



Neutral Citation Number: [2023] EWHC 2470 (KB)

Case No: KB-2022-003802

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**MEDIA AND COMMUNICATIONS LIST**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 06/10/2023

**Before :**

**THE HON. MRS JUSTICE STEYN DBE**

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**Between :**

**AXB**  
**- and -**  
**HOSSAM METWALLY**

**Claimant**

**Defendant**

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**Iain O'Donnell** (instructed by **Slater and Gordon**) for the **Claimant**  
The **Defendant** did not appear and was not represented

Hearing dates: 4 October 2023  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 6 October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**THE HON. MRS JUSTICE STEYN DBE**

**Mrs Justice Steyn DBE :**

**Introduction**

1. In 2013-2014, the Claimant, who was then 18-19 years of age, attended the Lincs Pain Clinic on up to ten occasions and received medical treatment from the Defendant, who was then a medical doctor, for back pain. This is an assessment of damages in a claim for personal injuries resulting from the covert recording, collating and retention of intimate personal video footage of the Claimant by the Defendant during those appointments. The video footage was taken without the Claimant's knowledge or consent.
2. On 25 February 2020, the police attended the Claimant's home and informed her that they had seized intimate video and photographic footage of her from a hard drive at the Defendant's clinic. On 29 February 2020, the police showed the Claimant a series of digital images seized from the Defendant's Clinic showing the Claimant undressing, wearing her underwear, being treated by the Defendant on the treatment couch when wearing knickers and a medical gown, and sitting on the treatment couch in her knickers with her breasts and upper body exposed. The digital images the police showed her also included still images captured from that video footage, including a close-up, zoomed in still image edited to show the Claimant from the waist up with her breasts and upper body entirely exposed.
3. The pleaded cause of action is for misuse of private information. The Particulars of Claim allege that at all material times the Claimant had a reasonable expectation that her privacy would be upheld by the Defendant; and that the covert recording, collating and retention of the video footage and images constituted a clear and obvious misuse of her private and intimate information. In short, the Claimant was owed an obligation of trust and confidence by the Defendant, who was at the material time her treating clinician; the covertly taken video footage of the Claimant contained confidential, intimate and private information belonging to her; and the Defendant misused the covertly obtained private information in the video footage by storing it and viewing it for his own voyeuristic sexual gratification.
4. Judgment on liability, with damages to be assessed, was entered in the claimant's favour by Master Sullivan on 3 January 2013 (and the order was sealed on 20 January 2023), the Defendant having failed to acknowledge service of the claim.
5. On 6 August 2021, the Defendant entered guilty pleas to voyeurism offences against the Claimant and another complainant, pursuant to section 67 of the Sexual Offences Act 2003. He was sentenced to concurrent terms of 6 months' imprisonment for the voyeurism offences, consecutive to a term of 14 years' imprisonment imposed in respect of other offending.
6. Voyeurism is an offence to which the provisions of the Sexual Offences (Amendment) Act 1992 apply. Under those provisions where a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

## Proceeding in the Defendant's absence

7. The Claimant appeared remotely via the court's Cloud Video Platform from her Counsel's chambers, as permitted by the order of Master Sullivan dated 21 September 2023. The Claimant's Counsel, Mr Iain O'Donnell appeared in person. The Defendant was not present or represented at the hearing. For the reasons which I gave in *an ex tempore* judgment at the hearing, I was satisfied that it was right to proceed with the trial in the Defendant's absence. As the Defendant was not present, I reiterate those reasons below.
8. Where a party fails to appear at a trial, the court may proceed in that party's absence: see CPR 39.3(1). This is a power that must be exercised in accordance with the overriding objective of dealing with a case justly and at proportionate cost, including so far as practicable, dealing with it in the ways identified in CPR 1.1(2)(a)-(f).
9. The Defendant did not seek an adjournment or give any reason for his non-appearance. In *Sloutsker v Romanova* [2015] EWHC 545 (QB), where the defendant failed to appear at the hearing of her own application to set aside service of proceedings on her outside the jurisdiction, Warby J observed at [23]:

“Where a litigant fails to appear without giving a reason it is necessary to consider first whether they had proper notice of the hearing date and the matters, including the evidence, to be considered at the hearing. If satisfied that such notice has been given, the court must examine the available evidence as to the reasons why the litigant has not appeared, to see if this provides a ground for adjourning the hearing.”
10. In *Reid v Price* [2020] EWHC 594 the defendant failed to appear at a trial on damages and compensation. Warby J observed at [14] that while the court may proceed with a trial in the absence of a party,

“the position of a defendant who fails to attend a trial is different from that of a defendant who fails to attend the hearing of an application. In the latter case the court has an unfettered jurisdiction to ‘re-list’ the application, on application or of its own initiative: see r 23.11(2) and n.23.11.3. If judgment is entered after a trial in absence, the defendant can apply to set aside the judgment (r 39.3(3)), but the application must be supported by evidence (r.39.3(4)) and the Court ‘may only grant the application if’ the defendant acted promptly, had a good reason for not attending, and has a reasonable prospect of success (r 39.3(5)). This arguably calls for a more cautious approach to hearing a trial, as opposed to an application, in absence. That is the approach I take.”
11. That is also the approach I have taken in this case. The Defendant is currently serving a sentence of 14 and a half years' imprisonment. On 23 May 2022, the Ministry of Justice provided the Claimant's solicitor with the name of the prison in which the Defendant is held, and with his prison number which has to be stated on all correspondence. On 4 July 2022 the Claimant's solicitors sent a letter to him at that

address pursuant to the Personal Injury Pre-Action Protocol. The letter was addressed to “Mr Sondos Hossam Mohamed Hassan Metwally”, as that is the full name given for the name of the proprietor of his home address on the Land Registry, and included his prison number. The Defendant responded by an undated letter, written in manuscript.

12. In the letter, the Defendant stated:

“Couple of weeks ago I was handed a letter addressed to Mr Sondos Metwally. I explained to the officer that this is not my name, and refused to receive it.

The letter was hanging around in the office, until today, when I was asked to reply to you, and inform you that these are not my names. My name is not Sondos, my father’s name, grandfather’s name, and my great grandfather's name, all are not as per your letter.

The prison number, you were given over the phone is mine, but I am not Mr Sondos Metwally.”

The Defendant did not sign or give his name. In a postscript, he stated “*Your letter has been opened and resealed by the Prison Security.*”

13. The Claimant’s solicitor responded on 4 August 2022 asking for confirmation why, if that was not his full name, it was the name given on the Land Registry. The Defendant did not respond. However, Mr O’Donnell informed me that the Claimant’s solicitor subsequently ascertained that the name given on the Land Registry was that of the Defendant’s daughter, to whom the property had been transferred.

14. In these proceedings, the Claimant has identified the defendant as “Hossam Metwally”, which is the name by which he was identified when he pleaded guilty to the offence of voyeurism committed against the Claimant. The pleadings, evidence and orders have all been sent to him in that name, to the prison where he is detained, and giving his correct prison number. The correspondence includes:

- i) A letter of 13 December 2022 enclosing by way of service on him the sealed anonymised claim form, the anonymity order, the Particulars of Claim, the Schedule of Loss, the report of Dr Sue O’Rourke dated 19 September 2022, and a response pack;
- ii) a letter of 24 January 2023 enclosing the order giving judgment on liability sealed on 20 January 2023;
- iii) a letter of 27 April 2023 enclosing the directions order of 26 April 2023;
- iv) a letter of 19 June 2023 enclosing confirmation from the court of the trial date of 4 October 2023;
- v) a letter of 27 June 2023 enclosing the claimant’s list of documents and reminding him of the directions;

- vi) a letter of 26 July 2023 enclosing the claimant’s witness statement and reminding the defendant of the time for filing and service of his evidence;
  - vii) a letter of 1 August 2023 enclosing a further copy of the court notice of the trial date, and enclosing a pre-trial checklist, estimate of costs and proposed trial timetable;
  - viii) a letter of 21 August 2023 enclosing an updated Schedule of Loss and reminding the defendant of the date for filing and service of any counter schedule; and
  - ix) a letter of 31 August 2023 providing him with drafts of each of the index for the trial bundle, the case summary, the chronology and the trial timetable.
15. In addition, Mr O’Donnell drew to my attention further correspondence that has been sent by the Claimant’s solicitor to the Defendant since the trial bundle was finalised. This includes, most recently, a letter of 26 September 2023 enclosing by way of service the Claimant’s skeleton argument and bundle of authorities, and reminding him that “*the trial has been listed to take place on 4 October 2023 at the Royal Courts of Justice, Strand, London, WC2A 2LL*”. On 22 September 2023, the Ministry of Justice confirmed to the Claimant’s solicitor that the Defendant’s prison location and prison number remain unchanged.
16. The Defendant has not acknowledged service and, as a consequence, judgment was entered with damages to be assessed. The Defendant has not acknowledged or responded to any of the correspondence that has been sent to him since this litigation began. I am satisfied that it has been correctly addressed to him, and received by him. There is no reason to believe that his absence is for any other reason than that he has chosen not to engage with these proceedings. In these circumstances, I concluded that there was no reason to adjourn the hearing. I was satisfied that the trial should proceed in the defendant’s absence.

### **The Claimant’s evidence**

17. I heard oral evidence from the Claimant. She confirmed the truth of the evidence that she had given in her witness statement dated 26 July 2023, the witness statement she had given to the police on 29 February 2020, and the account she had given to Dr Sue O’Rourke, Consultant Clinical Psychologist, in particular as recorded in paragraphs 7.7-7.12 of Dr O’Rourke’s report dated 19 September 2022. I permitted Mr O’Donnell to ask some questions in examination-in-chief regarding matters since she made her witness statement. And I tested the Claimant’s evidence in a number of areas.
18. In the statement she gave to the police, the Claimant described each of the images she was shown, identifying herself in them. The footage she was shown by the police on 29 February 2020 consisted of ten separate files each containing one or more (up to eight in one file) digital images. The Claimant said that at each appointment the Defendant would ask her to get changed into a medical gown in the treatment room, and he would leave the room and pull the curtain across while she changed. She said she believed the cameras were hidden and the recordings were carried out secretly. She described herself as “*totally shocked by what has happened to me*” and said that her “*trust in people has gone*”. She expressed worry about attending any future appointments at medical practices.

19. In the statement that she gave in these proceedings, the Claimant said that she had been accompanied by her partner on each occasion that she had attended the Lincs Pain Clinic as, at the time, she was “*suffering with anxiety*”. On every occasion, she undressed so that she was naked from the waist up, and then she put on a medical gown. She would then lie down and once she was ready the Defendant would come in. On her first visit the treatment consisted of an injection into the spine. During the subsequent visits the treatment consisted of electro acupuncture. She said that on two occasions the Defendant “*massaged my back during the treatment and went down as far as the middle of my buttocks*”. At the time, she thought this was part of her treatment plan.
20. She first saw the images when she was shown them by the police on 29 February 2020. The Claimant said “*the images included me in my underwear, getting undressed and with my breasts fully exposed*”. She said:

“When I was shown the images, one or two were timestamped and showed that Metwally had viewed the photos years later. He had zoomed in and then saved as new images for a closer look. This made me feel sick and even further violated.”
21. She would not have attended the Lincs Pain Clinic if she had known she was being recorded.
22. The Claimant says that she had suffered with anxiety and low mood/depression in around 2013-2015, due to a difficult relationship, but once that relationship ended she felt back to her normal self. In the period prior to February 2020, she was able to go out and was not anxious or depressed, nor on any medication. Finding out about the images triggered her anxiety. She said, “*Seeing myself on the images was too much for me*”, it was “*a huge shock and I couldn’t cope*”.
23. In her witness statement in these proceedings the Claimant said:

“I feel I can no longer trust people and I am very anxious about medical procedures for example I avoid cervical screening tests and was meant to see somebody for colitis but have not attended due to my anxiety and lack of trust.

I will have phone consultations with my GP but won’t go to see them.

I live with my partner and my sister and spend most of my time at home. I avoid going out and in particular social gatherings due to my anxiety.

I work from home and only really leave the house to walk my dog for around 20 minutes a day.

Recently this has been less, only once or twice a week due to the stress and anxiety building up having to bring up the past and relive these moments, and the fear of having to travel to Court and potentially see Metwally.

Since finding out about the images, I have been unable to be intimate with my partner, I feel violated and vulnerable.

I find it difficult to talk about which is having an impact on my relationship.

My anxiety symptoms include sweaty palms, palpitations, feeling dizzy and sick and an urgent need to go to the toilet. These usually arise if I try to leave the house or attend a social gathering. Recently, these have happened even when at home.

I avoid social situations, even with my family.

If I do have to go out, I plan this in detail so I know where everything is and how I can escape.

I feel low in mood and very lonely. I am emotionally closed off and have found myself increasingly withdrawn and self-isolative.

I have negative thoughts about what happened and think about it often. I get triggered when I see [the location of the Clinic], which is local to me.

I also get triggered by attempts at affection or intimacy which is affecting my relationship. Even seeing my reflection in the mirror when undressed causes me to think and feel negative thoughts.

I have seen people who look like Metwally which made me freeze and feel sick and breathless.

I struggle to sleep due to thoughts of what happened and often wake up suddenly. This is further negatively impacting my mood.

When the police first contacted me, I didn't think it would be this traumatic.

I have been having flashbacks particularly of the ceiling fan in the treatment room.”

24. The claimant has been in her current employment since 2019. Since seeing the images, she has worked entirely from home, as she finds it very difficult to leave her house. She has looked for other employment, but she told me in her oral evidence that it is extremely difficult to find a new job which she would be able to undertake without leaving her home. She told me that she had found going to Counsel's chambers on the morning of the hearing, to give evidence remotely from there, very stressful.
25. The medical records indicate that the Claimant had attended a “*low mood (review)*” with her GP on a number of occasions during 2015-2017. However, each of the entries indicate that she was doing well. It is evident that the reason for the reviews was that

she was still on anti-depressant medication, namely Sertraline, although during this period she was on a very low dose, taking 50mg on alternate days, until she ceased it entirely. The medical records show that on 18 September 2019, the Claimant saw her GP, complaining of low mood. She was put on 50mg per day of Sertraline, which was increased to 100mg per day in October 2019. As the Claimant acknowledged, orally, there was an inaccuracy in her evidence, insofar as she suggested that she had not been on medication from about 2015 until after she saw the images in February 2020. But I accept her evidence that she did not feel anxious or depressed, and was able to go out, throughout most of this period, including in the four months prior to seeing the images on 29 February 2020.

26. The Claimant gave measured evidence. When I asked her about her claim for travel for psychological treatment, she frankly acknowledged that if she is not able to undertake it online, she would not currently attend such treatment. Save to the extent that, as I have indicated, her recall was not entirely accurate in relation to her mood and medication prior to being contacted by the police, I accept her evidence.

### **The expert evidence**

27. The Claimant relies on the expert evidence of Dr Sue O'Rourke. There is no other expert evidence before me.

28. Dr O'Rourke states in her summary of conclusions that:

“3.1 AXB is a young woman with a history of anxiety and depression, amounting to a pre-existing vulnerability. However, there are also protective factors, namely a stable background and the absence of childhood trauma or mental health concerns.

3.2 The index abuse, which she only became aware of when approached by the police, has resulted in a reoccurrence of anxiety and depression.

3.3 In addition, she meets criteria for a diagnosis of Post Traumatic Stress Disorder (PTSD) (ICD-11 6B40), related to the index abuse.

3.4 She meets criteria for a diagnosis of Agoraphobia (ICD-11 6B02) and Depression (ICD-11 6A7Z) which is reasonably well treated with antidepressants.

3.5 She would benefit from psychological treatment, namely Eye Movement Desensitisation and Reprocessing for PTSD and Cognitive Behaviour Therapy for Agoraphobia. Both are likely to have a positive impact on mood.

3.6 If she does not engage in the recommended treatment, she is likely to continue to experience poor mental health, with the likelihood of deterioration and possible risk to herself.”

29. Dr O'Rourke states:



“The abuse suffered was due to voyeurism by Mr Metwally. AXB was not aware of this as it happened and only became aware when she was contacted by the police. At this point she felt violated and suffered symptoms of anxiety and low mood as described in this report.”

30. Under the heading, “*Diagnosis*”, Dr O’Rourke gives her opinion that:

“Since becoming aware of the index abuse, AXB has suffered from anxiety and low mood. She meets criteria for diagnosis of Post Traumatic Stress Disorder (ICD 11 6B40) with key symptoms of:

- Re-experiencing: including intrusive thoughts and flashbacks.
- Avoidance: primarily cognitive avoidance but also avoidance of seeing the building where the abuse occurred and avoidance of medical practitioners and procedures.
- Hyperarousal: when triggered she is clearly distressed and finds it difficult to manage her emotions.

Although she does not meet the full criteria of Complex PTSD as defined in ICD-11, there are elements of this, particularly in her difficulties in feeling close in her relationship.

Her anxiety has developed over time into agoraphobia, with some social anxiety and she currently meets criteria for a separate diagnosis of agoraphobia (ICD-11 6B02).

She is low in mood secondary to anxiety, avoidance and the resulting impact on her life. She meets criteria for diagnosis of depression (ICD 11 6A7Z) of varying severity which is treated with antidepressant medication.”

31. As regards the prognosis, Dr O’Rourke states:

“Although AXB has a prior history of anxiety and low mood, prior to becoming aware of the index abuse she was functioning well. She has a positive history in terms of her development, providing a certain robustness in adversity. She is struggling to overcome her difficulties at present, but with appropriate psychological intervention I would be optimistic that she can make a full recovery, although a vulnerability to anxiety and depression is likely to remain.

AXB has experienced counselling and some CBT. However, this has currently ceased. She has talked about the index abuse but not received any treatment directly dealing with the impact of trauma.

In my opinion she requires referral to a clinical psychologist who is qualified in Eye Movement Desensitisation and Reprocessing (EMDR) and who can combine this with a CBT approach to agoraphobia. Her medical records refer to her being referred for EMDR and may be worth pursuing this on the NHS.

... I would recommend this is funded for a period of six months, to allow for both elements of the therapy, at a cost of £150 per session (total £3,900).

If NHS provision is not forthcoming, I would recommend Dr Tracey Swaffer, Consultant Clinical Psychologist ... She is based in Newark and would deliver online or face to face sessions. I would suggest online initially with the option of travel to Newark for sessions as her agoraphobia improves. This would require funding for travel also.

If AXB engages in therapy, it is highly likely that it will be successful. If the sessions could initially be delivered online, she is likely to engage and then move to in person sessions later.

If AXB does not engage in therapy, she is likely to continue to have poor mental health and I would be concerned regarding risk to self, over time.”

32. Dr O'Rourke's opinion on the question of causation is as follows:

“AXB has a prior history of anxiety and depression in relation to past difficult life events. There is some evidence of mild agoraphobic anxiety in response to stressful life events in 2014 and reviews of low mood from 2013 up until the contact by the police, with comments regarding low mood up until September 2019. However, she reports that immediately prior to the index abuse (ie being contacted by the police) she was well and happy.

Whilst she is vulnerable to anxiety and depression, on the balance of probabilities, her current mental health issues have been triggered by the index abuse, causing a recurrence of anxiety and depression. If the index abuse had not occurred, it is unlikely that she would have experienced mental health difficulties at this time.

In addition, symptoms of PTSD relate specifically to the index abuse, with the content of re-experiencing being related to this. This aspect of her presentation can therefore be attributed to the index abuse.

In relation to life stage and impact on her career, the abuse suffered, and the resultant mental health difficulties have limited her options for employment; she has chosen a job which is totally online and allows her to avoid going out of the house. Whilst this

enables her to earn, despite her difficulties, it exacerbates her agoraphobia.”

33. The Defendant has not challenged Dr O’Rourke’s evidence. Dr O’Rourke has taken into account the medical records to which I have referred above in addressing the Claimant’s evidence. In the absence of any contrary expert evidence, any challenge to her evidence, or any good reason to reject her expert opinion, I accept Dr O’Rourke’s conclusions.

### **Findings**

34. The Claimant was the Defendant’s patient. He was a medical doctor who had responsibility for treating her for back pain when she was 18-19 years old. The Claimant was owed an obligation of trust. The Defendant breached that obligation of trust by repeatedly, covertly videoing the Claimant while she was getting undressed, taking images of her naked from the waist upwards, and while she was being treated. He obtained, retained and edited the footage for his own sexual gratification, continuing to do so years after the appointments.
35. The Claimant was shocked and distressed when she discovered what he had done. His actions have had a serious impact in her ability to trust people, in particular members of the medical profession.
36. As a direct consequence of his actions, the Claimant is suffering from Post Traumatic Stress Disorder (PTSD) with elements of complex PTSD, agoraphobia, and her recurrent depression has recurred. Although she remains in full-time employment, working exclusively from home, her ability to leave her house has been severely affected. She remains in a supportive relationship with her partner, but the relationship has been seriously affected as she has not felt able to be sexually intimate with her partner since the Defendant’s actions were revealed to her.

### **General and aggravated damages**

37. The Claimant seeks general damages to reflect (a) the immediate distress and anxiety that she suffered at the time of the police showing her the video footage and digital images on 29 February 2020 and (b) the consequential psychological injuries that she has suffered as a result, namely, PTSD with elements of complex PTSD, agoraphobia and recurrent depression.
38. Mr O’Donnell submits that the Claimant’s PTSD falls within bracket (b) of Section B – *Post-Traumatic Stress Disorder* in chapter 4 of the Judicial College Guidelines (16<sup>th</sup> ed.). The Judicial College Guidelines for this bracket provide a range of £23,150-£59,860, stating that while “*there are awards which support both extremes of this bracket, the majority are between £28,760 and £37,120*”. As Mr O’Donnell acknowledges, bracket (b) of Section B covers cases which have a better prognosis than for bracket (a) but where “*the effects are still likely to cause significant disability for the foreseeable future*”, whereas Dr O’Rourke is optimistic that, with treatment, the Claimant will make a full recovery. Nonetheless, he submits that if one bracket covers this case, bracket (b) of Section B is the most apt.

39. Mr O'Donnell submits that the Claimant's agoraphobia and recurrent depressive disorder, together, fall within bracket (c) *Moderate* of Section A – Psychiatric Damage Generally, which provides a quantum range of £5,860-£19,070.
40. Mr O'Donnell contends that the closest comparable authority to this case is *FGX v Gaunt* [2023] EWHC 419 in which an award of £60,000 general damages (£61,992 updated) was made. In *FGX*, the defendant had published naked images of the claimant (taken while she was in the shower, bathroom or asleep) on a pornographic website, alongside a photograph of her face. The claimant suffered the primary injury of chronic PTSD. The award of £60,000 for general damages included an uplift for aggravated damages on the basis that an element of the claimant's PTSD resulted from the defendant's conduct in needlessly uploading a photograph of the claimant's face onto the pornographic website so that she could be identified, the fact that he had obtained payment for the images, and his failure to participate in proceedings which deprived the claimant of the opportunity to obtain information about the extent of publication, a matter which remained a barrier to recovery for her (*FGX*, [57]).
41. Mr O'Donnell has also drawn my attention to the awards of £25,000 (£36,267.33 updated) in *ABC v West Heath 2000 & Willock* [2015] EWHC 2687 and of £25,000 (£32,177 updated) in *Reid v Price* [2020] EWHC 594. He submits that whilst the breach of trust in *ABC* was worse, as the claimant was a child at the time of the abuse at the hands of the vice-principal of her school, and she suffered the additional trauma of knowing that her intimate information had been published, the Claimant in this case has been caused to suffer multiple and more serious psychological injuries as a result of the Defendant's misuse of her private information. *ABC*'s psychological injury was 30% attributable to the abuse, whereas the Claimant's PTSD and agoraphobia were entirely caused by the Defendant's actions, and her recurrent depression recurred as a consequence of his actions. Mr O'Donnell submits that although *Reid v Price* also involved publication, unlike this case, the claimant in that case did not suffer any diagnosed psychological injuries such as those suffered by the Claimant. In addition, Warby J considered that the appropriate award was “at least” £25,000, limiting the award to the amount claimed on the claim form, in circumstances where the claimant was not willing to pay the additional fee to claim a higher award. As Thornton J put it in *FGX* ([40], [45]), the award of £25,000 in *Reid v Price* falls to be treated as a “floor not a ceiling”.
42. By reference to these authorities, the Claimant submits that general damages in the region of £35,000-£45,000 should be awarded. If an uplift for aggravation is given, the total award should be comparable to the £60,000 awarded in *FGX*.
43. With respect to aggravated damages, Mr O'Donnell submits that the Claimant has suffered an injury to her feelings, humiliation, loss of pride and feelings of confusion, stigma and resentment towards the Defendant as a result of his covert recording of her when undressed, all of which are separate to the basis for the compensation to which she asserts she is entitled by way of general damages. He acknowledges that the Court must guard against double recovery if it hands down an award for aggravated damages: *AT & ors v Dulgieru* [2009] EWHC 225 (QB), [56]. Mr O'Donnell contends that an award for aggravated damages should be made to compensate her injury to feelings and loss of trust, particularly towards members of the medical profession. He also relies on the Defendant's failure to acknowledge or participate in these proceedings, noting this was a factor taken into account in *FGX*, but acknowledged that the reason that was an

aggravating factor in *FGX* – namely, because it prevented the claimant obtaining information about the extent of publication – is absent here.

44. I treat the PTSD as the Claimant’s primary injury. In order to avoid double counting, I do not make a separate award in respect of her diagnoses of agoraphobia and recurrent depression (bearing in mind, in particular, that depression is a common feature of PTSD: *FGX*, [55]). But I have fully taken into account the Claimant’s agoraphobia, as well as the elements of complex PTSD in her condition, in determining the appropriate level of damages. I agree that on the evidence before me, the Claimant’s PTSD is moderately severe. Certainly, it cannot be said that she has largely recovered (*cf* bracket (c) – Moderate). On the contrary, at the time of the hearing her symptoms were, if anything, worse than when she had been seen by Dr O’Rourke, albeit that is likely to be a temporary effect of the litigation. The positive prognosis given by Dr O’Rourke has the effect that, taking the PTSD diagnosis alone, I would place it towards the bottom of the bracket. But the elements of complex PTSD and the severity of the Claimant’s agoraphobia push this case further up the range.
45. The fact that the Defendant’s actions were undertaken in gross breach of his position of trust as the Claimant’s doctor, and the impact that has had on the Claimant’s ability to trust others, is an aggravating feature of this case. It seems to me that in this case that is most appropriately compensated by making a modest uplift to the general damages award, rather than by making a separate award of aggravated damages.
46. Although there are significant features of this case that are comparable to *FGX*, there are also important features of that case which warranted a higher award of general damages than would be appropriate in this case. In particular, the claim concerned *publication* on a pornographic website of intimate personal images of the claimant. The fact that the images were highly likely to have been spread further, making it impossible for the claimant ever to be confident that they had been removed, was an ongoing barrier to her recovery. And Thornton J put her PTSD (which as in this case entailed anxiety, depression and becoming reclusive) at the top end of the category because the effect had been “*profound*”, resulting in an “*enduring personality change*”. In this case, there is no evidence of publication of the images, a factor that is relevant to the level of damages: *Representative Claimants v MGN* [2015] EWHC 1482 (Ch), [31]; *FGX*, [41]. And the prognosis is positive, if the Claimant is able to engage in the therapy advised by Dr O’Rourke.
47. Taking all the factors I have identified into account, I consider that an appropriate award of general damages (including, as I have said, a modest uplift for aggravated damages) should be £38,000.

### **Special damages**

48. The Claimant claims for future psychological treatment consisting of 6 months of weekly eye-movement desensitisation reprocessing (‘EMDR’) at a cost of £150 per session, as advised by Dr O’Rourke. The total cost of 26 sessions of EMDR is £3,900. In addition, the Claimant sought anticipated travel costs of £25 per session for all 26 sessions, on the basis that she might not be able to source a suitably experienced therapist who will provide the necessary therapy sessions online. However, in light of the Claimant’s oral evidence, Mr O’Donnell acknowledged that he could not maintain the claim for travel costs in respect of all 26 sessions.

49. I am satisfied that the Claimant is motivated to attend EMDR, as advised by Dr O'Rourke. She had hoped to be able to do so if the Defendant had made the interim payment of £10,000 that he had been ordered to make. He did not do so, and so she has not yet been able to access this treatment. It is evident that she will only undertake EMDR if she is able to attend online, at least until she has made sufficient progress to attend in person. Dr O'Rourke did not anticipate that the Claimant would be unable to access EMDR online, and I conclude that it is likely she will be able to do so.
50. Having regard to Dr O'Rourke's assessment, and having heard the Claimant's evidence, I consider it likely that the Claimant will make good progress such that once she has attended 16 sessions online, she will attend the final ten sessions in person, and so incur travel costs for ten sessions.
51. Accordingly, I accept the claim of £3,900 for 26 sessions of EMDR, and award travel costs of £25 per session for 10 sessions, amounting to £250, giving a total of £4,150.

### **Future risk on the open labour market**

52. The Claimant contends that while she has been able to continue in her pre-incident employment, she remains extremely vulnerable on the open labour market. In the event that she were to lose her current role, she would be limited to home-based roles. Given her medical condition, she is considerably restricted in her choice of occupation. Although Dr O'Rourke's prognosis is positive, that is dependent on the Defendant paying for the therapeutic treatment that she needs, and he has shown no willingness to do so. He has not complied with the order to make an interim payment of £10,000. Mr O'Donnell submits that it is likely that obtaining the damages that I award will take a considerable period of time, so delaying the Claimant's ability to engage in the therapy that she needs. He submits that if she is unable to have therapy, the identified restriction on her ability to obtain alternative employment, if she were to lose her job, would remain.
53. The legal basis for this award for future risk on the open labour market was considered by Brown LJ in *Moeliker v A Reyrolle & Co Ltd* [1977] 1 WLR 132. A claimant must be at a real or substantial risk of losing their current employment and at a real disadvantage in obtaining alternative work by reason of the injury suffered.
54. Under this head, the Claimant claims an estimated 24 months net loss of earnings, to reflect the future labour market risk if her employment were to come to an end. Her net annual salary is £17,884.10. Accordingly, the sum claimed in respect of labour market disadvantage is £35,768.
55. As I have indicated in accepting the claim for EMDR, I consider it likely that the Claimant will undertake such treatment. I accept that it may take some time before she is able to do so, and in the meantime, if she were to lose her job (which is a real risk) she would have more difficulty finding alternative employment than would be the case if she was not suffering from agoraphobia, and requiring an entirely home-based role. However, she has a strong work record. She has been in her current employment since 2019. In my view, the disadvantage on the labour market from which she currently suffers is likely to be resolved within a few years, and it is unlikely to result in her being out of work for as long a period as claimed.

56. Nonetheless, I accept that given the very real difficulty she has ever leaving home at present, she is currently at a real disadvantage on the labour market, which I reflect in an award of damages amounting to six months' net loss of earnings. Accordingly, under this head of loss I award £8,942.05.

### **Interest**

57. Interest is assessed on the award of £38,000 for general damages in the sum of £617.76, that assessment being based on general damages attracting interest at the rate of 2% from the date of the service of the Claim Form on 13 December 2022 to the date of judgment on 6 October 2023 (i.e. £2.08 per day for 297 days).
58. Interest is assessed on the total award for special damages of £13,092.05 in the total sum of £302.68, that assessment being based on special damages attracting interest at half of the Court's Special Account Rate from the date of the index injury on 29 February 2020 until the date of judgment on 6 October 2023 (i.e. £0.23 per day on average over the period for 1,316 days).

### **Conclusion**

59. For the reasons that I have given, I conclude that the Claimant is entitled to an award of damages in the total sum of **£51,092.05**, comprised of:
- i) General damages (including a modest uplift for aggravation): £38,000;
  - ii) Future psychological treatment: £3,900;
  - iii) Travel expenses in respect of future psychological treatment: £250; and
  - iv) Disadvantage on the labour market: £8,942.05.
60. The total interest payable is **£920.44**, comprised of:
- i) £617.76 interest on the award of general damages (as specified in para 59(i) above); and
  - ii) £302.68 interest on the total award of special damages (as specified in para 59(ii), (iii) and (iv) above).