Neutral Citation Number: [2015] EWHC 1722 (QB)

Case no: HQ13X01985

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/06/2015

Before :

THE HONOURABLE MR JUSTICE GLOBE

- -

Between :

A	**Claimant**
- and -	
THE TRUSTEES OF THE WATCHTOWER BIBLE AND TRACT SOCIETY	**First Defendants**
THE TRUSTEES OF THE LOUGHBOROUGH BLACKBROOK CONGREGATION OF JEHOVAH'S WITNESSES	**Second Defendants**
THE TRUSTEES OF THE LOUGHBOROUGH SOUTHWOOD CONGREGATION OF JEHOVAH'S WITNESSES	**Third Defendants**

James Counsell and **Benjamin Bradley** (instructed by **KathleenHallisey AO Advocates**) for the **Claimant**
Adam Weitzman and **Jasmine Murphy** (instructed by **Richard Cook, Legal Department, Watch Tower**) for **all Defendants**

Hearing dates: 3-16 February 2015

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Approved Judgment

MR JUSTICE GLOBE:

Anonymity

1. On 3 February 2015, although the trial was held in public, the following anonymity order was made.

> "No party or non-party shall report or disclose the name, address or any other information which might tend to lead to the identification of any person who was a child or young person at the time of the events which form the subject matter of this claim and who was alleged to have been sexually abused by Peter Stewart without first applying to the judge to vary this order."

2. The order was made to protect the interests of those concerned in view of the nature of the allegations that were being made in the case. The order is continued pursuant to CPR 39.2(4). The judgment accordingly has been anonymised. The order will cease to apply in relation to anyone who notifies the court in writing that they are content for their names to be identified. In addition, there will be liberty to apply to enable any interested party to challenge the order for anonymity, on notice to the parties' solicitors, so that they can notify those whose rights may be affected by any disclosure of their identity.

Introduction

3. The claimant, who is now 29 years of age, claims damages for personal injury and loss arising out of being sexually assaulted by Peter Stewart, now deceased, between 1989 and 1994, when she was between about the ages of 4 and 9. Quantum has been agreed subject to liability.

4. The first defendants are the over-arching body of the second and third defendants. It is common ground that, if the second and/or third defendants are liable, then the first defendants will satisfy the judgment on behalf of the other defendants. The Blackbrook and Southwood Jehovah's Witness Congregations are the direct or indirect successors of the congregation that was originally known as the Loughborough Limehurst Jehovah's Witness Congregation, then split into two congregations known as the Limehurst Jehovah's Witness Congregation and the Garendon Park Jehovah's Witness Congregation, which congregations are central to the factual matrix of the case.

5. The claimant's case has been presented in two ways.

6. First, it is claimed that the defendants are vicariously liable for the sexual assaults committed by Peter Stewart when he was or had been a Jehovah's Witness ministerial servant ("the assault claim"). The primary limitation period expired on 4 September 2006 (i.e. three years after the claimant attained the age of 18). The action was commenced in March 2013. The claimant seeks an order for the disapplication of the limitation period under section 33 of the Limitation Act 1980 ("the Act").

7. Secondly, it is claimed that the defendants are vicariously liable for the actions of the Limehurst Elders who, in 1990, negligently failed to take reasonable steps to protect the claimant from Peter Stewart once they knew he had sexually assaulted AM, another child in the congregation ("the safeguarding claim"). The claimant contends that the "the safeguarding claim" has been brought within the primary limitation period pursuant to sections 11 and 14 of the Act on the basis that the claimant did not have the requisite knowledge to bring "the safeguarding claim" until the defendants' witness statements were received in March 2014. Alternatively, the claimant seeks an order for the disapplication of the limitation period under section 33 of the Act.

8. In accordance with the guidance given in *B v Nugent Care Society [2009] EWCA Civ 827, [2010] 1 WLR 516*, it was agreed between the parties that the correct approach was for the evidence to be heard before making decisions as to disapplication of the limitation period under s.33 of the Act. Having heard the evidence, I bear in mind the additional guidance (at paragraph 21 of the judgment of the court) that, in circumstances where I am determining a section 33 application along with the substantive issues in the case, I should take care not to determine the substantive issues, such as liability, before determining the issue of limitation and, in particular, the effect of delay on the cogency of the evidence. To do otherwise would be *"to put the cart before the horse"*.

9. The issues to be determined and the order in which they are to be determined are therefore as follows:

- Limitation – section 14 "knowledge"
- Limitation – section 33 "disapplication"
- Vicarious liability – "the assault claim"
- Vicarious liability – "the safeguarding claim"

10. Before dealing with the issues, it is necessary to set out the factual matrix of the case in relation to the general structure and governance of Jehovah's Witnesses and the relevant history of what happened to the claimant. Save where specifically stated, the facts are agreed or not disputed.

The Structure and Governance of Jehovah's Witnesses

11. The organisational structure of Jehovah's Witnesses is modelled on first century Christianity as described in the bible. Jehovah's Witnesses rely on passages from the bible to set their policy and religious practices. This distinguishes them from other religious denominations who use the bible to shape thinking, guide behaviour and teach lessons, but do not use it directly to set policy and religious practices. As a result, written documents, including worldwide monthly Jehovah's Witness publications such as *Watchtower* and *Awake!*, that describe the policy and religious practices of Jehovah's Witnesses, often quote biblical references.

12. Worldwide Jehovah's Witnesses now comprise about 8 million people who live in many different countries. There is a hierarchical organisational structure. A Governing Body coordinates organisational arrangements and doctrinal matters (*Acts 15*). The Governing Body supervises over 100 branch offices worldwide, each of which is supervised by a branch committee. One of the branch offices is the United

Kingdom office based in London. The branch office has a branch committee. The committee oversees districts within the branch and assigns a district overseer to oversee each district. Within each district, there are about 12 circuits. A circuit overseer is assigned to oversee each circuit. Within each circuit, there are about 20 congregations. Within each congregation, there are elders, ministerial servants and members of the congregation.

13. Notwithstanding its hierarchical organisational structure, in accordance with the model of the early Christian communities as described in the bible, there is no hierarchical structure of setting apart a clergy class from the laity. All members are expected to teach and can lead bible study. Congregational responsibilities are split between "overseers and ministerial servants" (*Philippians 1:1*). Overseers are also referred to as elders. Generally, there are a number of elders and ministerial servants in each congregation. Members of the congregation are called "publishers" and call each other "brother" and "sister" (*Matthew 23:8-12*).

14. Elders are selected for appointment based on scriptural qualifications and will be mature spiritual men who have been baptised for many years, will be viewed as good examples in Christian living and previously will have served as ministerial servants (*1 Timothy 3:1-7* and *Titus 1:5-9*). However, elders are not considered to be closer to God or superior persons (*Job 32:21,22*). They do not adopt an elevating title, such as Father, Reverend or Pastor, or take a superior position with reference to other members because there is only one leader who is Christ (*Matthew 23:8-11*). As such, they are not required to make any particular pledge or promise of obedience or loyalty to others within the governing structure of the organisation and there is therefore no relationship between an elder and a circuit overseer in the way that there is, for example, between a pastor and a bishop. They are not to be viewed as masters over others, but as fellow workers (*Romans 12:8; 1 Corinthians 3:5; 4:1-2*) who are appointed to shepherd the congregation of God (*Acts 20:28*). They therefore have no unique or advanced academic background and are volunteers of the congregation who are appointed to do the work of shepherding and overseeing spiritual matters (*Watchtower 1 October 1977*). Their primary role is to guide and protect the congregation spiritually, including taking the lead in evangelising and presiding over all types of congregational meetings.

15. Ministerial servants are members of the congregation who are also selected for appointment based on scriptural qualifications which require them to be serious individuals who hold the secret of the faith with a clean conscience (*Timothy 3:8-12; 12:13*). They provide voluntary practical assistance to the elders and service to the congregation. They care for organisational and physical tasks that must be handled in the congregation. Tasks include keeping the Kingdom Hall clean and tidy, arranging the platform and microphones as circumstances require, manning and controlling the sound system and microphones for the use of the congregation, organising and making available literature for the congregation, serving as attendants at meetings, assisting in emptying collections boxes, keeping accounting records for the money, managing records to help to co-ordinate field service and any other tasks to which the elders may assign them from time to time (*The Organised Book: Organised to Accomplish Our Ministry, chapter 6 p.55-59*).

16. There is evidence in the case that ministerial servants are not supposed to have any independent pastoral or shepherding role. The evidence comes from a number of past

and present elders, particularly from Paul Gillies, who is a trustee of the First Defendants, a member of the British branch committee and an overseer. It also comes from Dr Monica Applewhite who has written a report about the structure and governance of Jehovah's Witnesses. She is an American expert in clinical social work whose previous experience and expertise in relation to Jehovah's Witnesses is limited to being requested by the Watchtower Society to review three separate Jehovah's Witness civil liability cases. Whether or not a ministerial servant is supposed to have any independent pastoral or shepherding role is an issue in the case. Specifically, it is an issue whether Peter Stewart was acting in any such role towards the claimant and her family at the material time. In so far as reliance is placed by the defendants upon *The Organised Book: Organised to Accomplish Our Ministry chapter 6 p.55-59*, it is worthy of note that at p.56 it states "their work within the congregation generally involves non teaching responsibilities" (my emphasis) and at p.58-59 it states that, "if there are not enough elders to conduct the congregational book studies, some of the more qualified ministerial servants are used as study conductors to care for assigned groups. They may be assigned to handle parts in the service meeting and the theocratic ministry school and to deliver public talks in the local congregation. Other privileges may be extended to some of the ministerial servants where there is particular need and they meet the requirements for the assignment".

17. Jehovah's Witness meetings are generally held in a place of worship called "Kingdom Hall". They are open to the public. Meetings are held twice each week, once on a weeknight and once on a Saturday or Sunday. On a weeknight, the programme consists of the congregational bible study, the theocratic ministry school and the field service meeting. In the 1980s and early 1990s, the congregational bible study was called the congregational book study and normally occurred in small groups, either at Kingdom Hall or in members' private homes. The format for that activity was a one hour question and answer discussion of a bible topic using a printed publication of Jehovah's Witnesses. The theocratic ministry school includes talks from the elders with contributions from members about various bible readings. The field service meeting relates to house to house activities. At a weekend, the programme consists of the public meeting and the *Watchtower* study. The *Watchtower* study is a one hour question and answer discussion of a bible subject using an article in the *Watchtower* magazine. Generally, an elder takes the lead in teaching at congregational meetings. Members have the opportunity to give comments and to speak for a few minutes during the meetings. Families remain together. There are no separate arrangements for children. Parents are primarily responsible for their own children's secular and spiritual education (*1Timothy 5:8; Deuteronomy 6:6-7*). There is no bar, though, on parents seeking additional help from others.

18. Bible study is conducted in a variety of ways, including group bible study, family bible study, individual study and the door to door ministry of field service. Regular door to door ministry is expected to be the life of all Jehovah's Witnesses (*Acts 20:20*). It is not limited to religious leaders or a chosen few, but should be carried out by all (*Acts 5:42*). Members are instructed to go and make disciples of all people (*Matthew 28:18-20*). It is performed voluntarily and without pay (*Matthew 10:7-10*).

19. Jehovah's Witnesses strive to live by a strict code of moral conduct based on the scriptures. However, when a member of the congregation is accused of committing a sin, the body of elders will assign two elders to investigate if there is evidence that the

sin was committed. If there is, the body of elders will appoint a judicial committee of three or more elders to provide spiritual assistance to the person who committed the sin. If they find the individual genuinely repentant they will provide spiritual counsel and reproof to help avoid recurrence of the sin and may restrict the individual from full participation in meetings (*Acts 26:20; Watchtower 1976, 1 December 1981, 15 September 1994, 15 July 2007*). There may be an announcement to the congregation during a regular scheduled meeting that the individual has been "reproved", but the sin itself should not be mentioned (*Shepherd the Flock of God p.98; Watchtower 1 December 1976*). If the reproved individual is an elder or ministerial servant, he will be "deleted", that is removed, from that position and an announcement of the deletion should also be made to the congregation at a meeting (*Shepherd the Flock of God p.42; Watchtower 1 December 1976*). If the judicial committee finds an individual is not repentant, he or she may be "disfellowshipped", that is excommunicated, from the congregation. In that case, an announcement should be made to the congregation that the individual is no longer one of the Jehovah's Witnesses, but again the sin itself would not be mentioned (*Shepherd for The Flock of God p.101*). The information received by and the deliberations of a judicial committee are supposed to remain confidential (*Proverbs 25:9*). Those who are disfellowshipped should be "shunned" by all those who wish to have a good relationship with Jehovah *(Pay Attention to Youselves and to All The Flock 1991 p.103).*

The Facts

20. The claimant's mother married the claimant's father in 1967. They were baptised as Jehovah's Witnesses in the early 1970s, at which time they joined the Limehurst Congregation in Loughborough. They had four children, two boys born in 1968 and 1970 and two girls born in 1977 and 1985. At the time the claimant was born in 1985, her brothers were teenagers and her sister was 8 years old. Soon afterwards, the claimant's older brother left home.

21. During the 1980s, there were matrimonial difficulties. The claimant's father was disfellowshipped because of his behaviour towards the claimant's mother. The matrimonial difficulties ultimately led to him leaving the matrimonial home in East Leake in 1989. At around the same time, the claimant's younger brother left home. The claimant's mother continued living at the matrimonial home with her two daughters who, in 1989 were 12 and 4 years of age.

22. According to the claimant, she was subjected to sexual abuse by Peter Stewart from 1989 when she was 3 or 4 until 1994 when she was 9. The abuse occurred at least once a week. Throughout the five years, she was in Peter Stewart's company up to four or five times a week in relation to various activities at Kingdom Hall, at field service, at other people's homes, at her own home, at Peter Stewart's home and once at the Don Valley Athletic Stadium in Sheffield. The claimant recollects Peter Stewart being with her at Kingdom Hall with her on Tuesdays, Thursdays, Saturdays and Sundays at meetings, at other times when preparations were being made for meetings, at book study groups and at times when the hall required cleaning. Additionally, she recollects Peter Stewart regularly carrying out field service with her, most particularly on Tuesdays and Saturdays, taking her with him and remaining in her company when her mother was doing extra auxiliary field service, leading group bible study sessions at other people's homes mainly on Tuesdays, being in her own home on many

occasions during the week leading family bible study sessions, personal bible study sessions and *Watchtower* study sessions in place of her absent father and by way of assistance to her mother, leading family bible study sessions at his own home normally after field service and being present at the Don Valley Stadium where there was a convention for Jehovah's Witnesses taking place.

23. The abuse consisted of sexual touching of the claimant's nipples and vagina on top of and underneath her clothing. There were frequent occasions of digital penetration of her vagina and other occasions of oral sex upon her and making her perform oral sex upon him. Once, he rubbed his erect penis against her naked vagina and attempted to penetrate her vagina. Throughout, he told the claimant it was their secret and that she should say nothing about what was happening. He told her that she would be damned as a sinner if she said anything to anyone.

24. It is accepted by the defendants that Peter Stewart sexually abused the claimant and there is no dispute about the nature of the acts. The issue is where and when it happened and what activities were occurring at the time it happened. There is no dispute about the account given by the claimant in her first statement, wherein she describes the abuse taking place either at her own home or Peter Stewart's home. There is an issue as to the accuracy of her second statement, wherein she expands upon the abuse and includes the additional information already summarised. The defence submission is that there is no reference to such details in her earlier statement. They are not backed up by independent documentation or any other evidence, cannot be relied upon and should not be accepted. The submission made on behalf of the claimant is that the contents of her statement have been supported by her oral testimony and that her evidence can be relied upon and accepted. Her mother provides support in so far as Peter Stewart had opportunity by participating in all the activities referred to by the claimant. Her statements and evidence confirm that, save for a few weeks in 1990 when Peter Stewart was not allowed to take bible studies and field study, he was as actively involved in leading and participating in the activities of Jehovah's Witnesses as alleged by the claimant.

25. The abuse stopped in 1994 when Peter Stewart was arrested and later convicted of and imprisoned for sexually abusing a young female relative and a young boy in the congregation. The claimant continued to keep her silence at that time. Ignorant of the full facts, the claimant's mother remained supportive of Peter Stewart and wrote a character reference on his behalf to the court at the time he was sentenced.

26. Shortly before Peter Stewart's release from his prison sentence, the claimant found out about his imminent release. It affected her badly and eventually she told her mother what had happened. In May 2000, her mother wrote to Peter Stewart telling him that she knew he had sexually abused the claimant. On 7 June 2000, he replied. In his letter, he admitted the abuse and apologised for the hurt and damage he had caused to the claimant. Upon receipt of the letter, the claimant's mother contacted an elder of the congregation. When nothing was done, she went to the police. In May 2001, the police interviewed the claimant. When the police thereafter went to see Peter Stewart about the allegation, they discovered his recent death.

Limitation – s.14 "knowledge" in relation to the "safeguarding claim"

27. The "safeguarding claim" is based upon the proposition that the Limehurst Elders failed to take reasonable steps to protect the claimant from Peter Stewart after they became aware in 1990 that he had sexually assaulted AM, another child in the congregation. It is the claimant's case that she only had the requisite knowledge to bring the claim when she read what had happened in 1990 in the defendants' witness statements that were served in March 2014.

28. There were thirteen statements served by the defendants in March 2014. They were all from past and/or present elders and ministerial servants. A number referred to the fact that Peter Stewart had been reproved, deleted and/or had resigned as a ministerial servant in 1990. Two elders, Robert Berry and Alan Orton, referred to the details of what happened in 1990.

29. Robert Berry stated he had been approached in 1990 by a member of the congregation who had told him that Peter Stewart had interfered with his daughter, AM, by touching her through her underwear. Robert Berry reported the allegation to the presiding elder, Anthony Hodgkinson, who asked him to go with another elder to see Peter Stewart. Robert Berry went with another elder, whose identity he can no longer remember, to see Peter Stewart and put the allegation to him. Peter Stewart admitted the allegation. Robert Berry reported back what had been said to other elders and then took no further part in what happened because he went on holiday. Upon his return from holiday, he learned that Peter Stewart had been removed as a ministerial servant. He added that, afterwards, all parents of the congregation were given warnings about the inadvisability of allowing their children to be on their own with a man who was not a family member. He stated that he was asked to visit a mother in the congregation to give that advice. He could not recall who it was that he warned.

30. Alan Orton referred to the same issue, although he stated that the report to the elders had been from AM's grandmother, rather than from her father. He stated that she informed the body of elders that AM, who was about six years of age, had told her that Peter Stewart had performed acts of a sexual nature upon her. After investigation by two elders, in the course of which Peter Stewart had admitted the allegation, a judicial committee of three elders was formed, of which he was a member. In total, there were about 5 or 6 elders attached to the Limehurst congregation. The other two members of the judicial committee may have been Laurie Hunter and Robert Brown, both of whom have since died. At the hearing of the judicial committee, Peter Stewart admitted the abuse. He was asked if he had ever touched any other child and he said he had not done so. He said he was very sorry and it would not happen again. The judicial committee decided that, because he was remorseful and genuinely repentant, he should not be disfellowshipped. Instead, he was given scriptural reproof and counsel admonishing him that he should never be alone with children in any circumstances and was removed as a ministerial servant. The result, but not all the details, was reported back to the body of elders. AM's grandmother was informed of what had happened and was asked if she wanted to report the matter to the police. She said she did not want to report it.

31. In a second statement dated November 2014, Alan Orton stated that, after the judicial committee had made its decision, the body of elders met to discuss how they could continue to safeguard children in the congregation. They decided to make a public

announcement at a meeting and also to speak privately to parents of the congregation. In relation to the public announcement, his recollection is that the congregation were informed that Peter Stewart had been removed as a ministerial servant. He was unsure whether the announcement also indicated that he had been reproved, but it was likely that it did. It was also possible that a talk was given to the entire congregation warning them about the need for parents to supervise their children. If such a talk was given, it would not have named Peter Stewart, but would have outlined bible principles for parents to consider. In relation to speaking privately to parents, pairs of elders visited parents and warned them of the need to protect their children. Alan Orton said he went with another elder, who may have been Laurie Hunter, to visit the claimant's mother. He stated that he warned her about Peter Stewart, telling her that under no circumstances should she allow her children to be alone with Peter Stewart.

32. In evidence, Alan Orton confirmed the contents of his statements. In relation to the public meeting, he added that the congregation would have been told about Peter Stewart having been removed as a ministerial servant and then warned separately about the need to supervise their children. They would not have been told specifically that Peter Stewart had sexually assaulted a child, but it was intended that the conjunction of the two announcements should cause the congregation to understand that Peter Stewart was a sex abuser of young children. In relation to speaking privately to the claimant's mother, he said he could not remember the exact words he used, but it would have been to the effect that Peter Stewart was a very dangerous man and under no circumstances should she allow him to be alone with her children. He may well have told her why he was considered dangerous in that he had sexually interfered with a child, but the child would not have been named.

33. Anthony Hodgkinson stated he could not remember what happened in 1990, but referred to a *Watchtower* document dated 31 August 1990 which recorded that Peter Stewart had been judicially reproved and deleted as a ministerial servant.

34. In the claimant's mother's statement of February 2014, she recollected that there was a time around 1990 when, without understanding why, Peter Stewart was stopped from taking any study groups or field service. There had been rumours about him concerning sexual abuse of AM. However, she stated that no one was informed about what he had done and, after about three or four weeks, he returned and carried on as if nothing had ever happened. As a result, despite the rumours, everyone assumed nothing had happened. In her statement of November 2014 and in her evidence, the claimant's mother denied that Alan Orton or any other elder had spoken to her at any time to warn her to keep her daughters away from Peter Stewart because he was a danger to them or that he had admitted sexually assaulting a young girl in the congregation.

35. Having considered all of the evidence about what happened in 1990, I am mindful and take into account that I have not received any evidence from the elder who Alan Orton says went with him, who may have been Laurie Hunter, who has since died. In relation to the events of 1990, I prefer the evidence of the claimant's mother to that of Alan Orton. Having heard the claimant's mother give evidence, I am satisfied that, if she had been given the warnings as alleged, she would not thereafter have allowed Peter Stewart any access to her children, even the more limited access about which there is no dispute. She would not have written the reference in 1995. She would not have argued with the claimant's father in the manner I am about to describe in about

2002. Having heard Alan Orton give evidence, I am satisfied that he presented himself as being completely honest. However, partly because he is now 77 years of age, partly because his memory is poor and partly because the events were a long time ago, he had difficulty in understanding some of the questions, periodically became confused and gave incorrect answers that he later changed when he realised what he had said was wrong. In relation to the Section 14 issue, I find his description of the steps taken in relation to warning the congregation publicly and privately to be illogical. The scriptures forbid revealing confidential matters. The inference therefore is that no member of the congregation, publicly or privately, should have been told of what Peter Stewart had done. If a public talk took place, such as that regarded as possible by him, arguably that alone would have breached confidentiality. Mentioning the specifics to the claimant's mother would certainly have done so. Notwithstanding his obvious honesty and the partial support for his evidence from Robert Berry, I am unable to accept the reliability of his account of what happened in 1990.

36. It is with these background facts in mind and the conclusion I have reached about what was, or rather was not, said to congregants and the claimant's mother in 1990 that I turn to consider the important issue of the claimant's knowledge. I have had to come to a conclusion in relation to that specific part of the evidence in order to consider the s.14 issue.

37. The claimant's evidence is that she knew nothing at all about any allegation of Peter Stewart having sexually abused a young girl before 2002. In about 2002, she overheard her parents talking about the fact that the elders had known that Peter Stewart had been accused of sexually abusing AM. Her mother believes that date may have been about three years later. Whichever date it was, according to the claimant, her father was saying that he believed the elders had known about the abuse whereas, consistent with the finding I have just made, her mother was saying that she did not believe it could be true and the elders could not have known. The claimant said that she did not want to hear any more about it and her parents eventually stopped talking in front of her about it. The claimant said that the next time she saw Alan Orton at her mother's house, which would have been soon afterwards, she asked him whether it was true that the elders had known that Peter Stewart had been accused of sexually abusing AM. Alan Orton said it was not true and added that, if the elders had known of something like that, Peter Stewart would have been dealt with. When he gave evidence, Alan Orton said that he had no memory of the question or the answer.

38. In August 2006, at a time when the claimant was still angry about what had happened to her, she met the circuit overseer, Paul Presland, at her mother's house. There is a Jehovah's Witnesses data record of the meeting having taken place, but there is no record of what was said at the meeting. The claimant states that she told Paul Presland that she had heard that the elders had known Peter Stewart had been accused of sexually abusing AM and, if they had done something about it at the time, then Peter Stewart would not have been able to have gone on to abuse her. In her statement, she stated that Paul Presland replied "the elders would never do that". In her evidence, she clarified what she meant. She explained he was saying that the elders would never have overlooked something like that if they had known about it. She understood him to be saying that, if they had known about it, Peter Stewart would have been disfellowshipped. She said that, after the meeting, she remained angry and had her own beliefs about what had happened but had nothing to back them up. After the

discussions with Alan Orton and Paul Presland, she felt there was no way of ever finding out the truth of what had happened.

39. The claimant agreed in evidence that she continued to express her anger and belief that the elders had known that Peter Stewart had been accused of sexually abusing another child at a recorded meeting on 21 November 2013 with two elders, John Peel and Tony Penton. No admissions were made by the elders at that meeting to confirm her personal beliefs.

40. Mr Weitzman, for the defendants, submits that, for the purposes of s.14 of the Act, what a claimant must know is that an injury is attributable in whole or part to a defendant's act or omission and that attributable means that the injury is capable of being attributed to the act or omission, not that causation, a cause of action or all allegations that might be pleaded are available. He submits that the evidence of Alan Orton can be accepted and, from the rest of the claimant's evidence, she had sufficient knowledge for the purposes of s.14.

41. Mr Counsell, for the claimant, submits that the evidence of the claimant is to be preferred to that of Alan Orton. She had nothing to go on except for what she describes as her "belief", which in reality was unsubstantiated and amounted to no more than suspicion. Even then, such "belief" amounted to no more than that the elders had known of an allegation of sexual abuse, not that Peter Stewart had committed any sexual offence. Therefore, prior to the service of the witness statements, she lacked sufficient information to investigate a claim, let alone bring proceedings.

42. S.14(1) of the Limitation Act 1980 provides:

> "…..in sections 11 and 12 of this Act references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts-
>
> (a) that the injury in question was significant; and
> (b) that the injury was attributable in whole or part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty; and
> (c) ……
> (d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant;
>
> and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant."

The claimant knew that she had been sexually abused and knew that she had suffered significant injury arising from the abuse. The issue is whether, in accordance with

s.14(1)(b), she had knowledge that the injury was attributable in whole or part to the act or omissions, which are alleged to constitute the negligence of the defendants.

43. In *AB and others v Ministry of Defence [2013] 1 AC 78*, Lord Mance referred at paragraph 80 to the much-quoted sentence of Hoffman LJ in *Broadley v Guy Clapham & Co [1994] 4 All ER 439, 448H-J*

> "S.14(1) requires that one should look at the way in which the plaintiff puts his case, distil what he is complaining about and ask whether he had, in broad terms, knowledge of the facts on which that complaint is based."

44. Lord Mance continued at paragraph 81 by referring to the approval of the House of Lords of the above passage in *Haward v Fawcetts [2006] 1 WLR 682* citing extracts from the judgments of Lord Walker, Lord Scott and Lord Brown. Lord Walker referred to the court being concerned with the identification of the facts that are the "essence" or "essential thrust" of the case. Lord Scott referred the requisite knowledge being "knowledge of the facts constituting the essence of the complaint of negligence". Lord Brown referred to the claimant needing to know "the essence of the act or omission to which his damage is attributable".

45. The essence or essential thrust of the claimant's pleaded case in relation to the "safeguarding claim" is that defendants failed to protect children of members of the congregation from sexual assault by Peter Stewart after they became aware of his sexual offending in 1990. The crucial issue therefore is whether the claimant had sufficient knowledge of the fact that the defendants had become aware of Peter Stewart's sexual offending in 1990.

46. In the leading judgment in *AB and others,* Lord Wilson stated the test was as follows:

> "11. ……Had I been offering a view of the meaning of knowledge in s.14(1) in circumstances in which I had been unassisted by authority, I think I might have ventured the phrase "reasoned belief" rather than "reasonable belief". The word "reasoned" might even better have conveyed the need for the belief not only to be held with a degree of confidence (rather than to be little more than a suspicion) but also to carry a degree of substance (rather than to be the product of caprice). But the distinction between the phrases is a matter of little more than nuance. In the resolution of marginal issues, and even at the level of this court, there is a lot to be said for maintaining consistency in the law. So I consider that this court should reiterate endorsement for Lord Donaldson MR's proposition that a claimant is likely to have acquired knowledge of the facts specified in s.14 when he first came reasonably to believe them. I certainly accept that the basis of his belief plays a part in the enquiry; and so, to that limited extent, I respectfully agree with

> paragraph 170 of Baroness Hale JSC's judgment. What I do not accept is that he lacks knowledge until he has the evidence with which to substantiate his belief in court. Indeed, we should not forget that, if the action is to continue, the court will not be directly interested in evidence about mere attributability; it will require proof of actual causation in the legally requisite case.

> 12. What then is the degree of confidence with which a belief should be so held, and of the substance of which it should carry, before it is to amount to knowledge for the purpose of the subsection? It was again Lord Donaldson MR in *Halford v Brookes [1991] 1 WLR 428* who, in the passage quoted by Lord Phillips PSC in paragraph 115 below, offered guidance in this respect which Lord Nicholls in *Haward v Fawcetts [2006] 1 WLR 682* was, at paragraph 9, to describe as valuable and upon which, at this level of generality, no judge has in my view yet managed to improve; it is that the belief must be held "with sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking legal and other advice and collecting evidence."

47. For the reasons already stated in relation to the facts, the claimant had no information at all about what the elders might have known in 1990 until overhearing her parents speak about it some time between about 2002 and 2005. All that she then discovered was that there was an allegation that the elders had known about an allegation of Peter Stewart having sexually abused AM. Her efforts to discover what the elders actually knew were thwarted by what I am satisfied was the negative reaction of both Alan Orton and Paul Presland. Her anger and comments at the meeting on 21 November 2013 produced no confirmation upon which to act. In my judgment, her "belief" was not held with sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking legal and other advice and collecting evidence. The "belief" she had was in reality no more than mere suspicion. In such circumstances, she did not thereby have sufficient knowledge within the meaning of s.14(1) until the statements were served in March 2014.

Limitation – s.33 "disapplication"

48. S.33 of the Limitation At 1980 provides:

> "(1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which-
>
> (a) the provisions of section 11 …… of this Act prejudice the plaintiff……..; and

> (b) any decision of the court under this subsection would prejudice the defendant …..
>
> the court may direct that those provisions shall not apply to the action or shall not apply to any specified cause of action to which the action relates.
>
> (2) ……
>
> (3) In acting under this section the court shall have regard to all the circumstances of the case and in particular to-
>
> (a) the length of, and the reasons for, the delay on the part of the plaintiff;
> (b) the extent to which, having regard to the delay, the evidence to be adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11…..
> (c) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant."
> (d) …….
> (e) …….
> (f) ……..

49. S.33 (1) gives the court discretion to allow an action to proceed outside the limitation period and requires the court to balance the prejudice to the claimant arising from the limitation period against the prejudice to the defendant in permitting an action to proceed outside that period. That requires a balancing exercise to be performed taking all the circumstances into account. S.33(3) does not place a fetter on the discretion given by s.33(1). This much is made plain by the opening words "the court shall have regard to all the circumstances of the case". S.33(3) focuses the attention of the court on matters which past experience has shown are likely to call for evaluation in the exercise of the discretion and which must be taken into consideration by the judge (*Donovan v Gwentoys Ltd [1990]1 WLR 472 at 477H-478A*).

50. In considering the delay to which particular regard should be given under s.33(3)(a) and (b), I bear in mind that, pursuant to *McDonnell v Walker [2009] EWCA Civ 1257*, it is the delay since the expiry of the limitation period that is relevant, although the overall delay is relevant as part of all the circumstances of the case.

51. Under s.33(3)(a), particular regard is to be had to "the length of, and reasons for, the delay". The two matters appear in the same sub-paragraph. There is relevance to the conjunction of the two issues.

52. The limitation period expired in September 2006, three years after the claimant's 18th birthday. The proceedings were commenced in March 2013, 6½ years later. It is noteworthy, though, that the facts relevant to the action date back to the period between 1989 and 1994. Even if the proceedings had been legitimately commenced within the limitation period in 2006 and heard, say, in 2008, this would still have been

a historic sex abuse case with all the issues associated with trials of that nature. That said, it is not a case where everything is in issue. By reason of the judicial committee proceedings in 1990 and Peter Stewart's conviction in 1994, it is not disputed that the claimant was sexually abused by him and over a lengthy period. The issues in relation to the abuse are those identified above in paragraph 24.

53. In relation to the reasons for the delay, the case of *A v Hoare [2008] 1 AC 844 at 863C-D* requires a judge to give due weight to evidence that the claimant might have been disabled from commencing proceedings by any psychiatric injury that might have been suffered. Mr Weitzman concedes that the expert report of Dr Roychowdhury establishes that the Post Traumatic Stress Disorder suffered by the claimant justifiably explains why she was unable to focus upon the prospect of commencing proceedings until 2013.

54. Further, there is no issue as to s.33(3)(c). It is not suggested that the defendant's conduct has affected the claimant's ability to bring the action. S.33(3)(d)-(f) are also irrelevant in the context of the action.

55. The narrow focus, therefore, pursuant to s.33(3)(b) is on the extent to which the delay has affected the cogency of the evidence under the wider umbrella of the surrounding circumstances of the case.

56. Mr Weitzman refers to the death of witnesses and the difficulty about documentation and recollection so long after the events. He relies on the judgment in *McDonnell*, which contrasts the type of case where a defendant cannot show any forensic prejudice and for whom the limitation defence would be a complete windfall with one where prejudice is suffered because a defendant has not for many years been notified of a claim so as to enable investigation of it. He submits this is not a windfall case, but one where real prejudice has been suffered. He also refers to the observations of Lord Brown at paragraphs 85 and 86 of *Hoare* wherein he dealt with the real difficulties that could arise in having a fair trial in relation to historic sex abuse cases. In summary, he submits the defence evidence is substantially less cogent than it might have been and the prejudice is such that I should refuse to disallow the operation of s.11 of the Act.

57. Mr Counsell submits the cogency of the evidence has not been significantly adversely affected. Memories may have faded over the short time frame of delay since the expiry of the limitation period, but not substantially. Indeed, the defence have been able to call all of the witnesses they would have called if the action had been brought in time. No key witnesses have died during the 6½ years period. The two elders referred to in evidence who have died, Mr Hunter and Mr Brown, respectively died in 1999 and 1992. The defence have not identified any documents that have not been recovered as a result of delay outside the limitation period. Many records have been recovered. Any documents that may have assisted were destroyed many years ago. They include the police interview, although there is a detailed summary of it, as well as the report from the judicial committee in 1990, which Paul Gillies said would have been destroyed almost immediately after the hearing. He submits this is an appropriate application to be granted.

58. In relation to the circumstances of the case, I have regard to the balancing exercise I must perform between the prejudice on both sides. So far as the claimant is

concerned, I take into account the fact that this is not a case where the claimant would have redress against any other prospective defendant. A refusal to disapply the limitation period will mean the end of the action for her. This is not a windfall case for the defendants. However, I do not regard any additional prejudice to the defendants arising either since the expiry of the limitation period or as a whole have so adversely prejudiced them that it should outweigh the prejudice to the claimant. In such circumstances, I am satisfied that a fair trial remains possible. At all times, I bear in mind the difficulties associated with the lack of evidence, particularly lack of documentation and witnesses, as well as poor recollection. In my judgment, the claimant has satisfied me that it is equitable to allow the action in relation to the "assault claim" to proceed and for me to direct that the provisions of s.11 should not apply to that part of the case. I am further satisfied that, even if (contrary to my earlier finding) the claimant were to be deemed to have had sufficient knowledge within the meaning of s.14 of the Act, it would be equitable to allow the action in relation to the "safeguarding claim" to proceed and for me to direct that the provisions of s.11 should also not apply to that part of the case.

Vicarious liability – "the assault claim"

59. As Lord Phillips put it in *Various Claimants v Catholic Child Welfare Society [2012] UKSC 56; [2013] 2 AC 1*, "the law of vicarious liability is on the move". It is no longer limited to employees of a defendant acting in the course of their employment. It has been extended to those who are not employees of the defendant but with whom the defendant has a relationship "akin to employment". In that case, a residential school's headmaster and teachers who were members and brothers of a lay Roman Catholic Order, but who were not employed by the order, sexually abused children at the school. The order was held to be vicariously liable for the abuse because it exercised a degree of control over the members by reason of the vows the members took and the hierarchical structure of the order. Lord Phillips at paragraph 21 referred to a two stage test for establishing vicarious liability.

> "21 ……. The test requires a synthesis of two stages: (i) The first stage is to consider the relationship of D1 and D2 to see whether it is one that is capable of giving rise to vicarious liability. (ii) ……..What is critical at the second stage is the connection that links the relationship between D1 and D2 and the act or omission of D1."

First stage – the essential elements of the relationship

60. In relation to the first stage, in *E v English Province of Our Lady of Charity and another [2013] QB 722* a priest appointed by a diocesan bishop to visit a children's home sexually abused a child at the home. At paragraph 73 of the judgment, Ward LJ stated that the time had come emphatically to announce that the law of vicarious liability had moved beyond the confines of a contract of service and described the test to be applied as follows:

> "…..whether the relationship of the bishop and (the priest) is so close in character to one of employer/employee that it is just and fair to hold the employer vicariously liable."

61. Ward LJ then examined whether the relationship was so close in character by considering the four signposts of a "control" test, an "organisation" test, an "integration" test and an "entrepreneur" test. Having done so, he held it was just and fair to hold the bishop accountable, in that the priest owed him reverence and obedience and could be dismissed by him in the event of a gross breach of his duties. His activities in ministering to the souls of the faithful were central to the objectives of the organisation, the Roman Catholic Church. He was part and parcel of that organisation and was integrated in it. In his work, he behaved more as if he was an employee than someone in business on his own account.

62. Mr Weitzman submits that elders and ministerial servants are different to the priest in the case of *E* and the brothers in the case of *Various Claimants.* The priest and brothers were full time clergy. Elders and ministerial servants are not full time clergy. They have no stipend. There is no stipulation as to where they should live. They have a secular life as well as being members of the congregation. They share common beliefs with other members of the congregation, but the way they act is no different to other members of the congregation. They are not controlled by, fully integrated into or obedient to the organisation of Jehovah's Witnesses in the same way that a full-time clergyman is. Mr Weitzman's submissions need to be tested alongside the approaches adopted in the cases of *E* and *Various Claimants.*

63. In relation to control, it is apparent from the structure and governance of Jehovah's Witnesses as summarised above and from the evidence from numerous elders, particularly the lengthy evidence of Alan Orton, that being a Jehovah's Witness is a way of life for all members. It is not confined to the attendance at services. It affects every aspect of one's daily life. That is particularly so for those who become elders and ministerial servants. The strict code of moral conduct by which all members are expected to observe and apply to their day-to-day living is enforced by the existence of the judicial committee and its jurisdiction over all aspects of the life of a Jehovah's Witness.

64. In the case of Peter Stewart, he was brought before the judicial committee in relation to an extremely serious allegation about his sexual offending. However, in other cases, the transgression could be far less serious, in the sense of it being a spiritual sin rather than a criminal offence. The sanctions available to the Judicial Committee are wide ranging and include reproof, removal or deletion as an elder or ministerial servant and disfellowship. Specifically, in relation to ministerial servants, Mr Gillies gave evidence that if a ministerial servant fails to measure up to bible qualifications, the elders may express concern about him to the circuit overseer. If he fails to change and continues not to measure up to the scriptures, the circuit overseer can recommend deletion as a ministerial servant. If the matter is dealt with by a judicial committee, there is no appeal from such a decision.

65. The high level of control over all aspects of the life of a Jehovah's Witness is arguably a closer relationship than that to be found in an employer/employee relationship. It is at least akin to such a relationship. It is to be contrasted with rather less control that the bishop had over the priest in the case of *E.* There, the priest was appointed to his office subject to the oversight of his bishop and in a wide sense the priest was found to be accountable to his bishop, but responsibility for running the parish rested with the parish priest. He exercised his ministry in co-operation and collaboration with his bishop rather than one who was subject to the bishop's control.

66. In relation to organisation, the hierarchical organisational structure of Jehovah's Witnesses that has already been referred to has close similarities to the organisational structure of the Roman Catholic Church which was described by Ward LJ in *E*. The Roman Catholic Church was described as being highly organised with the Pope in the Head Office, with its "regional offices" with their appointed bishops and with "local branches" being the parishes with their appointed priests. Jehovah's Witnesses, too, are highly organised with a governing body, branch offices, districts with a district overseer, circuits with a circuit overseer and congregations with members made up of publishers, ministerial servants and elders. There is no hierarchical structure of setting apart the clergy. However, there is prescriptive guidance as to how a ministerial servant and an elder should serve, act and behave at all times. Members can work their way up from being a publisher to being a ministerial servant to being an elder. Down at local level within the congregations, there are organised meetings, study groups and field service principally supervised or led by Jehovah's Witnesses of differing seniority.

67. The Watch Tower Bible and Tract Society of Britain is a charity dealing with large sums of money. It is notable that, at local level, part of the responsibility of a ministerial servant is to take charge of congregational accounts that feed into the charity's resources. The Watch Tower's Memorandum of Association declares its objects are to advance the Christian religion as practised by Jehovah's Witnesses by preaching the gospel of God's Kingdom under Christ Jesus unto all nations as a witness to the name, word and supremacy of Almighty God, Jehovah; by producing and distributing bibles and other religious literature in any medium and educating the public in respect thereof; promoting religious worship, Christian missionary work; advancing religious education; and maintaining one or more religious orders or communities of special ministers of Jehovah's Witnesses. In order to do that, Jehovah's Witnesses function via its organisational structure.

68. By a simple substitution of words, the organisation of Jehovah's Witnesses is analogous to the way Ward LJ described the Roman Catholic Church at paragraph 77 of his judgment, namely:

> "This looks like a business and operates like a business. Its objective is to spread the word of God. The priest has a central role in meeting that target. Ministering, as he does, to the souls of the faithful, can be seen to be the very life blood of the church, vital to its existence."

69. In relation to integration, a useful test, in accordance with Denning LJ's observations in *Stevenson Jordan & Harrison Limited v McDonald & Evans [1952] 1 TLR 101*, is whether the relevant person is "part and parcel of the organisation, not only accessory to it". A ministerial servant may not be very far up the ladder of the structure but his role is one of great importance. The routine tasks performed by him are necessary and important tasks without which many of the activities of Jehovah's Witnesses cannot be carried out. He deputises for an elder in the absence of an elder. I am satisfied that, in deputising, he assists the elders, not only with routine administrative tasks but also standing in on occasions with a teaching role, if necessary. One also cannot become an elder without first having been a ministerial servant. As such, a ministerial servant is part and parcel of the organisation and integral to it.

70. In relation to the entrepreneur test, the issue is whether the relevant person is more like an independent contractor than an employee. In other words, is he actually behaving like an entrepreneur, running his own business, taking the appropriate risks and enjoying the resulting profits? In the case of the priest in *E,* the priest was found not to be receiving a wage, but was required to reside in the parochial house close to his church. He therefore did not quite match a very facet of being an employee, but was regarded as being very close to it. The description of his activities certainly did not resonate with being an entrepreneur. Like the priest, a ministerial servant does not receive a wage. Unlike the priest, there was no requirement as to where he should live. However, it would be inaccurate to describe him as being more like an independent contractor than an employee. He is a fundamental part of the whole enterprise dedicating himself to the good of Jehovah's Witnesses. His duties are solely to serve the interests of the organisation. He is constantly working for the good of the organisation of Jehovah's Witnesses and not for himself.

71. Notwithstanding the matters raised by Mr Weitzman, by reason of the answers to the signposted tests applied by Ward LJ to the first stage, in my judgment the relationship between elders and ministerial servants and the Jehovah's Witnesses is sufficiently close in character to one of employer/employee that it is just and fair to impose vicarious liability.

72. In *Various Claimants*, Lord Phillips noted and did not disapprove of the application of the four signposts referred to by Ward LJ. However, he preferred a simpler analysis in concluding that the stage one test was satisfied. At paragraph 61, he held that:

> "……Providing that a brother was acting for the common purpose of the brothers as an unincorporated association, the relationship between them would be sufficient to satisfy stage one, just as in the case of the action of a member of a partnership. Had one of the brothers injured a pedestrian when negligently driving a vehicle owned by the institute in order to collect groceries for the community, few would question that the institute was vicariously liable for his tort."

73. Ward LJ also used a road traffic example to test the conclusion he had arrived at by adopting the signposted tests. His example demonstrated vicarious liability being the appropriate outcome in circumstances where a priest may knock down a pedestrian at a zebra crossing when driving to give the last rites to a member of the parish. Mr Weitzman used that example in his final submissions to suggest that, if a Jehovah's Witness was driving to a location to carry out field service and knocked down a pedestrian, it would be nonsensical for vicarious liability to apply in those circumstances. Mr Counsell replied by stating that the better analogy is whether vicarious liability would be appropriate in circumstances where a ministerial servant was taking a publisher to field service and had an accident in the course of which the publisher was injured. In his submission, it would. I agree.

74. Whether one applies the reasoning of Lord Phillips or Ward LJ, in my judgment the answer to the stage one test remains yes.

Second stage – the connection between the relationship and the sexual abuse

75. In relation to the second stage, what needs to be considered is whether the acts of sexual abuse were connected to the relationship of the defendants and Peter Stewart in such a way as to give rise to vicarious liability.

76. In *Lister and others v Hesley Hall Limited [2002] 1 AC 215*, the issue was whether the owners and managers of a school were vicariously liable for sexual abuse of pupils by the warden of the school who was their employee. Lord Steyn (at paragraph 28) stated the question to be answered was "whether the warden's torts were so closely connected with his employment that it would be fair and just to hold the employers vicariously liable". In answering the question yes and cautioning that it will always be a matter of degree, Lord Steyn said that, on the facts, the pupils had been entrusted into the care of the warden and the sexual abuse was "inextricably interwoven" with the carrying out of the warden's duties". That was to be distinguished, for example, from the situation of a groundsman, who was only employed to look after the gardens, even though his employment would have provided him with opportunity. Mere opportunity is not enough.

77. In *Maga v Archbishop of Birmingham [2010] 1 WLR 1441*, where, for the purposes of the case, it was accepted that a Catholic priest should be treated as an employee, the Archbishop was found to be vicariously liable for abuse by the priest outside religious services. The abused boy was not a member of the priest's congregation or diocese. They became acquainted when the priest ran youth discos. *Maga* is illustrative of vicarious liability being established in a religious setting where an individual uses a religious position of responsibility as a means to gain access to children and, at the time of such abuse, he was not performing his specific religious role.

78. Lord Neuberger at paragraph 45 found that a priest is "never off duty". At paragraph 46, he stated:

> "…..(the priest's) functions …... included a duty to evangelise or "to bring the gospel to be known to other people….". Accordingly he was ostensibly performing his duty as a priest employed by the archdiocese by getting to know the claimant….."

79. Longmore LJ at paragraph 84 stated:

> "….the progressive stage of intimacy were to my mind only possible because (the priest) had the priestly status and authority which meant that no one would question his being alone with the claimant. It is this that provides the close connection between the abuse and what (the priest) was authorised to do."

80. Smith LJ added at paragraph 94:

> "…..there is no doubt that, on the evidence in the present case, the duty to evangelise was clearly established……. That duty was one of the factors or circumstances which provided (the

> priest) with the ostensible authority to befriend and become intimate with the claimant and boys like him. That duty and ostensible authority to befriend the claimant created the opportunity for the abuse and also increased the risk of abuse. But I do not think that, if a priest or pastor of a non-evangelical church had the ostensible authority to befriend and develop intimacy with a young person by reason of his pastoral duties and if he then abused the opportunities given by that ostensible authority, the position of that church would be any different from the position of the Roman Catholic Church in this case"

81. With these principles in mind, I return to the factual issues in the case in relation to the abuse perpetrated by Peter Stewart as summarised above in paragraph 24.

82. Making all due allowance for the absence of some documentation, the death of some witnesses and the poor recollection of others, I nonetheless accept the evidence of the claimant. Her evidence was not perfect. Given her youth at the time and the period of time that has elapsed since, one would not expect it to have been perfect. However, I am satisfied she was being truthful and, where her memory enabled her to recollect events, she was reliable and accurate. Where there is a conflict of fact between her evidence and that of the defence witnesses, I prefer her evidence. I give one specific example of when she could have given untruthful, exaggerated or unreliable evidence and did not do so. When pressed as to whether she had been raped, she did not reply positively, but stated that she did not know if there had been penetration at the time Peter Stewart pressed his erect penis against her naked vagina.

83. In accepting the claimant's evidence, I accept that the abuse started in 1989 and continued until Peter Stewart was arrested in 1994.

84. Further, in that I accept the claimant's evidence as a whole, it is implicit in that finding that I accept the evidence contained in her second statement. She was cross examined about specific details and about why the additional events in the statement were not in her first statement and why they appear to go further than what she told social workers and the police in 2001. Her replies were credible. In essence, she was saying that she has had difficulty in going into detail about what happened to herself, even with her solicitor, but that in any event she thought she had made it clear in her first statement that Peter Stewart would abuse her almost every time he saw her. What she had not done in her descriptions to Social Services, the police and in her first statement was to list each and every occasion she could think of when he had seen her. That had not been done until she had been asked to focus on those occasions and to list them, which is what happened at the time of making the second statement.

85. Notwithstanding evidence from the elders that it would not have been the norm, I also accept the evidence of the claimant and her mother that Peter Stewart did stand in for elders at book study meetings in other people's homes and that he took the opportunity whenever it arose to take the claimant with him on field study. It would have been apparent to all that he was doing these things and no one did anything about it. In the context of his deviance, that is unsurprising. It is obvious that he managed to gain access to AM in 1990 and was additionally able to gain access to his young female relative and the boy he abused that led to his sentence in 1994. It is not disputed that he managed to abuse the claimant in her own home and in his own home

without the claimant's mother knowing he was abusing her. It is far from incredible that he should have continued to do so on other occasions when I am satisfied he was in her company.

86. I also accept the claimant's mother's evidence that Peter Stewart was not merely a friend who was assisting her in the absence of her husband. I am satisfied that she has been a devout Jehovah's Witness for many years and would have struggled to have maintained the obligations of teaching her two remaining children, her two young daughters, what was needed to be taught to bring them up as equally devout Jehovah's Witnesses. I am therefore satisfied that Peter Stewart's access to her and, through her, to her children, was as a direct result of Peter Stewart's known and established position as a ministerial servant, both before and after the events relating to the finding by the Judicial Committee in 1990. In the words of the claimant's mother, she was initially wary of Peter Stewart but came round to trusting him in that "he must be alright if he is allowed to come to East Leake." It is implicit in that comment that the claimant's mother only accepted him into her house on the understanding that he was there officially in his actual or ostensible capacity as a ministerial servant.

87. In this regard, I do not ignore the evidence of the elders that it is not normal practice for a man alone to visit a single woman. I accept the evidence that that is normal practice and is a matter of general principle, but I do not accept it never happened. First of all, even the elders accepted there were occasions when it could happen. Secondly, Anthony Hodgkinson knew, as must other elders, that Peter Stewart was visiting the claimant's mother on a regular basis because the claimant's father complained to him about that fact in 1992. The fact that the claimant's father chose to speak to Anthony Hodgkinson about Peter Stewart's visiting is consistent with his belief that the visits were associated with Jehovah's Witness activities. Thirdly, it will have been obvious that Peter Stewart was driving the claimant's mother and her children to and from field service meetings. Further, the evidence of the claimant and her mother establishes the elders knew he was conducting field service with the claimant alone. There is no evidence that any objection was raised to either of those events, each of which will have been contrary to normal practice and principles. The reason may be found in a confidential written communication sent to all bodies of elders by *The Watchtower Bible and Tract Society of New York* on 20 July 1998 which, in part, stated:

> "Those who are appointed to privileges of service, such as elders and ministerial servants, are put in a position of trust. One who is extended privileges in the congregation is judged by others as being worthy of trust. This includes being more liberal in leaving children in their care and oversight. The congregation would be left unprotected if we prematurely appointed someone who was a child abuser as a ministerial servant or an elder."

88. The documentation in relation to what happened to Peter Stewart after the hearing of the judicial committee in 1990 is unclear. The documents establish the following:

1) Prior to 31 August 1990, Paul Gillies stated there are no filed documents in existence showing Peter Stewart had either being appointed or deleted as a ministerial servant at any congregation of Jehovah's Witnesses.
2) On 31 August 1990, there is a *Watchtower* S-52b written notification to the body of elders of the Limehurst congregation of the "deletion" of Peter Stewart. The entry has been typed. There is an undated handwritten addition stating "M.S. Judicial reproof".
3) On 10 August 1991, there is typed document with no heading on it on filed at the Watchtower offices in London that lists seven elders and four ministerial servants of the Limehurst congregation. Peter Stewart is not one of the listed ministerial servants.
4) On 1 September 1991, there is a Watchtower S-52b written notification to the body of elders of the Limehurst congregation of the appointment of one elder and the deletion of five elders and two ministerial servants all of whom moved that day to the newly formed Garendon Park congregation. Peter Stewart's name is not on the form.
5) On 1 September 1991, there is a Watchtower S-52b written notification to the body of elders of the Garendon Park congregation of the appointment of six elders (including the five from the Limehurst congregation) and three ministerial servants (including the two from the Limehurst congregation). Peter Stewart's name is not on the form.
6) On 7 January 1995, there is a Watchtower written notification that Peter Stewart had disassociated himself.
7) On 13 May 1995, There is a S-2 written document from Garendon Park congregation sent by the presiding overseer, Anthony Hodgkinson, recommending that Peter Stewart, whose present position was stated as being "MS", should be deleted from the appointed list of appointed elders and ministerial servants due to his "disassociation". It was date stamped by the Watchtower branch office on 16 May 1995. Mr Gillies suggested in evidence that the reference to Peter Stewart being a "MS" as at 13 May 1995 must have been a clerical error.

89. Piecing together all of that unsatisfactory evidence about Peter Stewart's status both before and after the judicial committee hearing, I am satisfied of the following. His "deletion" as a ministerial servant on 31 August 1990 confirms oral evidence that he was a ministerial servant prior to that date. If the document of 13 May 1995 is not a clerical error and he was reinstated at some time after the hearing, then he gained access to the claimant's home and children as a ministerial servant. If it was a clerical error and he was not reinstated, I am satisfied he continued to act as if he was still a ministerial servant and did so with the knowledge of those around him. That may well have been the reason for the error. He knew what to do and how to act. He had been a ministerial servant for an appreciable period of time. In circumstances where I am satisfied that the elders never told anyone in specific terms of his abuse of AM and no one knew about the abuse of his young female relative and the boy until his arrest in 1994, it is entirely feasible and I find that he continued to act, either very soon after the hearing in 1990 or within a reasonable period of the hearing, in like manner to previously when he had been a ministerial servant. I am satisfied that he was holding himself out to others as being a ministerial servant acting with ostensible authority to carry out his duties in the same manner as he had been carrying them out beforehand. That is consistent with the evidence of the claimant and her mother and the document

dated 13 May 1995 and it is also consistent with the deviance inherent in the way he was behaving towards a number of children during the relevant period.

90. My conclusion in relation to the second stage is that, on the facts as I find them to be, the sexual abuse of the claimant by Peter Stewart was not as a result of the mere opportunity of his presence in the claimant's company for reasons outside any role he was playing as a Jehovah's Witness. Whether the abuse took place at or after book study at whoever's home, on field service, at Kingdom Hall or at the Convention, he was ostensibly performing his duties as a Jehovah's Witness ministerial servant. I am satisfied that the progressive acts of intimacy were only possible because he had the actual or ostensible status of a ministerial servant that meant no one who saw him questioned his being alone with the claimant. As in the cases of *Lister* and *Maga*, it is that that provides the close connection between the abuse and what he was authorised to do. In the words of Lord Steyn, they were "inextricably interwoven" with the carrying out of his duties. In such circumstances, in my judgment, it is fair and just to hold the defendants to be vicariously liable for his acts.

Vicarious liability – "the safeguarding claim"

91. In relation to the safeguarding claim, there are three issues to be considered. Did the elders owe a duty of care to the claimant? If they did, was there a breach of duty? If there was, are the defendants vicariously liable for the breach?

Duty of Care

92. The test as to whether a duty of care is owed comes from the opinion of Lord Bridge in *Caparo Industries v Dickman [1990] 2 AC 605 at 617H-618A*. In addition to the foreseeability of damage, the relationship between the parties must be one of proximity or neighbourhood and the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope on the one party for the benefit of the other. When these principles are applied to the facts of the case, that means the claimant needs to establish it was foreseeable that Peter Stewart would harm her by sexually abusing her; that there was a relationship of sufficient proximity between the elders and her; and that it would be fair, just and reasonable to impose a duty of care upon the elders to protect the claimant from such sexual abuse.

93. There have been wide ranging aspects of evidence and submissions about the roles and responsibilities of elders generally and whether or not they owe a duty of care to members in various situations. However, the focus of the case and the allegations that are made in the claimant's amended pleading surround what happened in 1990 after the elders became aware of Peter Stewart's sexual abuse of AM. It is that which is central to the decision I must make.

94. The circumstances that arose in 1990 and my finding of fact in relation to those circumstances have already been summarised in paragraphs 27-47 in relation to the s.14 limitation issue. It is in respect of those circumstances and finding of fact that the above principles must be applied.

95. By reason of Peter Stewart's admitted behaviour towards AM in 1990, it is not disputed that it was foreseeable that his continued presence within the congregation

presented a risk of sexual abuse and consequential harm to other children in the congregation. Even if it had been expressly disputed, I would have found as a fact it was foreseeable. Notwithstanding the acceptance by the judicial committee of his repentance and statement that he would not re-offend, Alan Orton's evidence is to the effect that such a risk existed. It is correctly argued, though, that foreseeability of harm is insufficient by itself to found a duty of care. The law does not normally impose a positive duty on someone to protect another or to prevent another from being harmed by another.

96. What is in dispute is whether there was a sufficient relationship of proximity between the elders and the claimant such that it is fair just and reasonable to impose a duty of care upon them.

97. Before dealing with the way the case is presented on behalf of the claimant, it is illustrative to make further reference to the case of *Maga*. It has already been referred to in the context of vicarious liability in relation to the assault claim. Its relevance to the safeguarding claim comes from the fact that, in addition to the claimant relying on the sexual abuse by the priest, the claimant also relied upon the fact that, a year before the abuse, the father of another boy had complained to the church that the same priest had abused his son, but the complaint had not been fully investigated. At paragraph 74 of the judgment, Lord Neuberger said as follows:

> "It is easy to envisage circumstances where an employer could owe, and be in breach of, a duty of care, without being vicariously liable, in respect of the sexual abuse committed by an employee. A school would not normally be vicariously liable for sexual abuse committed against a pupil by a gardener employed at the school, but, if the school had received previous allegations against the gardener of sexual abuse of pupils, failure to deal appropriately with those complaints so that he committed the abuse complained of would, at least on the face of it, give rise to a claim in negligence against the school."

98. The claimant's case is presented on the basis that, in dealing with Peter Stewart in 1990, the elders assumed responsibility to children of the congregation and to the claimant in particular.

99. Reliance is placed on the case of *Mitchell v Glasgow City Council [2009] 1 AC 874.* In that case, a tenant killed a co-tenant after the landlord, the City Council, had summoned him to a meeting to discuss complaints about his behaviour. The City Council were held not to be liable for failing to warn the deceased about the meeting. At paragraphs 22, 23 and 29 Lord Hope said as follows:

> "22. Lord Bridge acknowledged in *Caparo*…..that the concepts of proximity and fairness amount in effect to little more than convenient labels to attach to the features of different specific situations which, on a detailed examination of all the circumstances, the law recognises pragmatically as giving rise to a duty of care of a given scope. He said that the law had moved in the direction of attaching greater significance to the more traditional categorisation of distinct and recognisable

> situations as guides to the existence, the scope and the limits of the various duties of care which the law imposes. These are cases where, as Lord Reed suggested in paragraph 97, the imposition of a duty of care is readily understandable.
>
> 23. It is possible to identify situations of that kind …… Another, which is of particular significance in this case, is where the defendant has assumed a responsibility to the pursuer which lies within the scope of the duty that is alleged. …….
>
> 29. ……..The situation would have been different if there had been a basis for saying that the [City Council] had assumed a responsibility to advise the deceased of the steps that they were taking, or in some other way had induced the deceased to rely on them to do so. It would then have been possible to say not only that there was a relationship of proximity but that a duty to warn was within the scope of that relationship. But it is not suggested in this case that that ever happened …….. I would conclude therefore that it would not be fair, just or reasonable to hold that the [City Council] were under a duty to warn the deceased of the steps that they were taking and that the common law case that is made against them is irrelevant. I would also hold, as a general rule, that a duty to warn another person that he is at risk of loss, injury or damage as a result of the criminal act of a third party will arise only where the person who is said to be under that duty has by his words or conduct assumed responsibility for the safety of the person who is at risk."

100. The evidence in support of an assumption of responsibility comes from three sources.

101. The first source is the evidence of elders. Citations from the evidence of Alan Orton and Paul Gillies suffice.

102. In the course of exploring the purpose for which the judicial committee was constituted to examine the complaints made against Peter Stewart in 1990, Alan Orton said that it was because the body of elders had a responsibility to look after the congregation. In his words, he said "if there is anything unclean, the elders must remove it." He then confirmed that the elders had a responsibility to deal with sexual allegations, particularly child abuse, if such allegations came to the knowledge of the elders. There was a duty to do so owed to the victim, to members of the congregation, particularly the young and vulnerable and also to the perpetrator because a decision had to be taken as to what to do with him.

103. When Paul Gillies gave evidence, he said that, if someone had repented, that person should not be a future risk to others. However, because the person will have demonstrated a moral weakness, he would be expected to abide by certain restrictions to avoid any situation that would place him into temptation. In the words of Paul Gillies "so, one would say you should never ever be alone with a child who you are not related to."

104. The evidence of Alan Orton and Paul Gillies is supported by paragraph 3 of the areas of agreement between the two experts in the case who have prepared reports in relation to the safeguarding issue, Ian Elliott, an independent safeguarding consultant from County Antrim, and Nicci Murphy, an independent Social Worker from Kent. Paragraph 3 states:

> "3. The alleged steps taken by the elders to prevent children being harmed by Peter Stewart appear to have been motivated by their desire to protect members of the congregation."

105. The second source is the Jehovah's Witness literature that was available in 1990 in relation to child abuse.

106. Paul Gillies referred to the current Child Safeguarding Policy in existence for Jehovah's Witnesses. In summary, it refers to child abuse being a serious sin and a crime. The policy states it is designed to deal with allegations of child abuse so that "children in the congregation will be protected from avoidable harm". Paul Gillies gave evidence that the current policy is in harmony with longstanding and widely published religious principles of Jehovah's Witnesses. He said that, although the policy did not exist in its current form until 2013, many features of the policy were in existence by the late 1980s and early 1990s.

107. Two specific items published by the *Watchtower* will suffice by way of illustration. Alan Orton was asked about both items. Trevor Jenkins, another elder, was asked about one of them. Both of them confirmed the documents they were shown were operative at the relevant time.

108. The first is a 1981 publication called *"Pay Attention to Yourselves and Your Flock "*. After describing issues relating to a judicial committee in respect of serious wrongdoing, it states "in some cases elders may feel it is necessary to warn the congregation about the type of conduct that prevailed".

109. The second is a 1989 written communication to bodies of elders which refers to judicial committee procedures and makes specific reference to child abuse, including the following: "When elders receive reports of physical and sexual abuse of a child, they should contact the Society's legal department immediately. Victims of child abuse need to be protected from further danger: see '*If the Worst Should Happen'* in *Awake!* 22 January 1985 page 8."

110. The third source is what actually happened. Put simply, the elders heard about the allegation, sent two elders to investigate it, formed a judicial committee to hear about it and then acted in order to help the perpetrator and to protect members.

111. Mr Weitzman submits correctly that the mere fact that a judicial committee was formed to investigate the allegation does not of itself mean the elders assumed a duty of care to the congregation. Given the low level transgressions that could have led to a Judicial Committee being formed, the elders may have considered it sufficient to limit their action to matters that concerned the perpetrator alone. Even if the transgressions were at a higher level and were criminal, the level of criminality may have been at the low level of pick-pocketing or common assault. Such behaviour may well not have imposed a duty of care upon the elders thereafter to assume a responsibility to protect

members from further instances of theft or fighting. I agree. It is all a matter of fact and degree. None of the elders gave evidence to say that everything considered by a judicial committee would have caused them or the body of elders afterwards to take like action. The judicial committee on this occasion was formed to consider Peter Stewart's sexual abuse. It is that and that alone that must be the focus of what happened at the time of the meeting and consequent upon it.

112. The question therefore is whether the elders assumed responsibility following the meeting to take steps to protect members' children from the risk of Peter Stewart sexually assaulting them at some time in the future, particularly in circumstances where, by reason of what the elders found to be his true repentance, they concluded that they were unable to disfellowship him? In my judgment, the facts establish that, following the findings by the judicial committee, the body of elders did assume that responsibility. They did so because of the seriousness of what Peter Stewart had done in the past, their appreciation of risks in the future and their responsibility to members as elders in accordance with their understanding of the teaching of Jehovah's Witnesses and communications derived from *Watchtower* communications. In doing so, the facts establish a sufficient relationship of proximity between the elders and the children of members such that it would be fair, just and reasonable to impose a duty of care upon the elders to protect the children from sexual abuse by Peter Stewart.

113. The issue that next arises is the scope of the duty. There are a number of pleaded particulars from which the alleged scope can be ascertained. They can be summarised as a duty to have conducted a thorough judicial enquiry, to have disfellowshipped, to have ensured he could not longer have access to children, to have notified Social Services and the police and to have warned parents of the risk he posed to children.

114. In deciding the scope of the duty, it is necessary to consider it within the context of life as a Jehovah's Witness and in the circumstances that existed in 1990.

115. I keep in mind what has already been summarised in paragraph 17 above, namely, that Jehovah's Witnesses do not make special arrangements for children and that parents are primarily responsible for their own children's secular and spiritual education. The oral evidence confirms that Jehovah's Witnesses believe that parents have the primary responsibility for the protection and safety of their children. However, that does not mean that the elders in specific circumstances cannot and, in the context of the case, did not also assume responsibility to provide additional safeguarding protection.

116. Paragraph 5 to 7 of the areas of agreement between Ian Elliott and Nicci Murphy are as follows:

> "5. The level of understanding of child sex abuse in 2015 is very different to the level of understanding in the late 1980s and early 1990s.
>
> 6. In the late 1980s and early 1990s there was an emerging awareness of child sexual abuse, which was a long way short of a developed understanding of the complexity of the issue.

> 7. The Jehovah's Witness organisation could be viewed as ahead of its time in terms of its educative publications addressing the issues of child sexual abuse."

117. I exercise caution in placing too much reliance on the evidence of Nicci Murphy. Mr Weitzman submits she lacks specific expertise in the area of safeguarding in relation to voluntary or religious groups and makes no comparison with voluntary religious groups at the relevant time. I find that to be a valid criticism. In so far as her report has relevance, I rely only upon facts about which there can be no dispute. In addition to the cited areas of agreement, she provides evidence of support for the emerging awareness of child sexual abuse in 1990 from high profile coverage of the Cleveland case in 1987 and media coverage of abuse in television drama productions such as Grange Hill and Brookside, as well as the creation of Childline in 1986 as part of Esther Ranzen's awareness campaign.

118. I note that in *Maga,* Lord Neuberger at paragraph 64 disapproved of the judge's finding in that case that there should have been an appreciation that the priest's sexual assault was so serious that it should have been reported to the police. In *Maga*, though, one was dealing with the historic standards of 1974. Peter Stewart's sexual abuse was in 1990, 16 years later on.

119. Mr Weitzman invites me to rely on the expert evidence of Ian Elliott. He has specific expertise as an independent safeguarding consultant with 40 years experience within the field of child safeguarding. His experience has been gained through working with both statutory and voluntary childcare agencies, Has worked for two years within the Northern Island Social Services Inspectorate and has worked within a church setting as the Chief Executive Officer for the National Board for Safeguarding in the Catholic Church in Ireland. I am satisfied he is well qualified to express an opinion about safeguarding issues.

120. Ian Elliott's conclusion is that safeguarding practice in society as a whole and within religious organisations in particular has changed very greatly in the intervening period between the late 1980s and early 1990s and today. He does not view the actions taken by the elders to have been behind what one would reasonably expect a voluntary organisation to have taken at the time. In relation to child abuse, they were ahead in their practice as can be seen by articles within their *Watchtower* and *Awake* publications. He expresses his opinion having regard to the particular principles within which Jehovah's Witnesses will have had to operate a judicial committee at the relevant time. He regards it as understandable that the judicial committee will have had very little appreciation of the manipulative behaviour that often characterises individuals who sexually abuse children and that the spiritual procedure adopted within the Judicial Committee was reasonable. He regards the claim not to inform Social Services or the police as reasonable because of Jehovah's Witness confidentiality issues. He regards the decision not to disfellowship from the congregation as reasonable by reason of Peter Stewart's repentance. Of particular importance to my conclusion, he regards the decision to warn the congregation and to have face-to-face alerts as good practice and reasonable.

121. The report and conclusions of Ian Elliott are helpful in defining the scope of the duty of care that I find to have existed. They are consistent with the written and oral evidence of all of the elders and ministerial servants who appeared before me. Further

to the observations I have already made about Alan Orton, I found them all to be honest, upright, loyal and devout men for whom being a Jehovah's Witness is and has been for many years a way of life for them and their families. In that there were differences of recollection between them or hesitation in their answers, it was not borne out of any ulterior motive. All are horrified by the sexual abuse that occurred and are extremely remorseful that a Jehovah's Witness should have caused such harm to the claimant. I do not find the differences of recollection or hesitation in their answers to be of such significance that it creates a difficulty in deciding what the scope of the duty of care was.

122. In the end analysis, I do not find it necessary to resolve every issue raised in the case. For the reasons already identified, there are good arguments for limiting the scope of the duty of care. I find the opinion of Ian Elliott in particular impressive. In my judgment, at the very least, the elders assumed a responsibility to warn the congregation about Peter Stewart and to have face-to-face alerts to the same effect. The evidential considerations about confidentiality are of relevance to how they exercised the duty of care. However, I am in no doubt on the evidence that the scope of their duty was the assumption of a responsibility to warn the congregation and individual parents about the risks posed by Peter Stewart.

Breach of Duty

123. I have already explained in the course of resolving the s.14 issue what my finding of fact is in relation to warnings. Despite whatever may have been the good intentions of the elders, I am satisfied that the congregation as a whole, specifically the claimant's mother and her children, were either not warned at all or not adequately warned about Peter Stewart's sex abuse; nor, importantly, was the claimant's mother personally warned. Ian Elliott's evidence is that it would have been good practice and reasonable in 1990 for that to have been done. The evidence of Alan Orton is that was what was intended to happen and is what should have happened. His evidence is that it did happen. Probably because of issues surrounding a misunderstanding or over-reliance on confidentiality issues, I am satisfied that they either did not happen at all or were inadequate warnings. If the case had been heard earlier, I do not consider I would have received any better evidence as to the precise reason why there was such a failure. What I am in no doubt about from the evidence of both the claimant and her mother is that there was such a failure. As such, I find that there was a breach of the duty properly assumed by elders on the particular facts of Peter Stewart's case.

Vicarious liability

124. That leaves the issue of vicarious liability for the elders. As summarised earlier in paragraphs 10-18, the elders had additional responsibilities to those held by ministerial servants. They were even closer and more integrated with congregational issues than were ministerial servants. They had a spiritual role and partly exercised that role, via the judicial committee, and decisions of the body consequent upon decisions of the judicial committee. The decisions that emanated from the judicial committee and thereafter from the body of elders were a fundamental part of the role of the elders within the organisation. The second and third defendants are the trustees and successors of the Garendon Park and Limehurst Congregations. They are unincorporated associations who have taken over the responsibility of the

congregations. In circumstances where, having applied the two-stage test, I have already found they are vicariously liable for the actions of Peter Stewart, I also find they are vicariously liable for the actions of the elders in relation to the above breach of duty arising from the findings of the judicial committee in 1990.

Decision

125. For all of these reasons, I am satisfied that the defendants should be held responsible for what Peter Stewart did between 1989 and 1994. The claim succeeds. Judgment should be entered for the claimant. An order will need to be drawn up to reflect the agreement as to quantum.