



Neutral Citation Number: [2020] EWHC 595 (QB)

Case No: QB-2018-005979

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/3/2020

Before :

MR JUSTICE GRIFFITHS

Between :

DSN	Claimant
- and -	
BLACKPOOL FOOTBALL CLUB LIMITED	Defendant

James Counsell QC (instructed by **Bolt Burdon Kemp**) for the **Claimant**
Michael Kent QC and Nicholas Fewtrell (instructed by **Keoghs LLP**) for the **Defendant**

Hearing dates: 27-31 January 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE GRIFFITHS

Mr Justice Griffiths :

1. Frank Roper was a convicted sexual abuser. The Claimant brings this action for damages for sexual abuse by Roper during a youth football trip to New Zealand in June 1987 and the effects of it upon him in later life. The Defendant (“Blackpool FC”) is a football club which Frank Roper was associated with at the time and which is said to be vicariously liable for these damages. Frank Roper himself is now dead.
2. The identity of the Claimant, and of some of the witnesses who, like him, have given evidence to me of sexual abuse by Roper, is protected by orders made earlier in these proceedings. He is therefore referred to as “DSN”, and those other witnesses are also referred to by various initials. These orders were made under section 11 of the Contempt of Court Act 1981 and CPR Rule 5.4A to 5.4D and CPR Rule 39.2(4) and the inherent jurisdiction of the court.

The issues

3. There are five issues for me to decide. The five issues were agreed as follows:-
 - i) Should the limitation period be extended under the discretion provided by section 33 of the Limitation Act 1980?
 - ii) Was DSN sexually abused by Roper and what was the extent of the assault?
 - iii) Is the Defendant vicariously liable?
 - iv) What is the causation and effect of DSN’s psychiatric diagnoses?
 - v) What damages is DSN entitled to?

Outline chronology

4. A brief chronology of the agreed background facts is as follows. I will consider particular points in more detail when deciding the issues.
5. Roper was convicted on four occasions of indecent assaults on males before the events involving Roper and DSN with which this trial is concerned. The age of his victims was not specified for the two earliest offences, but they were specified as boys under 14 in the two later offences, and I infer from the evidence as a whole that all four were probably committed against young boys. They were all convictions for indecent assault on a male contrary to section 15 of the Sexual Offences Act 1956 and are recorded in 1960, 1961, 1965 and 1984 – this last date being only the year before DSN says he and his parents first saw Roper, which was in 1985. DSN was born in 1974.
6. DSN went to his secondary school in September 1985. On 11 November 1985 he was registered with Blackpool FC’s “Centre of Excellence” (a concept I will consider further below) for the 1985-86 season. In 1987 he played for the Lancashire Boys’ Club Under 14 team.
7. On 19 March 1987, Blackpool FC sold one of its first team players, Paul Stewart, for a record fee of £200,000. Stewart had come through the youth system and had originally

been introduced to the club by Roper. I will say more about the significance of this later.

8. In June 1987, Roper took a squad of young football players, including DSN, who was then 13 years old, on a football tour to New Zealand. The trip started in New Zealand on 1 June 1987 and continued until 19 June, when it proceeded to Bangkok. The return flight from Thailand to England was on 30 June 1987. It was in the course of this tour that DSN alleges that he was sexually abused by Roper in New Zealand.
9. DSN stopped going to the Blackpool FC Centre of Excellence after that. His evidence is that he was not invited, after refusing an invitation by Roper to join Roper's youth side "Nova Juniors", which was informally associated with Blackpool FC. I consider the evidence on this in more detail, below.
10. DSN went from school to university, and graduated in 1995. In 1997, he began his relationship with the woman who is now his wife: he was then 23 years old. They married in 2002 and have 3 children.
11. Roper died on 13 September 2005.
12. Jack Chapman, Blackpool FC's youth coach (whose role I consider in more detail, later), died on 14 May 2012.
13. The Jimmy Savile scandal and publicity encouraged DSN to disclose Roper's abuse, but only to his wife, in 2013. His mental health was seriously affected by the disclosure. In November 2016, DSN contacted the NSPCC about the abuse and also made a statement to the police. Shortly after (December 2016), he was prescribed mirtazapine by his GP, to address anxiety and sleeping problems. In 2017 he received counselling.
14. In April 2017 he instructed solicitors. The letter before claim is dated 13 July 2017. A protocol response was sent by Blackpool FC on 15 December 2017 and the Claim Form was issued on 19 January 2018.

The evidence

15. In the course of the trial, I heard evidence from 18 witnesses of fact. 16 were cross examined, one was not required for cross examination, and one was not able to attend by reason of ill health, with the result that cross examination was not possible.
16. I also had evidence from two expert psychiatric witnesses by way of reports and a joint statement.
17. There were two lever arch files of documents, and these included some redacted and anonymised statements obtained in the course of a police enquiry. However, since they were anonymous, incomplete, and could not be tested, and since the matters they dealt with were more reliably and directly addressed by a number of witnesses before me, I do not place weight on them.
18. Three witnesses were adult and close to the playing side in Blackpool in 1987. They were:
 - i) The Blackpool FC manager (Sam Ellis).

- ii) The manager of an under 13s team in Blackpool called Poulton Youth whose son went on the New Zealand trip in 1987 (Frank Sharp).
 - iii) A volunteer part-time youth scout, physio and coach for Blackpool FC during the period in question, although he did not give precise dates (William Hurst).
19. Ten witnesses who gave evidence and were cross examined were school-age footballers who had contact with Roper in the 1980s. They were (in the order in which they were called):
- i) DSN (the claimant).
 - ii) LDX (who was abused by Roper between the ages of 11 and 13 in the early 1980s, but ended up with a bigger and more successful club than Blackpool FC).
 - iii) Graham Wright (who came across Roper when he was 11 or 12, was very seriously abused by him, and played for his Nova Juniors side until he was 14).
 - iv) Mark Bradshaw (who met Roper when he was about 13 years old in 1982, and went on to play for Blackpool FC as an adult until 1990).
 - v) David Erhardt (who met Roper when he was 13 or 14 in 1983 or 1984, who played for Nova Juniors);
 - vi) Colin Greenall (who met Roper when he started training with Blackpool FC at the age of 15 in about 1979, before going on to sign as an apprentice and eventually as a very successful full-time first team player, leaving in 1987 for another club);
 - vii) CFS (who was seriously abused by Roper between the ages of 11 and 16 and eventually reported it to Chapman in about 1984 or 1985; he signed schoolboy and then apprentice forms with Blackpool after playing for Nova Juniors);
 - viii) Michael Davies (who signed for Blackpool FC as an apprentice in 1982 when he was 16, after previously playing as a schoolboy, and stayed there for a playing career which lasted until 1995, after which he continued as a coach and was on two occasions caretaker-manager);
 - ix) ANF (who was sexually abused both by Roper and another person associated with another club, first met Roper when he was 11 in 1981 and played for Nova Juniors until signing schoolboy forms with a better club than Blackpool FC at the age of 14);
 - x) Steven Harrison (who signed for Blackpool FC as an apprentice when he was 15 in 1967, signed as a professional there in 1971 and stayed until 1978).

In addition, another witness in this category provided a witness statement and was expected to give evidence, but was prevented from doing so because of ill health. I received his witness statement in evidence on a hearsay basis, while recognising that, because he was not cross examined, it carried less weight than the evidence of other witnesses. He was:

- xi) JKL (met Roper when he was 14 in about 1987 attending trials for Blackpool FC, abused by him, played occasionally for Nova Juniors).
20. The other witnesses (all but the first of whom were cross examined) were:-
- i) DSN's wife, whose witness statement was agreed and who was not, therefore, cross examined.
 - ii) Kenneth Chadwick, who was the Chairman of the Board of Blackpool FC 1981-1990 (and stayed on as Life Vice President after that).
 - iii) David Johnson who was the Company Secretary between about 1980 and about 1988-89.
 - iv) Christopher Wilson, a solicitor from the firm acting for the Defendant, who gave evidence about the effect of delay on his searches for witnesses and documents.
21. I will assess the cogency of the evidence when addressing the first issue (limitation) and also when considering particular issues of fact arising under the other issues.

The issues

22. I will consider each of the issues in turn.

(1) Should the limitation period be extended under section 33 of the Limitation Act 1980?

23. The sexual abuse at the heart of this case is dated June 1987, when DSN was 13 years old. I will go into more detail of the abuse itself when I consider issue (2), the question of whether it took place and what its extent was. The primary limitation period (ending 3 years after DSN's 18th birthday), set by sections 11 and 28 of the Limitation Act 1980, expired in 1995. Proceedings were issued 22 years later on 19 January 2018. Therefore, these proceedings can only be brought if it is equitable for me to exercise the discretion provided by section 33 of the Limitation Act 1980 to disapply the primary limitation period.
24. Section 33 provides, so far as material:-

“33.— Discretionary exclusion of time limit for actions in respect of personal injuries or death.

(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.

...

(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 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) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;

(e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;

(f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received..."

25. Although section 33(3)(b) particularly requires consideration of the effect on the cogency of the evidence arising from the delay on the part of DSN after expiry of the primary limitation period (*Donovan v Gwentoy's Ltd* [1990] 1 WLR 472 at 478G), I do bear in mind that consideration of the effect of the lapse of the whole period of time since the accrual of the cause of action is required in order to assess "all the circumstances of the case" (*Donovan v Gwentoy's Ltd* [1990] 1 WLR 472 at 478H and 479G-480C).

26. I have been referred to a number of authorities, many of them helpfully summarised and, on some points, quoted at length by the Court of Appeal in *Archbishop Bowen and the Scout Association v JL* [2017] EWCA Civ 82 at paragraphs 21-27. These include *Dobbie v Medway Health Authority* [1994] 1 WLR 1234 CA, *KR v Bryn Alyn Community (Holdings) Ltd* [2003] EWCA Civ 85, *Adams v Bracknell Forest BC* [2005] 1 AC 76, [2004] UKHL 29, *A v Hoare* [2008] 1 AC 844 HL, *B v Nugent Care Society* [2009] EWCA Civ 827, *AB v Ministry of Defence* (in the Court of Appeal at [2011]

BMLR 101, and in the Supreme Court at [2012] UKSC 9), *Goodman v Faber Prest Steel* [2013] EWCA Civ 153 and *RE v GE* [2015] EWCA Civ 287.

27. I have also been referred to two cases decided since *Archbishop Bowen and the Scout Association v JL* [2017] EWCA Civ 82: which are *Murray v Father Devenish* [2018] EWHC 1895 (QB) and *Catholic Child Welfare Society v CD* [2018] EWCA Civ 2342.
28. The Court of Appeal decision in *London Borough of Haringey v FZO* [2020] EWCA Civ 180 was delivered after I had reserved judgment and paragraphs 94-123 further consider the authorities and applicable principles, which I have taken into account. Counsel on both sides of the case before me indicated that neither side thought these paragraphs called for further submissions.
29. I have been very much assisted by these authorities and it is clear that I must weigh many factors and approach them in a principled fashion, notwithstanding the breadth of the question posed at the beginning of section 33 of the Limitation Act as to whether it appears to me that it would be “equitable” to allow the action to proceed after a long delay. I must and will bear in mind the prejudice to the Claimant if the primary limitation period is not extended, the prejudice to the Defendant if it is, and “all the circumstances of the case” under sections 33(1)(a) and (b), and (3), including but not limited to the statutory factors in section 33(3)(a)-(f). Of these, I regard factors (a) and (b) of particular importance in this case: namely, the length of the delay, the reasons given for the delay by DSN, and “the extent to which, having regard to the delay, the evidence adduced or likely to be adduced [by the Claimant or the Defendant] is or is likely to be less cogent” than if the action had been brought within the primary limitation period. Although not part of the statutory language, a number of the authorities confirm that the question of whether there is a “real possibility of significant prejudice” by reason of the delay is of critical importance, as is whether it is possible to have a fair trial.
30. I will begin by examining the reasons given for the delay.
31. DSN’s evidence about the period between the abuse when he was 13 in 1987 and the letter of claim in 2017 was as follows. In the immediate aftermath of the night when he recalls being abused by Roper, he was “absolutely terrified” and “only began to feel safe when it was light outside”. Roper then exerted pressure on him to keep quiet by a combination of threats and bribes. He gave DSN a pair of top of the range Nike football boots in the morning and said he was a good player and would be “the next Alan Wright”. DSN kept his distance for the rest of the tour, and avoided being alone with Roper. But when they were in Thailand, Roper falsely accused him of stealing from the hotel gift shop. DSN said “Despite having done nothing wrong, I was frightened that my parents would believe Roper if he told them that I’d stolen something. Once he’d finished shouting at me, Roper told me that this would be our secret and that he would not tell my parents. This left me feeling as if Roper had control over me because he had said he would keep this a secret and I felt as if I owed him something because of this.”
32. When he got back from Thailand, DSN did not want to spend any more time near Roper: “because I was extremely anxious that I would be abused again. I felt I was in survival mode and that I had to do what I could to protect myself from him. By this I mean that I felt I could not directly address the issue...” He said “Despite knowing that I had not stolen anything or done anything wrong on the trip, the accusation which Roper had

made still hung over me and, so, I did not feel able to speak to my mother about the abuse. Shortly after the trip, I told my parents that I did not want to play football as seriously any more.”

33. Although he thinks his mother would have believed him if he had disclosed the abuse, “it was such a difficult thing to talk about and I did not want her to feel that it was her fault or that she had put me in a position of risk. I also felt ashamed of what had happened to me and embarrassed and all this made me just want to try to forget about it. No one at that time talked about abuse – it was a taboo subject. I was also scared of being labelled as the boy that had been abused and worried that my friends would tease me if they found what had happened. I was also aware that Roper was well respected and well connected. I worried that even if my family believed me, the football club and police would not.”
34. He did not suspect that others might have been abused in the same way. He did not tell anyone about the abuse. At first, he found it “very difficult to turn off from the abuse” but, as he got older, he was “more able to move away from the incident and became better at disassociating myself from the abuse and compartmentalising it.”
35. He seems to have buried the memory so far as he could, although he attributes various anxiety and stress symptoms to it in the course of his adult life.
36. The expert evidence agrees that before late 2016 his anxiety was mild and did not have significant impact on his day-to-day life (Joint Report para 7) and that there was “no specific psychiatric condition affecting his ability to make an earlier claim” (Joint Report para 11). But they also agree that “the abuse has been a significant material factor in the mental health problems following the disclosure to his wife in around 2012, the disclosure of the abuse to the NSPCC and police in 2016 and subsequent involvement in the litigation” (Joint Report p 4 first para).
37. There was, in my judgment, and I find, a clear barrier to him making a disclosure, which was a pre-requisite to making a claim, which was that it would require him to disinter toxic memories from the place where he had buried them. The effect of disclosure, when he did disclose, was damaging to his mental health and to his life in various ways. The experts agree that he was by the time of their respective examinations subject to a recognised psychiatric disorder, although they place different labels upon what that disorder was. They agree the main problem when they both examined him was “excessive anxiety with a strong phobic element consisting mainly of a fear of heights and of driving” (Joint Report para 6). The Claimant’s expert diagnosed Phobic Anxiety Disorder, ICD-10, F40.2, to which by June 2019 Panic Disorder ICD-10, F41.0 was added to his diagnosis. The Defendant expert agrees with the Phobic Anxiety Disorder diagnosis, but, instead of Panic Disorder, adds Anxiety Disorder Unspecified ICD-10, F41.9. Both experts agree that on DSN’s account his anxiety became a mental health problem in 2013 when he disclosed to his wife, and that he presented to a doctor with mental health symptoms in December 2016.
38. The change in his ability to claim came about, on his evidence, which I accept, in 2012 when publicity about unrelated abuse of children and others by Jimmy Savile broke. DSN came to realise both that this was a more widespread phenomenon than he had previously known and that allegations of this type could be taken seriously and acted upon. He did not, at that time, know that Roper had died.

39. Having previously disclosed to no-one at all, therefore, he spoke to his wife in 2012 or 2013, in the context of the reporting of abuse by Jimmy Savile. He was then hit by the deterioration in his mental health I have already described. The experts agree that the abuse has been a significant material factor in DSN's mental health problems following the disclosure to his wife, the disclosure of the abuse to the NSPCC and police in 2016 and subsequent involvement in this civil litigation (Joint Report p 4 first para). His wife gave evidence that she noticed his mental health deteriorating after the Jimmy Savile publicity and his disclosure to her. She was sympathetic and supported her husband but, having brought the abuse into the open at least with her, he became obsessive about the news coverage, and also started drinking excessively, on his own, which he had not done before (she had known him throughout his adult life, as they had been happily married for 10 years and in a relationship for 15 years). She could see that he was "not ready to take it any further and report it to the police". None of her evidence was challenged.
40. In late 2016, three well-known footballers publicly disclosed that they had been sexually abused as football-playing schoolboys: Andy Woodward and Steve Walters disclosing abuse by Barry Bennell at Crewe Alexandra, followed by Paul Stewart, a former Blackpool FC player and Roper protégé, who disclosed abuse which he had suffered between the ages of 11 and 15.
41. This encouraged DSN to report his own abuse officially, "in order to protect children in the future but also to support the others who had come forward" as he told his wife. Immediately, in November 2016 he spoke to the NSPCC and, again almost immediately, to the police, who took statements from him. The effect on his mental health continued to be significant, and he was medicated by his GP with Mirtazapine and provided with counselling to assist with this. His wife describes the medication as "turning him into a zombie" and he subsequently discontinued it. He managed to instruct solicitors in April 2017 and the letter before claim was sent in July 2017. The Defendant's protocol response was dated 15 December 2017 and the Claim Form followed swiftly on 19 January 2018.
42. In my judgment, on the evidence, it was for practical purposes impossible for the Claimant to disclose the abuse before he did, or to raise a legal claim before he did, particularly having regard to the effect of the abuse on him, the shame he felt, the steps taken by Roper to keep him quiet, his concern about what his mother might feel (such as, whether she would blame herself for allowing him to travel alone with a stranger) before she died in 2010, his coping strategy of ignoring what had happened, the change in the climate of opinion about the credibility of allegations of sexual abuse against vulnerable children which is relatively recent, and the increased difficulty of acting caused by the severe distress and mental health deterioration he suffered after bringing the memory back to the surface upon disclosure to his wife. I am satisfied that, adopting the phrase of Lord Hoffmann in *A v Hoare* [2008] 1 AC 844 at para 49, he was for practical purposes disabled from commencing proceedings, initially by the trauma of what he had suffered and his reaction to it, and then by the mental health challenges he faced when disclosing even to his wife and no-one else. In relation to some of the particular considerations in section 33, therefore, both the reasons for delay (section 33(3)(a)) and the extent to which DSN acted "promptly and reasonably" once he knew that he might have an action for damages (section 33(3)(d)), are in DSN's favour, in my judgment.

43. However, the length of the delay (section 33(3)(a)) is very long indeed – over 30 years from the cause of action until the issue of proceedings; and over 22 years from expiry of the primary limitation period. In that time, Roper died (in September 2005) and another relevant witness, the youth manager Jack Chapman, died (in May 2012). Both of these deaths occurred before DSN had felt able to disclose even to his wife.
44. It is also said that Blackpool FC is no longer able to obtain records and papers from 1987 which might bear on the role played by Roper and, particularly, on the issue of vicarious liability. However, the evidence on both sides agreed that Roper was not an employee and was not paid (the club was financially stretched and very few people could be paid) and that documentation even for employees (which Roper was not) was limited. The Defendant’s solicitor, who gave evidence, said that the destruction of records probably took place in the early 1990s, which is before expiry of the primary limitation period in 1995.
45. I bear in mind all the section 33 factors, and also that section 33(3) provides a non-exhaustive list. However, it was submitted to me, and I agree, that particularly important in this case (although not the only factor) is “the extent to which, having regard to the delay, the evidence 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” (quoting section 33(3)(b)) and (quoting the authorities), whether there is a “real possibility of significant prejudice” to Blackpool FC by reason of the delay.
46. I remind myself, when assessing the effect on the cogency of the evidence, that I must not fall into the error of forgetting that evidence which seems cogent to me on the evidence now available might have seemed substantially less cogent if other evidence had been available which, because of the delay, I have not seen or heard: *Bowen v Scout Association* [2017] EWCA Civ 82 at para 101.
47. The basic question has been said to be “...whether it is fair and just in all the circumstances to expect the defendant to meet this claim on the merits, notwithstanding the delay in commencement” (quoting *Cain v Francis* [2008] EWCA Civ 1451 at paragraph 73). The defendant in this case relies on the dictum of Lord Brown in *A v Hoare* [2008] UKHL 6 emphasising that, in cases alleging sexual abuse:

“Whether or not it will be possible for defendants to investigate these sufficiently for there to be a reasonable prospect of a fair trial will depend upon a number of factors, not least when the complaint was first made and with what effect. If a complaint has been made and recorded, and more obviously still if the accused has been convicted of the abuse complained of, that will be one thing: if, however, a complaint comes out of the blue with no apparent support for it (other perhaps than that the alleged abuser has been accused or even convicted of similar abuse in the past), that would be quite another thing. By no means everyone who brings a late claim for damages for sexual abuse, however genuine his complaint may in fact be, can reasonably expect the court to exercise the section 33 discretion in his favour. On the contrary, a fair trial (which must surely include a fair opportunity for the defendant to investigate the allegations –

see section 33(3)(b)) is in many cases likely to be found quite simply impossible after a long delay.”

48. In the case before me, the two issues potentially most affected by the long delay (however reasonable that delay may have been) are issue (2), the allegation of abuse itself, and issue (3), the dispute over Roper’s relationship with Blackpool FC and whether the club is vicariously liable for anything Roper did on the trip to New Zealand.
49. As to issue (2), the only identifiable witnesses, given the nature of the allegation (which I consider in detail below) were Roper and the claimant. The evidence of the claimant (which I consider in more detail below) was cogent, circumstantial and convincing, quite apart from the strong plausibility given to it by Roper’s track record as a convicted paedophile, and the evidence of 5 other witnesses who gave evidence at the trial of very similar, and in some cases worse, sexual abuse, committed in similar circumstances, using similar tactics, by Roper. I recognise that, because Roper is dead, I have not heard from him, and there is no possibility of obtaining his reaction to DSN’s allegation, which might have included a denial. But I regard the evidence against Roper as cogent, indeed compelling, even bearing that in mind. Any denial by Roper would have carried very little weight given the cogency of the evidence against it. He would have had to accuse DSN of lying. Having heard DSN give evidence, and being cross examined, I am confident that such an accusation would have had no prospect of succeeding, whatever Roper might have said.
50. Issue (3), vicarious liability, is one in respect of which two relevant witnesses to Roper’s connection with the defendant have died: Roper and Chapman. The risk to a fair trial, and the possible effect on the cogency of the defendant’s case, might therefore be assumed to be greater. But a remarkable number of witnesses, both youths and adults at the material time, gave a great deal of evidence on this question which proved to be strikingly consistent and cogent, and I do not think that Roper and Chapman, even if they had contradicted this evidence (which, of course, they might not have done) would have been able to prevail as lone voices against it.
51. The witnesses on the vicarious liability issue included the manager of Blackpool FC at the time, Sam Ellis (who gave evidence in support of the claimant), the Chairman of the club at the time, Kenneth Chadwick (who gave evidence on behalf of the defendant), and the club and company secretary at the time, David Johnson (who also gave evidence on behalf of the defendant). These witnesses were in good mental and physical health, and did not appear to have suffered from impaired recollection or ability to give evidence because of the passage of time.
52. The defendant was also able to call evidence from William Hurst, who gave evidence that he “worked for the Club from 1978 until 1990 as a part-time youth scout, physio and coach” having been recruited by Chapman, after which his evidence was he “worked very closely with Mr Chapman although it is fair to say that from time to time there were other volunteers who also helped us out”. He gave short answers to questions, and did not appear to have the same full and vivid recollection as other witnesses. His age and the passage of time was, in my judgment, relevant to that, but it also appeared from his own evidence and the evidence of others that he was less directly involved with Roper than the numerous other witnesses, including those who were adult and non-adult at the material time, and so any deficiency in his evidence was for that reason less significant.

53. On the claimant's side, a large number of witnesses to Roper's apparent connection with the defendant gave evidence from their days as youth players around the time of the New Zealand trip in 1987. They were all credible and convincing and, although the extent and level of the relevant detail in their evidence varied, none of this variation appeared to me to be attributable to age or the passage of time. They were, of course, substantially younger than the witnesses who were already adult in and around 1987.
54. Of these, 4 witnesses granted anonymity (but whose names were disclosed and used at the hearing) gave evidence of being abused themselves by Roper but also of Roper's apparent connection with the defendant club. They were the witnesses known as LDX, CFS, ANF and (by witness statement only) JKL. Another witness who was a youth in the 1980s gave evidence of being abused by Roper and of Roper's apparent connection with the defendant without claiming anonymity (Graham Wright).
55. Other witnesses in this age group gave evidence of Roper's apparent connection with the defendant who did not claim to have been abused by Roper. These were: Mark Bradshaw, David Erhardt, Colin Greenall and Michael Davies.
56. Other witnesses of this sort (that is, football players, whether as youths, schoolboys, apprentices or professional players coming into contact with the defendant club and Roper, and able to give evidence about the apparent connection, or lack of it, between the two) were just as accessible and available to the defendant club, if not more so, as they were to the claimant. The defendant did not call any witnesses of this type. The evidence of the defendant's solicitor was that this was not because efforts to contact them were made and failed, but because they chose to make no attempt to approach such people. Given the number of such witnesses I did hear from, and given the consistency of the picture they painted, I am confident that earlier proceedings would not have had access to relevant witnesses who would have altered the effect of this evidence.
57. I also heard from another witness who was adult at the time in question, Frank Sharp. He was managing an under 13 team in Blackpool when he first met Roper in early 1986. Roper approached Sharp about the 1987 New Zealand trip, because he wanted to take 4 boys from Sharp's team, including Sharp's own son, Kevin. Although 72 at the trial, Mr Sharp was an impressive witness with a clear recollection, obvious intelligence, and a keen appreciation of what was going on. Mr Sharp brought to his evidence a thorough understanding of the schoolboy football scene as it was in the Blackpool and Lancashire area at the time and, indeed, nationally. He was a fair and convincing witness with a first rate understanding of the system and a good memory. He had close dealings with Roper and with Blackpool FC at the time of the New Zealand trip and, such was the clarity and coherence of his evidence, I am sure it was no less cogent and complete than it would have been had it been given 20 years ago.
58. Sam Ellis, the Manager of Blackpool FC at the time, was able to give evidence not only about Blackpool FC and his knowledge of Roper, but also about the circumstances of the New Zealand tour, because his own son was one of the youth players who went on that tour, with DSN and the others. He was a confident and solid witness, who did not appear to be handicapped in his ability to recall and give evidence by the passage of time.

59. Apart from Roper and Chapman (and I do not underestimate the significance of their deaths), it did not appear that any witness had become unavailable because of the passage of time. The nature of the case, and of Roper's role in youth football and at least in the orbit of Blackpool FC in the 1980s, meant that there were potentially large numbers of witnesses who might have been called upon.
60. I have therefore concluded that, because of the cogency and abundance of the evidence that was put before me on both sides, and the nature of the issues in this case, and the narrow scope of factual dispute, at least so far as primary facts are concerned, no real risk of substantial prejudice has been caused by the delay in the defendant receiving notice of the claimant's claim, or in the issue of proceedings so long after the primary limitation period.
61. The Defendant also argued that "It would not be proportionate to disapply the limitation period as on a proper analysis any award is likely to be relatively modest" (Defendant's written submissions in opening, para 36), citing *Adams v Bracknell Forest Borough Council* [2005] 1 AC 76 at paras 54-55 and *Robinson v St Helen's Metropolitan Borough Council* [2003] PIQR P128, 139-140, paras 32-33.
62. In both of those cases, the possible exercise of a discretion under section 33 of the Limitation Act 1980 was considered as a preliminary point, which, if resolved in favour of the Defendant, would mean that no trial on the merits took place at all. The case before me has been conducted on the agreed basis that I should not decide the limitation point until the end of the full trial, at which all the evidence and arguments on all the issues have been heard. Indeed, I was asked from the outset to decide all the points, even if my decisions on one or more issues (including limitation) should render decisions on others unnecessary.
63. It was agreed that I should decide the limitation point as the first issue (so as not to put "the cart before the horse" as Auld LJ put it in *KR v Bryn Alyn Community (Holdings) Ltd* [2003] EWCA Civ 85 para 74, or fall into the other errors discussed in *Catholic Child Welfare Society v CD* [2018] EWCA Civ 2342 paras 41-42). However, whatever I decide on limitation, a possible saving of time and cost by avoiding a trial is not a factor in this case, because there can be no such saving: the full merits trial on every issue has already taken place.
64. Moreover, in *Robinson v St Helen's Metropolitan Borough Council*, the observations of Sir Murray Stuart-Smith at paras 32-33 were made particularly in relation to cases in which there was a real risk of substantial prejudice, "when any witnesses the defendants might have been able to rely on are not available or have no recollection and there are no documents to assist the court in deciding what was done or not done and why" (para 32) and it was in that context that he said (at para 33)

"Courts should be slow to exercise their discretion in favour of a claimant in the absence of cogent medical evidence showing a serious effect on the claimant's health or enjoyment of life and employability. The likely amount of an award is an important factor to consider, especially if, as is usual in these cases, they are likely to take a considerable time to try. A claim that the claimant's dyslexia was not diagnosed or treated many years before at school, brought long after the expiry of the limitation

period, extended as it is until after the claimant's majority, *will inevitably place the defendants in great difficulty in contesting it, especially in the absence of relevant witnesses and documents*. The contesting of such a claim would be both expensive and likely to divert precious resources. Courts should be slow in such cases to find that the balance of prejudice is in favour of the claimant." (emphasis added)

65. That is far removed from the evidential position in the present case. The approval of this passage by Lord Hoffmann in *Adams v Bracknell Forest Borough Council* [2005] 1 AC 76 at para 55, likewise, referred to "uncertainties of causation and quantification" and said "The council is in a very difficult position and there are no special features about the reasons why Mr Adams left his claim so late which tilt the balance in his favour".
66. I do not read these passages as allowing Defendants to play as a trump card the fact that the money value of a claim is relatively small. The money value of the claim is not one of the factors identified in section 33(3)(a) to (f) of the Limitation Act and proportionality is not expressly referred to in section 33 either. The ultimate question is what is "equitable". What Sir Murray Stuart-Smith said in *Robinson* was "The likely amount of an award is an important factor to consider, especially if, as is usual in these cases, they are likely to take a considerable time to try" (at para 33). That was good sense when the discretion and the question of what would be "equitable" was being decided in advance of a trial; it has less force when the trial has already taken place.
67. Both in *Robinson* and in *Adams* the cases being considered (bearing in mind that the expression used by Sir Murray is "as is usual in these cases") were based on allegedly negligent failures to investigate a pupil's dyslexia. They were not cases of childhood sexual abuse. DSN is not bringing this claim solely in order to recover money: he is bringing it so that allegations of sexual abuse, which have not been admitted, are tried; so that the question of Blackpool FC's vicarious liability for any such abuse, which is positively denied, can be investigated and decided; and, not least, "so that the football club could learn from its historical failings... so children like my own wouldn't have to suffer in similar situations." This court is used to dealing with cases which can be said to be important and worthwhile, even if not a great deal of money is at stake.
68. In my judgment, paying careful regard to the considerations in the authorities cited to me, and applying the criteria in section 33 of the Limitation Act 1980 which I have set out, it is equitable to allow the action to proceed.

(2) Was DSN sexually abused by Roper and what was the extent of the assault?

69. DSN impressed me as a transparently sincere and honest witness. I take on board the fallibility of human memory, and the suggestions of inconsistency on other matters summarised by the experts in paragraph 4 of their Joint Report. Although the abuse he gave evidence of was not witnessed by anyone except himself and Roper, who is now dead, I found DSN's evidence about it entirely plausible and convincing. His evidence was specific and limited (compared with other cases alleged against Roper, which included rape). The death of Roper meant that he might in theory have magnified or exaggerated what happened to him, but he did not do that. The limited nature of the

allegations he did make, enhanced the credibility of those allegations. He was not cross examined on the basis that anything he said about the abuse was untrue.

70. DSN told me that he was brought up in a Lancashire village and was always a football fan and football player in the course of what he remembered as a happy childhood. He had an exemplary record at his school on the Fylde coast of Lancashire, south of Blackpool. He first met Roper when he was 11. He said:-

“Roper was a well-known local football scout and scouted me to play for the Blackpool School of Excellence which was run by Jackie Chapman, the head coach, and Sam Ellis, the manager of Blackpool Football Club... The Blackpool School of Excellence fed players into the youth academy at Blackpool Football Club to develop into professional footballers... For the next two years, I attended Blackpool School of Excellence’s training sessions with Jack Chapman and Roper...”

71. When DSN was 13, Roper organised a trip to New Zealand for the boys playing in the Blackpool School of Excellence, “as an opportunity to go and play football with other teams in New Zealand” (DSN evidence para 20).
72. I will return to the question of Roper’s involvement with Blackpool FC, and the extent to which Blackpool FC was linked with the New Zealand trip, when I consider the issue of vicarious liability.
73. Roper was the only adult leading the trip. He was accompanied by members of the Blackpool FC youth team (who were over 16 but not adults) as helpers. The boys on the trip numbered about 20 (DSN evidence para 22) and included the son of the Blackpool FC manager, Sam Ellis. The group flew from Manchester to New Zealand, landing on 1 June 1987. They stayed in New Zealand until 19 June 1987, and each boy was put up with a local family during the stay in Auckland, New Zealand. At the end of the trip, on 19-20 June 1987, they flew to Bangkok in Thailand. On 30 June 1987 they arrived back in Manchester from Thailand. The New Zealand leg of the trip (which was the only footballing part) therefore ran from arrival on 1 June to departure on 19 June 1987. DSN was 13 at the time.
74. I accept DSN’s evidence of the abuse without qualification or reservation.
75. He said that all the boys including him would usually go out to dinner with Roper and the youth team players in the evening, after training or matches, before going back to their various host families in New Zealand for the night. On the night in question, DSN was the last of the boys to be dropped off by Roper, and so they were left alone in the minibus together.

“Roper... told me that it was now too late to drop me off and I would therefore have to spend the night with him. I remembered feeling unsure and uncomfortable about this but I did not refuse or say no because I felt there was no other option... Roper was in my eyes, such a powerful individual. I did not feel able to challenge him or argue with him.

...When I arrived at Roper's accommodation, I was taken to Roper's bedroom and was told by Roper to get into his double bed. I offered to sleep on the floor as I did not really want to share a bed with Roper but he insisted. Despite feeling uneasy about this, I felt as if I had no alternative..."

76. Once DSN was in bed with Roper, wearing only boxer shorts and a T-shirt, Roper sexually abused him. He was 13 years old and had no previous sexual experience of any kind. The abuse consisted of groping and fondling of DSN's genitals and buttocks through his boxer shorts. DSN was, even before this started, "very uncomfortable and frightened". When the abuse started "I was completely frozen with terror for approximately 60 seconds". Roper was breathing heavily and was probably (although DSN did not realise or understand this at the time) masturbating himself as he abused the boy. DSN "rolled over and pulled the blanket tightly over my body to try to protect myself", pretending that it was a natural movement in his sleep.

"Roper then tried to reach over to cuddle me but I resisted by keeping my body rigid and leaning right over the side of the bed. I stayed on the edge of the bed, wrapped up in the sheet so he could not touch me.

I was absolutely terrified and, although Roper then went to sleep, I lay awake all night, right on the edge of the bed, as far away from Roper as possible. I clearly remember that I had one arm stretched out on the floor to stop myself from falling out of the bed. I stayed there for the entire night and I remember it hurt having to hold that position. I only began to feel safe when it was light outside."

77. I accept DSN's account without qualification or reservation.

(3) Is the Defendant vicariously liable?

Vicarious liability - The law

78. In *Various Claimants v Catholic Welfare Society* [2012] UKSC 56 Lord Phillips of Worth Matravers observed "The law of vicarious liability is on the move" (para 19). Building on the "impressive leading judgment" of Ward LJ in *E v English Province of our Lady of Charity* [2013] QB 722 (para 19), he identified a number of propositions, including:

- i) D2 may be vicariously liable for the tortious act of D1 even though the act in question constitutes a violation of the duty owed to D2 by D1 and even if the act in question is a criminal offence (para 20 at (ii)); and
- ii) Vicarious liability can even extend to liability for a criminal act of sexual assault (para 20 at (iii); citing *Lister v Hesley Hall Ltd* [2002] 1 AC 215).

79. Lord Phillips approved a two-stage test (at para 21):-

- i) The first stage is to consider the relationship between the Defendant and the tortfeasor “to see whether it is one that is capable of giving rise to vicarious liability”.
- ii) The second stage is to examine the connection that links the relationship between the Defendant and the tortfeasor and the tortious act or omission of the tortfeasor.

80. In relation to the first stage, Lord Phillips said (at para 35):-

“The relationship that gives rise to vicarious liability is in the vast majority of cases that of employer and employee under a contract of employment. The employer will be vicariously liable when the employee commits a tort in the course of his employment. There is no difficulty in identifying a number of policy reasons that usually make it fair, just and reasonable to impose vicarious liability on the employer when these criteria are satisfied: (i) The employer is more likely to have the means to compensate the victim than the employee and can be expected to have insured against that liability; (ii) The tort will have been committed as a result of activity being taken by the employee on behalf of the employer; (iii) The employee's activity is likely to be part of the business activity of the employer; (iv) The employer, by employing the employee to carry on the activity will have created the risk of the tort committed by the employee; (v) The employee will, to a greater or lesser degree, have been under the control of the employer.”

81. Lord Phillips went on (in para 45) to approve the formulation of the control test for the purposes of the modern law of vicarious liability suggested by Rix LJ in *Viasystems (Tyneside) Ltd v Thermal Transfer (Northern) Ltd* [2005] EWCA Civ 1151 at para 79, suggesting that the court should be looking for:

“...a situation where the employee in question, at any rate for relevant purposes, is so much a part of the work, business or organisation of both employers that it is just to make both employers answer for his negligence.”

82. This language is similar to the approach of Ward LJ in *E v English Providence* [2013] QB 722 at para 73: “The test I set myself is whether the relationship of the bishop and Father Baldwin is so close in character to one of employer/employee that it is just and fair to hold the employer vicariously liable.”

83. Lord Phillips then applied the analysis to non-employment relationships (in para 47) as follows:

“At para 35 above, I have identified those incidents of the relationship between employer and employee that make it fair, just and reasonable to impose vicarious liability on a defendant. Where the defendant and the tortfeasor are not bound by a contract of employment, but their relationship has the same

incidents, that relationship can properly give rise to vicarious liability on the ground that it is “akin to that between an employer and an employee”. That was the approach adopted by the Court of Appeal in *E’s* case [2013] QB 722.”

84. The first stage of Lord Phillips’ two-stage test was considered by the Supreme Court in *Cox v Ministry of Justice* [2016] AC 660. The tortfeasor was not an employee of the defendant, but a prisoner in the defendant’s custody working in a prison kitchen as an inmate. Lord Reed JSC said (at paras 29-31):-

“29. It is important, however, to understand that the general approach which Lord Phillips described is not confined to some special category of cases, such as the sexual abuse of children. It is intended to provide a basis for identifying the circumstances in which vicarious liability may in principle be imposed outside relationships of employment. By focusing upon the business activities carried on by the defendant and their attendant risks, it directs attention to the issues which are likely to be relevant in the context of modern workplaces, where workers may in reality be part of the workforce of an organisation without having a contract of employment with it, and also reflects prevailing ideas about the responsibility of businesses for the risks which are created by their activities. It results in an extension of the scope of vicarious liability beyond the responsibility of an employer for the acts and omissions of its employees in the course of their employment, but not to the extent of imposing such liability where a tortfeasor’s activities are entirely attributable to the conduct of a recognisably independent business of his own or of a third party. An important consequence of that extension is to enable the law to maintain previous levels of protection for the victims of torts, notwithstanding changes in the legal relationships between enterprises and members of their workforces which may be motivated by factors which have nothing to do with the nature of the enterprises’ activities or the attendant risks.

30. It is also important not to be misled by a narrow focus on semantics: for example, by words such as “business”, “benefit”, and “enterprise”. The defendant need not be carrying on activities of a commercial nature: that is apparent not only from the cases of *E v English Province of Our Lady of Charity* [2013] QB 722 and the “Christian Brothers” case [2013] 2 AC 1, but also from the long-established application of vicarious liability to public authorities and hospitals. It need not therefore be a business or enterprise in any ordinary sense. Nor need the benefit which it derives from the tortfeasor’s activities take the form of a profit. It is sufficient that there is a defendant which is carrying on activities in the furtherance of its own interests. The individual for whose conduct it may be vicariously liable must carry on activities assigned to him by the defendant as an integral

part of its operation and for its benefit. The defendant must, by assigning those activities to him, have created a risk of his committing the tort. As the cases of *Viasystems (Tyneside) Ltd v Thermal Transfer (Northern) Ltd* [2006] QB 510, *E v English Province of Our Lady of Charity* and the “Christian Brothers” case show, a wide range of circumstances can satisfy those requirements.

31. The other lesson to be drawn from the cases of *Viasystems (Tyneside) Ltd v Thermal Transfer (Northern) Ltd*, *E v English Province of Our Lady of Charity* and the “Christian Brothers” case is that defendants cannot avoid vicarious liability on the basis of technical arguments about the employment status of the individual who committed the tort. As Professor John Bell noted in his article, “The Basis of Vicarious Liability” [2013] CLJ 17, what weighed with the courts in *E v English Province of Our Lady of Charity* and the “Christian Brothers” case was that the abusers were placed by the organisations in question, as part of their mission, in a position in which they committed a tort whose commission was a risk inherent in the activities assigned to them.”

85. On the same day, the second stage of Lord Phillips’ two-stage test was considered by the Supreme Court in *Mohamud v Wm Morrison Supermarkets plc* [2016] AC 677, in which the tortfeasor was the employee of the defendant. The judgment of Lord Toulson was approved by all the Justices in the case. Lord Toulson traced the history and the development of the law of vicarious liability from medieval times to the 21st century (paras 10-43), including some far-sighted observations of Sir John Holt (Lord Chief Justice 1689-1710) along the way.
86. He devoted a section of his judgment (paras 39-43) to the judgment of the House of Lords in *Lister v Hesley Hall Ltd* [2002] 1 AC 215, a case of sexual abuse by the warden of a school boarding house, and its application in later cases. He summarised the approach of Lord Steyn as posing “the broad question whether the warden’s torts was so closely connected with his employment that it would be just to hold the employers liable” and that of Lord Clyde as saying “the warden had a general duty to look after the children, and the fact that he abused them did not sever the connection with his employment; his acts had to be seen in the context that he was entrusted with responsibility for their care, and it was right that his employers should be liable for the way in which he behaved towards them as warden of the house.” He noted Lord Steyn’s reference to the judgment of McLachlin J in *Bazley v Curry* [1999] 2 SCR 534 (which he likened to the approach of Holt CJ) which said:
- “The employer puts in the community an enterprise which carries with it certain risks. When those risks materialise and cause injury to a member of the public despite the employer’s reasonable efforts, it is fair that the person or organisation that creates the enterprise and hence the risk should bear the loss.”
87. He quoted at length (in para 41) the judgment of Lord Nicholls of Birkenhead in the commercial case of *Dubai Aluminium Co Ltd v Salaam* [2003] 2 AC 366 as follows:-

“22. ... [I]t is a fact of life, and therefore to be expected by those who carry on businesses, that sometimes their agents may exceed the bounds of their authority or even defy express instructions. It is fair to allocate risk of losses thus arising to the businesses rather than leave those wronged with the sole remedy, of doubtful value, against the individual employee who committed the wrong. To this end, the law has given the concept of ‘ordinary course of employment’ an extended scope.

23. If, then, authority is not the touchstone, what is? ... Perhaps the best general answer is that the wrongful conduct must be so closely connected with acts the partner or employee was authorised to do that, for the purpose of the liability of the firm or the employer to third parties, the wrongful act *may fairly and properly be regarded* as done by the partner while acting in the ordinary course of the firm’s business or the employee’s employment ... (Original emphasis)

25. This ‘close connection’ test focuses attention in the right direction. But it affords no guidance on the type or degree of connection which will normally be regarded as sufficiently close to prompt the legal conclusion that the risk of the wrongful act occurring, and any loss flowing from the wrongful act, should fall on the firm or employer rather than the third party who was wronged. ...

26. This lack of precision is inevitable, given the infinite range of circumstances where the issue arises. The crucial feature or features, either producing or negating vicarious liability, vary widely from one case or type of case to the next. Essentially the court makes an evaluative judgment in each case, having regard to all the circumstances and, importantly, having regard to the assistance provided by previous court decisions.”

88. He concluded (in para 43) by pointing out “a... risk in attempting to over-refine, or lay down a list of criteria for determining, what precisely amounts to a sufficiently close connection to make it just for the employer to be held vicariously liable. Simplification of the essence is more desirable.”

89. He then stated “The present law” in the following terms (paras 44-46):-

“44. In the simplest terms, the court has to consider two matters. The first question is what functions or “field of activities” have been entrusted by the employer to the employee, or, in everyday language, what was the nature of his job. As has been emphasised in several cases, this question must be addressed broadly; see in particular the passage in Diplock LJ’s judgment in *Ilkiw v Samuels* [1963] 1 WLR 991, 1004 included in the citation from *Rose v Plenty* [1976] 1 WLR 141, 147-148 (at para 38 above), and cited also in *Lister v Helsey Hall Ltd* [2002] 1 QC

215 by Lord Steyn, at para 20, Lord Clyde, at para 42, Lord Hobhouse, at para 58 and Lord Millett, at para 77.

45. Secondly, the court must decide whether there was sufficient connection between the position in which he was employed and his wrongful conduct to make it right for the employer to be held liable under the principle of social justice which goes back to Holt. To try to measure the closeness of connection, as it were, on a scale of 1 to 10, would be a forlorn exercise and, what is more, it would miss the point. The cases in which the necessary connection has been found for Holt's principle to be applied are cases in which the employee used or misused the position entrusted to him in a way which injured the third party. *Lloyd v Grace, Smith & Co* [1912] AC 716, *Pettersson v Royal Oak Hotel Ltd* [1948] NZLR 136 and *Lister v Hesley Hall Ltd* were all cases in which the employee misused his position in a way which injured the claimant, and that is the reason why it was just that the employer who selected him and put him in that position should be held responsible. By contrast, in *Warren v Henlys Ltd* [1948] 2 All ER 935 any misbehaviour by the petrol pump attendant, qua petrol pump attendant, was past history by the time that he assaulted the claimant. The claimant had in the meantime left the scene, and the context in which the assault occurred was that he had returned with the police officer to pursue a complaint against the attendant.

46. Contrary to the primary submission advanced on the claimant's behalf, I am not persuaded that there is anything wrong with the Lister approach as such. It has been affirmed many times and I do not see that the law would now be improved by a change of vocabulary..."

90. The essence of this statement is the following two-fold test:-

- i) "...what functions or "field of activities" have been entrusted by the employer to the employee, or, in everyday language, what was the nature of his job. As has been emphasised in several cases, this question must be addressed broadly..." (para 44): and
- ii) "...whether there was sufficient connection between the position in which he was employed and his wrongful conduct to make it right for the employer to be held liable under the principle of social justice which goes back to Holt..." (para 45).

Vicarious liability – Stage 1 - evidence

91. The defendant was at all material times (and is still) a professional football club. The New Zealand trip took place after the end of the 1986-87 season. In those days, there was no Premier League, and English professional football was organised at the top into four divisions by the Football League. The season ended with Everton at the top of the First Division. Blackpool FC was in the middle of the Third Division (placed 9th out of

24 teams). It had been founded in 1887 and had played since 1901 (as it still does) at a ground in Bloomfield Road, Blackpool. Its colours were tangerine, and opposite the Bloomfield Road stadium it ran a social club called the Tangerine Club. Blackpool is in the middle of the Fylde coast of Lancashire, which stretches over the 13 miles from Fleetwood in the north to Lytham St Annes in the south.

92. The manager of Blackpool FC in 1987 (and between 1982 and 1989) was Sam Ellis, who gave evidence to me. The Chairman (between 1981 and 1990) was Kenneth Chadwick, who also gave evidence. The Club and Company Secretary (between 1980 and 1988-89) was David Johnson, who also gave evidence.
93. Mr Johnson said (and other evidence confirmed) that “The Club’s financial situation at the time was dire” and, as a result, “it could only afford to employ a minimum number of staff.” Also “Non-playing staff did not have formal contracts in those days.”
94. Sam Ellis was ultimately responsible for all footballing matters at Blackpool FC. The youth team set-up was, however, run by Jack Chapman, who (according to Mr Johnson) “was employed by the Club as Head of Youth Development throughout the 1980s”. Mr Johnson was able to say with confidence, because of his role in administering the payroll, that anyone who assisted Mr Chapman “did so on a purely voluntary basis” and was not on the payroll. It is clear to me from the evidence that this was because of the Club’s “dire” financial situation, which made it dependent on volunteers for functions which might, in a bigger or better-funded club, have been performed by paid employees from within the establishment. This was the position of William Hurst, who gave evidence to me. His evidence was “I worked for the Club from 1978 until 1990 as a part-time youth scout, physio and coach.” He was not paid, he had no contract or formal terms, and he was not an employee. He “worked for the Club” (as he put it) “on a voluntary part-time basis”, fitting his activities for the club around his full-time job in the ambulance service for which his hours of work were between 9 am and 5 pm. Although not carried out by employees, these functions were nevertheless, on the evidence before me, part of the essential running of a professional football club in the 1980s and of Blackpool FC in particular.
95. The recruitment of talent was important. It was important because Blackpool FC needed players; it was important because Blackpool FC, like any club, needed the best players it could get in order to perform as competitively as it could in professional football; and it was important because it was competing for players, even locally, with clubs which were more successful both in footballing terms and financially, both of which placed handicaps on Blackpool FC in the market for players. It was also, in this club and at this time, important because Blackpool FC had been financially rescued by two particularly lucrative transfer deals. In March 1987 (very shortly before the 1987 New Zealand trip) it sold 22-year old Paul Stewart to Manchester City for a record-breaking £200,000. In 1983 it had sold 19-year old David Bardsley to Watford for £150,000. The evidence of the Manager, Mr Ellis, was “When we sold those two players it was probably the saving of the club”. The Chairman, Mr Chadwick, agreed that it was “no exaggeration” that these two sales “saved the Club.” Both players had been introduced to the Club by Roper. Identifying, recruiting and retaining the allegiance of promising young footballers was, on the evidence before me, part of the core business of the club. Apart from performance on the pitch by the first team, it appears to have been more important than anything else, and it also contributed to performance on the pitch to the extent that it provided the best players. (Both Stewart and Bardsley were first-team

players before they were sold.) But the evidence also shows that it could not be, and was not, done by Mr Chapman alone. He had to have help from the work of others. And, because of the Club's "dire" financial situation, that work had to be done by unpaid volunteers.

96. There was some evidence that even Mr Chapman left the payroll at about the time of the 1987 trip. Match day programme advertising was sold and printed at the start of every season, and remained constant in the programme throughout the season. A programme at the end of the 1986-87 season (for the match on 4 May 1987) advertised Roper's sports clothing shop "Nova Sports and Leisure" in Lytham Road, Blackpool, and said "Call and see JACK CHAPMAN (Formerly Youth Manager with Blackpool F.C.)"; whereas a programme in the following season (for the match on 23 September 1987) was identically worded save that it dropped the qualification 'Formerly', and said "Call and see JACK CHAPMAN (Youth Manager with Blackpool F.C.)". The Chairman Mr Chadwick recalled "I know he left the football club and went to manage the shop and in a relatively short time, say 9 months at the most, came back." There was no suggestion that anyone took his place on the payroll or in the role during this brief spell. The second advertisement suggests that he was on hand at the shop for people to "call and see" whether he was on the Blackpool FC payroll as Youth Manager or not.
97. The rules which applied to clubs in the Football League in the 1986-87 season (and at all material times) structured the integration of young players into the set-up of a professional club like Blackpool FC in the following way:-
- i) At the age of 11, boys could attend a licensed "Centre of Excellence" run by the Club with the approval of the Football Association "for training and coaching" (rule 44).
 - ii) At the age of 14, the Club could register the boy as an "Associated Schoolboy", commonly referred to as 'schoolboy forms' (rule 45). It was expressly provided that "Boys under the age of 14 years are not eligible to become Associated Schoolboys and must not attend a Club for regular training or coaching" (rule 44(5)(a)).
 - iii) Once signed as an Associated Schoolboy, the boy was exclusive to the Club and was not free to join another club without consent or going through an appeals process (rule 45(6)).
 - iv) Other clubs were banned from direct or indirect approaches to an Associated Schoolboy (rule 43(10)).
 - v) When an Associated Schoolboy completed his full-time education, his Club had first refusal on him as a Trainee or Contract Player and no other Club could sign him without paying the Club a transfer fee (rule 45(9)).
 - vi) Trainee Players (sometimes referred to as 'apprentices') were 16 or 17 year olds not in full time education. They were on a 2 year contract (if 16) or a 1 year contract (if 17) (rule 46).

- vii) From the age of 17, a boy was eligible to be signed as a professional Contract Player by the Club (i.e a first team player). The Club had first refusal as to whether to sign its Trainees as Contract Players and the player could not sign for another club without payment of a transfer fee (rule 46(2)).
98. Therefore, under the regime which applied at the time, whilst it was recognised that the Clubs would potentially start its interest in promising young players from the age of 11, it could not lock such players in until they reached their 14th birthday and signed schoolboy forms, after which they were bound to the Club and the Club could keep them on or sell them, free from competition by other clubs.
99. Although I heard evidence from the Club Chairman (Mr Chadwick) and Secretary (Mr Johnson), they were not directly involved with the process of bringing new talent into the Club. Mr Chadwick said “I would not be involved in recruitment of youth or very young players”, and even if it was a question of buying a player, “the manager would approach the board for permission and we would either say yes or no, we would not have a say in who the player was.” Mr Chadwick said he was not familiar with the process I have outlined: “The manager was in charge of the footballing side and he delegated that to Jack Chapman on the youth side; we had no idea. Ellis [the manager] gave Chapman quite a free rein.” Although I found Mr Chadwick a credible witness, therefore, his evidence was less important than the evidence of those who were closer to these activities. The Club secretary, Mr Johnson, was equally removed from activities which did not involve a financial outlay or return (such as the signing or selling of adult Contract Players). For what it is worth, I found Mr Johnson a more partisan and less reliable witness, although I paid careful attention to what he said, to the extent that it could truly be said to be within his own knowledge.
100. The picture eleven other witnesses painted of Roper’s methods and of his connection with Blackpool FC was remarkably consistent and, by the end of the trial, it seemed that there could be very little if any dispute about the primary facts.
101. Roper was a scout for Blackpool FC with a particular role in spotting promising players below the minimum schoolboy signing age of 14, taking them under his wing, coaching and watching them, particularly at a team run by him called “Nova Juniors”, and encouraging them to form an allegiance to Blackpool FC before the time came when they might (if good enough) be formally signed up. I will move through the witnesses broadly chronologically, referring to evidence both in chief and in cross examination which I found to be relevant and credible. I have already summarised my general impression of each witness, and the capacity in which each came across Roper and Blackpool FC.

Steven Harrison

102. As early as 1967, when Steven Harrison joined the Club as an apprentice, Harrison’s evidence was that the Blackpool FC under 18s team went on tour to Germany and Roper was on the trip with the team “basically the team’s gofer... doing various things including taking photographs and helping with the kit”. Throughout the period that Harrison was at the Club as an apprentice and young professional between 1967 and 1972, he recalled “Roper was usually at the training sessions for junior players on Tuesday and Thursday evenings.” Harrison “also knew that [Roper] was a scout for the club and would bring players from the South Manchester area to the club.” “The

schoolboy coach at the time was Jack Chapman and Frank Roper was assisting him. He would generally help out with training for the junior teams.” Harrison stayed at the Club until 1978, by which time he was 26.

Graham Wright

103. Graham Wright was recruited to Roper’s Nova Juniors team in the Stockport area of South Manchester when he was 12 or 13 in 1972 or 1974, and played for them until he was 14 in 1975. He said “Roper was locally known as a football scout for Blackpool Football Club”. He had a sports shop in Blackpool. He remembers Roper taking them to Blackpool FC “I would imagine it would have been a way of getting us interested in Blackpool Football Club as Roper was well known as having a connection with the club”. Roper sometimes liked Nova Juniors to play in the Blackpool FC tangerine kit (apparently supplied from his own sports shop), but there was no specific Nova Juniors kit. He said “Roper was a scout for Blackpool FC. The shop was not anything to do with it. He used to take us to Blackpool Football Club games and get us to wear the Blackpool Football Club kit.” He only knew Roper to be involved with Blackpool Football Club. Roper abused him when he was giving him lifts in his car and, on one occasion, raped him. A teacher at Wright’s school was a scout for Coventry, and Wright ended up signing schoolboy forms for Coventry.

LDX

104. LDX knew Roper between the ages of 11 and 13, which would have been in the period 1982-84. LDX was playing for a rival side to Roper’s Nova Juniors team, which was, in fact, better than Nova Juniors, but they played each other and so he came across Roper. “At the time, Roper was widely known as a scout for Blackpool Football Club and that Nova Juniors was a feeder team for Blackpool Football Club. I also knew that Roper would take lads to watch games at Blackpool. I remember that Roper introduced himself to my parents as a scout for Blackpool Football Club.” “Roper tried to scout me to his team, promising me that, if I moved, he would get me trials with Blackpool.”
105. LDX was not interested, because he knew he could do better (and did do better, eventually signing for a bigger club as a schoolboy). However, on one occasion Roper lavished him with sports kit from his shop, allowing him to take his pick from an “Aladdin’s cave” of it in his house, and after that LDX played in one five-a-side tournament for Roper. Roper gave him a lift, and abused him in the car on the way home.
106. At that time, LDX understood Nova Juniors to be based in Blackpool or, at least, associated with Blackpool, although boys were recruited from other areas; “I don’t see how the area makes a difference”. In cross examination, he said “In my belief and knowledge, Nova Juniors were affiliated with Blackpool FC. That Blackpool feeder club was Nova Juniors, that was what I was led to believe. Roper himself advertised the fact that he was associated with Blackpool FC and that he was a representative of Blackpool FC.” He confirmed that ‘scout’ was the term in use at the time, and that it meant “Somebody that could introduce you or could get you into a football club. Somebody that could scout you for that team, specifically for that team.” There were other scouts for other clubs, including the club that LDX eventually signed for. “It never crossed my mind that [this other scout] was employed, it was just enough to say that he was a scout, and the benefits that came from being associated with [the club he signed

for]. For example, I could ring up and get tickets for myself and my family whenever I wanted, I could go to the club.” LDX was clear that every scout “spoke specifically about the teams that they represented”; every scout had their own club. They were not general freelance agents.

107. Similarly, the feeder teams were associated with particular clubs. His own team was a feeder for the club he signed for; if a boy was not interested in that club “he would have to leave”. Nova Juniors was a feeder team for Blackpool Football Club. In his day, Nova Juniors had two sides, one of his age and one older. Other evidence suggested that Roper ran a single side at Nova Juniors or (for a period, when he had help) a second side, and that the Nova Juniors team worked its way through the age categories of youth football matches as its members got older, until they outgrew junior football altogether and a new side was formed with younger boys.

Colin Greenall

108. Colin Greenall met Roper when he started training with Blackpool FC aged 15 in about 1979, before rapidly going on to sign as an apprentice (at 16) and then as a Contract Player at Blackpool until 1987. He has been in football as a player and as a coach for his whole life. He was initially recruited to Blackpool by Jack Chapman, the youth coach, but “Roper was always at Blackpool when I was there in the school holidays. At weekends I would see him if I was playing.” “I believed he was very much part of Blackpool but I was not clear of his specific role or link.” Greenall was coached by Chapman, not Roper, being an older player, but “We all knew [Roper] and I understood him to be a scout for the club who was responsible for bringing young players to the club from the Manchester area”. “Frank Roper was around the club during some of the training days and most home games at the weekend. He did not get involved in the training but was often on the side lines.” “I am not sure of his official role at the Club but I do know that he brought young players from the Manchester area and that he was there very often and appeared to know all of the other staff members.” If there was a home game, Roper “would take a group of players and he would have access to the players’ tunnel, where we used to go, and we would all sit in the south stand and watch the game together, about half way up in the old stand.” Greenall was approached by bigger clubs like Manchester City, Coventry and Leeds United but “I was not interested in a trial because I’d already been to Blackpool and I’d made my mind up that I wanted to start at the bottom and work my way up.”

CFS

109. CFS was seriously abused by Roper between the ages of 11 and 16, roughly in the period 1980-85. He was first approached by Roper when he was 11 in about 1980, after a youth football match. “[Roper] introduced himself, telling me he was a scout for Blackpool and inviting me to join his team Nova Juniors.” “Roper also told me about Paul Stewart and David Bardsley and said that they had played for Nova Juniors before going on to play professionally at Blackpool. I ended up meeting both of them, via Roper, within about 6 months of joining Nova Juniors.” Based on the dates, this was before Blackpool sold Bardsley and Stewart. Roper met his parents and arranged for him to join Nova Juniors, which Roper was “in charge of... and managed”. CFS was “thrilled” and “realised that, because of Roper’s connections to Blackpool, playing for Nova Juniors was a really good opportunity and I knew if I did well there, I would have a chance of joining Blackpool when I was older.”

110. In the summer of 1980, CFS went on a trip to America with Roper and two other boys. Roper raped him and abused at least one of the other boys in bed. Roper told him not to tell his parents and said that, if he did, he would slit his throat. Roper had a knife on his lap when CFS spoke to his parents on the telephone. On his return to Lancashire, CFS continued to play for Nova Juniors (and Roper continued his sexual abuse of him). They usually played in Manchester but, for Nova Juniors trial games against other counties, they would play at the Blackpool FC training ground in Squires Gate and wear the Blackpool FC tangerine kit. "This was because at these trial games, we would be representing Blackpool." "Jack Chapman was a regular at these trial games." CFS signed schoolboy forms with Blackpool FC when he was "13 or 14 years old" (there was some evidence that Blackpool, or at least Chapman, did not always strictly observe the age threshold of 14 for these forms), i.e. in 1983 or 1984. "It was Roper who introduced me to Blackpool. Once I had signed to join Nova Juniors, I was basically considered to be part of Blackpool and to have signed schoolboy forms." "Roper would take me to Blackpool during the school holidays, usually for a week or two at a time. When I played at Blackpool on these occasions, it wasn't like having a trial with them as the assumption was that if you played for Nova Juniors, you were automatically signed up as a schoolboy with the club." "I considered myself to have signed schoolboy forms from the age of 11, when I joined Nova Juniors."
111. There was a photograph in the trial bundles of CFS signing his Blackpool FC forms at a Manchester hotel as a teenager. Most of the boys in the photograph could be identified by name, and it turned out that, on that occasion, out of a core team of 9 or 10 Nova Juniors playing at that time, 7 were on that occasion alone signing their forms for Blackpool FC.
112. CFS had been a keen Manchester City fan, going to every home game with his father, "but once I had signed with Nova Juniors, I became a Blackpool fan who was going to become a Blackpool player." He went to every Blackpool FC home game for 3 years as well as every away game within a 90 minute drive. "When watching matches, Roper and I would sit in a private box with other boys, players from the club and Blackpool Football Club officials. Jack Chapman would sit with us in the private box." The box, which was more a designated corner of the stand than a modern box, was known as "Chapman's corner". "Roper would be treated like staff and was able to access any part of the ground he wanted to. On match days, we would enter via the players' entrance with Roper". "After the match had finished, Roper would then usually take me and the other boys to socialise with the players and their families as well as Jack Chapman and Sam Ellis. This socialising would take place in the players' suite located under one of the stands in the grounds. The players' suite did not allow access to members of the public and it would only be players, their families, Blackpool management and employees, Roper and myself and other lads who played for Nova Juniors."
113. When CFS was 15 or 16, in 1984 or 1985, he told Jack Chapman about Roper's sexual abuse of him and other boys. This was before he had signed (as he later did) as an apprentice. A week or two later, Chapman pulled him to one side "and said he had had a word with Roper and assured me that it would not happen again." He was not invited onto the next football trip, which was to Thailand. He had been on 3 or 4 of Roper's earlier trips, to America. CFS went on to Rochdale, where he remembered William Hurst, but he did not recall William Hurst ever training him at Blackpool FC.

114. ANF first met Roper when he was 11 in 1981. He had the misfortune to be abused by Roper after having already been abused by another coach at another feeder club and he met Roper when still at his original club with his original abuser, who knew Roper. At that time, ANF was “aware that Roper was closely associated with Blackpool Football Club and worked as a scout for them”. “Nova Juniors was considered a feeder club for Blackpool”. ANF knew that, as well as Bardsley and Stewart signing for Blackpool on the introduction of Roper (they being 4 or 5 years above him in the youth football world), a number of others closer to him in age did so: Alan Wright (a year below him), Simon Rooney (a year above him), Trevor Sinclair (2 years below him) and Mark Bradshaw (a witness, 1 year above him).
115. ANF left his original feeder club to escape his abuser there, and within hours Roper turned up at his parents’ house with forms for him to sign up to Nova Juniors. “Roper also said that he wanted to introduce me to Blackpool Football Club that weekend. In particular, he wanted me to meet Jack Chapman.” “That weekend, Roper picked me up from my house and took me to Blackpool Football Club at Bloomfield Road as promised. When we got there, we went to watch Blackpool play and we sat in the director’s box. I remember that Jack Chapman was there and that he already knew who I was... Jack Chapman and Roper wanted me to sign schoolboy forms straight away...” Roper swiftly began his own abuse of ANF, after persuading him to stay overnight at his house, and to meet other boys (who were also abused there) as “a good team bonding experience”.
116. ANF continued to play for Nova Juniors for a few months, which he recalls in his time sometimes training at the Blackpool FC training ground at Squires Gate. There were more visits to watch the first team play at Blackpool FC by the whole Nova Juniors team, sitting in the directors’ box or in the stand directly underneath the directors’ box. “Roper would sit with us and most of the time Jack Chapman would also be there.” After the matches, “Roper would take us to the players’ lounge”; “Roper had the run of the place; he knew everyone there and it was as if he had the keys to the Club.” During the school summer holidays in 1983, ANF trained with Blackpool Football Club. Throughout the time he played for Nova Juniors he was put under pressure to sign with Blackpool FC but he resisted, wishing to get away from the sexual abuse. At 14 years old, he signed schoolboy forms with Manchester United.
117. In cross examination, ANF clarified that Roper identified himself as “working for Blackpool Football Club” on his initial visit to ANF’s parents. He said Roper was scouting for talent and ability like a modern scout but “He was not scouting for Nova Juniors”. “Nova Juniors were Blackpool Football Club juniors, their nursery team”, although the rules at the time meant that the boys could not be tied down legally at that age. He was at Nova Juniors for, he estimated, about 3 months, at the end of the playing season and then through the school holidays. He “felt intimidated by Frank Roper, he applied pressure, he was verbally intimidating, he was very aggressive, he was overpowering.” “I remember my Mum saying he was a very persuasive man; she did not like him.”

Mark Bradshaw

118. Mark Bradshaw met Roper when he was about 13 years old in 1982, and went on to play for Blackpool FC as an adult until 1990. His evidence, as well as continuing to show the development of Roper’s relationship with Blackpool FC chronologically,

therefore, overlaps with the point when DSN was abused by Roper in New Zealand in June 1987. Bradshaw was invited by Roper to join his Nova Juniors team when he was 13 and the team he joined grew up through the Under 14, Under 15, and Under 16 competitions and matches until Bradshaw and his teammates outgrew youth football and Bradshaw signed up to Blackpool FC as an apprentice and then as a first team player. There was at first only one Nova Juniors team in his day but, about a year after he joined, a second Nova Juniors side of younger boys was formed, which was run simultaneously by the father of another boy. (Evidence from other witnesses showed that, remarkably, this boy was allowed by his father to share a bed with Roper on a regular basis, and Roper sexually abused him over a period of years.) Roper did not really coach, leaving the boys to learn by playing against each other in small groups. After a couple of months playing for Nova Juniors, Roper took Bradshaw to Blackpool FC “to train with them and play for their junior team and I was offered the opportunity to sign schoolboy forms with Blackpool.” This he did not do, but he did eventually sign as an apprentice.

119. At Nova Juniors, Bradshaw came to understand that “Roper was a scout for Blackpool”, and, although Roper did not use the word ‘scout’ to Bradshaw, “He said he had an association with Blackpool”. Bradshaw told me his understanding of the term ‘scout’ is “a person who goes out and finds talented footballers and takes them to the club they are associated with.” Roper often took them to watch Blackpool games at Bloomfield Road, getting them in for free “and we would sometimes sit in a box at the Club.” They were introduced to the Manager (Sam Ellis), the Assistant Manager and the Youth Team Manager Jack Chapman. When they went to watch home games with Roper “we felt we were part of the Club.” Roper “seemed to have the run of the place” at Bloomfield Road “and, at one point, he was given his own room in the stadium at Bloomfield Road so he could entertain young boys who had signed with or who were considering signing with Blackpool and their families.” Roper was “quite proud of this room”. Roper would also take the Nova Juniors boys into the players’ lounge after matches. He produced rolls of cash and would give large sums to the boys to spend in the arcades in Blackpool. Bradshaw was not sexually abused, and saw no sexual abuse, but Roper was physically aggressive and hit him several times when he did not do what Roper told him to do on the football pitch.
120. After Bradshaw signed as an apprentice, he “continued to come into contact with Roper, seeing him around Blackpool often.” But about 3 years later Roper disappeared, after having financial difficulties with his business, running off with money taken from customers for orders which were never satisfied and ending up, apparently, in Thailand.

Michael Davies

121. Michael Davies played at Blackpool FC from 1982 (when he signed as an apprentice at the age of 16) until 1995, and then remained as a coach. He had two brief spells as caretaker manager, well after the events in question. Although called as witness for the Claimant (initially without providing a witness statement), he was quite compliant in cross examination. Although he did not sign schoolboy forms, his association with the Club began as a schoolboy, and he was not introduced by Roper but by “a scout called Tommy Pendlebury”. “Whenever I was at the Club on Saturdays or during the school holidays, Frank Roper was almost always there. I was told that he was a scout who covered the Manchester area. I was also told that he ran feeder teams in that area, including a team called Nova Juniors Football Club who Paul Stewart had played for.”

He was not aware of Roper getting any payment from the Club, but “When I was a coach and caretaker-manager at the Club, the Club paid commission to the scouts responsible for introducing signed players, so I would expect it was the same when Roper was a scout.” I have seen no other evidence of this, and I am mindful that the Club records have been destroyed, apparently before expiry of the primary limitation period, and so I place no weight on this speculation. It was contradicted by the evidence of the two board members who gave evidence to me.

122. Davies’s recollection is that Roper’s association with the Club came to an end in about 1987 or 1988, around the same time that Jack Chapman left to work for Blackburn Rovers. Before that:

“I know that Roper was closely associated with the Club because he was given access to what I would describe as the ‘inner sanctuary’ of the Club. He was allowed access to the training sessions and facilities and the dressing room, something that I do not think would be afforded to someone who was not closely associated with the Club or was not employed by the Club in any capacity. Roper was definitely involved with the junior and Youth Team set up at the Club during the period of time that I was part of that set up.

... I am not aware of Roper scouting for any other teams. I am only aware of him being associated with Blackpool Football Club...”

123. He said, interestingly, that in his time as a schoolboy (in the early 1980s) there was no “Centre of Excellence” at Blackpool FC. The rules to which I have referred required any “Centre of Excellence” to be officially registered and approved. The lack of an official “Centre of Excellence” at Blackpool to cater for potential signings before they reached the age of 14 and were eligible to sign schoolboy forms makes the informal arrangements in place to spot and recruit boys between the ages of 11 and 14 more important, and it is clear from the evidence I have cited that Roper was an important part of those arrangements. However, there seems subsequently to have been something that was at least called a “Blackpool School of Excellence”, which the claimant DSN attended in the late 1980s.

David Erhardt

124. The next witness in the chronology was David Erhardt, who met Roper when he was 13 or 14 in 1983 or 1984, when Roper approached his parents after a schoolboy match and suggested that he should play for Nova Juniors. He told them “he was a football scout for Blackpool Football Club and that he would be able to get me trials with Blackpool Football Club if I joined his team, Nova Juniors.” At the time, “Nova Juniors was widely known as a feeder team for Blackpool Football Club” and his parents agreed to him joining. He played for Nova Juniors over two seasons. Once he began playing there, Erhardt learned that there was “a strong link” between Nova Juniors and Blackpool FC. “Roper would arrange for people from Blackpool Football Club to come and watch us play with a view to trials being arranged and I was aware that a number of players went from Nova Juniors to Blackpool Football Club.”

“I would say that Nova Juniors was more than a ‘stepping stone’ to Blackpool, it was a feeder team... Most junior teams had a link to professional clubs and I believe Nova Juniors was linked to Blackpool. If you wanted to be considered for another club, it was almost as if you had to leave Nova Juniors. It was as if there was an exclusive agreement between Nova Juniors and Blackpool – that is the way that I viewed it.”

When Erhardt himself drifted away to a different local boys’ team after two seasons, “the possibility of trials and any connection with Blackpool ended.”

125. Erhardt was aware that Roper was regularly sleeping in the same bed as the son of the father who was running the second Nova Juniors team. He also noticed Roper making inappropriate comments when he was in the car with the boys, about the size and appearance of their genitals. Erhardt’s parents did not agree to him going on the overseas trips organised by Roper to America during his time at Nova Juniors. On an occasion when Erhardt was taken by Roper with other Nova Juniors back to Roper’s house, the other boys went to Roper’s bedroom but told Roper that “David doesn’t want to play those games” and Roper left him alone. In cross examination, he said “The feeling I got was, if Roper liked you, you would be put forward [for Blackpool]. It was not always the best players who were selected to go for trials.”

DSN (the Claimant)

126. The next witness in the chronology is the claimant, DSN, who first met Roper in 1985, when he was 11. “Roper was a well-known football scout and scouted me to play for the Blackpool School of Excellence which was run by Jackie Chapman, the head coach, and Sam Ellis, the manager of Blackpool Football Club.” In cross examination he explained “It was very obvious when you were playing football who was a scout and [Roper] was obviously a scout when I was playing. We were briefed who were scouts when we were playing.” In re-examination: “Roper was obviously a scout because you could tell people pointing at people in the pitch, in dialogue with managers, talking to people, moving around, he clearly was watching, you could see from the corner of your eye, if you did something it evoked a conversation between Roper and Chapman, or Roper going to one of the coaches.”
127. The Blackpool School of Excellence was for boys aged between 11 and 14 (as envisaged by rule 43 of the Football League Rules). Although it seems (from the evidence of Davies, above) to have been a relatively recent development when DSN joined (and the first team manager, Ellis, did not remember it at all), it was Roper who brought DSN into it. “From memory, I didn’t have a trial and Roper contacted my coach at the YMCA Football Club... I would expect that Roper was then put in contact with my parents.” “Roper was essentially able to offer boys a place at the School of Excellence and, in my view, the School of Excellence was a stepping stone to joining the youth team at Blackpool.” In cross examination: “I did not have a trial for the School of Excellence. I was asked to attend.” “Roper was able to offer a place at the School of Excellence – that is what it appeared he did at the time.” Both Chapman and Roper were attending games. “It appeared to be both Roper and Chapman who recruited in our area, not just Chapman.” Although this point was tested in cross examination, I am satisfied that it was Roper and not Chapman who spotted DSN, spoke to his parents, and successfully recruited him to the Blackpool School of Excellence.

128. “For the next two years, I attended Blackpool’s School of Excellence training sessions with Jack Chapman and Roper as well as other young boys (aged between about 11 and 15), together with members of Blackpool’s youth team and members of the adult team and Blackpool’s management. Jack Chapman used to coach at these sessions.” “Roper would attend some coaching sessions and would interject at times and have some input into the training sessions.” In cross examination: “Sessions were led by Chapman with Roper observing and sometimes making comments; and you could see them in dialogue.” Although boys were brought by parents, “they would not stand on the touchline and watch. My parents certainly did not and I do not recall parents watching. I think it was restricted. I do not recall parents watching those training sessions.” This was a contrast with his YMCA training sessions (which he attended in the same period); these “seemed to be open”.
129. DSN continued to play for his school and the YMCA, but he would be at the School of Excellence training every week, between 1 and 3 times a week. The Blackpool FC Manager Sam Ellis had a son (Tim) in the School of Excellence at the same time as DSN, and DSN’s parents would often give Tim a lift. “We trained at Blackpool’s training ground for approximately an hour each time and then we would have showers and a sauna afterwards. Roper would have free rein to go wherever he wanted and would often walk around the area of the showers and saunas... I did not perceive this as strange at the time.”
130. DSN wanted to be a career footballer. “When turning up to training sessions, I felt as if I had to impress [Roper]. Roper made it very clear to me that he could open up doors for you at Blackpool and help you pursue a professional football career there.” “There was an established relationship between Roper and Blackpool.”
131. Roper would arrange nights out, mostly on Saturdays. “I would often go to these with other boys from the School of Excellence and there would often be players from Blackpool Football Club there as well as management, I remember Sam Ellis and other management staff attending these nights and that there would also be professional players from Blackpool there too.” Roper paid for the boys to have anything they wanted on the menu. The usual venue was Blackpool FC’s “Tangerine Club”, opposite the stadium (which was open to the public). DSN recalled some of the boys staying at Roper’s house, but DSN never did. Roper gave the boys money to play in the arcades, and football gear from his shop in Blackpool.
132. As a member of the School of Excellence, DSN was entitled to free tickets for Blackpool’s home games for himself and his family. “Roper would sometimes arrange these tickets and would give me them directly or I would pick them up from the ticket office”.
133. Roper was “a Jekyll and Hyde character”, who veered from joviality to showing his temper and shouting at the boys after matches. “I had the impression that Roper was very powerful and was an intrinsic part of Blackpool Football Club; he had the capacity to influence managers and I found that, at times, he could be quite intimidating and quite frightening. In my eyes, Roper was someone who could progress my career at Blackpool and had the power to make or break my career at that time.” In cross examination: “It did not always feel like Chapman was the one you had to impress. I wanted to be a professional footballer. It appears that Roper had more power in the Club than Chapman. Chapman was a coach as opposed to someone who oversaw the

progression. Roper was a strong personality... Chapman was a different character.” I have already noted that, as shown by the matchday programme advertising in May and September 1987, Chapman worked for Roper in Roper’s sports shop. All the witnesses with knowledge of the matter, including the defendant witnesses, agreed that it was Roper, not Chapman, who had brought David Bardsley to the Club (sold to Watford for £150,000 in 1983) and who had brought Paul Stewart to the Club (sold in DSN’s time to Manchester City for £200,000 in March 1987). This would have enhanced his credibility and his prestige both with the Club and with those he approached to join, or form an association with, the Club’s youth set up.

134. DSN went on the New Zealand trip with Roper in June 1987, and I will say more about that below. When the boys got back from the trip, “Roper set up another team called Nova Juniors”. Connecting this with the earlier evidence I have summarised, the probability is that the earlier Nova Juniors teams had outgrown youth football and so this was a moment for Roper to re-set the team by starting again with a new team of young boys. I infer that he used the New Zealand trip partly as a means of drawing boys in to join the fresh Nova Juniors, which was itself a means of bringing them to Blackpool FC until they reached the age when they could be formally signed up and tied in. DSN said “I understood Nova was based in the Blackpool area for people who had been on the tour”.
135. “[Roper] asked me to join the team but I refused. The abuse which Roper had inflicted on me was still fresh in my mind... Lots of the other boys, however, did leave to join Nova Juniors.” “As a result of turning down the Nova Juniors invitation, my parents told me that I was not asked to play for the Blackpool School of Excellence any more.” DSN was clear in his evidence about this, and it makes sense and I accept it. It is significant. It shows how integrated Roper and Nova Juniors was into the Blackpool youth set up, such that opting out of Roper and Nova Juniors meant exclusion from the Blackpool School of Excellence. I find as a fact on DSN’s evidence that, before the New Zealand trip and the invitation to join Nova Juniors, DSN did play at the School of Excellence, and, after he came back and refused to join Nova Juniors, he did not. DSN continued to play football until he was 16, but never again in association with Blackpool. This is not because he lacked talent. He played football for the Lancashire Association of Boys’ Clubs Representative Squad. In 1990 he reached the trial stage of the U16 England Boys’ Club Representative team.
136. DSN was shown an exchange of correspondence from 1987 with the Headmaster of the school he went to from age 11, in which his mother said that what would have been his final report from the Blackpool School of Excellence to the school was “incorrect” in its rating of DSN’s marking and attitude “and both the YMCA and Mr Chapman would be willing to confirm this if necessary”. The Headmaster wrote a reassuring reply dated 4 November 1987. Perhaps the hand of Roper had been applying a final black mark to the record of the boy who refused to join Nova Juniors and was then cut adrift, but, if he had, “both the YMCA and Mr Chapman” – not Roper – were willing to wipe it clean and no harm was done.

JKL

137. The last witness in time who saw Roper from the point of view of a youth footballer was JKL, who first met Roper when he had just turned 14, in 1987. JKL did not attend to be cross examined because of ill health and I bear that in mind when assessing the

weight of his evidence. However, it seems credible to me. It is substantially in line with the evidence of the witnesses I have just summarised, which was tested. JKL attended trials with Blackpool FC on the introduction of “someone called Graham Davis... a scout based in the Manchester area.” “Roper told me that he wanted me to sign his team, Nova Juniors”. JKL was playing for what he considered to be a better team already, and refused. He did, however, sign schoolboy forms with Blackpool FC. After that, between the ages of 14 and 16, he would “usually stay in Blackpool for one or two weeks during the school holidays and train with them”. The boys would go and watch Blackpool play at Bloomfield Road during the day during these holiday training periods and Roper would “often take us”. “Roper had free rein at Blackpool to go wherever he wanted. We would usually go in via the players’ entrance and into the changing rooms before matches. As Roper was so well known at Blackpool, he would be able to get us in.” The training itself took place, 95% of the time, at the Blackpool FC training ground at Squires Gate. Roper would usually be there. The boys also had to do menial jobs for the Club like cleaning the changing rooms and the first team’s football boots. When JKL was 15, they had been cleaning up at Squire’s Gate “But Sam Ellis and Roper were not happy with the job we had done” and took them to Bloomfield Road to do more cleaning. “Sam Ellis and Roper stood over us and hosed us down with cold water” whilst they cleaned “because they did not think we had done a good enough job.”

138. When Roper was at the training sessions at Squires Gate “he was treated like a superstar; everyone knew who he was and he could do whatever he wanted and go wherever he wanted”.
139. Roper would often drive the boys to and from training and the stadium, and, when he did, he took the opportunity to abuse them, including JKL. JKL thought that Roper’s abuse was “an open secret”, which the men in the Blackpool FC first team would joke about.

Adult witnesses

140. In addition to the 11 witnesses I have just summarised, who saw Roper’s relationship with Blackpool FC from their perspective as youth or teenage footballers, I heard evidence from 5 witnesses who were adults at the time. In some ways, their evidence was less important, because (apart, perhaps, from Hurst) they were not so closely involved with the youth set up as the boys themselves were, and they were also less focussed on it than the boys. It was, however, instructive, and it also cross checked the account given independently by those who were at the time under-age boys.

Sam Ellis

141. Sam Ellis was the first team manager of Blackpool FC from 1982 to 1989. The Youth Team Manager was Jack Chapman. He knew that Bardsley and Stewart, who were sold profitably (and went on to play in the Premier League and for England) “had been brought to the Club as schoolboys in the 1970s by Frank Roper”. Ellis was told that “Roper was a scout for the Club who had been running a feeder team for the Club for a number of years prior to my arrival as Manager”. “Frank Roper had a reputation within the Club including with the Board of Directors for bringing good quality Youth Team Players into the Club from the feeder team he ran...”

142. Ellis “wasn’t really involved with the youth setup. I left that to Jack Chapman...” “Jack had wide ranging contacts within the game, including Frank Roper who he was very closely associated with in terms of producing youth players for the club.” “Nova was a feeder team solely for Blackpool FC and Roper did not introduce players into other clubs...”
143. Ellis said: “In those days we didn’t have the structure within football that we do now. Professional clubs couldn’t sign players on schoolboy forms until they were 14; therefore clubs like Blackpool relied upon people like Frank Roper running feeder teams like Nova Juniors for recruitment of schoolboy footballers who could then go on and sign schoolboys and hopefully when they were older as apprentices and then full-time professional footballers...” “Frank Roper was a Scout for the Manchester area for Blackpool [Football] Club and the Coach of an affiliated feeder team.” “When he brought players to the Club he was basically given the freedom of the place and that didn’t happen to many people.” “He would bring the players to the Club during school holidays and at weekends”. “...he would attend training sessions for the youth teams with Jack Chapman but I wasn’t involved in those sessions...” “I know the Club would put the players he brought from Manchester up in local hotels and guest houses and would pay all the costs associated with that.” Ellis left in March 1989 and Roper was still there when he left.
144. Ellis had no recollection of the hiatus when Chapman was briefly described as “formerly” youth manager in the Club programme. As far as he was concerned, it was always Chapman. “We were short of finance and we could not afford to scour the country” so, as far as scouting went, “Roper did the Manchester area and Jack [Chapman] and whoever he had with him did the local area.” Roper had an “aura around the Club”; and “the youth system was dependent on his involvement, not exclusively, but it was dependant to a large extent; because the local players we had were good, but the ones he brought in were better.”
145. Ellis did not recall Roper having access to the first team training or dressing room but on his own evidence he had limited personal involvement with Roper because he was concerned with the first team and not the youth set up run by Chapman, and so I do not regard this as displacing the evidence of access which I have summarised above, and accept, from the strong impression it made on the boys themselves, who saw it. Ellis himself said “He was held in high esteem” “everybody knew him” “he was never knocked back on anything, he could walk in, he could go to the players lounge.” “I got the feeling the Club was pleased to be associated with him because of the players he brought, he only wanted to bring the best players to Blackpool, so they had first choice.”
146. Ellis said: “The youth system was dependant on Roper without a doubt...” “Frank preferred to bring them to be a big fish in a small pool. As far as I was concerned he brought all the best players to Blackpool and that’s why he was treated as he was. He was treated as a big fish.”

Frank Sharp

147. Frank Sharp had a different perspective, as an adult who was running his own youth team in Blackpool in the 1980s called Poulton Youth. During a game in 1986, “Roper approached me on the touchline with two men that I knew to be scouts from Blackpool Football Club, Jack Chapman and Bill Hurst.” Because of the people Roper was with,

Sharp's impression was "that Frank Roper was also associated with and worked for Blackpool Football Club." In cross examination, he said "In my opinion, they were there to give credibility to Frank Roper." Some of the Poulton Youth boys went on to Nova Juniors and then to sign Blackpool schoolboy forms. Roper persuaded Sharp to help him get families onside for the 1987 New Zealand trip, which I will come back to, below.

148. After that trip, Sharp saw Roper start up his new Nova Juniors team in the Fylde area. "This team was based around the boys who had been on the New Zealand tour". Sharp's own son, who had been on the New Zealand trip, wanted to continue playing with the New Zealand boys and left Poulton Youth to join the new Nova Juniors side and do that.
149. "Nova Juniors would play some of their games at the Blackpool Football Club training ground, Squires Gate." "Roper was poaching the best players", which "caused some consternation" locally at other sides. Roper took Nova Juniors to watch the Blackpool first team playing "very often". Sharp sometimes went with them. "Roper had his own section of the stadium... where we would sit." When a prominent YMCA coach was spotted by Roper in that section, Roper said "how has he got in here?" and the YMCA coach was not seen there again.
150. When Sharp's son was only 12, Chapman tried to persuade him to let his son sign schoolboy forms. When he objected that this was not allowed until the boy was 14, Chapman said he could sign the forms early and they could be kept in the safe until he was older. Sharp refused. Roper "got wind" of this and was angry with Chapman as the signing had not gone as Roper planned. "My feeling was that Roper controlled Chapman and not the other way around." When Chapman queried Sharp getting on a minibus to go to a match, Roper told him "forcefully" to "mind his own business".
151. Sharp explained in cross examination how Roper used Nova Juniors to capture boys who were too young to sign forms. "Once they were in Nova Juniors, Roper had them cocooned, and they played friendly controlled matches, not in a league on public view. No-one else could scout them, because no scouts were allowed to come and watch." "He was a strong personality." "He kind of used the boys, the camaraderie, to keep them together. So if anybody got approached (and there was always boys getting approached once they started in the schools' system), he would use the network of the boys to ridicule it, and say 'you're not going to get any good there', to corral the boys together, and keep them together. He was charismatic. I thought he controlled Chapman rather than the other way around. Chapman was quieter."

William Hurst

152. William Hurst (Bill Hurst) gave evidence that he "worked for the Club from 1978 until 1990 as a part-time youth scout, physio and coach", albeit unpaid and in the time allowed by his full-time job with the ambulance service. Davies, who was at the Club throughout that time, however, said that Hurst "did not do much on the footballing side when I was there, but he was Chapman's physio and assistant on a Saturday, I don't remember him doing as much coaching as Jack did, but he did some."
153. Hurst's witness statement said that Ellis delegated responsibility for the youth set up to Chapman (which Ellis agreed with) and that Chapman "acted as the Club's Chief

Scout” (which Ellis disagreed with). I prefer Ellis’s evidence on this. Hurst’s own scouting activities were mainly in Blackpool and Fylde area, but I note that none of the youth players who gave evidence to me had been scouted by him, and his evidence was not that Roper was not a scout in his own right. On the contrary, Roper was the only name that Hurst recalled among “people who referred potential players to the Club” and this confirms the weight of the evidence, as I assess it, that Roper was the most significant of them. Hurst played down the number of times Roper referred players to Blackpool, but this was overwhelmingly contradicted by the other evidence I have summarised, and I regard it as reflecting Hurst’s own more limited involvement in and awareness of this important side of the Club’s recruiting operation. He did not recognise any of the boys in the photograph of the occasion when 7 boys signed forms from Nova Juniors. I did not find him a convincing witness and to the extent that he denied things which were evidenced by others, I preferred their evidence to his. I have mentioned that Frank Sharp remembered Hurst as one of the two men (with Chapman) that Roper brought with him to Sharp’s youth game, apparently to demonstrate Roper’s Blackpool credentials. Hurst did not remember this occasion at all and denied it. Since Sharp was an exceptionally convincing witness, and Hurst was not, I attribute this to the weakness of Hurst’s reliability as a witness. Hurst said “I can’t remember looking at teams with Jack Chapman at all, really, because on match days we took one area, Jack took the other area.”

Kenneth Chadwick

154. The Chairman of the Club, Kenneth Chadwick (Chairman 1981-1990, and a director before that, and life Vice President after that), remembered Frank Roper by name, and that “He used to refer players to the Club on occasions via Jack Chapman, who was in charge of the youth set up”. He particularly recalled Roper’s referral of Paul Stewart and David Bardsley. He said “As far as I am aware, Roper was not involved in coaching young players at the Club and was never employed by the Club. I think he may have been a supporter, but otherwise as far as I am aware his only connection with the Club was through Jack Chapman.” This, to my mind, only demonstrated how remote Chadwick was (not surprisingly) from the youth operation given the evidence of a number of witnesses that Roper had the run of the Club, his own room, and so forth. Chadwick did not seem to me to be in a position to gainsay the evidence that I have summarised about Roper’s close connection with Blackpool over so many years from so many witnesses and, to the extent that Chadwick was put forward as doing so, his evidence was neither reliable (because of Chadwick’s limited involvement with the playing side) nor credible. In cross examination, Chadwick said “I would not be involved in the recruitment of youth or very young players”. The Under 14, schoolboy forms, and other parts of the youth structure which I have summarised from the rules and from the evidence of the boys involved in it was put to Chadwick, and he said “I was not familiar with that structure; the manager was in charge of the footballing side and he delegated that to Jack Chapman on the youth side. We had no idea.” However, he disclosed in cross examination that Board meetings would always have a report on the footballing side and “Frank Roper’s name would be mentioned in despatches as someone who brought people to the club”. He said “We had other scouts and I could not tell you who they were either, because they were in the manager’s domain.” “I would have no way of knowing how often Roper referred players to the Club.”

David Johnson

155. David Johnson was the Club and Company Secretary at Blackpool FC between 1980 and approximately 1988-89. There were monthly board meetings. “The Club’s financial situation was dire and as a result throughout the time I was there it could only afford to employ a minimum number of staff.” “Non-playing staff did not have contracts in those days”. Sam Ellis managed the football team but “he was fully occupied with the first team and delegated the management and operation of the youth team set-up to Jack Chapman”. Anyone who assisted him was unpaid and purely voluntary. Johnson was aware that Roper ran “a junior football team called Nova” and that “he occasionally referred players from his team to the Club, although I am not aware of the circumstances surrounding this.” He was sure that no-one referring players was paid for it. He said he had “no doubt” that if any allegation or complaint had been made about Roper “Mr Ellis, Mr Chapman and/or the board would have taken the matter extremely seriously” but, in the light of the evidence of CFS (which I accept) that he told Chapman about Roper’s sexual abuse of him and other boys in 1984 or 1985 (before the claimant was abused in 1987), and Chapman merely spoke to Roper about it, he was wrong about that.
156. My impression was that Johnson did not know enough about the youth set-up or Roper to give useful evidence about either, compared with the other evidence that I had. I was not confident that his evidence was candid or impartial; I was surprised that it was only in cross examination that he said that Chapman introduced Roper to him when he became the Club and Company Secretary. When Ellis’s evidence that Roper was a Blackpool scout was put to him, he said he could not remember how Roper was introduced to him. He was more confident in asserting that Roper had nothing to do with the Club than in engaging with the detail which might or might not demonstrate that to have been the case.
157. Johnson said he remembered that “on one occasion the board was asked to make a one-off donation towards the cost of a trip Roper was organising for the Nova team. I cannot now remember when this was or how it came about. However, the board agreed to make a small contribution of, from memory, somewhere in the region of £500... The trip and any other trips Roper organised were completely independent of the Club...” Given the Club’s “dire” financial position, this was a more remarkable fact that Johnson appeared to acknowledge, and it directly undermined the suggestion that the Club had nothing to do with Roper’s trips. In cross examination, he said “I do not remember which trip it was. Sam Ellis, the manager, reported all football items to the board and, on that one occasion, he brought to the board the proposition that the board should consider making a contribution to Frank Roper’s trip. I thought it was to the Far East and was then told by our solicitors it was actually New Zealand. The board discussed it and agreed to make a one-off donation of £500, because Mr Roper had obviously brought Paul Stewart and David Bardsley in.” He agreed that it was hoped that the Club would gain from taking these boys to the Far East and New Zealand.
158. On the balance of probabilities, I find that this was, in fact, the 1987 New Zealand trip during which DSN was abused. Johnson mentions Paul Stewart as having been sold, and that happened in March 1987. The saving of the Club by this providential and lucrative £200,000 sale of Stewart would have been just the environment in which a payment towards Roper’s expenses on the trip would have been most likely to find favour. Johnson also mentions the proposition being brought to the board by Sam Ellis (who had concluded his evidence and was not asked about this); Ellis had a particular

interest in the 1987 trip because his own son was one of the boys who went on it (he also went on a second trip). Roper disappeared very soon after the 1987 trip and a second New Zealand trip which followed it, so, as the £500 contribution came after Paul Stewart was sold in early 1987, there is only a limited window for a trip which could have been funded in this way.

Vicarious liability – Stage 1 – conclusion

159. Reviewing all this evidence, in the light of the authorities on vicarious liability which I have cited, I am satisfied that the relationship between Roper and the Club was one capable of giving rise to vicarious liability. It is just and reasonable on the facts I have found that this should be so. Roper was an unpaid volunteer, but the Club's dire financial state meant that almost all the non-playing staff were in the same position, Ellis (the manager) and Chapman (the youth manager) being the exceptions. Chapman could not and did not do his job alone. He depended on people like Roper and Hurst to help him, and in doing what he did, Roper was very much doing the work of the Club. There was no more important task for the Club than spotting and capturing young players and bringing them into a position when they were willing to sign up for a lower division side with limited resources. This is the task that Roper did better than anyone else, and everyone knew that he was doing it. He was a Blackpool scout, and his Nova Juniors side was a Blackpool feeder team. Its sole purpose was to take boys, so far as possible, into a closed environment in which Blackpool had a better chance than any other club of securing their signatures when they were old enough to sign (if not before). There was evidence that some boys did not take the bait. DSN himself did not sign for Nova Juniors after the New Zealand trip. But, on the evidence, they were the exceptions. Roper was very effective, and both the number and the quality of the young players he brought to Blackpool was exceptionally high.
160. Blackpool gave Roper credibility by lavishing tickets and access on him and his protégés. These were talented boys and there were other clubs. Roper was not a footballer. The only currency he had to offer was his connection with Blackpool FC, and Blackpool FC kept him supplied with everything that it could, short of money, to confirm that connection and provide that currency to Roper for its own benefit. Roper's activity was not only on behalf of Blackpool, it was exclusively on Blackpool's behalf, and the fact that he was not paid made it all the more striking. Roper's activity was part of Blackpool's business activity. Blackpool, by giving Roper the "aura" (as it was put in evidence) he had there, and his own room, and a special place in the stand, and free tickets, and access to the private areas, and association with the older players including first team players, and what was described as "the run of the place", as well as by the track record it gave Roper of taking on his boys time after time, created the trust in Roper that allowed him to abuse the boys. None of the boys, and none of the parents of the boys, that I heard about, knew anything at all about Roper except that he was a Blackpool scout who ran a Blackpool feeder team at Nova Juniors from which a professional career at Blackpool might, if Roper rated them, develop. It was on that basis that the boys were placed in his power, and that is how he was able to abuse them. I did not hear evidence of a single case of Roper abusing anyone who was not a young footballer being groomed for Blackpool, or playing for Blackpool, at the same time as he was being groomed for abuse, or actually abused. The football and the abuse were symbiotic, and all the football was directed to recruitment for Blackpool FC.

161. It is true that Roper seemed to control Chapman more than Chapman controlled Roper. But Blackpool FC could have removed Roper's access and all the other incidents of his position with Blackpool FC, at a stroke - and, if it did, Roper would have been nothing. He depended on Blackpool FC, even though he was not employed by them under a contract. He could not do what he did without them. They gave him the tools to do his work for them, the credibility to make promises about them, the perks to buy allegiance to them and the association to build loyalty to them. At any time, they could have taken all that away, refused him access to the Club, stopped his association with Chapman and made it known that Roper no longer had any influence over the selection of boys for schoolboy forms or apprenticeships - and then he would have been finished. He was as dependent on Blackpool's favour and on his integration into Blackpool FC as an employee would have been: he was working for them, and they could have fired him at any time. Truly, the relationship between Roper and Blackpool FC was akin to that between employers and employees between whom there is vicarious liability. Roper was, in reality, part of Blackpool FC's workforce in the youth set up. He was at least as important as Chapman in that respect. Chapman coached the youth but, without Roper, and without the likes of Stewart and Bardsley and the other talented boys Roper found and brought in, Chapman would not have had the youth he was coaching. Even the money men on the board, who did not involve themselves in the footballing side, knew that Roper's recruitment of Stewart and Bardsley had saved the Club. Conversely, Nova Juniors was not an independent club. It was a Blackpool feeder club. That is how it was promoted, that is how it was known, that is how it operated, and that is how it maintained its reputation and thrived.
162. Roper was so much a part of the work, business and organisation of Blackpool FC that it is just to make Blackpool FC liable for his torts within the first limb of the two-stage test, and subject to the second limb, to which I will turn when considering, specifically, the New Zealand trip and the context of the abuse suffered by DSN during that trip.

Vicarious liability – Stage 2 - evidence

163. I now turn to the particular tort in question, the sexual abuse of DSN by Roper on the New Zealand trip, to determine whether it was connected so closely with Roper's relationship with Blackpool FC as to satisfy the second limb of the vicarious liability test.
164. Four witnesses gave evidence about the circumstances of the New Zealand trip: DSN (the claimant), Sam Ellis (the Club manager, who sent his own son on the trip), Frank Sharp (who also sent a son on the trip) and Mark Bradshaw (another boy on the trip). They were all credible witnesses, giving plausible evidence which was consistent between them. I accept their accounts.

DSN

165. DSN said that the New Zealand trip was "for the boys playing in the Blackpool School of Excellence, as an opportunity to go and play football with other teams in New Zealand." For him, it was "the opportunity of a lifetime" and "a chance to further our prospects of a career playing for Blackpool Football Club".
166. There were about 20 boys on the trip. Roper was the only adult on the trip but he was assisted by older boys who were members of Blackpool FC's youth team. He was also

part-funded (as I have decided) by a £500 contribution from Blackpool FC, although this can only have covered a small part of the cost, the balance of which Roper appears to have paid himself. Boys did not have to pay for flights or for accommodation, which was arranged with local families.

167. The team was known as a Blackpool representative side from England and that is how they referred to themselves, regardless of their own personal geographical home. It was not called a Blackpool FC side as such, and did not play in Blackpool FC kit, but in a variety of kit supplied by Roper from his shop or stores, as was his usual practice. There was a programme of training and matches with local players in New Zealand. The boys (including the older boys from Blackpool FC who were Roper's helpers) stuck together not only for training but for meals in the evening, after which they would each go back to their host families to sleep. Roper organised all of this.

Frank Sharp

168. Roper raised this trip with Frank Sharp on the very first occasion that Sharp met him. This was the occasion I have already referred to at which Roper was accompanied both by Chapman and Hurst (although Hurst did not remember it), Sharp having the impression that they were with Roper in order to demonstrate Roper's standing with Blackpool FC. Roper was asking Sharp to let him take 4 boys from Sharp's youth team on this tour, and one of them was Sharp's own son Kevin. Sharp asked Roper what the cost would be and Roper told him there would be no cost to the boys, except their personal spending money. This "set alarm bells ringing" with Sharp, who did not understand why Roper would fund a trip for these boys of 12 and 13 years old. He said he would speak to the parents of the boys.
169. The parents had "a lot of questions" for Sharp about Roper. They wanted to know who he was. One of the boys' parents (Tony Green) was himself an ex-Blackpool FC player. When Green asked Ellis about Roper, Sharp said he did not know who Roper was but "he had two scouts from Blackpool with him, Bill Hurst and Tony Chapman." Green said he would contact the first team manager, Sam Ellis. Ten minutes later, Green rang Sharp back and told him that Ellis was sending his own son on Roper's trip. Sharp told me: "In my mind, this made the trip legitimate and reassured me that the trip was endorsed by Blackpool FC."

Sam Ellis

170. Ellis's evidence was that his son went on two New Zealand trips with Roper, of which this was (on the evidence of Sharp) the first. He said that some of the parents were still concerned about the trip, so he personally addressed a meeting to reassure them. The meeting was at the Tangerine Club opposite the Blackpool FC stadium. It was not an official meeting, and Ellis said he went "as a father and not as the manager of the Club" but it is obvious, and he accepted, that "being manager of the Club it is more likely that people took advice from what I said." Both the parents and the boys were at this meeting, so far as Ellis could recall. He "stood up and addressed the rest of the room. I said that it was a good opportunity for the boys, that they seemed to get on well, the group that they had, and I was quite happy for my lad to go and have the experience." I am satisfied on the evidence that, had Ellis not endorsed the trip, the parents would not have allowed their boys to go to the other side of the world with Roper, a man they did not know, accompanied by no other adult. They were concerned, but they were

reassured and persuaded by the connection with Blackpool FC. It was not an official trip, but it had the backing of the Blackpool FC manager and, had it not been for that, Roper would not have persuaded the parents to entrust the boys to his care.

Further meetings

171. There were then further meetings (on Sharp's evidence, which I accept) to discuss the organisation of the trip. As well as parents and boys, and Roper, and Ellis and his wife (who were also parents, of course), Sharp said that apprentices at Blackpool FC also attended; "they were in their late teens and would also be going". This will further have reinforced the impression that this was a Blackpool FC venture in spirit, although Roper was running it and paying for it (or most of it). Sharp asked the apprentices about Roper; they told him he was "sound" and not to worry.
172. Sharp was an exceptionally impressive and convincing witness and he was clearly suspicious of Roper and his motives. He said:-

"The impression I had from attending the meetings at the Tangerine Club was that the parents were looking to Blackpool Football Club for reassurance about Roper and wanted to ensure that the trip was supported and endorsed by them. Roper seemed to know everyone affiliated with the club. Roper... bragged about having introduced Alan Wright, Paul Stewart, Trevor Sinclair and David Bardsley as well as the existing apprentices, Mark Bradshaw and Simon Rooney to Blackpool Football Club. I believe Roper said this to highlight his connection with Blackpool Football Club and show the influence he had there.

Knowing that Ellis' son would be going on the trip meant I was satisfied that it was legitimate and I believed that Roper was a recruitment agent or scout for Blackpool Football Club. This settled any concerns that I had regarding Roper and I was conscious that all of the older boys that were going on the trip had signed for Blackpool and they were going to help Roper with looking after the younger players. If Blackpool had been taken out of the equation, as far as I am concerned, none of the parents would have agreed to their children going on the trip. The involvement and support provided by Blackpool Football Club made the trip legitimate, especially as the first team manager's son would also be on the trip.

...I spoke to other parents about the trip and we settled on the purpose of the trip being that Roper had organised the trip with a view to the boys going on to sign for Blackpool."

173. I accept all of this evidence. It makes perfect sense. It fits in with the other evidence. It was unshaken in cross examination. It came from a witness (Frank Sharp) who was adult at the time, well-versed in the football scene. He clearly had his wits about him both then and when he gave his evidence to me. He was credible, reliable and convincing.

Mark Bradshaw

174. Turning, finally, to the evidence of Mark Bradshaw: he was one of the Blackpool FC apprentices that Roper took with him as a helper on this first New Zealand trip (and on the second trip). He was 17 or 18, and the boys he was looking after were 11 or 12. There were four other older boys with him in the same role: all were, like him, signed up apprentices of Blackpool FC. It was out of season and so this was not a problem. He remembers Roper doing business with sportswear manufacturers during the Thailand stage of the trip, which followed on from the stay in New Zealand which was all about the football. The boys were also allowed to bring back Lacoste labels which they sold on their own account when they were back at school in England. However, that does not in my judgment detract from the fact that this was, as the travel documentation described it, “Mr Roper’s Football Tour.”

Conclusion on vicarious liability

175. Taking all this evidence into account, and bearing in mind all the authorities I have reviewed, I am satisfied that Roper’s abuse of DSN on the New Zealand tour, and the New Zealand tour itself, were so closely connected with Roper’s relationship with Blackpool FC that it is just to hold Blackpool FC vicariously liable for it. Blackpool FC, given its inadequate resources, was never going to be able to run this as an official trip, but it was as close to an official trip as made no difference. It was a football tour that was part of Roper’s operation in building the allegiance of promising young footballers to Blackpool FC. He swiftly followed it up by trying to sign them up to the Blackpool FC feeder team he ran at Nova Juniors (the fact that some, including DSN himself, resisted Roper’s efforts and did not go on to join Blackpool FC makes no difference). The parents only allowed Roper to take their sons on this tour because they saw it as part of a Blackpool FC recruitment operation offering the boys the prospect, if they were good enough, of finding an opening at Blackpool FC in due course or, at the very least, of benefitting, in their playing as youths, from the expertise and association with Blackpool FC that Roper and his affiliation to Blackpool FC provided. Roper’s involvement with the boys on the tour, and the opportunity he took to abuse DSN in the course of it, may fairly and properly be regarded as taking place in the ordinary course of Roper’s work for Blackpool FC although it was a crime which was not, of course, authorised or condoned by Blackpool FC and although it took place off the club premises and outside the football season. Roper used and misused his position with Blackpool FC to get DSN into a position where Roper could and did sexually abuse him. Blackpool FC is vicariously liable for that abuse.

(4) What is the causation and effect of DSN’s psychiatric diagnoses?

176. This was one incident of assault and it was an indecent assault over clothes and without penetration. However, DSN was very young (13) and he was in particularly frightening and vulnerable circumstances: in bed with his abuser, far from home, away from any adult whom he knew. Although the assault itself was not prolonged, DSN was left clinging to the bed trying to keep his distance from Roper for the rest of the night. The effect was then compounded by Roper’s trumped up allegation of theft in Thailand and the threat of exposure, which was intended to and did deter DSN from confiding in anyone. This ensured (quoting section 4(A)(vii) of the Judicial College *Guidelines for the Assessment of General Damages*) “a long period during which the effects of the abuse were undiagnosed, untreated, unrecognized”, quite apart from “the immediate

effects of the abuse at the time that it was perpetrated, including feelings of degradation”.

177. On return to England, DSN cooled in his single-minded devotion to football, although he continued to play to a good standard. His childhood ambition to be a professional footballer, which he was in a better position to pursue than most because of his talent, was set back.
178. The experts agree that, before he was abused by Roper, there was no evidence of any pre-existing mental health problems and no known family history of such difficulties. They also agree that he was of “at least” average resilience in terms of mental health.
179. Although the experts are not completely in agreement, in my judgment the circumstances make the opinion expressed by Dr Mogg probably correct, namely that:

“In my opinion there have been severe psychological consequences of the abuse that DSN experienced. He has had a lengthy history of specific anxieties, particularly in situations where he does not feel fully in control, for example, crossing bridges and driving at speed. In my opinion he suffers from a phobic anxiety disorder in the form of specific phobias which in the ICD0-10 classification of mental and behavioural disorders is coded as F40.2. There is much research evidence regarding an association between sexual abuse and anxiety disorders. In my opinion while DSN may have suffered from anxiety in any event, it is likely that the sexual abuse experienced the feeling of not having any control over the situation has been the main causative factor in his subsequent anxiety.”
180. DSN recalls, and mentioned to the expert, two other events which he associates with feelings of anxiety. One is a car crash he was in when in the car with his parents and grandparents, which he recalls caused him to be sick at the side of the road afterwards, and shaken up, but not injured. Another is hearing a news report of a man threatening to throw himself off the top of Blackpool Tower. Neither of these is documented, but in his recollection they took place in the months after Roper’s abuse. I accept Dr Mogg’s expert opinion that he will have been sensitised to being made anxious by these events by the high level of anxiety he experienced when Roper was abusing him (Joint Report p 4). I also accept Dr Mogg’s opinion that, whilst the car crash and news report “have had a contributory effect to some of the symptoms that DSN has experienced... the abuse he experienced has been the primary causative factor.”
181. I find on the evidence that DSN suffered from a heightened state of anxiety for roughly 6 months after Roper’s assault, but that he then buried the memory and made the best of things.
182. In the years between the abuse and DSN’s initial disclosure to his wife in 2013, DSN graduated, married, had children, built a stable home life, and achieved stable employment with promotion. There is no medical history directly or (in my judgment) indirectly attributable to the after-effects of Roper’s abuse, and very little medical history at all, in the period prior to the Jimmy Savile allegations and DSN’s disclosure

to his wife in 2011 or 2012. The experts agree that Roper's abuse did not significantly affect his educational achievements or his employment prospects.

183. That changed when he made the disclosure to his wife and, subsequently, reported to the NSPCC and the police, and embarked on this litigation. He began to focus again as he had not before on what Roper had done to him. He became obsessive about the subject of abuse generally, not just his own case. He had nightmares and night sweats. He could not sleep. He felt frightened and had irrational fears (before he discovered that Roper was dead) that Roper would take revenge on him. He found making a police statement "probably the most difficult thing I have ever done in my life... it was traumatising"; and he found the same when preparing his witness statement for this trial. He started to drink to excess, although after a time he got over that. Even the smell of a grown man triggers flashbacks, for example in a gym or changing room. His fear of heights got worse, to the extent that he struggled with going to meetings on high floors in buildings, and avoids going over bridges and changes his route or method of travel to do that.
184. The experts agree that his specific phobic anxiety symptoms cannot be related directly to his experience of abuse. However, they also agree that the abuse has been a significant material factor in the mental health problems following the disclosure to his wife in around 2012, the disclosure of the abuse to the NSPCC and police in 2016 and subsequent involvement in the litigation.
185. The experts agree that his main problem on examination was excessive anxiety with a strong phobic element consisting mainly of a fear of heights and driving. They also agree that the symptoms got worse: prior to late 2016 his anxiety was mild and did not have significant day-to-day impact on his life.
186. He received therapy, which the experts agree was unhelpful in causing him to re-live his trauma and reflect on its impact, rather than in helping him to cope with it and so far as possible put it behind him. Seeking therapy was, however, a natural and sensible reaction to the distress he was experiencing, and I do not regard it as breaking the chain of causation, although it was a contributory factor to be taken into account.
187. The experts agree that the prognosis is good, once the trial is behind him. They also agree that a course of Cognitive Behavioural Therapy at that point will be appropriate to treat his current anxiety symptoms.
188. I am satisfied on the evidence that Blackpool FC's conduct since being notified of the claim, up to and including the trial itself, has made things worse than they might have been. By never accepting any responsibility and never even accepting that the abuse had taken place at all, Blackpool FC maximised the suffering caused to DSN (this is consistent with the history taken in para 6.10 of Dr Mogg's first report and the opinion expressed on p 12 of his second report). Although the allegation of abuse was overwhelmingly plausible given what is now known about Roper, Blackpool FC has at no time admitted that DSN was abused by Roper. I have noted that he was not cross examined on the basis that he was not abused, but no indication was given to DSN or any of the witnesses who bravely gave evidence to me of abuse by Roper (in a case in which they had no personal interest) that they would not be cross examined on that aspect until I asked for clarification myself. I was told that Blackpool FC had not responded to previous enquiries about that in correspondence, and I have been shown

the correspondence. It is well known that for many witnesses the anticipation of the ordeal of having to attend court and be cross examined on painful matters can be greater than the ordeal of cross examination itself. DSN was not spared that ordeal of anticipation. In his evidence in chief, he said:-

“I am shocked by the approach taken by Blackpool Football Club. When I came forward, I expected the club to want to engage and to understand what had happened. The main reason I came forward was because it felt the right thing to do, but also, so that the football club could learn from its historical failings. I want to do this so children like my own wouldn't have to suffer in similar situations, and I have felt let down by the lack of empathy, engagement and humanity shown by Blackpool. Many people have commented on how brave I have been, but I do not feel brave in this process, just frightened, and at times like the vulnerable 12/13 year old boy I was.”

189. To the extent that (as the experts agree) the period of the litigation has been worse for DSN than the 25 years after the assault, Blackpool FC share a responsibility for that. They conceded nothing at all at any point and made no effort to sympathise or to reach out in ways that might have mitigated the difficulties faced by DSN in the years since disclosure.
190. **(5) What damages is DSN entitled to?**
191. Special damages for past losses and general damages for future pecuniary losses have been agreed in this case at a figure of £2,071.98 subject to liability. They cover the cost of the Cognitive Behavioural Therapy which is an agreed recommendation of the experts, and some travel expenses.
192. In considering the appropriate figure for general damages for pain, suffering and loss of amenity, I have been referred to the awards in *C v S* (November 1997), *F v Bryn Alyn Community Homes Ltd* (2001) and *F v Virgin Holidays* (2010). On the need to apportion liability and damages on a pragmatic basis, discounting non-tortious contributory factors, I have been referred to the cases of *Hatton v Sutherland* [2002] ICR 613, *Konczak v BAE Systems (Operations) Ltd* [2018] ICR 1 and *Allen v BREL* [2001] EWCA Civ 242.
193. This is a case within Chapter 4 of the Judicial College *Guidelines for the Assessment of General Damages in Personal Injury Cases* (15th edition, 2019), covering “Psychiatric and Psychological Damage”. It is not a case in which there is or was Post Traumatic Stress Disorder (according to the experts). It is, however, a case arising out of sexual abuse in breach of trust (Roper being in a position of trust), involving a victim who was young and therefore vulnerable (he was not, however, more vulnerable than any other 13 year old in that situation). It is a case, therefore, within category 4(A) – Psychiatric Damage. I must take into account the factors in 4(A)(i) to (vii) when valuing the claim. DSN’s ability to cope with life was not compromised until after disclosure, and not immediately then, but has become seriously affected more recently. His relationships have not been significantly affected, although he has increased anxiety about his children in certain situations. The prognosis, with treatment, is good, and future vulnerability is not said to be a factor. Looking at the broader considerations outlined

in 4(A)(vii), this is a case of sexual abuse and abuse of trust, which is relevant to the award of damages. I must take into account DSN's feelings of terror at the time of the abuse, as well as the longer term effects. Although aggravated damages are appropriate in this case, they are compensatory and not punitive, reflecting the aggravation of harm caused by the offence itself and its circumstances. I do not, therefore, propose to allocate a separate figure for aggravated damages, but will assess the proper figure for compensation within the Guidelines with the aggravating features in mind, which are Roper's position of power and authority, his abuse of trust, and the false allegations of theft used to silence DSN after the event. I do not regard Blackpool FC's stance in the litigation as aggravating the damages, although it does not mitigate them.

194. The Claimant argues that the case falls within category 4(A)(b) of the Guidelines (Moderately Severe, range £17,900 to £51,460) while the Defendant argues that it falls within category 4(A)(c) (Moderate, range £5,500 to £17,900). Because I do not find "significant" problems "associated with factors (i) to (iv)" taken as a whole (which would indicate the higher bracket), I place it in category 4(A)(c) but, because of the elements I have identified under issue (4), and the presence of elements identified in Guideline 4(A)(vii) including notably breach of trust and significant psychiatric damage (but with a good prognosis, which is built into this category) nearer the top than the bottom of the range. This is in accordance with the Guideline: "Where cases arise out of sexual... abuse in breach of... trust, involving victims who are young and/or vulnerable, awards will tend to be at the upper end of the relevant bracket to take into account (A)(vii) below."
195. Based on the Guidelines and factors within the Guidelines I have identified, and the authorities I have been referred to, my assessment of the appropriate award of general damages for pain, suffering and loss of amenity in this case, to include aggravated damages, is £17,000.