



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 54

PD489/20

OPINION OF LORD YOUNG

In the cause

X

Pursuer

against

Y

Defender

Pursuer: Brodie KC, E Smith; Digby Brown LLP

Defender: Party

Curator *ad litem*: A Gray KC

24 September 2025

Introduction

[1] The pursuer and defender were married in the 1990's. They separated in 2018 and were divorced in 2020. The pursuer made allegations to the police about the defender's conduct during their marriage which resulted in the defender being prosecuted on indictment in the Sheriff Court in 2022. The defender was acquitted on six charges but was convicted of two charges of assault and two charges of threatening and abusive behaviour. The defender received a community-based disposal and a non-harassment order was imposed.

[2] This action was served on the defender on 2 December 2020. By the time the case came to proof before answer, it was based on allegations of harassment contrary to the Protection from Harassment Act 1997 (“the 1997 Act”). The harassment was alleged to have taken place between 16 June 1997 (the date of commencement of the 1997 Act) and 2019. At the commencement of the proof, the pursuer moved a minute of amendment which, *inter alia*, sought to add allegations of harassment for the period 2020 to 2024. I refused the proposed amendment insofar as it sought to allege further incidents of harassment beyond 2019. I considered that the proposed amendment came too late and was liable to prejudice the defender who was a party litigant. As it was, the evidence which was led at the proof ranged far and wide over different aspects of the parties’ relationship for a period in excess of 20 years.

[3] The defender represented himself at the proof before answer. The existence of the non-harassment order and the pursuer’s allegations that she was raped by the defender during their marriage necessitated the appointment of a curator *ad litem* to undertake the cross-examination of the pursuer. The court is grateful that Miss Gray KC accepted that appointment and undertook cross-examination of the pursuer.

[4] At an earlier stage in these proceedings, the court granted anonymity to the parties under rule of court 102 and made orders under the Contempt of Court Act 1981 and the Children & Young Persons (Scotland) Act 1937 prohibiting the identification of the parties’ children. To minimise the risk of incidental identification of the parties or their children, I have decided to anonymise the names of all lay witnesses and of the addresses at which the parties lived. I shall also use generalised dates unless the specific date is critical to the decision itself. The following table sets out the abbreviations used in this Opinion to identify individual witnesses and locations.

Initials	Description
B	The eldest son of the parties
C	A younger brother of the defender
D	An older brother of the pursuer
F	A younger brother of the pursuer
G	A former neighbour of the parties when they lived at Edin2
H	A friend of the pursuer from her school days
J	A friend of the pursuer from university
K	A friend of the defender from his school days
L	A friend of the defender and the husband of M
M	A friend of the defender and the wife of L
N	A friend of the defender
P	A daughter of the defender from his first marriage
Q	The pursuer's niece who stayed at Edin2 for a period in 2018
R	A former child minder employed by the parties at Edin2
Edin1	The parties first house in Edinburgh
Edin2	The parties second house in Edinburgh
CHouse	A country house which was rented or owned by the parties at various times

[5] In advance of the diet of proof, parties were ordained to lodge affidavits or signed witness statements in respect of the lay witnesses they intended to lead. Oral testimony was led on behalf of the pursuer from the pursuer, B, D, F, G, H, J, Q, R and Dr Lisa Reynolds. The defender led oral testimony from himself, C, K, L, M, N and P. Parties also entered into

a joint minute which agreed certain key dates and that certain productions did not need to be spoken to by witnesses. The joint minute agreed that a report by Suzanne Anderson, an employment expert instructed for the pursuer, was the equivalent of her oral evidence.

Uncontroversial or agreed factual matters

[6] The defender is a few years older than the pursuer. He had been married previously and that first marriage resulted in the birth of a number of children. At some point after the end of his first marriage, he met the pursuer who was a student living in Edinburgh. They started a relationship. There was a period after her graduation when the pursuer lived in London and had no contact with the defender. The relationship was re-kindled and they married in 1995. They purchased a house in London where the defender was undertaking work as a journalist and writer. The defender subsequently obtained a well-paid job in the financial sector in Edinburgh which necessitated him working in Edinburgh for much of the week. While based in London, the pursuer gave birth to two children, Bin 1998 and another son in 2001. In around Autumn 2001, the parties made a permanent move to Edinburgh with their young family. They acquired a flat at Edin1. A further child was born in 2002. In 2003, they sold Edin1 and acquired a large townhouse (Edin2). Other children were born to the parties in the period up to 2010.

[7] The defender moved to another financial sector company in about 2008. In that role, he required, on occasions, to work in London and abroad. For a number of years, the defender had an affair with a work colleague who was based in London.

[8] In June 2018, the parties separated. The defender made a permanent move from Edin2 to CHouse at some point in the summer of 2018. By this time, he was in a relationship with a new partner who he has subsequently married.

[9] The defender was indicted on various charges. In 2022, he was found guilty of four charges of which three are relevant to these proceedings. The relevant charges were in the following terms (which reflect deletions made by the jury):

“(007) on an occasion between 14 December 2015 and 31 December 2017, both dates inclusive at [Edin2], you [the defender] did assault your wife [the pursuer] and did seize her by the neck and struggle with her.

(008) on an occasion between 14 December 2015 and 31 December 2017, both dates inclusive at [Edin2], you [the defender] did behave in a threatening or abusive manner which was likely to cause a reasonable person to suffer fear or alarm in that you did act in an aggressive manner, shout, swear towards your wife [the pursuer]; CONTRARY to section 38(1) of the Criminal Justice & Licensing (Scotland) Act 2010.

(009) on various occasions between 1 January and 30 June 2018, both dates inclusive, at [Edin2] you [the defender] did assault your wife [the pursuer] and did repeatedly poke her on the body.”

Evidence of witnesses led at the Proof on behalf of the pursuer

The pursuer

[10] The pursuer gave evidence of meeting the defender shortly after she had been injured in a car accident. Their relationship commenced and in 1991 they purchased a flat in Edinburgh and moved in together. There were problems in the relationship and the pursuer moved away from Edinburgh in 1993. The relationship resumed in autumn 1994 and they got engaged. They purchased a house in London which required substantial refurbishment.

[11] Her description of the defender’s behaviour while they lived in London was of cycles of aggression. He would be disparaging to her leading up to an explosive confrontation before a resumption of treating her better. She was left with an overwhelming sense that everything she did was wrong. The defender was drinking heavily. He shouted at her frequently. She described an occasion at Christmas 1998 when she went abroad to stay with her sister’s family. The defender had decided not to travel which left the pursuer taking B,

then a very young baby, on her own. On her return to the UK, the defender collected them from the airport but he was intoxicated and struggled to find his car in the car park. He was angry that she had gone abroad without him even though it had been his decision not to travel. She described being hit by the defender at the London house on more than one occasion. She said friends had seen bruising on her face and neck. She could recall showing the bruising on one occasion to her friend, H. His behaviour towards the pursuer in London was belittling. He would criticise the state of the house, or how the pursuer looked, or how she looked after their children. If she was working, she would be criticised for not doing her best for the children but, if she did not work, he would criticise her for not contributing to the family's finances. He would call her fat and incompetent.

[12] They moved to Edinburgh in autumn 2001 as the defender's job was based in Edinburgh. They acquired Edin1 which required considerable renovation which was the pursuer's responsibility to organise. By this time, she had two young children. Some of the defender's children from his first marriage would also stay at Edin1 when on vacation from their boarding schools. The pursuer found this period stressful. She did not have family or close friends in Edinburgh. The defender would criticise her for the state of the house and he did not like others to visit. She described an assault on her in late August or early September 2002. Her mother had come to stay at Edin1 as the pursuer was expecting to give birth to her third child imminently. She was having a cigarette when she saw the defender walking towards the house. Aware that he did not like her smoking, she stubbed her cigarette out in a bin. Shortly afterwards, a smell of smoke alerted the pursuer's mother to the fact that the bin had caught fire. Her mother doused the fire with water from a jug. The pursuer described the defender being drunk and apoplectic that evening when they retired to bed. He pinned her down on the bed. He told her she was disgusting and not fit

to be a mother. He pinned her upper arms and then her throat. His full weight was on top of her. She could recall his face above her. The assault stopped as he passed out drunk on the bed. She said that she felt ashamed and did not want anyone else in the house to know what had happened that night.

[13] The family moved in 2003 to Edin2. This was a very substantial property, and the aim was to have sufficient accommodation that the defender's children from his first marriage could also come to stay. This house also required a substantial amount of renovation. The pursuer described the defender as being absent for long periods of time. Although his main office was in Edinburgh, her impression was that he started to work more from London. She described the defender getting angry with her if she questioned his absences or asked for help. He would criticise the pursuer's organisation of the renovation works; the state of the house; and the behaviour of the children. He did not want to eat with the children in the evenings. He would start to drink at 6pm and would want the children to be in bed by 7pm. By the time that the pursuer returned downstairs at 7.30pm after getting the children to bed, the defender would be extremely drunk. He would constantly criticise the pursuer's appearance. If the pursuer questioned the defender about where he was or what he was doing, he would become verbally abusive and violent towards her. She described the defender being violent to her in their bedroom.

[14] In her affidavit, she referred to giving in to sex "to keep the peace" and being raped repeatedly through the pregnancy of one of her children. In her evidence, she explained that she very rarely wanted to have sex with the defender but if she did not have sex then the violence would be worse. She was asked with what frequency she gave in to sex to keep the peace and she said it was probably just before he went away each time. She said he expected sex and would refer to his "conjugal rights". The pursuer's evidence was that she

would tell the defender that she was very tired and he would respond along the lines that it had been some time since they had had sex. The pursuer described blanking out as a form of dis-association. She was asked in what way she indicated that she did not want sex. Her response was that she would tell the defender she was too tired or did not want to but that she was in a state of resignation in her mind. Sex seemed to be a better outcome than a physical fight, but she did not see it as a positive choice on her part.

[15] The pursuer started to hold regular exhibitions of artwork from 2004 at Edin2. The defender enjoyed the opening nights associated with these events but was otherwise critical of the pursuer's endeavours. He did not like the loss of privacy within the house, and he was critical of the lack of money which the events made. These exhibitions revealed the dual nature of the defender's personality with him being moody and critical other than on the opening night when he could be a charismatic host. The pursuer believed that he resented any degree of independence shown by her. These events would lead to verbal aggression and physical attacks. As a tall man, the defender would loom over her and restrain her by the shoulders or throat. He would prod her by jabbing a finger to her chest. She described sexual activity at that time as being "very rough and unwanted. Did I say no? Probably not then." She described viewing the verbal, physical and sexual abuse as being a "sacrifice, a trade-off for the exhibitions."

[16] In October 2005, the pursuer and defender travelled to England for the 40th birthday party of her friend, H. She was heavily pregnant at the time. They were staying at a nearby hotel and the birthday party was to be at the large family home of H's parents. Prior to the party, the pursuer saw an email on the defender's laptop which indicated to the pursuer that the defender was conducting an affair with his female colleague. She recalled them having a verbal fight at the hotel and then a very loud argument at the party itself. In her evidence

she was referred to a typed chronology which she had prepared for solicitors in which she described being flung to the ground at the party by the defender. On being referred to the terms of the chronology she said in evidence that she thought that did happen but she was starting to doubt herself and could not now recall whether the confrontation was a physical one. In cross-examination, she said that the defender had been violent at the party and had pushed her over on their way back to the car.

[17] The pursuer did not disclose the defender's affair to her family or friends. She had lost confidence and was trying to cope with a number of small children in a home which was like a building site. The defender remained violent and unpleasant towards her. If anything, she considered that the defender felt more powerful as he could continue with his affair safe in the knowledge that the pursuer's confidence was so low that she would stay with him and bring up his children. He continued to criticise her appearance.

[18] In September 2006, the pursuer realised that she was pregnant again. She was surprised by this as the defender had told her he had had some form of contraceptive medical device implanted. There is an entry in her GP records for 19 September 2006 which, after noting the positive pregnancy test, includes an entry made by the GP of "Husband on the male pill through GP plus". When she told the defender of her pregnancy on 2 September 2006, his initial reaction was positive, but he then "flipped". He called her a bitch and told her to obtain an abortion. He then attacked her by pushing her down onto a sofa. He snapped the necklace which she was wearing. He grabbed her arm which resulted in her dislocating her shoulder. He hit her on the face. He kicked or punched her on the stomach and said "let's see if you can hold on to your precious baby". She called the police. The police came but left after a few minutes. A summary of the incident was provided by a Police Scotland letter dated 12 November 2018 in the following terms

“Police contacted after [the pursuer] reported she had been assaulted by her husband, [the defender]. On police arrival [the pursuer] advised she had become involved in a heated argument with her husband regarding an affair he had apparently been having for the last 2 years. She had advised this had resulted in a disturbance within the property. [The defender] had been spoke with who confirmed there had been a heated argument between both parties. No complaints of assault forthcoming from either party at this time. No apparently [sic] injuries to either party to substantiate any physical violence.”

[19] Three days after this incident, the *au pair* employed by the pursuer advised her to take photographs of the injuries which she sustained in this incident. The pursuer then took a series of date stamped digital photographs of her face which were produced in court. These photographs appear to show bruising below the right eye and bruising on both eye lids, especially the right. There is a mark on the left temple and some marks behind the left ear.

[20] In 2008, the pursuer’s university friend, J, suggested that the pursuer should visit her in Mexico for a break. It was agreed that the defender and the *au pair* from New Zealand would look after the children during the pursuer’s absence. When she was in Mexico, she received a message from the *au pair* to say that the defender had arrived with a van and had removed items of furniture from Edin2. He had moved from the family home without leaving any forwarding address. The children were left in the care of the *au pair* until the pursuer returned from Mexico.

[21] The defender lived apart from the pursuer until December 2009 when he returned to Edin2. The pursuer became pregnant again in late 2009/early 2010 although the pursuer’s evidence was that she cannot recall any resumption of sexual relations at that time. The defender was angry that the pursuer was pregnant and wanted her to have an abortion. She refused. The relationship was no better. The defender was continuing his affair with his colleague. He was contemptuous of the pursuer both in private and in front of others. The

criticisms covered the familiar grounds of the pursuer's competence, appearance and parenting skills. He would threaten to cut up her credit card. In cross-examination, she accepted that she had access to substantial sums of money through the defender's income and her own inherited capital, but she explained that the loss of confidence and decision making capacity deprived her of true financial independence.

[22] In 2011, there was a family reunion at the family home of the defender's brother, C. The defender got cross with the pursuer for speaking to his family and his children from the first marriage. He would disappear with the car over the weekend leaving the pursuer stranded.

[23] In the summer of 2017, a house was rented in Gloucestershire to celebrate a significant birthday. The holiday was attended by the defender's mother, his children from both marriages and his grandchildren. The pursuer also invited her own mother over for a few nights. According to the pursuer, the defender was vile to her in private. He appeared to be provoked by her talking to the grown-up children from his first marriage and by having invited her own mother. In her evidence, she said that one evening during that holiday he got on top of her when they were in bed and choked her with his hands.

[24] In 2017, there was an incident at Edin2. By this time, the defender was sleeping in the basement of Edin2. The pursuer was smoking in an upstairs sitting room in front of her computer. The defender stormed in and demanded that she put the cigarette out. She refused. He tried to pull her from the chair. The defender put his hands round her throat. In order to get him to loosen his grip, the pursuer bit the defender's wrist. The aftermath of this incident was witnessed by B and another son who had heard the altercation. The defender brandished the bite mark on the wrist to his children everyday leading up to Christmas that year.

[25] By the summer of 2018, the defender had CHouse available for his own occupation. When the pursuer became aware in late summer 2018 that the defender had commenced a new relationship with another woman – who he has subsequently married – she asked him to move permanently to CHouse. According to the pursuer, the defender became incensed by the idea that he should have no further access to Edin2. He attacked her in the kitchen by pinning her up against the wall by her throat.

D

[26] D gave evidence of a family holiday one summer between 2010-12 at CHouse. The pursuer and defender hosted D's family, D's parents and the families of his siblings. He described the defender's attitude as "schizophrenic". He was proud to be a good host but at other times appeared angry and intimidating. D formed the impression that the defender was drinking heavily in private. D spoke of conversations with the pursuer during that holiday about problems in her marriage and she told him that she did not always feel physically safe. D could not recall witnessing any specific incidents of violence from the defender during that holiday. Nor did he witness the defender drinking excessively. He did say that he witnessed the defender acting in a hostile and aggressive manner.

H

[27] H was a school friend of the pursuer. When the pursuer was living in London early in her marriage, she visited H's house one day. The pursuer was wearing a short-sleeved top as it was a warm day. H noticed bruises on the pursuer's arms and the pursuer appeared upset. The pursuer told H that the defender had caused the bruises. In her evidence, H was not able to identify the date on which this visit took place. She was unable

to pinpoint the date by reference to whether the pursuer had her first child by the time of this visit. H also gave evidence about her 40th birthday party in 2005 attended by both parties. She recalled going upstairs at one point in the party to fetch something and she could hear a screaming match between the parties outside. She could not make out what was being said. She did not see the argument but only heard it. She did not recall any further interaction between the parties at the party.

F

[28] F is the younger brother of the pursuer. He recalled conversations with the pursuer in around 2006-2009 when she stayed with his family in the southwest of England. The pursuer disclosed to him that the defender had been conducting an affair and that he was verbally abusive to her. He felt that the pursuer was less communicative with him after she had allowed the defender to return to the family home in 2009. Later on, in the period 2017-18, the pursuer disclosed to F that the defender would be verbally and physically abusive especially when drunk. The defender would get so drunk he would urinate in the corner of their bedroom. She described to F that the defender would hold and hit her. F did not witness any physical assaults on his sister by the defender.

J

[29] J met the pursuer at university. She has spent much of her working life abroad and currently lives in Mexico. In her affidavit and oral testimony, she described an occasion when B was a toddler. J and another friend went to visit the pursuer at her house in London. The three friends were in the conservatory having a social drink and they were smoking. The defender was looking after B in another room in the house. J described the

defender coming into the conservatory and arguing with the pursuer. He was shouting aggressively and wanted J and her other friend to leave. It was an awkward situation, so J and the other friend made to leave. The defender followed them to the door still shouting. She did not accept the suggestion put to her in cross-examination that they were asked to leave in a civil manner as it was time for B's bedtime routine and that the defender did not like B being exposed to cigarette smoke.

[30] J recalled that the pursuer twice disclosed to her that the defender had assaulted her. She had been told by the pursuer that the defender kicked and punched her while pregnant with B in London. The pursuer had also disclosed to J that the defender assaulted her in September 2006 and that photographs of her injuries had been taken. J was told this some years after the 2006 incident itself but a number of years before the parties separated in 2018. She formed the impression that the pursuer lived in a state of fear. She formed this impression because she saw a completely different person when the pursuer was away from the defender's influence.

[31] She recalled the pursuer coming for a holiday in Mexico in 2008. She had a recollection of being stopped at a petrol station while the pursuer got out and was on the phone. She subsequently found out from the pursuer that the defender had moved items from the house and had left the children in the care of the *au pair*. She described the pursuer as being very upset and she could not believe that the defender had abandoned the children while she was so far from them.

R

[32] R applied for a nanny position with the parties between completing her undergraduate degree and commencing her post-graduate studies. She was a nanny

between April-July 2011 on a live in basis and then on a live out basis until she commenced her graduate course in September or October 2011. She remained close to the family and helped look after the children during her university holidays from 2011-2014.

[33] R described the pursuer appearing exhausted. The defender largely worked in London at this time and would, in theory, be back for weekends but his presence was unpredictable. She found the defender to be shallow and patronising. He was often uncommunicative. R described two occasions during a visit to CHouse around 2012 when the defender directed comments at the pursuer's appearance. On one occasion he commented on the pursuer having too many scones with jam. On another occasion, the defender introduced the pursuer's older sister to R with a comment to the effect that the sister had kept her figure despite having a number of children, and he told the pursuer not to eat things or she would get fat.

[34] At some point after R stopped living with the family, the pursuer told her that she had been assaulted in September 2006; that the police had been informed; and that photographs of the injuries had been taken. She thought she was told this before the separation in summer 2018. She was also told on more than one occasion by the pursuer that she had been raped by the defender. She could not say when she was told this.

Q

[35] Q is the pursuer's niece. She lived with the parties at Edin2 between January and April 2018 while she undertook an internship in Edinburgh organised by the defender. She could not recall the name of the company for whom she undertook the internship. She would have been aged 24 at the time. She described witnessing episodes of verbal abuse directed by the defender towards the pursuer and usually fuelled by alcohol. Q lived in the

basement during her stay. At that time, the defender also had a bedroom in the basement. There was a kitchen in the basement and Q would regularly find empty bottles of wine and spirits there. She recalled an occasion when a bottle of red wine was opened by the pursuer to celebrate B's return to Edinburgh. When the defender came into the kitchen, he complained that the bottle of wine was an expensive one which the pursuer ought not to have opened. He said to the pursuer "you may think you are worth it, but I don't". She described his tone as sneering "with an intent to humiliate". She could recall the precise words as they mimicked a well-known cosmetics advertising slogan. She described the defender as being verbally abusive on multiple occasions. She was also told in one conversation with the pursuer that she had been raped by the defender in the past. They were having a conversation in the sitting room when this was said. Q did not know how to respond, and they did not discuss the details of the allegation.

B

[36] B is the oldest child of the parties. B attended boarding school in England until 2017. Latterly, during school holidays, he would stay in the basement of Edin2. He recalled an occasion when he was in the shower in the basement and one of his younger brothers came downstairs as he had become concerned by an argument between the parties. B got out of the shower and ran upstairs. He became aware of noise as he ran upstairs. In the sitting room, he found his mother sitting in a chair facing her computer and his father was standing to the left of her. His mother was shouting for help. The pursuer said that the defender had attacked her, and she used the word "strangled" to B. B did not see any physical altercation himself. He described the pursuer as being "very upset". He did not know where the defender or his brother went after the incident ended. In relation to when this incident

occurred, he initially thought that it was likely towards the end of his time at school, but it could have been after leaving school. He suggested sometime in 2016-18. In cross-examination, he recalled that he left the country to go travelling in January 2018 and he then stated during re-examination that he was largely away from the UK in 2018 and was at university by 2019. He agreed during re-examination that it was most likely that this incident occurred in 2017.

G

[37] G was a former neighbour of the parties when they lived at Edin2. In 2014, while walking her dog, she saw the pursuer with her youngest child and their dog. G had not met the pursuer previously. G described the pursuer breaking down in tears in front of her. The pursuer said she could not go on. G took the pursuer back to Edin2 where the pursuer told her that she was exhausted. She told G that the defender was controlling and that she felt she had no life. The pursuer expressed concern to G that G could not be in the house when the defender returned from work. G stayed for about an hour. G next saw the pursuer approximately 3-4 weeks later and, once again, the pursuer was in tears as she walked her dog. G described the pursuer as being "absolutely distraught". G suggested a regular dog walk together. The pursuer agreed to this but told G that she should not come to Edin2 unless the pursuer texted her first. The reason given for this was that the defender had been intimidating to friends in the past and had scared them away. G and the pursuer met for regular dog walks over several years.

[38] G witnessed an occasion when the defender threatened to cut up her credit card as she had used it at a BP petrol station instead of Sainsbury's. This incident took place in the kitchen at Edin2 when Q was staying with them. G described another occasion when she

bumped into the defender on the street. The pursuer was abroad at the time. The defender told G that the pursuer had lost a bag with money in it while abroad. He appeared angry and called the pursuer a “stupid cow” for losing the bag. When G said that their holiday insurance should cover the loss, the defender said “[the pursuer] has never filled in an effing form in her life”. G also described hearing the defender criticise the pursuer on multiple occasions for smoking or playing games on her phone. Her impression was that these comments were not said in jest. She also described a birthday party in December 2017 when she witnessed the defender going over to the pursuer and gripping her elbow forcefully.

[39] In cross-examination it was suggested to G that she had a financial relationship with the pursuer involving the loan of money. G described one occasion when the pursuer covered an emergency vet bill as G did not have her own credit cards at the vets. The money was repaid in full to the pursuer. She denied that she had admitted during cross-examination in the criminal trial that she had received a business loan from the pursuer. She was also cross-examined on the basis that she received regular payments from the pursuer. G said that she would be repaid out of pocket expenses, but she was not paid for helping pick up his children or looking after one if they were ill. She agreed that she could use a polo car owned by the pursuer, but this was primarily used for taking the children to school or picking up groceries. Very occasionally, the car was used by G to visit her mother, but she would obtain the pursuer’s permission for this. She was also asked about the alleged assault in August 2018. G’s evidence was that she was told by the pursuer that the defender assaulted her in August 2018. G had not witnessed this. In re-examination, G said that the pursuer had told her that the defender had pinned her against the wall by grabbing her throat in August 2018.

Dr Lisa Reynolds

[40] Dr Reynolds is a consultant clinical psychologist. Her training is to the highest level (specialist) of trauma assessment, formulation and treatment. She interviewed the pursuer and completed a report dated 2 November 2022. She reassessed the pursuer in March 2024. Dr Reynolds was unable to identify any experiences of trauma or abuse beyond those reported by the pursuer during her marriage. She could not discern any pre-marriage experiences of physical, sexual or emotional abuse, or any pre-marriage mental health level symptoms. She was able to identify various core symptoms of post-traumatic stress disorder (“PTSD”) which occurred during the period of the pursuer’s marriage. The pursuer was describing high levels of anxiety and reporting intrusive images. Dr Reynolds’ diagnosis was that the pursuer had developed PTSD. PTSD is a response to specific stressful experiences or events. Dr Reynolds’ opinion was that the physical, sexual and emotional abuse described by the pursuer has resulted in the development of PTSD. Although her GP records contained no disclosure of such abuse at the time it is alleged to have been taking place, this was not uncommon. In Dr Reynolds experience, non-disclosure or delayed disclosure of abuse is more common than prompt disclosure. The prognosis for the pursuer was guardedly optimistic. Once the litigation was completed, she would be best placed to proceed with trauma focussed cognitive behavioural therapy (CBT) or eye movement desensitisation pre-programming (EMDR). A course of 10-20 sessions which would be privately funded should, on balance, significantly reduce the severity of her symptoms. While her symptoms remain unresolved, she would struggle to gain or maintain employment.

Evidence led at the proof on behalf of the defender

The defender

[41] The defender denied the allegations of verbal, physical and sexual abuse made by the pursuer. He did acknowledge that he had been a poor husband and father at times during the relationship. He accepted that he had conducted an affair with a colleague which he said was from around 2006-2009. He described a marriage in which both spouses were prone to drinking excessively on occasions, and of having shouting matches in front of the children. He did not accept that the drinking or shouting was a one-sided situation. In relation to the claims of lengthy absences from the family home, he emphasised that he held down highly responsible and remunerative roles in the financial sector. His role was in marketing and communications, but he described himself as essentially a salesman. These jobs paid well. He did not have family capital to call upon so he had to earn substantial sums to fund the family's lifestyle including boarding school education for the children. His employment took him to London and abroad on a regular basis. His employers paid well through discretionary bonuses but expected a high level of commitment from their staff. His absences were the *quid pro quo* for the substantial income which his family required. In retrospect, he questioned the trade-off between work and family life, but at the time, his focus was on providing for his family. He considered that he did assist with childcare duties when he was at home including the school runs and bedtimes. He did occasionally criticise the pursuer "gently" if he came home to a house which was untidy. He accepted that he would criticise the pursuer if he considered that she had not used her time at home during the day more efficiently. In his view, the pursuer had access to significant levels of help with childcare and domestic help, and he could not understand why things always seemed to be a mess at home. He did find it distressing if he had to wash and iron his own shirts

when his own work was so demanding. He would criticise her drinking, smoking and playing games on her mobile phone. He did not like her drinking and smoking through her pregnancies. He denied every making comments in public about her appearance. He did not consider that he had a problem with alcohol. He had stopped drinking whisky in late January 2009 to prove to himself that he could stop. He had a period of a few years after that when he was teetotal and had then returned to drinking in moderation. He did not consider that alcohol fuelled anger in him. Rather, it had the opposite effect, and it would quieten him down. He drank wine but only very rarely drank spirits.

[42] He denied the alleged assaults including the offences for which he was found guilty. He never assaulted the pursuer in any way. J's evidence about an occasion in which he aggressively asked her and another friend to leave the London property was "retrofitted". He was anxious that evening that B should be put to bed and was concerned about the noise and cigarette smoke coming from the conservatory, but he was not aggressive in suggesting that it was time for the social meet to end so that B could go to bed. He did not chase them from the house as suggested. He was disparaging about J as a witness describing her during his own evidence as a "heavy drug user".

[43] He denied assaulting the pursuer in London. When the court asked him about two entries in the pursuer's GP records from 1997 and 2001 which referred to an assault and a domestic assault, he said he was mystified and could not explain them. Those entries appear to read:

"17 September 1997 - assaulted last night thrown about room – (1) bruising and swelling seen underneath right eye. (2) small bruise lower part left thigh (3) aching tender neck and lumbar muscles"; and

"14 [indecipherable] 2001 – "Dom violence last night – 1st time for 3 years – alcohol ++ - hit on head and back"

[44] In relation to the alleged assault on 2 September 2006, his position was that there had been an argument at the time and the pursuer had called the police. He denied that there was any physical assault. He denied calling her a bitch. When asked about the photographs of the pursuer which appear to show marks on her face, the defender questioned the authenticity of the photographs in terms of when they were taken and what they showed. His position was that there was no proper audit trail for the photographs, and he had not seen the meta-data to confirm that the date stamp was accurate. Nor did he accept that it was bruising which could be seen. His suspicion was that these photographs had been manufactured in some way for the criminal trial. He emphasised that the police incident report did not note any allegations of assault or any findings of injuries.

[45] The defender accepted that he moved out of Edin2 in 2008 when the pursuer was on holiday in Mexico. His response in cross-examination to the observation that he moved out of the family home after having undertaken to look after the children during her absence, was "it wasn't prescriptive, it was understood". When it was put to him that he had not told the pursuer in advance that he was going to do that, he said "I can't be sure. I think I did so at the time". He then said that the pursuer was "mistaken" when she said in her evidence that the defender had moved out without alerting her in advance.

[46] In relation to the alleged assault in 2017 which resulted in B coming into the room, his evidence was that there was a shouting match between the parties for which he was not proud. He said that the argument was about a significant piece of building work which the pursuer wanted funded, but which the defender did not consider could be afforded. In cross-examination, he accepted that the catalyst for the argument was that the pursuer was smoking in the house. He accepted that B came into the room and heard the shouting

match, but he denied assaulting the pursuer. He denied trying to grab a cigarette from the pursuer on this or on any other occasions.

[47] The defender denied that he would insist on sexual intercourse when the pursuer was not consenting. He did not accept that he would ignore her protestations of tiredness and insist on sex. He did not accept that the pursuer had no choice but to give in to sex on occasions.

[48] The defender's position, repeated in final submissions, was that the pursuer's claim was part of a campaign to destroy him financially and emotionally.

C

[49] C is one of the defender's brothers. As a lawyer by profession, he had become reluctantly involved in a number of the legal disputes following the disintegration of his brother's marriage. C gave evidence in relation to two large family gatherings which took place in Bordeaux in 2009 and in Spain in 2016. In Bordeaux, his siblings and their respective families had all stayed in a *chateau*. In Spain, he recalled that the defender's family had stayed in a house near to the house which C's family had stayed in. He did not see or hear any disagreements between the parties during these events. In 2011, there was a family reunion involving around 30-40 family members at his own house in the south of England. He did not see his brother slapping the pursuer during that event, nor did he witness the defender driving off and leaving her. He was confident that if any of his siblings had been aware of an incident in which their brother struck the pursuer then they would have challenged such behaviour. C also spoke of an event in June 2018 at Loch Earn which was a birthday celebration for his mother. He recalled the pursuer driving up and being at the celebration for a short period. His evidence was that she took C to one side and informed

him that she was going to divorce the defender; that she was going to hire “the best Rottweiler lawyer”; and that she was going to “destroy” the defender. She served divorce papers shortly after. He told two of his siblings about this conversation and thought that he also told the defender. He considered that the pursuer had embarked on a campaign of litigation against the defender involving a number of legal processes with the aim of destroying the defender. He had become involved as an intermediary in the divorce process and had also become involved in a sequestration process in Forfar Sheriff court where the pursuer’s petition for sequestration was dismissed.

[50] In cross examination he indicated that he believed that the defender had embarked on his new relationship with his current wife by the date of the Loch Earn conversation although he could not be certain. It was put to him that the conversation which he recalled with the pursuer did not happen at Loch Earn but he was certain that it did. He confirmed that at the family reunion in 2011, the pursuer and the defender were staying in rented accommodation rather than his own house.

P

[51] P is a daughter of the defender by his first wife. She gave evidence in relation to her observations of staying with the parties at their two houses in Edinburgh. She attended boarding school in Edinburgh from 1998-2001. During most school holidays, she would stay with her father in rented accommodation and then at Edin1. Her evidence was that when the pursuer moved up to Edinburgh in 2001 with her two young children, the pursuer insisted that P leave and find accommodation elsewhere. P did that and moved into a rented room elsewhere. P attended university in England but would return to Scotland during university holidays. She stayed at Edin2 for around 4 weeks in 2003 and for

occasional short stays at other times. In Edin2, she was allocated a cold and damp bedroom in the basement.

[52] She considered that the pursuer took the decisions in the house. She described the pursuer as a confident and assertive woman. She described one occasion in which she was shocked by the pursuer's aggression directed towards P and her husband on a visit in 2008. The pursuer berated P and her husband for having met the defender's mistress in London which the pursuer regarded as a betrayal. In her affidavit, P described the defender as being a high functioning alcoholic for a long time. She explained in her evidence that she meant that the defender was able to hold down a highly demanding job while also drinking alcohol regularly in the evenings. She did not mean to suggest any alcohol dependency. She never saw her father drunk at family gatherings and did not see him being violent in drink. She could recall the party in Gloucestershire in 2017 as it was the only occasion that all of the defender's children were present together. She did not witness any aggression by the defender towards the pursuer at that event. She did not detect any tension between them. She recalled a happy occasion. She also recalled that the defender was suffering from polymyalgia at that time which caused him to walk with a pronounced limp. He was very physically limited and clearly uncomfortable. Although she had witnessed the defender being angry on occasions, these had been occasions involving controlled and justified anger. He was never out of control and P had never felt personally threatened.

L

[53] L is a friend of the defender. He is married to M. He is a consultant psychiatrist currently employed in the south of England. He first met the defender through M who was a school friend of the defender. He has had contact with the defender and the defender's

family over 30 or more years. It was not unusual for the respective families to visit for overnight stays in each other's houses. They would also holiday together in Scotland at CHouse.

[54] L had never seen or heard anything which came anywhere close to abusive conduct by the defender towards the pursuer. In his affidavit, he offered the opinion that the criminal convictions were largely the result of coached evidence from two of the defender's children. He expanded on this in examination in chief by explaining that he considered that the two children had been placed in a difficult situation and that he was not sure whether due care and attention had been given to ensuring that they were recalling actual events as opposed to matters which others had encouraged them to recall. He had never witnessed the defender being drunk, violent or verbally abusive. He did know that the defender felt that, at times, he had an unhealthy relationship with alcohol and it was to the defender's credit that he had acted on that. His personal opinion was that the pursuer's action was vindictive and mercenary although he qualified this by recognising that it was for the court to determine, if necessary, what motivated a party. After caveating that he was expressing a personal not a professional view and that he had not had recent conversations with the pursuer, he offered the opinion that the pursuer's desire for revenge or her aim to accumulate wealth may have distorted her ability to recall matters accurately. He was reluctant to use the phrase "false memory syndrome" but he did have professional experience where individuals can lose the ability to think through carefully the costs and benefits of a situation, and they can convince themselves that things happened which may in fact be distorted thoughts.

[55] In cross examination, L confirmed that he was not offering a professional opinion. He had not seen the pursuer's medical records and was not claiming to have made a clinical

evaluation. Although he had read some of the statements from the criminal proceedings, he agreed that he was not in a position to comment on the appropriateness of the interviews of any child witnesses.

M

[56] M, who is married to L, first met the defender in 1974 when they attended the same school. She has been a close friend of the defender since then and became friendly with the pursuer from around 2003 or 2004 after visiting Edinburgh. She had never witnessed the defender being abusive or a violent drunk. She would speak regularly to the pursuer on the telephone, but the pursuer did not disclose any of the current allegations to her. She gave evidence in relation to the amount of alcohol which she witnessed the pursuer drinking and an occasion on which she witnessed the pursuer strike out at her children who were misbehaving. She gave evidence of the pursuer telling her in conversations after the separation that she wanted to “destroy” the defender.

[57] In cross examination, she was asked about a passage in her affidavit in which she stated that in 2016 the pursuer told her that she was planning to divorce the defender and move to England when the time was right. She was certain that this conversation took place in 2016. She did not say anything to anyone at the time as she had a previous experience of disclosing such information and it had resulted in the loss of a friendship.

N

[58] N had known the defender since 1979. He first met the pursuer in around 1997 and got to know her better from 2010 after the parties acquired CHouse as a holiday home close to N’s own home. His evidence was in short compass and largely confirmed that he had

never witnessed any untoward behaviour by the defender at any time. There was no cross-examination.

K

[59] K had been a friend of the defender since their schooldays. She also knew the pursuer who formerly worked for K. She considered that the pursuer was a determined and forthright person. In her view, neither party was the more dominant personality in the relationship. She offered her personal view on how she considered she would react if she had been a victim of sexual assault. She had never seen the defender to be violent or vindictive, and she had not witnessed any violence or abusive conduct between the parties. There was no cross-examination.

Discussion

The concept of harassment under the 1997 Act

[60] Section 8(1) of the 1997 Act provides that a person must not pursue a course of conduct which amounts to harassment of another person. Harassment is not comprehensively defined in the Act, but it includes causing a person alarm or distress. The course of conduct must involve conduct on at least two occasions and conduct may include speech. It is the course of conduct which must amount to harassment rather than the individual incidents which make up that course of conduct (*Marinello v City of Edinburgh Council* 2011 SC 736 at para [12]). What amounts to harassment has been discussed in previous cases. From an early date, the English courts recognised that harassment involves conduct of a particular quality which is targeted at an individual. In *Majrowski v Guy's and*

St Thomas's NHS Trust [2006] UKHL 34 at para 30, Lord Nicholls of Birkenhead observed that

“Wherethe quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day-to-day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable.”

The phrase “oppressive and unacceptable” has been adopted in a series of English cases as a helpful shorthand to describe the type of conduct which will amount to harassment, (see *Veakins v Kier Islington Ltd* 2009 EWCA Civ 1288 at paras [10]-[11]). While senior counsel for the pursuer argued that this amounted to a gloss on the statutory language, I recognise that this phrase has become a touchstone to help courts identify the boundary line between annoying behaviour and a delictual wrong. I note that the “oppressive and unreasonable” or “gravity test” was applied by Sheriff Braid (as he then was) in *Dickie v Flexcon Glenrothes Limited* (unreported, 4th September 2009, Kirkcaldy Sheriff Court at paras [69]-[72] & [78]). For my part, I accept that harassment involves a course of conduct of such gravity that it would be viewed as oppressive to the victim. As much of the conduct alleged in the present case, if proved, would amount to criminal acts of violence directed against the pursuer, there can be no doubt that the gravity threshold would be met. In practical terms, the gravity test only becomes critical in this case if the court finds that the pursuer has only proved instances of verbal abuse or criticism.

The Standard of Proof

[61] There is no dispute that the standard of proof applicable in this action is the balance of probabilities. The fact that the pleadings contain allegations of serious criminal acts including rape and physical assaults does not import the criminal standard of proof,

(*Mullan v Anderson* 1993 SLT 835; *C v G* 2017 CSOH 5; 2017 CSIH 72). There is *dicta* that an allegation of a criminal act obliges the court to look for “careful and precise” proof of the facts (*Mullan v Anderson*, Lord Penrose at p851), or the court is obliged to consider whether the “cogency of the evidence” is sufficient to prove a grave allegation (*1st Indian Cavalry Club Ltd v HM Customs & Excise* 1998 SC 126, Lord Hamilton at p138), or simply that the court must “carefully examine and scrutinise” the critical evidence, (*C v G*, per Lord Armstrong at para [274]). I have some doubt whether these various formulations reflect any practical differences between the way that the respective judges approached the evidence before them. A court must be mindful that a finding in civil litigation that an individual committed a criminal act is likely to have serious reputational consequences for that individual. But the court must also recognise that a person claiming to be the victim of a criminal act which has caused them damage should be given the opportunity to prove their claim to the requisite civil standard without shading that standard upwards.

Objections to evidence

[62] It was agreed at the outset of the proof that objections to the admissibility of evidence would be reserved until submissions. This was the most practical approach to ensure that the evidence would be completed within the allotted diet.

[63] The defender had a general objection to the lack of a record for various passages of evidence, and he criticised the lack of specification in relation to most of the allegations. Senior counsel for the pursuer recognised at the outset of the proof that some paragraphs in his witnesses’ affidavits were not supported by pleadings and he helpfully highlighted the paragraphs in the affidavits which he did rely on. In his final submissions, senior counsel for the pursuer correctly anticipated that he would be held by the court to the terms of his

pleadings in relation to the particular incidents alleged to fall within the course of conduct. In this Opinion, I shall give effect to the defender's objection that the individual allegations of harassment must have a basis in the averments on record. However, I do not uphold the defender's broader objection that individual incidents of harassment ought to be specified in terms of the particular date of each alleged incident and/or more precise articulation of each incident. Where many of the allegations are of repeated conduct over a period of time, it is unrealistic to expect a pursuer to be able to identify precise dates for the incidents in issue. Criminal indictments setting out charges of domestic abuse which, if proved, might result in the deprivation of an individual's liberty will often be drafted in general terms without specific dates identified. Scottish juries are asked to decide on issues of guilt and innocence on such indictments every week of the year. Where, as in this case, the defender's position is that there were no incidents of physical, verbal or sexual abuse against the pursuer, there is no particular prejudice in not knowing the precise date of the alleged incident beyond the somewhat hypothetical suggestion that his diaries might provide him with an alibi.

[64] The pursuer objected to L's evidence insofar as he purported to provide comments on the pursuer's mental health. It was submitted that L was not acting as an expert and did not carry out a clinical examination of the pursuer. I uphold this objection in relation to the observations made by L in his evidence that the pursuer had difficulty differentiating between what had occurred and what she believed had occurred. Although L did seek to caveat his observations on the basis that he was only commenting in a personal capacity and had not examined the pursuer, he was still attempting to provide opinion evidence without undertaking the objective role of an independent expert who has duties to the court. I was surprised that L allowed himself to be drawn into commenting on the pursuer's mental health and also on the issue of alleged coaching of evidence in relation to the criminal trial.

[65] During the curator *ad litem's* cross-examination of the pursuer, senior counsel for the pursuer objected to the admissibility of a recording of a private conversation between the pursuer, D and others in August 2020. The recording was not played during the proof, and the transcript was not put to any witnesses. The individual who made the recording did not give evidence. Neither the recording (defender's production 7/23) nor the transcript of the recording (defender's production 7/7) was covered by the joint minute. The very limited use made of this evidence by the curator *ad litem* was to elicit from the pursuer that she had described the defender using an offensive term and had expressed the view that the police would not like the defender. Presumably on the basis that the content of this recording did not feature to any further extent in the evidence, the pursuer made no final submission in relation to this objection at the conclusion of the evidence. The defender's written submissions did invite the court to refer to the transcript of the audio recording which, it was submitted, supported the view that the pursuer's allegations were motivated by spite. As the pursuer's objection was not maintained at final submissions, I shall simply repel it. However, I also record that as the provenance of the audio recording and transcript were not agreed productions and were not properly set up in evidence by the defender, I did not consider it appropriate to take up the defender's invitation to listen to the recording or consider the terms of the whole transcript.

[66] The pursuer also maintained an objection in final submissions to the evidence of character which ran through much of the evidence from the defender's witnesses. Evidence of character is generally collateral to the issues at hand and such evidence is inadmissible, (Walker & Walker on Evidence at para 7.4.1). It is collateral as it does not have a sufficiently direct bearing on the critical issues and is, to that extent, of no great assistance to the decision maker. As a party litigant, it is understandable that the defender might think that

evidence of his good character from a variety of individuals who have known him for many years would assist the court, but ultimately this evidence is inadmissible, and I uphold the pursuer's objection.

Reliability and credibility of the principal witnesses.

[67] It is appropriate to make some general observations on the credibility and reliability of the parties in this case. The defender submitted that the pursuer's evidence was motivated by a desire for revenge, financial gain and disappointment from the criminal proceedings. These motivating factors resulted, it was submitted, in her evidence being incredible and unreliable. It was submitted that it was not credible that a confident and intelligent woman with access to her own considerable financial resources would put up with years of the abuse which she now alleged. She was well able to stand up for herself, as spoken to by witnesses such as P and K. The difficulty with this submission is that it elevates the identification of broad motivations above the more important task of deciding whether individual elements of the case are proved or not. Ascribing a motive to an individual not only runs the risk of pre-judging matters, but it is not even a particularly helpful tool. Even if I was to find that the pursuer was motivated by animosity towards the defender, that animosity could be a consequence of being a victim of the sexual and physical assaults which she alleges, or it could be fuelled by a desire to revenge herself for his infidelity during their marriage. Ultimately, I found the pursuer to be a credible and generally reliable witness. She was credible as I had no doubt that she was trying her best to tell the truth to the court at all times. She gave her evidence in a subdued manner although she was a little more forceful when she felt challenged in cross-examination. She became emotional on two or three occasions. Her reaction appeared to me to be genuine and in

keeping with the allegations being discussed at those times. I have qualified the assessment of her reliability with the word “generally” as there are some parts of her evidence where I was not satisfied that her memory was accurate. That is to be expected given the lengthy time gap between the alleged incidents and the proof. As Dr Reynolds explained in her evidence, individuals who experience traumatic events often do not recall each event in a linear manner. They may recall a fragment of an incident which may not be the core piece of the incident. At other times, they may recall a sensory element. In this case, I have concluded that the pursuer’s recollection in relation to some specific incidents was insufficiently reliable to allow me to make a particular factual finding but these do not detract from my general observation that she was a reliable witness.

[68] In contrast, I am unable to conclude that the defender was a wholly credible or reliable witness. As discussed further in this opinion, there is evidence from various sources which demonstrates that the defender did physically assault the pursuer on a number of occasions. His denial of these assaults is simply not credible. Nor did I find his explanation of some of the other incidents discussed later in this Opinion to be credible. I formed the general impression that the defender was a highly intelligent and forceful man, capable of great charm. Those attributes have no doubt contributed to great success in many parts of his professional life. But it appeared from the evidence and my own observations throughout the proof, that he was a man who expected others to bend to his will by accepting his version of events. An example of this, further discussed at paragraph [80], relates to his allegation that photographs had been manipulated without any evidence to support such a serious allegation. This was a wild allegation albeit confidently put forward by the defender in both evidence and submissions.

[69] I was satisfied that the pursuer's witnesses were credible and reliable. The defender attacked the reliability of G on the basis that she had some form of financial relationship with the pursuer but nothing was placed before me to cast doubt on G's denial of any real financial relationship existing. In relation to the defender's witnesses, I was also satisfied that they were credible witnesses doing their best to recollect events from many years ago. I have some reservations about the reliability of the evidence of M on account of the way she gave her evidence. Her evidence, as with many of the witnesses, was taken remotely. She appeared to view the giving of evidence to the court as akin to a social chat amongst a group of friends. At times, it was difficult to follow her evidence as she did not speak towards the microphone even after being instructed to do so. She sought to challenge the relevancy of questions asked of her in cross-examination. Ultimately, much of her evidence was irrelevant to the issues or inadmissible for the reasons set out at para [66] above, but insofar as her evidence was relevant and admissible, I only rely on it if it is supported by the evidence from another witness.

Allegations of rape

[70] Although the pursuer's affidavit contained references to alleged rapes prior to the commencement of the 1997 Act, the pursuer's case on record alleges instances of rape occurring only after they had moved into Edin2. In his closing submission, Mr Brodie KC accepted that some of the allegations of rape had not been spoken to in evidence. He accepted that an allegation in statement of fact 4.4 of being physically pinned down by her shoulders during an instance of alleged rape was not established. Nor had evidence been heard to prove an allegation in statement of fact 4.4 that the defender had slapped and restrained her after she requested the defender to stop his dominating behaviour during

consensual sex. It was also accepted that evidence had not been led to substantiate an alleged rape in 2017 in a house in Gloucestershire (statement of fact 4.8). There was some evidence elicited from the pursuer in cross-examination which might have suggested an incident of unwanted sexual intercourse at a point in 2009-2010 but it is not an allegation made on record and the pursuer did not mention it in her affidavit or examination in chief. This leaves for determination whether the pursuer has proved that the defender raped her on a number of occasions from around 2005 until around January 2007 in Edin2.

[71] In her evidence, the pursuer expressed disappointment that her allegations of rape did not form part of the criminal proceedings in 2022. The defender sought to suggest that there was something sinister in the pursuer's expressed disappointment which should cause me to treat her evidence with caution. Although I do not have access to the papers in the criminal proceedings, it seems likely that the Crown did not proceed with charges of rape as there was no evidence capable of formally corroborating the pursuer's allegations. Any attempt by the Crown to proceed with rape allegations would have been bound to fail. I do not accept the defender's suggestion that the pursuer's expressed disappointment with the Crown casts doubt on the veracity of her account. Indeed, quite the contrary. It is readily understandable that an individual who considers that they were the victim of a sexual assault would be disappointed by a decision not to proceed with a criminal prosecution.

[72] The evidence from both the pursuer and the defender in relation to the rape allegations was brief and took, in total, probably less than half an hour over the course of a lengthy proof diet. I have summarised their respective evidence at paras [14]-[15] and [47] above. I accept the pursuer's evidence that sex took place on a number of occasions when she had reservations about whether she wanted to have sex or not. I also accept that by the time of her evidence, and no doubt for some time before that, she recalls those occasions as

being situations where she did not give her consent. To adopt the terminology of the Sexual Offences (Scotland) Act 2009, her evidence was that she was not exercising free agreement when the defender had sex with her on various occasions.

[73] Rape is a criminal act in which the mental state of both complainer and accused are relevant. The complainer must be shown not to have consented to the act of intercourse and the accused must be shown to have had no reasonable belief that the complainer was consenting. Whether consent was present or not may not always be readily discernible from the primary facts. So, for example, part of the standard charge contained in the Jury Manual is:-

“Consent can be given enthusiastically or with reluctance, but even if reluctantly given it is still consent. But when a person gives in to something due to threats, repeated demands, persistent psychological coercion, fear or because they simply feel unable to resist, that is not consent. A person can in some circumstances simply let the sexual activity take place because they feel that is the only way they see the incident ending. In such a situation, it is open to you to conclude that there was no free agreement.”

[74] This passage from the Jury Manual highlights the distinction between reluctant consent and passive non-consent. In practice, it can be difficult for a fact finder to determine whether the evidence indicates that the complainer was reluctantly consenting or did not actually consent at all. In a criminal trial, the jury will have at least one other source of evidence capable of corroborating the complainer’s evidence. It is a reasonable assumption that the strength or weakness of that corroborating evidence is likely to be helpful in assisting the jury’s decision whether consent was present or not. The jury may also be helped by evidence led of the events shortly before or after the alleged rape to provide some context against which to assess the complainer’s evidence that she did not consent on a specific occasion. In the present case, there is no corroborating evidence for the pursuer’s

account of being raped. She did disclose the rape allegations to R at some unspecified date and to Q in 2018 but neither disclosure falls to be viewed as *de recenti*.

[75] On the evidence, I find myself unable to say whether the pursuer was in fact consenting to sex albeit reluctantly, or whether she was not consenting on these occasions. Her description of giving in “to keep the peace” and being in a “state of resignation” could describe both reluctant consent or passive non-consent. Her description of blanking or zoning out while having sex does not assist in determining this difficult issue. Although she did refer to acquiescing as she viewed the risk of future violence as a worse option, it was not explored with the pursuer whether she was describing threats of violence which were made when she was reluctant to have sex or if that was her perception of what might occur. Ultimately, I am left with the parties ascribing a different conclusion to these incidents and there is no other evidence to assist me. There is also the possibility on the evidence led that even if the pursuer was not in fact consenting, the defender reasonably believed that she was consenting to have sex. Although reasonable belief in consent is rarely a live issue by the end of a criminal trial, it remains a constituent element in the definition of rape. As the burden of proof rests on the pursuer, I have concluded that she has failed to prove on the balance of probabilities that she was raped by the defender on a number of occasions at Edin2.

Allegations of physical assaults.

[76] The position in relation to the physical assaults is quite different from the allegations of rape. In the first place, the defender was convicted on charges of assaults committed upon the pursuer. Secondly, there is formal corroborative evidence for some of the assaults. Thirdly, there is some documentary evidence from the time of certain alleged assaults which

supports the pursuer's evidence. I shall deal with the physical assault allegations chronologically.

[77] I accept the pursuer's evidence that the defender was physically abusive to her when they were living together in London. Her evidence is supported by the testimony of H who described an occasion when she saw bruises on the pursuer's arm. The pursuer was upset and told H that these bruises had been caused by the defender. Although H could not date this incident beyond saying that it was after the pursuer's marriage, the pursuer's affidavit suggests that the incident was after 1999. In relation to assaults occurring in London, there are also the two entries in the GP records from 17 September 1997 and on another date in 2001. The medical records were agreed documents in terms of the parties' joint minute. The defender said that he was mystified by these entries in the GP records. They were clearly a surprise to him despite being in one of his own productions. But the terms of the entries (set out in paragraph [43]), especially, the later one, speak for themselves. They describe distinct physical assaults on the pursuer causing injuries sufficient to attend her GP. The later entry refers to domestic violence and alcohol consumption which accords with the pursuer's evidence that the defender was often aggressive and violent due to excessive alcohol intake.

[78] There is one alleged physical assault in Edin1. Statement of fact 4.3 alleges that in about August 2002, the defender put his hands around the pursuer's throat and made to strangle her while they were in the bedroom. The pursuer can be reasonably accurate as to the date of this incident as it was shortly before she gave birth to one of her children. The pursuer was not expressly cross-examined on this incident and the defender did not lead any evidence beyond his general denial of ever assaulting the pursuer. When the pursuer gave her evidence on this alleged incident, it was one of the few occasions where she became visibly distressed in the witness box. When she described the defender's face being

immediately above her as he applied pressure to her neck, her demeanour indicated to me that she was re-experiencing that moment. Her evidence in relation to this alleged assault was compelling and I find that the defender did attack her as she described.

[79] I do not find the alleged assault at or about H's 40th birthday party in October 2005 proved. The pleadings allege that the defender assaulted the pursuer in their hotel bedroom by throwing her to the floor causing her head to strike a bed. Her affidavit refers to an argument when the pursuer discovered that the defender was having an affair, but it does not narrate that an assault took place. In her evidence in chief, the pursuer did not mention any physical assault until prompted by reference to a chronology which she had prepared for her lawyers. The chronology did suggest that an assault had taken place but at the party rather than in the hotel bedroom. Even after seeing the chronology, her evidence in chief was that she could not be sure whether there was violence that weekend or not. During cross-examination, her evidence was that she was assaulted at H's party when she was pushed over on the way back to their car. H's own evidence does not assist. H's evidence was that she overheard a loud argument between the pursuer and the defender, but she did not see the argument or any altercation. As such, the pursuer's position has varied on whether there was an assault that weekend and, if so, where it took place. I am not persuaded that the pursuer's recollection of this event can be relied upon to find that she was assaulted by the defender on this occasion.

[80] The date of the alleged assault on 2 September 2006 is confirmed by the police record of officers attending at Edin2. This alleged assault did feature in one of the criminal charges and a not proven verdict was returned. The allegation on record involves slapping the pursuer's face, grabbing her wrists, throwing her to the floor, kicking her while on the floor, and dislocating the pursuer's right shoulder. In her evidence, she described her necklace

being snapped, being hit on the face, her shoulder dislocating after being grabbed by the arm, and being punched on the stomach. The pursuer's version of events is supported to some extent by both the police incident report and the photographs taken of facial and neck injuries on 5 September 2006. I agree with senior counsel for the pursuer that by calling the police, the pursuer was escalating matters which indicates that this was likely to involve more than an argument. The police incident report states that the pursuer "reported she had been assaulted by her husband." The defender correctly points out that the report goes on to note that "no complaints of assault forthcoming from either party at this time" but I consider this probably reflects the fact that matters had calmed down with the presence of the police and neither party wished the police to take matters further. I find that the photographs were taken on 5th September 2006 and that these do show bruising on the pursuer's face and neck caused by the defender's assault on her. The defender's suggestion that the photographs had been manipulated or created in some way was not put to the pursuer for her response. The defender agreed that he had asked his lawyers in the criminal trial to look into the possibility that the photos had been manipulated but he did not lead evidence of any such investigations or their outcome. Despite a lack of any evidence that these photographs had been manipulated, the defender's written submission contended that the court could not safely rely on these photographs. I reject the defender's submission on this matter. A suggestion that a party to a litigation has manufactured false evidence to further their claim is a very serious allegation indeed. It is not an allegation which should be advanced unless there is evidence put forward which is capable of supporting that allegation. There is none in this instance. For completeness, I also accept the evidence of both R and J that they had been told of the existence of these photographs prior to the parties' separation in 2018 which

further undermines the defender's accusation that these were created for the criminal proceedings.

[81] I find that on 2 September 2006 the defender did assault the pursuer by calling her a bitch, hitting her on the face and pulling her necklace off. I also accept that she suffered a shoulder injury as there is evidence from her GP records that she regularly suffered shoulder dislocations around this time. Her evidence that her shoulder dislocated during the physical altercation which she described appeared credible to me. However, I am not persuaded that the assault on that occasion included kicking (as per the pleadings) or punching (as per her evidence) on the stomach. I would expect that this would have caused bruising or marks to the stomach which would also have been photographed. As she was in the early stages of pregnancy when this assault took place, direct punches or kicks to the stomach would have been a particular focus for photography.

[82] Statement of fact 4.7 contains an allegation that the defender slapped the pursuer's face at a family reunion in 2011. From the evidence, this appears to refer to a family reunion at C's house in London. Although the pursuer gave evidence of poor behaviour by the defender on this occasion, she said that she could not remember any physical abuse that weekend and I did not understand senior counsel for the pursuer to suggest that this allegation had been proved. I do not find this allegation proved.

[83] Statement of fact 4.7 also contains an allegation that at an unspecified location in 2014, the defender pushed the pursuer into a door causing a scar above her right eyebrow and a dislocation of her right shoulder. No evidence was led in support of this allegation, and I do not find it proved.

[84] The pleadings at statement of fact 4.8 allege assaults on multiple occasions over the course of a week's holiday in Gloucestershire in the summer of 2017 but the pursuer only

gave evidence of a single assault during that week. Although there is no other supportive evidence for the pursuer's allegation that the defender grabbed her throat in bed one night, I found the pursuer's evidence to be credible on this allegation. It fits the mode of assault described on other occasions. I have hesitated over this particular finding given P's evidence that the defender was physically weak during that holiday. However, I observe that the proposition that the defender was in a weak condition over the course of this holiday was not put to the pursuer or B in cross-examination; it was not advanced by the defender in his own affidavit or evidence to the court; and it was not contained in P's own affidavit lodged in advance of the proof.

[85] Statement of fact 4.8 contains an allegation that the defender pinned the pursuer down over the course of forty minutes in relation to an argument over some wine. The pursuer's affidavit does describe the argument that evening but does not refer to any physical violence. As I understood her evidence on this matter, she described being shaken awake by the defender but no physical violence such as being pinned down. This allegation on record is not proved.

[86] There are averments of two very similar incidents in statement of fact 4.8. Both averments refer to incidents in 2017 when the defender confronted the pursuer while she was smoking in Edin2. Each set of averments describe the defender seeking to move her from a chair and placing his hands round her neck. It is reasonably clear to me that there was only one such incident and that the pleader has caused confusion by including the same incident twice. The pursuer's affidavit only refers to one such incident as did her chronology. The indictment at charge 7 only alleged one such incident within the period of the libel from 2015-17. I am satisfied that the pursuer has proved that she was assaulted by the defender at Edin2 when he tried to grab a cigarette from her, tried to move her from her

chair, and put his hands round her neck. Her account is corroborated by the evidence of B who came upon the immediate aftermath of the incident. He described the pursuer's *de recenti* distress and he also spoke of hearing a *de recenti* statement that she had been strangled. I do not believe the defender's account of this going no further than a heated argument.

[87] Further the pursuer also has the benefit of section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 in relation to this alleged assault. The defender was convicted in terms of charge 7 of seizing the pursuer by the neck and struggling with her. The jury deleted a reference to attempting to pull her from the chair. Senior counsel for the pursuer was circumspect in his final submission about relying on this statutory provision. As I understood his reticence, it was due to the fact that the conviction was in relation to a broad libel and there remained some doubt which of the two similar assaults pled on the record resulted in the conviction. However, if, as I have concluded, there was only a single incident, the basis for senior counsel's concern falls away. I am satisfied that charge 7 relates to the incident in which B arrived at its immediate aftermath. As a result of his conviction on charge 7, the burden shifts to the defender to prove that he did not assault his former wife on that occasion. He has failed to persuade me to that effect. The defender did make a submission that the reverse evidential burden under s.10 of the 1968 Act only came into play if the full judicial context of the conviction was established by way of the trial transcript and any sentencing statement. I reject that submission. It is inconsistent with the opinion of the Inner House in *Towers v Flaws* [2015] CSIH 97 at para [27] which directs attention to a comparison of the libel in the criminal charge and the allegations in the civil claim.

[88] The final alleged assault pled on record is set out in statement of fact 4.9. This relates to the defender attacking the pursuer in the kitchen of Edin2 by pinning her against the wall with his hands around her throat. The averment states that this alleged assault took place in August 2018. Aside from denying this allegation, the defender also argues that this allegation has been fabricated for the purposes of limitation. In short, he alleges that the pursuer has concocted this alleged assault as it falls well within the period of three years prior to the commencement of the action. The defender points to an email from the pursuer to Scottish Police on 29 September 2019 in which she referred to the last assault which she could remember as taking place in late November or early December 2017 and she then describes the incident in Edin2 which B part witnessed. The terms of this email do not cause me to doubt the pursuer's evidence of being assaulted in August 2018. I do not find it particularly surprising that the pursuer on 29 September 2019 has omitted to recall that there was a more recent assault. An entry in the GP records for 1 October 2019 describes the pursuer suffering from acute anxiety and poor sleep, and an entry on 22 October 2019 describes her as at "breaking point". At the time of the email sent to the police, the pursuer was at a low ebb. The pursuer was also dealing with a significant issue which had arisen with one of her children which would have taken much of her focus and attention. I am unable to accept, as the defender asks me to do, that her failure to refer to the August 2018 incident in the 29 September 2019 email points to the incident being fabricated. I considered that the pursuer's account of being assaulted in the kitchen in August 2018 was credible. It is consistent with how the defender reacted in similar situations in the past. Formal corroboration, had it been necessary, can be found utilising the single complainer mutual corroboration principle from *HMA v Taylor* 2019 JC 71 with reference to the other assault found proved in paras [86]-[87] of this Opinion. In addition, the pursuer's evidence is

consistent with G's evidence that she was told by the pursuer that the defender assaulted her by pinning her by the throat against the wall in July or August 2018. I find this assault established.

Other allegations of abusive language and conduct

[89] I shall deal with the miscellaneous other allegations in the pleadings in chronological order. An allegation of shouting, spitting and pinning the pursuer's shoulders after her return from Cyprus in 1998 (statement of fact 4.2) was not evidenced by the pursuer's affidavit or oral testimony. I do accept the pursuer's evidence that the defender would shout at her when they lived in London and would criticise her physical appearance and her competence as a wife and mother. I do not find proved an averment that he flung food across the room. There was no evidence led on that latter allegation.

[90] I accept as reliable and credible the pursuer's evidence that the defender was verbally abusive towards her throughout the time that they lived in Edin1 and Edin2. I accept the pursuer's evidence that on 2 September 2006, the defender called her a bitch at or around the time that he assaulted her. I accept that he regularly criticised her parenting skills; the lack of progress with the various renovation works; and her physical appearance. The defender does not deny that he would make criticisms of how the pursuer utilised her time at home although he does not accept that his criticism was made harshly. The pursuer's account is supported by a number of witnesses whose evidence I accepted. F was made aware by the pursuer in the period prior to 2009 about the verbal abuse which she suffered. J described witnessing the pursuer's confidence being undermined which she ascribed to the defender's bullying behaviour. R spoke of the defender's comments in public at CHouse on the pursuer's appearance and weight. I also found parts of G's

evidence to be relevant in relation to the verbal undermining of the pursuer. Although part of G's evidence was a description of the defender's comments about the pursuer outwith the pursuer's presence, these comments demonstrated disdain and a lack of support for the pursuer. I accept her evidence that the pursuer's confidence appeared to be undermined and that she seemed intimidated by the defender's presence in her life. Finally, I accept the evidence of Q that when she stayed with the family in 2018 she witnessed the defender verbally abusing the pursuer on more than one occasion. This verbal abuse took place when the defender was drunk. I find it established that on one occasion when the defender was angry after the pursuer had opened a special bottle of wine, he sought to humiliate her by telling her "You may think you are worth it, but I don't". The defender was critical of Q's evidence and questioned how she could recall the specific terms of the alleged remark but not the name of the company with whom she undertook an internship. I do not share the defender's surprise. Q explained that she recalled the terms of the remark since it mimicked a well-known advertising phrase whose very purpose is to stick in the memory of the public.

[91] I also find that when the pursuer visited J for a holiday in Mexico in 2008, the defender moved out of the family house without warning the pursuer that he was planning on doing so. This left the *au pair* in charge of five children under the age of 10. I accept J's evidence that the pursuer was surprised and very upset when the *au pair* gave her this information. Let me be clear, I do not consider that a decision to separate or to remove his own belongings are in themselves actions amounting to harassment. But misleading the pursuer into believing that he would be involved in the care of their children while she was abroad was, in my view, conduct deliberately designed to cause anxiety to the pursuer and to exert control over her.

[92] The defender was convicted in terms of charge 8 on the indictment of threatening and abusive behaviour towards the pursuer on a single occasion at Edin2 between December 2015-17. This charge relates to the same incident covered by charge 7. The defender accepts that there was a loud argument on that day which was also heard by B. The conviction in respect of charge 8 reverses the burden of proof so that the defender must prove that he did not act in a threatening or abusive manner on that occasion. He has failed to do so. In any event, even if the onus of proof remained on the pursuer, I would have accepted her evidence that the defender created an angry scene in which he shouted at her causing her to be very upset. This accords with B's evidence of what he saw and heard from his mother as soon as he entered the room.

[93] Finally, for the avoidance of any doubt, I make no findings on some other incidents which were mentioned in evidence but which did not feature in the averments on record. These relate to the evidence from J regarding an altercation with the defender after the pursuer, J and a friend had been drinking in the conservatory at the London house, and an alleged incident in which the pursuer was placed in a cupboard in the property at London. Nor do I make any finding in relation to evidence from G that she witnessed the defender physically grabbing the elbow of the pursuer in Edin2. There was no record for such an allegation of assault.

Course of conduct amounting to harassment

[94] Having determined which individual allegations I find established, it remains necessary to consider whether all or some of these form part of a course of conduct amounting to harassment of the pursuer. I have no difficulty concluding that each of the physical assaults which I find took place throughout the period 1997-2018 form part of a

single course of conduct directed at causing both physical and psychological harm to the pursuer. I also find that when the defender directed abusive terms at the pursuer or made criticisms of her appearance, these fall to be viewed as part of the same course of conduct. Such language had as its primary purpose the aim of hurting or humiliating the pursuer. When viewed along with the physical assaults, it is clear to me that the defender's verbal abuse was designed to undermine the pursuer's confidence so that he could assert a degree of control over her. Likewise, the deliberately cutting remark in 2018 in front of Q and B falls to be viewed as part, albeit a small part, of this campaign of harassment. I also conclude that the defender's decision to renege on his undertaking to look after the children while the pursuer was in Mexico was aimed at causing maximum anxiety and upset for the pursuer when she was far from her children. It is telling that he acted in this manner at a time that the pursuer was asserting a degree of independence from him by travelling abroad. It is an instance, comparable with his behaviour towards the pursuer when she sought to develop art exhibitions at Edin2, which indicates that the defender sought to exert coercive control when he felt threatened by the pursuer's independence.

[95] There was evidence of criticisms made by the defender which I do not consider fall to be viewed as part of a course of conduct amounting to harassment. The defender made criticisms of how the pursuer undertook parenting, household tasks and organising renovation works. I was not furnished with evidence which would permit me to form even a provisional view as to whether there was any merit in the criticisms which the defender made of the pursuer's role in the family. I consider that the court needs to tread warily when incidents said to amount to harassment involve verbal opinions on the sort of issues which commonly arise within a busy family unit. Such opinions may be justified even if another person feels hurt by the criticism. This is an area in which even excessive criticism

might be said to mark that individual as an obnoxious partner, but it would not necessarily follow that such criticism is so oppressive as to amount to conduct amounting to harassment giving rise to a civil claim for damages.

Limitation

[96] The defender pled a limitation defence. The pursuer's response is that the three-year limitation period does not commence to run until the date on which the alleged harassment ceased, (Prescription & Limitation (Scotland) Act 1973, section 18B(2)(a)). The defender's submission was that any act of harassment which took place prior to 2 December 2017 was time-barred subject only to the discretion of the court under section 19A. The defender's submission misunderstands the operation of section 18B(2)(a). An action of harassment has a single date for the commencement of the limitation period, namely the date on which that course of conduct ceased. There are not, as would follow from the defender's submission, numerous starting dates for each individual element within the course of conduct.

[97] I have found that the defender did assault the pursuer on an occasion in August 2018 and that the remark to the pursuer in the presence of Q in the early part of 2018 also formed part of the course of conduct amounting to harassment. Both dates fall well within the 3 year period prior to the raising of these proceedings so the pursuer's action has not suffered limitation of time.

[98] In the light of my determination from the factual evidence that the defender's harassment of the pursuer continuing into 2018, the pursuer does not require to ask the court to exercise its discretion under section 19A. I was addressed in final submissions by the defender on the s19A discretion. There seems to me to be no merit in extending this already lengthy judgement by setting out what my view would have been on the s19A

discretion had I required to decide that issue in the light of different factual findings. Section 19A involves exercising a discretion against a particular factual background. The difficulty in expressing a view on the exercise of the s19A discretion is that there are innumerable competing factual scenarios which could be envisaged in this case.

Causation and quantum

[99] The defender argued in his final submission that quantification ought to be held over for a separate hearing, but I refused that motion. The proof before answer had proceeded on the basis that all issues would be the subject of evidence and submissions without reservation.

[100] The only medical witness called was the pursuer's expert, Dr Reynolds who spoke to her reports dated 2 November 2022 and 25 March 2024. Her opinion was that the various forms of abusive conduct directed by the defender against the pursuer caused her to develop PTSD. The defender submitted that I should take great care in accepting Dr Reynolds opinion as it was based on the pursuer's self-reporting of her symptoms. While that is not an unreasonable observation, it does not fully reflect how an expert such as Dr Reynolds operates. Dr Reynolds role is to critically assess the information provided by the pursuer and to assess it in the light of her training and experience in the field. Dr Reynolds also had access to the pursuer's GP records which contain references to psychiatric symptoms from 2006 through to 2024. I found Dr Reynolds to be an impressive witness who explained the way she assessed the pursuer, interrogated the available GP records and worked towards both a diagnosis and a conclusion on causation. She also explained why it is very common for victims of trauma to delay reporting what has happened to them. I accept Dr Reynolds opinion that the pursuer has developed PTSD

because of the defender's abusive conduct towards her throughout their marriage. This conclusion is consistent with the evidence of J, G and R who described how the pursuer's confidence and health appeared to be undermined by the defender's actions. The critical aspect of Dr Reynolds evidence was that the only trauma capable of causing PTSD which she could detect in the pursuer's life was that caused by the defender's conduct. The physical and emotional abuse which has been proved has been the material cause of the PTSD which she developed.

[101] With regard to the pursuer's claim for a loss of employability award, I have been provided with the report of Suzanne Anderson which was agreed to be the equivalent to her evidence. The pursuer's university degree and subsequent training was in the artistic field. She then re-qualified in psychotherapy and has acted as a therapist in both voluntary and private practices roles since 2015. The employment report at para 3.14 notes that the author has not been provided with details of the pursuer's actual earnings as a therapist. The pursuer has lodged records from HMRC (6/2 of process) but these do not appear to show income from earnings from 2020 onwards.

[102] Senior counsel for the pursuer submitted that I should award damages comprising (i) solatium of £90,000, (ii) interest on solatium of £41,740, (iii) loss of employability of £100,000, and (iv) treatment costs of £1,800.

[103] I was referred to the Judicial Studies Guidelines (17th edition) in respect of the level of solatium. I agree that it is impossible to identify any appropriate authorities with comparable claimants. Many of the reported decisions involve PTSD developing from a single incident. I do not find any real assistance from that line of authority. In assessing solatium, I view the pursuer as falling within the moderately severe ranges of both PTSD and sexual & physical assaults categories under the Judicial Studies Guidelines. Key factors

(both aggravating and mitigating) in the valuation of solatium in the present case are (i) the extensive period of time over which the harassment took place, (ii) the particularly frightening nature of some of the physical assaults such as placement of hands around the pursuer's neck and assaults on her when she was pregnant, (iii) the abuse was carried out by a person who ought to have been supportive and loving to the pursuer, and took place in her home where she should have felt safe, (iv) the effect on the pursuer was to reduce her confidence and limit her ability to maintain friendships and take on employment options (v) there were some periods of respite when the defender remained away from the family home for periods of time, and (vi) the prognosis for recovery is broadly positive. I value solatium at £65,000. I allocate 80% of that award to the past.

[104] In relation to the approach to interest on past solatium, I was referred to *JM v Fife Council* [2008] CSIH 63 and *F v Chalmers* [2025] CSOH 23. It was submitted on behalf of the pursuer that I should split the past element of solatium into two discrete sums being (a) an award for the pain and harassment caused up to the end of the abusive conduct in June 2018, and (b) an award for the emotional damage experienced in the period from the date of separation to date of decree. The submission was that interest should run at 2% from December 1998 to June 2018 and then at 4% from June 2018 to decree on the first element of past solatium, with interest at 2% from June 2018 to decree on the second element of past solatium. I am not minded to follow the approaches in *JM v Fife Council* and *F v Chalmers*. Both of those cases involved very serious sexual and physical abuse of young children within institutions where the abusive acts ceased many decades before proceedings were raised. In *JM v Fife Council*, the abuse ended in 1966 with decree being granted 41 years later in 2007. In *F v Chalmers*, there was a 47 year gap between the abusive acts ending in 1978 and decree in 2025. In such cases, it is understandable that the pain and

suffering experienced by the claimant fell to be analysed in terms of the initial sexual or physical abuse experienced as a child within the institution, and then the longer-term psychological effects experienced throughout adulthood. That analysis allowed the courts to adjust the interest calculation to meet the concern that a defender may be unfairly penalised by an interest calculation spanning a period of decades even though the solatium award will have been updated in line with inflation over that period. The present case can be distinguished from both *JM v Fife Council* and *F v Chalmers*. The pain and suffering sustained by the pursuer occurred in adulthood. The abusive conduct to which she was exposed ended less than three years before proceedings were raised. The assaults which I have found established would undoubtedly have been frightening and caused a degree of soft tissue injuries, but they are not comparable in seriousness to the sexual or physical abuse experienced by the children in *JM v Fife Council* or *F v Chalmers*. In my view, the pursuer's pain and suffering can be described as homogenous in nature (see para [25] in *JM v Fife Council*) and there has not been such a long period between the injuries being sustained and the date of decree to cause any injustice to the defender by adopting the standard approach on interest. I base the interest calculation on the element of solatium allocated to the past as being £52,000 (80% of £65,000). The interest rate is 4% per annum. The earliest date for which there is evidence of a physical assault by the defender on the pursuer is 17 September 1997 based on the GP records which is shortly after the commencement of the 1997 Act. I calculate the accumulated interest from September 1997 to decree in September 2025 as £58,240.

[105] In relation to the claim for loss of employability, the pursuer's pleadings are brief and refer to the pursuer being unable to work since the parties divorced in 2020. I interpret the pursuer's pleading as being limited to a claim for loss of income from 2020. The report

from Suzanne Anderson postulated a past wage loss claim from the outset of the harassment in 1997 but – leaving aside the absence of such a claim pled on record - senior counsel for the pursuer agreed that such an approach was wholly unrealistic. The pursuer is entitled to compensation for loss of earnings which are directly caused by the harassment. Although there were some general references in the evidence to jobs which the pursuer had undertaken since graduating from university, I did not hear any detailed evidence of what those jobs entailed or the level of her earnings. In assessing this head of claim, I require to take a broad approach to past and future earnings losses in line with cases such as *Blamire v South Cumbria HA* [1993] PIQR Q1. I do accept from the evidence that, but for the PTSD caused by the harassment, the pursuer would have been able to work from the date of her divorce. As of 2020, she had three children of school age but by the time of the proof only one child remained at school. I approach loss of employability on the basis that the pursuer would have most likely undertaken work as a private counsellor on a part time basis from 2020. I also approach this award on the basis that she will undertake a course of treatment which is likely to successfully resolve the worst of her symptoms within the next 2 years. In terms of potential annual net earnings as a part time counsellor, I proceed on the basis that the pursuer could have expected to earn approximately £16,000 net per annum from 2020-2027. This annual figure is simply rounded down from the annual net figure of £16,011 for such work in 2022/23 from table A3 of Suzanne Anderson's report. However, some allowance requires to be made for the prospect of the pursuer earning some income from counselling work over the next two years especially as her recovery advances. I am also conscious that the employment report indicates that the pursuer has earned some income as a therapist in the past, but the court has not been provided with figures of actual earned income from 2020. Approaching this head of claim broadly, I award £75,000 which is

calculated based on £16,000 per annum for 7 years less a one third discount for actual earnings and other contingencies. I make no award for interest on the element of this award which related to the period from 2020 to decree due to the very broad nature of the award.

[106] I shall also award £1,800 for treatment costs based on 15 sessions of trauma focussed CBT treatment or EMDR treatment at a cost of £120 per session.

[107] Accordingly, the total award for which decree will be granted is comprised of the following amounts:

Solatium	£65,000
Interest on past solatium	£58,240
Loss of employability	£75,000
Costs of therapy	<u>£1,800</u>
	£200,040

Disposal

[108] I find that the defender harassed the pursuer contrary to section 8 of the Protection from Harassment Act 1997 and grant decree in the sum of £200,040. I will award interest on this sum at the judicial rate of interest from the date of decree until payment. I shall reserve all questions of expenses meantime.