Neutral Citation Number: [2026] EWHC 364 (KB)

Case No: KB-2024-000639

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/02/2026

Before:

MRS JUSTICE FOSTER

- -

Between:

FASSONE	**Claimant**
- and -	
HUGH JAMES (A FIRM)	**Defendant**

- -
- -

Alistair Forsyth (instructed by **Hillary Cooper Law**) for the **Claimant**
Jake Coleman (instructed by **RPC**) for the **Defendant**

Hearing dates: 8th October - 10th October 2025

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Approved Judgment

This judgment was handed down remotely at 12:00pm on 20th February 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE FOSTER

Introduction

1. This is a claim in professional negligence by Mr Antonio Fassone against the defendant solicitors' firm Hugh James (also referred to here as "the Firm") who advised him in 2018 in respect of a claim he wished to bring against the English Benedictine Congregation ("the EBC"). The claim was for damages following historic child abuse when the claimant was at Fort Augustus Abbey School ("the School"), a Catholic school in Scotland in the 1980s. His claim at the Firm was handled by Alan Collins, a partner, and an associate solicitor, Mr Sam Barker. Mr Collins advised the Claimant to accept an offer of £10,000 in settlement made on behalf of the EBC who denied liability on a number of specific bases. The claimant says that had his claim been handled in a non-negligent manner he would have recovered £650,000 or thereabouts in damages.

2. The case before the Court was as to liability only following an Order of Master Davison who isolated a number of preliminary issues for determination.

3. The claimant who was born in 1968, attended the School as a boarder, between May 1983 and May 1987.

4. The claimant reports routine serious abuse, physical, sexual, mental, and emotional, by staff there during his years at the School. He has remained unemployed, and his unchallenged evidence is that since 1990 he has lived entirely on benefits. He suffers from poor mental health with drug and alcohol abuse. His case is the abuse so damaged him that it caused him to suffer various psychological sequelae including PTSD with symptoms of paranoia, with the effect that although recognised as highly intelligent, he did not attend university, nor hold down a good job and has been unable to work since 1990.

5. The alleged facts are, in the way of child abuse in this context, very distressing. It is not necessary to canvas the detail of the alleged abuse, cruelty and mistreatment though the statements containing this material have been carefully read. No questions were asked, properly, in cross examination to challenge the abusive background he advances, but the Court takes into account the distressing context to this claim. The Firm noted in its consideration of the papers, including the claimant's medical notes, that there were materials consistent with a history of abuse at the School. It has never been suggested in these proceedings that this claimant did not suffer physical and sexual abuse at the hands of certain of the staff at that time.

6. Hugh James Solicitors is well known as a specialist personal injury partnership and Mr Collins within it was a very experienced specialist in historic sex abuse cases with (at the time of the alleged default) many years' specialist experience. Mr Collins qualified in 1990 and about 20 years ago began to be instructed in child sexual abuse litigation. He had at the relevant time practised exclusively in such matters, with some homicide cases, for over 13 years. He headed up the abuse team at the Firm, and is director of the Association of Child Abuse Lawyers.

7. Before approaching Hugh James, the claimant had in October 2014 explored a civil action with Switalskis Solicitors, with the benefit of legal aid. He paused the litigation

to await the verdict in a Scottish criminal prosecution of Father Seed, one of the persons he says is responsible for the physical abuse he complains of. In the event the verdict was "not proven"; the trial concluded in May 2021. The relationship with Switalskis for whatever reason came to an end without proceedings being issued. The advice which emerges from their file indicates that the claimant was told that a civil claim for compensation was going to be a challenge. The claimant also instructed Drummond Miller, solicitors in Glasgow, regarding an application to the Criminal Injuries Compensation Authority in respect of the abuse allegations. Mr Collins was aware the claimant was part of a survivor group which was a core participant in the Independent Inquiry into Child Sex Abuse ("IICSA") in which the Firm itself also took a part, and Mr Collins attended over some days. At the Scottish Child Abuse Inquiry, the firm Livingstone Browne represented this survivor group and are understood by the defendant to be the claimant's current solicitors in Scotland.

8. The claimant approached Hugh James in late January 2018, explaining he wished to bring a claim against the EBC in England in respect of abuse. The EBC had been a case study for IICSA, therefore, Mr Collins explained, the firm knew a lot about the allegations of abuse and were, in his opinion, well placed to advise the claimant.

9. In brief, what followed was investigation of the claim, and the time came when the Firm advised the claimant in light of the substantial difficulties they concluded he faced, "*including establishing vicarious liability, appropriate jurisdiction, limitation and causation of the harm suffered*", that he would be wise to accept any offer of settlement if he received one.

10. After discussions, on 31 August 2018 the defendant wrote to Browne Jacobson the EBC's solicitors, making a part 36 offer of £20,000 in settlement. On 20 September 2018 Browne Jacobson responded with a part 36 offer on behalf of the EBC in the sum of £10,000. On 20th September Hugh James wrote to the claimant advising he accept the offer, which he did.

11. The claimant complains that Mr Collins who had personally advised him (with Mr Barker), did not seek counsel's advice or medical or other expert opinion before assessing his claim. The defendant denies that there was any duty to do so in the circumstances of the case, and in light of the poor prospects of success of the claim generally. The claimant says the solicitors were in breach of contract and/or negligent in their failure to assess his claim properly and he asserts he was, as a result, grossly undercompensated. He claims loss and damage for the alleged under-compensation and for distress and anxiety at having to revisit the relevant events.

12. The defendant denies any breach of duty, causation or that the claimant has suffered loss.

The Issues and the Claim

13. On 22nd January 2025 Master Davison set down the trial of a number of preliminary issues encapsulated by him as follows:

1.Did the defendant obtain the claimant's medical records concerning his alleged abuse at Fort Augustus Abbey School ("the School")?

2. Was there a duty on the defendant to:

2.1. Instruct counsel to advise regarding the merits of the claim against the English Benedictine Congregation ("the EBC" and "the Underlying Claim")?

2.2. Obtain expert evidence from an expert psychiatrist?

2.3. Advise the claimant on the possibility of a claim based on loss of earnings and/or pensions rights?

3. Was it negligent for the defendant to assess the value of the Underlying Claim in the absence of expert medical evidence (i.e. would no responsible body of personal injury solicitors have assessed the value of the Underlying Claim in such circumstances)?

4. Was the defendant's assessment of the value of the Underlying Claim against the EBC, in the absence of counsel's advice and expert evidence from an expert psychiatrist, negligent (i.e. one which no responsible body of personal injury solicitors could have come to)?

5. Did the defendant have no, or no proper, understanding of the value of the claimant's claim?

6. In all of the circumstances, including the defendant's understanding (or otherwise) of the value of the Underlying Claim:

6.1. Was it negligent for the defendant to have engaged with the EBC without having obtained expert medical evidence and/or counsel's advice (i.e. would no responsible body of personal injury solicitors have behaved in the same way)?

6.2. Was it negligent for the defendant to advise the claimant to accept the EBC's £10,000 offer without having obtained expert medical evidence and/or counsel's advice (i.e. would no responsible body of personal injury solicitors have advised the claimant in the same way)?

7. In all of the circumstances, did the defendant fail to exercise reasonable care and skill?

8. Was the claimant advised of the risk of under-compensation to sufficiently discharge the defendant's duty to advise in respect of the same?

9. Are the losses claimed by the claimant within the scope of any duty owed by the defendant?

10. Had counsel's advice regarding the merits of the claim against the EBC been obtained, what would that advice have said?

11. In the circumstances, had the claimant been advised in the terms alleged, would he have:

11.1. Pursued his claim against the EBC further?

11.2. Obtained expert evidence from a psychiatrist?

14. An allegation of contributory negligence relating to delay and originally included as an issue, was withdrawn by the defendant.

15. Not all of the further matters are still in contention between the parties. For example, it is not in dispute that the medical records were obtained by the defendant, although the claimant argues just obtaining the records was insufficient to discharge the Firm's duties to him.

16. It is no longer argued that it was negligent to engage with the other side (represented by Browne Jacobson) without further medical evidence or counsel's advice, although it is argued "*it was negligent of the Defendant to impose upon the case a limit of £20,000 with no proper understanding of the true value of the underlying claim,*" that sum being an inappropriate offer of settlement at a time when medical evidence and counsel's opinion had not been obtained.

17. The issues were refined and the claimant relied before the Court on the following arguments:

(a) Issue 2.1 the duty to instruct counsel. A reasonably competent solicitor would have instructed counsel in these circumstances.

(b) Issue 2.2 the duty to obtain a report from an expert psychiatrist: the claimant says solicitors are self-evidently not medical professionals and "*it is nearly always the case that the input of a medical expert will be required*." Having obtained a recent report from a psychologist they say the defendant "*could have come to a very different conclusion on value"* had they obtained one.

(c) Issue 2.3 the duty to advise on a loss of earnings and/or pension rights claim: the reasonably competent practitioner would have advised the claimant on these matters. Had an expert medical report been obtained this would have led to the conclusion there was a serious claim, and this would have meant considering the real possibility of such a claim. Assessing the value of the claim without these materials was negligent. It is asserted the defendant had "*no proper understanding of the value of the claim*."

(d) Issue 6.2 advice to accept £10,000: this was negligent in the above circumstances.

(e) Issue 8: the duty to advise on the risk of under-settlement: this duty was breached because the defendant was inadequately aware of the value of the claim, the possible loss was not quantified. There is no evidence that loss of earnings was considered. The claimant should have been advised that accepting an offer meant he could not later make any claims; the claimant was vulnerable, the advice was thus inadequate, and money was "*dangled in front of him*."

(f) Issue 9: **are the losses within the scope of any duty owed**? The duties are owed both in contract (always to act in his best interest subject only to the duty to the court - clause 27.1 of the Conditional Fee Arrangement) and correspondingly in tort. There

was a duty to explain the risks and benefits of taking legal action (clause 27.2 thereof).

(g) Issue 10 - What would counsel's advice have been? The claimant accepts this is in truth speculation but makes what are referred to as "*general comments*" to support his case. This question is not part of the pleaded case, and Hugh James does not accept it is an issue before the Court. The claimant nonetheless seeks to say that a reasonably competent practitioner would have concluded there was a reasonable prospect of establishing vicarious liability against the EBC. It is also not pleaded that had counsel been instructed, he/she would have concluded the settlement was wrongly reached or inadequate.

(h) Issues 11.1 and 11.2 - What would have happened – would the claimant have pursued a claim if properly advised? The claimant says whilst accepting this is speculative, there is no evidence to suggest he would not have, he could have gone to another legal aid firm. As to instructing a psychiatrist, the claimant says that if properly advised, on balance, he would have obtained an expert report and proceeded to a claim in spite of the financial difficulties he would have faced in funding it.

18. The claimant gave live evidence to the court by remote video link and Alan Collins of the defendant gave evidence in person. Others with ancillary roles put evidence before the Court as to various evidential matters which are largely uncontentious.

19. An issue remained at trial as to relief from sanction on the application of the claimant due to failure of timely delivery of his evidence. In any event, I considered the material in question *de bene esse*, the defendant is neutral as to its admission and I am prepared, without more, to admit it.

20. To understand the proper context of the claim it is necessary to set out the facts in some detail.

The Sequence of events

The first meeting of the parties – meeting Note 22nd January 2018

21. In his written statement for these proceedings the claimant stated that a friend of his who was at the School at the same time as him, a few years below him was head of a survivors' charity called "White Flowers Alba," this friend Andrew, helped him find a lawyer and first recommended Switalskis. Whom he instructed in 2014. They obtained legal aid funding. Switalskis worked for him until 2018 when he moved on the recommendation of Andrew who had said especially, to go to Alan Collins who was fantastic, and who had appeared on Question Time. He was aware he was based in England but did not know he did not practise in Scotland. While the issue of taking proceedings in Scotland was clearly a matter that has exercised the claimant, and he referred to it repeatedly in his evidence, it was not pleaded nor pressed on his behalf, rightly so, and, although there were certain jurisdictional questions, it is not relevant to the claim he makes in these proceedings.

22. Mr Fassone, on Andrew's recommendation, arranged to meet Mr Collins on 22nd January 2018 in Glasgow. At the meeting, the Firm informed the claimant that they did not take legal aid cases, so if they were to be instructed it would have to be on a

"no-win, no fee" basis. The note records the claimant was not happy about that, but it was explained that was the only basis on which they operated and with a 25% payment out of any recovery.

23. The first substantial paragraph in the attendance note of that meeting is as follows:

"ALC [Mr Collins] *explained the weaknesses in ARF's* [Mr Fassone's] *case, which includes a jurisdictional point (EBC may say the correct jurisdiction is Scotland), a limitation point (EBC may say ARF is out of time) and a difficult legal point in relation to the proper entity to sue, as it may be that EBC will say the trust which managed Fort Augustus (FA) is wound up and the EBC is not a proper respondent.*

ARF acknowledged this, albeit noting it is unfair and the EBC should have to pay out of their assets. ALC noted the EBC will only get out its chequebook to pay if forced to do so.

ARF said he was told of a survivor of abuse at the hands of the EBC who obtained £165,000.

ALC explain this is a very unlikely result and discussed the Court's method of assessing damages, which includes assessing all the circumstances of the claimant's life and a psychiatric assessment, may only sound in damages of £5000. ALC said ARF needs to be realistic about the damages which he might obtain and that £165,000 is unrealistic."

24. The note sets out a number of incidents describing very serious abuse suffered by the claimant from a number of monks. The first he reports is in June 1983 with details of the alleged perpetrators together with possible witnesses. As the claimant emphasised to the court, this is detailed and particular information is given regarding timescales and perpetrators are named .

25. The claimant was asked some questions by Mr Collins. The following is noted:

"*ARF also confirmed, on questioning by ALC:*

1. He has been hospitalised at Camp Navel, Dykebars Place, Royal Alexander and Parkhead.

2. [His] current GP is 10 Queens Crescent and Dr David McCarthey.

3. He has only one criminal conviction for production of cannabis, for which he received 2 years' probation.

4. He is not known by any other names.

5. He studied history and anthropology at Glasgow University but did not finish due to depression and anxiety arising from the abuse at FA.

6. He last worked in 1990 at stockbrokers but has not worked since and has been given disability status due to schizophrenia, PTSD and depression and other psychiatric conditions.

7. He does not have any brain damage.

8. He has had bouts of using cannabis, LSD and MDMA.

9. He has a good relationship with his immediate family, who would speak to us if need be.

10. He is currently on Obexil (200 mg)

11. He has no family history of epilepsy but does have a nephew with schizophrenia due to heavy MDMA and LSD use.

12. He has made three statements to police, and a DS Gordon Thomson was handling his case along with a DI Debbie (last name unknown)."

26. The claimant told Mr Collins and Mr Barker that he wished to leave his last solicitors Switalskis, and confirmed he wanted to proceed with a claim.

27. Following discussion, a conditional fee agreement was proposed, and was entered into on 8 February 2018.

28. In his witness statement the claimant had said he was not told by Alan Collins in the meeting or indeed ever, that they were looking to sue in the English Court. When questioned in court he accepted that had in fact happened. He was unhappy with no win no fee agreement, but he agreed. His statement records that he was unhappy he was not asked about the detail of his symptoms which were severe. He had told them he had severe PTSD and he wasn't treated by the NHS who had "zombified him."

29. In his written statement, Mr Collins explained his expertise in child sex litigation, which was, in his description, unpleasant but often complex both evidentially and in law. He described it as a niche area and that there was only a small number of practitioners who were prepared to take on such work. He explained that the changing picture as to liability over the years was complex.

30. Mr Collins referred to Switalskis' Note of a telephone conversation with the claimant in May 2017 in which it is noted that "physical only" claims were extremely difficult. This was after the failed Scottish prosecution against Father Seed for physical assaults including against the claimant. Mr Collins noted also the problem in that those accused of the sexual abuse were either dead or could not be identified; this feature making it difficult in respect of limitation. Even under the reformed limitation law in Scotland and in Australia, the burden he assessed as being significant. Often there had been delay in the victims' complaints, abusers were dead and key records destroyed. Many practitioners, although not him, would refuse a case unless the abuser had been already convicted.

31. It was no surprise at all to him that the EBC raised limitation as a real issue. Switalskis had raised the issue already with him and Mr Fassone was aware of it.

25th January 2018 Memorandum

32. Mr Barker the associate then did some research and made a case note on 25 January 2018 entitled "*Antonio Fassone – ability to sue the ECB [sic], evidence from transcript and research*". It noted that the claimant had previously engaged a number of solicitors both in a civil claim against the EBC and as part of the group of survivors for the IICSA. The note starts with a point concerning the ability to sue the EBC:

"*as the evidence of the ECB [sic] at the IICSA indicated the ECB operated quite separately from the independent congregations, which were managed by individual pastors. Whilst this appears to be artificial, it is a matter which needs to be overcome*."

The Firm's view of the strength of this point developed over time as more material on the relationships came to hand.

33. Mr Barker cited various passages of submissions from IICSA, which was conducting its Catholic Church investigation as part of the sexual abuse enquiry in 2018. The submissions made were to the effect that that the EBC was a monastic congregation which was akin to "*a union of independent monasteries*". They are individual rather than a congregation and each monastery is autonomous and self-governing under the leadership of an abbott. The solicitor noted down documentation that he thought would be useful to obtain.

34. He recorded evidence that the EBC was established in the 13th century and that, for the Benedictines, the unit is the individual monastery. The EBC is accountable to the Holy See. Bishops and archbishops appointed by the Pope oversee dioceses; it is said with little authority to intervene. One witness stated it was only a relationship of advice, not authority and control, but Mr Barker noted the bishop can remove a priest from the parish, even without grave fault, denoting a degree of control. The monasteries are grouped together in congregations, the Abbot President has the role for each of the monasteries. He would conduct a visit every four years or so. The EBC however does not enter into regulation of the individual monasteries as they are autonomous. The inconsistency of witnesses on structure and responsibilities is also recorded. Elsewhere the notes state that the EBC recognised an element of moral responsibility for the victims of Fort Augustus and that some money had been given from the trustees of Fort Augustus Abbey when it closed, but the primary responsibility to the victims, legal and moral, was with individual monasteries. Mr Barker highlights that the Abbott President is aware of movement of monks between monasteries and had been involved in one monk moving to another monastery who had been accused of sexual offences. In 1993 a monk had been moved from Downside to the School. As to the School, one witness said Father Francis Davidson, headmaster at the School at the time, knew of certain allegations of abuse in 1976 but did not report them. The claimant had said he had reported things to him, but he did nothing.

35. Mr Barker's initial impression of the material given to IICSA was that the evidence was "*only helpful to an extent for the formulation of the claim*." He said it was clear on the evidence there was a total lack of accountability of individual monasteries to the EBC. As an organisation there was also a desire to repudiate any sense of control:

"*It might be difficult to make out control necessary to pull the Monastery under the umbrella of the EBC for the purposes of vicarious liability*."

36. He mused on whether various other avenues of redress might work.

The Internal Risk Assessment 26 January 2018

37. An early internal risk assessment for the Risk Assessment Committee of the defendant was carried out on 26 January 2018. It recorded the claimant wished to bring a case in England against the EBC, and noted that the abuse occurred in Scotland which raised jurisdictional issues. The initial assessment set out what was known about similar allegations elsewhere, and the difficulties in establishing liability against the Catholic institutions involved. It referred to IICSA , that there may be helpful evidence from it of failure to report abuse at the School, noted the fact that several involved had died, nonetheless there were some witnesses available, and the fact that there might be money in a trust that was based in England.

38. The assessment noted a number of issues arising, including time bar and jurisdiction, and who was the proper respondent, reflecting the need to establish control to attach liability, and the difficulty of that. It assessed the prospects of success at 50%, estimated damages at £20,000 and summarised as follows:

"*prospects of success*

The first three issues [limitation, jurisdiction and vicarious liability] place the Claimant's claim on unsteady footing for success at trial and we are cognisant of the fact the Claimant is unlikely to overcome each of the issues identified.

However, we believe this Claimant has better prospects of obtaining compensation through settlement… We assess the prospects of success at 50%. The recommended course of action is:

1. Send letter of claim,

2. Obtain disclosure from Police Scotland and the Claimant's medical records.

3. If the records show significant inconsistencies in the Claimant's account or significant causation issues in the medical records, then abandon case.

4. If disclosure positive, obtain a psychiatric report.

5. Attempt to settle via part 36 offer.

6. In absence of settlement, obtain counsel's advice on issues.

7. Review"

39. In his statement before the Court Mr Collins drew attention to the third item above, emphasising the importance of the claimant's medical records which were not yet to hand, and to the general tenor of the note that it was unlikely the claim would succeed

because the claimant would probably not overcome each of the hurdles set out. The prospects of success were therefore assessed at only 50% and an outcome involving a settlement was suggested. Mr Collins in his evidence to the Court commended the risk assessment which had been compiled by Mr Barker, which was very detailed. He agreed with the estimation of 50% chance of success. He explained that given the information they had at that point about the School, the sexual abuse that had taken place, and the fact that the powers that be knew something about it; he felt that was a good basis to say that they would try and do something.

40. However, when they saw the claimant's available medical records, he said in evidence, that although they did not abandon the case, he felt they were certainly entitled to do so. He was also challenged on this in cross-examination – namely, that he thought the case was not positive, and yet he continued it. Mr Collins said his view then was that "*could go one way or another*".

The Client Care letter 29th January 2018

41. A client care letter was sent out a week later on 29 January 2018 to the claimant with Mr Barker's reference, in which the instructions given to pursue the compensation claim are recorded. It reflects the history as related by the claimant with the names of those he said assaulted him, both physically and sexually, and records the inaction of the then headmaster.

42. The letter also records that Father Benedict Seed was convicted for physically assaulting a person in 2017 but a verdict of not proven was returned in relation to other allegations, including relating to the claimant. The letter reflects that the solicitors were aware of similar allegations concerning others, including one who later stepped down as head of St Benet's Hall in Oxford due to allegations of him covering up abuse. There were otherwise no other criminal proceedings as the alleged perpetrators were both deceased. A check on potential witnesses was set out and thereafter four separate paragraphs indicating four "significant hurdles" which needed to be overcome.

43. It said *inter alia* the following:

> "*In addition to the requirement to prove your various allegations, I need to repeat the additional legal issues you will need to overcome in order to make out your case against the English Benedictine Congregation (ESC). You will remember these were discussed in our meeting of 22 January 2018.*
>
> *For the case to succeed there are four significant hurdles I need to overcome, those being*:
>
> *1. Firstly, that the High Court in London has jurisdiction to hear your claim. I note the abuse occurred in Scotland and [the School] was of course located in Scotland so it would appear the proper jurisdiction is Scotland. However, [the School]no longer exists and the trust which controlled [the School is similarly non-existent. Therefore, you have sought to prosecute your claim in England. Abbot Richard Yeo did give evidence at the Inquiry that some money remains in the trust which the EBC and it is intended this money will be available for survivors of abuse at FA. If this is the case, we might not need to undertake the*

process of convincing the EBC and the Court that the High Court in London has jurisdiction to hear your claim. But in the event it comes to this, the argument will need to be advanced and there is no guarantee of it succeeding.

2. Secondly, I will have to prove the EBC is legally responsible for the abuse you suffered at [the School]. I expect this will be a difficult task. I say this because the EBC has always maintained individual monasteries such as [the Fort Augustus Monastery] were autonomous and run independently and without accountability to the 'congregation' known as the EBC. In addition, the EBC will say [the School] was managed by a trust, which was later wound up and left without assets. I understand this is a difficult concept to grasp but for your purposes you only need to appreciate that the EBC has gone to some length to create a structure which quarantines the EBC itself from the individual monasteries to avoid legal liability and access to funds.

3. Thirdly, I need to convince the Court it is appropriate to disapply the time limitation which is relevant to your claim. The Limitation Act 1980 provides that you should have brought your claim for compensation within three years of your attaining your 18th birthday, being 16 October 1989. As such, you are currently 28 years out of time to bring your claim. I do not doubt the EBC will raise this as a defence to your claim. Whilst the Court will exercise its discretion to disallow the time limitation in some circumstances, it does not in all circumstances. Where crucial witnesses are dead, such is the case here, the Court might not exercise its discretion to disallow the time limitation. Having said this, it is not a fruitless endeavour but it is this reason which places your claim on unsteady ground.

4. Finally, I have to prove you have suffered harm as a result of the abuse inflicted upon you at [the School] by the monks mentioned above. As discussed it will be necessary for you to see a medical expert (and I have recommended Professor Jon Bisson who is a consultant psychiatrist) who can then advise us as to the nature and extent of the damage suffered as a result of the abuse. This in turn will enable us to calculate how much compensation you might be entitled to.

As noted at our meeting, the above barriers to establishing your claim are quite significant and your claim is not well placed to succeed at trial for those reasons. This is why I discussed the most appropriate avenue to compensation is alternative dispute resolution."

44. Those four matters as explained in evidence to the Court, consistently with Mr Barker's research note, included the initial question as to whether the High Court in England had jurisdiction to hear the claim, even though the school was in Scotland. The problem is set out - the School no longer existed nor the trust which controlled it, prosecution of the claim should be England because that was where the EBC was established; reference is made to IICSA and its evidence, and possible monies available from EBC for survivors, but emphasising the question of jurisdiction was not guaranteed.

45. The second issue was proof that EBC was legally responsible. The claimant had described the School in the Particulars of Claim as being "… *owned and operated – albeit through a trust structure – by an organisation called the English Benedictine Congregation ("the EBC").* The defendant states this is just wrong as to ownership

and operation. The School was operated by Fort Augustus Abbey an autonomous self-governing monastery. The EBC was an unincorporated confederation of monasteries. The English Benedictine Congregation Trust ("the EBC Trust") was constituted only in October 1987, at which point it was connected to the School, but this was at a time *after* the claimant had left. The School had at all material times been owned by the Trustees of St Benedict's Abbey Fort Augustus Trust ("the Trust") but this was dissolved in 2011. This analysis is not challenged on behalf of the claimant.

46. The defendant explained that the structure of responsibility, the dissolution of the relevant trust, and the lack of involvement in the EBC at the relevant time were key factors impeding the claimant's chance of a successful claim in respect of the matters he says he underwent at the School. To establish vicarious liability was described as in particular a difficult task because the monasteries are described as "autonomous" and are run independently with no accountability to "The Congregation" - i.e. to the EBC. The EBC would say the School was managed by a trust which was later wound up without assets. The defendant warns in terms the EBC has "quarantined itself" to avoid liability.

47. The third issue was limitation - namely persuading the court it was appropriate to disapply legislative time limits. It was explained that where crucial witnesses are dead the court might not exercise its discretion to disallow a limitation defence. At this point Hugh James (and Browne Jacobson) referred to the 1980 Act. Mr Barker's research later concluded the new Scots statutory amendment applied and told Browne Jacobson, who agreed.

48. The fourth point was causation - proof of suffering harm as a result of the abuse. The defendant drew attention to the pessimistic tone and the statement that the claim was not well placed to succeed at trial, and the advice will likely be to take a settlement option. The defendant emphasises this was before the medical records of the claimant were to hand. Further the claimant is warned not to sign any forms unless he understands the content - in which case he should discuss it with them.

49. The various kinds of funding are noted, including that Mr Fassone had a civil legal aid certificate in respect of the claim he had started with Switalskis, his allocated funds of £2,250 including disbursements and counsel fees but excluding VAT was described as "*very limited and likely already to have been spent*". If not, it would be spent in obtaining the medical report, but that left no financial scope to progress the matter at all. The letter noted that the psychiatrist would likely cost £2,000-£3,000. An estimate of the fees of the firm is set out, and an insurance policy advised against adverse costs or disbursements; in the event no such application for insurance was made.

50. The claimant puts weight on the statement in the letter about instructing an expert to advise on the nature and extent of the damage, who could then advise on the damage suffered as a result of the abuse, in turn enabling calculation of compensation. There was, he said, a clear expectation here that a psychiatric expert would be instructed. The defendant however emphasised the fact that four significant preliminary hurdles were specifically identified, and it was said in terms that the case was not well placed to succeed. Each hurdle was substantial and the question of liability was itself a difficult task. They emphasised that the letter concludes "*Finally I have to prove you have suffered harm as a result* … (i.e. causation)."

51. In cross-examination when dealing with the fact that he had signed and sent back the documents the claimant said he had in fact felt under duress, his mother was in hospital and, as he had explained before, he was on medication. Asked about the clear warnings as to the difficulties in the case, he answered as far as he was concerned *he* thought the claim was viable and that if he had been advised about Scottish limitation, would not have been a problem (not a pleaded point). He accepted he h*ad* been told that Mr Collins had said the Firm did not take legal aid cases, it had to be "*no win no fee*" if he wanted them to act.

52. The claimant clearly had his own views of the chances of success, and said he did not accept that the barriers were significant, or that he was not well placed to succeed. A lot of things had come out about the EBC and the school in the IICSA enquiry about the school he said, and they had admitted a number of offences. He did not admit that his claim was weak. He said he had been told he had "*an okay chance*." When shown the letter which clearly warns that the claim is *un*likely to succeed, and that settlement was a better proposition, he said he didn't accept it and he'd rather have gone to court, and that Mr Collins should have given him the chance to go to court.

Medical Records Summary 13th March 2018

53. The next stage in the Firm's exploration of the claimant's case was obtaining a volume of the claimant's medical records.

54. On 13th March 2018 Mr Barker made a summary of the disclosed materials which ran to 3 ½ closely typed pages. The most recent notes refer to 2017, the year before; the oldest were from the 1990s, 1980s and a few from the 1970s. The earliest report, from 1976, when the claimant was aged eight, said that he had intelligence in the "*very superior*" range and his reading and maths abilities were two years ahead of his age. He is described as having troubles at school, including being "*baited unmercifully because of his Italian name and background"*. In January 1983 a report notes the claimant's mother having difficulty handling him and a report of 1986 records, by a psychiatrist, that his use of cannabis and poor performance was the result of the "*difficult adolescent phase*". In February 1990 he had assaulted his mother and was depressed.

55. By 1992 the following was noted in a report by a senior lecturer in psychological medicine (as recorded by Mr Barker):

> "*a. The Claimant reported having a long history of cannabis use since he was 12 [i.e. from 1980] and also using amphetamines, cocaine, magic mushrooms and LSD.*
>
> *b. The Claimant noted his Father physically abused him as a child, as did his older brother, and he described his Mother as bigoted.*
>
> *c. The Claimant describes being rejected by his parents and assaulted by them and he was also assaulted by Jewish and Protestants at school.*

d. The Claimant says he was sent to boarding school at FA and was assaulted physically and sexually by the staff.

e. The Claimant began working at stockbrokers after school but couldn't continue on account of his mental state and then started a business studies course but again became depressed.

f. The symptoms are mainly related to his drug abuse".

56. Mr Barker notes a hospital report from 1993 which describes

> "*a very unhappy childhood, with unsatisfactory and stormy and sometimes violent relationships with both parents and his older brother"*

and thereafter

> "*The Claimant was assessed at Renfrewshire Healthcare NHS Trust on a number of occasions in 1994 and there is a consistent thread of drug abuse, psychosis, paranoid thoughts, doubts with his sexuality, being tearful, impotence, invasive thoughts but no mention of the abuse at FA."*

57. A report of 1996 speaks of a long history of contact with adult psychiatric services, that recently he was diagnosed with schizophrenia, that he has a long history of alcohol and substance problems, was performing badly at school and using cannabis. He had displayed symptoms of thought disorder, delusions and violent behaviour. The report also records that he said he was physically abused by his teachers and sexually interfered with at school. His primary mental problem is described as "*psychosis*." Throughout, the diagnosis of paranoid schizophrenia appears.

58. The end of Mr Barker's Medical Reports Summary records:

> "*The claimant has been less than truthful about the extent of his psychiatric issues and family life but there are references to physical and sexual abuse at FA from an early date."*

59. The records thus bore out the claimant's complaints of abuse at the School, but also revealed many serious significant matters pre-dating his attendance at the School. They painted a picture characterised by Mr Collins as "*a very complex picture of psychiatric illness and drug misuse*".

60. Mr Fassone in evidence did not accept that he was smoking cannabis at that early age but said he was around kids that were; that was in 1981 before he attended the School. He denied using LSD; he said he hadn't started smoking till he got to the School. The monks gave him alcohol, the senior boys gave him mushrooms, and some gave him cannabis in cubicles listening to Bob Marley. He said he would be suing NHS Scotland as he didn't recognise himself as reflected in his medical records. As to the symptoms being related to his drug abuse, he said that was not true, his symptoms came from being raped and abused and he was quite a happy boy before he went there; he had a loving mother and father.

61. For the defendant, of particular note was the record of misuse of class A and B drugs predating the claimant's time at the School, and the allegations of abuse by his

parents, also predating time at the School. There was also a medical opinion within the notes that the allegations of school sexual abuse were untrue, and another suggesting the claimant was not disturbed by them.

Engagement with the EBC - the letter of claim

62. On 3 April 2018 the Firm wrote to the EBC. They were described by Mr Collins as the only viable defendant given that the School and the FA trust (which had held any assets and might have had any legal responsibility), no longer existed. In the letter, Hugh James intimated a claim for damages in respect of physical and sexual abuse. The abuse was set out, naming those the claimant believed had inflicted it, both physical and sexual. The claimant's complaint to the then headmaster and others about the abuse and the failure of any response from those at the School is noted. A non-delegable duty of care falling upon the School or the trust which managed the School was asserted. Alternatively it was alleged that the EBC was vicariously liable for the actions of the various monks. The letter mentions material given to IICSA, and the fact that the EBC's charitable trust had applied to the Charities Commission to allocate funds for survivors of the School. The unreliability or dishonesty of the evidence given by witnesses to IICSA is referred to, and various other arguments as to the strength of the factual basis of the claim. Hugh James invite Browne Jacobson to outline the compensation options available and assert pain, suffering, loss of amenity and economic loss on the part of the claimant. The letter states it is a case where a medicolegal report is required and they give the name of a consultant psychiatrist, whom they intend to use. Disclosure is requested, including school management documentation and other relevant materials.

63. On 19 April 2018, Browne Jacobson, solicitors, confirmed they were instructed by the EBC. On 19 June 2018 the defendant informed Browne Jacobson that they intended to issue proceedings on behalf of the claimant. Mr Collins observed in his oral evidence he'd been conducting cases against this firm for decades. They know what the law is and they did not see Hugh James as a pushover. That was why, as appeared later in the letter written on the claimant's behalf, that all arguments were raised very strongly – a point upon which Mr Collins was challenged in cross examination, with the suggestion that in truth the case was stronger than he was now saying. He did not agree.

64. A Note of a without prejudice telephone call with Browne Jacobson was made on 3 August 2018 when Mr Barker was told by phone the opposing solicitors had drafted a letter repudiating the claim, which they said would be a difficult read for Mr Fassone. They said that limitation was an insuperable barrier for his claim. Furthermore, they did not have any records for the school for the relevant period as the EBC Trust had not at that stage been established, and Browne Jacobson noted that failure of records for the time in question is a negative point in limitation arguments in the case law. They asserted there was no vicarious liability on the part of the EBC at the relevant time: they were a charity, and whilst not inviting an offer, might consider some payment disposing of the claim.

65. One discussion note of 6 August 2018 made by Mr Barker states "*Discussed evidence regarding control from EBC over monasteries. There is scope to argue [vicarious liability], but it is difficult*." A further note reflects Mr Barker's work and discussions on limitation, concluding that Scottish limitation would likely apply wherever the case

was tried: the assaults which form the basis of the claim occurred in Scotland, and the Limitation (Childhood Abuse) (Scotland) Act 2017 would apply to his claim, regardless of the fact the claim is brought in England. Section 1 of the Foreign Limitation Periods Act 1984 provides that a court in England and Wales shall apply the law of the other country relating to limitation not that of England and Wales. The note indicates: "*SB [Mr Barker] to draft letter*," which he did, setting this out to Browne Jacobson, on a without prejudice basis. The letter presses for a written response to the letter of claim in order properly to take instructions.

Not Instructing Counsel

66. Thereafter Mr Collins and Mr Barker discussed the case as is reflected in a note of 7th August 2018 headed "*to discuss vicarious liability, application of [Scots] law and briefing JL*" where JL refers to Justin Levinson of counsel, a barrister frequently used by Hugh James Solicitors.

67. The claimant placed particular emphasis at trial on the issues concerning vicarious liability, arguing that it was clear that counsel was required to advise on the claim, because the note mentions him. There were a number of complex issues, the defendant recognised that, and themselves identified more than once that they should seek counsel's views. The claimant says it was negligent not to have done so. The claimant relied on the note of 7 August 2018 in support. He noted Mr Collins spoke with Mr Levinson to see if he was interested in taking the matter, which he was. The note refers to Mr Barker:

> "*highlighting the relevance of the Christian Brothers case, in CB we have an example of an unincorporated association being VL* [vicariously liable] *for the actions of the "brothers" known as "members" who taught at an approved school unconnected with the Chrisitan Brothers because of the relationship between CB and the brothers being akin to employment."*

68. Mr Collins is noted as asking rhetorically in discussion whether the Solicitors Regulation Authority would be liable for a criminal act of him, Mr Collins, if Hugh James were not. Mr Barker referred to the decision of *Christian Brothers* saying that "business" and "enterprise" were seen as a guide. Mr Collins said: "*it is worth a go, it might be difficult but let's brief Justin and see".*

69. The claimant says any ordinarily competent solicitor aware of the case law would have sought the advice of counsel for this matter and that the meeting notes indicate they indeed were of the view counsel should be instructed. This proposition is not accepted by Hugh James who emphasised the barriers to recovery were high, and became higher. This was not a case where it was a requirement for counsel to advise; the wide specialist experience of Mr Collins, indeed of the Firm was such that the issues raised by the case were familiar to them and the developing picture indicated to them the necessary course of action - it was not negligent to fail to ask Counsel's opinion. It was not suggested that counsel's opinion would have differed from Mr Collins' view in any way.

Publication of the IICSA EBC Report

70. On 9 August 2018 a further note was made recording matters on which the defendant puts significant reliance, which they say made a material difference to the picture. That attendance note says :

> *"ALC [Mr Collins] reading the IICSA Report re the EBC and in particular what the Inquiry has had to say about the governance and structure of the EBC. ALC is firmly of the opinion that we would struggle to prove vicarious liability on the part of the EBC in respect of individual monks at Fort Augustus."*

71. Mr Collins gave detailed evidence of his opinion, in particular based upon the IICSA *Ampleforth and Downside (English Benedictine Congregation case study) Investigation Report* ("the IICSA EBC Report"), published in August 2018, to the effect that the school was autonomous, even though an integral part of the EBC. The school no longer existed and its assets had gone. Again, the investigation had established there were some proceeds, held by the EBC to pay compensation to victims.

72. Mr Collins explained to the Court he studied these IICSA conclusions the day the IICSA EBC Report was published, and the effect it had upon his assessment of vicarious liability.

21 August 2018 Meeting

73. Mr Collins made clear on the basis of the IICSA EBC Report's findings, his conclusion was they could not succeed on vicarious liability given the school's autonomy. They therefore arranged to meet up with the claimant to discuss the issues with him. The meeting is recorded in an attendance note of 21 August 2018.

74. When challenged as to whether the IICSA EBC Report had genuinely changed their view, Mr Collins explained that because he knew about the school in the first place and that sexual abuse had taken place, there had been a good basis to say they would try to do something for Mr Fassone. It was however always their advice that the claim was unlikely to succeed. There was no other entity existing that might have had legal responsibility, and have had any assets. In April 2018 he had indicated to the claimant the main difficulty he saw was vicarious liability. The EBC were not directing the monks at the school, the difference was that the EBC was unlike other hierarchical organisations. The EBC were moving monks between monasteries, but the abbots were running them. In the *Christian Brothers* case the monks were being told - the head was telling them - what to do, but that was not the same in this case as was made clear at IICSA. Mr Collins named the relevant witnesses before the inquiry. There was no Institute here sending monks to the schools founding joint liability as in the *Christian Brothers* case. Both the IICSA and the Scottish Inquiry found that the school was autonomous. When you actually analysed the evidence the case law was not in fact useful. He believed Browne Jacobson were correct on the law.

75. As pointed out by Mr Coleman for Hugh James, it is not pleaded that Mr Collins' conclusions were not correct.

76. The attendance note from that meeting indicated that Mr Collins discussed with the claimant the issues in his claim, explaining the EBC were relying on the autonomy of the institution, which was a strong argument, and that they would likely lose in court.

77. The material parts of the note record:

> *"ALC discusses with you the issues with your claim. The EBC are relying on the autonomy of the institution to protect themselves and this argument does carry a lot of weight.*
>
> *ALC noting we have to look at the harm facts. FAA are independent and it is very difficult to establish vicarious liability in this context. SB draws a diagram to show where the EBC / FAA divide causes problems.*
>
> *ALC confirming if this were in court today, it is likely we would lose.*
>
> *ALC runs through the issues with proof and vicarious liability to you can understand. However, ALC does say there is a slight chink in their armour if we can suggest the EBC had some idea about their monks causing trouble. The sins of our father documentary and the apology gives us something to press there.*
>
> *There is some ground to say the priests knew and we will press this.*
>
> *ALC says if we prove whoever was running it knew more than is currently known then we can press the EBC to settle. However, ALC reiterates the risk of losing is very high.*
>
> *You say you want at least £10 - £20 K. ALC says £5k is more likely. ALC advising a deal is better. ALC recommends we go to the EBC and make an offer of £20k and there is a reasonable chance you will get between £5 and £7k. You instruct ALC to proceed."*

78. Mr Collins also drew diagrams to show the EBC/Fort Augustus Abbey divide.

79. Mr Fassone did not remember this visit at first and stated he did not accept that the case had been investigated to any real degree. He thought Mr Collins was wrong. He did not accept that vicarious liability was difficult, and he said that was his opinion; he did not accept the statement that if they went to court they were likely to lose – but later he did accept that the advice had been given to him.

80. He also accepted that he said he wanted between £10,000 and £20,000 but said he "*later found out … that was a pittance*". He wanted to achieve a fair settlement but then he said the Scottish lawyers advised it was grossly undervalued. Although he had difficulty remembering things, he accepted he did instruct Hugh James to make the £20,000 offer - although he had not mentioned this in his witness statement. It's fair to say Mr Fassone did not as he admitted, fully remember what had happened on a number of points. He said he remembered Mr Collins saying that it was because of the medical records that he would not get more.

81. He also said he disagreed with the conclusions *he* believed the monastery in Scotland was part of the English Church. He also thought the trial ought to have taken place in Scotland. He said he understood there were other cases in Scotland on similar facts,

he doesn't know why he wasn't referred to a solicitor in Scotland to go to the Court of Session – a thought he repeated many times in his evidence.

No Medical Reports

82. Mr Fassone complains that it was negligent not to obtain a medical report in his case. He said in his written statement that Mr Collins had never told him how much it would have cost to obtain a report from an expert. He records that all he was told was that a medical report would do more harm than good to the case and Mr Collins didn't suggest getting any other reports either.

83. In fact, as was pointed out, Mr Fassone's letter of engagement dated 29th January 2018 makes clear in terms not only that he would be required to pay for any disbursements himself, but that a psychiatrist would charge in the region of £2,000-£3,000. The defendants argue that the necessary expenses of a medical expert could not have been met by Mr Fassone, who was responsible for them, in any event. These were investigation expenses – and insurance had been recommended but not in the end taken out. Although he maintained for a while in evidence that he was never told of the cost at the very end of his evidence he admitted eventually "I suppose you're right", he had been, but then said in new evidence, he could have funded the money from wealthy relatives if it was essential, but that wasn't said to him. This evidence was first aired in oral evidence in this way.

84. The main burden of his case was that without the instruction of a medical expert the defendant could not value the claimant's rights, accordingly it was wrong and negligent not to instruct a medical practitioner before reaching a view. The claimant notes that in the letter of engagement a Professor Bisson is actually named and the intention to instruct him set out.

85. Mr Collins, whilst accepting that a medical report is certainly the *usual* thing, said that the need to see a medical expert was not in this case an "in any event" requirement. He described it as "*in the ordinary course of events he would be seeing Professor Bisson*". Here, however, it was a requirement that would arise only if the "*significant hurdles*" mentioned in the letter were overcome. It was not the case that in any matter that was complex you would get a medical report – here where liability is so weak, that is not so - not where it doesn't help the client.

86. In cross-examination it was suggested to Mr Collins that he, who is not a doctor, could not possibly sufficiently interpret medical records - a doctor was always required. He disagreed. Accepting that there were advances in medical science over the years, and changes in knowledge, nonetheless, his years of specialist experience meant he certainly could read and understand medical records to a satisfactory extent. He explained that one becomes acquainted with the context and here he was well able to form a view. It was not his practice *not* to get a medical report in a case like this – as was at one point suggested to him. "*To generalise the usual practice is to commission a report from a psychiatrist familiar with cases like this*." They would get some cases and situations where they were in a better position to help the client by *not* getting a report. You need an individual approach in each case he said.

87. When interpreting the proposition that the claimant's condition was caused by drug use, he said that the records in the bundle painted a quite clear, albeit complex,

medical history which he would need to take note of as a lawyer. The claimant had been diagnosed with schizophrenia over the years, the medical records mention use of cannabis as well as hard drugs which can't be ignored. He went by what was in front of him, using his experience to take the case where it needed to be pursued. There were here very black and white diagnoses over decades, he said, he could not ignore this potential evidence. The point was that here, liability was so weak, that a report doesn't help the client. Going on a wild goose chase was not valuable. What "*changed the dynamic*" was the records. He denied that, as put to him, he had already "valued" the claim at £5,000 at their earliest meeting – "that's *not what I said"* - he replied: "*I was warning him. It did not serve any body to under recover*."

88. He was challenged that he had suggested in the April 2018 letter to Browne Jacobson there should be a joint report. He explained the approach, as adopted here, that it is quite usual to suggest a joint report, but in 99.9% of cases that is rejected. Tactically however, it puts your opponent under pressure. His conclusions about a report being unhelpful were made at a later date – when he could not see how it could have helped. This case was far more complex than the usual one, where a medical report would be needed for quantification. There was a whole series of issues that had to be overcome. His recollection was Mr Fassone's expectation had to be managed, and that damages were low. The events in issue took place many years ago, and many clients have complex, difficult backgrounds. Mr Collins was asked why it was not a six-figure sum proposed in settlement. He said a loss of earnings claim was an exception rather than the norm; it was his experience that having to go back 40 years and make the case was very difficult.

89. The claimant further argued that the failure of the defendant to acquire a medical report led to the further failure to consider the possibility of a claim for loss of earnings and/or pension rights. It would have been obvious to a reasonably competent practitioner there was a real possibility of a claim for loss of earnings and/or pension rights. In answer Mr Collins disagreed. He described the later report produced by Richard Boardman an Employment Expert as speculative and based on assumptions. The report had concluded that, but for the abuse he had suffered at the School, the Claimant would have taken up a place at university and obtained a degree and earned between about £700,000 to £900,00 to end August 2022, with an ongoing annual net loss of between £30,476 and £40,872. A loss of pension report had also been compiled. The claimant had put the likely settlement sum, if reports had been assembled, at £650,000.

90. Mr Collins referred again to the evidence before him. It showed among other things that the claimant had in fact reported abuse by his parents, before attendance at the School.

91. The claimant had also acquired for the purposes of this claim, an up-to-date psychologist's report from a Dr Alison Harper, Clinical Psychologist, which he suggests, had it been available or a similar report available to the defendant, would have caused a very different conclusion on the value of the claimant's case. In broad terms her conclusion was that the claimant's PTSD was a consequence of his experiences whilst at the School, even though he had by his own admission abused drugs. Her report from 2022 diagnoses Complex PTSD resulting from the claimant's treatment at the School. Her report refers to medical records though makes no mention of the early materials noted by Mr Barker. She does not refer to the summary

of psychiatric hospital inpatient stays, nor to familial abuse allegations, nor long term drug abuse pre-dating attendance at Fort Augustus.

92. As to Dr Harper, Mr Collins indicated in his own experience the relevant expertise is always psychiatry: "*one would never commission a psychologist to diagnose, in my experience it was always a psychiatrist*," and in his view the opinion she gave was not dealing with the evidence that was there: he drew attention to the fact that Dr Harper had not seen or did not refer to all the medical records. She did not deal with the psychiatric reports which were seen from the earlier days by Mr Barker, nor for example with the frequent inpatient stays. For all these reasons he was hesitant as to the value of the conclusion that the claimant suffered complex PTSD as a result of his abuse at the School.

The Settlement

93. The claimant no longer says it was negligent to engage with the EBC without having obtained expert medical evidence and/or counsel's advice rather, he argues it was negligent to "*impose*" a value of £20,000 only (which was an unreasonably low valuation) "*without any proper understanding of the true value of the claim.*" The negligence was in making an offer of £20,000 when the defendant had not obtained evidence properly to value the claim.

94. The claimant asserts therefore that it was negligent without having obtained expert medical evidence and/or counsel's opinion and so fell below the standard of the reasonable body of personal injury solicitors advising on the same issue. He also argued there was no sufficient warning about the risk of under-compensation: both in that it was the defendant who started out at £20,000 - that was fundamentally wrong - and also in terms of the "*so-called-advice about under -compensation*" which was made by letter thereafter.

Part 36 Offers August and September 2018

95. On 31 August 2018 the defendant wrote to Browne Jacobson together with a Part 36 offer of settlement at £20,000. The letter advances the claimant's case very firmly, asserting among other matters the dishonesty of Father Davidson which emerged from evidence given to IICSA, vicarious liability based on the case law, evidence of control, of business activity, and that their activities were undertaken on behalf of the defendant EBC. This is as they had discussed as the lines of approach, but which Hugh James believed in truth to be weak arguments.

96. On 10 September 2018 Browne Jacobson made the first written reply to the letter before claim that had been written in April. In a short letter they accepted that the Scottish Limitation Act would apply as Mr Barker had suggested; they said a Scottish Court is more appropriate, but denied that the claimant can overcome limitation problems in any event, citing a series of recent English cases on delay, memory and fair trial. While they accept the claimant was at the School, they assert the absence of paperwork, the autonomy of each Benedictine community and restate the absence of any liability at all upon the EBC.

20th September 2018 counter offer and 21st September 2018 letter of advice

97. Browne Jacobson followed the denial of liability with a part 36 offer of £10,000 on 20th September 2018. The claimant was contacted by Mr Barker who notes he explained the offer and the claimant instructed him to accept.

98. A letter of advice is written explaining the effect of a compromise, and the costs consequences. The letter was sent to the claimant on 21st September 2018. Mr Collins' evidence was that he was concerned because the claimant was clear he wanted between £10,000 and £20,000 and he was very eager to take the settlement so the letter to him, he directed Mr Barker, should be clear, because he wanted Mr Fassone to think about it. He said he did not think it would actually be achievable, given the correspondence from Browne Jacobson. Mr Fassone was very clear, he said, he had two conversations with him. He said that the claimant "*struck me as someone very alive to the issues and clear what he wanted*". Indeed he said that in his view he was wise to take the course that he did. He recalled that there had been other similar settlements to this.

99. The letter recommended acceptance, reiterating the problem with vicarious liability, and saying failure was not a certainty, but the chances of success were so low it was advisable not to refuse, with the costs' consequences. The limitation problem is repeated, as failure on this ground was "*not unlikely*". The letter then said this:

> *"The Offer is reasonable given the current climate. I say this even though in one respect you are being possibly under compensated. If you fail at trial you get nothing, so the point is largely academic.*
>
> *Finally, you have not been medically assessed. This creates a possibility that you are undercompensated on the basis the effects of the abuse are more serious than the Offer represents. This of course depends on succeeding in court, which, as outlined above, is unlikely.*
>
> *I have reviewed your medical records and I am of the view a medical report might be more harmful than helpful. I say this because the expert would undoubtedly have to comment on your history of drug abuse, which, although it is probably an effect of your traumatic time at FAS, recent case law has confirmed is not compensable on the basis of illegality. As such, the EBC would argue they are not liable to pay you for any addiction problems or associated psychiatric symptoms arising from addiction, which would weaken your overall claim."*

The letter ends:

> *"I'm sure you have questions about this and I am available to discuss with you further once you have read this letter."*

The claimant was informed he had until 10th October 2018 to accept the offer.

100. The letter thus explained the risk of under-compensation in terms, now said by the claimant to be inadequate. It was put to the claimant that the letter contained advice on the risk that he was being undercompensated because no expert report had been obtained, and that he'd been advised expressly that was the risk. Mr Fassone had

difficulty remembering when the offer was made. He thought the advice regarding settlement had come in August 2018 – and mistook who had handled it with him, saying he remembered Mr Collins saying, "*you'll not get a better offer.*" He said that was why he took the settlement – but later accepted, when shown the paperwork naming Mr Barker that it was Mr Barker who was handling these conversations. Mr Fassone said that he did not fully remember, but did accept that it was Mr Barker. He said he thought he had complained at the time - "*is that all I get?"* Then he said, "*you more or less do what they say*." He also indicated that he disagreed with the legal conclusions they reached.

101. When it was put to him that he didn't ask any questions in response to the Firm's letter of 21st September 2018, he did not answer but simply said "*I thought I'd get more*". He accepted that he had given the instruction to make the offer although he had not said as much in his written statement. He accepted he did not fully remember the detail, but agreed he was sent a letter outlining the offer. He also said, that when the advice was given that the autonomy of the institution was relied upon by the EBC to protect themselves "*I was under the impression the whole period of time that the school was under the EBC was the whole time I was at school*."

102. The fact that he was advised specifically of the risk of under-compensation in the absence of a medical report he agreed "*may be so,*" but said he had to go on what Mr Collins said. He accepts as noted he asked whether it would affect his criminal injuries compensation claim and was advised by Mr Barker it might reduce the award by the amount of the offer, he said he understood that.

103. When it was pointed out to him that the solicitors had written to him in detail explaining the risks before he accepted the offer he just said, "*I agree to differ*". He likewise did not agree that the doctors had properly diagnosed him with paranoid schizophrenia, and he would pursue the doctors in litigation who had said that.

104. It is fair to say that when facts were difficult for Mr Fassone and did not quite fit his narrative, he occasionally just blanked questions or changed the subject. As invited by Mr Forsyth, I do not treat him as seeking to deceive in his often rather off point responses. I recognise the pressure on him of recalling matters in issue here, and of reflecting upon things that inevitably will give him pain. However, where there were conflicts between his testimony and that of Mr Collins I prefer the recollection of Mr Collins without hesitation which also accorded with the contemporaneous materials.

Legal Framework

105. There was a difference between the parties in the emphasis put on various expressions of principle, but no dispute about the generally applicable law. Accordingly it can be shortly stated. It is to the following general effect.

106. It is trite, as reflected in *Saif Ali v Sydney Mitchell & Co* [1980] AC 198), that solicitors owe a general duty to their client to exercise reasonable care and skill, and that the duty will be breached where they make an error that *"no reasonably well-informed and competent member of that profession could have made"* see page 220D. As the claimant submits, the standard of care is to be judged against that of the

reasonably competent solicitor see *Midland Bank v Hett Stubbs and Kemp [1979] Ch. 384* per Oliver J at 403B:

"The test is what the reasonably competent practitioner would do having regards to the standards normally adopted in his profession".

and this is a question for the court (ibidem at page 402) per Oliver J:

"The extent of the legal duty in any given situation must, I think, be a question of law for the court."

107. In the context of conducting litigation and especially when conducting settlements the defendant drew attention to the words of Stuart-Smith LJ in *Griffin v Kingsmill* [2001] EWCA Civ 934, where he said at para [63]:

"The circumstances in which barristers and solicitors have to exercise their judgment vary enormously. .... in a very complex case it may be that in advising settlement too much weight is given to some factors and not enough to others. Here again a difficult judgment has to be made; and unless the advice was blatantly wrong, i.e. such as no competent and experienced practitioner would give it, it cannot be impugned and the prospects of successfully doing so would seem very slight."

108. The recognition that a settlement requires the exercise of a subtle and difficult talent infused in particular by experience and judgement is reflected in the speech of Lord Carswell in *Moy v Pettman Smith (a Firm)* [2005] 1 W.L.R 581, deprecating the notion that a practitioner might be inhibited from exercising that judgement by the fear of litigation. He regards with dismay the position where:

"*some judge, viewing the matter subsequently, with all the acuity of vision given by hindsight, and from the calm security of the Bench, may tell him that he should have done otherwise.*"

109. Mr Coleman for Hugh James relies upon the following words in particular in the present context of advising on settlement that were cited with approval in *Moy* from a Canadian authority:

"*I can think of few areas where the difficult question of what constitutes negligence, which gives rise to liability, and what at worst constitutes an error of judgement, which does not, is harder to answer. In my view it would be only in the case of some egregious error that negligence would be found."*

110. In similar vein is *West Wallasey v Berkson* [2010] P.N.L.R. 14 with regard to the circumstances of settlement. It was a claim to recover from former lawyers the loss of an extant offer "at the door of the court" of £100,000 less the sum actually awarded by the court on litigation – a lot less - of £9,714. HHJ Browne KC said

> "*the court must be very wary of the dangers of hindsight and of imposing its own standards above, or below, those of "the Bolam test" ... in the litigation context where, uniquely, the court is its own expert. Furthermore, this particular area of litigation "settlement" is a notoriously difficult area of anticipatory professional judgment: an "art" probably more difficult than that of a doctor advising on the*

chances of a successful operation where there is more "science" to guide the professional."

111. I apply the principles in these cases to the current matter.

112. Mr Forsyth for the claimant referred me also to the case of *Hickman v Blake Lapthorn* [2006] PNLR 6, where a barrister was found to have been negligent by Jack J for reaching a settlement at Court without any adequate knowledge of medical reports which had been prepared in the case.

113. At para 47: the judge said

"*In my view it was essential for a barrister in Mr Fisher's position to consider what the current position was as to Mr Hickman's progress and prospects before he commenced the task of putting figures to the claim".*

And at para 50:

"*In the circumstances the omission was clearly wrong. I consider that it was also negligent. No reasonable and competent practitioner should in the circumstances have omitted to examine the possibility that this was not a case which called for a generous Smith v Manchester award but one which might call for loss of earnings and care to be compensated for on a lifetime basis. I do not think that was simply an error of judgement, something on which opinion might differ. It was a failure to appreciate and take into account a real possibility, apparent on the papers, which called for further enquiry, and once entered into, would have revealed itself as something which must be included in advice given. So I find that Mr Fisher was in breach of his duty. He should have made such assessment as he could of what the claim might be worth if Mr Hickman was unable to work, and should have included that advice to him. In contrast, the advice he gave was on a best outcome scenario."*

114. This was a case where "the circumstances" were a trial of liability only which was due to take place, but on the day of trial, a witness did not appear, and the defendant sought to settle the whole action at the door of the court. Counsel for the claimant had been briefed for liability only, and it was held that he ought not to have advised on quantum until he was acquainted with the medical evidence – which he was not. He did so advise however, and, unaware, settled at far too low a level. No reasonable and competent barrister would have omitted to consider whether the claim might be for loss of earnings and lifetime care on the basis that the claimant would never work again. It followed that counsel had been negligent in advising without having done this.

115. I should say I do not find this case particularly helpful- its facts are a very long way from the present case. It is not helpful as to any general point of principle.

116. No case law finding negligent a decision not to instruct counsel was found by either party (save for an instance of negligently delaying the instruction of counsel, *Balamoan v Holden & Co* [1999] ALL ER (D) 566), but the defendant referred the court to the well-known case of *Ridehalgh v Horsefield* [1994] Ch 205 at 244C where

a solicitor considering legislation that was *"very far from straightforward"* and where the *"textbooks did not give a clear answer" w*as held to be not negligent if he did not "*bring the expertise of specialist counsel to the case."*

117. The claimant also invited attention to the case of *Various Claimants v Catholic Child Welfare Society and others* [2012] UKSC 56, a case in which about 200 abuse allegations were made against "the Institute" known also as the "*Brothers of the Christian Schools*" or "*the Christian Brothers.*"

118. They were a lay Roman Catholic order whose stated mission was to provide a Christian education to children. Its members lived a communal life together as brothers, renounced any salaries payable for their teaching work which were instead paid to a charitable trust for the benefit of the Institute - an unincorporated association. In return the Institute met all the brothers' material needs, and the Institute nominated a brother to act as headmaster and appointed other brothers to teach there. The Judge and then the Court of Appeal both decided that the defendants with vicarious liability for any abuse were two diocesan bodies responsible under statute for management of the school during the relevant period, and who had employed the brother teachers. The Supreme Court included the Institute as also liable. They determined the test for liability was not whether both defendants had exercised control over the tortfeasor, but whether the tortfeasor had been "*so much a part of the work, business or organisation of both defendants that it was fair to make both answer for his acts*" . Further that (to take from the headnote):

> *" ... in the context of vicarious liability the relationship between the teaching brothers and the institute had many of the elements, and all the essential elements, of the relationship between employer and employees; that in so far as the relationship differed from normal employment those differences rendered the relationship closer than that of an employer and its employees in that the business and mission of the institute was the common business and mission of every brother who was a member of it; and that, consequently, the relationship between the brothers and the institute was one which was capable of giving rise to vicarious liability."*

119. This was a case expressly considered by the defendant in the present case and whilst initially considered to be helpful, on further consideration was regarded as quite distinctive, given the difference in relationships in the present case. A careful analysis of this case and of the factual background to the EBC was carried out. As more detail of the EBC emerged the apparent similarity diminished. As said before, it is not asserted that the defendant was negligently wrong in its analysis of the law. Whilst the case is part of the backdrop to the consideration of liability, it does not in these circumstances assist directly in the task of this court. It is helpful in my view in highlighting the overwhelming importance of the precise factual context for consideration before a court. It provided the touchstone for beginning consideration of vicarious liability in the present case.

120. The cases of *Cox v Ministry of Justice* [2016] UKSC 10 and *Armes v Nottinghamshire County Council* [2017] UKSC 60 also dealing with issues of vicarious liability are likewise mentioned by the claimant. The former holding a prison liable for the

negligence of a prisoner who injured another, since, again, even in the absence of a contract of employment there could be liability where the tort had been committed as a result of activity being undertaken by the tortfeasor on behalf of the defendant, where that activity was integral to the defendant's business activities, and that the defendant, by employing the tortfeasor, had created the risk. The case of *Armes* held the local authority responsible for the abuse by foster parents of children placed by the local authority since the authority had recruited and trained the foster parents, and placed the claimant there in order to receive care in the setting which the authority considered would best promote her welfare. The abuse thus took place in the course of an activity carried on for the benefit of the local authority.

121. Again, the current case is not pleaded to suggest that if counsel had been instructed they would have formed a different view of liability – or lack of it. The case was pleaded as failure to follow up what the claimant refers to as the defendant's "*initial advice to the claimant to obtain a psychiatric report",* so as to ensure that one was duly obtained, and also consult counsel.

122. The case for the defendant is pleaded in terms that the claim had only negligible value, because Hugh James say, the proposed defendant was obviously not vicariously liable for the alleged abuse. The claimant was therefore appropriately advised to accept an offer to settle the claim for £10,000 and expressly accepted the risk of under-compensation. There was no duty to provide any further advice. Even had Mr Fassone been advised differently, he would never have obtained the expert reports which he claims he would have obtained. In any event, he has lost nothing of value because he had no real prospect of obtaining any more valuable settlement.

123. The cases adverted to by the claimant do not, the defendant says, approximate factually to the situation that was revealed to them concerning the EBC as he was clear in evidence and in correspondence, Mr Collins had stated there was "*a total lack of accountability of individual monasteries to the EBC ...it was repeated time and time again, the monastery is autonomous*".

124. The claimant also invited the Court's attention to a Solicitor's Regulatory Authority publication from 2017 concerning the quality of services in personal injury practice, and warning that settlements reached before a medical report is obtained run the risk of tempting clients to settlement on the wrong basis. While interesting, this publication does not take the points any further.

Analysis.

Medical Reports and Instructing Counsel

125. The claimant in submissions addressed first the proposition that it was negligent to fail to obtain a medical report in this case. It was argued by Mr Forsyth for the claimant that there were a number of references within the notes and correspondence to obtaining medical reports and to instructing counsel. This reflected the requirement for these steps in this case. It was plain in his submission that, since neither Mr Collins nor Mr Barker were themselves medical practitioners, it was inevitable and necessary that a medical report had to be obtained in order for the defendant properly

to discharge its professional duty. In answer to my question as to whether that meant in every case where there was medical material, a report would be required in order not to be negligent, Mr Forsyth accepted there might be cases where it was not a breach of duty to fail to obtain a report – but here it was essential he said: a solicitor cannot make a diagnosis or give a prognosis and in every case where the facts are complex, a report would be required, or where a solicitor had to quantify a claim, in a case where a Part 36 offer was made, a report would also be required.

126. I reject the breadth of these submissions. In my judgement, consistently with the process of assessment that a solicitor is required to carry out in a case, using his or her experience and knowledge and judgement, each case falls to be assessed on its own facts and merits and at the time, and on a continuing basis, as it develops. It is a matter of broad judgement when, indeed whether, a medical report is required.

127. I reject the general proposition that solicitors experienced in handling medico-legal materials always require expert opinion properly to read and understand medical material. Reading and understanding medical material is entirely within the compass of an experienced specialist solicitor, and the notes made by Mr Barker speak for themselves as a cogent understanding of some fairly obvious points – points that in this case went to causation and were arguably very harmful to Mr Fassone's case. I reject the particular proposition that the defendant was negligent in not obtaining an expert medical report here.

128. The claimant said that the January 2018 letter mentioning obtaining a medical report was a reflection of the necessity for one. I do not agree. In an advisory case, as Mr Collins stated in evidence, the *usual* course would have been to obtain a medical report. However, in this case, when it was made subject to the first analysis by Hugh James, as is plain from the detail set out above, a series of major potential impediments to recovery were observed. The solicitors, an expert firm in this area, were able to see that jurisdiction, limitation and vicarious liability were problems at the first meeting they had – and they spelled this out in terms.

129. They also spelled out that the claimant had to be realistic about the size of any potential recovery. Mr Collins deduced that the claimant may have had unrealistic expectations, very few settlements were six figures in size, he said. In those circumstances it was his duty to suggest to the claimant as he did that the figure he came up with (namely £165,000) looked very inflated, and to try to manage his expectations. Part of the context was that Mr Fassone had come from another set of solicitors who had been handling his case – also English solicitors – and had wanted, but could not be offered by Hugh James, the work to be done on legal aid.

130. I accept the evidence of Mr Collins as to his approach set out at paragraphs 85 to 95 above. In my judgement they represent an entirely acceptable, non-negligent approach to medical reports.

131. As Mr Coleman submitted, the defendant is a well-known and highly regarded specialist firm. Mr Collins has a huge amount of experience of claims of exactly this sort, and it was clear to him that this case had many weaknesses and was likely to fail – at its highest it was a case that "*could go either way*" but it was a case where the firm advice was to settle. Furthermore, once not just the IICSA submissions and evidence had been read, but the analysis and conclusions in the IICSA EBC Report

were digested, it became even weaker. The facts of the *Christian Brothers* case were much less like the claimant's school and monastery than at first was hoped. The EBC had indeed managed to insulate themselves from liability in Hugh James' reasonably held view. This was not a case where he needed now to go to counsel.

132. As Mr Coleman put it, Mr Collins' reading of the IICSA EBC Report on the day it came out in August 2018 was "the crux of the chronology" for the defendant. I accept that that hour of reading of the Report, noted as 10 units, cemented Mr Collins' view as to the insuperable hurdle of vicarious liability in the case: the EBC could not be assimilated to the Institute in the *Christian Brothers* case.

133. This was not a case where there was now any point to an expert medical report and thereafter a report on lost earnings and pension monies. There were the considerable difficulties presented by the claimant's own medical notes discovered in March 2018, revealing other abuse reported before time at the School, a tumultuous family background involving abuse, and a report of drug use since the age of twelve. This was aside from the numerous in-patient stays recorded and the diagnosis of paranoid schizophrenia. However much the claimant, perhaps understandably, protests this now, the effect upon his claim was highly significant and recognised as such by his advisors.

134. The allegation based on failure to obtain a medical report before advising on settlement must also fail. The conclusions reached on the fragility of the claim and on the very real impediments to recovery were properly and non-negligently reached. There was ample material on which to decide that there was no point in incurring the extra (uninsured) expenditure upon a report. Even if there were funding available, there was no warrant for taking such a step in light of what the March 2018 medical disclosure showed about the causation difficulties.

135. The claim founded on negligent failure to instruct counsel must also fail. This was not a case where no competent solicitor would have failed to do so. Here there was a wealth of knowledge and experience in Mr Collins. He looked at the materials, and he raised as the key problems the very matters that Browne Jacobson relied upon when they repudiated the claim before making their Part 36 offer.

136. For the reasons given, jurisdiction was not straightforward. As the defendant points out, the solicitors practised in England, however the *lex locus* was Scots law, but the defendant was domiciled in England. There would be an issue to fight perhaps as to whether England was correct under the conflict rules. In any event the law of limitation was likely to be that of the delict (tort)- so Scotland.

137. Again, there were limitation issues as set out above. At the relevant time there were no decided cases on the amended limitation law in Scotland. There were no decided cases here – but as noted, Mr Collins himself had lectured on the similar provisions in the Australian jurisdiction. The solicitors in my judgement were fully entitled to conclude that this was a case that faced an uphill struggle. There was no point in going to counsel on the case at this stage. Again, as the defendant points out, importantly, it has never been pleaded that the solicitor was wrong in his conclusions about these things.

138. There was a suggestion of a submission made orally and by skeleton that this was an area for exploration: I disagree. It is not pleaded and although the existence of a number of defences available for the EBC is acknowledged, the claimant has not put the accuracy of the analysis in issue. In my judgement rightly so. Had the matter been in issue, I would hold that the *Christian Brothers* case was readily distinguishable from the present facts. The early spark of optimism that this was a case that might be won, was properly regarded as extinguished by the fact findings about the EBC and the institutional structure, even aside from the very difficult causation issues already encountered.

139. The task of settlement is subtle, and judgment and experience based. But here it is plain that care was taken. There were meetings, explanations, and a careful letter before allowing the Claimant to accept the counter offer.

140. Furthermore, the context of this case is important. Mr Collins asserted with good reason, considerable specialist expertise. He had been 28 years in practice and had 13 years of specialist child sex abuse claims experience at the date in issue and throughout a wealth of experience to bear. In these circumstances in my judgement it cannot possibly be said that the failure to instruct a medical expert, or to send the papers to counsel, was a breach of duty as alleged.

141. Furthermore, Mr Collins was alive, as was Mr Barker, from the very beginning to a series of difficult issues that arose in this case. His approach to those issues was throughout flexible: when the evidence changed his view changed. Crucially, when the IICSA investigation into the EBC showed that the autonomy of the monastery/School was such that earlier authority did not establish liability, his views as to difficulty crystallised.

142. It is quite unrealistic to suggest that he was in breach of duty in failing to instruct a medical expert when an intelligent reading of the records made clear the difficulties that were faced. In particular these difficulties went to causation which was fundamental to the whole claim. Also, worryingly, they must be said to cast doubts on Mr Fassone's truthful recollection.

143. Mr Collins, indeed, Mr Barker also, had a clear view of the essential points, none of which have been challenged as a matter of law, and there was nothing which arose later that gave rise to a need for counsel to be instructed. I agree with the submissions on behalf of Hugh James: this was a perfectly proper approach.

144. In my judgement the submissions must fail.

145. I did not find the evidence of Dr Harper helpful on the issues this court has to decide. A later report, which did not have the benefit or at least did not refer to the contents of very relevant medical materials from the past, cannot derogate from Mr Collins' proper reliance on his own experience and common sense in respect of the medical materials. Mr Barker did a long detailed, and very helpful note on what he found in the medical material that had been disclosed to them. It was on its face plain, as I have said, in exposing the difficulties which it presented.

146. Given (as has been repeated in this case), the numerous fundamental difficulties that were properly perceived, it cannot possibly be said that here there was negligence in

failing to obtain reports on speculative loss of earnings and other alleged potential claims.

147. By the same token, the settlement advice was not negligent, nor the sum arrived at in a negligent manner.

Conclusions on the Issues

148. Applying the principles of law set out above I set out below the issues between the parties and the determination of them.

149. I have come to the clear conclusion that there is no way in which the defendant can be said to be in breach of its duties to the claimant.

150. As I have said, where there have been conflicts of recollection between the claimant and defendant I prefer the evidence of the defendant over that of the claimant. The latter's confusion as to dates and discussions was shown by the divergence of his memory from the contemporary written materials. I accept as was submitted this is more likely his recollection and not a desire to mislead, but I was struck how his evidence confirmed on occasions what he now wishes he might have said and done, rather than what he did recall doing at the time. The meticulous notes of Mr Barker carefully charted the progress of this case: the evolving understanding of the factual matrix, the developing legal picture, the material medical background and the communication of these matters to the claimant. The notes reveal thoughtful and careful advice well within the standards of a competent practitioner from both solicitors at Hugh James.

151. I have no hesitation in accepting the recollection and evidence of Mr Collins who was a thoughtful and careful witness. His years of particular expertise in this area equipped him well, as he surmised, to assist Mr Fassone in his difficult and distressing claim.

Issues Resolved

152. The issues are therefore resolved as follows:

(a) Issue 2.1 the duty to instruct counsel. In this case it cannot possibly said that no competent solicitor would have failed to instruct Counsel. The issues that fell for consideration here were, to an experienced practitioner the obvious ones in this context. Mr Collins was well able to form a view on them ably assisted by his associate solicitor. The crux of the problems was the facts on the ground – the lack of a line of accountability/control/business endeavour between the EBC and the perpetrators or facilitators, the limitation issues, and others as set out. Mr Collins believed at the start there was a reasonable chance – but as facts came to light, that chance in his opinion significantly diminished. In my judgement that was a wholly sustainable view. The impact of the private medical records on causation is undeniable, and wholly negative. The findings of the IISCA EBC Report were rightly a turning point.

(b) Issue 2.2 the duty to obtain a report from an expert psychiatrist: It cannot be said that the only proper course was to instruct a psychiatrist in this case – for the reasons given by Mr Collins. There was a stark problem painted by the medical records disclosed by the claimant that went to the heart of causation in this case. In my judgement it is quite unrealistic to suggest that Mr Collins, especially given his years of particular expertise, could not reasonably assess the impact of the claimant's history presented in these notes. Any psychiatric opinion that took these matters into account could not realistically have changed that position. A psychologist's view that did not deal with significant aspects of the materials does not assist the claimant. There was force in Mr Collins words that one would not use a psychologist to diagnose, in this context.

(c) Issue 2.3 the duty to advise on a loss of earnings and/or pension rights claim: in the context of this case it cannot be said that the only non-negligent course was to advise on these matters given the numerous serious preliminary impediments to any claim succeeding. It was only by ignoring the import of the preliminary matters- by stating in evidence that he just did not agree with the solicitor, that the claimant sought to advance this part of his case. It was asserted that the defendant had "*no proper understanding of the value of the claim*." This in my judgement was wholly wrong. The conclusions drawn by the defendant were careful, founded in the (rapidly developing) law in a number of relevant areas and the product of considerable research by Mr Barker and the specialist experience and judgement of Mr Collins.

(d) Issue 6.2 advice to accept £10,000: for the above reasons this advice was not negligent. The case law set out above is clear that settlement is a prime area where the individual judgement of the solicitor will not lightly be reviewed. Here there is no basis to challenge the approach for the reasons given. This is not to say that Mr Fassone did not convey a sense of disappointment and, at times, real anger at his position. It was never suggested that there was any evidence available of any other comparable settlement reached by others, demonstrating he had been wrongly treated on the facts of his case only, although it was a theme of his evidence that others had done better.

(e) Issue 8: the duty to advise on the risk of under-settlement For the reasons given above, this was not in the event under-settlement, but even so, there was a clear warning given to him in writing. It is said the claimant was vulnerable, and that the advice was therefore inadequate, and that money was "*dangled in front of him*". This is a mischaracterisation both of the abilities of the claimant who showed himself to be an intelligent man, well able to state his view at the time and to understand the matters explained in correspondence, and an unfair slur on the defendant. Mr Fassone accepted he had asked no follow up questions to the materials he read. He came from other solicitors with whom he had wished to make a claim, but became dissatisfied; he had spoken with other claimants and had ideas that he might recover a six-figure sum, he was aware of the context of the criminal proceedings, he had been involved in IICSA, and knew of that Inquiry being potentially relevant. The warning about under - settlement was made in this context and the clear impression from the solicitors acting at the time, and from the written materials, is that this claimant was responsive, intelligent and he understood what he was engaged upon.

(f) Issue 9: **are the losses within the scope of any duty owed**? This is not an issue that arises and was not addressed in detail.

(g) Issue 10 - What would counsel's advice have been? It is not pleaded that had counsel been instructed, he would have concluded the settlement was wrongly reached or inadequate. The claimant accepts this is in truth speculation but makes what are referred to as "*general comments*" to support his case. This question is not part of the pleaded case, and Hugh James does not accept it is an issue before the Court. I agree. For the avoidance of doubt, however, I disagree that a reasonably competent solicitor advising at this point in time would have concluded there was a reasonable prospect of establishing vicarious liability.

(h) Issues 11.1 and 11.2 - What would have happened –although the claimant says he would have obtained an expert report and proceeded to a claim in spite of the financial difficulties it is clear on the evidence before the court that he would have faced real problems in funding it. I do not find that it is more likely than not that he would have done so, or that, having done so, the outcome would have been materially different.

153. Accordingly, this claim must be dismissed. There is no basis on which it can be said the defendant breached its duty to Mr Fassone in the conduct of this case or that with different advice, Mr Fassone would have obtained any better outcome.

154. I am grateful to both counsel for the clarity and economy of their written and oral submissions.