Case No: C08YP008

IN THE MANCHESTER COUNTY COURT

Date: 25/7/2018

Before :

HIS HONOUR JUDGE G SMITH

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Between :

MG	**Claimant**
- and -	
THOMAS AMBROSE STREET	**Defendants**
and	
THE GOVERNORS OF ST. AUGUSTINE OF CANTERBURY RC HIGH SCHOOL	

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Deborah Davies (instructed by **Farleys**) for the Claimant
The **First Defendant** acting in person
Adam Weitzman QC (instructed by **Browne Jacobson**) for the **Second Defendant**

Hearing dates: 10th, 11th, 12th January and 7th March 2018

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

HIS HONOUR JUDGE SMITH

His Honour Judge G Smith :

1. The Claimant joined the Second Defendant school ("the school") in September 1985 at the age of 11. He was sexually abused by Mr Street, the First Defendant, who was at the time his German teacher. Although all sexual abuse is serious, the abuse perpetrated by Mr Street was, by reference to the sentencing guidelines for sexual offences, at the least serious end of the scale of abusing. The First Defendant admits the abuse, although he remains reluctant to categorise it as sexual abuse. He pleaded guilty to 5 counts of indecent assault on 13 January 2014 and was sentenced by His Honour Judge Lewis to 8 months imprisonment, suspended for 18 months. It is clear from Judge Lewis' sentencing remarks, which appear at page 1/349 of the bundle that the sentence was only suspended because Mr Street had already served a significant custodial sentence for offending of the same nature relating to other boys.

2. Notwithstanding Mr Street's guilty pleas, there are issues as to the nature and duration of the abuse. In particular, the defendants contend that the abuse continued only for a relatively limited period of time in the Claimant's second year at school. The Claimant contends that it continued for a much longer period.

3. The Claimant is now 43, and he commenced these proceedings in November 2016. The School has raised a limitation defence. Mr Street has not done so, although I have ensured that, as a litigant in person, he is very well aware of the potential consequences of not having done so.

4. The Claimant's claim for special damages exceeds £500,000 and Miss Davies acting on his behalf submits that the claim for general damages should approach £100,000. The reason why these figures are so high is that the Claimant lived what can only be described as a chaotic lifestyle from the time he left the School in 1993 until 2013. During that period he regularly abused alcohol and illegal drugs. At times he was homeless. At times he did work or attended university, but he maintains that at no time until 2013 was he functioning normally. He attributes his addiction and its effects to the sexual abuse by Mr Street, and relies upon the expert evidence of Ms Helen Roberts, a clinical psychologist. The defendants dispute any causal link between the abuse and the Claimant's addiction, and the School rely upon the expert evidence of Professor Maden, a consultant psychiatrist. There is accordingly a significant issue between the parties as to causation. The School contend that general damages should fall within the range £10,000-£15,000 and that the claim for special damages should fail in its entirety.

5. The School also contend that even if the Claimant succeeds on causation, he should nonetheless not recover damages consequent upon his decision to take illegal drugs. On behalf of the School, Mr Weitzman QC submits that the decision to take drugs was so unreasonable that it constitutes an intervening act breaking the chain of causation, and alternatively that, as the use of the drugs was an illegal act, the Claimant cannot found a claim for damages upon it.

6. There are therefore four principal issues which I need to determine: the nature and extent of the abuse, limitation, causation and the recoverability of special damages. All four issues are interlinked.

Limitation

7. The Claimant and the School agree that I need to consider first the issue of limitation. They also agree that the cause of action accrued prior to the Claimant's 18th birthday, and that primary limitation accordingly expired on his 21st birthday. Pursuant to *A -v- Hoare* [2008] UKHL 6 the Claimant does not contend for a later date of knowledge. He invites the court to disapply the primary limitation period pursuant to s.33 Limitation Act 1980, which provides as follows:

> "(1) 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 [or 11A] or 12 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……..
>
> (3) 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 [, by section 11A] or (as the case may be) by section 12;
>
> (c) the conduct of the defendant after the cause of action arose, including the extent (if any) 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;
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> (d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;
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> (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."

8. The exercise of the court's discretion pursuant to s.33 has been considered in a number of well-known authorities including *A -v Hoare* [2008] UKHL 6, *Cain -v- Francis* [2008] EWCA Civ 1451 and *B -v- Nugent Care Society* [2009] EWCA Civ 827. Most recently it has been considered by the Court of Appeal in two cases. In *RE -v- GE* [2015] EWCA Civ 287 McCombe LJ said this:

> "58. Having had the benefit of argument on the point, I do not consider that this first ground of appeal is a good one. The question for the court under section 33 is whether it "would be equitable to allow the action to proceed", notwithstanding the expiry of the primary limitation period. That question is to be answered by having regard to all the circumstances of the case, including in particular the factors identified in section 33(3).
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> 59. Whether it is "equitable" to allow an action to proceed is no different a question, in my judgment, from asking whether it is fair in all the circumstances for the trial to take place - the same question as the judge asked in the first part of the criticised paragraph 29 of the judgment. That question can only be answered by reference (as the section says expressly) to "all the circumstances", including the particular factors picked out in the Act. No factor, as it seems to me, can be given a priori importance; all are potentially important. However, the importance of each of those statutory factors and the importance of other factors (specific to the case) outside the ones spelled out in section 33(3) will vary in intensity from case to case. One of the factors will usually be the one identified by the judge in paragraph 29, by reference to the judgment of Bingham MR in Dobbie v MedwayHA [1994] 1 WLR 1234, 1238D-E, namely that statutory limitation rules are
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> > "...no doubt designed in part to encourage potential claimants to prosecute their claims with reasonable expedition...but they are also based on the belief that a time comes when, for better or worse, a defendant should be effectively relieved from the risk of having to resist stale claims".
>
> Nor must it be forgotten that one relevant factor is surely the very existence of the limitation period which Parliament has decided is usually appropriate."

9. Lewison LJ commented that:

> "75. People arrange their affairs on the basis that stale claims cannot be pursued. Insurance cover is taken out and maintained on the basis that claims against the insured must be timeously brought. Organisations maintain document destruction policies fashioned according to limitation periods. Businesses raise finance and pay dividends on the basis that their accounts can be settled. Householders enjoy their gardens on the basis that long possession will not be disturbed. In addition the state has an interest in the principle of legal certainty. As Plumer MR said in Cholmondeley v Clinton (1820) 2 Jac & W 1, 140:
>
> > "The statute is founded upon the wisest policy, and is consonant to the municipal law of every country. It stands upon the general principle of public utility. Interest reipublicae ut sit finis litium, is a favorite and universal maxim. The public have a great interest, in having a known limit fixed by law to litigation, for the quiet of the community..."
>
> 76. Ms Gumbel QC's main submission was that if a fair trial was still possible that, in effect, trumped all other considerations. To accept that submission would mean that the prescribed limitation period for personal injury actions was no more than optional. It would cut across the policy underlying statutes of limitation. There are many cases, not involving personal injury, where a fair trial is still possible outside the limitation period. A claim for breach of contract may be cast-iron but if not brought in time will be statute-barred. Likewise a claim for possession based on a registered title may be easily proved, but if not brought in time will be statute-barred.
>
> 77. The overriding question is whether in all the circumstances of the case it is "equitable" to allow the action to proceed. "Equitable" means fair; and that means fair to both claimant and defendant, not just to the claimant.
>
> 78. Whether a fair trial can still take place is undoubtedly a very important question. However, it seems to me that 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, that is by no means the end of the matter. In other words, I would regard the possibility of a fair trial as being a necessary but not a sufficient condition for the disapplication of the limitation period."

10. In *Bowen and the Scout Association -v- JL* [2017] EWCA Civ 82, the Court of Appeal considered the way in which the Judge had applied the judgment of the Court of Appeal in *Nugent Care*. Burnett LJ referred extensively to the earlier case law, and cited the judgment of Lord Clarke of Sone-cum-Ebony MR:

> "24….
> ii) ... He or she may well conclude that it is desirable that such oral evidence as is available should be heard because the strength of the claimant's evidence seems to us to be relevant to the way in which the discretion should be exercised. We entirely agree with the point made at vii) that, where a judge determines the section 33 application along with the substantive issues in the case he or she should take care not to determine the substantive issues, including liability, causation and quantum before determining the issue of limitation and, in particular, the effect of delay on the cogency of the evidence. To do otherwise would, as the court said, be to put the cart before the horse."

11. Burnett LJ went on to hold that the Judge had mis-applied this part of the judgment in *Nugent Care*:

> "28. I accept the submission that the judge erred in quoting the extract from paragraph 21 of judgment in the Nugent Care Society case, and stating that he would apply it, implicitly irrespective of any factual findings he made. The findings and conclusions arising from his rejection of the claim for the bulk of the period and, more generally, the adverse findings he made against JLwere important in determining the length of delay, the reasons for delay and the extent of prejudice suffered by the appellants in defending the claim."

12. Accordingly, I cannot simply determine the limitation issue on an 'artificial' basis (per Lewison LJ at para 45 of *JL*), ie in isolation from the factual findings which I make. I need first to consider the evidence.

The evidence

13. I heard the evidence of the Claimant and Mr Street, that of Anne Handley (an insurance officer), and that of Ms Roberts and Professor Maden. In addition to the documents contained in the trial bundles, it became apparent at the outset of the trial that Mr Street had retained very detailed personal diaries for the period in question. Regrettably, as a litigant in person, he had not appreciated the need to disclose these documents, and indeed he does not appear to have produced a disclosure list at all. However, he made the diaries available later that day and they were considered by counsel overnight. Although they do not obviously refer specifically to the abuse of the Claimant, they do identify specific dates when the Claimant (at Mr Street's suggestion) visited Mr Street's home. Some of the abuse is agreed to have taken place at Mr Street's home although it is also agreed that some took place at school. The diaries also contain other relevant entries, for example in relation to a school trip to Germany. There is no suggestion that the diaries have been fabricated or manipulated in any way, so they do provide a very helpful source of evidence to test the recollection of the witnesses in respect of events which happened 30 years ago. In addition, although most of the School's records no longer exist, the Claimant's end of year reports are available for his first five years at the School, and again these are a helpful source of evidence. There is also a very significant volume of documentation relating to the period after the Claimant left the School, in particular his medical records. However, certain documents are not available,

in particular university records relating to the Claimant's time at Aberystwyth and Sunderland universities.

14. It is helpful to set out the chronology of events. Matters are not in dispute save where I shall indicate to the contrary. I refer to documents in the following manner: (bundle number/page number).

a) The Claimant joined the School in September 1986;

b) In September 1987 the Claimant entered the second year. The abuse by Mr Street began in this year. The Claimant contends that it continued for at least two years. Mr Street contends that it ended no later than early in the Claimant's third year, i.e. in 1988;

c) The Claimant went on a school trip to Germany in August 1989. Mr Street was one of the teachers on that trip. It is agreed that the Claimant was unwell during that trip, and the Claimant initially attributed that to being given alcohol by Mr Street. Mr Street denies that. The Claimant contends that he was regularly drinking to excess by that stage. The defendants dispute that;

d) In 1991 the Claimant took his GCSEs and obtained 5 A grades and 4 B grades. That September, although many of his contemporaries left the School to study at sixth form college, the Claimant entered the sixth form at the School studying a number of subjects including German. Mr Street was one of his German teachers, although Mr Street's evidence was that he only taught a relatively small part of the course;

e) In 1993 the Claimant took his A levels and obtained 2 C grades, one D grade, one N grade and an E grade in German;

f) In the autumn of 1993 the Claimant commenced studying at Aberystwyth University. Initially he enrolled on a one year Access course, and subsequently on an Agricultural Economics course from which he withdrew in January 1995. He says that he did so because of his extensive drug-taking;

g) In 1995 or 1996 the Claimant moved to Manchester. He registered with a GP on 20th February and the notes record that he was on methadone and occasionally using heroin (5/1613). This is the first mention of drug use in his medical records. As I shall explain later, the Claimant gave evidence that information provided by him to medical professionals in relation to his drug and alcohol use could not be taken at face value;

h) In March 1996 the Claimant moved to Wolverhampton and his methadone treatment was transferred there. The methadone prescription was reduced and appears to have ended at some point, but it is not clear when. The next reference to drug-taking in the medical records is in July 1998 when the Claimant was recorded as saying that he had started using heroin again because "he was under a lot of pressure" (5/1805). The

Claimant does not accept that he abstained from drug use at any point before 2013;

i) Later in 1998 the Claimant moved to Sunderland. He first obtained a certificate of communication following one year's university study, and then commenced a BA in Journalism. His medical records during this period record that he had come off drugs in May 1999, but again he does not accept that he did abstain from drug use. He completed his first year, but had to take leave of absence on medical grounds in his second year. His medical records record anxiety and panic attacks. In November 2001 he self-referred in relation to his alcohol consumption and was offered psychological counselling to address his anxiety, which he rejected. In March 2002 the records indicate that he had started using heroin again and he was placed on methadone treatment again (5/1797). He did not complete the third year of his degree;

j) There are various references in the Claimant's records to his methadone treatment until April 2004, when he moved to Durham. He returned to Sunderland later that year and re-enrolled at Sunderland University. However, he does not appear to have attended the course and ultimately he was awarded a Diploma of Higher Education in Journalism rather than a BA;

k) At some point the Claimant moved to Bridlington, where his parents lived. His father died in 2005. There are no entries in his medical records between May 2004 and April 2006, and the record on 26 April 2006 states that he had "started to inject heroin again - had stopped for two years. Not sure why – may be due to death of father last year" (5/1700). Again, the Claimant does not accept that this information given by him to the doctor was accurate;

l) The Claimant moved to Manchester later in 2006 and for a period of time was homeless and sleeping rough. He was again given methadone treatment. His GP records indicate that he told his GP that "in the last 10 years he has been totally drug free on and off for around a third that time/a further third of that time on a methadone script but not using/a third using but not on a script" (5/1694). Again, the Claimant does not accept that this information given by him to the doctor was accurate.

m) There are a number of references in the Claimant's medical records over the next few years to his drug use. He obtained accommodation in July 2009;

n) In March 2010 the Claimant was stabbed in the left leg and was admitted to hospital;

o) In 2012 the Claimant undertook detoxification and was under the care of the Brian Hoare Unit. In October 2012 it was noted that he had not used heroin for a year or alcohol for six months and was reducing his dependence on methadone. In January 2013 he was admitted to Acorn

for inpatient drug and alcohol rehabilitation and that treatment continued until the end of May;

p) The Claimant made his first disclosure about the abuse by Mr Street in early 2013, although he had hinted that there was an issue to Dr Ramaswamy in July 2012 (5/1644) and to Acorn in September 2012 (2/472). He reported the abuse to the police in May 2013 (1/266). He was interviewed in July 2013;

q) In June 2013 the Claimant became a volunteer for Acorn, and in January 2014 he commenced employment with Acorn as RAMP coordinator. He continues to be employed by Acorn and has had significant salary increases to reflect his increased responsibilities;

r) Mr Street was convicted on his guilty pleas on 13 January 2014 and was sentenced on 13 March 2014;

s) In May 2014 the Claimant instructed solicitors and letters before action were sent on 19 May 2015. Helen Roberts produced her report on 16 June 2015. The claim form was issued on 1 November 2016.

15. Turning now to the evidence, I consider first that of the Claimant. I have no doubt that he was endeavouring to do his best to give the court an accurate account, and I do not underestimate how difficult the process of giving evidence will have been for him, which was very obvious at times. I accept Ms Davies' description of him as "a man of integrity". The Claimant has been "clean" of drugs and alcohol for nearly 5 years and there is no current impediment to his giving reliable evidence. However, there are a number of factors which I need to take into account in determining the weight which I can place on his evidence.

16. The first factor is the period of time which has elapsed since the events in question, namely 30 years. The difficulty in recalling events over such a period is well known, and is articulated by Professor Maden as follows:

> "memory is not reliable over such long periods of time. Recall is an active mental process in which memories tend to become distorted with time to fit the individual's beliefs, needs and values. Both the content and the meaning of recollections change with time. Events can and do acquire a significance years later that they did not have at the time." (1/174, para 360)

17. The second factor is the effect on the Claimant's memory of his extensive drug and alcohol misuse during the intervening period. This is articulated by Professor Maden as follows:

> "Alcohol in particular is well known to impair memory. The Claimant when speaking to me admitted that his memory for may aspects of his childhood was rather poor. He has said the same to clinicians attempting to assess the development of his drug and alcohol problems." (1/175, para 363)

18. The third factor is the extent to which the Claimant has given accounts of his drug and alcohol use which he now contends were inaccurate. This means that it is very difficult to form any evaluation of the true extent of his drug and alcohol use, and therefore upon the reliability of his memory.

19. Finally, Professor Maden suggests that:

> "civil claims made so long after the material events..are an invitation to engage in a process of retrospective re-attribution. It is a natural tendency to look for meaning in one's life and to impose meaning on events. One looks back at one's life and re-interprets events, attaching to them a significance they did not have until then and that they may not deserve." (1/175, para 362)

Mr Weitzman QC suggests that I should be particularly astute to recognise potential re-attribution by the Claimant.

20. Notwithstanding these difficulties, there are some examples of the Claimant having a very good recollection of particular events. The most striking example is of a single occasion when he was in Mr Street's car and an unknown man was collected by them from Manchester Piccadilly station. The broad accuracy of the Claimant's recollection is demonstrated by an entry in Mr Street's diary dated 8th January 1988. Mr Street provided further information when he gave evidence, namely that the man in question was his cousin Edmund who had, by chance, been on the same train as Mr Street and the Claimant, so Mr Street offered him a lift home.

21. In other respects, however, the Claimant's recollection seems to be inconsistent with the information in Mr Street's diaries. This is most obviously the case in relation to the period in which he visited Mr Street's home. The Claimant's recollection is that the abuse went on for "two or more years" (witness statement, paragraph 7) or "at least four years" (paragraph 78 of Miss Roberts' report), until he broke down on one occasion and refused to go with Mr Street who had arrived to collect him from his parents' home – he specifically identified this in response to Professor Maden's questioning him about how the abuse came to an end (1/145, paragraph 93). In evidence, he said that he believed that this incident had been after the German trip. However, Mr Street's diaries show 15 occasions when the Claimant was at his home, between November 1987 and April 1988. There are also numerous references to Mr Street giving the Claimant a lift to his (the Claimant's) home during the same period and up to 17th May 1988. The German trip was not until August 1989. In my judgment, the Claimant's recollection must be wrong. As I have already indicated, there is no suggestion that Mr Street's diaries have been fabricated. In my judgment, the abuse at Mr Street's house ended in April 1988. In my judgment, the incident when the Claimant refused to go to Mr Street's house is likely to have been relatively soon after April 1988, rather than over 16 months later, which explains why Mr Street ceased giving the Claimant regular lifts home in May 1988. There is a single later reference to Mr Street driving the Claimant and two other boys to their homes on 3rd July 1989, but in my judgment this is not inconsistent with the abuse having ended a year previously.

22. Likewise, the Claimant's evidence in relation to the German trip is inconsistent with Mr Street's diary entries. The Claimant stated in his witness statement (1/202) that "Mr Street gave me a lot of alcohol and I became unwell." And he told Helen Roberts that

Mr Street "plied him with alcohol and he became very unwell." (1/117) Mr Street's diary records another boy being "incapably drunk", and states that "one of boys *[the Claimant]* was ill – we sent for Dr." When the Claimant was questioned about the trip in the light of Mr Street's diaries, he said that "there was a lot of drinking" and "I was drinking after-shave there as it was 90% proof. I put some spirit, maybe vodka, into the after-shave. I was heavily intoxicated". He went on to say:

> "I remember being very ill and being given blood tests. In retrospect maybe due to drinking after-shave, maybe I was deluded or paranoid, but I convinced myself Mr Street had used a date-rape drug. I have nothing to back that up. It was something in my mind, but not based on evidence. I was having blackouts and seizures. I was punching walls with no recollection of it. I was sent to hospital after we got back for a lumbar puncture, but I was twisting and turning too much to have it."

23. Although Miss Davies now seeks to rely upon the Claimant's recollection of drinking after-shave mixed with spirits as evidence of the effect which the abuse had on the Claimant at the time, this very significant change in his recollection demonstrates very well the dangers of relying upon his unaided recollection. What started as an allegation of abuse or grooming (Mr Street giving him a lot of alcohol which led to his being ill), which I am not now invited to rely upon because it is accepted that the Claimant's recollection is unreliable, has become an entirely different allegation upon which it is said that I can safely rely.

24. In addition there is a letter from The Royal Oldham Hospital dated 29th August 1989 (5/1814) which refers to The Claimant being unwell while in Germany. It states "he gave a history of having received a head injury four weeks ago with episodes of head turning and eyes rolling to the right". The letter records episodes of eyes rolling and head turning to the right during the Claimant's attendance at the Hospital and concludes that "these convulsive episodes may have been related to his general lack of sleep." Again, this record does not support the Claimant's recollection about the German trip.

25. Professor Maden gave a helpful explanation of why the Claimant's evidence may be detailed and reliable as to some specific incidents, but unreliable as to other matters. He said this (I have added italics):

> "Its easier to remember events than emotions/reasons. I don't underestimate the impact of child sexual abuse – it is a striking event burned into the memory. It stands out from a lot else that goes on. The nature of memory is like that. *We remember particular islands of events in time, not the sea around them*."

26. The difficulty which the court faces is knowing which particular "islands" the Claimant has remembered accurately.

27. The position is even less clear in relation to the immediate impact of the abuse of the Claimant. In his witness statement (1/202), the Claimant says that he began drinking alcohol after the abuse started, that he drank before going in to school, that he drank spirits and mixed alcohol with paracetamol to get a better effect, and that he would go into school drunk. He comments that "I don't know how I got through my exams". He

confirmed this to Helen Roberts and said "I wanted obliteration" (1/117). However, there is no hint of this in the only surviving documents, namely the Claimant's school reports (1987 at 2/371; 1988 at 2/381; 1989 at 2/396; 1990 at 2/413 and 1991 at 2/424). When he was taken to these, the Claimant accepted that they did not contain any indication that he was withdrawn, depressed or unable to cope. His attendance, attitude and performance were consistently good. When it was suggested to him that they were inconsistent with the account which he now gives, he responded "the way I presented was inconsistent with the way I felt". He was then asked whether his drinking would have been reflected in reports and in his performance, and answered "you would think so. There was an occasion at a school disco when I was so intoxicated..I think the 3rd year..I was absolutely paralytic." He was asked whether his teachers would have noticed, and answered "you would think so".

28. In my judgment, it is inconceivable that, if the account given by the Claimant as to the immediate impact upon him of the abuse is accurate, this would not have been noticed by the school. Further, it would undoubtedly have had an impact on his behaviour and performance. The contents of the school reports, coupled with the Claimant's performance up to and including in his GCSEs, strongly suggest that he is mistaken in his recollection. There are no other records now available to shed any further light on this.

29. There are no school records at all available for the Claimant's time in the 6th form. As I have indicated, his results were much worse at A level than at GCSE, which raises the obvious question why his performance deteriorated. It may be that the account given by the Claimant of alcohol abuse in fact relates to his period in the 6th form. Given the deterioration in his performance, one would expect the school records to address this, but that is based on the assumption that the deterioration was evident during the period leading up to the A levels, rather than the Claimant "falling at the last hurdle". The problem is that there is no way of knowing, in the absence of the records.

30. Accordingly, notwithstanding my conclusion that the Claimant is a man of integrity endeavouring to give his best recollection of his history, and that his recollection of some specific events is very good despite the passage of time, I must also conclude that his recollection of other matters is unreliable. There is no accurate way to distinguish which memories are reliable and which are not, unless there is other evidence available against which the Claimant's evidence can be tested. I therefore cannot rely upon his evidence where it is not supported by some other evidence.

31. Mr Street's evidence was straightforward. He accepts that the abuse took place, and indeed has volunteered information about it which the Claimant had not recalled (for example, that he massaged the Claimant). However, it seems to me that he still seeks to minimise the abuse. He said in cross-examination that "At the time I didn't think I was doing anything wrong. Now I realise it's plenty wrong." However, he also accepted that he knew at the time that he had been "pushing the boundaries" and that his conduct had been "iffy". He also persisted in denying that what he had done was "sexual abuse", describing it as "indecent assault". This is a distinction without a difference: the offences of which Mr Street was convicted were indecent assault, pursuant to s.15 of the *Sexual* Offences Act 1956 (my italics). Further, although Mr Street's diaries contain details of many activities which he undertook when the Claimant visited his home, there is no mention of the activities which constituted the abuse. If Mr Street had in any way

considered them to be legitimate activities I have no doubt that he would have mentioned them, given the level of detail in his diaries generally.

32. In the course of closing arguments, reference was made to the fact that the Claimant had been "cross-examined by his abuser", and a specific question was referred to. In response to this, Mr Street contended that he had not, in fact, asked the Claimant any questions at all. This was quite extraordinary, as he had asked the Claimant a number of questions in cross-examination. Although there was a gap of 7 weeks between the conclusion of the evidence and the hearing of closing submissions, the fact that Mr Street could not remember what had happened must cast considerable doubt upon his ability to remember events which occurred 30 years ago.

33. It is also regrettable that, despite having completed a sex offenders' treatment programme, Mr Street still seems unable to appreciate the nature and effect of the abuse. This was particularly evident when he asked the Claimant in cross-examination why he (the Claimant) had not told him (Mr Street) that he did not like what was happening.

34. Accordingly, although Mr Street appeared to be giving his honest recollection of the events in question, I am also unable to accept his evidence unless it is supported by some other evidence.

35. Anne Handley gave evidence on behalf of the School. She is a Risk and Insurance Officer employed by Oldham MBC. She confirmed that the School closed and a new school was created. By statute, any liability for this claim has passed to Oldham MBC. Although there is insurance in place to cover such liability, the insurer, Municipal Mutual, has been unable to meet all liabilities and so a scheme of arrangement is in place. This currently requires Oldham to contribute 25% of claims (damages and costs) in excess of £50,000 since 1993. It is possible that Oldham's contribution may increase. She said that at best, Oldham will have to pay 25% of damages and costs from reserves, out of council funds, but conceded that this would have been the case if the claim had been brought at any time since 1994.

36. Ms Handley also confirmed that no pupil or employee records from the School can now be located. Accordingly, there is relatively little documentary evidence available for the period when the Claimant was at the school. However, there are two important sources of evidence which are available, and which were referred to extensively. These are Mr Street's diaries and the Claimant's annual school reports. I place considerable weight on these sources of evidence, both of which were prepared contemporaneously. However, the limitation on the information available in Mr Street's diaries has already been noted.

37. Standing back at this point, I reach the following conclusions based on the factual evidence:

    a) I cannot rely upon the unsupported evidence of the Claimant or Mr Street;

    b) Mr Street's diaries are reliable, and are inconsistent with the Claimant's evidence as to the duration of the abuse;

c) The school reports are reliable, and do not support the Claimant's evidence as to the immediate effects on him of the abuse;

d) Accordingly, apart from the evidence of the Claimant, there is no evidence of the effects of the abuse upon him until at least 3 years after (as I have found) the abuse ended, ie until the 6th form. The period may in fact be longer, as there are no records at all available for the 6th form, so it is not apparent when the Claimant's performance began to deteriorate;

e) There are other undisputed facts which on their face appear to me to be inconsistent with the Claimant's evidence that the abuse had an immediate effect upon him, namely (1) his choice to go on the trip to Germany, despite knowing that Mr Street would also be on that trip; (2) his choice to stay on in the 6th form, despite many (if not most) of his contemporaries, including his girlfriend Maria, going to 6th form college and (3) his choice to continue studying German in 6th form, despite knowing that Mr Street would be one of his teachers. In relation to the decision to continue studying German, he stated in his witness statement (1/201, para 30) that "I felt bullied into doing this by Mr Street". However, when questioned about this he said that "every teacher I had pressured me into continuing; Mr Street was no different", and he conceded that he could not in fact remember why he decided to continue studying German;

f) As I will explain below, Helen Roberts' attribution of the Claimant's drug addiction to the abuse is based on the Claimant's account to her. That account cannot be relied upon for the same reasons which I have already given.

Limitation

38. Accordingly, I now move on to deal with the Claimant's application to disapply the limitation period. I consider first the factors set out in s.33(3) Limitation Act.

39. (a) *the length of, and the reasons for, the delay on the part of the plaintiff*. I have already identified the length of the delay. The explanation given on behalf of the Claimant for the delay up to 2013 is that he was psychologically inhibited from any disclosure until receiving counselling/support and treatment in the context of drug rehabilitation. That is disputed by the School, which contends that the Claimant suffered no psychological impairment as a result of the abuse. Even if I accept the Claimant's explanation, no explanation of any kind has been given for the further period of delay from January 2013 to 1st November 2016, when the claim was issued. That in itself is a lengthy period; indeed it exceeds the primary limitation period of 3 years. In *McDonnell & Anr -v- Walker* [2009] EWCA Civ 1257 Waller LJ, giving the judgment of the Court of Appeal, held that "The delay which is relevant is the whole period since the accident occurred. Each period of delay needs separate consideration as to whether it was excusable" (para 36). Although that was not a case involving sexual abuse of a child, the principle is no different.

40. (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 [, by section 11A] or (as the case may be) by section 12*. I have already dealt with this in my discussion of the evidence. The evidence of both the Claimant and Mr Street is very considerably less cogent than it is likely to have been if the action had been brought within time, and many highly relevant documents no longer exist. While the fact of the abuse is not in dispute, its duration is, as is the causative link between the abuse and the Claimant's drug addiction. Miss Davies submitted that the missing documents would add little to the case. For example, she submitted in respect of the 6th form records that "the facts speak for themselves" (ie the A level results) and in respect of the Aberystwyth University records that these would reveal little because the Claimant did not "get off the ground" with his education there. However, with respect to her, she is assuming the reliability of the Claimant's recollection. I have already indicated that the 6th form records may have indicated why the Claimant's performance began to deteriorate, and they would certainly indicate when it did. It is also perfectly possible that the Aberystwyth University records would shed light on the detail of the Claimant's reasons for dropping out.

41. (c) *the conduct of the defendant after the cause of action arose, including the extent (if any) 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.* There is no suggestion of any fault on the part of the School.

42. (d) *the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action*. The only disability suffered by the Claimant was his minority, which automatically delayed the commencement of the limitation period until his 18th birthday.

43. (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*. I have largely dealt with this already. Insofar as the Claimant relies upon his drug use as establishing that his failure to act sooner was reasonable, I consider this further below in the context of the recoverability of special damages. In my judgment, it is beyond doubt that the Claimant did not act promptly after 2013. As no reason has been advanced for his failure to do so, it follows that there is no material from which I can conclude that he acted reasonably in that period.

44. (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*. The Claimant instructed solicitors in May 2014 and was examined by Helen Roberts in March 2015. Her report was produced in June 2015. No details have been given of the specific advice which was given by the solicitors.

45. Miss Davies also submitted that if, as submitted by Mr Weitzman QC, the claim for special damages must fail for lack of evidence as to causation, then the School will suffer no prejudice by disapplication of the limitation period. While that may be partially true (the School would still have to pay general damages, subject to any right which it has to recover from Mr Street), this cannot be a determining factor. Taken to

its logical conclusion, it would mean that the weaker a case which a claimant may have, the more likely it is that the limitation period would be disapplied. In my judgment, that would be an absurd result.

46. In my judgment, having regard to all the circumstances of the case, it would not be equitable to allow the claim against the School to proceed. Accordingly, the claim against the School is dismissed. However, I still need to continue to consider the claim against Mr Street. If I am wrong in my decision as to limitation, my decisions as to the remaining issues will apply equally to the claim against the School.

Causation

47. The Claimant relies upon the expert evidence of a psychologist, Helen Roberts. In her report she reached the conclusion that:

> "88. [The Claimant] discovered that alcohol and later drugs provided a means of managing his psychological distress. From a very early age, [the Claimant] 'self-medicated' with drugs and alcohol and this pattern has continued throughout his life until the last two years.
>
> 89. It is my view that [the Claimant]'s drug misuse should be seen as arising directly from the sexual abuse that he describes. That is, as an immature child within the context of the nature of the abuse that [the Claimant reports], it is likely that he had few resources for managing abuse experiences and consequently misused substances in order to cope. Indeed Street introduced [the Claimant] to mind altering substances in order to abuse him.
>
> …
>
> 98. It is my opinion that drug misuse is directly attributable to the abuse that [the Claimant] suffered. Had he not been abused, it seems probable that [the Claimant] would have gone to University and would have followed a profession. His risk of drug and alcohol misuse would have been no greater than any other member of the general population." (1/131 and 133)

48. In her evidence, Ms Roberts confirmed that she stood by the conclusions stated in her report. She confirmed that she relied upon three sources of information when preparing a report: the history given by the subject, review of relevant documents, and psychometric testing. The psychometric testing was by way of a Personality Assessment Inventory which was carried out at the end of the interview to ensure that questions were asked in a systematic manner. She considered that Professor Maden's comments in the joint report went beyond the data. She did not feel that the test gave any information about the Claimant's personality at the time of the abuse. She agreed that the abuse had been at the less significant end of spectrum for criminal law, but in her opinion the grooming relationship had been devastating to the Claimant. Having heard Mr Street give evidence, she was of the opinion that this demonstrated his capacity to avoid responsibility and to blame his victims for saying nothing, which would have made the victims feel responsible: as time went by they were likely to have

felt enormous shame and guilt, and to have felt that disclosure would be saying something about themselves, not the abuser. Mr Street had been the Claimant's teacher – he took him on trips, paid him attention, rewarded him, visited his home, gave him alcohol; if the Claimant displeased Mr Street, then he withdrew attention and simulated rage. There was no direct threat by Mr Street, but manipulation. This caused psychological damage to the Claimant.

49. In cross-examination, Ms Roberts was challenged about her statement that she considered relevant documents when producing her report. She conceded that she had not mentioned the contents of any of the documents which she had read, but said that she did not need to do so because they were available for objective analysis by the court. She accepted that the account given to her by the Claimant was in a number of respects contradicted by his medical records. She was asked why she had not mentioned this in her report and responded that the medical records were also not objective because they were based on the Claimant's self-reporting, and he had told her that he had lied and been dishonest when questioned by medical professionals. She agreed that the lies told by the Claimant to medical professionals were relevant, but was then unable to explain why she had not mentioned them in her report.

50. Ms Roberts went on to accept that the Claimant's school reports were also inconsistent with the account which he had given to her, and that she had not mentioned this in her report. When asked why she had not mentioned this, she said that the school reports were available for everyone to read and it was not her function to comment on the facts. It was put to her that she had failed to identify material facts which might detract from her opinion, which is required of an expert pursuant to Practice Direction 35. She said that she had considered them and noted that they were discrepant to the Claimant's account, but that she had not mentioned them in her report. She also questioned whether the school reports were accurate and reliable. Ms Roberts confirmed that the contents of paragraphs 83, 87 and 88 of her report were based on what she was told by the Claimant. She went on to say that school reports cannot comment on sexuality, and she observed that they did not note that Mr Street was taking the Claimant out of school. She was then asked the following questions:

> Would you expect them to? I would have expected the school to have noticed.
>
> In his school reports? No.
>
> Why did you say so? It was a mistake.
>
> Are you acting as an advocate for the Claimant? No.

51. In my judgment, the way in which Ms Roberts has dealt with the documentary evidence is totally unsatisfactory. As an independent expert, she has an obligation to "consider all material facts, including those which might detract from [her] opinions" and her report should "contain a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based." (PD35 paras 2.3 and 3.2). Although Ms Roberts quite properly listed the documents which she had considered (1/102), she failed to identify in her report that the contents of those documents were at variance with the account given to her by the Claimant in a number of significant respects. Although she said that she had noted such

inconsistencies as part of the process of preparing her report, it is entirely unclear to me how she did take them into account. To the contrary, it appears that she in all instances accepted the account given to her by the Claimant. Additionally, although I accept that her answers were being given in response to vigorous cross-examination, nonetheless it did appear to me that she was stepping perilously close to, if not over the boundary between providing objective unbiased opinion and assuming the role of an advocate for the Claimant.

52. The School relied upon the expert evidence of a psychiatrist, Professor Maden. In his report, he reached the conclusion that:

> "387. I do not believe the evidence supports the view that the assaults made a material contribution to his addiction. I believe that he would have had similar problems in any event. Like many addicts searching for causes and explanations during treatment and recovery, he has come to retrospectively attach an importance to these events that he did not give them previously and that they do not deserve." (1/178)

53. In the joint report of the two experts, Professor Maden further opined that:

> "18…if Ms Roberts' findings in relation to [the Claimant's] temperament are valid, the fact that the Claimant is temperamentally inclined to risk taking and sensation seeking was probably a major factor contributing to his problems with substances." (1/185)

54. Professor Maden confirmed in evidence that he stood by his conclusions. However, he said that his opinion had changed during the trial. He had been very surprised by way in which the Claimant had said that one could not rely on his medical records, as the Claimant had not told him about those lies. He said that he made allowance for the fact that people do lie, but was very surprised by the extent of his lies. He mentioned the evidence that had been given that the Claimant had stolen from father, who had himself stolen those goods, and said this was in contrast to the picture of straightforward conventional family life which he had been given. He said that hereditary factors affecting criminality also affect anti-social behaviour and addiction, and that this was important because it must have caused considerable family disruption and would have been quite a blow if his father lost his job due to stealing. Taken overall, he felt that these inconsistencies led him to believe that personality factors were more important than he realised in his first assessment. He said that had he known about the stealing, he would have asked far more searching questions of the Claimant. He would also have done so when the Claimant denigrated his partner as a heavy drug user, as the Claimant had told him that she only smoked cannabis occasionally.

55. In cross-examination, Professor Maden was criticised for failing to read the Claimant's witness statement before he attended the joint meeting with Ms Roberts. He said that this had been an oversight. I note that Ms Roberts also does not appear to have read it before the meeting. He was challenged as to his comments on the PAI test carried out by Ms Roberts. He said that he had nothing against it as a test, and accepted that it should be used alongside clinical assessment. He initially said that he had used it himself in clinical practise, but later accepted that he has used a different test (PAS),

and that such testing had not been carried out by him personally, but by psychologists on his behalf. He was then challenged as to his reliance upon the results of the test carried out by Ms Roberts, and it was put to him that the test was designed primarily to look at the "here and now". He disagreed, stating that it was designed to assess personality traits, not mental state on a given day. He denied that he was seeking to rely upon the test result for an alternative explanation for the Claimant's drug abuse, and said that it did not give a complete explanation but gave additional information and "links nicely" with the history of anti-social behaviour in childhood, and bullying. He said that these were all pointers to maladaptive personality traits and helped to "build up a jigsaw which before had many missing pieces".

56. Professor Maden was then asked whether such personality traits would create an underlying vulnerability which any indecent abuse would add to. He accepted that the family history of anxiety disorder in particular was a vulnerability, with an increased risk of developing clinical anxiety, and that there is a link between child sex abuse and mental health disorders. He accepted that it is common for those abused to resort to some coping mechanism and that alcohol or drugs were frequently such coping mechanism. It was suggested to him that it was therefore not inconsistent, if the Claimant had suffered abuse, that he tried to cope by resorting to alcohol, and agreed that it was not. However, he went on to say that he thought that the Claimant had looked back at life and constructed this scenario, which was consistent with some of the facts, but not all of them.

57. Professor Maden was asked whether, if the court found that the Claimant was psychologically affected and using alcohol at school, would that be the most likely cause of his subsequent addiction. He responded that if he did develop a dependence before GCSEs, that would strengthen the causal link. Regular use of alcohol as a coping mechanism is harmful; social drinking "with mates" is not.

58. In re-examination, Professor Maden said that the school reports pre-GCSE were not consistent with a child suffering psychological distress as a result of abuse. He said that there were comments about presentation, interaction with teachers and behaviour, and that if there had been significant psychological distress then one would expect to see performance and behaviour deteriorate. He accepted that the abuse would have caused considerable upset and distress at the time. He was asked for how long and responded that it was hard to say. It was not severe enough to interfere with his results. He thought that the turning point was the end of GCSEs. The Claimant did not "get out" - if there had been ongoing distress, he could easily have gone with his friends and this would not have interfered with study or peer relationships.

59. In her closing submissions, Miss Davies suggests that Professor Maden's presentation and formulation were "blinkered by his interpretation of the facts" and that "there must be some concern as to whether [he] followed lines of evidence which contradicted his starting point"; rather, she suggests, "he was utilising this further evidence to build upon his "non-abuse cause" thesis.

60. I do not accept Miss Davies' criticisms. In my judgment, unlike Ms Roberts, Professor Maden had taken into consideration all of the available evidence before he reached his formulation. Although he did strengthen his position in the light of the evidence which became available, he did not do so in the face of that evidence. In my judgment,

Professor Maden was much more open to the possibility of revising his formulation in the light of the evidence than was Ms Roberts.

61. I have no hesitation in preferring the opinion of Professor Maden to that of Ms Roberts. In my judgment, her opinion is fatally undermined by her complete reliance on the Claimant's account to her notwithstanding the contemporaneous evidence to the contrary, which she failed even to acknowledge. As I have already found, apart from the evidence of the Claimant, there is no evidence of the effects of the abuse upon him. The only evidence which may potentially indicate an effect, namely the A level results, relates to a time at least 3 years after (as I have found) the abuse ended, and there are other undisputed facts which on their face appear to me to be inconsistent with the Claimant's evidence that the abuse had an immediate effect upon him.

62. The experts agree that the Claimant's mental health problems emerged later and were a consequence rather than a cause of his substance misuse (1/184).

63. Accordingly, in my judgment the significant distress caused to the Claimant was relatively short-lived and not an effective cause of his drug addiction. I will assess general damages accordingly. The claim for special damages for loss of earnings fails. The claim for the cost of further treatment is no longer pursued.

Public policy/illegality

64. In light of my finding as to causation, I do not need to determine this issue. However, I intend to do so in case I am wrong as to causation.

65. In *Holman -v- Johnson* (1775) 1 Cowp 341 Lord Mansfield said "no court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act." In the 240 years since that decision, the defence of illegality has been considered by the courts on numerous occasions. Most recently, it was considered by the Supreme Court in *Patel -v- Mirza* [2016] UKSC 42. Nine Supreme Court Justices heard that appeal. The judgment of the majority was given by Lord Toulson, who concluded at paragraph 120 as follows:

> "the essential rationale of the illegality doctrine is that it would be contrary to the public interest to enforce a claim if to do so would be harmful to the integrity of the legal system (or, possibly, certain aspects of public morality, the boundaries of which have never been made entirely clear and which do not arise for consideration in this case). In assessing whether the public interest would be harmed in that way, it is necessary a) to consider the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by denial of the claim, b) to consider any other relevant public policy on which the denial of the claim may have an impact and c) to consider whether denial of the claim would be a proportionate response to the illegality bearing in mind that punishment is a matter for the criminal courts. Within that framework, various factors may be relevant, but it would be a mistake to suggest that the court is free to decide a case in an undisciplined way. The public interest is best served by a

> principled and transparent assessment of the considerations identified, rather than by the application of a formal approach capable of producing results which may appear arbitrary, unjust or disproportionate. ”

66. In this case, it is accepted by the School that the Claimant could not study effectively or work consistently, and led a chaotic life, because of his use of illegal drugs. The School contends that this use of illegal drugs was a voluntary, unreasonable and illegal act by the Claimant, and that the defendants should not be liable for the harm caused as a result. It is further contended that the decision to use illegal drugs was the free choice of the Claimant, and not a result of his psychiatric condition. It is contended both that the use of illegal drugs was an unreasonable choice by the Claimant which prevents recovery of losses arising from that use (see *Mckew -v- Holland & Ors* [1970] HL 20, *Smith -v- Youth Justice Board for England and Wales* [2010] EWCA Civ 99, and *Rahman -v- Arearose Ltd & Anor* [2001] QB 351) and additionally that the Claimant cannot recover damages flowing from his illegal act. These two contentions are very closely linked: in *Wilson -v- Coulson* [2002] PIQR P22, Harrison J said at paragraph 69 that the Claimant “was the author of his own misfortune and what followed was caused by his own conduct. It does not matter whether it is put on the basis of unreasonable conduct breaking the chain of causation or on the basis of public policy relating to criminal conduct. Both are, in my view, applicable and, in either event, the result is the same.” Similar comments were made by Irwin J in *AB(A Protected Party) -v- Royal Devon & Exeter NHS Foundation Trust* [2016] EWHC 1024 (QB), at paragraph 85.

67. On behalf of the Claimant it is contended that it would not offend public policy for a claimant who has resorted to alcohol and drug misuse (so as to become addicted) as a means of dealing with the effects of abuse, in a case where criminal law has not sought fit to penalise the Claimant, to permit him to recover damages arising from his conduct. It was submitted by Miss Davies on several occasions that what had been done by the Claimant was “self-medication” to deal with the effects of the abuse.

68. It is also submitted on behalf of the Claimant that “it could not seriously be contended that alcoholism (*which does not involve a criminal offence*) should lead the court to deny damages.” I accept that submission, but it does not assist the Claimant because of the words which I have italicised. Plainly the doctrine of illegality does not apply to conduct which is not illegal. Where an injured party turns to a legal substance to deal with distress caused by a tortious act, then on the face of it such conduct would not be unreasonable, subject only to potential arguments about whether addiction to such substance could be said to be a voluntary and therefore unreasonable act. However, the real issue in this case (as demonstrated by the Claimant’s medical notes) is his addiction to illegal drugs, not his addiction to alcohol.

69. Surprisingly, counsel have not been able to find any example of this issue being dealt with by a court in a claim arising from sexual abuse. Mr Weitzman QC has identified three first instance decisions in which damages have been refused in tortious claims as a result of the claimant’s use of illegal drugs. *Wilson* was a claim arising from a road traffic accident, in which the claimant had initially taken heroin to relieve headaches, and subsequently became addicted. Harrison J held that his actions were unreasonable and illegal and accordingly the claimant was unable to recover damages arising from the use of heroin. *AB -v- Chief Constable of X Constabulary* (2015) EWHC 13 (QB)

was a claim by a former undercover police officer against his employer. Males J found that the claimant's psychiatric injury was caused by his misuse of cocaine, and, applying the test set out by the Supreme Court in *Hounga -v- Allen [2014] WLR 2889*, held that to allow recovery of damages would compromise the integrity of the legal system. *AB(A Protected Party)* was a clinical negligence claim in which an issue arose as to the liability of the defendants for damages relating to the claimant's lack of capacity. Irwin J held that the claimant could not recover damages arising from his use of illegal drugs.

70. In my judgment, claims arising from sexual abuse do not form a special category of claims in which different considerations apply. It is therefore highly persuasive that in all cases of which I am aware in which the issue has been considered by the court, the same decision has been reached.

71. It is submitted on behalf of the School that I should apply the test set out in the House of Lords in *Gray -v- Thames Trains Ltd* [2009] 1AC 1339. That decision appears to be good law notwithstanding the subsequent comprehensive consideration of the doctrine of illegality by the Supreme Court in *Hounga* and *Patel*. Both *Hounga* and *Patel* related to claims based on or arising from a contract which was itself illegal. *Gray* was a claim for damages based on the defendant's tortious act, in which the question of illegality arose in relation to part of the claim for damages which the defendant contended rose from the claimant's illegal acts subsequent to the tort. Lord Hoffmann identified a "wider and simpler" version of the illegality rule, namely "you cannot recover for damage which is the consequence of your own criminal act" (paragraph 32). He concluded that this was justified on the ground that it is offensive to public notions of the fair distribution of resources that a claimant should be compensated for the consequence of his own criminal conduct (paragraph 51). He considered that the question was simply one of causation: "can one say that, although the damage would not have happened but for the tortious conduct of the defendant, it was caused by the criminal act of the defendant?.... Or is the position that although the damage would not have happened without the criminal act of the claimant, it was caused by the tortious act of the defendant?" (paragraph 54).

72. The decision in *Gray* was considered in both *Hounga* and *Patel*, and was not departed from. In my judgment, the Claimant's claim for damages for loss of earnings must fail pursuant to the application of this test. The Claimant's loss of earnings were caused by his criminal act in using illegal drugs. They were not caused by Mr Street's conduct.

73. In my judgment, the same result is reached applying the test set out by Lord Toulson in *Patel*:

a) the underlying purpose of the prohibition of the use of illegal drugs derives from the harmful effect of those drugs on the user including the addictive nature of those drugs;

b) there are no other relevant public policies upon which the denial of the claim would have an impact. Tortfeasors are of course liable for damages arising from their torts, but the extent of their liability is limited by legal principles. Miss Davies' submission that a decision to refuse damages "will give the appearance of allowing abusers to escape consequences of their abuse" is, in my judgment, wholly fanciful.

c) Denial of the claim is a proportionate response to the illegality. The circumstances of this claim are very different to those in both *Hounga* and *Patel*.

74. Accordingly, in my judgment the claim for damages for loss of earnings would fail in any event as those losses arise from the Claimant's unreasonable and illegal decision to use drugs.

Damages

75. In *KR -v- Bryn Alyn* [2003] EWCA Civ 85, at para 112, Auld LJ said:

> "there is no doubt that awards in cases such as this should take account of the nature, severity and duration of the abuse and its immediate effects, as well as any long-term psychiatric harm that it may have caused, even though the latter may be the primary motivating and much the more serious injury giving rise to the claim…. Further compensation is due for the events themselves"

76. General damages therefore fall to be awarded on the basis of regular sexual assaults over a period of no more than one year which caused distress but no psychiatric condition. There were up to 15 assaults which took place at Mr Street's home, and an unknown number which took place at school. They comprised Mr Street measuring the Claimant's muscles while he was clothed only in his underpants, massaging the Claimant, and laying on top of him while they were both clothed only in shorts or underpants.

77. The legally represented parties agree that no separate award of aggravated damages is appropriate, but that the factors which would give rise to an award of aggravated damages should be reflected in the award of general damages.

78. I have been referred to a number of authorities in which damages were awarded for sexual abuse. Of course, each of those authorities depends upon its own facts. Some involved more significant abuse, for example digital penetration. Some involved abuse over a longer period of time, or indeed over a shorter period. Some involved claimants who had developed PTSD.

79. In my judgment, given the factors which I have set out in paragraph 76, and my findings generally, the appropriate figure for general damages is £15,000.

80. Interest will be payable on the general damages at the rate of 2% per annum from the date of service of the proceedings. I leave it to the parties to calculate and agree the figure.

Disposal

81. The orders which I make are accordingly as follows:

a) Mr Street shall pay to the Claimant the sum of £15,000 and interest at 2% per annum from the date of service of proceedings;

b) The claim against the School is dismissed.