



Claim No. KB-2023-002083

Neutral Citation Number: [2024] EWHC 2183 (KB)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

21 August 2024

Before :

Deputy Master Marzec

Between :

IMX

Claimant

- and -

PETER MARK BICKNELL

Defendant

Iain O'Donnell (instructed by **Middleton Law Ltd**) for the Claimant.
The Defendant appeared in person.

Hearing date: 9 July 2024

Judgment

This judgment was handed down remotely at 10.30am on 21 August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Deputy Master Marzec:

Introduction

1. The Claimant asks this Court to assess damages in her claim for compensation for sexual abuse perpetrated against her by the defendant whilst she was a child aged between 8 and 12. She is now 60 years old. The defendant was, at the time of the abuse, her step father, and at all material times lived with the claimant, her mother and brother in their family home.
2. The claimant's claim is based on the crimes for which the defendant was convicted on 11 June 2021 in the related criminal proceedings of *R v Bicknell*. The defendant was sentenced to 5 years 4 months' imprisonment. At the time of the hearing to assess damages, the defendant had recently been released from prison having served his sentence.
3. The provisions of the Sexual Offences (Amendment) Act 1992 apply to the defendant's offences. No matter relating to the claimant whose identity has been anonymised in this judgment shall, during her lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the 1992 Act.
4. These proceedings were begun by claim form dated 12 June 2023. In addition to the statutory anonymity protection the claimant has under the Sexual Offences (Amendment) Act, on 2 June 2023 Master Davison made an order anonymising the claimant in these proceedings and making a reporting restrictions order prohibiting publication of any report of the proceedings identifying her. That order remains in force.
5. On 19 July 2023 Master Davison gave judgment in default of defence against the defendant for an amount to be assessed with costs. On 22 February 2024 Master Davison set aside the default judgment and entered summary judgment against the defendant, the claimant having limited her claim to those assaults in respect of which the defendant had been convicted. The Master also gave some consequential directions, directing that the claimant to file and serve any further factual and expert evidence in support of her damages claim by certain dates, and listing the damage assessment before himself or a deputy master.
6. The assessment of damages hearing was subsequently listed before me for a one-day hearing on 9 July 2024. The claimant was represented by Mr O'Donnell to whom I am grateful for his helpful skeleton argument. At all times during these proceedings the defendant has appeared in person. He also submitted a skeleton argument to the court, which I refer to below and for which I am grateful.

The index sexual assaults

7. The claimant's mother married the defendant in 1972 and she and her two children, the claimant and her brother, moved in with the defendant. There is no suggestion that the claimant's childhood was up to that point anything other than normal.
8. When the claimant was 8 years old, the defendant began to abuse her sexually. The form of the abuse was to begin with touching her bottom and her genitals. This

happened at various times when the claimant was in bed, on his lap, carrying her, and giving her a piggyback.

9. The abuse escalated so that on at least one occasion the defendant inserted three fingers into the claimant's vagina, hurting her. The digital penetration resulted in the claimant suffering a vaginal infection. In her evidence the claimant describes how she tried, as a 12-year-old child, to self-treat that infection by douching with TCP and Listerine, because she was too embarrassed to seek medical help or tell anyone.
10. In her evidence the claimant stated that she remembers being frightened, confused and anxious about the abuse, and became so terrified of further attacks that she would tie wool from the door latch to her foot, so that she would wake if the defendant came into her room. She says that at times she felt suicidal and that she recalls thinking about stabbing herself with a kitchen knife. Later in her teenage years she self-harmed and suffered from bulimia, agoraphobia and panic attacks. None of the claimant's evidence as to the effects of the abuse upon the claimant when she was a child was challenged.
11. The claimant also gave evidence about the long-term consequences of the abuse during her adult life. In support of her case as to the long-term effects, the claimant adduced expert evidence from Consultant Psychiatrist, Dr Nick Cooling. That evidence was, to an extent, challenged, as set out below.
12. The claimant's evidence is understandably not specific as to the number of times she was assaulted. She cannot be expected to have kept count of these incidents when she was a child, and still less to recollect the number of those incidents now, several decades later. Although she has limited her claim for damages to the incidents which formed the basis of the indictment, and I will assess damages on that basis, the number of incidents in the indictment can be no more than a rough guide to the frequency of the assaults. The abuse stopped when the claimant was 12 years old, and so continued over a four-year period.
13. On 11 July 2021 the defendant was convicted at Southampton Crown Court of seven counts of indecent assault contrary to section 15(1) of the Sexual Offences Act 1956, although in relation to one count, that of touching the claimant's genitals under her clothing whilst reading to her in bed, the indictment specified that there were "no fewer than" 10 offences. Count 2 was also a specimen charge relating to two incidents. The defendant was therefore convicted of no fewer than 16 occasions of sexual assault by touching, as well as one count of indecent assault by digital penetration of the claimant's vagina.

Special measures

14. Although it is not at all unusual for special measures to be imposed at a criminal trial involving vulnerable parties, it is less common for special measures to be a feature of a civil hearing. Upon application by the claimant dated 21 March 2024, I imposed special measures for the hearing of the assessment of damages.
15. I heard the application on 12 June 2024 and granted it, on the basis that it appeared to me that the claimant was a vulnerable person pursuant to PD 1A of the CPR by virtue of the impact upon her of the subject-matter of the hearing, her relationship between her and the defendant, who was her abuser, and her psychological vulnerability. On the

last point the claimant's application was supported by a witness statement from Dr Cooling.

16. The measures imposed were in summary that the claimant could give her evidence from a remote location, namely her counsel's chambers; that the defendant would submit his questions for cross-examination of the claimant to the judge two weeks before the trial; that such questions as were approved would be verbalised by the judge, who would, in effect conduct the cross-examination, and not put by the defendant himself. In addition, the defendant was not permitted to address the claimant directly during the hearing, and the claimant and the defendant would not see each other during the hearing. Having had regard of the observations of Mr Justice Ritchie as to potential unfairness in *GKE v Brett Nigel Travers Gunning* [2023] EWHC 332 (KB) at [82] to [87], I assured the defendant that the claimant would not be shown the questions before the cross-examination. In order to ensure the integrity of the process, I also ordered that when the claimant gave evidence she should have with her in the room only her solicitor, who should remain on camera for the duration of her evidence.
17. These measures presented a number of unforeseen practical challenges. First, at the prescribed time the defendant submitted to me four separate lists of questions in pdf form, collectively numbering just under 70 pages. Neither the pages nor paragraphs were numbered. Since the documents were not in Word form, they could not easily be digitally marked. I made manuscript amendments to the defendant's list of questions before the hearing, but the fact that my notes were in manuscript meant I could not share my list of questions as amended with the defendant. I do not criticise the defendant for the presentation of these documents, because I had not given him specific directions as to how they should be presented.
18. Secondly, the wording of the defendant's questions was not appropriate given that the judge and not the defendant himself would be verbalising the questions. He had drafted them using the first person. He had also included an apology and expressions of regret in the list, and also included a statement of his belief that he had done this best to make amends and compensate the claimant in the only way he could. Not only could I, as the judge, not address the claimant as if I were the defendant, the defendant's remorseful sentiments did not properly form part of a cross-examination.
19. Third, the list of questions was very long and repetitive. The questions nearly all focused on the continuing relationship between the claimant and the defendant since the abuse, during the claimant's adult life. There was some basis for this line of questioning given the contents of both the claimant's evidence and her expert's reports, and it was clear that it was extremely important to the defendant that he should be allowed to establish that he had done his best to make amends during past four decades of the claimant's life. However, neither the nature of continuing adult relationship between the claimant and the defendant nor the defendant's attitude towards the abuse was relied on in aggravation, and therefore, despite the defendant's focus on these matters, it was not necessary for the claimant to be questioned at length about them. I chose some general questions to elicit the claimant's attitude towards the defendant and their adult relationship and also some questions as to a number of specific incidents to which the defendant wished to draw the court's attention which supported his case as to what on his case became, in adult life, a relationship of genuine affection or at least friendliness. Had I not cut down the number of questions considerably, the cross-

examination would have taken many hours and would not have assisted me in reaching a decision any more than the sample list of questions I put did.

20. After the cross-examination I gave the defendant a chance to consider the questions and answers and whether he wanted any follow-up questions asked before re-examination. The defendant did have some follow-up questions, most of which I put to the claimant, but he did not express any dissatisfaction with the way the hearing had gone and appeared pleased with what it had elicited and with the fact that, as he put it, the claimant had given truthful answers. I too was impressed by the straightforward and candid nature of the claimant's answers to the cross-examination questions. Her answers conveyed that, on the whole, the adult relationship between herself and the defendant had been superficially amicable and supportive, although she said that underneath she has hated the defendant from the moment the abuse started. She said that whilst she was "*part loving daughter, part of me ... loathed him*". The claimant and defendant have not had any contact for some six years.

The claimant's evidence

21. The claimant gave evidence clearly and bravely. I have already alluded to her evidence as to the nature, extent and her suffering as a result of the sexual assaults on her, which was set out in full in her witness statement. In addition, she gave evidence as to the lifelong effects upon her. I rely upon the contents of her witness statement and the evidence she gave in answers to cross-examination.
22. In her statement she stated that the sexual abuse has impacted her whole life. Her eating disorder lasted until her early thirties. She also suffered from agoraphobia and panic attacks. She turned to alcohol at an early age as a coping mechanism; she was expelled from the London College of Fashion after being discovered with alcohol. In her thirties she turned to drugs and continued using alcohol and drugs when she had children in 2000 and in 2002. She was sexually promiscuous (her word) during her youth, and this led to various medical issues. She says that her destructive behaviour has continued throughout her adult life, and at times would just "*drink and cry*". She has suffered from insomnia, obsessional thoughts and behaviours, flashbacks to the abuse and trust issues. She said that she has drunk a lot to cope with life and even to talk to Dr Cooling, her expert, about the abuse. She said that the abuse has left her feeling "*guilty, unworthy, disgusting, unlovable, dirty, useless and stupid*".

The expert evidence

23. The claimant's expert witness, Dr Nick Cooling, made two relevant reports. The first was dated 22 January 2022 and the second 16 May 2024. The latter report updated the first and also supported the claimant's application for special measures.
24. The defendant served a list of 35 CPR Part 35 questions on Dr Cooling on 11 June 2024, which were answered by him. Those questions were mostly argumentative, seeking repeatedly to make the point that Dr Cooling had not considered relevant facts, and had taken into account irrelevant material, for example, that he had considered incidents that did not form part of the indictment. In response to the first question, Dr Cooling stated that "*Findings of fact are a matter for the Court. My role is to advise on psychiatric condition, causation, and prognosis, using my scientific training as a doctor*". Thereafter most of his other answers were simply that the question put was "a

matter for the Court". It did not appear from any of these answers that the questions had caused Dr Cooling to change his mind about any aspect of his diagnosis or prognosis.

25. Although the defendant did not formally apply for an order that the claimant call Dr Cooling to give oral evidence, it became apparent during the special measures hearing and from the many emails the defendant wrote directly to me after the special measures hearing that he wished in some way to challenge Dr Cooling's evidence. I therefore convened a short, remote directions hearing to deal with the question of whether Dr Cooling should be called (and also to respond to the many questions that the defendant had put to me in his emails about the procedure that would be followed at the quantum hearing, so that he was not taken unawares at the trial itself).
26. Following submissions from both sides, I determined that it was not necessary for Dr Cooling to be called and pursuant to CPR 35.5 his evidence would be given by way of his written reports. This was because the defendant had not sought to rely on any expert evidence of his own and the questions that he had already put to Dr Cooling did not raise a scientific or medical issue that Dr Cooling needed to be present at court to clarify. The defendant clearly attached and attaches enormous weight to his own conduct after the abuse, during the claimant's adult life, and wanted to cross-examine Dr Cooling with reference to those matters, but it did not seem to me that they were relevant to the diagnosis and prognosis that Dr Cooling had made, which was based mainly on the claimant's medical history and his examination of the claimant. In his first report Dr Cooling had stated that he had also read an 82-page document supplied by the defendant. In that document (which I have seen) the defendant set out his version of events after the abuse and included copies of much correspondence between himself and the claimant. Dr Cooling was therefore aware of the long and sometimes apparently friendly relationship between the claimant and the defendant and had taken that into account, to the extent it was relevant. I could not see how calling Dr Cooling and putting those matters to him again was likely to alter the evidential picture relevant to the assessment of damages. In addition, calling Dr Cooling would have added time and expense to the proceedings.
27. In his first report dated January 2022, Dr Cooling stated that the claimant suffered from:
 - a. Recurrent depressive disorder of moderate severity, and the onset of this condition was in childhood. In his opinion, the abuse made a significant material contribution to her recurrent depression. The claimant's depressive disorder also involved her suffering from anxiety at a severe level.
 - b. Complex PTSD (or traumatic stress disorder), and the PTSD was "entirely causally related" to the index sexual abuse. Dr Cooling also noted that her score on the Work and Social Adjustment Scale indicated a "moderately severe or worse psychopathology".
 - c. Consequential panic disorder, entirely caused by the index sexual assaults.
 - d. Consequential harmful use of alcohol.
 - e. Consequential obsessive compulsive disorder and an unspecified feeding or eating disorder.

28. Given the claimant's complex psychiatric problems, including elements of severe trauma, complex PTSD, depression, anxiety, panic disorder, and a history of heavy drinking, Dr Cooling recommended a combination of inpatient and outpatient treatment, as set out in his first report.
29. In his second report, Dr Cooling notes that the claimant continues to suffer from high levels of anxiety but that at the time of the second report she was only mildly depressed. He stated that her phobic anxiety was no longer very prominent but she does get panic attacks occasionally. He set out a modified recommended treatment plan for the claimant, as follows:
 - a. Inpatient alcohol detoxification (cost of £6,905 for the first week and £6,405 for subsequent weeks, for three weeks in total: £19,715);
 - b. Once sobriety had been achieved, long term prophylactic antidepressant treatment, up to 15 sessions to establish an effective antidepressant treatment (approximately £400 per session);
 - c. 4 - 6 outpatient psychiatric treatment sessions per annum because of continuing vulnerability to bouts of depression and anxiety;
 - d. Psychotherapy, recommended 30 sessions (cost £150 per session).
30. Dr Cooling noted that, given the claimant's condition and age, he "*rather doubt[ed] that she will ever be able to re-enter the workplace in terms of full time employment*".

The defendant's case

31. The defendant did not apply to serve a witness statement or to give evidence. It is clear why Master Davison's order giving directions for the assessment of damages did not include a provision for him to do so, because it is not readily apparent what evidence he could give that was relevant to the assessment exercise.
32. The nature of the defendant's case emerged in his skeleton argument and his case at the hearing, namely that he was seeking to have the Court take into account the "*compensation*" that he had, on his case, already paid "*in all its forms*" when assessing damages. In his skeleton argument he listed a number of ways in which he had supported the claimant in her adult life, including financially by helping her buy two houses, one in 2003 and one in 2017, and also being on hand with practical help with day-to-day issues, such as house moves, cars, computers and so on; spending social time with the claimant; encouraging her artistic ambitions; and admitting and acknowledging the abuse to her directly and pleading guilty to the criminal charges against him. At the hearing the defendant repeatedly excoriated the evidence of Dr Cooling because Dr Cooling had not, according to the defendant, sufficiently or properly taken into consideration the defendant's post-abuse conduct.
33. It is understandable why the defendant would wish to place on the record his various efforts over the claimant's adult life to make amends for his crimes. But there is no authority supporting the proposition that an abuser can mitigate general damages due to the person he or she has abused by financial or emotional support, or that financial or other gifts the abuser has given his victim can be set against losses that the victim

incurs. To the extent that any such emotional or financial support ultimately results in reducing the long-term impact of the abuse upon the abused person, damages will correspondingly be lower to reflect the more limited impact. But the evidential focus at the quantum stage is on the person who has been abused and the consequences for him or her, and not on the actions or good intentions of the abuser.

34. A more minor, but still insuperable, difficulty with the defendant's case is that the defendant did not give evidence, and so his statements as to all the precise ways in which he believed he had already compensated the claimant had little status. However, it is right to record that the claimant accepted in cross examination that the defendant had helped her in various ways over the years and she had on some occasions sought out social contact with him and sometimes addressed him in affectionate terms.

Assessment of damages

General damages

35. Based on the claimant's psychiatric condition, in her skeleton argument, the claimant claims entitlement to general damages for PSLA with reference to the Judicial College guidelines (17th ed.) for "*Physical/Sexual abuse*" at the moderate level, the bracket figures for which are £25,100 and £54,920. The claimant submits that the appropriate amount of general damages in this case is between £35,000 and £45,000. This claim includes an uplift element for injury to her feelings caused by aggravating factors, which she identifies as being: (a) that the defendant was her stepfather; (b) that she was assaulted in her family home, which ought to have been a place of safety for her; and (c) that the abuse caused the claimant to suffer a sexually transmitted disease that humiliated her to the extent that she could not tell her family or seek medical treatment and had to try to treat herself when she was only 12 years old.
36. In *TVZ v Manchester City Football Club* [2022] EWHC 7, Mr Justice Johnson assessed the damages that would have been due to each of the claimants in that case, all of whom had been abused in childhood by a football coach, Barry Bennell, had the defendant been liable for Bennell's crimes. He found that each of the claimants would have been entitled to compensation both for the pain, suffering and loss of amenity arising from the long term psychiatric effects of the abuse, and separately compensation for assaults and batteries themselves. Each individual assault, being the cause of immediate and psychological harm and distress, merited an award irrespective of the consequences, and that award need not be nominal: see [367] to [376]. Although the judge's remarks as to quantum are obiter, the reasoning of the learned judge appears to me to be compelling. As Johnson J. states in [369], separate awards were given in respect of individual instances of voicemail interception and "*It is not easy to see why the law should ... value the protection of children from sexual abuse less than the protection of celebrities from breaches of privacy*".
37. In determining general damages, I will adopt this approach and separate out the two elements of an award for general damages, for the abuse itself and for the longer term psychiatric consequences caused by the abuse. In both elements I will include damages for injury to feelings rather than include a separate element for aggravated damages, as the JC guidelines suggest it is proper to do.

38. General damages for the abuse: I take into account the three important aggravating factors relied on by the claimant, and also the obviously extremely significant fact that the claimant was a young child of 8 when the abuse started, and that she endured four years of terror, confusion, upset and humiliation, effectively having her childhood taken away from her. She also had to deal with the immediate physical consequences of the abuse, including genital discomfort and infection. Although the index assaults were not in the most serious category of sexual assaults they were a serious violation.
39. In *TVZ*, all the claimants except one suffered multiple sexual assaults over a number of years, as in this case. In many of those cases the assaults included rape. Johnson J. assessed the appropriate general damages for the abuse itself in various sums between £40,000 and £75,000. Comparisons with this case are not straightforward because the details of the abuse in each case in *TVZ* are not set out in the judgment. Nevertheless, it seems to me that in the light of the similarly prolonged period over which the abuse took place in this case, the abuse of trust, the fact of multiple incidents and at least one incident of penetration, the appropriate award for the abuse itself is £30,000.
40. As to the longer term psychiatric consequences, the claimant fairly accepts that the effects on her, whilst significant, are appropriately placed in the “moderate” bracket of injuries. This takes account of the fact that Dr Cooling’s second report notes that the claimant’s depression has alleviated such that, in May 2024, her depression was mild (although her anxiety remained high). Nevertheless, the injuries have troubled the claimant for the whole of her life up till now, for some 45 years, and have overshadowed that life. I consider that the claimant’s long term psychiatric conditions merit an award of £30,000. Although this figure is lower than the bottom of the bracket suggested by the claimant, it excludes general damages for the abuse itself, quantified in the previous paragraph.
41. The total figure for general damages is therefore £60,000. This award does not include any compensatory element for injury to feelings caused by the defendant’s conduct towards the claimant during the claimant’s adult life, since the claimant does not rely on that conduct in aggravation. Nor has this award been mitigated by such conduct, contrary to the defendant’s submission that it should be.

Special damages

42. As set out in the claimant’s updated schedule of loss and her skeleton argument, the claimant claims special damages for (1) future psychological treatment, (2) educational deficit and loss of earnings, and (3) future risk on the open labour market.
43. Future psychological treatment: The updated claim for future psychological treatment in the updated total sum of £88,815 consists of the following:
- (a) Alcohol detoxification in a community-based setting, at a predicted cost of £6,905 for the first week of in-patient treatment including a full medical assessment, and £6,405 for a recommended further two weeks, hence: (£6,405 x 2) + £6,905 = £19,715;
 - (b) 15 initial outpatient psychiatric treatment sessions to ensure C’s adherence to a long-term prophylactic antidepressant treatment, to be completed once full

alcoholic sobriety has been achieved, at a likely cost of £400 per session, hence: 15 x £400 = £6,000;

(c) 4 to 6 sessions of (the claimant takes the mid-point of 5) psychiatric treatment sessions thereafter per annum as a result of her likely ongoing high vulnerability to future recurrences of her depressive disorder and anxiety, at a likely cost of £400 per session x 5 sessions per year, hence £2,000 (5 sessions x £400 per session) multiplicand x multiplier of 28.20 (from 60 years of age) = £56,400 total (the claimant's skeleton submitted a multiplier of 27.14 but when I queried this I was told it was a typographical error);

(d) 30 sessions of psychotherapy once the claimant has completed all of the above recommended treatment and her mood has stabilised as a result, at an anticipated cost of £200 per session, hence: 30 x £200 = £6,000 (para 77(c)); and

(e) Associated travel costs resulting from C's attendance at all of the treatment referenced above, which she has limited to a lump sum claim of £700 in her Schedule.

44. The defendant does not challenge the claimant's entitlement to any of this treatment or the amounts claimed. The treatment plan is recommended by Dr Cooling in his reports. I will award the amounts claimed in full. I will also allow the £700 claim for travelling costs in respect of treatment, which seems to me to be a reasonable and modest sum given the length of treatment proposed.
45. The total awarded for future treatment is therefore £88,815.
46. Educational detriment and loss of earnings: These two aspects of the claim are not separately quantified. Instead, the claimant claims a lump sum of £35,000 for educational detriment and loss of earnings, taken together. She relies on the approach approved by Lord Justice Balcombe in *Blamire v South Cumbria Health Authority* [1992] EWCA Civ 20 namely that where there is uncertainty as to prospects and risks for the claimant, and there is no perfect arithmetical way of calculating this kind of compensation, it is permissible for the judge to take a broad brush approach.
47. It seems to me that these two elements need to be considered discretely. Taking the claim for educational detriment first: the claimant left school at the age of 15 years with 6 O-levels. She then studied for her A-levels and sought to obtain a qualification in beauty therapy but was unable to complete the course as a result of her psychological symptoms. The claimant's case is that but for the index sexual assaults and their psychological consequences upon her she would not have attempted to obtain a beauty therapy qualification and would instead have been able to enter higher education and successfully complete a university degree.
48. The evidence in support is found in the claimant's witness statement, in which she states that but for the abuse, she "*probably*" would have obtained a university degree, and Dr Cooling's first report, in which he states that the claimant's "*complex mental health difficulties will have caused educational detriment and, in my opinion, absent the abuse she would have been able to pursue university studies*".

49. There is no other evidence supporting the case that, but for the abuse, the claimant would have obtained a degree. When the claimant was 18, in about 1982, only a minority of young people attended university and therefore, absent evidence indicating that she was one of the minority, the likelihood is that the claimant would not have attended university. I have no educational records showing her level of educational attainment or academic aptitude. This is completely unsurprising due to the long passage of time, but it does create a difficulty for the claimant in proving this aspect of her case. Dr Cooling is not an educationalist and is not, in my judgment, qualified to give an opinion as to the claimant's likely academic achievements decades ago, particularly without any documentary support. I do not find that the claimant has proved her case on this element of her claim on the balance of probabilities.
50. As to loss of earnings, it is submitted that as a result of the abuse the claimant has never been able to maintain a consistent level of employment in any of the various jobs she has started as a result of her ongoing psychological injuries. This has caused her to suffer from a lack of career progression throughout her working life. She was last employed as a cleaner, which employment she was forced to leave as a result of her psychological symptoms on 4 February 2022. She is currently claiming benefits and is unable to work at all.
51. The claimant's claim for loss of earnings is supported by Dr Cooling, who states in his first report that:
- “At this point it is apparent that in terms of her occupational functioning, there has been ongoing detriment, because her psychological disorder has meant that she has found it very difficult to work consistently and there have been multiple changes of occupation as well as a lack of career progression.”*
52. In his report of May 2024, Dr Cooling states:
- “With respect to employment, I note that currently the Claimant is not able to work because she gets so anxious about the demands of having to find another employer. The Claimant is now 59. From the psychiatric perspective, given her very high levels of anxiety and her self injurious behaviour for a substantial length of time, I rather doubt that she will ever be able to re-enter the workplace in terms of full employment, but she might be able to cope with volunteering and if a suitable job became available, she might be able to cope at some point with very limited part time employment. Overall, my opinion is that the prospects for this lady getting back to paid employment have already diminished rapidly.”*
52. Dr Cooling is qualified to give an expert opinion on the likely effects, past and future, of the claimant's psychiatric injuries on her capacity to work. In the light of the claimant's and Dr Cooling's evidence, I find that the claimant has suffered a loss of earnings due to her injuries caused by the assaults. The claimant has claimed £35,000 for both educational detriment and past loss of earnings. Given my conclusion on the first element of this head of loss, I award £30,000 for past loss of earnings.
53. Future risk on the open labour market: The claimant claims the lump sum of £25,000 for future risk on the open labour market on the basis that she is presently at a measurable risk of being less likely to obtain employment in the future than other individuals who do not suffer from her multiple ongoing psychological injuries. She

relies on *Smith v Manchester Corporation* [1974] 6 WLUK 31 for the principle that the Court needs to look at the weakness of the claimant in the market “in the round” and do its best to reach an assessment that does justice to the claimant; *Moeliker v A. Reynolle & Co. Ltd.* [1977] 1 WLR 132, where Browne LJ stated that a claimant must be at a “real” increased risk of future labour disadvantage (at 142A); and *Robson v Liverpool City Council* [1993] PIQR Q78 at Q82: a real risk exists as long as it was ‘identifiable’; it is not necessary for it to be identifiable on the balance of probabilities.

54. The claimant has not been able to work since early February 2022. Despite her hopes of returning to work, her prognosis remains uncertain. Dr Cooling states in his first report that: “*In my opinion the recommended treatment will assist in providing her with further psychological closure but on the balance of probabilities, she will remain psychologically vulnerable for the foreseeable future, even with optimal treatment.*” I accept that this vulnerability puts her at a real risk of disadvantage in the labour market in contrast to other directly comparable job applicants who do not have such permanent and ongoing psychological vulnerabilities, even if she were to successfully complete all of the recommended future treatment and then re-entered employment.
55. At 59, it is likely that the claimant would be nearing the end of her working life even if she did not have the psychiatric and psychological injuries she has. She will reach pensionable age somewhere between 66 and 67.
56. Taking into account all these factors, the figure claimed under this head appears to me to be reasonable, and I will award £25,000.
56. Total damages: The total damages award is therefore £177,415, made up of the following elements:
 - a. General damages: £60,000.
 - b. Future treatment: £88,815.
 - c. Loss of earnings: £30,000.
 - d. Future risk on open labour market: £25,000.
57. I will award interest at 2% on the general damages, from the date of the claim form.
59. As to interest on the award for loss of earnings, Mr O’Donnell submits that it should be awarded at 3% from the end of the index sexual assaults (January 1977) until the date of the quantum trial. However, he also fairly acknowledges that interest may be reduced at the Court’s discretion given the delay in bringing this action. It seems to me that interest for loss of earnings should only begin to accrue from the date the claimant reached 21 years of age, when she could reasonably be expected to enter the labour market after completing education and training, that is, from 20 July 1985. There is an additional difficulty with the claimant’s claim for interest on the full amount of the award for loss of earnings from 1977, which is that the loss of earnings claim accrued gradually over the years and did not crystallise in 1977 or 1985. It is also right to take into account the very long delay in bringing this claim. Doing my best with these issues, I direct that interest should run on the loss of earnings award for a period of 10 years at 2%.
