OUTER HOUSE, COURT OF SESSION

[2026] CSOH 5

PD459/23

OPINION OF LORD YOUNG

In the cause

DBAK

Pursuer

against

THE GOVERNORS OF THE FETTES TRUST

Defender

Pursuer: E Mackenzie KC, M Boni; Digby Brown LLP
Defenders: A Smith KC, A Cowan; Clyde & Co

29 January 2026

Introduction

[1] Many years ago, the pursuer was the victim of repeated sexual abuse at the hands of one of his schoolteachers. The defenders accept vicarious responsibility for the criminal actions of their former employee. The defenders also accept that they are liable to pay damages for the pursuer's losses. What is not agreed is the extent of those losses. In particular, the parties have fundamentally different positions on whether the pursuer's ability to earn income as an adult has been affected by the childhood abuse.

Proof before Answer

[2] The court has granted an interlocutor anonymising the pursuer. To give effect to that order, members of the pursuer's family will be identified only by reference to their relationship with the pursuer. It has been necessary to make limited reference to certain properties which the pursuer has either lived in or has had a business interest in. Any properties which were his Principal Place of Residence will be referred to by the abbreviation "PPR" together with a number. Likewise, any specific property which was acquired as a Business Development will be identified by the abbreviation "BD" plus a number. For a short period of time, the pursuer and his wife operated through a corporate vehicle which will be identified as "DevCo". Unless relevant to a particular aspect of the evidence, this opinion will use generalised dates and locations. Finally, the name of the pursuer's abuser, who has yet to face a criminal trial, has been anonymised to JX.

[3] I heard evidence over 4 days with a further day for submissions. The pursuer led evidence from himself, his wife, Peter Worlledge (the current bursar at Fettes College), Dr Lisa Reyonlds (consultant clinical psychologist), John McGovern (tax accountant), Dr Jacqueline Scott (consultant psychiatrist), Keith Carter (employment expert), and John Pollock (consulting actuary). The defenders led evidence from Professor Gillian Mezey (consultant psychiatrist) and Keith Frost (employment expert).

[4] Parties entered into two joint minutes. The joint minutes recorded the admission in relation to fault and vicarious liability summarised in para [1] above. Parties also agreed the provenance and admissibility of a large number of documents which avoided the need for many witnesses to attend court.

Evidence

The pursuer

[5] The pursuer started his primary education aged five at a small private school in Edinburgh. His impression was that he did well at this school. His parents decided that he should join his older brother at Fettes College. He passed the entrance exam for Fettes Junior School and commenced there shortly before his 10th birthday. He was young for his age group.

[6] JX taught maths in the junior school. He abused the pursuer from September 1977 to December 1979. A brief description of the sexual abuse is necessary. JX would set work for the class to complete. He would then call the pursuer to the front of the classroom ostensibly to go over his work. JX would fondle the pursuer's genitals underneath his shorts and underwear as the pursuer was made to stand to the side of JX. A desk would obscure what JX was doing from the other pupils in the class. JX would praise the pursuer's work as he abused him. The pursuer estimated that this occurred two to three times each week. The pursuer said that he was confused at the time about what was happening. He knew it did not feel right but he had been brought up to trust teachers. He would feel nervous in each class hoping that he would not be the pupil called to the front. He considered that he developed a distrust of teachers and authority. He did not disclose the abuse to his parents or to anyone within the school.

[7] The pursuer said that he reacted to the abuse by becoming rebellious. He did not properly engage in his studies during junior and senior school. He "switched off" at school. The pursuer said that he felt that the building blocks of his education were missing as he had been unable to concentrate on his school studies. He never managed to catch up. He considered himself to be intelligent but difficult to motivate.

[8] He had never sought medical treatment for the psychological effects of the abuse which he suffered. He did attempt to cut his wrist at age 17 which has left a small mark. He did not require medical attention on that occasion. Prior to meeting his wife, he had occasional sexual relations with female partners. He was conscious of a sense of dread when a partner sought to touch him intimately.

[9] The deputy head teacher in the junior school took a harsh approach in an attempt to motivate the pursuer. The pursuer was named during a school assembly as a pupil who needed to go to the deputy head. The deputy head was a physically imposing man. He confronted the pursuer about his lackadaisical approach to schoolwork by jabbing him in the chest. The pursuer found this very upsetting at the time. He burst into tears at home and told his mother about the deputy head teacher's actions. His mother complained to the school about this matter. He did not take that opportunity to disclose the sexual abuse to his mother and she remains ignorant to this day of what JX did to him.

[10] After 3 years in the junior school, he failed to pass the common entrance examination for Fettes Senior School. It was decided that he should repeat a year in the junior school. He re-sat the common entrance exam in the following summer and passed with 51%. He started in the senior school just before his 14th birthday. His work did not improve significantly. In 1984 he undertook O grade and O level examinations. Details of his O level results were not before the court although it was the pursuer's recollection that he obtained passes in English, Music and some other subjects. In his O grade results, he achieved an A in English, a B in Metalwork, a C in French and a D in Biology. His understanding is that he has a combination of nine passes at O level and O grade.

[11] The pursuer's parents were dissatisfied by the progress that the pursuer and his older brother made at Fettes. When the pursuer's older brother left school after taking his

A levels, the pursuer's parents decided to withdraw him as well. The pursuer left in the mid 1980's, a few months before he turned 17. In the following year, he attended the Edinburgh Tutorial College where he took Higher courses in English, French, Biology and Art & Design, and he re-sat O Grade Maths. He passed English Higher with a C Grade after an appeal. He also obtained a B Grade in Maths O Grade with the help of additional tutoring from his father. He failed the other exams.

[12] The pursuer worked as a hotel porter in the summer after leaving Fettes and before starting at the Tutorial College. He was encouraged to train in hotel management. He was offered a conditional place at an English university to study hotel management, but his Higher results at the end of the year at the Tutorial College did not satisfy the offer. He worked as a trainee junior assistant manager in a major hotel in Wales for 6 months before returning to Edinburgh and commencing work at a cinema. He worked abroad for a year in the late 1980's in various manual jobs. On his return, he worked as an assistant manager in the branch of a restaurant chain. He left after a year due to a fall out with the manager. Thereafter, he worked in various cinemas, pubs and restaurants in the Edinburgh area often in managerial or junior managerial roles. After a further stint working abroad he returned to hospitality work in Edinburgh until 1994.

[13] The pursuer met his wife in about 1993. Relatively soon after the start of their relationship, the pursuer became focussed on developing a career away from the hospitality field. From 1994 - 97, the pursuer worked as a tied agent to a life assurance company earning on a commission-only basis. Between 1998 - 2002, he worked for an independent financial adviser on a self-employed basis where he received 70% of the commissions earned through his efforts.

[14] The pursuer and his wife have been together for 32 years. They have a number of children, all born in the 2000's. They have a strong, successful and mutual supportive relationship.

[15] The pursuer and his wife have lived in eight principal private residences since the mid-1990s. Only the most recent three residences featured to any significant extent in the evidence. They purchased PPR1 in February 2015 for £1.16M. They carried out significant renovation work to the house and garden. It was placed on the market in 2019 and sold in January 2020 for £2.5M. PPR2 was purchased in November 2018 for £1,150,000. Extensive renovation works were carried out on the house and garden. PPR2 was subsequently marketed for sale in 2023, initially at offers over £3.6M. Two potential purchasers failing to complete and so the pursuer was advised by Savills to place PPR2 back on the market at offers over £2.8M. The pursuer said this was 70% of the market value. They have received an offer to purchase PPR2 but there is, as yet, no completed sale. He was not asked in evidence the level of the current offer. PPR3 was purchased by the pursuer and his wife for £1.1M in July 2023. After some renovations, the family moved into PPR3 in November 2023 at a time when it was anticipated that the sale of PPR2 would shortly complete. The pursuer and his wife have incurred significant debts from using bridging finance since 2023.

[16] From around 1998, the pursuer and his wife have been involved in property development. Initially this involved the purchase, renovation and sale of approximately one property each year while the pursuer continued to work in financial services. Around 2003, the pursuer and his wife decided to focus exclusively on property development. He had calculated that taking on one more property development each year would make up for the loss of his income from financial services work. He anticipated that there was the potential

to earn more through property development than from his financial services work. In addition, the work was more interesting and a better fit for family life. His work in financial services had involved evening and weekend visits which he did not like doing once he had a young family. He agreed with the description of his move into full time property development as a "positive choice".

[17] The pursuer and his wife have primarily operated as a partnership with each being entitled to one half of the profits. Their mode of operation is to purchase older properties which are then renovated and re-sold. The properties are often sub-divided into apartments. In terms of their roles within the business, his wife has a flair for design including a spatial awareness for the best layout. The pursuer tends to deal with the project management side including the financial aspect. He disagreed with a suggestion that his work involved working at a high level on a full-time basis. He said he could be busy on occasions, but he probably did not work more than 40 hours a week. Project management involved attending on site once per day and making sure that the various contractors were progressing matters. He said that most of the work was done by the architect. The partnership has been generally successful, but the profit levels are volatile. The business was affected by economic downturns during the "credit crunch" of 2007 - 2008 and the Covid-19 pandemic in 2020 - 2022.

[18] The pursuer agreed that his share of the profits generated by the partnership were properly reflected in a table produced by Keith Carter which is reproduced at para [46] below. Currently, the property market is softening. A property (BD2) was purchased for development in 2022 for £725,000. The pursuer and his wife have sub-divided BD2 into five apartments. One apartment has been sold recently for £500,000 and another is on the market at offers over £495,000. The remaining three apartments have yet to come to market. At one

point, he and his wife had hoped to retain these apartments for rental income in their retirement but that was no longer looking likely due to the outstanding level of business debt.

[19] He was asked what he lived off in the years where no or few profits were generated. His response was that they had been quite prolific in re-mortgaging their Principal Place of Residence.

[20] In an email to his accountant on 31 December 2019 timed at 09.04, the pursuer advised:

> "Firstly, we won't have earned anything in the 19/20 tax year as we have been renovating our new main residence since November 2018. It's nearly finished and we intend to purchase some properties for renovation soon but its highly unlikely we will have completed and sold these properties prior to 6/4/20."

When this email was under discussion during final submissions, the pursuer explained through senior counsel that there were ongoing projects being developed at the time of this email but that none would be completed in that tax year generating taxable profits.

[21] In an affidavit dated 6 October 2025, the pursuer explained that DevCo was incorporated for their property development work and it traded from around 2006 - 2007. The pursuer's affidavit stated that DevCo made a loss and that he derived no income from it. In a subsequent affidavit dated 10 October 2025, he further explained that DevCo owned approximately 10 properties when the "credit crunch" caused their lender to ask for the company's debt to be re-structured. The pursuer and his wife decided to sell the corporate vehicle. They received approximately £250,000 for the sale of DevCo which, after legal costs, resulted in a net payment to the pursuer and his wife of about £200,000. The pursuer explained in evidence that he had forgotten when the first affidavit was drafted that monies were received from the sale of DevCo. He explained that part of the original funding for

DevCo was through a directors' loan which was, in turn, funded from a critical illness policy which had paid out to the pursuer after a significant illness. The net proceeds from the sale of DevCo had repaid the directors' loan. Tax had also been paid from the net proceeds.

[22] The pursuer was cross-examined by senior counsel for the defenders in relation to a property (BD1). The Land Register shows that BD1 has been owned by a limited company since June 2018. In an email dated 2 April 2020 from the pursuer to his tax accountants, the pursuer wrote:

> "Many thanks for taking the time to speak to me yesterday… As mentioned, we have an unexpected property sale going through tomorrow which is just going to sneak into this tax year. The details of this are as follows:- [BD1] – purchased for £525,000, £125,000 renovation costs (approx. at this time), £20,000 borrowing costs (again approx. at this time) and sale price of £830,000. This gives a profit of £160,000 less our running costs of around £20,000 gives us net profit of around £140,000. I can't give you exact figures yet as I need some information from various organisations that are currently closed but it will be in this region."

[23] On 6 July 2020, the tax accountant provided an estimated tax liability for 2019/2020 and explained that the profit on the transaction for BD1 had resulted in a tax liability as opposed to a tax repayment. The pursuer replied on the same date stating:

> "Please disregard the information regarding [BD1]. I completely forgot that we bought this property in someone else's name to make it more tax efficient. Both [my wife] and myself have zero earnings for the 19/20 tax year. On this basis, there should be a refund of tax due."

[24] The pursuer was cross-examined as to the omission of BD1 from the list of development properties which he had provided to the defenders. His response was that BD1 had not been purchased by the partnership or through a nominee. They had no financial interest in that property. He had no recollection of writing the email of 2 April 2020 as he was very ill with Covid at that time. He believes that he was in a delirious state when he wrote that email. In his confused state, he must have thought that a potential acquisition of BD1 with estimated costs had gone ahead. In relation to his email of 6 July

2020, he explained that he was horrified and embarrassed when he realised what he had told his accountant. He made up a "white lie" to his accountant to explain the confusion.

[25] The pursuer was also challenged in cross-examination in relation to other omissions from a list of development properties which he had compiled for the litigation. He explained that he had produced the list largely from memory as much of the original documentation was no longer held. As far as he was concerned, any omissions from the list were irrelevant as the tax accountant had been given the correct information, so all profits had been correctly entered into the tax returns.

[26] The pursuer was asked by senior counsel about the omission of income from Airbnb lettings from his tax return. He explained that there are separate studio apartments at the rear of PPR2 which were let out with rental income generated of £11,000pa in two recent years. He accepted that the Airbnb income (or his share of it) had not been entered into his tax returns for those 2 years. His explanation was that he had a discussion with his accountant about this income. As he had no other earnings in the relevant tax years, his share of the Airbnb income would not take him above the income tax personal allowance. He said that the discussion with the accountant had included discussion of offsetting some of the renovation costs for the PPR2 apartments against the Airbnb income but he had not wished to conflate his main residence with his business income. As no income tax would be due, it was decided to remain silent about the Airbnb income. He accepted that he had not told Keith Carter about this income stream.

[27] The pursuer's evidence was that he would have liked to go to university and to pursue a career linked to banking, finance or investment. He had enjoyed his work as a tied agent for a financial institution and felt he was good at it. However, he would have wanted to work in fund management rather than as a financial adviser. He was unable to pursue

these occupations due to his poor examination results. His mother had thought he should be a lawyer. His contemporaries at Fettes included successful lawyers, financiers and military officials. Most of his contemporaries went on to higher education.

[28] The pursuer's father had a degree in maths and physics from a prestigious English university. He was an impressive man who the pursuer had looked up to. His father had his own computer consultancy company which was responsible for developing an important aspect of modern retailing. His mother did not attend university. His older brother achieved two A levels and six O levels at Fettes. He commenced an Art Foundation level course at an English polytechnic before attending university in England to study fashion design. He was asked to leave university at the end of his first year due to lack of progress. His brother emigrated in 1988 and works for a power supply company as a linesman. His sisters both attended an all-girls private school in Edinburgh with his younger sister also spending her final school years at Fettes. His older sister obtained seven O Grades and four Highers. She is variously described in the productions as working as a teacher or nursery nurse in England. His younger sister obtained nine O grades, five Highers and four A levels. She studied biology at a prestigious English university and also has a master's degree in physiotherapy. She works for the NHS as a physiotherapist.

[29] He first told his wife about the abuse approximately 3 years ago. He also contacted the defenders and the police around that time.

The pursuer's wife

[30] She has been the pursuer's partner for 32 years. She became aware of the sexual abuse about 3 - 4 years after she mentioned a news article about Fettes College to the pursuer. A few days later, the police came to their house to speak to the pursuer and a few

days after that he told her of the abuse which he suffered. She described the pursuer as being quite closed when talking about personal matters. Although she had never suspected that the pursuer had been a victim of abuse, she said that certain things made sense once it was disclosed. It appeared to her that he hated school and never referred to any fond memories from school. He had retained no friends from school. He had been adamant that he did not want his children to be privately educated. He had been very protective of their own children. She was not aware that he was a member of a Facebook group for former pupils at Fettes.

[31] The pursuer's wife was working as a mortgage adviser for a bank when she first met the pursuer. They saw property as a good investment and the property development business evolved from there. They had both been working full time in other jobs as they completed their initial property developments. At some point, they realised that full time property development work was more conducive to family life with better hours. They also enjoyed the work and found it more interesting. She confirmed that in terms of the business, she provided more of the design side with the pursuer being responsible for the financial side. She said that they had looked at BD1 with a view to purchasing it but they did not offer or purchase it.

Peter Worlledge

[32] Mr Worlledge is the current bursar at Fettes. He had put together a document listing the Fettes leavers for 1 year in the mid-1980s showing information retained by the school on pupils' school accomplishments and progress after leaving school. Some of the information came from the leavers in their final term. Other information was dependent on the subsequent contact which the former pupil had with the school. There were many gaps

where the school had no information on what had happened to the former pupil. Mr Worlledge's observation was that the document demonstrated the wide range of outcomes for leavers which varied from higher education, the armed services and apprenticeships. He believed that the majority of leavers would go to university. He emphasised the significant gaps in the information available for many leavers.

Dr Lisa Reynolds

[33] Dr Reynolds is a consultant clinical psychologist in private practice. She has a doctorate in clinical psychology and is trained to specialist level in Trauma Assessment, Formulation and Treatment. Her clinical experience includes being the clinical lead for the Glasgow Psychological Trauma Service. She has considerable experience in both the assessment and treatment of trauma victims.

[34] Her initial instruction in this matter was for a desktop report on the possible link between childhood abuse and poor educational or occupational outcomes. She explained that one of the difficulties in identifying causal effects of childhood sexual abuse is that there are normally socio-economic confounding factors which could be responsible for the poorer educational and occupational outcomes. She referred to a study by Henkhaus ("The lasting consequences of childhood sexual abuse on human capital and economic well-being"; Health Economics 2022:31:1954-1972), which sought to control for these confounding factors. From this study, Dr Reynolds concluded that an individual's educational prospects can be affected by the abuse beyond the end of the abusive acts.

[35] Dr Reynolds subsequently assessed the pursuer. Her conclusion was that the pursuer developed a fear-based PTSD reaction at the time of the abuse. He described symptoms which would meet the criteria for a PTSD diagnosis during the abuse and for a

period of time thereafter. He described anxiety, shame and low mood at school although there was no behavioural disturbance. His description of avoidance and poor concentration would have affected his ability to learn. His performance at school dropped off and he did not achieve as well as would be expected if he had not been abused. In her opinion, the PTSD diagnosis remained appropriate for a couple of years while he continued into senior school but that at some point during senior school, the symptoms fell below the diagnostic threshold for PTSD. He did not currently meet any diagnostic criteria for a mental health illness.

[36] She disagreed with the defenders' expert, Professor Mezey, that the pursuer had never met the diagnostic criteria for PTSD. She said that she also disagreed with any suggestion that non-penetrative sexual abuse is less likely to have a lasting impact on a victim than penetrative abuse. Her understanding of the literature is that the impact depends on a number of factors including the frequency of abuse, the relationship with the abuser, and the background to the abuse. Individuals respond differently to abusive episodes.

John McGovern

[37] Mr McGovern is a tax accountant who obtained a qualification from the Association of Tax Technicians in 2023. He worked for HMRC for 12 years before working in private practice. In that role, he would prepare tax returns for clients.

[38] From around 2016 until 2021, he was personally involved in the preparation of the pursuer's tax returns. Prior to 2016, the pursuer's tax returns had been prepared by a small company in East Lothian that were bought over by Mr McGovern's own employers.

Since 2021, a more junior employee has been responsible for completion of the pursuer's tax returns although those returns would always be reviewed by a more senior individual.

[39] Mr McGovern explained that he would prepare the pursuer's tax return but not partnership accounts. Although an auditing role was provided for some clients, this was not part of the instruction from the pursuer and his partnership. Mr McGovern placed reliance on the information provided by the pursuer as accurate. He would not ask for vouching. He confirmed that if income was received from Airbnb lettings then the appropriate box should have been checked on the income tax return and this would take the taxpayer to some additional property pages on the return which would need to be completed to disclose income and expenses for the property. He referred to a specific "rent a room" scheme which allowed a landlord to earn a capped level of tax free rental income subject to a number of specific conditions. He could not comment on whether the Airbnb income earned by the pursuer would be eligible for this scheme. He was shown the emails in April and July 2020 concerning BD1 but had no recollection of the discussions at that time.

Dr Jacqueline Scott

[40] Dr Scott is a consultant in general adult psychiatry with NHS Ayrshire & Arran Health Board. She assessed the pursuer in November 2022. At that time, the pursuer described no current issues with concentration or memory. Although he had no concerns about his sleep, he had suffered from flashbacks and nightmares albeit these were now less frequent. The flashbacks and nightmares could be triggered by discussing the trauma. He felt some reduced libido and that he was slightly repressed sexually. This took the form of feeling uncomfortable on intimate sexual touching. He described some anxiety and feelings of guilt. He struggled to discuss his emotions and felt shame in relation to the abuse

suffered. He had developed a dislike of school. He had become isolated and disinterested in his own education. He had deliberately cut his arm on occasions as a teenager. He did not describe any suicidal feelings, panic attacks or obsessive-compulsive behaviour at any time.

[41] In her opinion, the pursuer had developed PTSD at the time of the abuse which continued for a period of time after the abuse ended. The absence of any psychiatric or psychological difficulties in his medical records would indicate that the PTSD symptoms were most prominent during and shortly after the abuse. At assessment, he was not suffering from any ongoing or significant PTSD symptoms although there were some ongoing psychological impacts on his life. She thought that the acute symptoms would have been experienced at the time and for up to about 2 years post-abuse.

[42] Dr Scott said that victims of abuse can be affected in a variety of ways. In her own experience, victims of penetrative abuse tend to suffer a greater impact but one should be careful not to generalise based on the precise form of abuse. There are many factors which can impact on the outcome for the victim. Abuse by a person in a position of trust can make a child feel very insecure about the world. This can affect their ability to form trusting relationships and can lead to anxiety and low mood. The pursuer has no cognitive or learning impairment. He presents as a man of average intelligence who would be expected to do better in higher education than he did.

Keith Carter

[43] Keith Carter is an employment expert with many years of giving expert evidence in court. He prepared reports in this case which focussed on areas of work which Mr Carter concluded might have been achievable for the pursuer if he had performed better at school.

Although the pursuer had expressed an interest in working as a lawyer, investment banker or fund manager, Keith Carter noted that there was no concrete data that he would have pursued such roles. Keith Carter focussed on a career progression which matched the skills which the pursuer had demonstrated in his own property business.

[44] The employment reports contained two models. Model 1 assessed potential earnings without a university degree while model 2 assumed that the pursuer attended university graduating in the late 1980's. For each model, there were three scenarios for which earnings data were provided. Scenario 1 for each model used average earnings for all men in Scotland. Scenario 2 set out salary levels in business up to manager level. Scenario 3 set out salary levels in business up to director level. The salary levels are derived from the Annual Survey of Hours and Earnings (ASHE) produced by the Office of National Statistics. A comparison of the salary levels in the two models showed only one difference. Model 1 included salary levels for the first 4 years after leaving school whereas model 2 had no salary levels for this period as the pursuer would have been in higher education. As such, the total income over a working lifetime under model 1 exceeds that for model 2 on each of the scenarios.

[45] Keith Carter also compiled a table showing the gross and net earned income which the pursuer has achieved since 1983/84. These figures derived from the pursuer's tax returns.

[46] The table below is a truncated version of Keith Carter's table 3 from his supplementary report dated October 2025 in respect of tax years 1996/97 - 2024/25. The table shows the gross earnings achieved by the pursuer (column 2); the gross earnings for scenario 1 (column 3); gross earnings for scenario 2 (column 4), and the gross earnings for scenario 3 (column 5). It should be noted that the gross income earned by the pursuer

for 2013/14 and 2014/15 in column 2 of this table also included some earned income from short periods of employment in other property related businesses.

Tax year	Pursuer's actual gross earnings	Gross earnings- All males in Scotland (both model 1 & 2)	Gross earnings- Business to manager level (both model 1 & 2)	Gross earnings- Business to director level (both model 1 & 2)
1996/97	£7,368	£17,410	£22,964	£22,964
1997/98	£13,750	£18,099	£24,046	£24,046
1998/99	£33,618	£20,560	£43,413	£43,413
1999/20	£27,142	£21,393	£45,536	£45,536
2000/01	£14,739	£22,369	£47,454	£47,454
2001/02	£22,982	£23,021	£51,517	£51,517
2002/03	£52,746	£23,714	£54,639	£54,639
2003/04	£17,405	£24,242	£60,747	£60,747
2004/05	£0	£25,603	£62,255	£62,255
2005/06	£23,733	£26,900	£62,787	£62,787
2006/07	£27,246	£27,973	£64,729	£64,729
2007/08	£0	£29,030	£68,707	£68,707
2008/09	£0	£29,782	£68,944	£68,944
2009/10	£2,724	£29,954	£70,000	£70,000
2010/11	£4,455	£30,353	£70,635	£70,635
2011/12	£5,937	£31,390	£58,496	£58,496
2012/13	£4,514	£31,991	£59,322	£59,322
2013/14	£19,736	£31,654	£60,826	£60,826
2014/15	£26,653	£32,370	£63,164	£63,164
2015/16	£13,720	£32,941	£64,224	£64,224
2016/17	£3,162	£33,466	£68,370	£68,370
2017/18	£64,807	£34,723	£68,935	£91,050
2018/19	£73,383	£35,045	£70,435	£95,306
2019/20	£0	£35,985	£70,653	£98,868
2020/21	£14,561	£35,198	£69,423	£88,784
2021/22	£11,835	£37,324	£70,510	£103,353
2022/23	£0	£39,409	£74,131	£97,137
2023/24	£0	£41,774	£78,579	£102,965
2024/25	-	£43,654	£82,115	£107,599

[47] Mr Carter assessed the pursuer's future self-employed earnings as £18,786 - 19,953pa net of tax. By way of comparison, Mr Carter's report advises that the future net annual

earnings figure for all males in employment in Scotland is £36,671. The net annual figure for business to manager level is £59,966 and for business to director level is £72,796.

Dr John Pollock

[48] Dr Pollock is a consulting actuary who produced estimates of pension loss based on the alternative career profiles set out in the Keith Carter reports. His report set out three models based on the scenarios set out by Mr Carter. The calculations assume that the pursuer would be a member of a defined benefit scheme from 1992 - 1999 and would then have a defined contribution pension with contributions from employer and the pursuer. Dr Pollock calculated pension losses of £269,140 on scenario 1; £594,180 on scenario 2; and £636,780 on scenario 3. His report separates out the value attributed to the defined contribution element of each loss calculation in the event that the court did not accept that a defined benefit scheme would have been open to the pursuer for the period 1992 - 99. Dr Pollock was not cross-examined by the defenders. Senior counsel for the defenders made clear that, while no issue was taken with his calculations, it was not accepted that the pursuer had any losses from employment, including pension losses.

Professor Gillian Mezey

[49] Professor Mezey has been a consultant forensic psychiatrist for 35 years and a professor of forensic psychiatry for 10 years. She has worked and published in relation to the assessment and treatment of victims of sexual abuse of children. She is the co-author of the first textbook on male victims of sexual abuse which followed on from her original research in that area.

[50] Professor Mezey interviewed the pursuer over 3 hours in February 2024. She found no evidence of past or current clinically significant symptoms. The gateway event for a PTSD diagnosis is that the victim has experienced a traumatic event which is life threatening or presents a serious threat to that individual's physical identity. If the victim has experienced that traumatic event, the diagnosis of PTSD is only made if (i) the individual persistently re-experiences that event such as through flashbacks or nightmares, (ii) the individual adopts persistent avoidance techniques both internally (i.e. by avoiding thinking about or talking about the event) and externally (i.e. by avoiding situations which might overwhelm the individual), (iii) there is persistent hyperarousal such as an inability to relax or sleep, and (iv) the symptoms must be associated with a significant functional impairment to the individual's life.

[51] She explained that many of the individual symptoms of PTSD are extremely common and therefore the diagnostic criteria must be carefully considered to prevent applying a PTSD diagnosis to people who should not be medicalised. For example, occasional nightmares as described by the pursuer to Professor Mezey are common amongst the population and are not, in themselves, clinically significant. She did not consider him to have suffered from significant sleep disturbances. In her view, the pursuer described a good relationship with his wife without any evidence of repressed sexual function. He was not avoidant of all contact with Fettes College. He had returned to visit Fettes when his sister was a pupil. He was a member of the Facebook page for former Fettes pupils.
Professor Mezey was anxious to stress that her role as a forensic psychiatrist was to assess whether the criteria for a psychiatric diagnosis were present. She did not dispute that the pursuer would have had an emotional response to the abuse which she suffered.

[52] Professor Mezey had not previously been familiar with the Henkhaus paper referred to by Dr Reynolds. She did not think the study was particularly helpful in shedding light on an individual's response to abuse. As a general observation, she considered that generalisations from a population study did not tell you much about how a specific individual might be affected by the abuse which they suffered. It was put to her that the pursuer had switched off from school as a result of the abuse. Professor Mezey's evidence was that switching off in adolescence was not uncommon and would not be indicative of a psychiatric illness. On her reading of the school records and her interview with the pursuer, she considered that he did continue to function well at school taking part in many activities such as music and cadets. He did not tell her that he refused to participate in school, or engaged in persistent truanting. He did not come across to the school authorities as frightened or unwilling to engage with other children. The evidence did not suggest a deeper emotional problem at the time. She considered the pursuer to be intelligent but not particularly academic. His academic and vocational achievements were broadly comparable with two of his three siblings. Professor Mezey suggested that the pursuer had a belief that a glittering career should have followed on from having attended an elite school. This had resulted in a degree of discontent and grievance on his part. It was her view that his failure to achieve better exam results at Fettes could not be ascribed to the sexual abuse.

Keith Frost

[53] Mr Frost is an employment expert instructed by the defenders. His evidence was relatively brief. In examination-in-chief he expressed the opinion that it was not possible to identify the true income which the pursuer had generated from property development since he had, quite legitimately, adopted a model of developing and re-selling the family home at

regular intervals. The profits generated were untaxed and unquantifiable on the documents available. He was critical of Keith Carter's use of average rather than median earnings from ASHE. He also criticised the lack of a self-employed earnings model within the Keith Carter report as that is the vocational status which the pursuer has actively pursued for most of his career.

[54] He agreed with senior counsel for the pursuer that it was not correct to say that the pursuer's educational achievements were comparable to those of his siblings. He qualified this by saying that the pursuer's educational achievements at Fettes were comparable with his brother. In his opinion it was paradoxical that the pursuer's father withdrew him from Fettes for underperforming. A comparison of his exam results at Fettes with his exam results from the Edinburgh Tutorial College suggested that he achieved at a better level at Fettes.

Pursuer's submissions

[55] The pursuer's evidence of the abuse which he had suffered was not in dispute. The court should accept the opinions of Dr Scott and Dr Reynolds that the abuse had led to the development of PTSD. The formal diagnosis of PTSD was appropriate for the period of the abuse and for a few years thereafter. The court should reject Professor Mezey's view that the psychological effects of the abuse were minor. Professor Mezey's clinical experience was heavily focussed on the treatment of offenders and health care professionals rather than the general population. Her conclusions were based on factual errors contained throughout her report. It was submitted that Professor Mezey underplayed the serious nature of the repeated abuse and consequently the effect of that abuse on the pursuer. She had also demonstrated an insufficient understanding of the pursuer's position as a child of primary

school age when she talked about him having a "choice" to attend school or not and thereby potentially being able to avoid that abuse.

[56] In relation to the effects of the abuse on his education and occupational prospects, the court was invited to accept the pursuer's evidence. He had "switched off" and he never managed to catch up. The school reports supported the view that he was intelligent but disengaged. His exam results were surprisingly poor for a prestigious school where the norm was for pupils to progress to further education. He had performed significantly worse than his father and siblings. In many ways, this was a far more straightforward case in relation to causation and quantification than many sexual abuse cases as there was an absence of confounding factors. The court should conclude that, but for the abuse, the pursuer would have obtained better exam results which would have led to university and a degree in business management. He would then have had a career in business, finance or law.

[57] The submission on behalf of the pursuer was that solatium should be assessed at £75,000 with 2/3 allocated to the past. Reference was made to the Judicial Studies Guidelines for sexual abuse, and *D* v *The Bishops Conference of Scotland* 2022 SLT 816. For the purposes of calculating judicial interest in terms of *JM* v *Fife Council* [2008] CSIH 63, £25,000 of the past award should be allocated to the period of abuse from 1977 - 1979 and £25,000 to the emotional reaction post-abuse. The accumulated interest to December 2025 was calculated at £71,000.

[58] In relation to past wage loss, the pursuer's submission was that a comparison of his actual earnings to the three scenarios within the Keith Carter report identified past wage losses of £340,504, or £946,645, or £1,072,453. It was submitted that a total past wage differential of £1,000,000 was reasonable to which a further discount of 25% for other

imponderables could be applied. The resulting past wage loss was £750,000. Interest on the past wage loss from 1988 (when the pursuer would have notionally left university) to date was £1,125,000.

[59] Future wage loss should be calculated on the basis of a multiplier and multiplicand (*Bullock* v *Atlas Ward Structures Ltd* [2008] EWCA Civ 194 at paras [17] and [21]) with recourse to a lump sum award only where there was no real alternative, (*F* v *Chalmers* [2025] CSOH 23 at para [111]). The pursuer submitted that an appropriate differential was £47,545pa. In a higher paid job, the pursuer is likely to have retired at an earlier age of 63. The multiplier was 4.94. The future loss was further discounted by 25% for imponderables resulting in a final figure, in round terms, of £175,000. If the court considered that a multiplier/multiplicand approach was not appropriate, the lump sum award should still be substantial.

[60] There was a wide range of possible pension loss figures. The pursuer submitted that a broad figure of £350,000 was a reasonable assessment.

[61] The pursuer's motion was for decree in the sum of £2,546,000 calculated on the basis set out in the table below:

Solatium	£75,000
Interest on Solatium	£71,000
Past Wage Loss	£750,000
Interest on past wage loss	£1,125,000
Future Wage Loss	£175,000
Pension Loss	£350,000
TOTAL	£2,546,000

Defenders' submissions

[62] The defenders' submission commenced with an acknowledgement that the pursuer had been the victim of serious sexual abuse for which he deserved the utmost sympathy. He

was also fully entitled to appropriate compensation. However, the compensation ought to be limited to an award of solatium as the claims for patrimonial loss were not established on the evidence in this case. The only head of claim for which damages should be awarded was solatium which the defenders' valued at £15,000 together with a sum to be calculated for interest on the past element.

[63] The defender's invited the court to accept the opinion of Professor Mezey to the effect that the pursuer's reaction to the abuse did not meet the diagnostic threshold for PTSD. The court should reject the opinion of Dr Reynolds. She had based her conclusion on the pursuer's account which had incrementally changed from his initial accounts to Dr Scott and Professor Mezey. The more severe symptoms which Dr Reynolds based her conclusion on were not described by the pursuer in his evidence. However, even if the court concluded that the pursuer had suffered from PTSD during his adolescence, that made little difference to the quantification of the claim.

[64] The onus was on the pursuer to prove his patrimonial loss. The pursuer had failed to prove that the injuries suffered as a result of the abuse had led to a poorer educational outcome and a failure to obtain a university degree leading to a higher paid job. There was no good evidence from the school records that the pursuer had switched off from all school activities. There were entries from the senior school records of him engaging in activities which he enjoyed such as music. His examination results may have been poor in comparison with his peers at this school but they were reasonable in comparison with the general population.

[65] It was entirely speculative as to whether the pursuer ever wished to pursue the educational and occupational route now postulated on his behalf. None of his siblings have ended up in occupations comparable to what is now being put forward as his likely career

path. What was clear is that by 2002 - 2003 when he was self-employed in financial services, he was earning sums comparable to the Keith Carter model. He had then chosen to move away from that career to pursue, along with his wife, a career as a property developer. That was a perfectly sound decision made for lifestyle reasons and job satisfaction, but it was not one forced on him as a result of the effect of the abuse. The evidence from Keith Carter's report indicated that the acquisition of a business degree made no difference to the pursuer's earning capacity.

[66] It was submitted that the pursuer was not a credible or reliable witness in relation to certain aspects of his evidence. His evidence in relation to BD1 and the email of 2 April 2020 was manifestly false. He had provided a list of properties in the course of the litigation which omitted five properties. He had failed to disclose his Airbnb earnings until specifically asked about this by the defenders in the lead up to the proof. He had provided a misleading statement in his affidavit to the effect that no income was obtained from DevCo but had subsequently accepted that he received a sum of money from the sale of that company.

[67] The pursuer and his wife had adopted a practice of regularly upgrading and re-selling their primary residential properties. While the gain achieved by an injured party on the sale of their house will normally be irrelevant to the assessment of damages, it was submitted that it was different in the present case as the regularity of the practice made this part of the pursuer's vocation. The inference to be drawn was that the pursuer and his wife made a deliberate decision to generate income from the development and re-sale of their primary residences.

[68] It was submitted that his tax returns could not be relied upon. They omitted income derived from the sale of the primary residential properties. The profit figures were

calculated by reference to renovation costs which were not vouched by the accountant. The rental income from Airbnb had been omitted. As a consequence of these matters, the pursuer's evidence as to his earnings from property development was unreliable and the court could not be certain that there was any loss. It was submitted that it was not an adequate response to deal with such uncertainties by adopting a lump sum approach as per *Blamire* v *South Cumbria Health Authority* 1993 PIQR Q1. The appropriate method of calculating a loss only arises once the court is satisfied that there is a loss in the first place, (*Ronan* v *Sainsbury's Supermarkets Ltd* [2006] EWCA Civ 1074 at paras [22] - [25]).

Analysis

[69] The pursuer's description of the abuse which he suffered at the hands of JX over a 27 month period in the late 1970's is a matter of agreement. This was a series of regular sexual assaults on a young boy by a person in a position of authority. His evidence of being confused and embarrassed by the abuse is readily understandable. As is his description of being fearful in each class that he might be called out to the front to be abused. He described feelings of shame at the time.

[70] The principal difference between the medical experts was whether the pursuer had ever suffered from symptoms which met the diagnostic criteria of PTSD. This largely depends on the description of the symptoms which the pursuer gave during interviews many decades after the abuse ceased. Dr Scott and Dr Reynolds were satisfied that he was describing symptoms of re-experiencing the abuse and avoidant behaviour while a pupil. Professor Mezey was not persuaded that he was describing such symptoms. There are no medical records to assist and the contemporaneous records from Fettes are brief.

[71] It is significant that the pursuer's wife described him as "not a talker" when it came to discussing emotional issues. That description matched how he came across when giving evidence in court. It is also in keeping with how he processed the abuse when he was a child. The pursuer found a way to deal with the abuse during childhood through adopting an outgoing demeanour and a degree of disengagement. He did not overly reflect on what had happened to him. When it came to describing his feelings many years later, it is not surprising that he could not instantly access how he felt as a young boy. Ultimately, he did describe to both Dr Scott and Dr Reynolds feelings and responses from his time at school which enabled them to conclude that he had suffered from PTSD for a period of time, perhaps around 2 years. I accept that his descriptions to Dr Scott and Dr Reynolds were accurate. While his description of such matters to Professor Mezey were of less significant symptoms which she considered fell below the PTSD threshold, I ascribe that to his reticence in speaking about his emotions. In my view, the large number of factual errors in Professor Mezey's report suggests that, for whatever reason, there were problems in communication between them.

[72] I find that the pursuer did develop symptoms which met the PTSD diagnosis at the time of the abuse. However, the acute symptoms diminished within a year or so of the abuse ending. I am satisfied that by the time he left Fettes in the mid-1980's, he was largely symptom free. Such contemporaneous records that exist from the school and his GP, suggest that the pursuer came across as a confident and affable individual by his mid to late teens. It is to the pursuer's credit that he appears to have found a way to distance himself from the abuse. That has allowed him to have a happy family life and uninterrupted career in various jobs. He has had occasional recurrences of symptoms linked to the abuse, more

so in the lead up to the proof in this case. However, his adult life has largely been untroubled with psychological effects from the abuse.

[73] In valuing solatium, it is important to acknowledge the frequency of these sexual assaults over a lengthy period when he was a young boy. The abuse was by a trusted teacher and in a semi-public setting. Some of the expert witnesses spoke of the fact that the abuse was not penetrative which is correct, but largely irrelevant. The abuse involved skin-to-skin contact with his genitalia on a weekly basis. Each incident of abuse would have been preceded by a sense of dread of being called to the front of the class. It would have been followed by an undeserved but real feeling of shame. The very fact that the pursuer felt unable to confide in anyone reflects how disorientating the abuse must have been. Although the acute symptoms disappeared after a year or so, I accept that the pursuer has continued to experience intermittent psychological effects in later life through to the present day. I assess solatium at £40,000 of which I would allocate £35,000 to the past and £5,000 to the future. In selecting that figure, I have drawn support from *D* v *The Bishops Conference for Scotland* [2022] CSOH 46 (especially the alternative assessment at para [86]); *A & B* v *C* [2018] CSOH 65 (the award for victim B at para [45]); *LXA* v *Wilcox* 2018 Kemp & Kemp Q1-002.1 (the first claimant); and the Judicial Studies Guideline for sexual abuse 4(C)(c)(moderate).

[74] Interest falls to be calculated on the past element of solatium in accordance with *JM* v *Fife Council* 2008 CSIH 63. It is necessary to sub-divide the past element of £35,000 between the award for the period of the abuse and the award for the subsequent emotional reaction. I allocate £27,500 to the period of the abuse which ended in December 1979 and £7,500 for the subsequent emotional reaction. As in *JM* v *Fife Council*, I have taken the commencement date for the two components of the interest calculations as the end of the abuse. The

accumulated interest is thus calculated as (£27,500 x 4% x 46.083 years) + (£7,500 x 2% x 46.083 years) = £57,604.

[75] The pursuer's approach to past and future loss of income differs from many other reported actions by victims of sexual abuse. Frequently, a victim of sexual abuse in childhood is unable to develop any pattern of paid employment, (*AB* v *The English Province of the Congregation of Christian Brothers* [2022] SC Edin 7). Alternatively, the victim may initially build an employment history before the longer-term effects of the abuse prevent them from continuing in that role (*D* v *The Bishop's Conference of Scotland* [2022] CSOH 46). Occasionally, the victim may be able to work but recurrent psychological issues result in regular absences from that work (*A & B* v *C* 2018 CSOH 65). The pursuer's position does not fit any of these forms. He has never been prevented from working due to any psychological illnesses. He has had no time off work attributed to the effect of abuse. Rather, his claim for patrimonial loss is based solely on the effect that the abuse is said to have had on his academic qualifications and subsequent occupational attainment.

[76] In his evidence, the pursuer spoke of an interest in working in banking or finance (fund management) or law. These specific options were not modelled by Keith Carter and it is not necessary to deal with them.

[77] It is for the pursuer to prove, on the balance of probabilities, that but for the abuse he would have obtained a business management degree and had a career in business at manager or director level. That route can be broken down into stages namely (i) acquiring the necessary examination grades to be accepted onto a university degree course in business management, (ii) successful completion of that course, and (iii) the desire and commitment to pursue a long-term career along the lines of that modelled by Keith Carter.

[78] The court did not hear any evidence as to the entrance requirements for business management courses at UK universities in the mid-1980's. No doubt, the entrance requirements varied considerably depending on the status of the institution and content of the course offered. It would have been helpful to have had a broad indication of the number and grade of Highers or A levels which the pursuer would have required for admission. Nor was the court furnished with statistical evidence relating to the outcomes for undergraduates on business management courses in the mid to late 1980's in terms of dropout rates, classes of degree awarded, and occupational outcomes. These gaps in the evidence are not fatal to the pursuer's case, but the absence of such evidence does make the court's task more difficult.

[79] It is not enough for the court to be satisfied that the pursuer's exam performance was affected to some extent by the earlier sexual abuse. I accept that his education in the junior school would have been significantly affected by the abuse he was experiencing at that time. I also accept that there would be an ongoing effect on his educational performance in the senior school albeit diminishing over time. Critically, the pursuer must prove that, if he had not suffered this abuse, he had the academic ability and drive to gain the necessary qualifications to get into a business management degree course and then successfully complete that course. Although I have not been provided with information of entry requirements for such courses, it seems to me to be a reasonable assumption that he would have required Higher passes in a minimum of four academic subjects. He may have required a Maths Higher pass for some universities, and some universities might have discounted passes in subjects such as Art & Design. On any view, his actual exam performance was very far below what was likely to be required.

[80] By the time that the pursuer was sitting his Highers in the mid-1980's, he was no longer attending Fettes College. He turned eighteen a few months after sitting his Highers so would have been older than most exam candidates. The abuse had ceased about five years before embarking on his Higher courses and he was no longer experiencing symptoms sufficient for a diagnosis of PTSD. An indication of how the pursuer appeared before he commenced his Higher courses can be found in a reference from his GP which stated "he appears to get on well with all age groups and has a cheerful and extrovert attitude to life in general." (6/5 of process at joint bundle at p171)

[81] The pursuer spoke of missing out on the building blocks of his education. I accept that to some extent but building blocks can be put in place later. Once the chronic effects of the abuse were reducing, there was an opportunity for the pursuer to catch up in relation to the gaps in his education. He did that as he achieved some exam qualifications. The gap however between his actual exam performance and what he likely required to be accepted onto a business management course remains stark.

[82] Much was made of the successes enjoyed by some of the pursuer's contemporaries at Fettes College, and that the pursuer's exam results were surprisingly poor for such a prestigious school. In truth, neither of these advocacy points takes the pursuer's case very far in terms of causation. The success of his contemporaries will be down, to a large extent, to their own intelligence, skills and personalities, as well as the opportunities afforded to them after leaving Fettes. Strictly speaking, we do not know how his exam results compared with others at Fettes College in the mid-80s as that comparison was not before the court. The document prepared by Mr Worlledge of school leavers in the mid-1980's lacked detail on over 50% of former pupils, and was not relied upon by either party in final submissions to any significant extent.

[83] The pursuer's siblings are obvious comparators. Of his three siblings, only his younger sister completed an undergraduate degree course. His brother was asked to leave university after the first year of an undergraduate degree and did not return to his studies. Although there was a suggestion in the pursuer's evidence that his brother was also abused by JX, there is no admission from the defenders in relation to that suggestion and I heard no evidence from his brother to that effect. His brother is the closest comparator. Despite having marginally better exam results than the pursuer, he did not obtain a degree. His older sister is variously described in the documents as working as a teacher or a nursery nurse. She does not appear to have a university degree. His youngest sister is the only sibling who has successfully completed further education to degree level. The academic progress of his three siblings does not present a compelling picture of sustained success at university level from which I can draw any inference in favour of the pursuer.

[84] The pursuer did not, as far as I am aware, take any steps to obtain appropriate qualifications for admission to a business management course later in life. He is not in the same position as the claimant in *CAX* v *PQR* 2023 EWHC 3198 who left school with limited examination results as a consequence of long term sexual abuse by a close relative. The claimant in *CAX* did not have the necessary exam qualifications to fulfil her ambition to be a social worker. However, over a number of years while working as a carer, she obtained NVQ level qualifications and was ultimately accepted onto a social work degree course during the hearing of her damages claim (see 2023 EWHC 3198 at paras [17] - [19]). In the present case, it was submitted on behalf of the pursuer that it was reasonable that he did not seek to study as a mature student because he had a young family to support. However, the principal value of the evidence seen in *CAX* v *PQR* is that it allowed the court to be satisfied

that the claimant's stated ambition was achievable albeit delayed by the problems experienced during her schooling.

[85] Both the pursuer and his wife spoke in evidence of the positive decision made in 2003 that the pursuer would leave financial services to pursue property development on a full-time basis. This was a decision taken, in part, for reasons of job satisfaction and family lifestyle. They also hoped that it would be a highly lucrative venture. Importantly, there was no bar in 2003 to the pursuer following a business management path either through further developing his financial services business, or through seeking entry to a business management course at university as a mature student. His decision to opt for an interesting and slightly riskier career in property development has been an exercise of his free choice and not one forced on him by the consequences of the abuse which he suffered, (*Ronan* v *Sainsbury's Supermarkets Ltd* at paras [24] - [25]).

[86] I consider that the pursuer was always likely to have been drawn to working in his own business rather than in a corporate environment. His father, who he greatly admired, had his own business. Aspects of the pursuer's personality suggest a better fit with being his own boss rather than working for others. He has always been viewed as personable and self-confident, but there was evidence that he "butted heads" when younger with immediate superiors. He preferred the flexibility which his own business could give him in terms of working hours. If the pursuer truly had a lifelong yearning to pursue a business management degree followed by a corporate career, I consider that he would have taken active steps much earlier in his relationship with his wife to pursue that. His wife appears to have been the catalyst for the pursuer to focus on his career path. Having pursued both financial services work and property development work from 1998 - 2003, I consider that the

pursuer could have juggled university study with some degree of property development work when his children were young if that had been his long term ambition.

[87] For the reasons set out at paras [78] - [84], I do not consider that the pursuer has proved, on the balance of probabilities, that if his schooling had not been disrupted, he would have successfully negotiated the steps to gain a business management degree. I also consider that, for the reasons set out at paras [85] - [86], he also exercised a free choice in 2003 to proceed with his present career as opposed to embarking on a career which followed the trajectory now advanced. The pursuer's claim depends on proving a causal link between the abuse which he suffered and his lack of a university degree on which to build a corporate career. His claim for patrimonial loss is predicated on proof of that link. In the absence of such proof, he is not entitled to damages for past or future loss of income or pension loss.

[88] There is a further difficulty with the pursuer's approach to patrimonial loss. Model 1 of the table produced by Keith Carter assumes that the individual has not obtained a graduate degree. When a comparison is made between the yearly salary figures for each scenario in model 1 and model 2, it can be seen that they are identical. These tables suggest that there is no salary premium for the graduate employee. *Prima facie*, these tables are destructive of the pursuer's argument that lack of access to a university education has placed him at a financial disadvantage. I accept that it would be wrong to read too much into these tables. They were created to show a possible salary progression for the pursuer. They do not purport to list average salaries earned by non-graduate and graduates in comparable jobs. However, it can be said that these is no discussion within the report or in Mr Carter's evidence of statistical evidence demonstrating that a graduate premium does exist in this sector. Nor was there any evidence that non-graduates face longer job searches

than graduates, or that particular types of jobs within the sector are only available to graduates. It might be thought that there must be some financial advantage to being a graduate in the business sector, but such evidence was not before the court. In short, Keith Carter's report does not provide a basis for concluding that the pursuer is prevented from working in business management without a degree, or that his salary or job prospects in that sector would be improved by holding a relevant degree.

[89] I have considered whether the pursuer would be entitled to a modest loss of employability award in relation to the immediate years after leaving school on the basis that his exam results were probably marginally poorer as a result of the abuse. For a period of about 8 years, he worked in various hospitality and manual jobs in the UK and abroad. The evidence is that he had no difficulty obtaining work and he did not have periods of absence due to the ongoing effects of the abuse. These jobs included some junior managerial positions. He was not working simply at the lowest level in hospitality. It is difficult to see that his earnings in those immediate years after leaving school were affected to any extent by the fact that his exam results were slightly poorer than they might have been if he had not been abused by JX. In any event, this was not the focus of the evidence and submissions before me.

[90] Having concluded that the pursuer has not proved that he suffered any patrimonial loss, it is not strictly necessary to say much more about the evidence. However, certain broad areas were discussed in submissions and it is appropriate that I should set out my conclusions.

[91] The defenders submitted that, independently of the causation issue, the court could not calculate patrimonial loss because there was so much uncertainty as to the actual earnings which the pursuer had enjoyed through his property development business. The

defenders challenged the pursuer's credibility and reliability on many aspects of his business dealings. These can be summarised as (i) the non-disclosure of certain development properties in the list which he produced for the litigation, (ii) lack of vouching for the cost of renovations from which the partnership profits were calculated for tax purposes, (iii) his denial that he was involved in the acquisition of BD1 contrary to the terms of his email of 2 April 2000, (iv) the absence of profits from his PPR's in his tax returns, (v) his omission of Airbnb profits from his tax returns, and (vi) his failure to disclose income from the sale of DevCo until recently.

[92] I accept some but not all of the defenders' criticisms. In relation to the issues which do concern me, these would not have prevented me from making some award for past and future patrimonial loss. Rather, my concerns about the reliability of some of the pursuer's evidence would have been an important factor in concluding that the only appropriate methodology for assessing patrimonial loss was through a lump sum award, (*F* v *Chalmers* [2025] CSOH 23, per Lord Clark at paras [111] and [122]).

[93] There is no merit in the defenders' criticism of omissions from the list of development properties produced by the pursuer. As the pursuer pointed out, all the development properties are disclosed in other documents. Leaving aside the issue of BD1 which I shall return to, the defenders did not point to any development property which had not been disclosed to the accountants for the preparation of tax returns.

[94] The defenders also submitted that the court should be concerned about the lack of vouching for renovation costs on the various development projects undertaken by the partnership. In effect, the suggestion was that the profitability of the partnership as disclosed for tax purposes was based on the figures provided by the purser to his tax accountant. The accountant was not provided with vouching for the costs of renovations.

If the costs of renovations were overstated, the effect would be a reduced level of profitability for tax purposes. Correspondingly, the claim for loss of past and future income would be greater if the profits had been historically understated. The problem with this submission is that there was no evidence before the court that the pursuer did overstate the renovation cost figures to his accountant. The pursuer was not challenged in his evidence about the renovation costs utilised to assess past profits. The defenders could have, if desired, sought to seek vouching for past renovation costs in order to retrospectively audit selected developments but they did not so do. Except where there is evidence that a particular income receipt has been incorrectly omitted from the pursuer's income calculations, I would have proceeded on the basis that the income tax returns provide a reasonable starting point for the assessment of his income.

[95] I found the pursuer's explanation for his failure to include the Airbnb income in his tax returns unconvincing. His position in evidence was that it was agreed with his accountant that there was no need to include his share of that income as it would not take his income for the year above the personal allowance threshold. There was no documentation confirming such a discussion. His only email to the accountant about that year's income makes no mention of Airbnb receipts, (email dated 17 October 2022 at joint bundle 1127). I do not believe that a tax professional would advise a client not to disclose a taxable receipt on the basis that disclosure would not affect the tax payable. In any event, although it was not expressly put to him, his explanation does not sit well with the documentation produced. The Airbnb earnings reports for 2021 and 2022 (7/79-80 of process) indicate that a total income of about £14,789 was received from lettings in the period August 2021 – March 2022 of which the pursuer would be entitled to one half, i.e. £7,394. His personal tax return for 2021/22 (6/12 of process at joint bundle pp550 - 551)

included taxable income of £11,935 comprising self-employed Covid grants and a small dividend. This total income fell just below the personal allowance of £12,570. *Prima facie*, the inclusion of the Airbnb received in that tax year would have taken the pursuer above the threshold so that income tax would be due. Although the possibility of the Airbnb income qualifying under the "rent a room" scheme was raised by John McGowan, this was not suggested by the pursuer in his explanation for the omission from the tax return, and Mr McGowan stressed that he was not suggesting that the Airbnb income would satisfy the requirements for such a scheme. It would, in any event, still need to be entered onto the tax return. I find that the pursuer took a decision not to disclose the Airbnb income to his accountant and hence to HMRC.

[96] The pursuer's evidence regarding BD1 is summarised at paras [22] - [24] above. On the face of those emails, the partnership had acquired, developed and sold BD1 either in its own name or using a nominee. It is perfectly understandable why the defenders would believe that he has failed to declare the profits on that transaction. However, I accept the pursuer's evidence that the partnership has never acquired BD1 directly or indirectly. His evidence to that effect is supported by the defenders' production of the Land Register certificate for BD1 which shows that the property has been owned by another company since 2018. No evidence was led to link the pursuer or his wife with that company. However, I did not find his explanation for the terms of these emails to be at all credible. He claimed that the email of the 2 April 2020 was sent while he was suffering from the effects of Covid and he was in a state of confusion. This email is well-structured and detailed. It bears to follow on from a recent discussion with the accountant. The opening paragraph refers to the effect of Covid on the accountant's own workload but there is no suggestion in the email that the pursuer is also suffering from Covid at the time. The email does not bear

to be one produced in a confused or delirious state. His further explanation for his "white lie" in the following email in July 2000 makes even less sense. If he was embarrassed about misleading his accountant through the terms of an email sent when he was very unwell, it would have been very easy to explain that to the accountant. It seems clear to me that the pursuer wrote these emails giving deliberately false information to his tax accountant because he perceived there to be a benefit to him at that time. It is not necessary for me to make a finding as to what motivated his actions although there is a hint in the whole email exchange that the pursuer thought that it would assist in a re-mortgage application if the partnership could demonstrate a higher profitability in tax year 2019/20. For the purposes of this case, I find that this is an instance where the pursuer deliberately misled his tax accountants about a business development, and he has subsequently given an inaccurate account of the circumstances to the court.

[97] I also have a concern about the pursuer's evidence in relation to DevCo. At paragraph 75 of an affidavit dated 6 October 2025, the pursuer swore that DevCo was set up in 2006 to start trading and that it traded until 2007. He swore that DevCo made a loss and he derived no income from it. In a subsequent affidavit dated 10 October 2025, he stated that he was a director of DevCo from 1999 - 2010. It was sold in 2010 from which he and his wife obtained a return of about £200,000. I find it surprising that the pursuer would sign the first affidavit which he knew would be relied upon in court which contained errors as to the formation date of the company and the financial return achieved from that company. The pursuer would have known in October 2025 that the defenders were closely investigating his business income, and it is unsatisfactory that the sale proceeds from 2010 were only disclosed at such a late stage and only after a misleading affidavit had been produced.

[98] The parties adopted very different positions in relation to the income or gains achieved from the development and onward sale of PPR's. On behalf of the pursuer, it was said that any income or gain derived from selling or letting the principal residence is irrelevant to the assessment of patrimonial loss. The pursuer has not moved house on an excessive number of occasions from which to infer this was a trading pattern. The pursuer is in the same position as any other householder. If he renovates and re-sells his primary residence, he is entitled to retain the return on that. The defenders argued that the repetitive nature of the pursuer's actions demonstrated that this was a way in which he and his wife actively sought to generate income. They were different from normal householders for whom a financial gain realised on a house sale is incidental to the fact of moving. In effect, the defenders say that this was a key part of the business strategy adopted by the pursuer and his wife.

[99] As a preliminary observation, nothing which follows seeks to offer any view on the income tax or CGT status of any profits or gains made by the pursuer through the sale of his principal residence. That is not something which this court can determine or needs to determine. This court is concerned with the distinct issue of whether all, or any part of, the income or gain made from the sale of any PPR should be taken into account when assessing a patrimonial loss. There is limited judicial authority on this. In *D* v *The Bishop's Conference of Scotland* 2022 CSOH 46 at paras [96] - [98], Lord Clark concluded that the pursuer had to give some credit for gains achieved on the sale of his house and any future house sales, where such gains would not have arisen if there had been no abuse. The circumstances in *D* v *The Bishop's Conference of Scotland* were special in that the pursuer would never have acquired a private residence in an uninjured state as he would have continued in the priesthood. In *Hanks* v *Ministry of Defence* 2007 EWHC 966 at paras [56] and [58-59], Royce J

concluded that the claimant who had taken up property development after being invalided out of the Royal Navy should give some credit for the profit generated on the sale of his private residence where he would not have been able to spend such time and effort renovating it if he had remained in the Royal Navy. In my view, there will be occasions where some account should be taken of a gain made on the sale of a PPR if the change in circumstances brought about by the accident has enabled the claimant to achieve an enhanced profit from the development of their PPR.

[100] The next question is whether the circumstances in the present case are such that the pursuer should give credit for the gain on PPR1 or the anticipated gain on PPR2. The state of the evidence in relation to the PPRs was somewhat limited. There is some evidence that the pursuer and his wife would prioritise the renovation and sale of their primary residence with a consequent reduction in other developments. Thus, PPR1 was acquired in February 2015, renovated and then marketed for sale in 2019. The pursuer and his wife did not complete any property transactions in 2015 and only purchased/sold one property in 2016. In relation to PPR2, the pursuer's email of 31 December 2019 (quoted at para [20] above) advises the accountant that there will be no income for tax year 2019/2020 as they have been renovating their new main residence since November 2018. The pursuer's list of business developments and other documentation shows that after the sale of their only outstanding development property on 1 March 2019, the partnership did not acquire another development property until November 2021. While the onset of Covid in spring 2020 will have been responsible for the overall length of that delay, the absence of any development property on their books from 1 March 2019 to the start of the Covid pandemic in spring 2020, is consistent with the indication given to the accountant that their priority was renovating their main residence.

[101] The renovation works carried out on both PPR1 and PPR2 were extensive including significant structural works to the properties and gardens which resulted in both properties more than doubling in market value. The impression which I have formed from the evidence is that, at certain times of their business cycle, the pursuer and his wife did concentrate their efforts on the development of their high value private residences for onward sale. Had the pursuer been engaged full time as a business manager or director as envisaged by Keith Carter, he would not have been able to expend the same degree of time and effort in renovating his primary residences. It is unlikely that he could have achieved the same level of income or gain from the sale of PPR1 or PPR2 if he had been working full time in business management. Or, to put the matter another way, the partnership has chosen to step away from its normal development projects for extensive periods of time in order to focus on renovating PPR1 and PPR2 and the reduction in business income for those periods should not be laid at the door of the defenders.

[102] Had I been assessing damages for patrimonial loss, I would have made some allowance for the potentially significant gains achieved by the pursuer from the development and re-sale of PPR1 and PPR2. It is difficult to place a precise figure on that allowance as the pursuer and his wife were not asked about the costs of renovations for these properties. It would also be fair to allow the pursuer to receive some income or gain from PPR1 and PPR2 without that element affecting the patrimonial loss calculations to reflect what he could have expected if his primary job had been as a business manager.

[103] If I had been satisfied that the pursuer would have obtained a business management degree and entered that sector of work, I would have assessed past and future loss by way of a *Blamire* award. I have explained in paras [95] - [97] that there are aspects of the pursuer's evidence which indicate that he has not been candid with his accountant and/or

the court about certain elements going towards his income. I have also concluded at paras [99] - [102] that the pursuer and his wife have sought, perfectly legitimately, to derive significant income through the development of PPR1 and PPR2, and that some account needs to be taken of that source of income in working out the patrimonial loss. There are other uncertainties in the evidence which, to my mind, indicate that a *Blamire* approach is the only appropriate one. Two of these have been touched on earlier in the opinion. First of all, there is no specific evidence of a graduate premium in the business management sector so, on one view, the difference between Keith Carter's figures and the pursuer's actual earnings is not due to his lack of an appropriate qualification but is simply a reflection of how the partnership's business ventures have worked out. In some years, his earnings have been on a par with the Keith Carter figures which supports the view that there is little reduced earning capacity *per se*. In the years where there is a substantial difference between the modelled salary and his actual earnings, that may be attributed to the lack of properties being developed or that market conditions have reduced the level of profit. The pursuer would be entitled to compensation for the loss of earning capacity brought about by the effect of the abuse, but the defenders are not liable to underwrite the profitability of his business in poor trading years. In the second place, even if the pursuer had obtained a business degree and embarked on the career modelled by Keith Carter, there is a real chance that he would have chosen, at some stage, to move to a self-employed occupation. Overall, on the evidence led, I am unable to conclude that the lack of a business management degree placed the pursuer at a particularly significant disadvantage in relation to general business management roles. Had I been making a *Blamire* award, it would have been at a level considerably lower than sought by the pursuer in submissions.

Disposal

[104] I shall grant decree in terms of the first conclusion of the Record for payment by the defenders to the pursuer of the sum of £97,604 sterling with interest thereon at 8% a year from today's date until payment. I was not addressed by parties on expenses so I shall reserve all questions of expenses meantime.