



Case No: QB-2017-000097

Neutral Citation Number: [2020] EWHC 791 (QB)

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 2 April 2020

**Before :**

**THE HONOURABLE MRS JUSTICE LAMBERT**

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**Between :**

**FXF**  
**- and -**  
**Ampleforth Abbey Trustees**

**Claimant**

**Defendants**

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**Ms Nina Ross** (instructed by **AO Advocates**) for the Claimant  
**Mr Nicholas Fewtrell** (instructed by **Keoghs**) for the Defendants

Hearing dates: 14, 15, 16, 17 and 23 January 2020

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**Approved Judgment**

**Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 2pm on Thursday 2 April 2020.**

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**THE HONOURABLE MRS JUSTICE LAMBERT**

**MRS JUSTICE LAMBERT :****Introduction:**

1. This is an action for damages for personal injury and consequential financial loss arising from sexual abuse. The Claimant, whose identity is protected by an anonymity order made by Master Thornett, is now 56 years old. In September 2017 she issued these proceedings alleging that, in 1968 or 1969, when she was 4 or 5 years old, she was sexually abused by Father Damian Webb, an ordained Roman Catholic priest and member of the Benedictine community of Ampleforth Abbey. Father Webb died in 1990, 5 years after the expiry of the primary limitation period in January 1985.

**Background Facts:**

2. I set out below the background facts as described by the Claimant in her witness statement of 2019.
3. In September 1966 Father Webb was assigned by the Abbey to take on the role of assistant parish priest at St Mary's Roman Catholic Parish Church in Leyland in Lancashire. It was in this capacity that he visited the Claimant's home where it is alleged that the abuse took place. The Claimant's mother was a devout Catholic and Father Webb was free to come and go in the family home as he pleased. He would visit the family often and stay for many hours at a time. He had access to the shared garden behind the house where the Claimant and her siblings would often play with the other local children. Father Webb was a keen photographer and the Claimant remembers him coming to the garden with his camera to take photographs, often setting up his tape recorder to record their games. As the Claimant was later to find out, Father Webb's vast collection of photographs and recordings of children's games were archived after his death in the Pitt Rivers Museum in Oxford.
4. It is the Claimant's case that it was during those garden visits, between 1968 and 1969, that Father Webb abused her. In her witness statement of March 2019 she describes the first occasion upon which the abuse took place. She was playing in the garden with her siblings. Father Webb was sitting in a chair in the garden when he picked her up and put her onto his knee then, holding her around the waist so that she could not move, he put his hand down the back of her underwear and rubbed her genital area. After a few minutes he then inserted his finger into her vagina which she found extremely painful. In her witness statement she records that Father Webb abused her in a similar way on many of his other visits to the family garden: this was, she said, "*the pattern of his abuse.*"
5. The Claimant was confused and upset by Father Webb's behaviour. She did not complain to him about what he was doing as she was terrified of him and had not been brought up to speak to adults or those in authority. However, on one occasion, after Father Webb had abused her, she went to speak to her sister "M," who was one year older. She remembers standing in the doorway between the garden and the kitchen when she told her sister what had happened. Her sister told her that Father Webb had been doing the same thing to her. The Claimant records in her witness statement that she felt unable to speak about the abuse again after this, although she was aware that her sister had tried to tell their mother but had been rebuffed, her mother saying "*don't be silly, a priest would not do that.*"

6. The abuse ended, so the Claimant has been told by her sister “M,” with an episode of which the Claimant herself has no memory. Apparently, she and “M” were in the living room when Father Webb touched both girls sexually. The abuse was witnessed by their mother and grandmother and when her father returned from work he asked Father Webb to leave the house. Although she has no recollection of the incident, the Claimant records in her witness statement that this was the last occasion upon which she saw Father Webb. The family moved away from Leyland a year or two later.

### **The Issues:**

7. The Claimant consulted solicitors (AO Advocates) in March 2013 concerning the abuse but did not at that stage pursue the litigation. The complaint of sexual abuse was first reported to the Defendants in July 2014 when the Claimant contacted the National Catholic Safeguarding Commission which, in turn, passed on the report to Mr Mick Walker, the Safeguarding Coordinator engaged by the Defendants. A letter of claim was sent on 1 July 2016 and proceedings were issued in September 2017, 32 years and 9 months after the expiry of the primary limitation period. The proceedings were served in January 2018 and the Defence filed and served in March 2018.
8. The claim is formulated in two ways: first on the basis that the Defendants are vicariously liable for Father Webb’s abuse given the relationship akin to an employer/employee between Father Webb and the Defendants and the close connection between Father Webb’s role as a priest and the abuse. Second, and alternatively, on the basis that the Defendants were negligent in failing to have systems in place which would have identified Father Webb as an abuser. I need not elaborate further on the Claimant’s pleaded case as the Defendants have admitted that, on the facts of this case, the Defendant is vicariously liable for such tortious acts by Father Webb as the Claimant may prove, as to which the Defendants do not, given the death of Father Webb in 1990, advance a positive case.
9. The Particulars of Claim seek substantial damages arising from the sexual assaults. The Schedule of Loss includes a claim for general damages to reflect depression, including a major depressive episode suffered by the Claimant in 2015/2016; trauma symptoms including intrusive thoughts, avoidance and negative perceptions; low self-esteem and feelings of detachment causing the Claimant to form “poor quality” relationships with men and a crisis of faith and self-identity which has affected her ability to work. The Schedule claims damages for loss of earnings both past and future broadly in the sum of £340,000 and the costs associated with a course of Eye Movement Desensitisation Reprocessing therapy.
10. Centre stage of the Defendants’ case is limitation. The applicable statutory provisions are to be found in the Limitation Act 1939 (as amended by the Limitation Act 1975). There is however no material difference in the wording of the two statutes and both parties addressed the limitation issue by reference to the equivalent provisions of the Limitation Act 1980, recognising that the authorities on the 1980 Act are, not only useful, but binding on this court. Although, the time limits which I am considering are those set out in s 2A of the 1939 Act (as amended) and the discretion to direct that those time limits should not apply is that set out in section 2D of the 1939 Act (as amended), throughout this judgment I therefore refer to the equivalent provisions in the Limitation Act 1980, “the Act.”

11. After the Claimant withdrew her case on date of knowledge in the course of closing submissions, it became common ground between the parties that the primary limitation period under sections 11 and 28(1) of the Act expired in January 1985 and that, in order to pursue the claim, the Claimant requires a direction from the court under section 33 of the Act setting aside the prescribed time-limits for bringing this action. The Claimant seeks the direction in the Particulars of Claim on the grounds that the Claimant has a good reason for the delay and that the cogency of the evidence has not been substantially diminished as a result of the lapse of time. The application is resisted on the basis that Father Webb's death in 1990 has caused the Defendant significant prejudice and a fair trial is no longer possible.
12. The further issue which the Defendants raise for my determination, subject to my conclusion on the issue of limitation, is the causation of injury and loss. Putting it shortly for present purposes, the Defendants deny that any mental illness or distress suffered by the Claimant and/or the consequential financial losses are attributable to the sexual abuse which is alleged. The Defendants submit that a very large number of other adverse life events which affected the Claimant, wholly unrelated to the abuse, are likely to have led to distress, bordering on depression and ultimately led to her suffering a depressive illness in 2015/2016. Those adverse life events included: the physical and emotional neglect of the Claimant when she was a child; the Claimant's breast cancer and her persisting concern that she may not have been cured; the breakdown of her marriage; the mental illnesses suffered by her children and very serious work-place stresses. The Defendants deny that the Claimant's decision to leave her work as a primary school teacher in 2016 and start working as a ceramicist was caused by the long-term effects of the abuse, arguing that the decision was a product of the very poor working relationships between teaching colleagues.
13. In summary therefore the issues for my determination are:
  - (i) whether I should direct that the prescribed time period for bringing this action should be set aside, bearing in mind that the sole liability issue which I have to decide is whether as a matter of fact the abuse occurred; if so,
  - (ii) whether I am satisfied on balance that the abuse occurred; if so,
  - (iii) the quantum of general damages (which will involve an analysis of the impact on the Claimant of the abuse over the years, disentangling the impact of the other life events referred to above from the impact of the abuse) and whether the Claimant's decision to leave her work as a primary school teacher in 2016 and start to work as a ceramicist, was caused or materially contributed to by the abuse.
14. At trial, the Claimant was represented by Ms Nina Ross and the Defendants by Mr Nicholas Fewtrell. I am grateful to them both for the assistance which they have provided.

**Limitation:**

**Legal Framework:**

15. I start with the legal principles which I must apply. Section 33(1) of the Act provides as far as material that:

“If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which –”

(a) the provisions of section 11.. of this Act prejudice the plaintiff or any person whom he represents; and

(b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents;

the court may direct that those provisions shall not apply to the action, or shall not apply to any specified cause of action to which the action relates.

(...)”

Section 33(3) sets out that:

“In acting under this section the court shall have regard to all the circumstances of the case and in particular to –

(a) the length of, and the reasons for, the delay on the part of the plaintiff;

(b) the extent to which having regard to the delay the evidence adduced or likely to be adduced by the plaintiff or the defendant is, or is likely to be, less cogent than if the action had been brought within the time allowed by section 11;

(c) the conduct of the defendant after the cause of action arose, including the extent to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff’s cause of action against the defendant;

(d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;

(e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable might be capable at that time of giving rise to an action for damages;

(f) the steps, if any taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.”

16. Both parties have drawn my attention to a large number of cases in which the mechanics of the operation of the section 33 discretion has been considered. In spite of the parties’

extensive submissions and, having considered all of the authorities to which my attention has been drawn, it seems to me that the court's general approach to the section 33 discretion is now largely well-established. In *Chief Constable of Greater Manchester Police v Carroll* [2017] EWCA Civ 1992 at [42], the Master of the Rolls provided a helpful summary of the general principles upon which the court must act. I adopt and amplify below that summary as it appears to me to be relevant to the issues arising in this case.

- i) The section 33 discretion is not fettered and requires the judge to look at the issue broadly, taking into account each of the circumstances specified in section 33(3) to the extent that they are relevant. No one factor or circumstance will predominate. The topics specified in s 33(3) are not intended to place a fetter on the discretion but to focus the attention of the court on matters which experience has shown are likely to call for an evaluation in the exercise of the discretion and must be taken into account by the judge. See: *A v Hoare* [2008] UKHL 6 and *Donovan v Gwentoy* [1990] 1WLR 472 at [477E]. Having considered the relevant circumstances, including those set out in section 33(3) the court should conduct a balancing exercise of all relevant circumstances and with regard to all of the issues. See: *KR v Bryn Alyn Community Holdings Ltd and Another* [2003] QB 1441 at 74
- ii) The essence of the proper exercise of the judicial discretion under section 33 is that the test is the balance of prejudice as between the claimant and defendant. The burden of establishing that the balance tips in his or her favour is upon the claimant, but the burden is not necessarily a heavy one; how heavy or easy it is for the claimant to discharge the burden will depend upon the facts of the particular case. See: *Sayers v Lord Charlwood* at [55]. However, whilst the ultimate burden is on the claimant to show that it would be inequitable not to extend the relevant time-limit, the evidential burden of showing that the evidence adduced or likely to be adduced by the defendant is less cogent, is on the defendant.
- iii) When conducting the balancing exercise, the basic question to be addressed is whether it is fair and just in all the circumstances for the defendant to meet the claim on its merits, notwithstanding the delay. The court will consider:
  - a) the length of the delay, which is important mainly because of any effect which it has had on the cogency of the evidence on the issues of both liability and quantum. Although delay between the accrual of the cause of action and the issue of proceedings will often prejudice a defendant, that delay is permitted by the Act and is not a delay of which the Defendant can complain. But once the limitation period has expired, that disability is removed. It then becomes relevant to consider the whole of the period that has elapsed since the cause of action accrued. See: *Donovan*; and *Catholic Child Welfare Society v CD* [2018] EWCA Civ 2342 at 36
  - b) the reason for the delay: the analysis under section 33(3)(a) requires the court to conduct a subjective inquiry into the reason for the delay. Having found out what the reason is, the court must then decide whether it is a good or bad reason or whether the claimant is or is not

culpable in delaying commencing proceedings. See: *Coad v Cornwall HA* 1WLR 189 at [195D]. If the delay has arisen for an excusable reason, it may be fair and just that the action should proceed despite some unfairness to the defendant due to the delay. If there are no good reasons for the delay or its length, there is then nothing to qualify or temper the prejudice caused to the defendant by the effect of the delay on the defendant's ability to defend the claim. On the other hand the balance may go in the opposite direction, partly because the delay has caused procedural disadvantage and unfairness to the defendant and partly because the reasons for the delay are not good ones. See: *Cain v Francis* [2008] EWCA Civ 1451 at [73];

- c) whether a fair trial can still take place: this is an important question to the exercise of the discretion. If a fair trial cannot take place it is very unlikely to be equitable to expect the defendant to have to meet the claim. But, if a fair trial can take place this is not the end of the matter. The possibility of a fair trial is a "*necessary but not sufficient condition for the disapplication of the limitation period*". See: *RE v GE* [2015] EWCA Civ 287 at [78];
  - d) on the question of prejudice, the defendant only deserves to have the obligation to pay due damages removed "*if the passage of time has significantly diminished the opportunity to defend the claim on liability or amount*". See: *Carroll* at [42]. Or as it was put elsewhere, "*the issue on which the court must concentrate is whether the defender can show that, in defending the action, there will be 'the real possibility of significant prejudice.'*" See: *AS v Poor Sisters of Nazareth* [2008] UKHL 32
- iv) Where, as in this case, the court is to consider limitation and the substantive issue of liability in the same trial, the court should be careful not to determine substantive issues before determining the issue of limitation and the effect of the delay on the cogency of the evidence. The court should be aware that evidence may have been incapable of being adequately tested or contradicted: to rely on those findings in order to assess the cogency of the evidence for the purpose of limitation would be to put the cart before horse. The court must consider what evidence might have been available to the defendant if the trial had taken place earlier or it had learned of the claim earlier. See: *AB and Others v Nugent Care Society* [2009] EWCA Civ 827 at 21. It would be a "*logical fallacy*" to proceed from a finding, on necessarily partial evidence, that the claimant should succeed on the merits to the conclusion that it would be inequitable to disapply the limitation period as this would overlook the possibility that had the defendant been in a position to deploy evidence now unavailable the outcome might have been different. See: *Bowen v JL* [2017] EWCA Civ 82 at [26]
- v) However, that same "*logical fallacy*" is unlikely to apply in the reverse situation, especially when the case depends on the reliability of the claimant. If therefore, even on the basis of impoverished evidence deployed by the defendant, the court is not satisfied that the impugned event occurred, then it would not be realistic for the court to shut its eyes to the findings and conclusions reached following a full trial. See *Bowen*.

17. When reserving judgment in this case, Mr Fewtrell informed me that the judgment of the Court of Appeal in *London Borough of Hackney v FZO* was imminent. It has since been handed down: see [2020] EWCA Civ 180. Neither party has provided me with further submissions in the light of that judgment, nor do I consider that I need alter my summary of the relevant principles set out above. Applying the framework therefore, I must first consider those factors in section 33(3) to the extent that they are relevant and then, having done this, stand back and weigh the balance of prejudice as between the parties asking myself whether in all of the circumstances it is fair to permit the action to proceed. With this approach in mind, I set out below the evidence relevant to the limitation issue. Given that the potential prejudicial effect of delay may impact not just on liability issues but also quantum, it follows that there is a substantial overlap between the evidence on limitation and that relevant to the further issue which I have been invited to determine, that is, the causative potency of the alleged abuse on the Claimant's mental health and financial loss.

**The Evidence:**

18. The following is a timeline of key events relevant to the issues.

<i>January 1964</i>	<i>Claimant born</i>
<i>1968/69</i>	<i>alleged abuse</i>
<i>1975/76</i>	<i>Claimant's grandmother died</i>
<i>January 1985</i>	<i>primary limitation period expires</i>
<i>1990</i>	<i>Father Webb died</i>
<i>2004</i>	<i>Claimant's mother died.</i>
<i>March 2013</i>	<i>Claimant first consults solicitors (AO Advocates)</i>
<i>2013/2014</i>	<i>Claimant approaches another firm of solicitors (possibly Irwin Mitchell)</i>
<i>July 2014</i>	<i>Claimant reports her complaint to the Defendant</i>
<i>January to June 2016</i>	<i>Therapy sessions at Trust House</i>
<i>May 2016</i>	<i>The Claimant approaches AO Advocates again. AO Advocates instructed.</i>
<i>July 2016</i>	<i>Letter of Claim</i>
<i>September 2017</i>	<i>Proceedings issued.</i>

19. The Claimant and her sister "M" and her father all gave evidence at trial. I also heard from Ms Anne Hall to whom the Claimant mentioned that she had been abused at some point in recent years. I heard from Ms Joanne Wood, who alleges that she too was abused by Father Webb when he was an assistant parish priest in Garforth in Leeds in the 1980s and read some short file reports of complaints made by other women alleging abuse by Father Webb. I heard evidence from the Defendants' solicitor, Ms Rawcliffe, concerning steps taken by the Defendants to investigate the claim following issue of proceedings and some documentary evidence was placed before me in the form of the file maintained by the Defendants concerning Father Webb. There was an application before me by the Claimant to rely upon the Investigation Report of the Independent Inquiry into Child Sexual Abuse concerning the Benedictine Community. It was agreed that I should hear submissions arising from the contents of that report and give my ruling on its admissibility in this judgment. I deal with that issue below.



*The Claimant's Evidence*a) *The Diaries*

20. Before I set out the key parts of the Claimant's evidence relevant to the exercise of my discretion, I note one feature of the presentation of the Claimant's case. It concerns the Claimant's diaries. The Claimant admitted having kept a personal diary from around age 15. She told me that she did not make a diary entry every day, it would depend on time constraints, but she said that there were several diaries covering her adult years and that she had handed them all over to her solicitors at some stage in the litigation process. These diaries were never disclosed in this litigation. The existence of the diaries only came to light when, during discussion concerning the contents of the trial bundle, the Claimant's solicitor proposed that certain short sections running between 2012 and 2018 should be included in the trial bundle. The Defendants, predictably, objected.
21. Ms Shereen Kulczynska of AO Advocates, the solicitor who currently has conduct of the litigation on the Claimant's behalf was called to explain the situation. She was unable to provide a reason for the failure to disclose the diaries as she had only recently taken over conduct of the action. She told me that, having appreciated late in the day that the diaries had not been disclosed, or even reviewed, she set about going through the diaries as quickly as possible. This proved to be a time-consuming exercise and she completed her review shortly before Christmas 2019. She told me that she had reviewed the diaries with her disclosure obligations under CPR 31.6 well in mind. She looked for references to Father Webb, to the abuse itself and to the effect of the abuse. She also said that she had sought to identify any references to other life events which might have been material to the Claimant's mental health over the years. A very limited number of entries running between 2012 and 2018 fitted her "search criteria." She therefore proposed to the Defendant, rather optimistically it might be thought, that those diary sections of potential relevance should be included in the trial bundles, although she added "*we do not consider that much turns on these.*"
22. Predictably, and for good reason, the Defendants objected to the inclusion of the sections of the diaries in the trial bundle. It appears that, in the light of this objection, the application to rely upon the diaries as part of the Claimant's case was not pursued. The existence of the diaries came to my attention at trial as Mr Fewtrell embarked upon a section of cross examination using the contents of the diaries as a basis for his questions. He was entitled to do this, albeit he would not have been able to challenge the Claimant if she gave an answer inconsistent with the diary entry, but this course of questioning led to a degree of confusion, not least for me, as both Mr Fewtrell and the Claimant were aware of the contents of the diaries and I was not. In these circumstances, Mr Fewtrell, agreed that the sections of the diaries should be included as part of the Claimant's evidence. He maintained his position however that had the diaries been disclosed he would have wished to have examined them in their entirety, by means of an application had inspection not been forthcoming.

b) *The Abuse*

23. Of the sexual abuse itself, save in one important respect, the Claimant had little to add in her oral evidence to the contents of her witness statement. The one addition to, or rather clarification of, the witness statement was her confirming to me that, whilst her

witness statement refers to her having been abused by Father Webb “*on many of his visits*” and refers to a “*pattern of abuse*” she personally was only able to remember two occasions when she was abused, both when she was in the garden. To this must be added what she had been told by her sister of the third occasion when Father Webb abused the Claimant and her sister “M” in the presence of her mother and grandmother. She candidly accepted that she did not know how many times she had been abused, although she suspected that it was on many occasions, saying only that “*once is too often.*”

c) *The Reasons for the Delay in Reporting the Abuse*

24. The Claimant told me that throughout her life she had been affected by the abuse which had never been forgotten and was always at the back of her mind. As a child, the abuse made her feel lonely, tearful and morose. As an adult it had affected her self-esteem and her ability to pursue healthy relationships with men. She describes having suffered severe psychological injury which has included flashbacks and nightmares, anxiety and panic attacks. She says that she is filled with anger whenever she thinks about the abuse.
25. She gave a number of reasons for not having reported the abuse to the Defendants until 2014. She said that throughout her life she had tried to put the episode behind her and block it out. It made her feel ashamed and dirty. She sensed that her family did not want to talk about it even though they knew what Father Webb had done to her and to her sister. When she tried to broach the subject with her family “*they sensed what I wanted to talk about, before I even got to actually talk about what he did to me, they would laugh and joke it off or otherwise change the subject: this is true even to this day.*” She said that her siblings would be inappropriately light-hearted about what had happened, referring to Father Webb and other paedophile priests as “*kiddie fiddlers.*” This upset her as it ridiculed and belittled what Father Webb had done to her.
26. She said that during her mother’s lifetime she had not wanted to make a complaint about Father Webb as her mother was so devout that it would have upset her. Shortly before her mother died in 2004, the Claimant had mentioned Father Webb to her mother and although she had not, even on this occasion, mentioned the abuse, her mother went on to tell her that she had reported Father Webb to the Church and that in consequence he had been removed from the parish and sent off to a school. She goes on “*as far as I am aware, she made this report shortly after the last incident when I was abused ie in 1969.*” In her evidence she said that she did not know when the complaint had been made by her mother and that she had assumed that it must have been in 1969. How the conversation with her mother developed, if at all, is not recorded in the witness statement and not amplified in her oral evidence.
27. The Claimant was asked by Mr Fewtrell why she had not reported the abuse to the Defendants in the decade following her mother’s death. She said that, after her mother had died in 2004, there were other life events which required her, as she put it, to “*batten down the hatches.*” There were always things going on, she always had to be strong and that there were other people who needed her. By this, I understood her to be referring to the emotional fall-out from her divorce (her husband had left her to be with a man in 2002) and both of her sons suffered from poor mental health, one much worse than the other.

28. Another reason which the Claimant advanced for not having made any complaint concerning the abuse was that she had not known Father Webb's surname. She only knew him as "Father Damian." She said that when she was in her thirties she had tried to do some internet research on Father Webb but as she had not known his surname nor his connection with Ampleforth Abbey those searches had been fruitless. The Claimant said that it was only in 2012 when on holiday with another of her sisters, "J," that she had learned Father Webb's surname and that he had been part of the Benedictine community at the Abbey. The Claimant accepted that she could, in theory at least, have asked any member of her family for further details about "Father Damian" including his surname and that this would have been a "simple matter." She told me that, whilst for others, it might have been straightforward, it would not have been a simple matter for her.
29. In 2012, having learned of Father Webb's name, she searched for information concerning Father Webb online and came across a large number of photographs which he had taken, including some of herself and siblings. These were the photographs which had been archived with the Pitt Rivers Museum. In her witness statement she recorded that she was "*floored*" when she found them: "*there were dozens of photographs of me and my siblings in the collection, spanning years.*" She continues: "*there was one photograph that particularly captured my attention, it showed me crying at the camera. I was upset to see this photograph and outraged that Father Damian was praised online for his photography skills when I knew what he did to me and "M."*" Her witness statement continues by adding that the discovery prompted her to make anonymous and derogatory posts online. She was taken by Mr Fewtrell to her diary entry of 21 October 2012 in which she referred to this discovery. The diary entry reads as follows: "*Last weekend was Mum's 8 year anniversary. I had located over 100 photos of us "5 big ones" online... was great when I'd made them into a video for all to see. Gave them copies on pen drives. Tried to send them to Dad but email wouldn't send.*" It was pointed out to her by Mr Fewtrell that this entry was at odds with the reaction described in her witness statement. She responded that the diary entry was a truthful account of her reaction and that initially she had been excited by the discovery as few photographs existed of her siblings owing to the family never having had the means of taking photos. Initially she said she was shocked but not upset, it was only later when it all sank in that she became really angry and upset about it.
30. One of the triggers for her taking matters further was her finding out in 2013 that her brother in law had been sexually abusing her niece. In her witness statement she said that she was very distressed by this information and that it triggered memories of Father Webb's abuse. The Jimmy Savile scandal in 2012/2013 also led her to want to do something about Father Webb's abuse. Initially she had not been interested in filing a claim for compensation but wanted recognition that Father Webb had abused her. This led her to search for possible avenues online as she thought it best to consult a solicitor who might advise her of "*her options*" and so she approached AO Advocates in 2013.
31. The Claimant contacted AO Advocates through their website on 18 March 2013 and spoke to one of the solicitors by telephone a week later. In her statement, she describes being sent their "standard terms" a few days after this. She decided not to pursue a claim at that stage however as she understood that she may be exposed to some financial risk which she could not afford. As a single parent she said that she could not afford to

lose money. Although not referenced in her witness statement, she told me that having spoken with AO Advocates she then consulted another firm, possibly Irwin Mitchell, although she could not be sure of the name. As to the timing of that further approach, she thought that it was closer to 2013 than to 2016 and within a year or thereabouts of her first consultation with AO Advocates.

32. In July 2014, she contacted the National Catholic Safeguarding Commission. Her correspondence was then forwarded to Mr Mick Walker as the Safeguarding Coordinator for the Defendants. On 29 July 2014, Mr Walker recorded in the case file summary of allegation: *“the alleged victim stated that whilst she was a child that Fr Damian Webb abused her by digitally penetrating her vagina.”* This record of the complaint was made 45 years after the abuse. Mr Walker met the Claimant at her home on 31 July 2014. Mr Walker’s note of the complaint is as follows: *“FXF stated that when she was 5 years old Father Damian Webb visited her house and sat on a seat in the rear garden of her home with his back to the house. He would place her on his knee and then place his hand inside her knickers. She reported this matter to her older sister M who also stated that Fr Damian had also assaulted her in this manner too. She stated that her mother had seen Fr Damian do something to FXF in the house and had thrown him out...FXF wanted to know if there had been any other victims and I said that there had been.”* Mr Walker told her that Father Webb had died but that there were other women who had reported having been abused by Father Webb. According to the Claimant, Mr Walker referred to Father Webb as being a *“prolific paedophile.”* He told her that he was aware of at least three other women who had reported abuse, in addition to the Claimant and her sister. There was email correspondence between the Claimant and Mr Walker and on 5 September 2014, the Claimant wrote to him saying that she had spoken with her father who had told her that he had suspected something was wrong about Father Webb and his visits. Of the final episode of abuse, she told Mr Walker that her father had told her that *“on returning home from his work shift, early one evening...“all hell had broken loose.” My grandma had “caught” the priest doing “something” to me. My dad grabbed the priest and was going to punch him, but grandma stopped this. Father Damian was told to leave our house and never come back.”*
33. At Mr Walker’s suggestion, the Claimant then sought counselling from the Trust House in Preston which was an abuse crisis centre. Between January and June of 2016 she attended a series of free therapy sessions. The counselling records are relatively brief but record her motivation for seeking therapy as *“to get rid of all the feelings and feel normal. To stop popping into my head all the time.”* Of the assaults, her complaint was noted to be that she was *“sexually abused by “Father Damian” when she was very young (about 5 years). Her sister was also abused by the same man. Eventually parents were told, and they reported to the church. As a result, the priest was moved on. FXF has continually tried just to put it aside and get on but anxious. Has been unable to do so. She can feel angry, has affected her faith and makes her work as a primary school teacher in a catholic school difficult.”*
34. The therapy records start on 19 January 2016: *“Client explained abuse by Catholic priest up to age of 7. Sister was also abused. Client very angry. Tried to find priest in 30s. Discovered he was packed off to a school. Took various videos and photographs of her and siblings playing. Client says her head is full of thoughts and emotions and she just wants them sorting out.”* The records later refer to the Claimant’s stress at

work; to her father having been a bully; to having felt isolated as a result of having gone to a different school (grammar school) than her siblings; to her always having to sort out everyone else's problems and to her having always had to be "*the strong one*" and of her ex-husband being gay. In February 2016, there is a reference to the Claimant having been signed off from work with stress. In March 2016, the notes record that she was very upset as she had seen a man who looked like Father Webb which had shocked her. In April 2016, the notes refer to her having been to see a solicitor and in May 2016, her decision to leave work and go back to ceramics. Later that month the therapist noted that the Claimant was "*finding her inner self slowly opening up and being happy; she had a new business venture and she felt as though she was coming to terms with her past and doesn't feel the need to talk about the perpetrator any more*". The Claimant ended therapy in June 2016. Of that last session, the records note "*client extremely happy. Spoke of the future and getting back together with boyfriend.*"

35. In her witness statement she recorded that she had found the therapy sessions helpful as they had afforded her "*a space to heal and to confront what had happened*" rather than pushing it away. In her oral evidence she gave a rather different picture, commenting that the therapist had only been a student who had always had to seek advice from others and who had been more interested in talking about herself, her life and her problems rather than focussing upon the Claimant's problems. The Claimant said that she had in effect disengaged from therapy and that she had said that she was happy only as an acceptable reason for ending the therapy. In fact, she had not really derived any benefit from it.
36. She said that in around 2014 she had a conversation with a work colleague, Ms Anne Hall. At that time she was working as a religious education teacher in a Catholic school and she had lost her faith in the Church. She raised this with Ms Hall and described her internal conflict due to a priest having done "*something to her*" when she was a child. She was astonished when Ms Hall asked her whether the priest was Father Damian.
37. The Claimant gave up her work as a religious education teacher in 2016. In her witness statement she explained that the feeling of having lost her faith, coupled with her psychiatric condition, was causing her difficulties at work. She said that she had always been mistrustful of priests and there had been only one priest at the school with whom she had been close. His death in traumatic circumstances had caused her particular distress. She finally left work in July 2016 because she could no longer reconcile her feelings for the job, meaning that she had lost her faith. She reinvented herself as a ceramicist, ceramics having been her abiding passion since a young woman. She now has her own website, although she told me she has yet to make a living.
38. She was prompted to seek further advice from solicitors in 2016 having watched the American film "*Spotlight.*" She knew before she watched the film that it concerned the institutional cover up of child sex abuse by priests. Watching the film made her angry and, as she recorded in her witness statement, this "*together with the strength I have gained through therapy at Trust House*" spurred her on to consult AO Advocates once again in April or May 2016. By this time, she said her financial responsibilities had diminished in that both of her children were independent. She also knew that she was in line for a pay out from her former teaching job. When she received the contract from AO Advocates she appreciated that it was a no win no fee contract and that she would not have to pay anything for legal representation.

c) *Other Life Events*

39. The Claimant told me that her whole life had been affected by Father Webb's abuse; that the abuse was always at the back of her mind and never forgotten. She describes in her witness statement that her *"life and ability to embrace it has been tainted from sexual abuse. I have never been able to escape it .."* She describes an episode of depression 2016 which the experts (Professor Ireland and Professor Maden – see below) categorise as an episode which meets the relevant criteria for a depressive illness. It is the Claimant's case that this episode was caused by the abuse.
40. It was put to her by Mr Fewtrell that, notwithstanding the abuse she had been a high achiever at school, having passed her 11 plus and gone to grammar school and then to tertiary education, first in Preston and then at North Staffordshire Polytechnic; that she had worked almost continually as a primary school teacher of religious education until 2016 save for some time off for life events. She agreed with this but said that, notwithstanding, she had never forgotten the abuse she had suffered.
41. A number of other "life events" were explored with her by Mr Fewtrell. The Claimant accepted that, as a child she had been neglected both physically and emotionally. She confirmed that her father had been a strict disciplinarian and that she had been fearful of him at times. The family had been financially badly off: there were times when there was not enough money for the electricity or for food and bedding. Her mother had suffered from mental illness. Her parents had separated when she was only 13 years old, when her father had left the family to pursue another relationship with a woman in Jamaica. Coming from a mixed-race heritage, she had been bullied for a time at school for *"being a poor black girl in a wealthy white community."* She says that she was quiet at school because, although the family had moved away from Leyland, the memory of the abuse *"was still very present in my mind and I felt I had no one to help me."* The Claimant confirmed that she had been diagnosed with breast cancer in the middle 1990s and that, even though she had been in remission for many years, she was still fearful that the condition might return; she confirmed that her husband had left her and embarked on a same sex relationship in 2010 and that her son had significant mental health problems.
42. The Claimant's attention was drawn to a series of entries in the diaries concerning her work as a primary school teacher and her decision to leave the school. They start (so far as the disclosed sections in the diary are concerned) in October 2012 when she describes having had to go off work with stress and culminate in an entry on February 2016 when she describes having had a *"bit of a meltdown."* She told me that there had been lots of issues at school to do with the behaviour of the acting head and the assistant deputy including her mail having been steamed open and her practice review having been changed. By February 2016 the school *"was proving to be a difficult place to be in"*. The new head teacher was an old fashioned "1950s" Catholic and particularly religious, which she found difficult. The new head also thought that the school was not as successful as the teaching team believed it to be and was implementing many changes. The final straw for her was described in her diary entry for 11 February 2016. She was told that she was to be subjected to a further "observation" for which she had had no warning, which was, as she put it in her diary, *"unacceptable...If I am to be judged and that judgement will be fed back to management and the MIT team then I should be given adequate notice.. with all this pressure and no support I burst into*

tears.” In her evidence to me, she described the atmosphere at school as “toxic.” She told me that she had been at the same school since 1998 but by 2016 the school was “a real mess”. Her Union representative managed to obtain a good severance deal for her which she accepted as he advised her that if she had not gone amicably she would likely be eased out anyway as she was expensive.

#### *Evidence from the Claimant’s Father*

43. The Claimant’s father is now around 84 years old. His evidence was directed to the last episode of abuse when he had been called upon by his wife to turn Father Webb out of the house. He said that in 1969, he was in bed having been on a night shift when his wife woke him up in the afternoon. She appeared to be distressed. She told him that Father Webb had fondled the Claimant who was then 4 or 5 years old. He became angry and so went downstairs to confront him. He describes seeing Father Webb in the living room sitting on a chair next to the Claimant and his mother in law. Given that his mother in law was a devout woman he had asked Father Webb politely to leave the house and not return. Father Webb said nothing in response but got up and left. There had been no commotion and no shouting.
44. He told me that he never discussed the incident at all with his mother in law: “*she had too much respect for the Catholic Church to confront Father Damien. She was upset that we believed FXF and told Father Damian to leave the house and never return.*” He accepted that his wife had never mentioned to him that “M” had also been abused and that it was his recollection that it was his mother in law who had witnessed the abuse and then told his wife what had happened. Afterwards, although they discussed the incident, his wife had never mentioned either that she had made a complaint to the Church about the abuse or that she was thinking about making such a complaint. He said that although the family was a close one, it was not their way to discuss intimate matters and so talking about Father Webb’s actions did not come naturally. It was only after the discovery of the photographs that the incident was discussed. He was taken to the Claimant’s email to Mr Walker of 2014 which recorded, apparently, a conversation which she had had with him, but he did not remember speaking with the Claimant about the incident in 2014 and said that it was only very recently that they had spoken about it.

#### *Evidence from Sister “M”*

45. “M” told me that it had been their grandmother who had witnessed the abuse in the living room and then she and her sister had reported it to their mother “*we both spoke to Mum which was then confirmed by grandma.*” Some years later, her mother had told her that she had made a complaint to the church, but she didn’t say to whom. Her mother had been a very devout catholic and something of this magnitude would have been very difficult for her to comprehend. “M” told me that if her grandmother had not witnessed the abuse, it would never have been brought up and she felt that she would never have been believed.

#### *Evidence from Anne Maria Hall*

46. Ms Hall gave evidence of a conversation with the Claimant in which the Claimant intimated to her that she had been abused as a child by a priest. She had immediately thought that the person who had abused the Claimant was Father Webb as his reputation

was of “*questionable character*” and there was a rumour within her social and professional group that he was perverted. In her witness statement she recorded the conversation has having taken place “*about 10 years ago*” but told me that this was only a guesstimate and the conversation could have been 6 years ago or 12 years ago.

#### *Other Complainants*

47. By agreement, I heard evidence from Ms Joanne Woods. She alleged that she had been abused by Father Webb in the 1980s when he was working in the Garforth parish, near Leeds. She told me that the abuse occurred when she was around 6 years old. She would play with a friend at St Benedict’s Church where Father Webb was the priest. She describes how she would sit on Father Webb’s knee. He would make her kiss him on the lips, masturbate him until he ejaculated onto his trousers and her hands. On the last occasion, she refused to sit on his knee and he tried to prise her away from the table where she was playing. This was the last occasion upon which she visited him in his living quarters. Sometimes she would receive money or sweets from Father Webb.
48. Short file notes made by Mr Walker recording complaints from four other women formed part of the trial bundle. Two siblings alleged that they had been abused by Father Webb. One complained that he would encourage her to sit on his knee when he would touch her over her body saying that he was “*joining the dots*” of the many freckles which she had on her face and legs. He kissed her and put his tongue into her mouth. The other said that she too was encouraged to sit on her knee when he would touch her bottom and push his tongue into her mouth. Another victim was enticed into the garden shed at the back of the church where Father Webb sat her on his knee and put his hand into her underwear and then placed her hand on his trousers and onto his penis which became erect. This complainant alleges that she was abused in a similar way for over a year, including on one occasion when she was on a school trip to the theatre. A further file note records an allegation by another woman that in 1982/3 when Father Webb was at Garforth, he had put his hand inside her underwear.

#### *Documentary Evidence*

49. Father Webb’s file has been located and disclosed by the Defendants. It contains documents of limited relevance. Details from the Abbey necrology include the record that Father Webb worked as an assistant priest at Leyland from September 1966 to September 1969 when he was transferred to the chaplaincy of Cardiff University. He remained at Cardiff until July 1972. He was then sent on a sabbatical for one year to East Africa. From 1973 until 1983 he was the parish priest at Garforth and, from 1983 until his death in 1990, he was an assistant priest at Bamber Bridge, near Preston.

#### *Ms Rawcliffe*

50. Ms Rawcliffe, who together with Mr Carroll has conducted the case on behalf of the Defendants, gave evidence of the investigations which had been undertaken by the Defendant. She confirmed that Father Webb’s file had been located and searched and that no record of any complaint was found in it. She also confirmed that Father Fitzsimmons the parish priest at Leyland in the 1960s had died. She was not able to say whether his file had been located and searched to see if a record had been made of a complaint against Father Webb. Nor was she able to say whether Abbot Hume’s file



had been searched, although he would have been informed if a complaint of sexual abuse had been made.

*Expert Evidence*

51. I heard expert evidence from Professor Ireland for the Claimant and from Professor Maden for the Defendant. Both had provided reports and had participated in a joint expert meeting. The meat of their evidence was directed at the issue of the effect of the childhood abuse and its role in causing the Claimant to suffer psychological injury and in particular her depressive illness in 2015/2016.
52. Professor Ireland is a forensic psychologist based at a secure hospital in the North West. The nub of her opinion is that, on the basis of her Structured Clinical Interview for DSM 5 Disorders, the Claimant demonstrated some symptoms of PTSD arising from her abuse experience, but not the full breadth of symptoms required to fulfil the diagnosis. Her view was that the “*core basis*” for the Claimant’s poor self-esteem as an adult was the sexual abuse. She denied having disregarded the large number of other negative life experiences unrelated to the abuse (physical and emotional neglect by parents; the trauma of her parents separation; bullying at school due to her being mixed race and poor; her relationship with her former partner and the circumstances of the break up; her own diagnosis with cancer in 1996; the loss of her mother in 2004), and accepted that these factors may have contributed to the Claimant’s poor mental health. Those negative events had however been effectively “*processed*” by the Claimant, unlike the feelings caused by the sexual abuse. She said that the Claimant’s sense of being “*different to others*” was due to the sexual abuse: “*such a response of considering yourself to be different from others is a commonly accepted outcome of exposure to such abuse since it is extremely confusing for a child.*”
53. Professor Maden is a Consultant Forensic Psychiatrist, now working largely in the private sector. He accepts that sexual abuse has the potential to cause lasting psychological injury. However, on the basis of the full evidence available to him now which permitted him to “look back” and consider whether in fact the abuse had caused such injury, he thought that the abuse had led to understandable anger, but had not been the main cause of her mental health problems. In his opinion the Claimant had experienced a number of emotional challenges which she had addressed in a forthright way and even without the background of abuse, she would have experienced similar periods of low mood and anxiety. In particular, whilst accepting that the Claimant had experienced an episode of frank depression in 2015/2016, he thought that there were other stressors affecting the Claimant at this time which would have led to her experiencing a similar reaction in any event.
54. Neither Professor Ireland nor Professor Maden claimed a specialist expertise in memory function. Professor Ireland agreed that memory is not always reliable over long periods of time. She also ventured the more controversial view that unprocessed traumatic memories are stored differently from everyday memories. Although all memories will be impacted on by the passage of time, traumatic memories have raised emotional content, which “*ensures they do not disintegrate in the same manner as you would expect for everyday recall.*” Professor Maden advanced the “lay” common sense view that memory is not reliable over long periods of time: that the content and meaning of recollections will change with time and acquire a significance by virtue of subsequent events which they did not have at the time when the memory was laid down.

55. On the topic of the delay in reporting the abuse, both Professor Ireland and Professor Maden agreed that one of the effects of the shame and embarrassment frequently associated with abuse is to inhibit talking about and confronting the experience. Professor Ireland commented that the Claimant had not been aware of the remedies available to her. Also, that she did not seem to have connected her psychological symptomology with the abuse which was her means of coping with the trauma. She added that individuals with such histories can find it difficult to voice their abuse experiences either wholly or partially; feelings like embarrassment, guilt and shame are well recognised as factors likely to prevent disclosure.

### **Limitation: Submissions/Discussion**

#### **s. 33(3)(b): Impact of Delay on Cogency of the Evidence**

56. Although the legislative framework invites consideration of the length of and reasons for the abuse first, it seems to me to be sensible in this case to consider the impact of the delay on the cogency of the evidence first, given that there are a number of points which arise under this section which relate also to the issues under section 33(3)(a).
57. I start with two important points. First, in the absence of instructions or other evidence contradicting the Claimant's account, Mr Fewtrell was limited professionally in the extent to which he was able to challenge the Claimant's account of the abuse. He was not able to suggest that the Claimant was lying or not giving an honest account of her belief about what happened in 1969; his questions and submissions were directed to the reliability of the Claimant's evidence overall, and the extent to which the Defendants were disadvantaged as a result of the delay in bringing the action. Second, it is right that I record that, having had the opportunity of hearing the Claimant give evidence over a period of some hours, my provisional view, based upon the necessarily one-sided evidence which I heard, is that the Claimant gave an honest account of what she genuinely believed had taken place when she was a small child. However, to state the obvious, an honest belief can still be a mistaken belief: the Claimant may genuinely believe that she was abused when she was a young child, but it does not necessarily follow that that belief is accurate and reliable. It is with this issue in mind therefore that I consider the impact of the delay on the cogency of the evidence.
58. Ms Ross overarching submission under section 33(3)(b) is that, whether considered individually or compendiously, the various strands of evidence upon which she relies provide the court with cogent and compelling evidence that the Claimant was sexually abused. She submits that the Claimant's oral evidence (supported by the records of her complaints in and after 2014) in conjunction with the corroborative evidence of her sister and father and the other evidence that Father Webb was an abuser is so convincing that it is "*vanishing unlikely that his evidence would have prevailed over that of the Claimant*". As she puts it, even though Father Webb was not able to give evidence, the Defendants were "*always going to experience great difficulties in persuading the court that the Claimant's allegations were not true and in reality has not been prejudiced at all by his death*". I disagree, for the reasons which I set out below.
59. Given the way in which Ms Ross states her position, it is necessary to consider each part of the evidence which she submits I should take into account when considering the strength of the Claimant's case and the impact of the delay on the cogency of the evidence.

a) *The Claimant*

60. The Claimant's evidence concerns events which took place over 50 years ago when she was 4 or 5 years old. Her memory is limited. Although she describes a "*pattern of abuse*," she accepts that the existence of a pattern is based upon suspicion and not memory. There are very large gaps in her recall. Of the three episodes of abuse upon which she relies, she has no memory at all of the final incident, only discovering it from a more recent conversation with her sister "M". Of the second occasion upon which she was abused, she has provided no detail of the experience. Whilst, I also accept her point to me that "*once is enough*," I can't overlook the fact that the Claimant's case is that she was abused on several occasions and that I need to assess the reliability of that account. Viewed in this way, her evidence is obviously deficient.
61. No written contemporaneous or near contemporaneous records to plug the memory gaps were available at trial. The first written report of the abuse available to the Court was the Claimant's 2014 complaint to Mr Walker, see above at [32]. Assuming that the diaries have been reviewed comprehensively, and in accordance with CPR 31.6, then the Claimant's first reference to the abuse and the effect of the abuse appears in an undated entry in 2014 when the Claimant decided to put down in writing "*stuff going round my head recently*." She listed four matters which were troubling her: her ex-husband's relationship with a man; the possibility that her breast cancer might not have been cured; her relationship with her father and finally the sexual abuse which had been "*in her head for years and can't seem to do anything about it because the bastard is dead*." There are other references to the abuse (amongst other troubles) in her diaries all post-dating 2014. I accept that these diary entries, her report to Mr Walker and the various other accounts which the Claimant has given to third parties (for example, in the therapy notes) are all broadly consistent with each other and with the Claimant's evidence of the abuse at court. As such, they provide some support for the reliability of her account. However given that they were all made over 45 years after the event, their real evidential value is to support the genuine and honest nature of the Claimant's belief that she had been abused. They do not go far in assisting the court in determining whether that belief, however genuinely held, is reliable and accurate.
62. There were also aspects of the Claimant's evidence which lead me to question her general reliability as an historian. She demonstrated that her independent recall of dates (even by year) and the sequence of events was inaccurate and it was only when she was invited to cross check her free recall with the various diary entries and other documents that the errors emerged.
63. In other respects, her evidence was, at best, curious. I take a few short examples:
- i) her reaction to finding the photographs on the Pitt Rivers Museum website was at odds with her evidence of the profound and distressing impact that the abuse had had on her. She told me that when she found the photographs she had taken the time to make a selection from the many hundreds of photographs, download her selection and then send them to her siblings as gifts. Further on her account, her family knew that she had been abused by the man who had taken those photographs and that they were taken at around the time when the abuse was taking place. Even allowing for some degree of pleasure at finding a photographic record of her family, this response is hard to reconcile with her description of the traumatic legacy of Father Webb's abuse.

ii) The account in her witness statement dealing with her reasons for leaving her job in 2016 was incomplete. I accept that a crisis of faith and the loss of a valuable ally (the priest who died) may have played a part in her decision to leave the school but it was abundantly clear from her evidence in cross examination and from her diaries that the main reasons she left in 2016 were the poor working relationships at the school, her indignation that she was being badly treated and the advice which she received from her union representative that if she did not accept the severance package she would be eased out. This much fuller picture simply did not feature in her witness statement.

iii) Her evidence concerning the benefits (or otherwise) of the therapy which she underwent in 2016 was inconsistent. In her witness statement she said that the beneficial effect of the treatment enabled her to confront her abuse and seek legal assistance. Yet she told me in her oral evidence that the therapy had been sub-optimal, conducted as it was by a student therapist who talked only about herself and she had derived little benefit from it.

64. None of these examples, considered individually, would raise a concern as to the Claimant's reliability. Taken together however, they do not support Ms Ross's portrayal of the Claimant as a wholly straightforward witness in every respect. This is not to say that I have reached a concluded view that the Claimant was consciously trimming her evidence to prosper her claim in any respect and I repeat that I found her account of abuse to be one which, so far as I could say on the basis of such testing of her account as was possible, was genuinely believed. However, the inconsistencies referred to above, serve to underscore the obvious forensic value of contemporaneous reports of events, particularly when analysing the reliability of an account concerning events so long ago. It also underscores the value of corroborative evidence, to which I now turn.

#### *The Claimant's Sister and Father*

65. Ms Ross relies upon the corroborative evidence of the Claimant's sister. "M" was the person to whom she reported the abuse when she was 4/5 years old; "M" told her that she also had been abused and "M" was present (and also abused) on the last occasion that Father Webb was in the house and is the source of the Claimant's knowledge about that incident.
66. "M" was not a compelling witness. I take fully into account the considerable stress involved in giving evidence in court and the traumatic subject matter of her evidence, but she was guarded to the point of being defensive. She was reluctant to speak of her own abuse, even though the Claimant relied upon that "similar fact" evidence (see below) as part of her case. Presentation aside, her account concerning the last incident of abuse was unsatisfactory. Important parts of her evidence did not feature in her witness statement. When referring to the final incident, her statement made no reference to her having also been abused. Nor did she refer to the incident having been witnessed by anyone, whether mother or grandmother. Indeed the way in which the point is addressed in the witness statement, "*after Father Damian fondled FXF on the sofa while we were sitting there together, we told our mother...*" suggests that it was not witnessed by anyone. In her oral evidence she confirmed that she too had been abused by Father Webb on that occasion and that the incident had been witnessed by

their grandmother. But if this is correct, then it is very surprising (to say the least) that these important points were omitted from her witness statement.

67. Nor is the Claimant's case materially supported by the evidence of her elderly father. His evidence was bedevilled by the same problems as those affecting "M"'s evidence. He had no recollection of being told by his wife that "M" had been abused, only the Claimant. His statement made no reference to the incident having been witnessed by anyone, saying only that the grandmother was "*upset that we believed FXF.*" In his oral evidence, he like "M" reported that it had been witnessed by the grandmother who had then told his wife, but if this were correct, then there would be no question of the Claimant being "*believed*" (as he put it) as the grandmother would have seen the abuse for herself. In stark contrast to "M", he recalled no commotion or shouting when he evicted Father Webb from the house, taking pains to tell me that he ensured that he had calmed down sufficiently to maintain his composure out of deference to his mother in law.
68. Overall, having considered the evidence concerning this "last incident," I am left with a real doubt as to what, if anything, happened. On the basis of the evidence deployed at trial, what happened, and to whom and by whom (if anyone) the incident was witnessed is inconsistent and unsatisfactory. For different reasons, both "M" and the Claimant's father were not impressive witnesses. The Claimant relies upon them both to make good the short-fall in her own recall concerning the final incident but neither were able to do so in a way which I found to be satisfactory. Furthermore, my doubt generally over "M"'s evidence inevitably casts a shadow over the corroborative value of her evidence concerning the Claimant's earlier report of abuse in the garden and her own report to her sister that she too had been abused.

#### *The Other Complainants*

69. Ms Ross describes this evidence as "similar fact evidence" on the basis that all of the girls were apparently primary school age when abused, that the abuse would start with them sitting on Father Webb's knee and two refer to him inserting his hand into their underwear. "M" did not give an oral account to me concerning her abuse save to record in her statement that Father Webb "*abused me in a similar way as he abused FXF when I was a similar age.*" Only one woman gave evidence to me, the remainder of this evidence took the form of second-hand hearsay file notes of complaints made to and by Mr Walker. However even if I were to take this evidence at its highest, the complaints are not "similar fact" evidence in the sense that the nature of the abuse reported was strikingly similar. I accept that there are points of similarity as identified by Ms Ross (including the ages of the girls so far as is known and that they sat on his knee) but the nature of the abuse described was strikingly different. Ms Wood described Father Webb kissing her and her masturbating him to the point of ejaculation. Another describes kissing and Father Webb pushing his tongue into her mouth. Another describes being made to place her hand on an erect penis.
70. Taken together and at their highest, these complaints suggest that Father Webb was a paedophile and to this extent lend support to the reliability of the Claimant's account. However, the weight which I can place on these accounts, the majority taking the form of short file notes of very different complaints which are meagre in detail, is limited.

*The Complaint to the Church*

71. Ms Ross relies upon the evidence that a complaint had been made to the Church by the Claimant's mother in 1969 and asserts that the absence of any documentation of this complaint is the fault of the Defendants in failing to make a sufficient search of the Defendants' records, in particular the files relating to Abbot Hume (to whom the complaint would ultimately have been communicated) or that of the parish priest at Leyland, Father Fitzsimmons. It is convenient to deal with both of these issues at this stage.
72. The evidence concerning a complaint having been made by the Claimant's mother in 1969 is, in the absence of the Claimant's mother, limited to the two hearsay accounts given by the Claimant and "M". All that the Claimant was able to say on the issue was that at some point shortly before her mother's death in 2004, her mother told her that she had reported Father Webb to the Church and that as a consequence, he had been removed from the parish. Her sister "M" was told by her mother that Father Webb had been reassigned to another school. She was also, apparently, told that Father Webb had been investigated by the Abbey. Neither the Claimant nor "M" were able to give the contents of the complaint; to whom or when the complaint was made.
73. The evidence concerning the complaint is difficult to accept at face value. I am surprised that the Claimant and her sister provided me with only sketchy detail concerning this revelation when it must have been, for both of them, a very memorable disclosure. So far as I have been told, neither sister asked any questions of their mother in response to the new information. Putting those points to one side however, there is a further problem. All of the family witnesses told me that the Claimant's mother was a deeply religious woman who told her children "*to respect the cloth and not the man*". The Claimant told me that her mother was so religious that she felt unable to raise the subject of the abuse with her and that it would have upset her mother greatly if she had broached the subject of an action for damages. Given her religious deference it would be surprising to say the least if the Claimant's mother had made a complaint to the church. Also, if she had done so, I would have expected her to have told her husband either that she was thinking of complaining or that she had made the complaint. Not least because her husband was not a religious man. She did not apparently do so. All of these points are ones which, had the Claimant's mother been alive, she would have no doubt addressed in her evidence including any cross examination.
74. Ms Ross seeks support for her case that a complaint was made by the Claimant's mother in 1969 by seeking my permission to rely upon the Investigation Report of the Independent Inquiry into Child Sexual Abuse: Ampleforth and Downside (English Benedictine Congregation Case Study) dated August 2018.
75. The terms of reference of the investigation was the adequacy of the Catholic Church's response to allegations of child sex abuse made against monks and other individuals associated with Ampleforth (and Downside). In 2017, the Inquiry heard evidence in relation to 11 monks and others working at Ampleforth who had been accused of sexual abuse between the 1960s and 1990s. In relation to three of the monks, the Abbey's response was to move the monk to another parish. The investigators received evidence that in 1975 Abbot Hume received a complaint from the parents of a young boy who said that he had been touched inappropriately by Father Piers. Having launched an investigation, other boys came forward making similar allegations against Father Piers.

Documents accessed by the Investigation showed that Abbot Hume's response to the complaints which were "*technically, from a legal point of view... incidents of sexual assault*" was to transfer Father Piers from the school to parishes. Father Piers was moved from the school to Garforth and thereafter to another 5 parishes over the course of the following two decades. On the basis of the evidence presented to the investigators, the Investigators concluded that "*in the 1970s and 1980s Ampleforth's response to allegations of abuse was limited to transferring offending monks from school to parishes, arranging for them to be assessed by external psychiatrists and to receive treatment where recommended. This occurred on at least two occasions ... under Abbot Hume and Abbot Barry... no disclosure was made to the statutory authorities.*"

76. Ms Ross submits that the report is admissible as it is relevant to and probative of the issue of whether a complaint was made by the Claimant's mother in 1969. It is common ground that if a complaint had been made it would ultimately have found its way to Abbot Hume. The fact that Father Webb was transferred from Leyland in 1969, then sent on sabbatical in 1972 and upon his return was first deployed to Garforth and then to Bamber Bridge, fits the Defendant's pattern of dealing with priests against whom such allegations of abuse had been made.
77. I indicated to the parties that I would determine the admissibility of the ICSA report and give my reasons in this judgment. I do so now. I find that I can deal with the point shortly. The report is admissible. It is potentially relevant. There is no unfairness to the Defendants in my taking it into account. The report does little more than set out the contents of a series of documents which taken together reveal that the response of the Abbey when faced with allegations of sexual abuse was to deal with those allegations "in house" and that three monks had been transferred to the community following such allegations. The report contains no inadmissible opinion evidence: see *Rogers v Hoyle* [2014 EWCA Civ 257]. As Mr Fewtrell recognised in his submissions to me, the real issue is whether the report advances the Claimant's case in any material way. I find that it does not.
78. I have considered the various sections of the report and the underlying documentation to which Ms Ross has drawn my attention. I recognise that in other cases Abbot Hume dealt with allegations similar to those now made against Father Webb by transferring the offending monk from parish to parish and that, in the case of Father Piers, consideration was given to placing him on sabbatical. Father Webb's transfer from Leyland is consistent with a complaint having been made but no more than consistent; to suggest that this was the reason for the transfer is speculation. There may be any number of reasons why Father Webb was transferred from Leyland to the chaplaincy at Cardiff University in 1969. He was an assistant parish priest, no doubt looking to find "promotion" to his own parish. His transfer to East Africa on sabbatical is unlikely to have been the response to a further allegation of abuse given the age of his flock at the University. When he returned, he was not transferred from parish to parish to parish (as was Father Piers) but remained in Garforth for 10 years and then in Bamber Bridge for 8 years until his death. Having considered the matter carefully therefore, at its highest, Father Webb's transfer to Cardiff is consistent with a complaint having been made, but no more than this.
79. The cogency of the evidence that a complaint was made by the Claimant's mother is not enhanced in any material way by the Investigation Report. I move on then to Ms

Ross's further point here which is that, on the basis of Ms Rawcliffe's evidence, the Defendants' disclosure exercise was inadequate. The Defendants had located and disclosed Father Webb's file but not Abbot Hume's file nor that of Father Fitzsimmons, the parish priest to whom Father Webb was the assistant in 1969. She submits that had the disclosure exercise been more comprehensive then a record of the Claimant's mother's 1969 complaint may have been found. I accept of course that this is possible. However, witness statements were exchanged in March 2019. The Claimant has therefore had an abundance of time in which to raise the scope of the Defendants' investigation with the Defendants and, if appropriate, make an application to the court. None was made. Having failed to take this step, it does not seem to me to be fair to criticise the Defendants for the narrow breadth of its disclosure exercise, particularly given the vague and scanty detail as to whom and when the complaint was said to have been made.

*Conclusions on s. 33(3)(b)*

80. As a consequence of the delay in this action, I have not heard Father Webb's side of the story. I do not know his response to the allegations; I have not heard the Claimant and other witnesses cross examined on the basis of his instructions nor heard any evidence which the Defendants may have wished to adduce in support of his case. To make the obvious point, it is likely that had the claim been brought within the limitation period (or even within a short time of the expiry of the limitation period) these deficits would have been avoided.
81. I do not accept the submission that the combined effect of the evidence relied upon by Ms Ross is so compelling that Father Webb would have been unable to provide any sensible or plausible response. No doubt there are rare cases in which evidence of abuse is so convincing that the absence of any response from the alleged tortfeasor would make no difference, but this is not such a case.
82. The claim is largely dependent upon the Claimant's memory of events which occurred 50 years ago when she was a child of 5 or 6 years of age. Her recall is deficient. I note that in her written closing submissions, Ms Ross suggests that the Claimant's inability to recall events may not be due to "straightforward" memory loss but caused by the psychological phenomenon of pushing the traumatic memory to the back of her mind. Setting aside that neither Professor Ireland nor Professor Maden claimed any specialist expertise in memory function, the submission misses the point.
83. The point is that, for whatever reason, whether through memory loss or because those memories remain "locked in" and inaccessible, the Claimant is now able to give only a partial account about what happened to her. As I have analysed above, there is no buttressing contemporaneous or even near contemporaneous documentary evidence to plug the gaps or to support the reliability of what she does remember. I have doubts concerning the extent to which, if at all, her family provide valuable corroborative evidence. The current state of the evidence concerning the mother's complaint is scanty and raises a large number of unanswered questions. I accept that the fact that other women claim to have been abused by Father Webb provides some support for her case, but not much.
84. I do not find that this is one of those cases in which, even absent an informed defence position, the evidence concerning the abuse is so weak that I am able to dismiss the



claim on that ground. I prefer to put it as Nicol J did in *Murray v Devenish* [2018] EWHC 1895, that had he been alive, Father Webb would have had a case to answer. But it would not have been an unanswerable case by any means.

85. As a direct consequence of the delay in bringing these proceedings the cogency of the evidence has been substantially diminished, resulting in very substantial prejudice to the Defendants. It is no doubt that with this in mind that Ms Ross has sought to construct her case that Father Webb's death "*makes no difference.*" However comprehensive and attractively put her submissions on the point, I do not accept them.
86. The cogency of the evidence is also diminished by the absence of the evidence of the Claimant's mother concerning what (if she did) witness on the last occasion that Father Webb was in the house and the complaint which it is alleged she made. Given her death in 2004, had the claim been brought within the primary limitation period or even shortly thereafter, her evidence would have been available. Ms Ross recognises the significance of her absence but submits the party affected is the Claimant and not the Defendants. Again, I am unable to accept this submission as so starkly advanced. I have set out my thoughts on the quality of the evidence currently available concerning both aspects of the case to which her evidence is relevant. The evidence is deficient. There remains however a prima facie case on both topics to which the Claimant's mother's evidence is relevant. I accept that given the quality of the current evidence on both issues, there is prejudice to the Claimant in the absence of her mother, but that does not mean that the Defendants are not, as I find, also prejudiced.
87. However, the real and substantial evidential prejudice which the Defendants have suffered as a result of the delay is caused by Father Webb's death in 1990. For this reason, I find I can take Mr Fewtrell's further arguments on cogency relatively shortly.
88. I do not accept Mr Fewtrell's argument that the cogency of the evidence relevant to causation has been significantly diminished. I acknowledge that, when addressing the impact of the abuse on the Claimant's mental health, the court will need to disentangle the various potentially causative factors in order to say whether the abuse caused or materially contributed to the Claimant's mental health problems. However, the fact that the entirety of the GP records are no longer available; or that the Claimant's school reports or the hypnotherapy records are no longer available does not disadvantage the Defendants in any material sense. I acknowledge that Professor Maden commented that in the absence of the Claimant's GP records from childhood he was unable to say whether the Claimant had suffered poor mental health as a child and if so the stated cause. However, the fact is that neither expert have expressed themselves to be unable to perform the disentangling exercise as a result of the delay or the absence of crucial documents. Indeed, both were able to reach conclusions on the point, particularly the 2015/2016 depression, albeit they were not in agreement. This sort of exercise, which involves discriminating between different potential causes of mental illness over, often, very long periods of time and without the full life-time suite of medical and other records, is a regular occurrence in these courts. It is a familiar exercise for experienced experts. I see no significant loss of evidential cogency as a result of the delay on this issue.
89. Nor does Mr Fewtrell persuade me that the absence of other witnesses, in particular Father Fitzsimmons or Abbot Hume, has impacted adversely on the cogency of the evidence. Although it is possible that they may have provided some testimonial

evidence in support of Father Webb, the relevance of those witnesses is directed at the Claimant's mother's complaint and any subsequent investigation. Their evidence may have been helpful in that context given, as I have said, there is prima facie evidence before me concerning the complaint. But I place little weight on this factor. Compared with the prejudice caused by Father Webb's death, the absence of these potential witnesses pales into insignificance.

Section 33(3)(a): Length of and Reasons for the Delay

90. The delay in issuing these proceedings is very long indeed. The primary limitation period expired in January 1985, over 32 years before the claim was issued and 29 years before the Claimant contacted the Defendants.
91. This is not a case in which the Claimant has delayed taking action because she did not appreciate for many years that what was done to her was wrong. The Claimant accepts that she has always known that what happened to her was both wrong and immoral. Her witness statement includes the remark that she did not understand that Father Webb's touching her sexually constituted child sexual abuse until around 2012 when she read the press coverage of the Savile scandal and, then later, when she watched Spotlight. This is an odd comment given that the Claimant had, throughout her adult life, worked as a primary school teacher. When questioned on the matter however she accepted that she knew that an allegation of sexual touching of a child was serious and that, had she reported it to the police, they would, or at least should, have taken the matter seriously.
92. Ms Ross isolates the reason for the Claimant's delay in reporting the complaint to the Defendants (2014) and for issuing proceedings (in 2017) to the inhibiting effect of the abuse itself, coupled with the Claimant's stoical acceptance of her predicament and her desire to try and get on with her life. Ms Ross relies upon Professor Ireland's evidence that avoidance behaviour is a well-recognised feature of abuse and that it is not unusual for trauma victims to fail to disclose fully their abuse histories unless directly prompted. This avoidance response is consistent with the scientific literature on the subject, see in particular the research undertaken by *Alaggia* in 2010 which supports the conclusion that abuse victims may take a considerable time to disclose allegations, often well into adulthood. Ms Ross also relies upon Professor Ireland's opinion that the Claimant herself had not fully connected her psychological condition with the abuse, again a well-recognised coping mechanism of abuse victims who try to push the abuse to the back of the mind.
93. The trigger for the Claimant issuing these proceedings in 2016 was the deterioration in her condition in 2015/2016 when she suffered an episode of moderately severe depression. This depression was, submits Ms Ross, the product of a constellation of events which triggered the Claimant's memories of the abuse. The events included the Claimant's discovery in 2012 of Father Webb's surname; the Savile scandal; the discovery that her niece had been sexually assaulted; her discussion with Mr Walker leading to her belief that she was being believed and the counselling at Trust house which enabled her to confront the abuse. She reminds me of Professor Ireland's description, which was adopted by the Claimant, that between 2012 and 2016, the Claimant was on "*a journey*" which built to a crisis when unprocessed emotional memories associated with her own sexual abuse caused her to suffer a depressive illness.

94. Mr Fewtrell's submission on the reason for the delay can be put shortly. He submits that the Claimant was never psychologically disabled from bringing the claim. She has, throughout her life, functioned at a high level. She had achieved academically and then professionally. However considerable her anxieties may have been, she had continued working (save for some short periods off work when she was ill) and had continued supporting others. He submits that the reason why the Claimant delayed in bringing this action was down to one thing, which was her own choice. This he argues is not a "good reason" for delay, see *RE v GE* [2015] EWCA Civ 287 at [42] and [68]
95. I find that both parties have, in seeking to persuade me to their competing views, oversimplified what was a much more complicated picture.
96. I accept that one of the effects of the belief that she was abused has been to cause the Claimant shame and embarrassment and that these feelings were bolstered by the response of her family whose comments made her feel as though the abuse was ridiculous. I also accept that these feelings contributed at times to her not bringing a claim. However, the extent of these feelings and therefore the extent to which they operated to inhibit the claim must be kept in perspective. I agree with Mr Fewtrell that those feelings were never "psychiatrically disabling." As the Claimant accepted, they did not prevent her from functioning (very effectively) in her day to day life. Nor, it seems, did they provoke such a strong avoidance mechanism that she was unable to confront those feelings. She told me that when she was in her 30s, she spent hours searching the internet to find information concerning the man whom she knew only as Father Damian. As Professor Maden has said, this does not fit comfortably with the assertion that she had only functioned in adult life by consciously or otherwise pushing the abuse to the back of her mind and getting on with life with a stoical acceptance.
97. Also, the Claimant herself advanced further reasons for the delay. They included the practical obstacle posed by her not knowing Father Webb's surname or his connection with the Defendants but yet, as she accepted, she could have asked any member of her family for that information. Although she told me that such a simple inquiry would not have been "simple" for her given her feelings, I bear in mind that she will have had numerous opportunities over the years to raise the issue with either her family or others but did not do so. The Claimant also gave other reasons for the delay including, up to 2004, the fact that a claim would have upset her mother. After her death in 2004, she then explained the delay by saying that she needed to be strong for other people and so she put the possibility of a claim to one side.
98. I accept Mr Fewtrell's submission that from 2013 onwards the inhibiting effect of the abuse played no significant role. The Claimant may have been on a "journey" of some sort between 2012 and 2017 but by 2013 the main reason for not pursuing an action was, on her own account, because she was not prepared to risk financial exposure. Yet she did not, it seems, make any inquiry with AO Advocates concerning the level of that risk or whether the risk might have been alleviated and in 2014, she took matters into her own hands by reporting her complaint to Mr Walker. I find that there is no good reason why the Claimant did not bring a claim in 2013/2014.
99. In summary, I accept that before 2013 the inhibiting effects of shame and embarrassment played a role in the delay in bringing the claim. I also accept that the fact that the Claimant was able to function in her day to day life does not serve to demonstrate that those feelings of being tainted were not present and at times keenly

felt. However other factors also played a role in the delay: life events; a desire not to upset her mother and to be “strong for others” were all relevant factors. No doubt the Claimant believes these to be good reasons for the delay from her point of view. But that is not the end of the inquiry.

100. The question ultimately for me is whether the reasons which I have found for the delay, as a whole, qualify or temper the prejudicial effect of the delay on the Defendants’ ability to defend the claim. In my judgement the prejudice to the Defendants as a consequence of the delay is so substantial that, unquestionably, they do not do so.

*Section 33(3)(c): the conduct of the Defendants after the cause of action arose*

101. The Claimant draws my attention to two cases in which conduct had been a factor influencing the court’s discretionary exercise under section 33. In this case, she relies only upon the Defendants’ failure to investigate the offence in 1969 and a further failure to investigate in 2014 (following the report to Mr Walker). For the reasons that I have given, neither of these points advance her cause. On the basis of the evidence before me, I am unable to say one way or the other whether there was a complaint and whether there was an investigation. The Claimant could have made an application in 2019 which might have led to the disclosure of the files (other than those of Father Webb) and might have revealed that a complaint had been made and the response to the complaint. But I do not know. Any other conclusion would be speculative. I see no merit in the allegation that there was a failure to investigate the complaint in 2014. Mr Walker took a full note. He reported the matter to the police (who apparently took a statement from the Claimant). He was aware of other complaints from other women and told the Claimant this and the file notes of the reports were available to me. If the Claimant had wished to investigate the circumstances of those other complaints, then she (or her solicitors) could have done so. I see no relevant conduct issue arising from the scope of Mr Walker’s investigation and response to the complaint.

*Section 33(3) (e): extent to which the Claimant acted promptly*

102. Nothing turns on the application of this sub-section. Although Mr Fewtrell has made submissions under this head, they are all subsumed into the points debated under other sub-sections of the Act. I do not repeat them here.

*The Section 33(1) Balancing Exercise*

103. I bear in mind that the burden of showing that the primary limitation period should be disapplied is on the Claimant, albeit that that burden is not a particularly heavy one. The Defendants have undoubtedly discharged the evidential burden by reason of the death of Father Webb. In spite of the attractive way in which Ms Ross presented her case that his absence makes no difference given the forensic strength of her case, I have found that as a result of Father Webb’s death in 1990, the Defendants have suffered very substantial prejudice. The Defendants are in the position that they can advance no positive case in respect of the Claimant’s allegations. In these circumstances, I have no doubt at all that the result of the delay has been to seriously prejudice the prospect of a fair trial.
104. In considering whether, notwithstanding the effect of the delay on the fairness of the trial, it would nonetheless be equitable to permit the claim to proceed, I must also

balance the other relevant factors in section 33(3). In this case, it is section 33(3)(a) which is particularly engaged: the reasons for the delay. As I have already found, there are a number of different reasons including the effect of the abuse itself. But even taking that reason as fully into account as I am able to, and weighing it in the balance, it does not justify my setting aside the delay of over 32 years in bringing this action.

105. I bear in mind the other factors which Ms Ross has drawn to my attention. First, she suggests that there is a strong case against the Defendants. I agree with her that, had she had a very strong case, then this would have weighed heavily in the balance in her favour. But she does not have a very strong case. Second, she reminds me of the egregious nature of the sexual abuse which is alleged against Father Webb. She relies upon the observations of Coulson J at first instance in *A v Hoare*. However, in that case the defendant had been convicted of a violent sexual assault and sentenced to a term of life imprisonment. Those facts are far removed from her case.
106. In summary, in the particular circumstances of this case, I find that even though it is possible that the Claimant was sexually assaulted by Father Webb, for whom the Defendants are vicariously liable, a fair trial is now not possible. Such are the difficulties caused by the delay in bringing the action that, weighing those difficulties against the Claimant's reasons for delaying and the other factors to which my attention has been drawn, it would not be equitable for me to make the direction sought by the Claimant.
107. It follows that I will not exercise my discretion under section 33 of the Act to disapply the primary limitation period.
108. I have received comprehensive submissions from both parties concerning the other issues which, but for my conclusion above, would fall to be considered. However, those issues now fall away in the light of my refusal to grant the direction sought by the Claimant to disapply the primary limitation period.
109. Accordingly, the claim is dismissed.