and [38]) which show that an inordinate delay in prosecuting an action should not of itself result in a pursuer being deprived of interest to which he was otherwise entitled. The approach to interest taken in *JM v Fife Council* is, in my view, more pragmatic and rational. Put broadly, the approach is that interest on the element of *solatium* comprising the pain, affront and humiliation experienced by the pursuer at the time was one-half of the judicial rate at the relevant times and the element for the emotional and social consequences he experienced thereafter was one-quarter of the judicial rate.

[132] In reaching that view, the Inner House noted that the effects of past inflation are taken into account in making the award of the capital sum on *solatium* in terms of current money's worth, and so interest should not also be allowed to the extent of that element of the judicial rate which may be said to represent protection against inflation. The court observed that no doubt some assessment could be attempted as to what proportion of the judicial interest rates over the previous decades could be said to have been attributable to the inflationary element, but that had not been done in that case.

[133] In the present case, the defenders argue that their expert, Ms Angell, had made such an assessment and that her approach should be applied. On that basis, the rate of interest was said to be 1.31% rather than the judicial rate of interest of 8%, to be applied to 50% of the award of *solatium*. It is important to note that Ms Angell's approach proceeded on the basis of how much an investment of the amount awarded in *solatium*, if made at the time and consistently in one year GILTS, would have increased.

[134] Dr Pollock disagreed with Ms Angell's approach. He considered other options for investment and concluded that these would justify the rates applied in *JM v Fife Council*. By

way of example, looking at average house prices, these had increased from £15,192 at the time of the abuse at St Mark's to £265,012.

[135] I am not persuaded that applying one specific and somewhat limited approach to assessing interest rates is appropriate. Equally, it would go too far to assume an investment of a highly volatile kind, but which resulted in very substantial gains. The more sensible approach is to look at straightforward forms of investment or price increases, as Dr Pollock did, and consider whether these would undermine the court figures used for interest. They do not. I therefore reach the view that precisely the same approach as that taken in *JM v Fife Council* should be applied here.

[136] There are, however, certain further complications. The first is that, in relation to the abuse at Fort Augustus Abbey, the pursuer has received payment of £50,000 from the former fourth and fifth defenders. The settlement with the fourth and fifth defenders took place on 3 July 2023. In my opinion, based on all of the evidence before the court, the appropriate sum for *solatium* due from the fourth and fifth defenders would have been at least the amount paid, if not greater. This payment has no effect on the awards made against the present defender, which are about *solatium* for the abuse at St Mark's and the consequential losses arising from that abuse, rather than the other abuse. The second point is that the pursuer has already received the sum of £153,749.67 in respect of the abuse perpetrated at St Mark's. That figure comprises £78,749.67 paid from the priest's estate on 15 February 2023 and voluntary interim payments totalling £75,000 paid by the current defender. These payments are relevant both to the interest and to the overall damages.

[137] In the absence of information about the dates of payment, the court is not able to reach a final conclusion on interest at this juncture. Parties can discuss the calculation of interest and seek to agree on it. If agreement cannot be reached then the court will seek

written submissions from the parties and reach a final view on interest. My preliminary views at this point can be summarised as follows. Applying the broad-brush approach and using the figures I have arrived at for *solatium* and consequential loss, the payments already made by the defender can be taken to comprise 27% for *solatium* and 63% for consequential loss. Thus, when calculating interest, 27% of each sum can be deducted from the *solatium* award at the time when the sum was paid and the whole amounts paid should be deducted from the award at the date of decree. The pursuer would therefore be entitled to the following: interest on the sum of £55,000 from 31 August 1978 until the date of payment of the sum received from a defender, at the rate of four per cent per annum; thereafter, interest on the sum of £55,000 minus 27% of that payment, at the rate of 4% per annum until the payment from the next defender; thereafter, interest on the remaining amount at the rate of 4% per annum until decree; interest on the sum of £25,000 from 31 August 1978 until decree at the rate of two per cent per annum, again with the sum reduced by 27% of each of the above payments at the times made. Put very broadly, the interest rate runs from 31 August 1978, but with some reductions in the amount to which the rate is to be applied over the last couple of years.

[138] On consequential loss, the amount due is £492,000. Adding the *solatium* amount of £135,000, and leaving aside at this stage the interest to be paid, the total sum is £627,000, but subject to the reduction of £153,749.67, which was paid. The defender is therefore found liable to pay £473,250.33 to the pursuer. Interest on that sum, and on the capitalised amounts of the foregoing interest, will be due at the rate of eight per cent per annum from the date of decree until payment.

Conclusion

[139] This is a complex case in which there was serious and damaging sexual abuse of the pursuer when he was very young at primary school. He then suffered further abuse at secondary school, with sexual elements, and of a physical and emotional nature. That later abuse lasted longer than the first and may well, based on the medical literature, have had a profound effect on his life. But the devastating nature of the horrific sexual abuse at St Mark's when he was a young child was the more prominent cause. That being so, he is entitled to an appropriate award of damages for that abuse. The impact on the pursuer and the harm from which he continues to suffer cannot adequately be addressed merely by an award of damages but it is hoped that, this matter now having been dealt with, the pursuer can move on with his life.

[140] On past and future wage loss, a multiplier/multiplicand approach is out of the question, because of the difficulties with the factual evidence and the various imponderables. For that reason, an appropriate lump sum has been identified, in total £627,000, with the payments already made to be deducted and with interest to be applied.

Disposal

[141] The pursuer has succeeded in his claim, to the extent explained. If parties cannot agree on the level of interest, then further written submissions should be lodged within fourteen days from today and the court will then carry out the final calculation on interest. In the meantime, all questions of expenses are reserved.