OUTER HOUSE, COURT OF SESSION

[2022] CSOH 46

PD262/20

OPINION OF LORD CLARK

In the cause

"D"

Pursuer

against

THE BISHOP'S CONFERENCE OF SCOTLAND

Defender

Pursuer: Mackay QC, Lloyd; DAC Beachcroft Scotland LLP (agents for Dallas McMillan, Glasgow)
Defender: Dean of Faculty, Masters; Clyde & Co (Scotland) LLP

30 June 2022

Introduction

[1] In the 1970s, when the pursuer was a teenager, he attended a residential school in Scotland. The pupils at the school were boys who were aiming to become priests in the Catholic Church. The pursuer was sexually abused at the school, by a priest who was his Spiritual Director. After further education and training, the pursuer became a priest. He worked as a priest for a lengthy period, but eventually left the post. He now claims damages for loss said to have been caused by the abuse, including having to leave the post. The summons seeks payment of £2,250,000, plus interest. The defenders are the trustees of the Catholic National Endowment Trust, known as The Bishop's Conference of Scotland. The

defenders admit that the sexual abuse occurred and accept liability for any loss, injury or damage that was caused by the abuse. The key issues in dispute between the parties are: (i) causation (whether the pursuer's departure from the priesthood was caused by the abuse); and (ii) if so, the quantification of any resulting loss. The case called for a proof before answer, over eight days, conducted remotely using WebEx.

[2] At an early stage in this action a motion was made on behalf of the pursuer for his personal details to be anonymised. The court granted that motion, to protect the pursuer's privacy and dignity. The order withholds from the public the name and the designation, past and present, of the pursuer and any other particulars or details which could lead to the pursuer's identification. As a consequence of this order, in this Opinion factual information about the pursuer, his background and his career is, where necessary, expressed in general and restricted terms. In this published version, references to particular years when certain events occurred have required to be redacted. I have sought to leave out any details that could result in the pursuer being identified, but also to give sufficient information to allow the case to be properly understood.

Background

[3] As a teenager, the pursuer was a seminarian at a residential school, which I shall refer to as "the College". The defenders maintained and operated that college and others for the benefit of students of the Roman Catholic priesthood. While at the College, between the ages of 14 and 16 the pursuer was subjected to sexual abuse and assaults by Father X, the pursuer's Spiritual Director at the college. The nature of the abuse, admitted by the defenders, is narrated in the pleadings as follows:

> "The pursuer slept in a dormitory. Father [X] would come to the pursuer's bed, during the night. He fondled the pursuer's genitalia and masturbated him. Father [X]would take the pursuer's hand and place it on his ([X]'s) own genitalia. The abuse took place two to three times per month, when the pursuer was age[d] between 14 and 16. Father [X] was often under the influence of alcohol. The pursuer adopted a strategy of trying to divert him from abusing him. He would get up and walk with Father [X] around the grounds of the College, while he sobered up. The pursuer would have to hold hands with Father [X] as they did so."

[4] After leaving the College at the age of 18, the pursuer attended a seminary in Rome. In due course, he was ordained as a Roman Catholic priest for a diocese in Scotland. The College closed some years after the pursuer left. In about July 1996, Father X was convicted and sentenced in respect of offences unrelated to the pursuer. The pursuer became the priest for a particular parish, moved to other parishes, and was given additional roles within the Catholic Church, in relation to matters such as religious education. He continued to work as a parish priest until [redacted], when he was granted leave of absence in order that he might receive psychotherapy, for which the diocese paid.

[5] From about [redacted], the pursuer began to work in a self-employed capacity in health matters. In [redacted], the pursuer applied to be "laicised" (the formal procedure required for those who wish to leave the priesthood). This procedure involves an application to the Pope. In [redacted], in his letter to the Pope, among other things the pursuer said:

> "Having served as a priest since [redacted], I have found it increasingly difficult to exercise my priestly ministry due to the effects of a period of psychological and sexual abuse to which I was subjected as a teen-age seminarian at the national minor seminary of {the College]."

The pursuer's application to be laicised was granted in early [redacted], at which point the pursuer ceased to be a Roman Catholic priest. He continues to work as a self-employed person.

[6] As a parish priest, the pursuer received various forms of income. Part of the income was a "stipend", in effect a small salary from the Church. Another part was "mass stipends" (or "mass offerings") which are paid to a priest in exchange for a mass being dedicated to, or offered in respect of, an individual (usually a person who is sick or who has died). The mass stipends or offerings are restricted to one per day and the amount paid is not fixed. The final part was "stole fees", which are offerings given to the priest as a token of thanks for celebrating funerals, baptisms and weddings.

[7] In addition to the income, as a parish priest the pursuer also received "benefits in kind". These included the use furnished accommodation, certain car costs, housekeeping (including all food and drink, and other household bills, such as payment of a TV licence and the services of a housekeeper), a landline telephone, payment of utility bills, payment of council tax and payment of household insurances. After leaving the priesthood, the pursuer earned income from his self-employment. At the date of the proof his net income was £32,431 per annum.

Evidence

Witnesses for the pursuer

The pursuer

[8] The pursuer began his evidence by explaining his personal details. He had a comfortable young life and his parents were very much involved in the Catholic Church. When he was at the College, Father X in effect adopted the role of a parent to him. The abuse, as noted above, took place on a regular basis. He explained attending at the seminary in Rome and becoming ordained as a priest. Despite the sexual abuse, he still chose to become a priest. He put his experience of the abuse to one side, locking it away. His

intention was to pursue the lifelong vocation of priesthood. He enjoyed the post thoroughly. His ambition was to serve until aged 75, wherever asked to serve. He spoke about the parishes he worked in, the posts he held and the various roles he performed. One of his posts involved him, in the early 1990s, being asked to stay in the same building as Father X who had been working in Rome but had returned. The pursuer encountered Father X at the building. The pursuer then met with Archbishop O'Brien and explained what had occurred at the College and that he could not reside in the same building. He went to live in another Church property. In due course, he began getting flashbacks of the abuse and knew the time would come when he would have to deal with the past. He did not want the fact that he been subjected to sexual abuse by Father X to become public. However, he had concerns about how the Catholic Church was dealing with past sexual abuse.

[9] In about May or June 1998, he began to experience what he described as panic attacks. These panic attacks then decreased because his workload became busier. If he immersed himself in work, the attacks "would not get into his head". The problems lessened for a couple of years or so. There then came a time when he got more flashbacks of the abuse and would wake up at 6.00am, "in dread of the day". In the bright morning of a beautiful day, he would be sitting in tears. The panic attacks came back on the increase and would last between five and twenty minutes. He would try to calm down his breathing and "get control back in his head". He would bang his head with his fists. He would get dizzy and throw water on his face. He would get "lost" on the timing of events, such as a funeral. In the early 2000s his father died. The spell of panic disorder occurred during 2001, 2002 and 2003. In 2003 he had discussed the abuse with two Bishops. He told other friends about it and also told family members what had happened. The panic disorder seemed to

lessen in 2004. He was in therapy by then, undergone to help him try to deal with the memories and thoughts of the abuse. He came to realise that being a priest and continuing with therapy was not enough to resolve his problems. The therapy lasted until [redacted]. It was roughly in the summer of [redacted] that he decided not to return as a priest and to seek laicisation. If he had not been sexually molested by Father X he would not have made that decision. As a result of the abuse, he had lost trust. It changed everything, including his perspective on life. There was no other reason for laicising. But for the sexual abuse he would still be a parish priest.

[10] He described the intangible benefits of being a parish priest, including being a member of "a large family" from which he was now having to separate. It had almost been like an international club. There was a sense of entitlement and a good relationship with parishioners. The response of the Catholic Church to his disclosure of the abuse made him feel rejected. He felt like an outsider, who let his colleagues down and was guilty. He had longed to be happy in his life as a priest forever but the Church had taken everything from him. He had no more to lose.

[11] The laicisation decision was something that evolved gradually. He felt that he was seen as "damaged goods". People would stand back from him. He realised he would never be accepted back in the same way into the priesthood. The defenders' pleaded position, that the difficulties experienced by the pursuer had not stemmed from abuse by Father X but rather from the pursuer's anger at his perception of the way the Church was dealing with Father X, was just not true. The role of the Church was to show mercy to Father X, to show him care and compassion. He would expect the same compassion. In reality he had no knowledge of how the Church was treating Father X. After the pursuer had sought

laicisation, he became engaged to a woman and in due course got married. The marriage had now ended.

[12] He explained the accommodation he had been provided with and the nature of the benefits in kind he had received as a priest. Reference was made to transport, car running costs, having a housekeeper, heating bills, electricity bills, phone bills, furnishings and replacements, IT equipment, food, drinks and shopping bills, CPD bills, books and publications. He explained his income as a priest, including the stipend, mass stipends, and stole fees. He had not understood at the time that the mass stipends and stole fees were subject to tax. He referred to the Church paying insurance, rates and council tax, pension premiums and that these were now paid by him personally. He explained his work as a self-employed person and the income received.

[13] In cross-examination, among other things reference was made to what the pursuer had told Professor Maden, the defenders' psychiatric expert. Professor Maden noted in his report that the pursuer had referred to being demoted and having unacceptable accommodation. While Professor Maden's report states that the pursuer had complained about overworking and resigned from one of his roles as a result, the pursuer said that was not accurate. Work was his "go to". He used work "to block the other stuff out". He was referred to a newspaper article written about him after laicisation when he had become engaged. The article was not accurate. The marriage was never consummated. The marriage broke down in [redacted] and they were divorced in [redacted] . He met another woman but became separated from her as well. Certain other aspects of what Professor Maden had recorded in his reports were incorrect. It was true that the pursuer was blanked by Church people. He was concerned about the way in which the Church confronts abuse by clergy. If the Church does not deal properly with safeguarding, the

Church will not recover. He accepted that he was critical of many individuals in the Church and that if the Church had acknowledged his abuse and dealt with the problem he would not be making the claim now.

[14] He was asked about why he told Dr Livingston that he became "sexually promiscuous" while still a priest. The pursuer said that there was kissing or dalliance with a female but the term "sexually promiscuous" over-emphasised the position. There were no sexual relationships. While he had said that he had lifelong sleep dysfunction, and the work caused him not to sleep, it was actually his state and not the work that had that result. It was correct that there is no mention in the GP records of panic attacks. However, the GP was a friend from school and his discussions with the pursuer were not at appointments. There was also no record of the pursuer receiving counselling. It was carried out by a private practice and the records may have been destroyed.

[15] The woman he married in [redacted] was someone he had first met in the early 1990s. He had maintained a relationship or friendship with her for some time. He knew that intimacy with the woman was incompatible with priesthood and that was why he used confession on a regular basis. It was wrong to say that he resigned as a priest as a result of falling in love with her. He was referred to Dr Livingston's most recent report which stated that he had said that he now lived a celibate life but had always engaged in sexual intercourse to please other people. He said that his experience of sexual intercourse was with his partner. That had only been in the last three years.

[16] He went on to explain life since laicisation. He accepted that his tax returns, when a priest, did not show his income apart from the stipend. His family gave him additional income because he was a priest. He was asked a number of questions about the benefits in kind. He accepted that in his self-employed role nobody controls him, he can work when he

wants, where he wants, and no-one tells him where to go. As a priest, he would have been forbidden to marry but could now do so. He was free to buy property and had done that twice. On the priest's stipend he would not have been able to get the mortgage he obtained and would never have bought the house which he had now sold. He had less expendable income as a priest than now. He accepted that he now had a different lifestyle.

[17] In re-examination the pursuer accepted that if a priest engages in contact and that goes as far as sexual intimacy, that means he will be disciplined but explained that "you go to confession and confess sins". The point made in the press clipping that he resigned from the parish three years after falling in love with the woman, was made up. It contained quite a few untruths. The benefits of being an ordinary person outside the Church did not outweigh the benefits of the vocation in Church. He had been happy to let the Church decide which parish he should work in. In relation to the attitude of the Church as to how it dealt with sexual abuse, he had attempted to disclose the abuse to Cardinal O'Brien but that had gone nowhere. His unhappiness was mixed. It was in part based on the Church's attitude and the treatment of him being unsatisfactory. In the absence of the sexual abuse he would not have had that unhappiness.

Dr Livingston

[18] The next witness for pursuer was Dr Martin Livingston, who had been a consultant psychiatrist and a senior lecturer in psychology. He is a Fellow of the Royal College of Psychiatrists. He retired from active practice in June or July 2020. He had prepared four reports about the pursuer and adopted them as part of his evidence. In his final report he set out his opinion about the profound and adverse impact the sexual abuse had on the pursuer's mental health. It shaped the pursuer's personality, coloured his life, and affected

his functioning. It had caused him to lose trust. Dr Livingston had interviewed the pursuer and the pursuer's brother. The pursuer had explained his psychological and mental health and the reasons for his desire to leave the priesthood. The pursuer had said that while he was a still a priest he was "sexually promiscuous". He also told Dr Livingston that he felt compelled to please women. He gave confessions on his behaviour. Between the ages of 40 and 43 the pursuer developed panic attacks. Dr Livingston diagnosed this under the classifications in the textbook DSM-V as panic disorder.

[19] An important barrier to the pursuer opening up more generally was removed when his father passed away. He did not want the story about his abuse put out and seen by his parents as "it would've broken them". Father X had been a visitor to their house and came for dinner. The pursuer's brother told Dr Livingston about a noticeable change in the pursuer's behaviour. When the barriers to more public or open disclosure went, that was an issue for him. For people in the pursuer's circumstances, Dr Livingston explained that working hard and blocking out the abuse was quite common. The pursuer lamented the fact that there had been no measure of support and no supportive action regarding his predicament from the Church. He had made a great effort to block out the abuse and it was very hard for him to talk about it. He had attempted to overwork to block out difficult thoughts. Dr Livingston had seen a letter to the pursuer from the Bishop in the pursuer's former diocese, written in late 2020. Dr Livingston was of the view that not remaining in the priesthood did seem to be an inevitable outcome of such a shocking experience, as the Bishop had said. Dr Livingston also agreed that causation is usually multi-factorial.

[20] In cross-examination Dr Livingston accepted that it was not easy to see what difference abuse that ended in the 1970s made when examining a person more than forty years later. Reasonable professionals may reasonably disagree. Confirmation bias (that is, a

focus on adverse events and attributing anything disagreeable to them) was a recognised phenomenon. Contemporaneous records would commonly be important and there were no medical records demonstrating psychological problems. Nor were there any counselling records. The panic disorder occurred more than twenty years after the abuse stopped. One would look for a trigger for that delay. It was put to him that revealing the abuse could not have been the trigger because the pursuer had told people in the early 1990s.

Dr Livingston's position was that the earlier disclosures were private. By 2001 the pursuer's father had died and he felt he could now deal with what had happened publicly. The trigger was not when the pursuer re-encountered Father X, because that was in the early 1990s. It was fair to suggest that a major concern for the pursuer was the way in which the Church addresses abuse of him and of others. That was as much as a factor as the abuse itself. Dr Livingston had not been told that the pursuer had been in a romantic relationship going back to the 1990s. When the pursuer mentioned sexual promiscuity to Dr Livingston it was not described as occasional kissing and caressing. The reference to the pursuer feeling compelled to please women was made by the pursuer and taken by Dr Livingston to refer to sexual intercourse with more than one person.

[21] The intention of the pursuer to seek laicisation did not occur in 2003 and could have played no part in the abatement at that time of the panic disorder. There were things he had told Dr Livingston but not Professor Maden. The panic disorder in 2000-2003 was not the trigger and it formed no part in his decision to laicise. There was no extant psychological disorder in [redacted]. The pursuer's decision to become laicised was hugely determined by his experience and how the Church dealt with that; having destroyed his faith in the institution of the Church he could not continue. Dr Livingston disagreed with Professor Maden's views, which were that the panic disorder and decision to laicise were

not caused by the abuse. In re-examination, Dr Livingston accepted that for unexpected panic attacks there might be no trigger at all. They can arise quite spontaneously for no apparent reason. The common situation is that they start with a trigger and then develop without an obvious trigger.

Ms M

[22] The pursuer's sister, Ms M, then gave evidence. She explained her work background and her childhood. The pursuer had mentioned wishing to be priest to their mother when he was about 10 years old. After he had been ordained, he was a young, enthusiastic and dedicated priest and he took his role very seriously. They stayed in touch. She attended masses that he conducted and described him as very popular, and charismatic on the altar. He knew how to talk to people and make them smile. He was able to reach people. It was his calling and what he was meant to do.

[23] After their father died, the pursuer told the witness's husband about the sexual abuse. She then discussed it later on with him. He basically said he had struggled. While their father and mother had been alive, he had tried to deal with it and tried to address the issue with the Catholic Church but they had not been helpful or supportive and he was struggling to continue. It gave him severe difficulty as someone who was devoted to being a priest. She had seen changes in his behaviour. He had become much more tense and stressed and not relaxed. He decided that he needed to take a break from the parish and went to live on the west coast. She felt like he had gone into hibernation. He had become more reclusive. He was confused and not sure. She could see tension. He wanted to stay as a priest but the abuse was so tortious for him that it was a struggle. He did not want to stay within the Church and be anti-establishment because of what the Church had done and how

it had dealt with him. He had gone from being gregarious and witty to being isolated and withdrawn. He was a different person. There was a huge change and he had cut a very lonely figure. In [redacted] there was tension between wanting to be a priest and the abuse and how the Church was dealing with it. She thought he was still confused about whether to go back or not. In [redacted] he was a social hermit because of his abuse and the torture he was going through. As a result of what happened to him, she had lost her faith. She asked him why he would not go back and he said that the Church would not want him and he was "damaged goods".

[24] In cross-examination, Ms M said that she was not aware of the romantic relationship the pursuer had with a woman, going back to the early 1990s. When asked whether he was hugely disappointed with and angered by the attitude of the Church to child abuse in general, her reply was "no" and she could not remember him elaborating that matter. His anger was about the abuse to him as a child.

Dr B

[25] Evidence was then led from Dr B, who is a GP and hospital doctor. The pursuer was a patient of the GP practice and the witness also knew him personally, as they had been to school together and grown up in the same social circles. As a priest, the pursuer was very gregarious, outgoing, committed to and enjoying his job, which he was good at. He was popular and well-regarded by colleagues in the priesthood. As a patient, he was not seen very often, only as and when required. In the late 1990s the pursuer became slightly withdrawn. The witness then came to realise there had been quite a change but could not put down a date as to when it occurred. The pursuer was not coping and was stressed. He was offered a sick line but he declined because he had to deal with lots of things in the

parish. He was in a low mood, anxious and troubled. He told the witness about the sexual abuse. The witness linked the troubles for which he had offered a sick line entirely to that abuse. The history of what had happened was now causing the pursuer problems, being stressed and unwell. No record of this meeting was kept. The pursuer was not the person he had been, did not have the same joyousness and was more anxious. In cross-examination, the witness explained that he had been the pursuer's GP from the 1990s up to 2010 or 2011. He had no date for the consultation with the pursuer. There was no mention of the pursuer seeking any assistance and there was only one meeting at the surgery.

Ms Rolland

[26] The next witness for the pursuer was Ms Christine Rolland, a forensic accountant. Her evidence on loss is referred to in the summary of the parties' submissions later in this Opinion, and again in the section giving my decision and reasons. At this stage, it is dealt with in brief terms. She had prepared a report, with appendices, explaining the losses allegedly sustained by the pursuer as a result of leaving the priesthood. At the time of the proof, a revised single-page document was lodged. It contained a table of figures relating to the church income and benefits in kind which the pursuer had obtained as a priest. Her views were based on the assumption that from 2003 he sustained losses as a result of the sexual assaults admitted. She looked at the components of the income of a priest and the benefits in kind. She valued the benefits in kind on the basis of what the cash equivalent would be if the pursuer had to pay for them. It was generally on the basis of how the HMRC would value such benefits, albeit that some would not be taxable. This was an ordinary methodology. The revised table was prepared following receipt of further

information. She explained the changes made and the reasons for them. The total sum claimed for consequential loss was now £1,332,537.

[27] In cross-examination, the witness accepted that leaving aside benefits in kind, the pursuer now earns far more in income than he did as a priest. She accepted that if the evidence did not bear out the basis for her calculation on a specific matter the figure would have to change. The pursuer had told her that he kept no records of his taxable earnings. His full income was not included in any tax returns filed prior to laicisation. There was no mention in the pursuer's tax returns of benefits in kind, stole fees, offerings, or mass stipends. She accepted that there were tax guidelines for priests, issued by KPMG in March 1996, which sought to ensure that all priests fulfil their tax obligations. She was asked about the individual elements of her calculations. She had not made any allowance for financial activities that can now be undertaken by the pursuer, which he could not do as a priest. If his tax return as a priest showed £4,000 per annum as income he would not get a mortgage to buy the type of house he owned and had recently sold. His income in his job after leaving the priesthood would, she assumed, allow a mortgage. She accepted that a value could not be put, after leaving the priesthood, on him being in relations and getting married, what to do, what to wear and when not to work. If the value of any benefit in kind of having accommodation as a priest was stripped out that would make a material difference, both past and future. The same would apply to housekeeping.

Witnesses for the defenders

Father B

[28] The first defence witness was a priest, Father B, who had been in that post for almost 36 years. He was also the treasurer for a diocese and had familiarity with finances relating

to priests. He explained the various situations in which masses would be held. The job was not a nine to five regime; a priest did not keep office hours. A priest is on-call at all times, when not on holiday, for which six weeks of leave were given. He explained the stipend paid to priests. He also commented on other forms of income, including mass stipends and the normal receipt of an envelope with some gifted payment after a funeral, baptism or wedding. He explained the forms of accommodation in parishes. He had not amassed much savings in his long career as a priest. He did not own a property. Close friends who were not priests owned much more than he would be capable of owning. In cross-examination, he accepted that these people from different walks of life had to commonly pay for a mortgage, electricity, gas, food, phones and computers and the like. Leaving aside the mortgage, these things are paid for in his situation by the Catholic Church. A priest enjoys substantial benefits in kind. He explained the extent to which insurance was also covered.

Father T

[29] The defence then led evidence from another priest, Father T. He had served in a number of parishes, including one in which the pursuer had been a priest, although at a different time. He described the way of living of priests. He commented on the number of priests who could live in the same accommodation and that if the bishop asked that another priest could live there then, given the promise of obedience given by priests, there could be no objection without a very good reason. In relation to housekeeping, there had been changes in the last 15 years or so. In the past, priests would have had full-time housekeepers and that was not the case now in his diocese. His housekeeper comes one day a week for three hours. Gardening was quite often volunteered by parishioners. He

explained his position on car costs and telephone costs. Stole fees or mass stipends in a year could change vastly depending on the number of funerals, baptisms and weddings and the habit in the parish of what you would get. He spoke about his estimates of the sums he received for mass stipends (described as perhaps £3,500 a year) and stole fees (described as maybe £3,000 a year). In cross-examination, he explained that car running costs, in his diocese, were paid per mile for business travel. Other dioceses could have different policies.

Professor Maden

[30] Professor Anthony Maden was the next witness for the defence. He is an Emeritus Professor of Forensic Psychiatry at Imperial College in London and is retired. He is a Fellow of the Royal College of Psychiatrists and had qualified as a medical doctor in 1982. He had been an expert on personality disorder. About half of his medical work had been about adult consequences of childhood abuse. He had given expert reports in a number of cases. He adopted his reports in the present case as part of his evidence. There were difficulties in assessing the pursuer's condition because of the absence of medical or counselling records and the challenges of, at this point in time, trying to work out what was happening in the early 2000s. A person's memory is not entirely reliable over long periods and is to some extent a creative process where the mind tries to sort out gaps. "Confirmation bias" could occur. Looking back over a period of time one tends to focus on events consistent with the preferred explanation and not take account of, or forget, other information that may cast a different light and support a different explanation of how things transpired. The pursuer's decision to leave the priesthood was not primarily a psychiatric matter. The pursuer told him that a critical time was in the 1990s when he again encountered Father X. That led to

various conflicts with the employer and effectively a demotion and was a major turning point in his career.

[31] The witness felt that the decisions the pursuer made were not caused by mental health but resulted from him being within an organisation he disapproved of, in relation to how it dealt with sexual abuse, and that he could not be a public face of that organisation. This was all logical and rational but not really a matter for a psychiatrist. It was very important that mental health problems did not emerge at the time of the pursuer's encounter with Father X. At that time, the issues were the difficulties of working with someone who had abused him, difficulties with his employer and their reaction, and his views that his employer appeared to have favoured Father X rather than him and had demoted him. These were not psychiatric issues. He was referred to the pursuer's evidence of a romantic relationship going back to the 1990s and the witness said that came as a surprise because he had not been told that by the pursuer. This was a new fact and it was bound to have some relevance to the pursuer's thinking when struggling with whether to remain or leave. Psychiatric experts could not say much as to why people take decisions. The pursuer had the capacity to weigh-up matters. In the period between 2000 and 2003 the pursuer could have had panic disorder, that being a possible diagnosis, or it could be adjustment disorder.

[32] In cross-examination, Professor Maden accepted that in many cases what survivors of historic sexual abuse very often do is bury the traumatic experience for a long time. They might also engage in some activities which may help bury the past events, in some cases substance abuse and in others engaging in overworking to blot it out, although that was not what the pursuer had told him about his overworking. He accepted that he had not published any peer-reviewed articles regarding the effects on childhood sexual abuse survivors. While he had given reports for claimants, most of his evidence in court

appearances had been for defenders. There had been four complaints made to the GMC saying that his reports were deficient and that he was biased. However, the GMC found that he had done nothing wrong.

[33] When asked whether his general approach was to interview the survivor and then make a detailed examination of all documents to see if there was a conflict, he explained that he takes into account all the information and has an obligation to report discrepancies. It was correct that the pursuer did not have the opportunity to explain certain inconsistencies, but that was simply how things occurred. He was questioned about his repeated references in cases to "confirmation bias" and said that the important element of confirmation bias is what is not mentioned, the information we do not have.

[34] Professor Maden accepted that over the past decade there have been very many peer-reviewed papers published about the effects of historic sexual abuse and those effects can range from recognised psychiatric disorders through to complete changes in lifestyle. It could lead to a person changing his or her career. When drawing conclusions regarding causation he and Dr Livingston were not aware of the duration of the relationship with a woman. Confirmation bias was very relevant when considering psychiatric causation in particular. The evidence of people who observed the pursuer in the years 2000- [redacted] was important. Contemporaneous evidence might assist the court in relation to whether there was confirmation bias. It was a plausible scenario that the pursuer was beginning to experience panic attacks in 2000 because he did not know what to do about the abuse by Father X and was reluctant to disclose the matter. It was also a plausible scenario that someone abused would feel aggrieved and stressed. If there was evidence regarding a change in his personality that was not something the witness could dispute. Being more withdrawn and less sociable were effects that historic sexual abuse has had on people.

h

Mr McNaught

[35] The last witness for the defender was Mr David McNaught, a vocational consultant. Assessing income of a Roman Catholic priest was extremely difficult. It could change from parish to parish and diocese to diocese. In secular life the individual has complete control over where to live and work, and who he sees and meets. In cross-examination, the witness said that he had not been provided with the report of Ms Rolland or that of Ms White. What the witness took from the medical reports was that the pursuer had mental health problems as a result of stress. It could be described as burn-out. It was put to him that he used this reference to burn-out to construct a suggestion that in any event the pursuer may have retired from the priesthood for that reason. He said that out of his research, which went beyond the pursuer's evidence to him, belonging to the priesthood and its very intense lifestyle can be a source of stress. A stress-related illness is quite a common occurrence within the priesthood and priests were often sent out of parish to rest and recuperate. It was not strange that the pursuer suffered burn-out and that was a common occurrence for priests.

[36] The witness was not trying to construct a suggestion that the pursuer would have left the priesthood anyway but was saying he could have left it in any event for a number of reasons. His relationship with a woman was as much a facet as his feelings about his vocation and his mental health. The pursuer had said that he was in relationships (plural) while in the priesthood. Why the pursuer decided to leave the priesthood was a matter of fact for the court. The witness's skill as an employment consultant had nothing to do with that decision. He was simply trying to understand the reason for the pursuer changing his occupation. The pursuer did not list the number of factors that caused him to leave the

Church. The pursuer had talked about his breakdown of relationship with the Church, his loss of vocation and that he wanted to develop his career.

[37] When asked if he speculated about what the pursuer could now earn, Mr McNaught said that he was an employment expert looking at the market and applying market facts to an individual. He was not going out with his skills and seeking to advise the court about the mental health issues of a priest, but had looked at the occupation of a priest and factors that affect that occupation. Some priests just left the priesthood and did not laicise. The pursuer saw no dramatic difference between what he had been doing as priest and the work he is now doing. There was continuity of career. There was no evidence to show that what he is doing now is because he was abused. The witness could see no causal link. The witness was taken to his assessment of the pursuer's earnings and what was in his tax returns. The witness rejected the suggestion put to him that he was inflating the pursuer's future income in order to reduce the calculation of his loss and was acting as an advocate for those instructing him.

Assessment of witnesses

Factual witnesses

[38] The evidence of the pursuer was given in a genuine and honest manner and for the most part I have no issue with his testimony. In answering a number of the questions put to him he took an overly lengthy and verbose approach, but the core and relevant points from his evidence were credible, reliable and convincing. The only matters that raised any concerns related to his description of relationships or interactions with women in the course of being a priest. He described himself to Dr Livingston as "sexually promiscuous" and that he "had always engaged in sexual intercourse to please other people", but in his evidence in

court he stated that there was only one woman he had a relationship with when he was a priest and it had no significant sexual aspects, just occasional kissing and caressing. I found it odd that the pursuer used language with the clear meaning of more than one woman being involved and referring to sexual behaviour, including intercourse, when apparently intending to communicate a much more limited position. At the end of the day, however, this issue had no direct bearing on the quality of his evidence about the effects and consequences of the abuse, or his decision to laicise. I believed him on those key matters. On several occasions in the course of giving his evidence the pursuer became upset and turned away from the camera. This was fully understandable, but I have not regarded it as relevant in assessing his psychiatric condition.

[39] The pursuer's sister, Ms M, impressed me as an intelligent, articulate, careful and balanced individual, who gave her evidence in an open and honest manner, with clear integrity. Her occasionally lengthy answers resulted from her commitment to give a full and accurate response. The other factual witnesses, on either side, were also credible and reliable.

Expert witnesses

[40] Dr Livingston's evidence was relatively straightforward and clear. Professor Maden and Mr McNaught were similar in their approach. While the defenders' experts were each challenged by senior counsel for the pursuer as being, in effect, advocates for the defenders, in my view these were suitably qualified individuals who used their knowledge and experience to offer their genuine opinions on certain matters. The experts on psychiatry were each of the view that the assessment of causation was a factual matter, for the court to de1ermine. In relation to Ms Rolland, her forensic accounting evidence was generally quite

impressive, but, through no real fault on her part, significant issues about her calculations arose, including from the factual evidence given.

Objection

[41] On day five of the proof, prior to the defence leading expert evidence from Professor Maden and Mr McNaught, senior counsel for the pursuer made an objection. In summary, it was that in their reports these experts had speculated on reasons for the pursuer leaving the priesthood. This was said to be irrelevant, out with their expertise and unsupported by any averments on record. Reference was made to *Dow* v *AMEC Group Ltd* [2018] SC 247, (at [88]-[91]), for the proposition that the requirement of fair notice exists notwithstanding the fact that this case was under chapter 43 of the Rules of the Court of Session. The fact that the reports were lodged did not constitute fair notice.

[42] On behalf of the defender, the Dean of Faculty submitted that this case was very different from *Dow*, with which he had no quarrel. The point here was that the cause was not a psychiatric issue. At most there was a panic disorder between 2000 and 2003, the existence of which played no part in the pursuer's motivation to leave the priesthood. Professor Maden was effectively simply saying that it is not a matter for a psychiatrist at all, but rather for the court, based on all of the factual matters.

[43] I concluded that no ruling on admissibility was required at that point in the proceedings and that the evidence should be allowed subject to competency and relevancy, on which I would hear submissions at the end of the proof. In those submissions, the points made above were briefly developed.

[44] I broadly accept the pursuer's position. Causation is of course a very important feature in cases of personal injury. If the pursuer's alleged cause is disputed by the

defender, and another separate cause is to be put forward in evidence led on behalf of the defender, that requires to be pled. Fair notice must be given. The defenders averred that any psychiatric disorder was intermittent and transient and did not cause an inability to remain in the priesthood. The defenders also averred that any difficulties experienced by the pursuer were said to stem not from the abuse but rather from his anger at his perception of the way the Church was dealing with Father X. The defenders' case was thus limited to those contentions. In a chapter 43 case, fair notice on crucial matters relating to causation cannot be given simply in an expert report. Accordingly, I sustain the objection to the extent that it covers positive evidence led for the defenders about other potential causes of leaving the priesthood. However, the Dean of Faculty was of course able and permitted to raise the wider issues in cross-examination of the pursuer and any other factual witnesses and I therefore require to take into account any such evidence when deciding on causation. The result is that the opinions expressed by Professor Maden and Mr McNaught on causes not pled are excluded from my consideration, but the factual evidence of the pursuer's witnesses is not.

Submissions

Submissions for the pursuer

Causation

[45] The factual evidence was that the pursuer's decision to apply for laicisation was caused by the abuse and that evidence was overwhelming. The pursuer stated in terms that this was so, with contemporaneous documents supporting his evidence. The pursuer gave unchallenged evidence about the change in his personality. The evidence of Ms M, Dr B and Dr Livingston (including what the pursuer's brother had said) supported that position.

Professor Maden gave evidence that a change in personality was a possible consequence of historical sexual abuse. There was a tidal wave of evidence here that there was a personality change. That was a psychiatric injury, although not classified under DSM-V. No distinction could be drawn between the difficulties caused by recollections of the abuse itself and the reaction of the Church to the disclosure. The defenders never challenged the pursuer's evidence as to why he had laicised.

[46] There was no remaining dispute between the psychiatry experts on the key matters, although Professor Maden's approach was biased. While the psychiatrists agreed that at the time the pursuer made his decision to apply for laicisation he was not suffering from panic disorder, that did not mean he was no longer suffering from psychological symptoms caused by the abuse. On the evidence, his decision was constrained by his mental state. He was in therapy and there was no suggestion in the evidence that his symptoms had abated to zero. It was unnecessary for the pursuer to prove his decision to laicise was taken while suffering from any psychiatric illness falling within the DSM-V classification. This is not a case where the claim is for "pure" psychiatric injury. The pursuer was the victim of sexual assaults over a period of two years. Those assaults have led to the onset of continuing psychological symptoms, including panic attacks. It was apparent from the number of times, in his evidence, that he became upset and started crying that there are ongoing effects, even if not classified in DSM-V.

[47] Dr Livingston's views were correct. Professor Maden agreed with the proposition that abuse could cause a change in personality and even a change in career. Based on all the evidence, on a simple application of the "but for" test, the abuse caused the decision to laicise. In any event, a material contribution is enough to establish causation: *Wardlaw* v *Bonnington Castings* 1956 SC (HL) 26; *McGhee* v *National Coal Board* 1973 SC (HL) 37;

Williams v *Bermuda Hospitals Board* [2016] AC 888. The defenders' position that "but for" causation was insufficient (based on *Chester* v *Afshar* [2005] 1 AC 134) was incorrect, that case being a prime example of legal causation. The present case could easily be distinguished from *Ormsby* v *Chief Constable, Strathclyde Police* 2008 SCLR 793.

[48] The defenders' reliance on *Graham* v *David A Hall Ltd* 1996 SLT 596 was misconceived. The approach taken in *Simmons* v *British Steel plc* 2004 SC (HL) 94 was correct. The pursuer was upset and angry at the way he was treated, but that was not something separate from the abuse. His perception of how he was treated was, itself, a consequence of the abuse. In *Simmons* Lord Hope (at [21]) made clear that where the pursuer is a primary victim no distinction needs to be made between initial physical injury and subsequent mental state. The whole question of a DSM-V condition was therefore irrelevant. All that is necessary is an impairment. The evidence of a change in personality was overwhelming. The pursuer's averments about the psychiatric consequences of the abuse were made out, including that he has suffered a loss of the ability to trust others. The abuse itself was an injury. As noted in *B* v *The English Province of the Congregation of Christian Brothers*, at [262], given that this case concerns intentional wrongs, the defender is liable to make reparation for all losses suffered by the pursuer which directly arise from the wrongs - whether or not these losses are reasonably foreseeable (see Professor Thomson, *Delictual Liability* (5th Ed. at 16.4).

Damages

(1) Solatium

[49] Reference was made to the awards in *A* v *Glasgow City Council* [2021] CSOH 102, 2021 SLT 1577; *T* v *The English Province of the Congregation of Christian Brothers* 2020 SLT

(Sh Ct) 108 and *B* v *The English Province of the Congregation of Christian Brothers*. Taking into account the loss of career as a priest, a figure of £100,000 would be appropriate for solatium. If the court held against the pursuer on the loss of the priesthood, the award should be £60,000, considering the abuse itself and the psychiatric consequences, which are ongoing, and will be permanent even if not fitting a DSM-V category.

(2) Consequential loss

[50] The evidence of Ms Rolland should be accepted. There were only minor challenges to her evidence and there was no contradictor. She had already taken into account the comments of Ms Dawn White, the defender's forensic accountant and Mr Blyth, the actuary. No report from Ms White was ever disclosed. Ms Rolland had valued the benefits in kind, following ordinary accounting principles and properly using the cash equivalent value. The defenders led evidence from two priests as to expenditure, but that evidence was only of limited assistance (if any) so far as financial calculation goes, Ms Rolland having already considered diocese averages and national statistics, rather than personal experience.

[51] The evidence of Mr McNaught should be entirely ignored. He had no relevant expertise, and his evidence was, as was put to him, wholly biased and largely irrelevant. He was an advocate for the Church's position.

Submissions for the defenders

Causation

[52] The high point for the pursuer's case was the existence of a panic disorder (under DSM-V) between 2000-2003, but that did not suffice. First, the evidence of Professor Maden should be preferred to that of Dr Livingston. As Professor Maden

explained, working out the aetiology of any condition experienced by the pursuer in the period 2000-2003 is complex, and rendered very difficult by the absence of contemporary GP or counselling records. Given the emphasis placed by the pursuer, when interviewed by Professor Maden, on work stresses at the material time, it was not established that any condition was caused by the abuse.

[53] Second, and of greater importance, there was no proven causation between any condition suffered in 2000-2003 and the decision to seek laicisation. As at 2003 the pursuer had no intention of leaving the priesthood. Moreover, Dr Livingston was quite clear that the pursuer's decision to laicise was not motivated by him suffering a panic disorder. Rather, he experienced what Dr Livingston described as a "crisis of faith" as a result of how the Church dealt with what happened to the pursuer at the hands of Father X. The pursuer required to show that he was mentally disabled from working. The pursuer had demonstrated no link between a disabling result of the abuse and the decision to laicise. Satisfying the "but for" test is a necessary "if not a sufficient" condition of establishing causation: *Chester* v *Afshar*, Lord Bingham (at [8]).

[54] Distress, frustration and the like are not personal injury: *Rorrison* v *West Lothian College* 2000 SCLR 245; *Simpson* v *ICI Ltd* 1983 SLT 601. There had to be a formal diagnosis, whether under DSM-V or ICD-10. There was an absence of psychiatric injury at the operative moment, and that is required for causation: *JM* v *Fife Council* 2009 SC 163, at [16]-[17]. This case was similar to *Graham* v *David A Hall Ltd*, in which causation was not made out because what occurred was a reaction to the accident and not the accident itself. *Simmons* v *British Steel* involved no departure from *Graham* v *Hall*. The present case was different again; there is no ongoing injury post-2003. A voluntary and informed choice, not compelled or even motivated by physical or psychiatric injury, is not caused by the original

abuse, even if that choice would not have been made "but for" the abuse: *Ronan* v *Sainsbury's Supermarkets Ltd* [2006] EWCA Civ 1074, Hughes LJ (as he then was, at [24]).

[55] On one view, "but for" causation was plainly made out: all other things being equal, one could easily conclude that the pursuer would not have left the priesthood had he not been abused. However, all other things were not equal. Considerable uncertainty is created by the pursuer's personal relations, before and after any psychiatric disorder. He was certainly in a "romantic relationship", incompatible with the priesthood, for a period of many years going back to the early 1990s. There were unusual references to "sexual promiscuity" and "sexual intercourse" with more than one partner. The pursuer's explanation of this was unsatisfactory. The pursuer had clearly rekindled that relationship before seeking laicisation. He decided to get married, did so and then got divorced, and then entered a new relationship. None of that would have been possible within the priesthood. The court could not safely conclude that he would not have left the priesthood anyway, particularly when one adds in the work stresses he was experiencing in 2000 onwards and his evident desire to re-train for other work.

[56] The pursuer had failed to prove the necessary legal and factual causation between the abuse in the mid-1970s and the decision to laicise taken some [redacted] years later. A similar result obtained in *Ormsby* v *Chief Constable, Strathclyde Police*. The pursuer had not proved a causal connection between the abuse and the alleged loss of earnings: see *BXB* v *Watch Tower and Bible Tract Society of Pennsylvania* [2020] 4 WLR 42, Chamberlain J at [212]. For these reasons, damages fell to be limited to solatium for the abuse itself and any temporary psychiatric injury found to have been caused thereby. No financial loss was proved as having been caused by the abuse.

Damages

(i) Solatium

[57] In relation to solatium, to the pursuer's credit, a coping strategy was devised which prevented the abuse from occurring on occasion. In terms of the emotional and social consequences after leaving the school, the pursuer embarked on a successful career as a priest and later became self-employed. He attended universities. At its highest, there was only a temporary diagnosis of a panic disorder between approximately 2000 to 2003. This fell to be contrasted with cases such *JM* v *Fife Council* and *A and B* v *C* 2018 SLT 1194 which involved much more serious sexual abuse. £25,000 would be appropriate for solatium in the present case and that would be broadly consistent with the awards for abuse in *LXA, BXL* v *Mrs Cynthia Willcox* [218] EWHC 2256, which were also more serious.

(ii) Consequential loss

[58] Where a number of imponderables gave rise to uncertainties as to the amount a claimant would have earned if uninjured, and also as to the likely future pattern of earning, the multiplier/multiplicand approach was inappropriate: *Blamire* v *South Cumbria Health Authority* [1993] PIQR Q1. The "*Blamire* award" approach had regularly been applied in Scotland: e.g. *Wilson* v *North Star Shipping (Aberdeen) Limited* [2014] CSOH 156; *Brand* v *Transocean North Sea Limited* [2011] CSOH 57. It had also been applied in cases of this nature in England, precisely because of the various imponderables that inevitably arise: see e.g. *LXA, BXL* v *Mrs Cynthia Willcox*, at [79]; *BDA* v *Domenico Quirino* [2015] EWHC 2974, at [54]. In the present case, there were multiple imponderables that would result in a multiplier/multiplicand approach being manifestly unsuitable, and unfair to the defenders.

[59] On the multiplicand, the only certainty regarding the pursuer's earnings as a priest was the level of stipend that was automatically payable. The defenders did not contend that the pursuer is disabled from claiming wage loss merely because his own evidence shows that he should have, but did not, disclose such earnings to HMRC: *Hunter* v *Butler* [1996] RTR 396 at 403; *Kanu* v *Kashif* [2002] EWCA Civ 1620. But the court was put in a situation of speculation or estimation as a result of the pursuer's failure to account to HMRC. He should not be given the benefit of the doubt in such a situation.

[60] Even if that was ignored and Ms Rolland's revised table is considered, the pursuer has suffered no loss unless one takes account of the "benefits in kind". Multiple difficulties arise in that regard. There were uncertainties and problems in her approach to the value of accommodation, housekeeping, furnishings, repair costs (when the house and furnishings did not belong to the pursuer), mobile phone bills, and car running costs. It was therefore impossible to arrive at anything close to a reasonable approximation of the financial value to the pursuer of his life in the priesthood.

[61] The object of an award of damages is, so far as is possible, to put the pursuer back into the position in which he would have been, absent the injury: *Livingston* v *The Rawyards Coal Company* (1880) 7 R (HL) 1, applied in personal injury cases on many occasions including *British Transport Commission* v *Gourley* [1956] AC 185. Diminution of the loss he has suffered is to be taken into account even though there was no duty on him to take that action: *British Westinghouse Electric and Manufacturing Co* v *Underground Electric Railways Company of London* [1912] AC 673. The requirement to set-off benefits arising from an injured person's reaction to the wrongdoing applies equally to claims in negligence as it does to claims in contract: *Bellingham* v *Dhillon and Another* [1973] QB 304. The benefits objectively accruing to the pursuer as a result of laicisation had to be taken into account.

These included no longer being required to adhere to the strictures of the priesthood, not being on call "24/7"; being financially able to service a mortgage and purchase property; able to choose where he lives and works; able to form relations; and able to get married.

[62] If those submissions were not accepted, there would also be numerous difficulties for the pursuer in relation to the multiplicand. First, if the value the benefits in kind was taken to be that done by HMRC, there is no multiplicand at all because the pursuer's earnings now are greater than the benefits of being a priest. Second, Ms Rolland's assessment of the multiplicand had various problems, already mentioned. Ms Rolland had departed from her original calculations but had provided no proper vouching for the new calculations. Her calculation of past loss alone was problematic. Further, Ms Rolland made a mistake in deducting the pursuer's income from the past loss, arriving at a figure which must be incorrect. There was no explanation for this discrepancy which also affects the figures for future loss. The lack of detail underlying her table meant that any adjustment by the court is simply impossible.

[63] In any event, the figures for accommodation and housekeeping were practically wiped out by the pursuer's house value gain arising from laicisation. He will also have gained from the sale of his first house. No true past or ongoing loss was properly demonstrated.

[64] In the event of the court deciding to take a *Blamire* approach, the evidence did not support anything other than a moderate one and an award of £25,000 would be appropriate. If the court took a multiplier/multiplicand approach, giving the pursuer the benefit of the doubt a figure of £2,000 per annum would be appropriate, resulting in £34,000 to the past, and £12,000 to the future. Allowing some aspect of pension loss as a consequence, a total of £50,000 would be appropriate in that scenario.

Decision and reasons

Causation

The law on psychiatric injury

[65] The law on psychiatric injury is somewhat complex and has developed over time. It is of no surprise that the passage on "Mental harm" in Thomson's *Delictual Liability* (6th ed.) ends by saying (at paragraph 4.12) that "the law in this area is considered to be unsatisfactory" (under reference to the report of the *Scottish Law Commission on Damages for Psychiatric* Injury (Scot Law Com No 196)). However, it is unnecessary for me to embark on a detailed analysis of all of the authorities cited, primarily because many of them can be distinguished from the circumstances of the present case. This pursuer was repeatedly subjected to deliberate sexual assaults and abuse. Such conduct is an intentional delict, interfering with and violating his bodily and mental integrity and in that regard causing harm which constitutes, or at least equates to, personal injury. So, for example, this is not a case in which there is an allegation of negligence by breach of a duty of care, nor is it one in which damages are sought for "pure" psychiatric injury following such a breach, as in *Rorrison* v *West Lothian Council*. Issues of foreseeability and remoteness also do not arise here and there was no suggestion to that effect in submissions.

[66] The authorities on breach of duty are therefore of no real relevance, but it is perhaps worth observing that if the case had involved an alleged breach of duty, the pursuer here would be a primary victim rather than a secondary victim (as explained by Lord Carloway in *Fraser* v *State Hospitals Board for Scotland* 2001 SLT 1051, referred to with approval by Lord Hope in *Simmons* v *British Steel* at [21]). The control mechanisms which apply to claims by secondary victims would not apply here. Lord Hope referred to *Page* v *Smith* in which it

was held that if there is a breach of a duty of care not to expose the pursuer to the risk of personal injury then it does not matter whether the injury sustained is physical, psychiatric or both.

[67] It is however, also worthy of note that in *Page* v *Smith* Lord Lloyd said that the defendant who owes such a duty of care is not liable for nervous shock unless that results in "some recognised psychiatric illness" (at 197F-H). Numerous cases apply that approach. In *O* v *Rhodes and another* [2016] AC 219, in the different context of an intentional wrong which did not involve physical injury (a "pure" psychiatric injury case) Lord Neuberger (at [117]) observed that damages for distress in negligence are only recoverable for a "recognisable psychiatric illness" and not merely for "grief and sorrow", under reference to Lord Denning MR in *Hinz* v *Berry* [1970] 2 QB 40 (at 42-43), that being an approach which was followed by Lord Bridge of Harwich in *McLoughlin* v *O'Brian* [1983] 1 AC 410 (at 437). Lord Neuberger was of the view that in cases involving purely mental harm from an intentional wrong, other forms of mental stress should also give rise to recovery, but the majority in the court did not follow that approach.

[68] In a case such as the present, where there is an intentional delict of the kind I have mentioned, mental health problems falling short of psychiatric illness or psychological condition which are attributed to the abuse can form part of the award of solatium. That would occur in both intentional delicts and in breach of duty cases involving a primary victim. It is also an approach taken in English law (see e.g. *McGregor on Damages* 21st ed, at 5-013, and 42-001-2-008). But if there is an absence of professional support for the assertions of psychiatric or psychological damage, the existence of such damage, and its causal relationship to the abuse will not be proved: *JM* v *Fife Council* 2009 SC 163 (at [17]).

[69] In relation to whether the pursuer suffered a psychiatric injury, the first question is whether the injury alleged requires to fall within those specified in the key scientific texts. These are: DSM-V (*the American Diagnostic and Statistical Manual of Mental Disorders*, 5th ed, 2013) or in what is now ICD-11 (the *World Health Organisation's International Classification of Diseases and Related Health Problems*, Eleventh Revision, 2022). The case law contains various observations on this point. In *Rorrison* v *West Lothian Council*, Lord Reed (as he then was) explained that reference to these classifications was helpful as a matter of fair notice since they (quoting from the Law Commission *Report on Liability for Psychiatric Illness* (1998) (Law Comm No 249), paragraph 3.2, note 7) "represent the two main diagnostic classificatory systems used by the psychiatric profession". However, Lord Reed also observed that what constitutes a recognised disorder is a matter for expert evidence and he was prepared to proceed on the basis that the classifications given in those systems are not necessarily conclusive (as further explained in paragraphs 3.27-3.29 of the Law Commission's Report). By way of example, the Law Commission made reference to a controversial diagnosis, chronic fatigue syndrome (CFS), which was at the time excluded from DSM-IV but which was accepted as a recognisable psychiatric illness in *Page* v *Smith*.

[70] Certain cases throw some light on the meaning of psychiatric injury. In *Attia* v *British Gas plc* [1988] QB 304, Bingham LJ (as he then was), referred to mental or emotional trauma and (at 318) instead of using "nervous shock" preferred to use:

> "the general expression 'psychiatric damage,' intending to comprehend within it all relevant forms of mental illness, neurosis and *personality change*". [emphasis added]

In *Frost* v *Chief Constable of South Yorkshire* [1999] 2 A.C. 455 Lord Steyn considered that mental suffering could be divided into two categories, the second of which amounted to "a recognisable psychiatric illness", adding (at 491) that "Where the line is to be drawn is a

matter for expert psychiatric evidence". In the context of sexual abuse, in *C v D* [2006] EWHC 166 (QB), Field J accepted the evidence of Professor Maden (an expert in the present case) and held that *C* was not suffering from a diagnosed illness. Nonetheless, he was satisfied that *C* "has suffered and continues to suffer from mental abnormality as distinct from emotional distress". He mentioned *C*'s great difficulty in inter-personal relationships, deep mistrust of persons in authority, being callous and uncaring to others and isolated from his peer group and having suffered from depression and from psychotic episodes. In *Vernon* v *Bosley* (No 1) [1997] PIQR P255, the majority in the Court of Appeal took the view (as it is put in the rubric) that the types of "recognisable psychiatric illness" constituting nervous shock should not be confined in any way and reference was also made to *Brice* v *Brown* [1984] 1 All ER 997, where Stuart-Smith LJ (at 1006H), said: "The psychiatric illness does not have to have any particular label or term of art applied to it." While expert evidence will be of importance, as was recognised in *Vernon* factual evidence of the appearance and behaviour of the pursuer is also relevant.

[71] There are examples of sexual abuse cases which take a similar approach. In *Lawson* v *Glaves-Smith* [2006] EWHC 2865 (QB), Eady J considered the psychiatric evidence, again including that from Professor Maden, whose view ultimately was that the claimant had not suffered from PTSD. Eady J concluded that that there was no plausible explanation other than that the claimant suffered disabling trauma and psychological symptoms as a direct result of what happened to her. He said (at [120]):

> "Whether it is right to attach the label PTSD is perhaps less significant than to assess the symptoms she actually suffered herself (even if they do not necessarily correspond completely to those incurred by other people who have been diagnosed with PTSD)."

He noted periods of anxiety, flashbacks, poor sleep patterns, a degree of reluctance to meet people and that the impact on her life was profound. He allowed damages for loss of earnings, based upon the consequences of those symptoms. In *BDA* v *Domenico Quirino* [2015] EWHC 2974 (QB), Graham Wood QC (sitting as a Judge of the High Court) noted from the expert evidence that there were two elements to the claimant's psychiatric/psychological injury. The first was a depressive illness, no longer evident but likely to recur in the years ahead. The second element was represented by post-traumatic anxiety symptoms, about which the judge said:

> "While these do not fit within the psychiatric classification, nevertheless they were severe and tangible, in that she found it difficult to talk about the abuse, became tearful, but most notably was having problems in sexual and intimate relationships, which was having a profound effect on her personal life."

He then favoured "a broad brush approach" to loss of earnings and made a *Blamire* award, but that was on the basis that it was caused by the mental consequences of the abuse.

Application of the law

[72] For the reasons given below, I conclude that the pursuer did in fact suffer psychiatric injury from the abuse, which caused him to laicise.

Panic disorder

[73] As is noted above, Dr Livingston diagnosed the pursuer as suffering from panic disorder in 2000-2003. Reference was also made by Dr Livingston to the pursuer saying he had suffered it again in 2020. As to the first period, while Professor Maden in his report used a different classification (adjustment disorder) he was content that the diagnostic criteria for panic disorder were met. However, both experts also agreed that at the time of

the decision to laicise the pursuer was not suffering from panic disorder. I accept the experts' opinions on these matters. The experts were in dispute as to whether the trigger or cause of the panic disorder was the abuse or other factors. On that issue, I prefer the evidence of Dr Livingston, which is strongly supported by the evidence of the pursuer himself, his sister and his GP, summarised above, which I need not repeat here. In short, the panic disorder was a delayed consequence of the pursuer being sexually abused. Accordingly, as a result of the abuse the pursuer did suffer from panic disorder, as defined in DSM-V, in 2000-2003.

Did the pursuer have any other recognised psychiatric injury?

[74] Dr Livingston did not state in terms that the pursuer had suffered any other form of diagnosed psychiatric injury, nor did Professor Maden. It is important to recognise that Dr Livingston was using DSM-V as the sole basis for deciding if a defined or classified psychiatric injury existed. When one considers Dr Livingston's evidence in the round, it was plainly for that reason that Dr Livingston said that the pursuer had no extant psychiatric disorder in [redacted], when he decided to laicise. But there was other evidence from Dr Livingston which pointed clearly towards psychiatric injury at that time, albeit not falling within DSM-V. In his first report, he concluded that:

> "14.3 As a result of the abuse which [the pursuer] experienced during the 4 years he was a resident at [the] College, he developed obsessional traits, feeling a need to be in control, a need for order and cleanliness. He became somewhat moody and irritable. He felt unable to challenge people and compelled to please women he met who became interested in having a sexual relationship with him, despite this contravening his vow of celibacy. I note also that [the pursuer] has had difficulty trusting people and has a strong sense of being let down by the Catholic Church which has made him angry at times. I consider these traits to be aspects of [the pursuer's] temperament, much of which endures. They do not conform [to] any pathological entity described in DSM 5."

[75] In his third report he concluded that:

> "12.2 The abuse has had a profound effect on [the pursuer's] life. He developed panic disorder (DSM 5) for a period around 2001-2003. I learned during this most recent interview (15.02.2021) that this disorder re-emerged during the summer of 2020.
>
> 12.3 The abuse occurred during the formative years of [the pursuer's] life and there has therefore been a marked impact on his functioning, impacting on his ability to trust other people, to have loving relationships and to engage in sexual intimacy. It has also led to the loss of his career in the priesthood. [The pursuer] had expressed a desire to enter into that life as early as 8 or 9 years of age. Although these adverse aspects of functioning do not amount to a diagnosis in terms of DSM 5, they have imposed significant limitations on [the pursuer's] life continuing to the present time, which he is attempting to address by means of therapy."

Dr Livingston also referred to the pursuer's "subsequent psychological impairment, including the onset of panic disorder". The use of "including" obviously indicates that other matters he had commented on involved impairment. He also observed, under reference to what others had said, that the pursuer's "adverse mental state was linked with the historic sexual abuse rather than more contemporaneous factors in his life".

[76] In his final report he said:

> "10.2 In my opinion, this abuse has had a profound impact on [the pursuer's] life and his mental health. The abuse has resulted in an adverse impact on [the pursuer's] mental health and ultimately led to the loss of his vocation, a career in the priesthood of the Catholic Church. The abuse experienced early on led to impaired academic performance and enduring sexual dysfunction."

[77] In relation to the evidence of the pursuer's brother about a noticeable change in personality, Dr Livingston explained in his oral testimony that although he did not come to a formal diagnosis regarding personality (that is, no diagnosis of a personality disorder), the pursuer's personality had been shaped by the abuse and the storing of it in his mind. Dr Livingston had the impression that it had coloured the rest of the pursuer's life. Leaving the job did, in his view, seem to be an inevitable outcome of the abuse. In addition to the panic disorder, Dr Livingston's evidence about matters such as impacts upon the pursuer's

functioning, significant limitations on his life and adverse mental health fit with the factual evidence of a change in personality. In cross-examination he agreed that there were difficulties in establishing reasons for leaving the job in the absence of a diagnosis, but human behaviour outside the confines of a diagnosable disorder was for the court to determine. The pursuer's decision to become laicised was hugely determined by his experience and how the Church dealt with it.

[78] In light of my acceptance of Dr Livingston's evidence as clear, well-considered and persuasive, I take these observations as entirely correct, especially when one also has regard to the corroborative factual evidence. The pursuer had experienced panic disorder over a three year period as a result of the abuse. In 2020, on the pursuer's account, as accepted by Dr Livingston, this disorder re-emerged. I infer from the evidence that there was a strong prospect of it re-emerging earlier, had the pursuer remained in the priesthood. As a result of the abuse the pursuer said he had lost trust, a matter also picked up by Dr Livingston. The pursuer said that it changed everything, including his perspective on life. The pursuer's sister, Ms M, had seen significant changes in his behaviour. He had become obsessive and compulsive and very easily irritable. She felt like he had gone into hibernation and become more reclusive, confused and tense, moving from being gregarious and witty to being isolated and withdrawn. The abuse was tortuous for him. There was a huge change. In [redacted], he became "a social hermit" because of the abuse and torture he was going through. He had lost his sense of belonging. He was a tortured soul and not the same person. Dr B also described the pursuer, in [redacted], as not the person he had been, and he did not have the same joyousness and was more anxious. The abuse was causing him to be unwell. The pursuer undertook therapy, until [redacted], because of his psychological condition. The Church paid for the therapy. Professor Maden accepted that if there was

evidence of a change in personality he would not be able to dispute it. He also accepted that recollection of the abuse and the pursuer's anger over his perception of how it was managed made a significant contribution to the pursuer's stress.

[79] On the accepted expert evidence, supported by compelling factual evidence, the sexual abuse had a profound and adverse impact on the pursuer's mental health and his life. In addition to panic disorder, he suffered flashbacks, personality change and loss of trust. There was a marked and adverse impact on his functioning, imposing significant limitations on his life. He became obsessive and compulsive, very easily irritable, isolated and withdrawn. Having regard to the authorities, I conclude that he sustained psychiatric injury caused by the abuse. This is not a suggestion of merely emotional issues, distress or low mood. On the contrary, there were profound impairments.

The cause of the pursuer's decision to laicise

[80] It is not necessary to embark upon a detailed analysis of parties' respective submissions on the law on causation. The fact that the "but for" test might be described as "necessary but not sufficient" is perfectly understandable, especially when one has regard to foreseeability and remoteness of damage. But as already observed these issues did not arise here, nor was there a suggestion of any *novus actus interveniens*. These points, which can affect legal causation, are thus of no real significance for present purposes. As regards factual causation, having considered all of the evidence I am satisfied that the "but for" test is met. In particular, experiencing the awful sexual abuse to which he was subjected as a teenager could never be eradicated from the pursuer's mind. Instead, it plainly stayed there (albeit at times he sought to lock it away) and festered. It is true that for many years he blocked it out of his day to day memory and carried out his functions as a priest with great

ability. I see some force in the point that when he encountered Father X again in 1993 one might have expected that to trigger effects or symptoms if the abuse was a causative matter. However, the pursuer had a very strong desire not to upset his parents, who were devoted to the Catholic Church and who knew Father X. Along with his overworking, that meant he was able to keep going as a priest. But when his parents died, the generally locked away memories more regularly flashed back and he was forced to face up to the issue of whether he could continue.

[81] At the very least, the sexual abuse made a material contribution to the pursuer's decision to laicise. Its impact on his personality, his ability to trust others and properly to function plainly influenced his decision. I accept that there were other factors in play, including a relationship with a woman, anger and frustration at the Catholic Church and how he felt he was perceived. On the first of these points, the pursuer had for many years been able to use the ability to confess to avoid any real concerns. The fact that laicisation would allow marriage was, on the evidence, not something that outweighed the abuse as causing or at least being a material contributory factor in his decision. As to his anger and frustration, that was not (as the defenders pled) to do with the Church's treatment of Father X but arose from how the Church dealt with his position and sexual abuse in general. It was very much a result of the abuse itself. It is not possible to see it as a discrete or free-standing actual cause of leaving the priesthood. In that regard, the position here is closer to that in *Simmons* v *British Steel* (in particular, Lord Hope at [23]-[27] and Lord Rodger at [58]); that is, the abuse made at least a material contribution to the pursuer leaving the priesthood and indeed the abuse itself (as well as how matters were dealt with thereafter) contributed strongly to his anger and frustration. I do not therefore see the cases of *Graham* v *David A Hall Ltd* and *Ormsby* v *Chief Constable, Strathclyde Police* as being directly in point.

[82] It is, of course, also true that laicisation was a decision made by the pursuer and that he had the capacity to make it. However, when one has regard to the reality of the situation, he was not truly exercising an option. On any view, the psychiatric consequences of the abuse can be described as negative changes, causing impairment and damage. It is obvious that if the pursuer had been engaged in a quite different job, the consequences of the abuse may well not have been sufficiently serious to cause him to leave it. But he was a priest working within an organisation that he increasingly felt detached from, as a consequence of the mental harm he suffered as a result of being abused by a priest. On his evidence, he was not given sympathy or indeed any real engagement from the Church. He came to realise that the impact of the abuse and its damaging effects on his life to date would continue if he remained as a priest, but the ongoing torment could at least to some extent be alleviated by laicising. One can readily understand that a point was reached where it became inevitable that the post must be given up. It is impossible for me to conclude that reasons other than the abuse and its impact caused his laicisation, or that the pursuer would have laicised anyway even if the abuse had not occurred.

[83] I therefore reject Professor Maden's suggestion that the pursuer may have acted in the manner of confirmation bias. It is true that there are no contemporaneous medical records that assist the pursuer's case, but there was some evidence from his GP and friend Dr B, as well as from his sister. In any event, persons such as the pursuer who are suffering from psychiatric harm may do their level best to keep it to themselves. For the reasons given above, I conclude that as a result of the abuse the pursuer suffered from recognised psychiatric injury. Having regard to all of the evidence, I am satisfied that these debilitating consequences caused the pursuer to be incapacitated and consequently unable to work as a priest.

Damages

Solatium

[84] In *JM* v *Fife Council,* a sexual abuse case, reference was made (at [25]) to the following elements on solatium: (i) the pain, affront and humiliation experienced by the pursuer at the time, and (ii) the emotional and social consequences he experienced thereafter. The Inner House had earlier (at [16]-[17]) endorsed the approach taken by the Lord Ordinary in taking into account the nature, character and severity of the abuse, together with its frequency and duration, the age of the pursuer at the time and the immediate effects on the pursuer. I shall follow that approach. The Lord Ordinary was found to be entitled to have regard to and accept the evidence as to the emotional and social experiences. In that case, there was what the Inner House described as no psychiatric illness or psychological condition attributed to the abuse, but where that occurs it is obviously also relevant to solatium. Each incident of abuse in this case constituted a separate intentional delict but it would not be appropriate to make individual awards, given that the mental health consequences for the pursuer were cumulative.

[85] The authorities show that there can be complexities in assessing solatium in cases of this nature. As is obvious, each case must depend on its own facts. Other cases are likely to differ, not only as to the acts of abuse but also the effects of the abuse, which can vary from individual to individual. There is no case which equiparates sufficiently closely to the circumstances of the present action to offer any directly worthwhile comparison, but I have had regard to the various authorities cited. In short, the various factors relevant to solatium here were less severe than in *JM* v *Fife Council*, *A* v *Glasgow City Council*, *T* v *The English Province of the Congregation of Christian Brothers* and *B* v *The English Province of the*

Congregation of Christian Brothers. Cases such as *A* and *B* v *C*, while relevant, also differ factually and the lower award to one victim there took into account the single occasion of sexual assault, albeit that it involved penetration. *LXA, BXL* v *Mrs Cynthia Willcox* provides some assistance, but again markedly differs on the facts. I take into account the dates of these various previous awards and how they would have increased as a result of inflation.

[86] The award of solatium must in this case have regard to the prolonged and frequent physical and sexual abuse of a young man, extending over two years, perpetrated by a person in a position of trust. It caused psychiatric injury. There also requires to be some enhancement of the sum for solatium as a result of my finding that the pursuer left the priesthood because of the abuse, losing what could be described as congenial employment. Having regard to the relevant criteria and the whole circumstances, my conclusion is that an award for solatium of £55,000 is appropriate, allocated as £45,000 for the past and £10,000 for the future. The sum of £45,000 for the past comprises £40,000 pre-laicisation and £5,000 from laicisation to date. If the only psychiatric injury or impairment that the pursuer had suffered was the panic disorder in 2000-2003 and if he had not given up his post as a result of the abuse, the sum awarded for solatium would have been £35,000, with £30,000 allocated to the past and £5,000 for the future.

Consequential loss

[87] Parties were in agreement that as a parish priest, the pursuer received an income which included the elements noted in paragraph [6] above and the benefits in kind explained in paragraph [7]. They also agreed that at the time of the proof his net salary as a self-employed person was £32,431 per annum.

Ms Rolland's position

[88] In her original report, dated 6 March 2022, Ms Rolland set out her approach to assessing the loss and in appendices to the report gave a detailed methodology and basis for the calculations made. The total sum claimed was £1,743,223. On 7 March 2022 Ms Rolland made revisals to take into account an issue about pension payments, reducing the claim to £1,650,646. In the course of the proof, prior to giving evidence, Ms Rolland produced a revised single-page document containing a table of figures. It reduced the claim further to £1,332,537. She explained in her oral evidence that on receipt of further information she considered alternative bases for her calculation of the loss on various items. One example involved the change of figures for clergy salary, now using actual figures for the diocese rather than average figures. A number of other changes were made. In making her decision to revise, she also had regard to observations made by Ms Dawn White, a chartered accountant listed as a witness for the defenders. In the event, Ms White was not called to give evidence.

[89] The calculation which gives rise to the claimed sum of £1,332,537 is set out in the table in the revised document, but only in summary form. It gives a figure for past loss (from 2003 until the proof) of £415,418 and future loss (from the date of the proof) of £877,199. In broad terms, the figure for past loss is reached by taking the gross sum for past loss until December 2021 (made up of what is claimed would have been the pursuer's income and the value of the benefits in kind) and deducting from it tax and national insurance and the actual income of the pursuer during that period. In relation to future loss, a multiplier and a multiplicand are identified for each phase of the remaining period (e.g. up to state pension age, and from retirement to age 75).

Challenges to Ms Rolland's figures

[90] The Dean of Faculty argued that there are multiple imponderables that would result in a multiplier/multiplicand approach being manifestly unsuitable, and unfair to the defender. For example, while the pursuer's earnings as a priest included a stipend that was automatically payable, everything else, such as mass stipends and stole fees, depended upon a number of variables (such as which diocese the pursuer was stationed in; the size of the parish; the popularity, or otherwise, of the pursuer within that parish; and the affluence or generosity of the parishioners). There is some force in that position and I consider the issue of imponderables below.

[91] I accept the broad point made on behalf of the defenders that it is necessary to take account of the benefits objectively accruing to the pursuer as a result of laicisation, as well as the losses. However, when one has regard to the evidence of the pursuer, it is not appropriate to conclude that positive emotional or lifestyle features of no longer being in the priesthood somehow outweigh the benefits to the pursuer of remaining in that post had he not been abused. On the contrary, what were viewed as negatives of the job of being a priest would very probably have been outweighed by what the pursuer regarded as the strong positives of the post, to which, but for the abuse, he would have remained utterly dedicated. Equally, it was clear that laicisation did not, from his perspective, give rise to emotional or lifestyle benefits greater than being a priest. The evidence does not support taking alleged non-financial benefits of not being a priest into account. Financial benefits, arising as a result of departing from the priesthood, are however relevant and that is discussed further below.

[92] The Dean of Faculty also referred to the various detailed aspects of Ms Rolland's original report that had been "jettisoned" by the revised version. This included various

appendices in which details of the basis for calculations were explained. It is correct that Ms Rolland's revised document now gives just a summary of her newly adopted totals for wage loss and that the material previously used to demonstrate or evidence various components for the calculation has at least to some extent been superseded. I have no doubt that in revising her totals for various items Ms Rolland will have carried out detailed calculations, but these were not put before the court. That does create difficulties for the court in properly assessing the accuracy of the figures.

[93] On behalf of the defenders, it was also submitted that a further, quite fundamental, problem exists in Ms Rolland's revised document. The gross value of the church income and benefits in kind is stated in the document as £793,414 and the sum of £455,418 is arrived at after deducting tax, national insurance and the pursuer's actual earnings. The parties agreed (in their joint minute) that the pursuer's actual earnings since 2003 amount to £393,535. It was argued that if that is deducted from £793,414, it leaves £399,879 and not Ms Rolland's figure of £455,418. This was said to create difficulties in understanding how the figures for both past and future losses have been reached, standing this discrepancy. In particular, the multiplicands Ms Rolland uses would be thrown into question.

[94] Unfortunately, there was no clear evidence about how the revised document, with the table of losses, fits with the detailed contents of the original report. However, put shortly, in arriving at the figure in her original report Ms Rolland deducted the actual earnings of the pursuer not from the figure for loss of church income and benefits in kind for the last 17 years to 5 April 2020, but from the enhanced amount which includes the losses up until December 2021. In her revised document, while regrettably not made explicit, the first section deals again with the 17 year period up until 5 April 2020. (The figure for that period from the original report is shown, £1,062,155, and that is revised to £793,414. The same

amount for accommodation for that 17 year period appears also in the revised version). I assume, although no detailed explanation was given, that Ms Rolland must have used the same technique as in the original report. That would involve *inter alia* adding the further amounts of loss up until December 2021 to the figure of £793,414. Thus, when she gives a past loss of £455,418, it seems likely that she must again have taken into account (as in the original report) that the pursuer's actual earnings since 2003 amount to £393,535. The submission for the defenders about a fundamental error is therefore not well-founded, but I accept that the detailed reasoning and calculations are simply not made out. Quite why the original report set out, separately, the figures for the 17 years to April 2020 and then the additional figures up to December 2021, and the revised document mentioned only the former, were not explained.

[95] The defenders contended that the HMRC arrangement with the Catholic Church (no value for accommodation and £2,288 for food and a housekeeper) should be applied. That is not persuasive. As Ms Rolland pointed out, she worked on the basis of the cash equivalent value.

Areas of concern

[96] However, there are several matters of serious concern in approaching consequential loss in the manner argued for the pursuer. One fundamental difficulty is that the pursuer was, as a direct result of leaving the priesthood and thus being able to service a mortgage, able to purchase a house and make significant gains from later selling it. The pursuer explained that he bought a house in joint ownership with his wife. No evidence was given as to when that property was sold and what gains, if any were made. However, he was asked, in cross-examination, about the purchase of his next house. Senior counsel for the

pursuer objected. I allowed the evidence, subject to competency and relevancy. No final submissions on the point were made, but in any event, having reflected further, I would not have sustained the objection. Questioning the pursuer on financial gains as a result of leaving the priesthood was plainly relevant. It was entirely open to senior counsel for the pursuer to deal with the matter in re-examination, but, no doubt for good reasons, no further questions were asked.

[97] The pursuer's evidence was that he had later bought a house for £310,000, funded by himself and with a large mortgage (£200,000). The only inference that can be drawn from the evidence is that this different property was owned by him and bought after the break-up of the marriage. He lived there with his new partner, now his ex-partner. The house was sold one month before the proof for £547,000, resulting in a gain of £237,000. While the pursuer mentioned giving furnishings to his ex-partner, there was no suggestion of joint ownership of this house. The pursuer accepted, as did Ms Rolland, that he would not have been able to service the mortgage referable to this purchase had he remained in the priesthood. That gain of £237,000 is a direct financial benefit from being able to own a property and profit from it, which arose as a result of leaving the priesthood. In assessing loss, it requires to be taken into account. The issue of how the deposit of £110,000 was obtained was not explained. It is possible that it was contributed to by a gain from the sale of the previous property but that is not known. I assume that mortgage interest must have been paid in respect of the second property, but there is no ready means of calculating the amount. But value has to be given to the fact that on leaving the priesthood the pursuer was able to purchase a house and made a substantial gain, albeit with payments of mortgage rates and council tax and any repair costs. That creates a very significant imponderable for past loss.

[98] It is also reasonable to conclude that further gains from the money made from the sale of the house are likely to prevail in the future. This again is a significant imponderable. The pursuer no longer owns a house. When asked, in cross-examination, if he was free to buy another property he said that with the little money he had, he did not know. However, that matter was not explained or explored any further. The future loss proceeds upon the basis of multipliers totalling over 18 years, based on the Ogden tables. It is reasonable to infer that having already been involved in the purchase of two properties since leaving the priesthood, the pursuer will buy again. Precisely what kind of mortgage the pursuer might now obtain, and for what period, was not discussed. However, it would be wholly unreasonable for the pursuer to be left in a position where he can continue to make gains on house prices, or indeed investments of previous house gains, which he could not have done as a priest and to fail to have regard to these in reaching a fair assessment of compensation. But given the uncertainties, only a relatively limited amount can be taken into account.

[99] A number of other imponderables arise. The variables noted above (at [90]) exist. Further, Ms Rolland proceeded upon the basis that for the purposes of calculating stole fees, she should use the same numbers for funerals as for baptisms. She was given no evidence, nor was the court, to support that view and as she explained this was merely an assumption. The benefit in kind of accommodation was valued on the basis of rental costs for a four-bedroom house in the area where the diocese is located, but on the evidence there was no certainty that the pursuer would always have stayed there, or had the benefit of a similar large house, or indeed always lived alone in such a property. Ms Rolland was also not able to explain whether the average rents she looked at for four-bedroom houses were for furnished or unfurnished properties. In relation to housekeeping, as I understand it, Ms Rolland valued this benefit on the basis of employing one housekeeper for 15 hours per

week. This was not supported by the evidence, for example of Father T. A visit for a few hours on one day each week would suffice.

[100] Ms Rolland valued furnishings on the basis of cost of acquisition, but that is not the same as the value of the right to use the furnishings. The court was not given any clear information in the factual evidence about the age or quality of the furnishings in the house. The cost of repairs to the house and furnishings are in the table, despite the fact that the house and furnishings did not belong to the pursuer. In relation to heat, light and insurance, the calculation was on the basis of the pursuer living alone forever, but there was no right or expectation to that effect and there was evidence about more than one priest living in accommodation in one of the parishes where the pursuer had worked. The evidence on car costs was limited and there were mixed views expressed. Ms Rolland has allowed for car running costs, but the evidence of one of the priests was that such costs would not be met by the Church, apart from for business purposes. The inclusion of fuel costs is also difficult to accept, for that same reason. A figure is stated for the costs of a gardener, but on the pursuer's evidence, and also the evidence of Father T, the garden was commonly looked after by parishioners who would volunteer to do it. Ms Rolland has also made allowance for IT provision, but the evidence was that this would be for business use and I see no basis for that being included. Moreover, the future earning capacity of the pursuer was, as is shown in the evidence of Mr McNaught and Ms Rolland, subject to wide disagreement and not easy to identify.

[101] The award I make must seek to put the pursuer back into the position in which he would have been, but for the abuse and its consequences: *Livingston* v *The Rawyards Coal Company*. In doing so, I must have regard to whether after leaving the priesthood, factors which diminish the loss arose: *British Westinghouse Electric and Manufacturing Co* v

Underground Electric Railways Company of London. It might have been possible, on some of the points mentioned above, to attempt to make adjustments or indeed deletions to the figures Ms Rolland gave. But other points remain problematic and indeed unresolvable merely by adjustment. The only way forward is to treat the consequential loss issues as containing imponderables of such significance as to warrant the *Blamire* approach.

[102] I conclude that, on the evidence, there is support for the benefits in kind in the priesthood giving rise to consequential loss of some significance, on the broad basis that they result in a higher figure than the pursuer's post-laicisation income and that they are by no means wholly set-off by that income and the financial benefits of not being in the priesthood. As I understand it, the past and future loss of the pursuer extends for a period of over 43 years. A reasonably significant amount is due. But there are many concerns with the factual basis for the calculations of a number of the benefits in kind, as well as significant issues regarding the fact that house purchase became possible after laicisation and that financial benefits have accrued from it and are likely to continue in the future. My broad conclusion from the evidence is that the total figures for past and future loss relied upon by the pursuer fall to be reduced, because of the adjustments and the imponderables, by roughly 50% and then reduced further by taking into account the gains made and limited further gains likely to become available. Doing the best I can to take into account the scale and extent of the difficulties with the figures relied upon by the pursuer, and weighing-up in very broad terms the financial benefits after leaving the priesthood, I conclude that a sum of £400,000 for consequential loss is a fair and reasonable award, with £140,000 for the past and £260,000 for the future.

Conclusion

[103] For many years, the pursuer carried out his role as a priest in an effective and well-respected manner. However, as a teenager in secondary education working towards being a priest, he had been subjected to vile sexual abuse by his Spiritual Director. This trauma has tormented him for many years. His personality, his ability to function and indeed his life were impaired by it. He did what he could to block from his mind the memories and effects of the abuse, but there came a point in time when he could no longer do so. As a perhaps obvious consequence, remaining in his role as a priest became burdened with intolerable difficulties. The loss he sustained and continues to suffer can never adequately be addressed merely by an award of damages. However, in assessing compensation I have concluded that the award of damages should include £55,000 for solatium and £400,000 for consequential loss arising from leaving his post as a priest.

Disposal

[104] The pursuer has succeeded in his claim, to the extent explained. It is, however, necessary to fix a by-order hearing to allow parties to address the court on the question of what interest falls to be added to the figures reached. In the meantime, I reserve all questions of expenses.