



Neutral Citation Number: [2021] EWHC 1419 (QB)

Claim No. F90MA014

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
MANCHESTER DISTRICT REGISTRY

Date: Wednesday 26 May 2021

**Before :**

**MR JUSTICE FORDHAM**

**Between :**

**AB**  
**- and -**  
**CHETHAMS SCHOOL OF MUSIC**

**Claimant**

**Defendant**

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**Justin Levinson** (instructed by Abbey Solicitors) for the **Claimant**  
**Steven Ford QC** (instructed by BLM Law) for the **Defendant**  
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Hearing dates: 22-25 March 2021

**Final Judgment**

**MR JUSTICE FORDHAM :**

**Introduction**

*Overview*

1. This case is a claim for damages. The claimant (“Abigail”) spent one academic year at the defendant school (“CSM”) between September 1996 and June 1997 when she was aged 15 to 16. Abigail alleges that, during that year at CSM, she was sexually assaulted on several occasions – including incidents of sexual intercourse – by her violin teacher and guardian, Wen Zhou Li (“Mr Li”). She seeks damages consequent on personal injuries arising out of the alleged sexual assaults, on the basis that CSM is vicariously liable for the tortious conduct of Mr Li. The Court has made anonymity orders in relation to four individuals, assigning each of them initials: “AB”; “EF”, “CD” and “GH”. I was satisfied that a statutory entitlement to anonymity arose (section 1 of the Sexual Offences (Amendment) Act 1992) but that, in any event, orders for anonymity were necessary and proportionate having regard to Articles 8 and 10 ECHR. Nobody opposed anonymity and I gave liberty to apply. In this judgment I am using these names (not their real names): “Abigail” for “AB”; “Effie” for “EF”; “Candice” for “CD”; and “Ghisele” for “GH”. The parties also, rightly, invited me to change or remove other names and details to avoid problems of jigsaw identification, and in cases of individuals accused of but not convicted of offences. The names “Isabelle” and “Brian” are fictional. Having been released confidentially in draft to the parties, and revised with their assistance, all contents of this judgment are designed to be reportable without risking breach of the prohibitions.

*Issues*

2. As is agreed, three issues arise for consideration by the Court. Abigail’s claim can succeed only if, and to the extent that, she succeeds on all three issues. The agreed issues are:
  - (1) The Limitation Issue: Whether the Court should exercise its disapplication discretion under section 33 of the Limitation Act 1980 (“the 1980 Act”) in Abigail’s favour, the claim having been issued many years after the expiry of the applicable limitation period.
  - (2) The Factual Issue: Whether Mr Li sexually assaulted Abigail in the ways and in the circumstances alleged by her, or any of them (detailed findings are not necessary).
  - (3) The Vicarious Liability Issue: Whether CSM is vicariously liable for any sexual assaults if the Court finds they took place.

There is no issue as to consent: on the Factual Issue, CSM’s case is the alleged sexual assaults did not take place; it is not CSM’s case that Abigail consented to sexual activity. By the time of the trial, quantum of damages was no longer in issue. There is no issue as to causation of loss or damage. The parties agreed as follows: (i) If the section 33 discretion is exercised and if CSM is found vicariously liable for one or more incident of sexual intercourse, then an award of damages should be made in the sum of £45,000. (ii)

If the section 33 discretion is exercised but if CSM is found vicariously liable only for other incidents of sexual assault, then a lower sum of damages will be appropriate which the parties will either (a) agree or (b) address in brief written submissions once the Court's findings are known.

*Evidence and the Trial*

3. Oral evidence was given at the trial by four witnesses. On behalf of Abigail there were Hyung Ki-Joo ("Mr Joo"), Abigail's mother and Abigail herself; on behalf of CSM there was Mr Li. Written expert reports were adduced: by Abigail from Dr Judith Freedman (a Consultant Psychiatrist, dated 18 October 2018); by CSM from Professor Anthony Maden (a Professor of Forensic Psychiatry, dated 26 July 2020); and a Joint Experts' Schedule of Areas of Agreement and Disagreement (dated 13 November 2020). Five witness statements were relied on by CSM (Qian Wu; Barbara Owen; Caroline Pether; Stephen Threlfall and Carolyn Rhind), which evidence was read. There were approximately 1,000 pages of further documents before the Court. Some documents were in a European language, with a translation. Also in evidence were videos of Abigail's 2013 police interviews with Greater Manchester Police ("GMP"). Counsel assisted the Court with thorough cross-examination of the four live witnesses and exacting scrutiny of the documentary evidence. There are two points to add:
  - (1) The mode of hearing was a 'hybrid' hearing, during the pandemic, in accordance with the parties' preference and directions of the Court. Some participants (including Counsel and Abigail) were physically present with me in the court room in Liverpool. Others participated by live-link (MS Teams): several observed from identified addresses in England and Wales; three witnesses (Mr Joo, Abigail's mother and Mr Li) gave their evidence by live-link from overseas (CPR 32.3). The arrangements were appropriate and justified. The mode of hearing involved no prejudice to the interests of any party. The open justice principle was secured: the case and its start time were published in the cause list; the court room was open to the public (with social distancing); any person, whether associated with the parties or a member of the press or public could, by providing a specified address in England and Wales from which they would do so, obtain permission to observe the hearing remotely, as several did; the hearing was recorded.
  - (2) The trial began with a CPR 31.19(5) application by Abigail for inspection of documents listed in CSM's disclosure list (dated 17 March 2020), over which confidentiality had been claimed (CPR 31.19(3)). These were minutes of 2013 and 2014 safeguarding meetings convened by Manchester City Council ("the Council") with GMP and CSM to discuss the police investigation into allegations against Mr Li, including those made by Abigail. CSM held those documents, which were marked confidential. The Council was notified of the application and raised concerns in writing. Having seen the documents (a step which I was satisfied was appropriate: CPR 31.19(6)(a)), I next directed that the documents be placed by CSM into the hands of its solicitors and Counsel (a next step which I was satisfied was necessary and proportionate). CSM's position was that, in principle, inspection

should be permitted. I ordered inspection, being satisfied (having regard in particular to the White Book 2020 commentary paragraphs 31.3.32 and 31.3.34): that it was necessary in the interests of justice to allow inspection of the documents; that the contents were relevant to the issues in the proceedings; that they mirrored GMP investigation documents in respect of which this Court had made an order for production on 17 October 2019; that third party names and initials had been redacted; that CPR 31.22 applied to restrict the uses to which the documents could be put; that inspection pursuant to the order of the Court involved no breach of data protection legislation; that securing such inspection as was necessary for the just disposal of the proceedings decisively outweighed any interest in protecting confidentiality; and that, insofar as public interest immunity was being relied on by the Council, withholding the documents was not necessary for the proper functioning of the public service and in any event the public interest in the administration of justice decisively prevailed.

*Factual Overview*

4. What follows in this paragraph will set the scene and help in understanding the discussion of the three issues. What follows is either uncontroversial or incapable of dispute and I find these contents as facts:
  - (1) Abigail was born at the end of March 1981 in another European country (“Abigail’s country of origin”). She was found to be a talented violinist. She was taught the violin by Isabelle from the age of 6. Abigail’s mother had the idea of Abigail auditioning for the Yehudi Menuhin School (YMS), a specialist music boarding school for school-age pupils, located in Surrey (often described as being in “London”). Abigail was offered a place at YMS as a boarding student from the age of 12 in 1993. Mr Li was her principal violin teacher there.
  - (2) Mr Li had been born in February 1955 and had moved to the United Kingdom in 1988 from a University teaching position in Canada. From 1988 Mr Li began teaching at YMS where he shared an on-site bungalow known as The Bothy. From 1990 Mr Li was also teaching at the Royal Northern College of Music (RNCM), at first for one day a week, then two days a week. RNCM is a specialist music college for college-age students, located in Manchester. In the early 1990s Mr Li was friends with the mother of Ghisele. In 1990 Mr Li taught Effie (aged 20) at RNCM, arising out of which Effie came to YMS and stayed at The Bothy and Mr Li later stayed at Effie’s flat in Manchester. Mr Li was Brian’s violin teacher at YMS 1990-1994, then at RNCM 1994-1998. Brian had started at YMS in 1988. He overlapped at YMS with Mr Joo who left YMS in 1991. In 1993 Mr Li introduced Brian to Ghisele, after which Brian and Ghisele became boyfriend and girlfriend for a time (1993/94). In 1995/96 Mr Li had a relationship with Min Yang (aged 27/28), a professional violinist who was a private student of Mr Li’s.
  - (3) Mr Li was Abigail’s violin teacher at YMS for three academic years 1993-1996, when Abigail was aged 12 to 15. During the summer of 1995, after her second year

at YMS, Abigail (then aged 14) spent a month on a boat in Croatia with Isabelle and Isabelle's friends. After Abigail's return to YMS in the autumn term of 1995, Abigail's father wrote to Mr Li telling Mr Li that Abigail was "worried" (a letter written after 5 September 1995); and that she was "unhappy", "confused" and "disappointed" (a letter dated 30 October 1995).

- (4) On 11 March 1996 the Director of Music at YMS wrote to all parents of children taught the violin by Mr Li to inform parents that Mr Li had recently announced his decision to resign from YMS at the end of the current academic year (summer 1996), but that YMS was determined to find a high calibre replacement. Shortly before that (7 March 1996) Abigail's parents had written to tell Abigail of a phone call two days earlier which Mr Li had made to them about his departure. Abigail replied to her parents by letter dated 8 March 1996. Mr Li moved in the summer of 1996 to take up a position at CSM, a specialist music boarding school for school-age pupils, located in Manchester. He retained his part-time teaching role at RNCM. Eight pupils who had been taught by Mr Li at YMS and who were finishing at YMS in the summer of 1996 secured student places at RNCM. Abigail, alone, transferred out of YMS and into CSM, to be a pupil taught by Mr Li at CSM. To make the transition, Abigail had a successful audition at CSM. Abigail's parents were strong advocates of Abigail following Mr Li from YMS to CSM. Mr Li hosted a visit to CSM by them and Abigail at the end of March 1996, after which Abigail's parents wrote to YMS (4 April 1996) and to Mr Li (5 April 1996). When Abigail left YMS (summer of 1996), after three academic years there, she was aged 15 and had gained A\* GCSEs in music and a modern language.
- (5) CSM required every overseas pupil to have a UK-based guardian. The guardian acted 'in loco parentis' and was expected to have the pupil to stay with them at 'free' weekends (every third weekend in term-time) and during half-term holidays (if the pupil were not returning to their home overseas), times when CSM was closed to pupils including overseas pupils. Before Abigail (and Mr Li) started at CSM it was decided between Abigail's parents and Mr Li – and notified to CSM – that Mr Li would be Abigail's guardian. That meant Mr Li having Abigail to stay at his flat in Salford Quays. At this time (1996/97), Min Yang (now Mr Li's ex-girlfriend) occupied one of the bedrooms at that flat when Min Yang was not touring or in hospital. Mr Li was by now in a relationship with Joanne Quigley (aged 23/24), a student from Ireland who he was teaching at RNCM. One of Mr Li's CSM students was Rakhi Singh who, in 1997, competed in and won national competitions sponsored by Audi and Texaco. Abigail spent one academic year at CSM (1996/97), turning 16 at the end of March 1997. Her violin lessons with Mr Li at CSM took place in his teaching room. That room was on the 'string corridor', on the ground floor of the Palatine Building.
- (6) At the end of the 1996/97 academic year (summer 1997) Abigail told CSM she would not be returning. She gave up the violin, and returned to her home country, leaving CSM aged 16 with GCSEs in science (A\*), English (A), English literature (A), maths (A) and history (B). On 5 August 1997 her father wrote to Mr Li giving

an explanation as to why Abigail's parents had been "forced to postpone" Mr Li's intended visit to Abigail's home country "until next year". Abigail went to the capital city of her country of origin ("the foreign capital city") with her mother. Abigail's parents were by now divorcing. Abigail enrolled in a secondary school in the foreign capital city, and studied for a time at university. During this period, Abigail's mother sent Mr Li property brochures in an attempt to encourage him to relocate to the foreign capital city and teach violin there. Mr Li remained in Manchester, teaching at CSM and RNCM. In 1999 he bought a house at Acresfield Road. One of Mr Li's students at RNCM in 2000 was Candice (aged 21). Candice at around that time (2000) made a complaint to RNCM alleging that Mr Li had sexually assaulted her. RNCM conducted an internal investigation. Mr Li admitted to a sexual relationship with Candice but said it was consensual. RNCM gave a formal final warning to Mr Li.

- (7) Five years after leaving CSM in 1997 (aged 16), Abigail returned to Manchester in 2002 (aged 21), having herself made contact with Mr Li and having won a place at RNCM. She enrolled for the 2002/3 academic year on a degree course, again taking up violin tuition with Mr Li. Abigail studied at RNCM for 4 years, graduating in June 2006 with a degree in music. Also in 2006, Abigail met and began a relationship with her current partner, a musician with 3 children from an earlier relationship. Abigail spent the period between 2006 and 2009 (ages 25 to 28) in her country of origin and the United Kingdom.
- (8) On 3 December 2007 (aged 26) Abigail filed a complaint with the police in her country of origin ("the foreign domestic police") against Isabelle (the violin teacher who had taught her from the age of 6) and four of Isabelle's friends: three female and one male. In that complaint Abigail alleged sexual abuse by all five of those individuals, including rape by the male, which Abigail said had taken place on the boat in Croatia in the summer of 1995 when she was aged 14. Among those interviewed in the foreign domestic police investigation were Abigail, the five accused (all of whom denied the allegations), Abigail's parents and Mr Armin Wabnig (a tax adviser who gave evidence about conversations he had had over "recent years" with Abigail's mother). A court-appointed psychologist Dr Sankl interviewed Abigail and wrote a report on 6 November 2008, concluding that there were significant doubts surrounding (then 27-year-old) Abigail's ability to provide information and testify. Abigail and her mother responded to Dr Sankl's report in February 2009, at around which time Abigail also saw her mother's psychologist (Dr Liane Saxer-Novotny) in the foreign capital city. The foreign domestic police investigative proceedings were dropped in 2009.
- (9) During the three years 2009-2012 (aged 28 to 31) Abigail was in the United Kingdom with her partner. Mr Li remained employed by CSM and RNCM. By January 2013 news had broken concerning a GMP criminal investigation (which GMP called Operation Kiso): specifically, allegations of historic sexual abuse of a pupil by a member of CSM teaching staff – not Mr Li. By early 2013 a prosecution was on foot which culminated in the March 2013 conviction of Michael Brewer,

former Director of Music at CSM, for indecently assaulting in 1980 (33 years earlier) a CSM pupil, Frances Andradi. Tragically, Ms Andradi took her own life after giving evidence at the trial but before Brewer's conviction. Other CSM teachers were investigated and other criminal trials were scheduled to take place. CSM wrote letters keeping parents informed. CSM told parents (letter 1 June 2015) that its position was that: "all allegations must be properly and fully investigated by the appropriate authorities". In early 2013 Abigail contacted GMP, making a complaint of sexual misconduct by Mr Li in 1996/97, her year as a pupil at CSM. Abigail was interviewed by GMP on 12 February 2013 and 26 February 2013. The Council convened safeguarding meetings with GMP and CSM, discussing allegations being investigated in relation to Mr Li: these took place on 28 February 2013, 3 October 2013 and 1 October 2014. Mr Li was suspended by CSM. Mr Li was arrested in conjunction with Abigail's allegations on 14 February 2013 and was interviewed that day. On 29 March 2013 he was rearrested and interviewed in conjunction with further allegations (relating to Candice, Effie and Ghisele). He was further interviewed by GMP on 2 October 2013 and 28 March 2014. Statements obtained by GMP during the investigation included an email from Mr Joo (15 March 2013), a statement by Brian (21 April 2013), an interview with Rakhi Singh (23 July 2013), and emails from and interviews with Abigail's mother and father (November 2014). Abigail was asked by GMP about Dr Sankl's report, about which she gave GMP a statement (22 September 2014). Abigail wrote a Victim Personal Statement (30 October 2014). Mr Li's crown court trial was scheduled for 18 April 2016. On 1 March 2016 the Crown Prosecution Service ("CPS") wrote to Abigail confirming that she was required to attend and give evidence. Then on 9 March 2016 the CPS wrote to Abigail to tell her that the decision had been taken, approved by Prosecuting Counsel, not to proceed with Mr Li's trial. The reason was that Dr Sankl's report, being disclosable to the defence, would inevitably adversely influence the jury if the jury accepted that the allegations made by Abigail to the foreign domestic police had been untrue. The CPS letter said the decision not to proceed against Mr Li was not a reflection, or a judgment, on the truthfulness of Abigail's account against Mr Li.

- (10) After the discontinuance of the prosecution of Mr Li, Abigail instructed Abbey Solicitors. It was decided that overturning the CPS decision to discontinue the criminal proceedings against Mr Li was not a viable option. This civil claim against CSM was commenced. Abbey Solicitors wrote a letter before claim to CSM on 4 July 2017. A limitation 'freeze' was agreed between the parties on 6 August 2017. That agreement stood as the effective date for commencement of proceedings, so far as any issue of limitation was concerned: it 'stopped the clock'. At that stage Abigail was aged 36 and Mr Li was aged 62. These proceedings were issued on 16 August 2018. Abigail was interviewed by Dr Freedman (the Consultant Psychiatrist instructed by Abigail's legal team) on 25 September 2018. She was interviewed by Professor Maden (Professor of Forensic Psychiatry instructed by CSM's legal team) on 20 January 2020.

### **The Limitation Issue**

*The 1980 Act*

5. In Part 1 of the 1980 Act, Parliament set out the “ordinary time limits” for different classes of action, among which is the three-year ordinary time limit (section 11) for actions in respect of personal injuries. Time does not begin to run until the injured person has knowledge that the injury is significant (see sections 11(4)(a) and 14(1)(a)), but no issue of delayed knowledge arises in this case. Part 2 of the 1980 Act includes a statutory extension to the ordinary time limit for as long as the injured person is an infant. That means the extended ordinary limitation period expires 3 years after the claimant’s 18<sup>th</sup> birthday (see sections 28(1), (6) and 38(2)). So, where personal injuries are sustained as a child, the extended ordinary limitation period expires on the claimant’s 21<sup>st</sup> birthday. In this case, that was at the end of March 2002. It follows that Abigail was statutorily entitled to bring this claim on any day up to that date. The limitation freeze, which stopped the clock was 6 August 2017. That was 15 years and 5 months after expiry of the statutory entitlement (the extended ordinary time limit). It was more than 17 years after the unextended ordinary time limit. It was more than 20 years after the alleged events of 1996/97.
6. Part 2 of the 1980 Act also includes section 33, by which Parliament empowered the Court to exclude (disapply) the ordinary time limit (including as extended) for actions in respect of personal injuries or death. Section 33(1) provides as follows:

*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 [claimant] or any person whom [the claimant] represents; and*

*(b) any decision of the court under this subsection would prejudice the defendant or any person whom [the defendant] represents;*

*the court may direct that those provisions shall not apply to the action, or shall not apply to a specified cause of action to which the action relates.*

Section 33(3) provides as follows:

*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 [claimant];*

*(b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the [claimant] or the defendant 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 [the defendant] responded to requests reasonably made by the [claimant] for information or inspection for the purpose of ascertaining facts which were or might be relevant to the [claimant]’s cause of action against the defendant;*

*(d) the duration of any disability of the [claimant] arising after the date of the approval of the cause of action;*

*(e) the extent to which the [claimant] 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 [claimant] to obtain medical, legal or other expert advice and the nature of any such advice [the claimant] may have received.*



In this case it is common ground that the principal focus is on section 33(1), on the opening words of (3) (“all the circumstances”), and on (3)(a) and (3)(b). It is also common ground that Mr Li is not a “person whom [CSM] represents”.

*A line of authorities*

7. The line of authorities cited to me by Counsel in relation to the Limitation Issue was as follows: *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541 (High Court of Australia, 2 October 1996) (“Taylor”); *KR v Bryn Alyn Community (Holdings) Ltd* [2003] EWCA Civ 85 [2003] QB 1441 (Court of Appeal, 24 March 2003) (“Bryn Alyn”); *A v Hoare* [2006] EWCA Civ 395 [2006] 1 WLR 2320 (Court of Appeal, 12 April 2006) (“Hoare CA”); *A v Hoare* [2008] UKHL 6 [2008] 1 AC 844 (House of Lords, 30 January 2008) (“Hoare HL”); *Cain v Francis* [2008] EWCA Civ 1451 [2009] QB 754 (Court of Appeal, 18 December 2008) (“Cain”); *B v Nugent Care Society* [2009] EWCA Civ 827 [2010] 1 WLR 516 (Court of Appeal, 29 July 2009) (“Nugent”); *RE v GE* [2015] EWCA Civ 287 (Court of Appeal, 27 March 2015) (“GE”); *CD v Catholic Child Welfare Society* [2018] EWCA Civ 2342 [2019] ELR 1 (Court of Appeal, 23 October 2018) (“CD”); and *FZO v Haringey London Borough Council* [2020] EWCA Civ 180 (Court of Appeal, 18 February 2020) (FZO). As on all issues, I benefited from focused submissions by experienced Counsel. I will set out in the following paragraphs some of the key points to be derived from these authorities, before turning to the present case.

*A principled starting-point*

8. The section 11 ordinary limitation period of 3 years from the date on which the cause of action accrued can be regarded as “the primary limitation period” (Cain paragraph 4), representing “Parliament’s best guess as to when prejudice can be expected to have arisen such that it is unfair to expose the defendant to the claim” (Cain paragraph 67). Disapplication of that primary limitation period (including as extended in the case of a person who was under 18 when the cause of action accrued) is “an exception to the general rule”, and “the burden of persuasion lies on the claimant” (CD paragraph 35), that being a “burden” resting on “the party who seeks to obtain the benefit of the remedy” (FZO paragraph 53). A sound starting point, in making a decision whether or not to disapply the limitation period is to recognise “the purpose of statutes of limitation”, being “designed to protect defendants from the injustice of having to fight stale claims especially 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” (CD paragraphs 33-34). For the “reason for limitation provisions is to protect defendants from the injustice of having to meet stale claims” (Bryn Alyn paragraph 82). And a limitation period “represents the legislature’s judgment that the welfare of society is best served by causes of action being litigated within the limitation period, notwithstanding that the enactment of that period may often result in a good cause of action being defeated” (Taylor per McHugh J), so that “in addition to giving protection to defendants against facing stale claims there is also a more general social benefit” (CD paragraph 34).

*Single trial of all the issues*

9. It has become the “usual practice in cases involving alleged sex abuse” for “the issues of the disapplication of the limitation period”, together with any substantive merits issues as to “liability and causation”, to be “tried together, avoiding the claimant having to give evidence twice if the action were to be allowed to proceed outside the limitation period”, meaning the Court has “heard full evidence” from the parties “on all issues of fact” before coming to decide whether the limitation period should be disapplied (FZO paragraph 51). That was the position at this trial.

(1) Where there is a single trial of all the issues, the Court must avoid a trap. The Court “should take care not to determine the substantive issues, including liability, causation and quantum before determining the issue of limitation and, in particular, the effect of delay on the cogency of the evidence” (Nugent paragraph 21). The danger is that the Court would determine the substantive issues and, if they are determined in the claimant’s favour in circumstances where the Court is satisfied that there has been a fair hearing, this could ‘drive’ a decision to disapply the limitation period. As will be seen, disapplication does not follow wherever a fair trial is possible. It would be wrong in principle for disapplication to follow in every substantively meritorious claim in which a fair trial is still possible. The Court must consider “the effect of delay on the cogency of the evidence”. A late claim, which could succeed substantively with disapplication of the limitation period, might have stood to be defeated by evidence adduced by the defendant had it been brought earlier: that could be a paradigm case of relevant prejudice to the defendant, justifying a refusal to disapply the limitation period. So, it is “not sufficient for the court simply to hear the evidence of the claimant, and indeed any other evidence now available, and to decide the issue of limitation on the basis of it, without considering what evidence would or might have been available at an earlier stage” (Nugent paragraph 25). The Court should not proceed to a conclusion that the facts alleged in the claim are “established” without considering, in the section 33 context, the effect of the passage of time and whether the defendant has been prejudiced (Nugent paragraph 58). To proceed “from a finding... that the claimant should succeed on the merits to the conclusion that it would be equitable to disapply the limitation period... would be to overlook the possibility that, had the defendant been in a position to deploy evidence now lost to [it], the outcome might have been different” (CD paragraph 42; FZO paragraphs 54, 96).

(2) Provided that the Court does not fall into the trap, the Court is not required to suspend or ignore what it made of the evidence, when it considers disapplication. Take an example. A claimant might say there was delay ‘in appreciating that sexual acts were abuse’. It would be artificial for a Court to evaluate the strength of that reason for the purposes of disapplication (section 33(a)), putting to one side what the Court made of the claimant’s evidence, including as to whether the sexual acts took place (or the claimant genuinely believed they had taken place). The Court’s factual assessment can, properly, inform the Court’s reasoned, evaluative judgment on disapplication. Accordingly, it is “not realistic to shut one’s eyes to findings and conclusions reached following full trial”, it being “what is done with them in the context of the substance of the reasons for the limitation decision that matters”

(FZO paragraph 96). It is appropriate for the Court “to adopt an overall assessment of the evidence” (FZO paragraph 60). That “overall assessment of the evidence ... includes weighing up any adverse findings made against the claimant” (FZO paragraph 60), so that “when assessing the cogency of evidence in considering whether to disapply the limitation period, the judge must take into account findings adverse to the claimant” made “in the course of” the Court’s “fact-finding” (CD paragraph 43). If the Court does proceed in two stages – as by approaching disapplication on the basis of a ‘preliminary assessment’ of whether the cogency of evidence has been affected by the passage of time – it is appropriate to revisit that ‘preliminary assessment’ in the light of concrete later findings (CD paragraph 53). In a case in which the defendant relies, for the purposes of resisting disapplication of the limitation period, on the contention that – by reason of the passage of time – the claimant’s evidence is unreliable, incapable of belief, lacking in credibility, undermined by inconsistencies, or implausible (FZO paragraph 59), the Court may have to make an “assessment of... credibility for the purposes of the limitation question” (FZO paragraph 100); and in such a case the defendant thereby takes “the risk that a judge will have to assess that credibility, even for limitation purposes, in the light of the credibility (or lack of it) of the rival witness or witnesses” (FZO paragraph 102). In conducting such an exercise, the Court may identify matters relating to reliability, credibility, implausibility, inconsistency to which “if the limitation period is disappplied” the Court would then need to “have careful regard in assessing the... evidence” and determining the substantive merits of the case (FZO paragraph 65).

*In all the circumstances, equitable (fair and just)*

10. In approaching the disapplication discretion, the Court must “have regard to all the circumstances of the case” (section 33(3)), it being the “object of the exercise ... to consider the circumstances of individual cases” (Cain paragraph 79). The statutory question – whether it appears to the Court that it would be “equitable” to allow the action to proceed having regard to the degree of relevant prejudice to claimant and defendant (section 33(1)) – involves a balancing exercise: “the injustice to a claimant who may be deprived of [their] claim” is to be “balanced against the injustice to a defendant who may be called upon to defend [themselves] a long time after the event when important evidence may no longer be attainable” (Hoare HL paragraph 60). The “heart” of section 33 is the phrase “it would be equitable to allow the action to proceed”, where “equitable” means “fair and just” (Cain paragraph 63). The “basic question” is “whether it is fair and just in all the circumstances to expect the defendant to meet [the] claim on the merits, notwithstanding the delay in commencement” (Cain paragraph 73, endorsed at paragraph 83).

*Length of the delay/ reasons for the delay*

11. As to the “length of ... the delay on the part of the [claimant]” (section 33(3)(a)), although this is a reference to “the delay after the expiry of the primary limitation period” (Cain paragraph 74), it is “relevant to consider the whole of the period that has elapsed since the cause of action accrued” (CD paragraph 36, also paragraph 48). Consideration of “the

length of, and the reasons for, the delay on the part of the [claimant]” (section 33(3)(a)) involves consideration of the specific circumstances and characteristics of the claimant and how they relate to the passage of time. The following points may be noted. (1) There may be multiple reasons or factors which are put forward as relevant to delay or to different periods within the overall delay (see eg. Nugent paragraphs 43-44). (2) The claimant may have been “for practical purposes disabled from commencing proceedings by the psychological injuries which he had suffered” (Hoare HL paragraph 49; Nugent paragraph 16). (3) The delay “may have arisen for so excusable a reason” as to make it fair and just that the action should proceed notwithstanding “some unfairness to the defendant due to the delay” (Cain paragraph 73). (4) It is important to consider “the medical evidence and opinion bearing upon the limitation issue” (FZO paragraph 107). (5) Illustrative examples of relevant considerations from the case-law include the following: (a) there may have been a lapse of time until a point at which the claimant “came to view that what had occurred to him... was abuse” (FZO paragraph 66); (b) it is relevant to ask whether and when the claimant “taking into account [their] psychological state in consequence of the injury, could reasonably have been expected to institute proceedings” (Hoare HL paragraph 44; Nugent paragraphs 10 and 16); (c) it can be relevant that there was a period in which the claimant “had a stormy life, with continuing problems” (Nugent paragraph 75), or the claimant “was in emotional turmoil” (Nugent paragraph 88), or where for “consistent and understandable reasons” the claimant “had got on with [their] life” (Nugent paragraph 95), or where, without having forgotten what happened to them, the claimant “just compartmentalised it and just put it to the back of [their] mind” (Nugent paragraph 87). (6) It can be relevant that, having made a complaint to the police it was “reasonable for [the claimant] to have waited until the conclusion of the criminal proceedings”, especially since any civil proceedings would have been “stayed” until the end of the criminal proceedings (FZO paragraph 75). (7) On the other hand, it may be that the claimant can fairly be described as having “put a cause of action onto the shelf with a view to taking it down again sometime later in the indeterminate future when [they] feel like using it” (GE paragraph 42). (8) Alongside the question of “the extent to which the [claimant] acted promptly and reasonably once [they] 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” (section 33(3)(e)), is the question of whether the claimant acted promptly once solicitors were engaged, or whether after that point there was “very tardy progress” which it is “impossible” to explain (GE paragraph 42, 68 and 80); and the question of when the “real nature of the claim” was notified to the defendant (CD paragraph 37) so that the defendant “can have had no inkling” of specific allegations as a ‘case... to be made against them” (CD paragraph 61).

*Prejudice to the claimant/defendant*

12. The legally relevant way in which “the provisions of section 11... prejudice the [claimant]” for the purposes of section 33(1)(a) is that “the claimant had the right to pursue his cause of action which he has lost by the operation of section 11” (Cain paragraph 69), so that the prejudice is “the prejudice to the claimant of being denied a trial” (Cain paragraph 81). The legally relevant way in which a “decision of the court

under this subsection would prejudice the defendant” for the purpose of section 31(1)(b) is not the loss of the limitation defence, or the economic consequences of having to pay damages in respect of a successful claim which the limitation period would have defeated. Rather it is the procedural prejudice in the defendant’s ability to defend the claim by reason of the passage of time which is the relevant prejudice. Thus “the prejudice to the defendant of losing a limitation defence is not the relevant prejudice to be addressed. The prejudice to be addressed is that which affects the defendant’s ability to defend” (Nugent paragraph 23). Thus, “having to pay the damages is not a relevant prejudice” nor is it “relevant ... as one of the circumstances of the case” (Cain paragraph 70), nor is “the loss of the accrued limitation defence” (Cain paragraph 75), for section 33(1)(b) “does not direct the court to have regard to the prejudice the defendant would suffer from the very act of disapplication” (Cain paragraph 80). Considering “prejudice to the defendant” includes “considering what evidence might have been available to the defendant if the trial had taken place earlier or [the defendant] had learned of the claim earlier” (Nugent paragraph 25). As for “the degree to which” a decision to disapply the primary limitation period “would prejudice the defendant” (section 33(1)(b)), having regard to “the length of... the delay on the part of the [claimant]” 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 time allowed by section 11” (section 33(3)(b)), the focus is on procedural prejudice: the effect on the defendant’s ability to defend (Bryn Alyn paragraph 81). “Delay of itself may not preclude disapplication of the limitation period. What is of importance is what prejudice the defendant has suffered by the delay”, which is why it has been said that: “The issue on which the court must concentrate is whether the [defendant] can show that, in defending the action, there will be the real possibility of significant prejudice” (CD paragraph 35). In considering prejudice to the defendant and the length of the delay, what “should make the difference” is “whether the defendant has suffered any evidential or other forensic prejudice” (Cain paragraph 57). What matters is “the prejudice to the defendant in the conduct of the action” which includes the “opportunity to investigate the claim” and the relevant “circumstances” (Cain paragraph 61). The relevant right, on the part of the defendant, is “the right to a fair opportunity to defend [itself] against the claim” (Cain paragraph 64). A principle which underpins limitation periods is that it is “not fair and just to impose liability on a defendant who had not had a proper opportunity to investigate the allegations against [it] and to assemble the evidence necessary to defend [itself]” (Cain paragraph 64). A defendant “only deserves to have [its] obligation [to pay damages] removed if the passage of time has significantly diminished [its] opportunity to defend [itself] (on liability and/or quantum)”, so that disapplication is “only prejudicial to [the defendant] if [its] right to a fair opportunity to defend [itself] has been compromised” (Cain paragraph 69). Thus, it is relevant to ask whether the delay in commencing the proceedings has “caused prejudice to the defendant in its defence”, which prejudice serves to “outweigh the prejudice to the claimant of being denied a trial at all” (Cain paragraph 81).

*Whether a fair trial is possible; and whether it is fair for a trial to take place*

13. One relevant question is “whether a fair trial is still possible” (Hoare HL paragraph 52): focusing on “the possibility of having a fair trial” (Hoare HL paragraph 85) and “the prospects of a fair trial” (Hoare HL paragraph 60). However, although “undoubtedly a very important question”, “the possibility of a fair trial” is “a necessary but not a sufficient condition for the disapplication of the limitation period” (GE paragraph 78). It is relevant to ask, not only whether a fair trial is possible, but also: whether the defendant’s ability to defend the claim is prejudiced due to the lapse of time since the events giving rise to the cause of action (Hoare HL paragraphs 50 to 51); what is the nature and what are the implications of the delay (FZO paragraph 111); whether the defendant is disadvantaged by the passage of time (CD paragraph 69). Thus, it is helpful to ask, not only whether a fair trial can be conducted, but “whether it is fair in all the circumstances for the trial to take place” (GE paragraphs 59-60).

*Nature of the issues*

14. It is important to have close regard to the nature of the issues needing to be determined at the trial. In Nugent (paragraph 96) it was not fair to disapply the limitation period “to allow the claimant to continue to advance allegations of negligence”, but it was fair to disapply the limitation period to allow a trial of allegations of sexual abuse, including consideration of issues relevant to vicarious liability. Thus it was significant for the disapplication discretion that claims came to involve “altogether narrower factual disputes than hitherto” (Hoare HL paragraph 85). At previous stages in the development of the law, as to both vicarious liability and limitation periods, claims relating to sexual abuse were framed as being concerned with ‘systemic’ issues and failures to protect. It was “previously... necessary for the evidence to cover the whole system being operated... over a long period and for the court to consider whether there was a relevant breach of duty”, as distinct from claiming that alleged abuse occurred and that the defendant was vicariously responsible for it (together with any issues as to causation and quantum): Nugent paragraph 14 (also paragraph 45). Once the true nature of the issues is identified, the court is able to focus on the evidential implications (Nugent paragraph 15). Thus, it may be that the “issues are narrow and well capable of resolution”, with “little loss of cogency” (Nugent paragraph 80). Facts relating to whether there was a sexual relationship, and if so its nature, may be “largely known only to the two people concerned”, such that there may be “nothing to suggest realistically that there [is] evidence missing that could have affected the outcome of this part of the case” (FZO paragraph 99).

*Witnesses, Documents, Recollections*

15. In considering prejudice to the defendant and the extent to which, having regard to the delay, evidence adduced is likely to be less cogent, it is relevant to ask: whether there is any loss of any individual as a witness; any loss of any document (including materials which documented an earlier evidence-taking proceeding); any loss of ability of witnesses to recollect details of material events; and whether it is to be supposed that the memories of key individuals would have grown dim about the central allegations, albeit that recollections of subsidiary witnesses might be affected by the passage of time as to the surrounding penumbra of the case (GE paragraph 43). It is relevant to consider:

whether there is any missing evidence, whether it is likely that any further such evidence existed at any earlier time, whether the defendant has sought to find any such evidence (FZO paragraph 70); whether any significant concrete example has been given of any missing witness or evidence (FZO paragraph 114); whether investigative attempts have been undermined by the passage of time (FZO paragraph 115); whether it has been possible for the defendant to investigate allegations with a fair opportunity to do so (Hoare HL paragraph 86); whether the delay has had consequences for the defendant's ability to investigate and defend the claim (CD paragraph 38); the impact of the delay on the cogency of expert evidence, and whether the task of the experts has been made more difficult, including whether expert evidence has been undermined by documents which are missing (FZO paragraphs 70-72, 116 to 118).

*My conclusion on disapplication*

16. In my judgment, Mr Levinson for Abigail has discharged the burden of showing that – having regard to all the circumstances of the present case and in particular the matters set out in section 33(3)(a) to (f) of the 1980 Act – it would be fair and just, and it would be equitable (pursuant to section 33(1)) to allow the action to proceed to be determined on its substantive factual and legal merits. That is so, having regard to the degree to which: on the one hand, the operation of the primary limitation period under section 11 (including its extension to her 21<sup>st</sup> birthday by virtue of section 28) relevantly prejudices Abigail; and, on the other hand, disapplication pursuant to section 33 would relevantly prejudice CSM. In my judgment, the balance of prejudice and justice – informed by all the circumstances and in particular the length of the delay, the reasons for the delay, and the extent to which having regard to the delay the evidence adduced by the parties is likely to be less cogent than if the action had been brought within the primary limitation period (with or without the extension applicable to Abigail having been a child) – comes down decisively in favour of Abigail. I will now explain the key points that have led me to this assessment, having regard to the discussion of the legislation and the key points which I have set out already (and do not repeat) arising from the line of authorities.

*My reasons*

17. First, I recognise the primary limitation period identified by Parliament and applicable to the present case. I recognise the judgment made by Parliament, approximating 3 years from the accrual of the cause of action to a position of presumptive prejudice for a defendant in having to defend such a claim. I recognise the judgment made by Parliament, extending the primary limitation period by reference to the time during which a claimant was a child, with the 3-year period running between their 18<sup>th</sup> birthday and their 21<sup>st</sup> birthday. I recognise the legitimate objectives and public interest considerations embodied and reflected in those statutory provisions. However, I also recognise that Parliament entrusted to the judgment and appreciation of the Court – guided by the provisions of section 33 and the relevant case-law – the burden of considering whether disapplication is nevertheless equitable (fair and just) in all the circumstances. Parliament recognised that there would be cases in which it would be equitable – fair and just – to disapply the primary limitation period and allow the claim to proceed to determination on its factual and legal merits. In my judgment, this is one of those cases.

18. Secondly, I recognise that the length of the delay in the present case is rightly characterised by Mr Ford QC as a “very, very long period” of delay. The alleged incidents took place in 1996-97. That is 20/21 years earlier than the limitation ‘freeze’. It means the trial has been concerned with events which took place 24/25 years earlier. The limitation ‘freeze’ came 15 years and 4 months after the expiry of the extended limitation period at the end of March 2002. 15 years is a full 5 times the 3-year period which constitutes the primary limitation period for an adult in relation to the present kind of claim. The potential prejudice to a defendant in having to defend on its factual and legal merits, a claim concerning events 20/21 years before it is to be treated as having been brought, where more than 15 years have elapsed since the extended deadline under which Abigail was entitled to bring the claim, is a potential prejudice which is significant and serious. The length of the delay brings into sharp focus the question whether disapplication can properly be regarded as equitable (fair and just). It brings into sharp focus the question of whether Abigail is able to put forward any convincing reason for such a long delay. It brings into sharp focus whether the delay is such as to give rise to real and significant relevant prejudice to CSM.
19. Thirdly, as to the reasons for the delay, while I cannot accept that the multiple reasons which have been put forward by and on behalf of Abigail (section 33(3)(a)) stand as cogent and compelling reasons for the entirety of – and for each period within – the very long period of delay, there is nevertheless some real force in several of the points made. There is no question, once Abigail had her 18<sup>th</sup> birthday (March 1999), of any lack of capacity then or at any subsequent stage. The experts (Dr Freedman and Professor Maden) agree that Abigail “has never lacked the mental capacity to make a complaint or to instruct a solicitor”. Further, Abigail has been under no psychiatric or psychological disability which would have prevented her from complaining about the alleged sexual abuse. I accept Professor Maden’s assessment that the filing of the complaint to the foreign domestic police in December 2007 when Abigail was aged 26 demonstrates that at that stage there was “no psychiatric or psychological disability that would have prevented her from complaining about other abuse”: Abigail had, and could exercise, “a free choice”. It is likely that Abigail would have continued to do nothing about making any complaint or claim in relation to Mr Li, had there not been the catalyst of the events of 2013. Having said that, there is, in my judgment some real force in these points:
- (1) Until she was about 25 (around 2006): (i) Abigail saw Mr Li’s sexual conduct towards her in 1996/97 as Mr Li having “taken advantage of me”; and (ii) although she did not “forget” it, she did ‘push it to the back of her mind’. Abigail, convincingly and consistently, described how she had seen what happened as Mr Li “taking advantage of me”; she did not see it as “abuse”; she did not see it as “rape”. I accept, to use Dr Freedman’s phrase, that Abigail did not “understand until age 25 that what happened to her was sexual abuse”. As to whether she had “forgotten” (or “not remembered”), Mr Ford QC submitted that Abigail’s evidence was “confused”. Abigail spoke of periods in which she had little more than “flashbacks”. She used the phrase “suppression, repression or dissociation”. I find, as Dr Freedman characterised it, that Abigail “wanted to block out and forget what



had happened to her”. I accept, as an apt description, what Professor Maden says about a person who does not “truly forget” acts but has acted to “push those memories to the back of the mind and avoid thinking about them”. Abigail could have reported Mr Li’s conduct to CSM at the time (in 1997), rather as 21-year-old Candice reported Mr Li to RNCM (in 2000). I am satisfied that Abigail had a period of turmoil 1997-2001 (ages 16-21) in which she ‘compartmentalised’: she was trying, with limited success, to reintegrate into the education system in her country of origin after 4 years (1997-2001) at specialist music boarding schools in England, with her violin playing dreams in tatters, her parents’ marriage over, struggling with an eating disorder, and experimenting with drugs. I am satisfied that Abigail then had another period of ‘compartmentalising’ 2001-2005 (ages 21-25), determinedly focused on the monumental task of trying to resurrect a violin-playing career, after five crucial formative years away, with the teacher who represented her ‘best shot’, who knew her skill and potential better than anyone. Abigail was (in 2007) able to report to the foreign domestic police alleged sexual abuse by Isabelle and Isabelle’s friends in 1995 (when aged 14), and did not report sexual abuse by Mr Li from 1996/97 (aged 15/16). That was an exercise of “free choice”, but it involved another act of ‘compartmentalisation’. It ended badly, with Dr Sankl’s report (November 2008) doubting her ability (aged 27) to provide information and testify. Understandably, that hit her hard: she saw it as an unfair “character assassination”.

- (2) When in early 2013 (aged 31) Abigail reported what had happened to her to GMP, the catalyst for doing so was that she had learned that there was an investigation into allegations of teacher sexual abuse at CSM, which complaints were being investigated. It was this knowledge which caused Abigail to step forward at that time and tell her own story, believing that she would be taken seriously by the authorities. After that, Abigail placed her trust in the criminal process. There was no complaint against CSM directly. But CSM was aware – throughout GMP’s investigation – of the substance of Abigail’s allegations regarding Mr Li. Abigail could have gone to GMP and spoken to them about Mr Li without that catalyst: as Abigail had done in going to the foreign domestic police about Isabelle; and as Frances Andradi had done with GMP about Mr Brewer. Having said that, it is in my judgment important, and right in principle, to recognise the following truth. There is a legitimacy in an abuse survivor experiencing, as an encouraging and reassuring catalyst, knowledge of another similar investigation. That may encourage an individual to step forward and tell their story to the authorities, as to something that happened many years ago, with added confidence that they will be listened to, even though it happened many years ago. It is also in my judgment important, and right in principle, to recognise that there is a legitimacy in trusting the criminal process and not pursuing parallel civil action, against an abuser or their employer: that was the position in this case in the period 2013-2016 (aged 31-34). Once the CPS dropped the prosecution of Mr Li (March 2016) there was no significant lack of promptness or unexplained delay. The prosecution of Mr Li was discontinued on the eve of Mr Li’s Crown court trial (April 2016), by reference to a document which long had been available to GMP (the Sankl Report) and which

had been put by them to Abigail 18 months earlier (September 2014). When the prosecution was dropped, Abigail understandably needed some recovery time. After what she calls a “break”, she engaged solicitors. Together, they explored the prospect of overturning the CPS decision, and then civil proceedings against CSM were the subject of the solicitors’ letter before claim (4 July 2017) and the limitation ‘freeze’ (agreed in August 2017).

In considering these points it is important never to lose sight of the overall lapse of time and the overall delay. It is also important to recognise that, so far as concerns Abigail’s “reasons for the delay” (section 33(3)(a)): (1) there was a period 2006-2013 (a full 7 years) from graduating from RNCM and making the complaint to GMP; (2) within that period was the period 2009-2013 (a full 4 years) from discontinuance of the foreign domestic police proceedings to making the complaint to GMP; (3) these periods would have been even longer but for the catalyst of the external motivation in 2013. I do not accept that this is a case which can properly and fairly be characterised as an individual ‘choosing to put on the shelf a cause of action with a view to taking it back down off the shelf and deploying it when they feel like doing so’. But there is, in my judgment, a substantial period of delay which is not explained by any reason which could constitute what has been described (in Cain at paragraph 73) as “so excusable a reason” as could make it fair and just for the action to proceed, looking at the matter in the round and on balance, notwithstanding substantial “unfairness to the defendant due to the delay”. The critical question is whether there is substantial, relevant prejudice to CSM.

20. Fourthly, so far as concerns unfairness or prejudice to CSM due to the delay, my assessment is as follows.

- (1) I remind myself of the following basic features of the passage of time: the passage of time is bound to have affected the memories of witnesses; that a person describing events long ago will be less able to remember exactly when they happened, the order in which they happened, or the details of what happened than they would if the events had occurred more recently; that a person’s memory may play tricks on them, leading them genuinely to believe that something happened long ago when it did not; that the passage of time may put CSM at a disadvantage in Mr Li or another witness not now being able to remember details which would have helped CSM’s case, in CSM not now being able to call witnesses who could have helped its case, and in CSM not now being able to produce documents which could have helped its defence.
- (2) The issues in the trial are narrow. The Court has to decide the factual questions of whether the essential allegations of sexual acts by Mr Li took place in 1996 and 1997. The Court also has to decide whether and to what extent, if those acts did take place, CSM is vicariously liable. There is no issue of consent. There is no remaining disputed issue of causation. Quantum is agreed on the basis of intercourse having taken place and CSM being vicariously liable for it. Resolving quantum on the basis of the Court finding only less serious events took place or

attract vicarious liability will not present any real hurdle: the parties envisage brief written submissions.

- (3) Whether what is alleged by Abigail to have happened in 1996/97, between Abigail and Mr Li, in the practice room at CSM, in Mr Li's car and in his flat engages the evidence of Abigail and Mr Li. They are both available to give oral evidence and be cross-examined at the trial. They both claim a clear recollection of whether what is alleged took place. It is true that memories will have faded over time, on questions of surrounding detail. But I do not accept that there has been or would have been any relevant or material fading in recollection on the questions at the heart of this case. Did Mr Li kiss Abigail in his teaching room at CSM? Did Mr Li perform an act of oral sex on Abigail in his car outside his flat at Salford Quays after returning from a concert in the spring of 1997? Did Mr Li sexually penetrate Abigail in her bed later that night in his flat? Did they continue to have intercourse and oral sex until the summer of 1997?
- (4) I can see no procedural prejudice related to the resolution of the vicarious liability issue. The case on behalf of Abigail has been put squarely on the basis that she was present at Mr Li's flat during stays in which he was acting as her guardian and host. There is no disputed issue as to whether CSM was involved in Abigail's parents choosing Mr Li as guardian: it is accepted that CSM was not. There is no disputed issue as to whether any relevant event occurred at any time at which Mr Li had 'signed out' Abigail from CSM other than hosting her as guardian: the case is squarely put on the basis that any sexual abuse in Mr Li's flat or car took place when he was hosting Abigail as her guardian. There is no question of fact relating to vicarious liability on which any procedural prejudice from the delay can, in my judgment, have arisen.
- (5) Mr Ford QC for CSM has rightly avoided exaggerating or overstating CSM's position on the limitation issue. It is not said that there is any witness material to the issues who would have been available to CSM at an earlier trial of the substantive factual and legal merits, but is not now available. It is not said that any investigative step has been identified by CSM as one which it could have undertaken, or could more fruitfully have undertaken, had the proceedings been commenced at an earlier stage compared with the timing when the proceedings were in fact commenced. It is not said there is any documentation material to the resolution of the issues which, through passage of time, has or will have become unavailable or inaccessible.
- (6) Albeit not a sufficient basis for disapplication – though it is a necessary one – I am quite satisfied that a fair trial is possible. Further, there is, in my judgment, no unfairness to CSM in the trial taking place, and the substantive factual and legal issues being determined on their merits, now compared with at any earlier stage. I have identified no relevant prejudice to CSM by reason of the passage of time. CSM is able to put forward Mr Li as its principal witness, together with the other witnesses (whose statements were read, because there was no need for any cross-

examination). CSM is able through Mr Ford QC to subject Abigail's oral evidence to a skilful and searching cross examination. Further, the Court has the advantage of a solid platform of contemporaneous material elicited by GMP during a sustained period of investigation. It includes interviews with Abigail and with Mr Li, of which the full interview transcripts remain available and are before the Court. It also includes other materials such as records of interviews and statements. It is not the case that the Court has before it a full set of all the investigative materials held by GMP. But, bearing that fact in mind, it is not the case that CSM has been able to point to any gap in the police documentation which is material to the resolution of the issues at this trial. Although the Experts agree that "it would have been helpful to see [Abigail] nearer to the time of the alleged abuse" and "it would be helpful to see full medical records dealing with the mental health problems she reports in her childhood and adolescence" there is, in my judgment, no basis on which it can be said that the experts' tasks have been made more difficult in relation to any issue which the Court has to determine at this trial. As Mr Levinson rightly points out, it has to be borne in mind that the Court is not deciding questions relating to physical or mental health conditions, or causation, and that quantum has been agreed (or is accepted to be readily capable of resolution).

- (7) This evaluation of the absence of relevant prejudice to CSM by reason of the passage of time is one which I have revisited in light of my deliberations as to the evidence, my evaluation of the evidence, and the findings of fact which I have needed to make and have made in this judgment. I regard that as an important and valuable cross-check. In my judgment the only prejudice to CSM would be constituted by the inability to be able to rely on the 'accrued limitation period', and thus avoid the risk of liability and adverse findings. The same is true if the prejudice is analysed from the perspective of Mr Li, CSM's employee at the relevant time. But that is not relevant prejudice for the purposes of deciding the issue of disapplication.
- (8) I do not accept Mr Ford QC's submission (one also made in FZO) that Abigail's evidence is so vague, uncertain, unclear and unreliable – and that in all these respects its cogency has been reduced by the lapse of time – that it would not be equitable to disapply the limitation period having regard to the balance of prejudice. I do not accept that Abigail's evidence is materially vague or uncertain or unclear or unreliable, nor that it has these characteristics by reason of the lapse of time. I shall return to what I made of Abigail's evidence when I analyse the Factual Issue.
21. Fifthly, I look at the position overall and in the light of what I have said about the line of authorities and the circumstances of this case. The prejudice to Abigail is in the loss of a determination of her claims on their factual and legal merits. That is a substantial prejudice. I make clear that I do not consider it appropriate, at least in the present case, to give that prejudice any added weight on the basis of what the claim is said to mean to Abigail in human terms (for example, Dr Freedman records Abigail's description of a life which "has come to a standstill"). Having regard to all the features of the case, in my judgment, the balance of prejudice (section 33(1)(a) and (b)) comes down decisively in

favour of the conclusion that it would be equitable to allow the action to proceed, having regard to all the circumstances of the case including the length of delay, the reasons for the delay and the extent to which the evidence adduced by the parties is less cogent than if the action had been brought within the section 11 three-year time-limit, with or without the section 28 extension (to Abigail's 21<sup>st</sup> birthday). I am satisfied that it is appropriate for the Court to exercise the power which Parliament conferred on it in section 33.

### **The Factual Issue: Principal Findings**

#### *Introduction*

22. The Factual Issue is whether Mr Li sexually assaulted Abigail in the ways and in the circumstances alleged by her, or any of them, bearing in mind that detailed findings are not necessary, and that it is not CSM's case that Abigail consented to sexual activity. In outline:

- (1) Abigail says this. By 1996/97 there was a close relationship between Abigail and Mr Li, including conversations of a private and personal nature, where she felt she could confide in Mr Li and felt he was confiding in her. She had been singled out by Mr Li in early 1996 with an offer of transferring from YMS to CSM to continue to be taught by him. Within a few months of them both starting at CSM, Mr Li started kissing Abigail during violin lessons in the practice room where he taught her. Then one day in spring 1997 around her 16<sup>th</sup> birthday Mr Li drove Abigail to a Rakhi Singh concert, a substantial distance from Manchester, where they both drank alcohol. On their return, they were sitting talking in Mr Li's car outside his flat in Salford Quays. Mr Li reached over and opened Abigail's jeans, pulled the jeans and pants down, and put his head between her legs licking her clitoris and vulva. She was able to make him stop by pretending to have an orgasm. In the flat, after more alcohol, Abigail went to bed. In the night she awoke to find Mr Li on top of her in her bed, penetrating her with what she initially thought was his finger but then realised was his penis. After that there were several further acts of oral sex and several further acts of sexual intercourse (one of which took place in Mr Li's car) and they shared his bed.
- (2) CSM relies on the evidence of Mr Li, who says this. Abigail had been 'just another student' at YMS and it was Abigail's (and her parents') idea to transfer to CSM. Mr Li helped them including by becoming Abigail's guardian. But he and Abigail did not discuss private and personal things; they never kissed; he never had or attempted to have oral sex or intercourse with her; he did not pull her jeans and pants down in his car; and he did not get into her bed while she was asleep.

At the trial I had the benefit of Abigail being skilfully cross-examined by Mr Ford QC, and of Mr Li being skilfully cross-examined by Mr Levinson. I had the benefit of considering the transcripts of their GMP interviews. I have been able to evaluate the evidence of Abigail and Mr Li alongside all of the other evidence in the case, and the submissions made by Counsel about the evidence. Mr Ford QC made clear in his closing submissions that CSM was not advancing the position that Abigail has given a

deliberately false account. It was not being suggested that Abigail was being deliberately untruthful to the Court, or deliberately untruthful in her account to GMP in 2013, or to Dr Freedman, or to Professor Maden. Rather, what is said is that these were false memories, albeit that she genuinely believed them to be true, and that her evidence was unreliable.

*My Principal Findings of Fact*

23. I am going to set out my principal findings in this part of the judgment, before discussing key aspects of the evidence, with some specific further findings as I deal with the evidence. The principal findings which I here set out are the culmination of my evaluation of the entirety of the evidence. When I turn – in the next part of this judgment – to my discussion of the evidence I am not describing a ‘reasoning path’ or ‘route to verdict’. Rather, I am describing what I made of key features of the evidence. My overall conclusion on the Factual Issue is as follows. I am satisfied that Abigail has discharged the burden of proving to the civil standard that the key events which she alleges – and which CSM denies, based on Mr Li’s denials – did take place. I find the following as facts:

- (1) In the spring of 1996 Mr Li made an offer to Abigail and her parents, which he presented to them all as an offer being made to Abigail alone, to transfer from YMS to CSM in order to continue to be taught by Mr Li. Abigail was not, to Mr Li, ‘just another student’. By now, Abigail felt she could confide in Mr Li, and felt that he was confiding in her, and Mr Li knew that. Abigail thought she was special to Mr Li, and Mr Li knew that. In March 1996 Mr Li hosted Abigail and her parents at CSM to show them round. In circumstances where CSM needed Abigail as an overseas pupil to have a guardian – to host her at open weekends and half-terms when CSM was closed – Mr Li enthusiastically agreed with Abigail’s parents that he would perform that role.
- (2) Having both started at a new school, Mr Li and Abigail continued to have a close relationship. To the relationship was added a physical, and then a sexual, dimension. Mr Li controlled this, and its escalation. It began when, on several occasions at CSM starting in 1996, Mr Li assaulted Abigail by kissing her in the teaching room during violin lessons.
- (3) Then, and in circumstances where Abigail was with Mr Li and staying with him because the school was closed and he was her guardian, Mr Li assaulted Abigail sexually. The first two incidents took place on the same day. In the late evening after a Rakhi Singh concert where they consumed alcohol, while sitting in Mr Li’s car parked outside his flat in Salford Quays, Mr Li reached over, opened Abigail’s jeans, pulled down the jeans and her pants, and began licking her clitoris and vulva. That night in the flat, after they had consumed more alcohol, Mr Li entered Abigail’s bed while she was sleeping and penetrated her with his penis. Subsequently, several further acts of oral sex and several further acts of sexual intercourse took place between them.

- (4) Mr Li exploited the opportunities presented by being Abigail’s teacher and by being her guardian. He initiated and controlled what happened physically and sexually and its escalation. He exploited Abigail’s submission to his actions and is affronted by what he sees as her failure to give a “signal” of a lack of consent.

*My assessment of the two key witnesses and their evidence*

24. I will deal below, in my discussion of the evidence, with particular features of the evidence and what I made of it. But I set out here my overall assessment of the two principal witnesses:

- (1) I find that Abigail was an honest and truthful witness giving evidence on the key aspects and core events of the case that she genuinely believed to be true. I also find that Abigail’s evidence of her recollection of the key aspects and core events was reliable: this is not a case of misremembering of key events; nor of delusion.
- (2) I find that Mr Li did not give me an honest, truthful or reliable account of the key aspects of the case and of the core events. I found him to be, and to have been, materially evasive. In his denial of the core events alleged, I disbelieved him.

### **The Factual Issue: Discussion of the Evidence**

*Relationship between pupil and lead instrumental teacher*

25. This is a sensible place to start my discussion of the evidence. As CSM emphasises, the relationship between a pupil (or student) and their principal instrumental teacher at a specialist music school (or college) is an important relationship. As Mr Ford QC put it to Abigail, and as she accepted: the principal instrumental teacher is an important person in their life, with responsibility for their instrumental development, for concerts in which they play, for competitions which they enter, for tours in which they participate, for scholarships for which they apply. Carolyn Rhind, a qualified solicitor who was co-Head of Girls’ House at CSM from 1995, told me in her evidence in chief (witness statement):

*The relationship between students and their instrumental teacher is very different to a normal academic teacher. All instrumental lessons are taught on a one-to-one basis. Instrumental lessons are very intense as music is highly emotional. All of the students are very passionate about their chosen instrument therefore they spend a lot of time refining their abilities. This requires a lot of one-to-one teaching.*

Caroline Pether, a professional violinist and violin teacher, who was a CSM student of Mr Li’s 2005-2008 and then an RNCM student of Mr Li’s 2008-2013 produced as an exhibit to her evidence in chief (witness statement) a set of student testimonials collected by Mr Li’s criminal solicitors during the GMP investigation in 2013. As Jane Hunt, an RNCM student of Mr Li’s (2001-2005) explained in hers:

*Learning music is not like having a maths lesson where you literally have the lesson and when it is over it is over. It is a process of discussing violin playing and constantly talking about ways to get better. This was Mr Li’s greatest asset as a teacher. You were always learning with him in the lesson and outside the lesson because he was always talking about violin playing. His dedication*

*to violin playing and enthusiasm for the subject was why I want to learn with him. You see the same kind of relationship between teacher and students in professional sports. The coach never stops teaching the player. There is almost no set lesson times it's a continuation of everything when you are with the teacher. It is part of the learning process in a high functioning skill. It is also a quality of high functioning individuals.*

Later in this judgment I will refer to a similar description given by Brian to GMP. I accept – and find – that this relationship is, by nature, extremely important; that it can be intense; and that this natural intensity does not mean that a pupil or student is being treated inappropriately, or being singled out by the teacher.

*Mr Li and boundaries of self-restraint*

26. The student testimonials exhibited to Ms Pether's witness statement speak positively about Mr Li. So does the witness statement of Qian Wu, which described how Mr Li was her guardian at CSM (2000-2002). One feature of the evidence, linked to Mr Li's violin teaching, was clearly elicited by Mr Levinson through cross-examination. It came to this: Mr Li did not apply boundaries of self-restraint in relation to whether he would explore a physical or sexual relationship with someone whose principal instrumental teacher he was at the time. That is part of the evidence in the case, which I have found it helpful to have in mind. It is clear, on the evidence, in relation to college-age students at RNCM. In 1997 Mr Li (aged 42) was in a sexual relationship with Joanne Quigley (aged 23/24), whose principal instrumental teacher he was at RNCM. In 2000 Mr Li (aged 45) was in a sexual relationship with Candice (aged 21), whose principal instrumental teacher he was at RNCM. Of course, that does not mean that Mr Li had a sexual relationship with any other college-age student he was teaching, or with any school-age pupil, or with school-age Abigail. I have kept in mind: that Joanne and Candice were college-age adult students at RNCM; that Mr Li has never denied those sexual relationships; that there is evidence that many people (including Abigail) knew about the relationship between Mr Li and Joanne Quigley; that when Candice alleged sexual assault to the authorities at RNCM, Mr Li admitted a sexual relationship with Candice, but said it was entirely consensual; that Abigail was a school-age student; and that Mr Li has always denied any sexual relationship with her.

*Abigail's YMS-CSM transfer (1996)*

27. Mr Li told me at this trial – as he told GMP in 2013 and 2014 – that Abigail was “just another student” when she transferred from YMS to CSM in 1996; that, although she was the only pupil who made such a transfer to follow Mr Li to CSM, that idea did not come from Mr Li but came from Abigail and her parents; that Mr Li treated all his pupils the same and told them all, at the same time, that he was leaving YMS; and that in agreeing to help Abigail, and in agreeing to be guardian, he was doing what he would have done for any pupil. I cannot accept this evidence. In my judgment, Mr Li has deliberately – and revealingly – downplayed how he treated Abigail; and he has not been candid with the Court about how Abigail came to follow him to CSM. I am satisfied that by 1996 Mr Li was treating Abigail as special, compared to his other pupils; that by then they had a close relationship which included Abigail being able to confide in Mr Li; that the idea of Abigail following Mr Li to CSM came from Mr Li; that it was raised by Mr Li with her, as an offer, presented as one being made to her alone; and that it was presented that way



by Mr Li to Abigail’s parents. The fact that Mr Li has played down this part of the case is not, of itself, evidence that he sexually assaulted Abigail. But it is concerning and it undermines my confidence in being able to rely on Mr Li’s evidence.

28. Mr Li’s evidence in chief acknowledged that Abigail was “the only student who was under 18 who followed me to [CSM]”. Mr Li had taught a number of students, across a number of year groups, at YMS. For those leaving YMS at the end of their studies – having done their A Levels – leaving YMS was inevitable and transitioning as a student to a college or university setting was entirely natural: RNCM was a natural candidate in choosing where to go; continuing to learn with Mr Li (who was teaching at RNCM part-time) was an open and obvious feature in that choice. That was the transition made by Brian, and many others. But transferring out of YMS and into CSM was different. It meant leaving part-way through the natural progression of time at one specialist music boarding school, to go to another, because that was what Mr Li was doing. It was also more sensitive ethically: for a teacher to ‘take pupils with them’. Only one of Mr Li’s pupils – Abigail – made that move. This is a strong feature of the story. Abigail’s father told GMP that “Abigail followed Mr Li to [CSM], as the one and only student of Mr Li”; and that “Abigail was the only one of his pupils who [Mr Li] subsequently took with him to Manchester”. Abigail’s mother told GMP: “When [Mr Li] left [YMS], we naturally agreed to Abigail (the only pupil) going with him to Manchester and to his becoming her guardian...” Dr Freedman records Abigail’s story: “At age 15, [Abigail] followed Mr Li to [CSM], the only one of his students who did”. Professor Maden records Abigail’s story: “[Abigail] moved because her teacher [Mr Li] moved and invited her to come with him... She was the only pupil at YMS that [Mr Li] asked and by that time they had become very friendly”.
29. Mr Li says: all this came from Abigail and her parents; that he supported it because it was what they wanted; but that Abigail was “just another student”; and that he had no reason to ‘single her out’. Mr Li – who claims to recollect what happened – said to the Court in his evidence in chief (witness statement) that:

*I announced my departure to all of the students at YMS together. I did not specifically ask [Abigail] to continue her education with me at [CSM]. This was instigated by her parents and the decision was made by [Abigail] and her parents that it was in [Abigail’s] best interests to transfer. I remember that [Abigail] came to continue her violin studies with me at [CSM] following a telephone conversation I had with [Abigail’s] mother. [Abigail’s] mother telephoned me and asked if I could arrange for [Abigail] to transfer from YMS to [CSM] to pursue her violin studies. Prior to this telephone conversation I had only come across [Abigail’s] parents couple of times before at YMS parents’ evenings. The guardianship relationship... was initiated by the parents.*

In cross-examination, Mr Li was asked by Mr Levinson whether he had a special relationship with Abigail at YMS. He was asked: “how would you define [Abigail’s] relationship with you at YMS?” Mr Li replied:

*she was just one of my many students.*

Asked by Mr Levinson if there was anything “special about her”, Mr Li said:

*No, not at all.*

Mr Levinson asked Mr Li if “as far as you were concerned, she was just another pupil?”, to which he answered:

*Correct.*

Mr Li added: “I must tell you. Before I was [Abigail’s] guardian, I was not even close to her”. In relation to Mr Li leaving YMS for CSM, and Abigail following him there, Mr Li told me:

*I made an announcement in class. [Abigail] was one of them and heard it. I must have told all my students and all their parents would know after that...*

*I decided to leave YMS to CSM ... I don’t want to see a situation where students want to come with me to Manchester. But at that time there are a bunch of students they are just finishing their studies as a high school student. They are going to college. So they all said they want to come with me. At the same time, together with [Abigail], nine of them came with me.*

*So, at that time [Abigail] has said to me: ‘Mr Li I would like to come to Manchester with you, would that be possible?’*

*I would say: ‘look, if this is something you really want to do, can you keep it quietly and will have a chat with your parents’. So, I would not want [YMS] professionally speaking to think that I’m pinching students from YMS to CSM, unless they want to. So I said to [Abigail] ‘keep this quietly but we will do the right thing’. First of all, I’d better make sure your parents support you on this. Secondly, I must tell the school beforehand. So that’s the story.*

So, Mr Li’s evidence to this Court was that the idea came from Abigail and her parents, and not from him to her or to them. That is a detail, but it is an important detail. For Mr Li to suggest to that pupil and their parents that they, and moreover they alone, should follow Mr Li from YMS to CSM is suggestive of something ‘special’ compared to other students. It is also suggestive of an appetite – whether it be borne out of the pupil’s musical potential or something else – to have the student follow.

30. In his police interview (14 February 2013), Mr Li had originally told GMP this:

*... students came with me to Manchester, but most of them, they are at age 18 so they come to [RNCM] ... and [Abigail] is the one still 15 I think by then. I said: ‘you can come to [CSM] with me’. Then she said: ‘okay I’d love to’. Then the parents phoned me and said ‘[Mr Li] can you please take [Abigail] to Manchester with you because [Abigail] believes in you, she can learn a lot from you, could you take her’. I said: ‘fine’. Also they said: ‘could you please be her guardian, look after her when she’s half term or something’. I said: ‘delighted’.*

Here, Mr Li makes an offer to Abigail, and Abigail responds. Later in the same interview, DC Whalley returned to the topic: “you said to your class you were going ... so what did you say to them when you told them?”. Mr Li now responded:

*I just say, okay, now you know, I just said, when I roughly remember what I said, I can’t remember the exact words, I have decided to move to Manchester. Okay. Now, what your plans are, you know, will be fully supported. Most of my students, several said to me, Mr Li, I would like to continue at college level, at [RNCM]. We come to your class at [RNCM]. Then I think Abigail said ‘Mr Li, can I come with you to [CSM]’. I said, ‘fine, you’re all very welcome’. Then at that point, Abigail’s father phoned me saying, ‘yes, we would like Abigail to study with you.*

*Would you please take care and also to mind if you be her guardian'. I said, 'delighted, I will do that'.*

So now it is Abigail who asks Mr Li, and he goes along with it, but it is nothing special (“you’re all very welcome”).

31. Abigail’s evidence in chief at this trial was as follows:

*At the age of 14, [Mr Li] asked me whether I wanted to leave the [YMS] and come and study at [CSM] in Manchester with him. [Mr Li] said that he could not ask all his students, not even several students to come with him, that he could only take one student with him and that he wanted to ask me.*

*[Mr Li] explained to me that [CSM] required that all international students have a guardian and that he would be very happy to be my guardian. The Guardian’s role was to act in lieu of parents for overseas children whose parents were not there. The Guardian was responsible for ensuring students had somewhere to stay during holidays and weekends when the school was closed if they did not return home. [Mr Li] and my parents therefore agreed for [Mr Li] to become my guardian and I would become a boarding pupil at [CSM].*

*I agreed to go and study in Manchester with [Mr Li] because I believe that he truly cared for me and I did not want to lose him as a teacher or as a friend. I believe that he was one of the best violin teachers in the world and I was proud to be his student. I had the feeling that he was proud of me also.*

In Abigail’s police interview (12 February 2013) she told GMP that she and Mr Li had “got very close” during the 3 years at YMS “and he asked me, he said he was leaving the school, he asked me to come with him to [CSM]”. She told GMP: “by the beginning [Mr Li] said that he is leaving the school and he can’t take many students with him... and in fact he’s only going to take one and he asked me”. She was asked: “How did that come about then you going to Manchester”. She replied: “he would have asked me, I would definitely not have asked him”. She was asked: “do you remember that conversation when he asked?”. She replied: “No because it didn’t seem like it was anything unusual, it was like it was part of a gradual process”. She was asked: “did he speak to your parents about that”. She replied: “I think he might have, I’m not sure”.

32. There are contemporaneous documents which assist me. On 7 March 1996 Abigail’s parents wrote to her about the “serious decision” facing her “as a result of [Mr] Li leaving the school at the end of the school year”. They set out a list of reasons for transferring from YMS to Manchester “to keep a tried and tested violin teacher of the highest quality who... thinks highly of you and, incidentally, also likes you”. The letter – which like other correspondence is revealing about their ambitions and priorities – concluded: “Carpe Diem. Take your violin. Take your teacher. Take your chance”. That part of the letter demonstrates a strong preference for Abigail transferring to CSM, which would be consistent with the idea coming from them and Abigail, and could explain why only Abigail made such a transfer: she alone had parents pushing the idea so hard. But within the same letter there is also a clear description of a telephone conversation with Mr Li which had taken place two days earlier (5 March 1996). The letter refers, no fewer than three times, to Mr Li making the “offer” for Abigail to go with him to CSM:

*Li's phone call, the day before yesterday, when [Isabelle] was just visiting us, hit like a bomb. After he had told me about his decision to leave the school, and had also stated his reasons for it, I could not respond with anything else but 'this is a catastrophe'. The reason being that we were completely certain, that Li – as you have stressed time and again – is the most important teacher for you, that without him, the school would be worthless. Then, suddenly, I was a little soothed again, when Li said he would very much like to see you there, that he would like to take you there, although that would have to stay secret because he is making this offer only to us. Otherwise, too many students would leave the [YMS], and he does not want this because his professional ethos forbids it.*

Later the same letter says:

*Be aware of that you are probably the only student to whom Li is offering to go to Manchester with him!*

And later:

*It is not a coincidence that Li has made this offer with Manchester to you.*

33. Another contemporaneous document is the detailed letter which Abigail wrote in response on 8 March 1996. In it, she pointed out a number of what she portrayed as annoying misunderstandings in what her parents had said in their letter of 7 March 1996. A main theme of Abigail's letter was that she knew much more about all this than her parents. She revealed to them, "for your information", that the name of "the school" where Mr Li was going was CSM. She described weighing up, for herself, whether CSM would be better than YMS and whether Mr Li would be better as a teacher than a new replacement teacher at YMS. She said: "[Mr] Li is very important to me, only if I like the school in Manchester even less than the current one and a great teacher comes, that would be stupid". She said this about how demanding Mr Li was and whether she had enough practice time:

*[Mr Li] does not demand too much of me, but rather, too little... I do not have to practise too much. I do not have enough practice time.*

She added:

*... you do not have to tell me that Li likes me and appreciates me, he tells me that himself.*

Then this:

*I do not push Li aside. Because he is my friend and I have often talk with him I have explained everything to him and he understands me completely. He appreciates my mind and admires me, and he also tells me that. He is not upset at all, and he believes that the school in Manchester is better for me, but he does not know it exactly. He said that I have to look at the school once, and it also has to appeal to me, he is of exactly the same opinion as I. Do not put words into his mouth, just because you believe you know everything better by experience. If you ask him, he will confirm what I have said. Please do not think that you know everything better, one can see where that leads to.*

Later in the letter, Abigail wrote:

*I know that the subject is Manchester and Li. You cannot write me anything about either/both, because you do not know anything.*

She added:

*I know that I am the only one Li has chosen, because he has spoken to me first, not with you. He also tells me things he does not tell anyone otherwise and which you do not know. He tells you only really little and you cannot even understand this properly.*

*I know that the offer is not a coincidence. You tell me things which I either already know or which are completely wrong... Because the school politics [at CSM] suit Li, that does not mean that they suit me. I hope that you have understood everything now and that you will know now why am not going to [CSM] blindly. One only has to use one's mind. Li is neither unhappy nor disappointed, he is fully content and I know as well as he that I am one of his best students and that he is more fond of me/loves me more than the others.*

34. This March 1996 exchange of letters shows that – at the time when the transfer idea surfaced – Abigail’s parents and Abigail all understood that Mr Li was making her an “offer”, portrayed to them by him as an offer to her “alone”. The letters reflect the fact that there had been conversations between Mr Li and Abigail on the subject, and a conversation on the phone between Mr Li and Abigail’s parents on the subject. Abigail’s letter indignantly corrects assertions and assumptions in her parent’s letter. It warns them: “do not put words into [Mr Li’s] mouth”. But it confirms – as Abigail’s parents had understood from Mr Li – that he was making an offer (“I know that the offer is not a coincidence”), that he was choosing Abigail to follow him from YMS to CSM (“I know that I am the only one Li has chosen”), and that she felt special to him (“Li likes me and appreciates me, he tells me that himself”; “He appreciates my mind and admires me, and he also tells me that”; “I am one of his best students and... he is more fond of me/loves me more than the others”). Mr Li was not a party to this correspondence. It is possible that both Abigail and her parents read more into the situation than was there from his perspective. It is possible that a pupil like Abigail, just turning 15, could be the one to suggest to a teacher like Mr Li that she should follow him and transfer from one boarding school to another. It is possible that Abigail’s parents were pushier than other parents in wanting to transfer her out of YMS and into CSM. It is possible that Mr Li acted in a guarded way, or recounts events in a defensive way, because of the ethical implications of encouraging any pupil or pupils to leave one boarding school to follow him to another. I have considered all these possibilities, and combinations of them. But I am left with this. I do not see that these letters would have been written as they were, if the true position ‘on the ground’ had been as Mr Li describes: that, for his part, he was treating Abigail as no different from all the other pupils; that the suggestion of her following him from YMS to CSM came from Abigail and her parents. I also need to put the March 1996 correspondence alongside the established facts: that Abigail, alone, did follow Mr Li from YMS to CSM; that Mr Li was very soon (late March 1996) hosting Abigail and her parents in Manchester, so they could see CSM for themselves (Abigail’s parents wrote on 5 April 1996 to thank Mr Li “for the time you spent with us in Manchester”); and that Mr Li was very happy to stand – and do so without any payment, even for expenses – as Abigail’s guardian and host her at his flat at Salford Quays at ‘free’ weekends and half-terms. The correspondence, coupled with those other facts, makes perfect sense – and

certainly makes “best sense” – if Abigail’s evidence at this trial (and her statements to GMP in 2013) are truthful and reliable, as I find that they are. It was Mr Li’s idea for Abigail to follow him to CSM. That supports the conclusion that Mr Li had, as I find, ‘taken a shine’ to Abigail. That could have been because of her exceptional potential as a violin player, or her personality; it could have been in some other way. Mr Li denies that Abigail had an exceptional talent or potential, compared with his other pupils, or a special personality. There must have been something.

*Confiding in Mr Li*

35. Something which is clearly supported by what Abigail wrote in her letter of 8 March 1996 is that Mr Li and Abigail were by this time having conversations in which she felt she was able to confide in him and felt he was confiding in her:

*... he is my friend and I have often talk with him I have explained everything to him and he understands me completely. He appreciates my mind and admires me, and he also tells me that ... He also tells me things he does not tell anyone otherwise and which you do not know.*

That description, in a letter written in March 1996, when put alongside the rest of the evidence and Mr Li’s reaction to it, has a resounding ring of truth. It is something which Mr Li also denies, but in my judgment with the same unconvincing ‘downplaying’ as his portrayal of Abigail in 1996 as “just another student”.

*Isabelle’s description of ‘relatively little notice’ (1995)*

36. Mr Ford QC relied on a statement made by Isabelle to the foreign domestic police detailing Isabelle’s “memories” of Abigail as her former pupil. It included the statement that “in the summer of 1995” Abigail had “told us about unbelievable events at school”, followed by this description:

*Her new teacher took relatively little notice of her.*

Cross-examined by Mr Ford QC, Abigail denied saying to Isabelle that Mr Li “took relatively little notice of her”, and said she had in fact told Isabelle “the opposite”. In his closing submissions Mr Ford QC relied on Isabelle’s description as one of “five features of the evidence” which, he submitted, were “very hard to make sense of” on Abigail’s case but which “make a lot more sense if Mr Li is correct”. I have found these phrases helpful in evaluating the evidence in this case. Mr Ford QC pointed out: that Isabelle would have had no possible motive (in facing the foreign domestic police investigation) for saying that she had been told this by Abigail, unless it were true that Abigail had said it; that several other matters reported by Isabelle in the same part of the same statement are accepted by Abigail as things she told Isabelle; and that “relatively little notice” supports Mr Li’s description of the relationship between him and Abigail as being a “normal relationship” of teacher and pupil. In my judgment, Isabelle’s statement about Mr Li taking “relatively little notice of” Abigail, and Abigail’s response to it when put to her in cross-examination, do not materially undermine her claim, or her reliability as a witness, or materially support Mr Li’s claim about the relationship between them. The reasons for that are these. The description of Mr Li as taking “relatively little notice of”

Abigail is clearly describing the position at summer 1995. That was the end of Abigail's second academic year (1994/95) at YMS. The description, when read in context, is closely linked to Abigail's violin playing and preparedness for a concert. The paragraph in which the description appears is as follows:

*Her new teacher took relatively little notice of her. She returned to [her country of origin] in a virtually unprepared state before the concert even though he, the Chinese teacher, knew that Abigail had to deal with a major solo evening. He had said: 'If you practise hard in the holidays, you can do it'. She was extremely unmotivated, did not actually want to practice at all in my tasks to make the concert a success despite everything was in fact very difficult.*

This description of Abigail's violin playing and practice time fits with the (undated) letter written by Abigail's father to Mr Li in autumn 1995, referring to the same concert and saying:

*This event was not only for my family a moment to think about [Abigail]'s future. These days I talked to her first violin teacher [Isabelle] ... She is worried about the fact, that [Abigail] has only two lessons a week with you. She is sure, [Abigail] loses too much time to improve better. As an example she told us about the fact that [Abigail] had again to practise more than two hours a day during the preparation for the concert. This made us [consider] very thoughtfully... I can imagine, [Abigail] is not so very important for you, because you have more highly gifted pupils, but I hope that you understand my asking for more lessons with you...*

In his next letter (30 October 1995), Abigail's father told Mr Li that Abigail was "unhappy, because she discovers no chance to become as good as she imagines" and "disappointed at not having the opportunity to become a very good violinist" so that "she wants to leave the school as soon as possible". As has been seen, Abigail's own letter the following Spring (8 March 1996) said: "[Mr Li] does not demand too much of me, but rather, too little"; and "I do not have to practise too much. I do not have enough practice time". These points, about violin teaching time and practice time, are not inconsistent with a 'special' and close relationship. Abigail's father's letter of 30 October 1995 had also said: "You are her special teacher, she thinks highly of you". Abigail's letter of 8 March 1996 contained all the references to: "Mr Li likes me and appreciates me, he tells me that himself", "he understands me completely", "He appreciated my mind and admires me, and he also tells me that", "he is more fond of me/loves me more than the others", and so on. As these letters reflect, there are different kinds of "attention". Later in Isabelle's same statement to the foreign domestic police she said this of the position a year later, in the summer of 1996, when Abigail followed Mr Li to CSM:

*[Abigail] had become very close to [Mr Li] by this time.*

The reference to "took relatively little notice of her" (summer 1995) is in context about violin playing and practice, is consistent with "demand[s] ... too little" (March 1996), is not inconsistent with "likes", "admires", "fond/loves" (March 1996), and Isabelle's statement overall supports the fact that – by 1996 – Abigail was reporting that she was "very close to [Mr Li]" (the "opposite" of what Mr Ford QC put to her that she had said to Isabelle), at the time of following him to CSM. That is the key point. That is the key time. It is what Abigail maintains. It is what Mr Li denies.

*'Inherent implausibility': events in the teaching room*

37. Abigail's evidence in chief at the trial was that, "after a few months or so" of starting at CSM, Mr Li "kissed me after one of my lessons": he "kissed me on the lips and pushed his tongue into my mouth"; subsequent to which "the kissing continued", and Abigail "found it pleasant". This is consistent with what she had told GMP at interview (12 February 2013): that, at CSM, she and Mr Li "got even closer... we started kissing so the kisses would be going from the cheeks where they had been to the mouth, and we'd be kissing in the lessons"; that it was "in the practice room where he was teaching me my lessons"; that the first time "we were saying goodbye and it suddenly ended, that his mouth was on my mouth"; and that this was "before the end of the first term" and "we ... started ... snogging basically". The evidence relating to the classroom at CSM included the following (which I find as further facts): the classroom was on the ground floor; there was a vertical window panel within the door; there were floor-to-ceiling windows looking out on the grounds of the school; the string corridor was a busy corridor with students coming to and from lessons dropping off and collecting their instruments and attending practice sessions supervised by a practice supervisor and with foot traffic from a nearby boarding-house. Abigail's evidence in chief was that the first act of kissing took place when she and Mr Li "were in one of the corners of his teaching room, and it is unlikely that anyone saw us as with most teaching and practice rooms there was only a small glass window in the middle of the door where the corner of the room was not visible"; "the kissing continued and always in the same way. We would be in his teaching room, on the left side of the string corridor, in the left corner, where it would have been difficult for anyone to see us". Abigail had told GMP (12 February 2013) that the kissing took place "in the practice room where he was teaching me my lessons", the door to which had a glass panel in it "so people could see", but that there was "like erm a dead corner where we used to kiss in like erm for instance you wouldn't see this corner". Mr Ford QC submits that it is 'inherently unlikely' and 'inherently implausible' that kissing could have taken place in the circumstances. I do not accept those submissions. The evidence does not support the conclusion that every part of the room was visible from the corridor; nor that people would simply enter the teaching room without first knocking; nor that the grounds outside the room were busy.

*Driving Abigail to a Rakhi Singh concert*

38. The most important day in Abigail's allegations – and in those which she made to GMP in early 2013 – was the day when Abigail says Mr Li drove her to a concert where Rakhi Singh performed, a considerable distance from Manchester. Abigail says they both consumed alcohol at the concert and, after driving back to Mr Li's flat in Salford Quays, they sat in the car outside the flat in the late evening, talking. That was when – she says – Mr Li leaned over, unbuttoned her jeans, pulled her jeans and pants down, put his mouth between her legs and began licking her clitoris and vulva, until she pretended to have an orgasm to make him stop. It was later that night – she says – when she was in bed, after they had both consumed more alcohol, that she awoke to find that Mr Li was on top of her in bed having intercourse with her, to which she submitted. One question is whether Mr Li did take Abigail, alone, to a Rakhi Singh concert in the spring of 1997. In her interview with GMP (12 February 2013) Abigail had described Mr Li driving her to



this concert. She had named Rakhi Singh as having performed at the concert. Later, GMP tracked down Rakhi Singh for an interview (23 July 2013): Rakhi Singh confirmed to GMP that during 1997 she had taken part in two major competitions (the Audi and the Texaco), which she had won; she confirmed that she played in several rounds of those competitions at venues which were a significant drive from Manchester; and that it was possible that Abigail had attended one of those concerts with Mr Li. In his evidence in chief (his witness statement dated 28 July 2020) Mr Li said this to the Court:

*[Abigail] alleges that I gave her special treatment and took her to concerts by herself. This is simply untrue. I took a number of students to concerts if I felt that it would further their education. I often drove a group of my students from [CSM] to concerts put on by the RNCM.*

Mr Li's interview with GMP (14 February 2013) had included this exchange with DC Whalley:

*Do you ever remember an occasion of going to a concert, in 96/97, so September 96 to June/July 97, that academic year, did [Rakhi Singh] put on any of them concerts that you went to?*

*I cannot recall. I cannot recall. But if you ask me if [Abigail] has come with me to the concerts with herself, I'm not so sure.*

*Right.*

*But with group, definitely.*

*Did you ever go to a concert to see Rakhi Singh with just you and [Abigail]?*

*No, never.*

"No, never" fits with "simply untrue". In cross-examination at this trial Mr Levinson, straightforwardly, asked Mr Li whether in spring 1997 Mr Li took Abigail to a Rakhi Singh concert. This was Mr Li's answer:

*This thing I have been asked many times. To be honest with you I'm not hundred percent sure which student, but certainly I took her for a concert of my student, yes, and it could be Rakhi Singh.*

Mr Levinson then asked Mr Li whether his response to GMP – "No, never" – had been untrue. Mr Li's response was:

*Well, now at that time, at the first interview I was under pressure. I could have said that – it's written there. But I did take her to a concert, definitely. I am not sure if it was Rakhi Singh. I should have said I was not sure whether it was Rakhi Singh.*

I am satisfied (and find as facts): that in Spring 1997 Mr Li did take Abigail, by herself, to a concert of a student; and that the student was Rakhi Singh. Abigail has described this clearly, consistently and convincingly. It is consistent with Rakhi Singh's own evidence. It is consistent with what Mr Li admitted in cross-examination. I am satisfied that the GMP interview transcript is accurate and reliable as to what Mr Li told GMP. In my judgment, Mr Li was being evasive when he told GMP he was "not sure" whether he took Abigail to a concert by herself, and in emphatically denying ("No, never") taking her to a Rakhi Singh concert by herself; he was also being evasive when he said in his statement (evidence in chief) that it was "simply untrue" that he had taken Abigail to concerts by herself. That evasiveness, in the context of what was alleged by Abigail about

that day – which Mr Li has denied throughout – makes it harder for me to be able to rely on Mr Li’s evidence about what else happened that day.

*Alcohol at the Rakhi Singh concert*

39. Abigail’s evidence, both to GMP and at this trial, was that she and Mr Li had drunk wine together at the concert. Asked about this in cross-examination, Mr Li said this:

*No, well, you know at intervals, at break time, people have a glass of wine. I do have a drinking situation, but I don’t remember offering to Abigail.*

Asked by Mr Levinson whether it ‘might’ be true, Mr Li responded:

*I don’t know... There [are] many people there. I am talking to other people. I am not aware of that.*

This is a detail, but I found it striking. I cannot accept that Mr Li would take Abigail by herself, at around her 16<sup>th</sup> birthday, to a concert where there were refreshments including alcohol, but that he would have been “not aware” of whether she drank any alcohol, because he would have been “talking to other people”. Mr Li was her teacher and her guardian. He cooked for her. He took her out for meals and drinks. He took her to this concert, by herself. I do not accept that he would have abandoned or ignored her, so as not to be “aware” of whether she had alcohol. I can see that there may be a sensitivity about whether a 15/16-year-old was consuming alcohol, and about Mr Li’s knowledge if she was. But if Abigail consumed alcohol at the Rakhi Singh concert, I have no doubt that Mr Li would have been aware of that. This was another example of evasiveness, which makes it harder for me to be able to rely on Mr Li’s evidence about what else happened that day.

*‘Nowhere outside to park’*

40. Mr Levinson cross-examined Mr Li about what Abigail says happened in the car outside the flat later on the evening of the concert. Mr Levinson put to Mr Li:

*You drove back to the flat and parked outside and performed oral sex on [Abigail] in the car.*

Mr Li responded:

*That’s what she says. It is not true. I will tell you why. There is a very busy road, in front of the flat. It is a ‘corridor’. There is no place to park. It is not allowed. You can only park somewhere else.*

This was another answer that I found striking. Here was Mr Li, at trial, delivering a ‘knockout’ answer (“It is not true: I will tell you why”). It was that the alleged assault could not have happened, because the car could not have been parked outside the flat, as Abigail says and said in 2013. This came across as a new answer – an afterthought – identified for the first time in the witness box, in cross-examination. It was not given in Mr Li’s evidence in chief (his witness statement of 28 July 2020). Nor did Mr Li say this to GMP in any interview. In that interview, he knew what was being alleged. Moreover, he was specifically asked about the car and parking. On 14 February 2013, when Mr Li first responded to what Abigail was alleging against him, DS Whalley asked Mr Li about:

*the allegations that's being put to you. As you're aware the allegation was that an incident happened in your car outside the flat...*

Mr Li's answer was that the allegation was: "completely, not true". During that same interview Mr Li was asked whether there was "a car park to the flat". He responded:

*Yeah, downstairs.*

Mr Li made no mention of the new point now made. I am satisfied (and find) that there was a place to park the car nearby, "downstairs", and "outside the flat". In my judgment, the answer given in cross-examination is another instance where Mr Li was evasive in answering questions about the day of the Rakhi Singh concert. Together with other instances of evasiveness, this undermines my ability to rely on Mr Li as a witness of truth.

*'Inherent implausibility': events in the car*

41. In her evidence in chief, Abigail said this is what happened:

*We were talking alone in the car, in front of his house until late in the evening. Suddenly, [Mr Li], who was in the driver's seat, bent over, across my lap, he ripped open the buttons on my jeans which came undone very easily because they were [Levi] 501s. He pulled my jeans and my pants down and started to lick my clitoris and my vulva. I was extremely shocked and I did not what to do. I panicked, but I wanted to stay cool, and after a few minutes, I decided to fake an orgasm so he would stop.*

In her police interview (12 February 2013) Abigail told GMP that Mr Li had bent over and unbuttoned her trousers and pulled her knickers down. She said: "I remember that I wasn't moving... I remember that I didn't move". She said: "he just unbuttoned my trousers and pulled my knickers down"; "he wasn't pushing me around, he wasn't making any jerking movements, he was just looking for some access to the area". She said: "it was a matter of a few seconds that basically I was partly naked", and that Mr Li "could only reach a certain area on top like he, he was reaching my clitoris, but there was no way he could erm get, just bending over, he could get to... the bottom part". Abigail said: "he put his head in my lap and he was licking... my clitoris". She said it was "very short because I was thinking what should I do and I didn't want him to continue. But I also didn't want to have a confrontation and tell him to stop. So I just decided I'm going to moan and pretend I've had an orgasm. And then he's going to be happy and it's all going to be over I thought". She said: "I was moaning" and "then it stopped basically" and Mr Li "seemed quite happy". Abigail also told Professor Maden that she "did not cooperate with [Mr Li] in any way". In cross-examination, Mr Ford QC put to Abigail that what she had described to the police and to the Court "could not" be accurate. It was put to her: that the Levi 501s, which she had told the police and this Court that she had been wearing, were "quite tight"; that she had told the police "I wasn't moving" and "I didn't move"; but that she must have "cooperated" by "lifting up your lower body from the seat"; that Mr Li "couldn't have taken your clothing down unless you moved"; and that it was "anatomically impossible" for Mr Li to have access with his mouth to those parts (her clitoris and vulva), by bending over from the front seat of a car, unless she moved her body to "cooperate". Mr Ford QC made clear that, in referring to "cooperation", he

was not suggesting “consent”. In response, Abigail told Mr Ford QC that the 501s were not “quite tight” (as Mr Ford QC described them): they were “baggy actually because I was losing weight”. She said: “I don’t remember moving but I guess I must have moved a little bit. I remember I wasn’t moving in the beginning; it could be that I moved slightly later on”. She denied “cooperating” and “lifting up her lower body from the seat”. As to the “removal” of clothing, she said Mr Li “definitely opened my pants”. As to whether Mr Li would be able to access to the area she described, with his mouth, Abigail said: “of course”; “easily”; that “anybody could” unless they were “disabled”; and this was without her having “lifted herself”. She accepted that it was “not physically possible to stay absolutely still” but said “I didn’t consciously move” and “I didn’t move at the beginning”. Mr Ford QC submitted – and invited me to find – that there was an “anatomical impossibility” as to the assault said by Abigail to have taken place in the car, especially when taken along with Abigail’s insistence to GMP and Professor Maden that she did not do anything to move or “cooperate” with Mr Li “in any way”. Mr Ford QC, fairly, accepted that Abigail would not have meant that she was “frozen to the spot”. His point was, as he put it, that “the clothing could not come off and the assault could not take place without Abigail having significantly shifted the position of her body in order to facilitate those things”. Mr Ford QC repeated that this was not a consent issue. Rather, it “simply could not be right” to say that the assault had happened in the way Abigail described, and yet for Abigail to maintain that she did not move and “cooperate”.

42. In my judgment, there are two linked strands here. One relates to clothing and the moving or removal of clothing. The other relates to the physical possibility of placing a mouth in the position to be able to lick the clitoris and vulva. They are linked because what has happened to clothing could be relevant to what is physically possible by leaning over from the driver’s seat. A common theme is that Abigail’s “cooperation” – which she denies giving – would have been needed, for what she alleges to be “anatomically possible”. As to clothing, as I have said, Mr Ford QC put in cross-examination that the Levi 501s would have been “quite tight”. That is relevant, and significant, to the question of what Mr Ford QC says about what was “anatomically possible”, by leaning over from the driver’s seat, without Abigail having “cooperated”. As I have said, Abigail’s response was: “they were baggy actually, because I was losing weight and they were quite old”. I found that a straightforward and convincing response. I accept (and I find) that the 501s were “baggy”. There is a lot of evidence before the Court which links to Abigail’s reference to “losing weight”. Her unchallenged evidence in chief was as follows:

*Since the beginning of 1997, I had dieted to the extreme and I worked out at the school gym a lot. I had weighed about 54 kg at the beginning of the year and I was losing weight rapidly. I felt very encouraged by anyone who complimented my new, slimmer figure, and [Mr Li] told me, once, in his car, that ‘my body looked more beautiful every day’ ...*

Abigail told Dr Freedman that she had an eating disorder which began when she was 15 or 16. She told Professor Maden that she developed an eating disorder beginning around her 16<sup>th</sup> birthday. Dr Sankl’s 2008 report records Abigail telling Dr Sankl that: “At the school in Manchester, [Abigail] then put herself on a very extreme diet and did sports. The school had a gym. She then received a lot of compliments for her slim figure. She

subsequently developed an eating disorder”. Abigail’s victim personal statement given to GMP (30 October 2014) said: “in 1997 ... I developed an eating disorder and I suffered from anorexia and bulimia for a period lasting about 5 years...”

43. As to what happened to the clothing, Abigail claimed that the jeans and the pants were ‘moved’. But she did not claim – nor accept that she had claimed – that the jeans or the pants were ‘removed’, that is taken off, over her feet. In his closing submissions Mr Ford QC described Abigail’s “case” as being that the clothes “came off or at least down”. But “off” and “down” are very different things. They have different implications as to what body movements would have been necessary, by Mr Li, or as “cooperation” by Abigail. Indeed, if the jeans (with or without the pants) came “off”, then there was also an obvious question about what happened regarding footwear. I put to Mr Ford QC that there is a difference between clothes coming “off” and clothes coming “down”. I asked Mr Ford QC: whether he was submitting that Abigail’s evidence was that the clothes had come “off”; and, if so, what was the source of that submission. As I have said, Mr Ford QC had said: “off or at least down”. His response to my questions ultimately rested with this submission:

*... to remove the clothing from the lower half of her body – whether the trousers are down and the pants came off completely or whether they stayed around the lower part of her legs – that wouldn’t be possible without [Abigail] lifting up her bottom to facilitate the removal.*

In my judgment, Mr Ford QC was right not to submit that Abigail’s evidence was that clothes had come “off”, rather than “down”. In cross-examination Abigail said “Mr Li bent over and opened my pants performed oral sex on me”. Her evidence in chief was that Mr Li “pulled my jeans and my pants down”. She was taken to this, with the question that she must have cooperated by lifting up her lower body from the seat “if Mr Li were to pull down your jeans and pants as you say”. Abigail was also taken to her GMP interview. There, she had said Mr Li “pulled my knickers down” so that “basically I was partly naked”. Abigail responded in cross-examination: “he definitely opened my pants”. On the next page of the same GMP interview Abigail referred to Mr Li as having “pulled the trousers and knickers down slightly” and when asked “whereabouts did they go to” her answer was “not far down”. Mr Ford QC asked Abigail this question: “He couldn’t have taken your clothing down from your lower half of your body if you didn’t move could he? It’s not physically possible because you were sitting down”. Abigail’s response was: “yes, I think it’s impossible that I didn’t move whatsoever during the assault”. There was a point at which Mr Ford QC asked this question: “if your clothing had been removed and you were sitting down still, he would not have been able to access that area with his mouth?” Abigail responded: “yes he could, of course, easily”. There was one point at which Mr Ford QC said: “I think you have agreed that you must have moved in order for him to get your lower clothing from your body”. Abigail replied: “I think that I must have moved a little bit if my pants had been taken off completely”. Mr Ford QC followed up: “you must have lifted your bottom off the seat”. Abigail replied: “it could be that I have lifted it slightly without necessarily knowing it”. I did not regard the cross-examination, when I heard it, as having established that Abigail was saying – or accepting that she had said – that the jeans, or pants, had been removed completely from her body, over her feet,

by Mr Li. Having deliberated on everything that was said, I still do not regard it as having done so. Nor did Mr Ford QC maintain that it had done so. If that was what Mr Ford QC was wishing to establish, a clear, direct and straightforward question could – and I have no doubt would – have been asked.

44. What remains is Mr Ford QC’s submission that it is “anatomically impossible” that Mr Li could have moved Abigail’s jeans and pants “down” her legs, and then placed his mouth in a position to access her clitoris and vulva with his tongue as she describes, without Abigail significantly shifting the position of her body in order to facilitate that happening, by moving and “cooperating”. Mr Ford QC took me to Professor Maden’s expert report, which said:

*It will ... be important for the Court to consider whether such an assault is anatomically impossible. [Abigail] told me and she said in her police interview that she had not cooperated with or assisted [Mr Li] in any way. I find it difficult to see how this assault could have been carried out without such cooperation when she was seated in a normal position in a car seat and wearing jeans.*

I cannot accept Mr Ford QC’s submission on ‘anatomical impossibility’. Professor Maden is a distinguished forensic psychiatrist but, naturally, he does not claim expertise on the question of what is anatomically impossible. His observation is about something he finds it “difficult” to “see”. He treats “wearing jeans” as significant, which may indicate a shared premise – with Mr Ford QC – about them being tight-fitting jeans. What Abigail describes is Mr Li placing his mouth between her legs and began licking her clitoris and vulva, until she made him stop by moaning and pretending to have an orgasm. Mr Ford QC accepts that she was not saying she was “frozen to the spot”. Abigail accepts that she must have moved “a bit”. Her oral evidence that Mr Li was able to reach these areas was convincing. There is no other evidence before the Court as to “anatomical impossibility” absent “cooperation”. I am being asked, in effect, to reach a conclusion on anatomical impossibility as a matter of obvious common sense. I am unable to accede to that invitation. I find that there is no anatomical impossibility or inherent implausibility.

*‘Inherent implausibility’: events in the night*

45. Abigail’s evidence in chief as to what happened next was as follows:

*We went upstairs, to his apartment where we had some bourbon, whiskey or brandy. I felt tipsy and I just want to forget what had happened. I went to sleep by myself, in the guestroom and I was glad that it was ‘over’. After I had fallen asleep, in the middle of the night, I woke up because I felt I was being penetrated, something was inside of my vagina. At first, I thought that it was a finger, [Mr Li’s] finger, but then I realise that it was his penis, which felt very small, and soft. [Mr Li] was on top of me, over me. I did feel some weight on me yet I noticed that he was ‘not close’ to me, his face seemed quite far away from me. [Mr Li] had started moving in and out of me, his penis was moving in and out of my vagina and I was so shocked that I did not know what to do. I thought that it was ‘already too late!’, I kept thinking: ‘it is too late’, ‘he has already started’, and that I could not do anything about it.*

This description – which Mr Li denies – is consistent with what Abigail told GMP at her interview (12 February 2013). This was her evidence in chief about how she felt afterwards:

*I felt a little silly, because now it seemed as if this was the logical consequence of all time we spent together, that this was the ‘normal’, ‘natural’ result. Now, it seemed as if he had been dating, rather than spending time together as friends, or like family, and I had not realised it before... I felt a little guilty, I felt that I was partly responsible for what was happening, I thought that it was my fault that I had not realised that things had been ‘moving in this direction’. I thought that ‘this is what grown-ups do’, ‘this is what happens in a normal relationship’, and I did not want to lose him, did not want to lose the friendship or his teaching, so, I pretended that nothing was wrong. I also did not want him to get into trouble either. From this night on, we had sex on a regular basis ...*

Abigail’s evidence is that she did not, at that time, recognise what had happened as constituting sexual “abuse”, or sexual “assault”, or “rape”. She saw it as Mr Li:

*taking advantage of me.*

Mr Ford QC did not submit that there was anything inherently implausible about any of this evidence: about what happened in the night; about what Abigail did and did not do at the time; about how she felt afterwards; about how she saw it afterwards. In my judgment, he was right not to invite the conclusion that any of this is inherently improbable or implausible. It is not.

*Abigail’s account, in the light of subsequent events*

46. Mr Ford QC relies on a number of subsequent events as significantly undermining the claims made by Abigail in relation to sexual assault by Mr Li in 1997. Four of the “five features of the evidence” on which Mr Ford QC relied in his closing submissions – as “very hard to make sense of” if Abigail is correct, but of “making a lot more sense” if Mr Li is correct – relate to subsequent events (the other one concerns Isabelle’s ‘relatively little notice’ description, with which I have dealt). They are: (i) that what Abigail told Mr Joo in June 1997 was “completely different” from what Abigail alleges, which “significant inconsistency” undermines her version of events; (ii) that the actions of Abigail’s parents in and after June 1997 are “untenable” if Abigail had revealed to them sexual assault by Mr Li (I will be calling this ‘Revelation’), and if Abigail’s father had telephoned Mr Li accusing him of sexual assault (I will be calling this ‘Accusation’); (iii) that it is “not really tenable” and “can’t be right” that Abigail would make contact with Mr Li (‘Reconnection’) and return to Manchester to RNCM to be taught by him in 2002 (‘Reunion’) if Abigail had been – and had revealed to her parents in summer 1997 that she had been – sexually assaulted by Mr Li; and (iv) that it undermines Abigail’s account that she told Dr Sankl in 2008 that she had “not suffered any negative sexual experiences in England” and then did not (in early 2009) correct that statement recorded in Dr Sankl’s report. Mr Ford QC relies on other subsequent events: including the Wabnig memorandum. As I have explained, Mr Ford QC made clear in his closing submissions that CSM was not advancing the position that Abigail has given the Court a deliberately false account. In that regard, he reminds me that Professor Maden has suggested that a “possible diagnosis” is a “delusional disorder”. Mr Ford QC reminded me of Dr Sankl’s assessment of Abigail’s ‘exceptionally poor memory’, and of Abigail’s “bizarre”

accusations of conspiracy and serious wrongdoing in relation to the foreign domestic police investigation. Overall, he submits that there are “the strongest grounds” for being “extremely cautious” in accepting Abigail’s “uncorroborated account”; that the Court cannot accept Abigail’s account on important disputed facts; or alternatively that these features of the case show it is not possible – after all these years – for CSM (and Mr Li) to have a fair trial, the passage of time having undermined the cogency of Abigail’s evidence. I will be discussing below the evidence relating to the key topics which feature in these submissions.

*Revelation to Mr Joo (June 1997)*

47. In my judgment, Mr Joo’s evidence is an important feature of the case. Both Counsel recognised that. As I have explained, one of Mr Ford QC’s “five features” points relates to Mr Joo. Mr Levinson’s closing submissions on the Factual Issue began with Mr Joo. I agree with both Counsel that Mr Joo’s evidence is highly significant. But I cannot agree with Mr Ford QC’s characterisation of Mr Joo’s evidence as “very hard to make sense of” if Abigail’s description of the events of 1996/97 is correct; still less that Mr Joo’s evidence “makes a lot more sense if Mr Li is correct”. In my judgment, precisely the opposite is true. Mr Joo’s evidence “makes a lot more sense if [Abigail] is correct”. The critical point is that Mr Joo – clearly and convincingly – describes Abigail as telling him in June 1997 that Mr Li had taken advantage of her sexually, with Mr Li on top of her in the night, which Mr Joo understood to be a description of rape, and which he recounted soon afterwards to Brian.
48. Mr Joo is an international pianist based in the foreign capital city who describes himself as a friend of Abigail’s. He was skilfully cross-examined by Mr Ford QC. Mr Joo studied for 7 years at YMS 1984-1991. He was friends with Brian (YMS 1988-1994), a violin student taught by Mr Li at YMS (1990-1994) and later at RNCM. Mr Joo knew Mr Li, who started at YMS in 1988. Mr Joo and Mr Li subsequently worked together. Mr Li, in his evidence at the trial, described Mr Joo as a wonderful musician. Mr Joo’s evidence relates to conversations with Abigail, conversations with Brian, and what Mr Joo told GMP in 2013. Mr Joo gave evidence at the trial about his first encounter with Abigail in June 1997. That evidence came to this. Mr Joo met Abigail for the first time at an end of year concert at YMS in June 1997. Subsequently, they had a number of phone conversations. By June 1997, Abigail had herself already left YMS, as had Mr Joo, but it was common for former YMS students to return for the year end concert. The YMS student body is a tight-knit community and there is an automatic ‘connection’ between almost everybody who has studied at YMS. Prior to the trial, Mr Joo had been able to locate his organisational calendar for 1997. Based on that he told me, with a high degree of confidence, that the weekend at which he first met Abigail would have been the weekend of 28/29 June 1997. Mr Joo and Abigail went for a walk. The conversation turned to Mr Li. Abigail confided in Mr Joo that she had been sexually assaulted by Mr Li. It has happened to Mr Joo many times in his life that all kinds of people have confided personal things to him. He puts that down to his nature, that people feel comfortable in confiding secrets and emotions to him. He told the Court:



*I think it's part of human nature. I think she needed to get it off her chest. I was the right person at the right time.*

Mr Joo describes a “clear recollection” of the contents of the discussion and says he “can still picture the moment” when Abigail told him, though he “cannot remember her exact words”. What Abigail told him was that she had been raped by Mr Li; that it was something that she did not want. He remembers that she was in a lot of pain about it and that it had deeply affected her. Mr Joo told the Court:

*I remember very clearly [Abigail] telling me that she had been raped [by Mr Li]. I cannot tell you with any certitude how many times it was. I just know this one time when she told me he came into her room and forced himself upon her without her consent. That's what I remember very clearly.*

In his evidence in chief (witness statement) Mr Joo said this:

*I met [Abigail in the Summer of 1997 at the [YMS]... We ended up going for a walk and whilst talking the subject turned to [Mr Li]. I was shocked when [Abigail] confided in me and told me about her bad experiences with him. I remember very clearly [Abigail] telling me that [Mr Li] had come into her room and forced himself upon her without her consent. She said it was not something she had wanted and wanted him to stop but he did not listen. I think this had happened not long before our meeting and it was a very traumatic experience for her which she needed to share with someone. I may have been the first one she had confided in about this.*

On 15 March 2013 Mr Joo wrote an email to GMP (DC Barker), as follows:

*Further to our conversation and per your request, I am writing a statement about my recollection of what [Abigail] told me several years ago.*

*I think it was the summer of 1997. I had the pleasure of meeting [Abigail] at the [YMS] – I'm assuming it was at the end of year Summer Concerts or some other public event held at the school. She was no longer a student at the YMS that summer and was studying with Mr Li elsewhere, possibly Manchester. At some point, we went for a walk and she started to tell me what had happened to her.*

*She told me that her teacher [Mr] Li had made various attempts to seduce her and have sex with her and that she had refused and had managed to escape the uncomfortable situation and his advances. However, at some later point, she found Mr Li on top of her, and although she had repeatedly screamed 'NO', Mr Li did not stop and continue to force himself on her, and then had sex with her against her will; in other words he had raped her.*

*I am sure she told me all of this in more detail, but this is the main summary of what I can recall after all these years.*

49. Mr Joo was cross-examined in detail by Mr Ford QC about whether there were inconsistencies between his witness statement (evidence in chief) for this trial and his 15 March 2013 email to DC Barker. Mr Joo, convincingly, explained that each was a summary which was produced after a much longer interview. When asked by Mr Ford QC why the police email refers to earlier incidents (“various attempts”) whereas the witness statement (evidence in chief) describes an incident where Mr Li “had come into her room and forced himself upon her without her consent”, Mr Joo replied: that the

witness statement was a summary of what he said in an interview with the solicitor; that he was being asked specifically about the Li “rape” case; that the statement was sent to him and he was asked to sign it if it was correct; that it was correct, and so he signed it. Having been asked in cross-examination about previous occasions, Mr Joo told me this: that, while he did not remember all the details, he did not recall Abigail as having described a single incident; and that his impression was that there were other similar acts or attempts. Asked whether he remembered Abigail referring to other incidents, he replied: “to the best of my recollection it seemed to me that this was not one of its kind.” Cross-examined on whether he recalled clearly being told about other incidents where Abigail had had to “refuse” Mr Li and to “escape” his attention, Mr Joo replied: “I do not remember clearly that being said, but there is something in my memory that she may have mentioned that he had acted in a similar way. This is the best of my impression”. Having been shown the email to the police, Mr Joo said: “it confirms what I told you: that I seem to remember that it was not the first time”. I found that an entirely convincing response from Mr Joo. The evidence in chief (witness statement) itself referred to Abigail having told Mr Joo about her bad “experiences” – plural – with Mr Li, and then focuses specifically on the occasion when Mr Li came into Abigail’s room and forced himself upon her without her consent. That Abigail recounted such an event to Mr Joo is consistently described by Mr Joo: in his email to the police; in his witness statement (evidence in chief) at the trial; and in cross-examination. Challenged about the email to the police, when put alongside the witness statement, Mr Joo’s convincing response was that the two are “exactly the same – not in words and wording: one is more detailed than the other – but both say the same thing”. Mr Ford QC also cross-examined Mr Joo on the email to GMP (15 March 2013) and whether Mr Joo remembered Abigail saying that she had “repeatedly screamed ‘NO’”, Mr Joo said this: “yes, I know that she repeatedly said no. That’s what she told me”. Mr Joo was asked by Mr Ford QC about the phrase in the witness statement “she... wanted him to stop but he did not listen”, compared with the phrase in the email to the police “although she had repeatedly screamed ‘NO’, Mr Li did not stop and continue to force himself on her”. Mr Joo said to Mr Ford QC: “Sir, with all due respect it says here she said it was not something she wanted and wanted him to stop but he did not listen. Isn’t that a narrative reduction of repeatedly screaming no?” In my judgment, there was no material inconsistency between the evidence of Mr Joo in his email to the police (15 March 2013), the evidence of Mr Joo in chief (his witness statement dated 8 July 2020), and his evidence under cross-examination at the trial (20 July 2021).

50. In his closing submissions Mr Ford QC told me that there was no basis on which CSM could invite me to find that the conversation described by Mr Joo never in fact took place. Nor did Mr Ford QC maintain, at least not with any force, that there was any inconsistency between Mr Joo’s email to the police and Mr Joo’s witness statement, which could serve to undermine Mr Joo’s evidence. I am entirely satisfied that Mr Joo was a truthful witness in whom I could have confidence and on whose evidence I could rely. I am satisfied – and I find as a fact – that a conversation between Mr Joo and Abigail took place in June 1997 at YMS, in which Abigail told Mr Joo that Mr Li had come into her room and forced himself upon her sexually without her consent. Mr Ford QC’s submission was a different one. It concerned inconsistency between what Mr Jo

described and what Abigail is alleging. Mr Ford QC invited me to find as a fact that what Mr Joo was told by Abigail at that meeting in the summer of 1997 was “completely different” from the allegation Abigail subsequently made, and made in these proceedings, undermining Abigail’s case. That “significant inconsistency” was because of Mr Joo’s description in the email to the police of Abigail describing “various attempts to seduce her and have sex with her” which she had “refused and had managed to escape”, and Mr Joo’s description of Abigail having “repeatedly screamed ‘NO’”. That, says Mr Ford QC, does not undermine Mr Joo’s evidence; but it does undermine Abigail’s claim and her evidence, for she does not describe “escape” from Mr Li’s “attempts to ... have sex with her”; and she does not describe having “repeatedly screamed ‘NO’”. In my judgment, there are three points to make about this.

- (1) First, Mr Joo has given a clear and convincing account, which I am satisfied is truthful and reliable, that in June 1997 Abigail confided in him that Mr Li had come into her room and forced himself upon her sexually without her consent. That is the central – and the most serious – allegation of sexual assault which Abigail made to GMP at the start of 2013, and which she makes in these proceedings against CSM. (It is also the incident said to have been the subject of the ‘Revelation’ to her parents later in the summer of 1997.) This clear and convincing account by Mr Joo is not “very hard to make sense of”. It certainly does not “make a lot more sense if Mr Li is correct”. It is at the heart of the case. It is clear and reliable evidence of Abigail reporting events in June 1997, which are said to have happened in the spring of 1997, and which would have been fresh. Moreover, what Abigail was reporting cannot be attributed to what Dr Sankl later described as ‘long-term memory’ problems. It cannot be attributed to the effect of the passage of time in playing tricks on the memory, leading to a belief that something happened a long time ago when it did not. Nor can I accept the belated suggestion by Professor Maden of a possible “delusional disorder” – still less one which was operating in June 1997 – a topic to which I will return at the end of my discussion of the evidence.
- (2) Secondly, as to Mr Joo’s description of a refusal of “various attempts to seduce her and have sex with her”, and Abigail having “managed to escape the uncomfortable situation and his advances”, I do not accept that there is in this phrase a material inconsistency between Mr Joo’s evidence and Abigail’s claims, still less one which undermines the support which Mr Joo’s evidence gives to Abigail’s case. Mr Joo – consistently and convincingly – has said that he recalls having had the impression that the “rape” was not an isolated incident. What he describes is the culmination of a sequence involving “advances” and “sex” and “escape”. I can put this alongside Abigail’s description of what had happened in the car, when Mr Li began licking her clitoris and vulva, which she was able to bring to an end by simulating an orgasm. The words – and the ideas of – “advances” and “sex” and “escape” are all consistent with that description. Mr Joo told me he does not recall Abigail referring to a car; and he did not refer to a car in his email to GMP. Abigail says she did mention the incident in the car. But there is in my judgment no material inconsistency here, still less one which would undermine the reliability of Mr Joo’s

evidence. Abigail was cross examined by Mr Ford QC about what she had revealed to Mr Joo. She said: “I remember that I told Mr Joo that Li wanted to have sex with me in the car and that I didn’t want this and I remember that I told him I was upset and angry”. Cross-examined about Mr Joo’s use of the word “escape”, Abigail said: “I think I may have told him that I managed to avoid it, so this would explain the word escape. I don’t mean that I physically ran”. Mr Joo has used a vivid word – “escape” – to encapsulate what he heard and understood. But I find no substantial inconsistency or incongruence; still less beyond what could be expected when a story is being heard, is being understood, and is being recollected.

- (3) Thirdly, as to “she repeatedly screamed ‘NO’” and “she repeatedly said no” and “she wanted him to stop but he did not listen”, Mr Ford QC is quite right that Abigail does not claim in these proceedings, and did not claim to the police in 2013, and does not say that she revealed to her parents later in the summer of 1997, that she “screamed ‘NO’” or “said no”, or said things to which Mr Li “did not listen”. Her description, in 2013 and now, is that there was a sexual assault to which she did not consent, but to which she submitted. (This fits with something I will come to at the end of this discussion of the evidence, regarding ‘signals’.) Moreover, I cannot accept Abigail’s suggestion, in cross-examination, that Mr Joo may have confused a description by Abigail of an earlier argument between Abigail and Mr Li. Mr Ford QC says I can rely on Mr Joo’s clear recollection, as to Abigail ‘screaming NO’ or ‘saying no’, but since Abigail made to GMP (2013) and makes (in these proceedings) no such claim, it undermines her claim and supports Mr Li’s version of events. I need to have in mind that the core event in dispute is whether Mr Li forced himself on Abigail; not whether she struggled or screamed or spoke and he did not listen. Like “escape”, “scream” is a vivid word. Mr Joo is clear in remembering hearing Abigail having verbalised her lack of consent: she “screamed NO”, she “said no”, or spoke and he “did not listen”. In my judgment, there is a clue in Mr Joo’s email to the GMP, where he says Mr Li:

*... had sex with her against her will; in other words he had raped her.*

Nowhere in Mr Joo’s evidence – in the email to the police, in the witness statement (evidence in chief), or in cross-examination – does Mr Joo say that Abigail reported what had happened by herself using the word “rape”. Mr Joo consistently says that Abigail described how Mr Li, having come into her room, forced himself upon her, against her will, without her consent, and it was something she did not want. Mr Joo says Abigail was “telling me that she had been raped”. But when he used the phrase “he had raped her”, in his description to GMP, Mr Joo prefaced it with the phrase “in other words”. That supports “rape” as having been Mr Joo’s word, to understand what in substance he had heard, and understood, and recalled. In the context of understanding – as “rape” – an assault involving sex “without her consent”, and “against her will”, which was “not something that she wanted”, it is not unnatural for Mr Joo to have been picturing verbal resistance (‘she said no’, ‘she screamed’, ‘she screamed no’). It has been, as judicial fact-finders need to be aware (I have in mind the Equal Treatment Bench Book), a longstanding

expectation or assumption that rape victims ‘do all they can to resist and escape’. That ‘myth’ could operate to lead a listener to infer no rape, from the absence of struggling or screams. But it could also lead a listener to infer struggling or screams, from a description received as rape. The explanation which makes most sense, by far, is that Mr Joo – as with his vivid phrase “managed to escape” – understood that he was hearing a description of “rape” – “in other words” – which he heard, received, absorbed and then recalled as involving vivid verbal protest. But even putting that to one side, the fact that there should be a difference between what Mr Joo recalls as to the details of what happened when Mr Li “forced himself upon her without her consent” does not, in my judgment, materially undermine Mr Joo’s evidence in corroborating Abigail’s: that this is what she reported to him, just a few months after it had happened. As I have said, Mr Ford QC does not invite the conclusion that Mr Joo’s evidence is materially unreliable; nor the conclusion that Abigail has given this Court a deliberately false account. Nor does Mr Ford QC suggest that Abigail gave – or had any reason or motive for giving – a deliberately false account to Mr Joo when they met at YMS in June 1997. No reason has been suggested why Abigail should want to get Mr Li into trouble in 1997; nor, if she did, that she would report Mr Li to Mr Joo.

51. I remind myself, of course, that the fact that Abigail told Mr Joo in June 1997 that Mr Li had come into her room and forced himself upon her sexually without her consent is not independent evidence about what happened between Abigail and Mr Li. It is only evidence about what Abigail told Mr Joo about what she said had happened between her and Mr Li. Mr Joo’s evidence is relevant in enabling me to consider whether or not Abigail has been consistent in what she has alleged and whether or not she has told me the truth. I agree with Mr Levinson that Mr Joo’s evidence provides me with very considerable assistance in this case. I do not agree with Mr Ford QC that Mr Joo’s evidence is “very hard to make sense of”. Still less can I agree with Mr Ford QC that Mr Joo’s evidence “makes a lot more sense if Mr Li is correct”. On the contrary, Mr Joo’s evidence makes a lot more sense if Abigail is correct.

*How Mr Joo came to explain (2013) what Abigail told him (1997)*

52. I have found this feature to be an additional helpful piece of the evidential picture. Abigail went to GMP in January 2013 to report her allegations against Mr Li. In doing so, she did not ‘parade’ Mr Joo, as a witness to ‘back her up’, because of something she was saying she had told Mr Joo in 1997. This is what happened. Abigail was first interviewed by GMP on 12 February 2013. Abigail recounted what she said had happened between her and Mr Li. She was then asked follow-up questions. During those follow-up questions she recounted something about a conversation with Mr Joo. But it concerned something which Mr Joo had told her. It appears at page 15 of the 40-page interview transcript:

*Erm one more thing which happened erm I was visiting the [YMS] during I was at [CSM]. And I met a former student there who told me that my teacher [Mr Li] had been making advances on a 12-year-old girl, who was the sister of a student from [YMS].*

She was then asked when she visited YMS, to which she replied 1997. The interviewing officer (DS Whalley) said:

*... we'll come back to that visit and talk about this ...*

And so they did. At the end of the interview (page 38 of 40), DS Whalley came back to this topic and said: “you said you got told about some... 12-year-old girl”. Abigail’s response was:

*Yes, so in 97 I was visiting, visiting erm the [YMS] and I met a former student there by the name of [Mr Joo]... And erm he mentioned to me, erm, I also told him that there was something going on between me and [Mr Li]. I don't remember exactly what I told him or when I told him that. But it was in that year. And he told me that he had heard from a student's mother, the student was called [Ghisele] ...*

Abigail went on to tell DS Whalley GMP what Mr Joo had told Abigail, about what Brian had told Mr Joo, concerning Mr Li and (12-year-old) Ghisele. The comment “I also told [Mr Joo] that there was something going on between me and [Mr Li]” was something which came out of the interview, naturally, and indirectly. GMP picked up on it, and later followed up with Mr Joo. The line of investigation about Ghisele and Mr Li, including what Mr Joo had told Abigail about that, proceeded by reference to Brian and then Ghisele herself. It was GMP who recognised the significance of Mr Joo being able to assist with what Abigail had told him. Mr Joo was asked to put into writing his “recollection of what [Abigail]... told me several years ago”. That was the purpose of the email dated 15 March 2013, as that email makes clear in its opening sentence. The fact that Mr Joo’s supportive evidence emerged naturally, in my judgment, reinforces the weight that can be put on it.

*Mr Joo’s evidence: a reinforcing matrix*

53. I have been addressing Mr Joo and Abigail’s evidence to this Court (and in 2013 to GMP) that in June 1997 Abigail told Mr Joo about Mr Li sexually assaulting Abigail. There is a wider dimension. As Mr Levinson powerfully submitted, that evidence sits within a reinforcing wider matrix of support, involving Brian and Ghisele. The position involves the following four points. First, Point (1): Mr Joo’s evidence in chief describes Brian reporting to Mr Joo what Ghisele had reported to Brian, about Mr Li having sexually assaulting Ghisele. This was Mr Joo’s evidence on this aspect:

*I was friends with [Brian] and he had also told me a story about [Mr Li] abusing someone and I shared this with [Abigail]. [Brian] told me that [Mr Li] was in a relationship with the mother of a student at the school [who] also had a sister – [Ghisele]. He told me that [Mr Li] had forced himself upon [Ghisele] whilst she was very young. I remember being very shocked by this especially as her mother had not believed her and was very upset with her. This was very disturbing as I remember thinking how can that be when she should have been upset with [Mr Li]. I spoke with [Brian] on numerous occasions about this ... I am aware that [Ghisele] ... could not report it to the police as this would have brought shame on the family who are likely to have disowned her.*

Then, Point (2): Mr Joo’s unchallenged evidence in chief added that Mr Joo reported to Brian what Abigail had reported to Mr Joo, about Mr Li having sexually assaulted Abigail:

*I also shared [Abigail's] experience with [Brian]...*

Next, Point (3): GMP took a detailed statement (under section 9 of the Criminal Justice Act 1967) from Brian (21 April 2013), in which Brian corroborated Mr Joo as to both these points. In relation to Point (1), Brian's police statement said this:

*... in my final year in Manchester, this would have been either 1997 or 1998... I had been in more and more contact with another old [YMS] friend of mine, [Mr Joo]. On one occasion a conversation led to my confiding in him the whole story about [Mr Li] and [Ghisele]...*

In relation to Point (2), Brian's police statement continued:

*To my surprise [Mr Joo] told me that he also knew something regarding Mr Li. A student of [Mr Li's] with whom [Mr Joo] was friends had confided in him that [Mr Li] had raped her. I was horrified by the revelation and mortified that I was perhaps guilty of having not done more to prevent exactly this eventuality. I knew of the girl in question, [Abigail]... I think she was even at [YMS] when I was, but I was not really acquainted with her. [Mr Joo] and I spoke a great deal about the situation, over the following months. I do not recall if I actually met with [Abigail] or not, but I certainly told him to tell her of my story and assure her that I would happily go on the record if she chose to take any action. She did not, which of course I could understand, and ... the matter passed.*

This is evidence from Brian's 2013 statement to GMP which recounts Mr Joo having told Brian in 1997 or 1998, that Abigail had confided in Mr Joo the fact that Mr Li had raped Abigail. Finally, Point (4): Abigail's own police interview supports what Brian and Mr Joo both say about Brian having confided in Mr Joo, what Ghisele had reported to Brian, about Mr Li sexually abusing Ghisele. As has been seen, this was how Abigail first mentioned Mr Joo to GMP at her first police interview. Mr Joo was cross-examined by Mr Ford QC as to why the conversations with Brian (about Mr Li and Abigail, and about Mr Li and Ghisele) were not part of his 15 March 2013 email to GMP. But the answer is in the email:

*Per your request, I am writing a statement about my recollection of what [Abigail]... told me...*

Mr Joo convincingly explained: that he had been interviewed by DS Barker and had described the allegation relating to Ghisele; that DS Barker had asked to speak with Brian; that Mr Joo then called Brian who had agreed to speak to the police; that Mr Joo was then asked to send his email providing his summary (of what Abigail had told him). This description of the sequence of events is confirmed in Brian's section 9 police statement. I add, since Mr Li questioned this, that the evidence in my judgment involves no 'discrepancy' as to the sequence of conversations and topics of conversation between Abigail, Mr Joo and Brian.

*The evidence about Ghisele (1992)*

54. This topic links to Mr Joo and Brian, and to the reason Abigail first mentioned Mr Joo to GMP. It makes sense to discuss it now. The material before the Court indicates the nature

of the allegations reported to Brian by Ghisele and then reported by Ghisele to GMP (before Ghisele decided that “she did not wish to take the matter further” given the position relating to her family and “then disengaged from the police enquiries”). I proceed with great caution. Mr Li was not prosecuted. The alleged events were in about 1992, when Mr Li was teaching at YMS. They have nothing to do with CSM, or a violin student, or with Abigail. Ghisele has not given evidence in this case. It was common ground that neither party was inviting me to make a finding of fact as to whether indecent assaults reported to Mr Joo and GMP by Brian, and subsequently to GMP by Ghisele herself, did or did not take place in about 1992. But it was also common ground that this Court can take into account the fact that other allegations had been made, and can take into account Mr Li’s reaction to them, if the Court is satisfied that those matters relevantly assist on issues which I have to determine at this trial. In Mr Li’s evidence in chief he devoted 20 paragraphs to Brian’s section 9 statement to GMP and to the allegations relating to Ghisele. He was cross-examined. There was one aspect relating to Ghisele which I do think relevantly assists me. I have described the context. Ghisele, in 1995/96, is said to have revealed to her then boyfriend Brian that she had been sexually abused by Mr Li when Ghisele was aged 10 to 14. The documents refer to events of around 1992, when Ghisele was around 12 years old. The allegations included what Mr Li was said to have done when giving Ghisele massages, including an allegation that he had “rubbed her vagina”. This was specifically put to Mr Li in his GMP interview, and he denied it. His evidence in chief at this trial told me: “The only physical contact I ever had with [Ghisele] was during traditional Chinese massage ... I massaged [Ghisele] neck, back and feet”. In cross-examination, Mr Li told me this:

*... what really happened. I was very good at massage for her mother. Once or twice [Ghisele] said why do not massage me? I said okay, you lie down there I will do the same for you. Since then I often gave her massages.*

In relation to the phrase “you lie down”, Mr Li told me that Ghisele was lying down when he did massages for her. He told me:

*I often do them, in her room. She is lying down, lying down. That’s Chinese massage ... face downwards, by the way.*

This evidence had a natural, unguarded flow. But what was striking about this (“you lie down there”; “she is lying down, lying down”) is how it contrasts with what Mr Li told GMP at his police interview on 29 March 2013, when dealing with the allegations in relation to Ghisele. Mr Li told DC Barker: “all the massage I give to her [was] because she was asking”. The interview continued as follows:

*DC Barker: when you give her a massage, what position was she in and what position were you in.*

*Mr Li: Erm, On the bed usually erm, how describe this. OK if this is her bedroom, the door is there, the bed, a single bed, is this way OK. So she would sit there, I would sit here behind her. Yeah.*

*DC Barker: So you would both be sat on the bed.*

*Mr Li: Yeah, yeah, yes.*

*DC Barker: OK. Would she be laying down at all.*



*Mr Li. I don't remember, I don't recall no.*

*DC Barker: Would she be sat up.*

*Mr Li. Yes.*

*DC Barker: Sat up.*

*Mr Li. Yeah.*

*DC Barker: OK.*

*Mr Li. That's definite.*

So, DC Barker pressed Mr Li about this. Mr Li described a seated position, which (eventually) was “definite”: Ghisele was “sat up”. Asked about this passage in the light of what he had told me, Mr Li said this to me:

*I don't know to comment on that but the fact was she was lying down. Quite a lot of times she sits there which I do on her back while she sits there. But she does lying down. If I am saying that, I don't know why am saying it. But the truth is she was lying down.*

The allegation about Ghisele was serious. Mr Li knew the substance of the allegation. He was in a police interview. He was describing massaging a 12-year-old girl. Mr Li claimed, clearly, that massages had been in a seated position. Yet he – unguardedly and freely – told me in this trial that, of course, Ghisele had been “lying down”. This is a point of detail. It does not mean Mr Li rubbed the vagina of 12-year-old Ghisele, and I make no finding that he did. But it is an incident of evasiveness with the police, as part of a denial, having been cautioned. It is a factor which further undermines the confidence I can have in Mr Li's reliability as a witness of truth.

#### *Actions and Events (1997-2009)*

55. I return to the topics which concern Abigail's, and her parents', subsequent actions. Abigail and her mother gave evidence at the trial about what happened in the summer of 1997 and in the years after that. In particular, there are ten features of the story. Some of them are uncontroversial. The labels ('Pursuit', 'Resistance', 'Revelation' etc) are mine, for clarity and to save repetition in the discussion which follows. Here they are:

*1997:*

- (1) Pursuit: After Abigail returned from CSM in an unhappy state, Mr Li was repeatedly making phone calls to try to speak to her.
- (2) Resistance: Abigail was refusing to speak to Mr Li, and threatened to leave home on learning that her parents had arranged for Mr Li to visit them all in Abigail's country of origin that summer.
- (3) Revelation: Told by her mother that she was being ungrateful to Mr Li, it 'burst' out of Abigail that Mr Li had forced himself on her sexually.

- (4) Accusation: Having later learned the substance of what Abigail had revealed to her mother, her father made a phone call to Mr Li asking “why have you misused my daughter?” and reported that, when challenged, Mr Li had “stuttered” awkwardly.
- (5) Cancellation: Abigail’s father wrote a letter cancelling Mr Li’s proposed visit to visit the family in Abigail’s country of origin, giving a series of excuses.

*1998-2002:*

- (6) Enquiry: Abigail’s mother, in the years after 1997, made further phone calls to Mr Li asking for more information about what had happened to Abigail in the UK.
- (7) Suggestion: Abigail’s mother at one stage, after 1997 and before 2002, sent Mr Li property brochures in an attempt to encourage Mr Li to move to the foreign capital city and teach the violin there.
- (8) Reconnection: Abigail made contact with Mr Li in about 2002, with a view to trying to recommence her violin studies with him, at RNCM.
- (9) Reunion: Abigail returned to study with Mr Li at RNCM in 2002, with her parents’ support.

*2007-2009:*

- (10) Non-Mention: When the authorities in Abigail’s country of origin (“the foreign domestic authorities”) in 2007-2009 were investigating Abigail’s complaint about sexual abuse in 1995 by Isabelle and Isabelle’s friends, neither Abigail nor her parents mentioned to the foreign domestic authorities Mr Li’s conduct in 1996/97 or the Revelation 1997 to her parents of that conduct.

Among these events are the remaining three of Mr Ford QC’s “five features of the evidence” which he submitted were “very hard to make sense of” if Abigail were correct, but which “make a lot more sense” if Mr Li is correct. As to that, as I explained earlier, Mr Ford QC has submitted as follows. (i) The actions of Abigail’s father and mother in and after June 1997 (ie. Cancellation, Enquiry, Suggestion) are “untenable” if Abigail had revealed to them sexual assault by Mr Li (Revelation), and if Abigail’s father had telephoned Mr Li accusing him of sexual assault (Accusation). (ii) It is “not really tenable” and “can’t be right” that Abigail would make contact with Mr Li (Reconnection) and return to Manchester to RNCM to be taught by him in 2002 (Reunion) if Abigail had been – and had revealed to her parents in summer 1997 (Revelation) that she had been – sexually assaulted by Mr Li. (iii) It undermines Abigail’s account that she told the foreign authorities’ court-appointed expert (Dr Sankl) that she had “not suffered any negative sexual experiences in England” and then did not correct that statement recorded in Dr Sankl’s report (Non-Mention). I discuss below what I made of the key features.

*Pursuit, Resistance and Cancellation*

56. I accept that Pursuit, Resistance and Cancellation all happened, and happened in that sequence. There is strong evidence to support all three. As to Pursuit and Resistance, Abigail's mother's evidence in chief was:

*[Mr Li] often tried to phone [Abigail] after she returned. I would estimate he tried to call her at least seven times during the first couple of weeks. [Abigail's] father always spoke to [Mr Li]. He wanted to speak to [Abigail] but she was very against these calls. [Abigail] was absolutely not willing to speak to him.*

Abigail's evidence in chief was:

*After returning to [my country of origin], I remember [Mr Li] telephoning several times and I told my parents that I did not want to speak to him. I did not want anything to do with him.*

Abigail's father had told GMP in 2013, that in the summer of 1997: "[Mr Li] phoned and wanted to talk to Abigail" but "she was not willing to speak to him", and that Abigail said to her parents that she would "leave the house" if Mr Li were coming to visit. Abigail's mother had told GMP in 2013: "During this holiday period [Mr Li] repeatedly tried to contact [Abigail] by telephone, something Abigail vehemently resisted (initially we did not know why)", and that Abigail "rebelled against" Mr Li's visit "saying she would leave home if Mr Li came (we still did not know why she was so against this)". This fits with this statement in a letter dated 5 August 1997 written to Mr Li by Abigail's father, to which I will need to return:

*[Abigail] is not in a good mood. Therefore it is better not to ask her.*

Pursuit and Resistance are also supported by this unchallenged evidence of Mr Joo:

*I recall speaking to [Abigail] perhaps a few weeks later after the conversation which she confided in me her traumatic incident of sexual abuse by [Mr Li]. I cannot recall if it was on the phone or in person as we were both visiting [Abigail's country of origin] at the time. [Abigail] was in a very bad state. She was petrified as [Mr Li] had been in contact with her parents and wanted to visit her during the holidays. She was begging her mother not to allow him to come. I felt extremely sad and sympathetic that she did not have the support of her parents and that sadness has stayed with me all these years. [Abigail] was very traumatised and I remember thinking who is she supposed to turn to now if her parents were not supporting her.*

Cancellation (by Abigail's father) occurred by means of a contemporaneous document: a letter dated 5 August 1997 which read as follows:

*Dear When Zhou, I suppose you have received [my wife's] message on your phone recorder. In the following sentences I try to explain you what happened, that we were forced to postpone your visit until next year. Until July this year we were a wonderful healthy family. But this is history now. In the middle of July we were confronted with the fact, that our son ..., who you know from his visit to Manchester, was infected with a strong form of hepatitis. He had to be committed to hospital, had to stay there in an isolated room for about two weeks. He is much better now and has the chance to become fully sane again. At the same time our eldest son ... got troubles with one of his eyes, and since yesterday we are informed, that he also has troubles with his arteries, leading to the brain. A surgery is most likely. And on last Wednesday the old father of the family survived with some luck a bicycle accident. Without a helmet it would have been most dangerous. Now I am sitting here in front of my computer, writing this letter with my left hand. A few tittle bones are broken in my right hand and also the right 'ciavicula', I am bruised from my hips up to my few last hairs, but it is getting a little bit better every day.*

*After your telephone call: I hope [my wife] and I were able to explain our situation on telephone. I don't know if [Abigail] told you more about it. She is not in a good mood. Therefore it is better not to ask her. She wanted to visit her girlfriend in Jordan, but she hasn't got a letter up till now. And in a little bit more than three weeks school starts in [the foreign capital city]. And there is a lot to learn in French. And she was invited by friends of us for a cruise in the Adria. but the engines of the ship have still to be repaired. [My wife] had to stand more than I did. although I have to wait a few more weeks until I am able again to move all my body as I was used to. You must know that the police didn't inform her about my accident, about my being committed to the hospital. She was asking and searching for me more than 12 hours. she drove our car for hours in different roads and regions to find me somewhere badly wounded or dead ... When Zhou, we keep friends as you told to me the last time. We keep friends and we meet again next year. We are very sorry that we can't see you this year. We keep in touch. Can you send us the film which was taken with Abigail in the beginning of this year? You can imagine of which importance it will be for us!*

Abigail's mother's evidence was that, although the misfortunes described in the letter were true, the letter was nevertheless making "excuses" as to why Mr Li could not visit. That is illuminated by Mr Joo:

*... [Abigail] was in a very bad state. She was petrified as [Mr Li] had been in contact with her parents and wanted to visit her during the holidays. She was begging her mother not to allow him to come...*

I am satisfied (and I find) that Cancellation was borne out of Pursuit and Resistance. Mr Ford QC powerfully submitted that Cancellation cannot have come after Accusation. The Cancellation letter – with its detailed reasons, its friendly terms, its reference to an ongoing relationship, the leaving open of the visit ("next year") – does not fit with it coming "after" Accusation. Abigail's mother's evidence in chief (witness statement) was that Cancellation came "after" Accusation. It also told me that Abigail's father had confirmed that he agreed with its contents. In cross-examination of Abigail's mother Mr Ford QC was careful to elicit that it was "after" the supposed accusation phone call that "we had to make an excuse for Mr Li to not come and stay; we had to stop Mr Li coming". I have to put this alongside a document provided to GMP by Abigail's father in about February 2013, which put a different sequence of events: Cancellation followed Resistance, and only then was there Revelation ("then I got to know what happened in England") and then Accusation. All of this brings into sharp focus whether Revelation and Accusation happened at all.

### *The significance of Pursuit*

57. The evidence in relation to Pursuit – alongside Resistance and Cancellation – provides me with some assistance as to who (Abigail or Mr Li) is giving the Court reliable evidence about the core events of 1996/97. Abigail says Mr Li had been having sex with her, that she considered Mr Li to have "taken advantage of me", and that she had recently (June 1997) told Mr Joo about that. Mr Li's evidence is that Abigail had left CSM having:

*... told me that she was finding the standard and level of music too hard and that she wanted to pursue other activities. She returned to [her country of origin] ... I had some sporadic contact with [Abigail] and her family after she left CSM.*

That Abigail's parents should be communicating with Mr Li, and inviting Mr Li to Abigail's country of origin, is consistent with ambitious and disappointed parents, hoping Abigail could be encouraged to continue with her violin-playing career pathway. Resistance by Abigail is consistent with her wanting no more to do with the violin or violin-playing, and wanting to put the violin and CSM behind her. But the Pursuit of Abigail by Mr Li – including as described by Mr Joo – makes “best sense” if there were something Mr Li knew about, that was a concern from his perspective, and that he wanted to ‘smooth over’. If that was the position then Abigail's refusal to speak to Mr Li would have galvanised Mr Li's attempts to speak to her. There were (I find) sustained attempts by Mr Li to speak to Abigail, and Mr Li was going to visit the family in Abigail's country of origin. Once again, I find Mr Li's evidence materially ‘downplays’ an aspect of the sequence of events. Something else was going on, which Mr Li was anxious to try and deal with if he could. To borrow Mr Ford QC's phrases: Mr Li's sustained Pursuit of Abigail “makes a lot more sense” if Abigail is correct and she had left the school in circumstances where Mr Li had been having sex with her; whereas it is “hard to make sense of” if Abigail had been “just another” pupil, who had now returned to her country of origin having given up the violin.

*Revelation etc: Evidence regarding Abigail's parents*

58. Abigail's mother's evidence in chief regarding Revelation and Accusation, which she maintained under cross-examination, was:

*After we had invited [Mr Li] to come to [Abigail's country of origin] it burst out of [Abigail] like an explosion. This happened shortly after she had returned maybe two weeks. We told [Abigail] she should be thankful to her teacher and that we had invited him to come to our house in [Abigail's country of origin]. [Abigail] just exploded, she said that [Mr Li] had already taken his thanks from her himself because there had been abuse in his apartment. She told me she never wants to see him again if he was going to our house she was leaving the house immediately. [Abigail] told me that she was in his apartment, they had been drinking alcohol that evening when she was sleeping suddenly [Mr Li] was above her and she couldn't decide what to do as he was taking. [Abigail] told me that [Mr Li] had problems sexually and after the act he asked her how good he was in bed and she was told the judge in between the numbers 1 and 10. I thought this was very strange. I also remember [Abigail] said [Mr Li] had told that he liked her body very much as she had a good bottom not like the Chinese women. I felt very shocked and I never imagined anything like this could happen between my daughter and her teacher who was also her guardian. We thought he was there to protect our daughter who had no one in a foreign country. [Abigail] told me more specific details compared to her father as I was her mother and female.*

*[Abigail] then told her father the sense of what happened – alcohol, apartment and [Mr Li] suddenly above her in the night and she couldn't decide what to do. [Abigail]'s father immediately phoned [Mr Li] and told him he had abused our daughter. [Mr Li] was very unsure and stuttering. My ex-husband told me about this call later that day. I was in the house but not there whilst he was on the phone. We were very shocked and didn't know what to do. [Mr Li] said nothing had happened and it was not true.*

Abigail's mother's evidence in chief regarding Enquiry was:

*During 1997 and 1999 when [Abigail] was attending school in [the foreign capital city] for her a-levels, I telephoned [Mr Li] 2 or 3 times. [Abigail] was in such a bad state and very depressed. Her psychological situation was very poor and [Mr Li] had known her so well. I wanted to try*

*and find out more from [Mr Li] so he could say what terrible things that happened to [Abigail]. Every time I rang he claimed he didn't know what I meant and he had no idea what could have happened to [Abigail] but was hoping [Abigail] would speak to him soon.*

In cross-examination, Abigail's mother said: "I phoned 3 times, to get to know what happened". Mr Ford QC also cross-examined Abigail's mother on Suggestion. Mr Li had claimed that she had sent him property brochures in the foreign capital city. She accepted that she did indeed do that. She said: "Yes, it is true. I remember this." There was another feature of the evidence, relating to Revelation. Mr Ford QC cross-examined Abigail's mother about the contents of a statement made by Abigail to Professor Maden: "after that first disclosure, her parents soon behaved as if nothing had happened. She says her mother even suggested that summer that she should marry [Mr Li]." When Mr Ford QC put to Abigail's mother "no mother would say that; of course you didn't say that", she replied: "I can't remember." Mr Ford QC asked "would you remember if you said it?", to which she replied: "Maybe I was not a good mother to have said this." Abigail's evidence in chief in relation to Revelation and Accusation was:

*I did not want to see [Mr Li] and it was after [my parents] suggested he visit some weeks after returning to [my country of origin], I told my parents what had happened. They were very shocked but had realised something must have happened to me given the way I had been acting. My father telephoned [Mr Li] and told him he had misused me. [Mr Li] was quiet and startled. After this my parents acted as if nothing had happened and did not encourage me to take any action.*

In cross-examination Abigail said that she heard the Accusation from:

*... the hallway; I was hiding near the kitchen door. I overheard the phone call. My father did say to Mr Li 'you have misused my daughter' or 'have you missed used my daughter?' or 'why have you misused my daughter?' And I remember this very clearly because he used the word 'misused'.*

Asked about Cancellation and the August letter, Abigail said this: "I think that my parents didn't know how to deal with the situation and they wanted to avoid confrontation and I too wanted to avoid confrontation. Everybody was avoiding the subject." Asked about Enquiry (her mother's follow-up phone calls), Abigail said: "my parents tried to go on as if nothing had happened because nobody knew how to deal with the situation and I think it's quite sad that this is what happened." Cross-examined about her statement to Professor Maden that her mother had suggested she marry Mr Li, Abigail said this:

*Yes, my mother did say something like I should or could get married to Mr Li and I was shocked when I heard her say that ... She did say something like 'if only he were 10 years younger', and it upset me.*

Mr Li denies that the Accusation phone call took place. In cross-examination he said:

*I do remember I spoke to her father many times about Abigail. Certainly, I would remember if somebody told me 'you raped my daughter', 'you assaulted my daughter'. I would remember that, but I don't remember any of that at all. As far as I am concerned it didn't happen in that context. As far as I am concerned: no, otherwise I would remember.*

Asked whether Abigail's father put to Mr Li that he had had a sexual relationship with Abigail, Mr Li said: "no, he didn't, never. I never remember he said anything in that nature."

*Revelation and Accusation: My Findings*

59. I have considered these issues, and this evidence, in the light of the other evidence in the case, as a whole, and including the features regarding Reconnection, Reunion and Non-Mention. However, it will be helpful at this stage to set out my findings, having done so, about the topics of Revelation and Accusation. I find the following as facts:
- (1) Abigail did reveal to her mother, in the summer of 1997 that Mr Li had had sex with her, during her time at CSM when she was turning 16. She revealed that, reluctantly and responsively. It came in circumstances where Abigail was saying she did not want to talk to Mr Li or see him. It was said to a mother who was telling Abigail that she was being ungrateful to Mr Li, to whom she owed so much. Abigail revealed that Mr Li had intercourse with her, coming into her room and being on top of her. What Abigail revealed reflected how she saw it at that time: that Mr Li had “taken advantage of her”.
  - (2) To Abigail’s parents, what was revealed was a description of sexual relations which began when Mr Li had taken the initiative, in the night, and to which Abigail had submitted. Abigail’s parents had a sky-high opinion of Mr Li. They regarded him as key to their daughter’s glittering violin career, and where they were hugely disappointed in her for throwing in the towel. Abigail’s revelation was not received or understood or treated by her parents as a description of ‘rape’ or of ‘abuse’ or of ‘assault’. They were not supportive of Abigail over it. They would not have been averse to Abigail marrying Mr Li, and Abigail’s mother made a comment to her to that effect. The reaction and lack of support is now a source of shame for Abigail’s mother.
  - (3) There was no heroic act of an accusatory father angrily calling Mr Li to account for sexual abuse. Rather, there was an awkward conversation between Abigail’s father and Mr Li in which Abigail’s father alluded to Mr Li having had sex with Abigail. Mr Li was never “accused”, and there was no reference to “abuse”. Abigail’s parents soon put it to one side. Abigail wanted to forget it too. Abigail’s parents remained predominantly focused on what they had seen as Abigail’s opportunity for stardom as a violin player, and the world-renowned teacher who could – and perhaps still could – help Abigail to achieve their ambitions for her.
60. These findings fit within the context and setting, and the evidence as a whole, and reflect the characters of those involved, including the ambitious parents and the pedestal on which they had Mr Li, as reflected in the correspondence. They are findings which fit alongside the evidence as to Pursuit and Resistance. They fit with Mr Joo’s evidence, and Abigail’s evidence, regarding Abigail’s revelation to Mr Joo at YMS in June 1997. Abigail was able to reveal what had happened. She did so to Mr Joo, because he was receptive and a good listener. It does not make sense for Abigail to tell the truth – including to GMP – about a revelation to Mr Joo, and for her (and her parents) collectively to manufacture for GMP and this Court an untruth about a revelation to them. If Abigail had been looking to ‘bolster’ her story, the revelation to Mr Joo – an independent witness – was far more compelling. Nor does it make sense for Abigail to tell an untruth about her mother referring to ‘marrying Mr Li’; nor for her mother to tell

an untruth about Revelation while volunteering her own description of Enquiry. The context is powerful. Abigail's parents were pushing Abigail. They would have been bitterly disappointed in her for suddenly giving it all up. They thought the world of Mr Li. To them, Abigail was being unresponsive and ungrateful. The Revelation was not in a spirit of confidence and support, but one of confrontation. It fits with the tenor of the correspondence in early 1997. It would not have made sense to Abigail's parents that she should push Mr Li away and be unwilling to see him or speak to him. It makes perfect sense that Abigail's mother would have challenged Abigail about that perceived ingratitude towards Mr Li, and that Abigail would have been provoked to say something. That family setting fits with Mr Joo's evidence about what was happening when Abigail was back home in Abigail's country of origin, which was unchallenged, and which I have accepted:

*I recall speaking to [Abigail] perhaps a few weeks later after the conversation which she confided in me her traumatic incident of sexual abuse by [Mr Li]. I cannot recall if it was on the phone or in person as we were both visiting [Abigail's country of origin] at the time. [Abigail] was in a very bad state. She was petrified as [Mr Li] had been in contact with her parents and wanted to visit her during the holidays. She was begging her mother not to allow him to come. I felt extremely sad and sympathetic that she did not have the support of her parents and that sadness has stayed with me all these years. [Abigail] was very traumatised and I remember thinking who is she supposed to turn to now if her parents were not supporting her.*

A strong theme in what Mr Joo describes is the lack of parental support: "she did not have the support of her parents"; "her parents were not supporting her". It fits with the letters from Abigail's parents to Mr Li, and to Abigail, which are testimony to the parents' ambitions for Abigail as a violinist, and the pedestal on which they had placed Mr Li. It fits with Abigail's own evidence that at that stage she did not think of what Mr Li had done as "abuse". It fits with Abigail's own evidence about parental support:

*After this my parents acted as if nothing had happened and did not encourage me to take any action.*

What fits is that they did not take it seriously and they did not, subsequently, attribute Abigail's years of turmoil in the foreign capital city to it. The Enquiry reflects the fact that Abigail's mother was looking for some other explanation. The evidence of lack of support supports my confidence in concluding that there was no heroic act of an accusatory father angrily calling Mr Li to account for sexual abuse. I accept that there was an awkward conversation. But the vivid description of Accusation has the hallmarks of exaggeration, recalling Abigail's father's actions in a more favourable light than was the cold truth. Abigail's own perception at the time was of having been "taken advantage of". Abigail's own reference is to "misuse". Her description involved her father having made a statement ("you have misused my daughter") or having asked a question ("have you misused my daughter?"). It is revealing that Abigail used three different words – "deceived", "misused" and "abused" – in her first interview with GMP (12 February 2013) when she said: "my father phoned my teacher up and he said to him why have you deceived my daughter"; and later in the interview "he said: why have you misused my daughter?"; and later in the interview "why have you abused my daughter?"



61. My findings about how Abigail’s parents reacted fit with the evidence relating to their own life experience. I have explained that Abigail’s description to Professor Maden, and her evidence to this Court, is that part of her mother’s response was a suggestion that Abigail could have “married Mr Li”. Mr Ford QC put to Abigail’s mother that: “no mother would say that”. Her reply was that she could not remember. But she did not deny that she could have said it. As Abigail pointed out to Professor Maden, the age difference between her parents is some 20 years, and her father had been a teacher at her mother’s school (although her mother was never his pupil). Abigail said this in cross-examination:

*I thought my mother could have said that because she married a teacher who was much older than her.*

I found the evidence on this part of the background illuminating. Abigail was born in March 1981. Abigail’s country of origin is a country in which – as was common ground – the ‘age of consent’ was 14. On the evidence: Abigail’s mother married a teacher from her school, 19 years older than she was; and she was pregnant, with their first child (Abigail’s oldest brother), at around the age of 16. There is nothing, in my judgment, implausible about the idea that Abigail’s mother should have referred to Abigail marrying Mr Li. Especially in a context in which Abigail’s parents were not taking the revelation of a sexual relationship between Mr Li and Abigail as constituting “abuse” or “assault” or “rape” (nor was Abigail). This also chimes with a view which Abigail’s parents had formed and expressed about Abigail and men in a contemporaneous document in March 1996, more than a year earlier, just before her 15<sup>th</sup> birthday. In their letter of 7 March 1996 they had written this:

*[Abigail], you are going to be 15 soon, you are already fully developed, you do everything – in our opinion, too much – to appear attractive and desirable for male beings. We can understand that. But please, set some boundaries, be too good for a fleeting adventure, do not throw yourself away. Do not chase after a boy, even if he is ever so desirable, otherwise you will only be used, rather, give him the cold shoulder. That which one can obtain all too easily, one does not appreciate so much, one rarely loves. A special offer, an object from the sales may indeed be quite pleasant for a short time, but one will not look after it so much because of the cheap price, which was actually the only reason for having taken it.*

Abigail’s reply (8 March 1996) is striking, as to its content and its likely effect on her parents. She wrote:

*I know that I am naturally attractive and I am stressing that because it is an advantage for me. I normally get very far when I want anything ie. better marks, because everyone lets themselves be influenced by my looks, and I know that. I am not running after anyone. I am not being used. Rather, the other way round. I get what I want. I find it quite low of you to compare me with a special offer/bargain. I also do not compare you to expiry dates, after all. You do not have to give me any long lectures on this subject. You definitely do not have more experience in this area than I have. I am happy that I have made my experiences. As you already say, I am almost 15 (I nearly forgot), and we are living in the 20<sup>th</sup> century.*

Another feature of the evidence which I found assisted me in relation to this topic was something that Abigail’s mother said during cross-examination. It arose out of questions in cross-examination about Abigail’s Revelation. Abigail’s mother said this:

*I feel so guilty. I listened too little to my good daughter. She was always clean and proper and correct and was never lying.*

This statement reflects shame and regret. This fits with what Abigail’s mother said when it was put to her by Mr Ford QC that “no mother” would have said that Abigail could “marry Mr Li”:

*Maybe I was not a good mother to have said this.*

I have no doubt that in summer 1997 Abigail’s parents were and remained focused on their own ambitions for her. They did not want to accept that this was the end for that career involving the violin, in which they had been so invested. Abigail’s mother did not let go of the idea that this revered, world-renowned violin teacher, who knew Abigail so very well, could provide a way back for her, so far as the violin and a glittering violinist career was concerned. That explains why Abigail’s mother was sending Mr Li property brochures and encouraging him to go to the foreign capital city and teach the violin there, the same city in which Abigail was now living. That is, by far, the most plausible explanation. And this explains why it was that Abigail’s parents felt able to support Abigail when in 2002 she returned to the United Kingdom having obtained a place at RNCM to study under Mr Li and get herself back on the career track as violinist, after 5 very difficult years in the foreign capital city. It is to that topic that I now turn.

#### *Reconnection and Reunion (2002)*

62. Mr Ford QC submits that Abigail’s May 2002 reunion with Mr Li and the events surrounding it undermine as “untenable” Abigail’s claims that Mr Li had “raped” her aged 16, and the claims that she had revealed the “abuse” to her parents in the summer of 1997. He submits that Abigail’s return to Manchester in 2002 undermines her account of what had happened in 1996/97 at CSM, and undermines her account of Revelation and Accusation in summer 1997. He submits that the return to Manchester (Reunion), initiated by Abigail herself in getting back in contact with Mr Li (Reconnection), “makes perfect sense” if it is Mr Li who is telling the truth. Abigail’s evidence in chief as to Reconnection and Reunion was:

*I remember writing [Mr Li] a letter and [I] had a few phone calls with him before I went back to England. [Mr Li] seemed to be very excited that I was coming back to study with him. I also apologised to him for not staying in touch for several years and said that I wanted to be friends. I knew he had taken advantage of me but I decided to forgive him. My parents challenged me about this decision but they knew my music and my career were too important to me so I was prepared to make the sacrifice. I returned to England and was accepted at the [RNCM]. I resumed lessons with [Mr Li] in 2002. I felt that he had taken advantage of me before but I didn’t understand how bad it was and had blocked out what had happened. He was one of the best teachers there were and he had a hold on me. I believed he was still interested in me and was the best person to help me become successful at playing the violin so I asked him to be my teacher. We hadn’t spoken for four years at that point. My parents were concerned that they were very ambitious for me and have always wanted me to further my musical career.*

Cross-examined about Abigail’s return to Mr Li in 2002, Abigail’s mother described it as “Abigail’s only chance”; “not a good solution, but the only solution”; referring in particular to the “difficult technique” and the fact that Abigail had “stopped”; and describing the “only chance” as involving the “same technique and same teacher”. When

cross-examined about the fact that “talented musicians frequently change their teachers”, Abigail’s mother responded by explaining that “to stop the violin for years, and take a new beginning as an adult is nearly impossible” and “I thought the only possibility to finish was with Mr Li”. Cross-examined on the same topic, Abigail said: “we all agreed. We all thought I couldn’t have a career, there was no future without Mr Li. I thought he was the best in the world. I have to make sacrifices to study”. She also said: “I was still very young. I didn’t understand the situation. Also I felt affectionate after a break of about 4 years. My affection for him returned. I believed it was mutual. That made it easier. There was an emotional connection between us, some kind of emotional attachment. I felt I had to control the situation, to a certain extent, to prove myself to myself and to him”.

63. Reconnection and Reunion with Mr Li in 2002 are, of course, entirely consistent with Mr Li’s evidence that the alleged events in 1996/97 did not take place, as well as consistent with there being no Revelation and no Accusation. I also accept that Reconnection and Reunion are a very striking part of the sequence of events, which bring into sharp focus whether Abigail can possibly be telling the truth about 1996/97 and Mr Li, and whether Abigail and her mother can possibly be telling the truth about summer 1997 as to Revelation and Accusation. What I cannot accept is that the 2002 reunion renders ‘implausible’ or ‘untenable’ the events alleged by Abigail to have taken place in 1996/97; nor the findings I have described about what happened in the summer of 1997, so far as concerns Revelation and Accusation. I find as follows as to the position in 2002. Abigail had been a gifted violinist, recognised from an early age, who had gone to a foreign country aged 12 and studied with a renowned violin teacher for years at two specialist music schools between the ages of 12 and 16. She had then given up the violin and her dreams of being a violinist and had lived in the foreign capital city for some 5 years. She had pursued other activities. She had been ill with an eating disorder. She had experimented with drug use. She had not settled. She had identified no alternative career path. She came to realise that it might not be too late. She was at an age where she could, in principle, undertake violin studies as an adult student. But she would be doing so after 5 years away from the violin, at a critical time in the development of an instrumentalist (between the ages of 16 and 21). To get herself back on the pathway to a career as a violinist, and to catch up with other students and be performing at an appropriate standard at a specialist institution so as to give herself a realistic prospect of achieving her goal, was going to be hugely difficult. It involved single-mindedness. She needed all the help she could get. The teacher who knew her best, and who knew best what her potential was, was Mr Li. He was teaching at a college and she was the right age to attend it, if she could get in. In the light of the very considerable challenges that Abigail was facing, and in the light of the single-minded focus called for by what she was attempting, there is in my judgment nothing ‘implausible’ about Abigail getting back in touch with Mr Li, notwithstanding what she alleges had taken place between them in 1996/97, and what she alleges she had disclosed to Mr Joo in June 1997, and to her parents later that summer. There is nothing ‘implausible’, if she was putting resurrecting a violin-playing career first, about Abigail preferring that course to the alternative: starting, cold, by trying a new teacher who knew nothing of her potential. I have no doubt that it was Mr Li who gave Abigail her ‘best chance’ of restoring her violin-playing aspirations. I have no doubt that

that is how Abigail’s parents saw it. Abigail’s evidence describing parents who “always wanted me to further my musical career” resonates with the correspondence between Abigail’s parents and Mr Li, the continued contact by Abigail’s mother with Mr Li. It also fits with the evidence as to Suggestion: Abigail’s mother sending the property brochures so that Mr Li could come and teach violin in the very city where Abigail was living, the foreign capital city. There is certainly nothing ‘implausible’ about this if Abigail’s parents had never taken what had been disclosed to them in the summer of 1997 as “rape” or “assault” or “abuse”; and they had never been supportive to Abigail about it.

*The investigation by the foreign domestic authorities (2007-2009)*

64. I have explained how, on 3 December 2007, Abigail filed a complaint with the foreign domestic authorities. The thrust was this. Abigail alleged that Isabelle had performed oral sex acts on her in March 1995, that she was also sexually abused by Isabelle’s friends, and that the sexual abuse continued on the boat in August 1995, where she was raped by one of Isabelle’s friends (husband of one of the other friends). Abigail’s allegations related to what she said had happened during her school holidays in 1995, the second half of her second academic year at YMS. Abigail told the foreign domestic authorities that she had disclosed the abuse by Isabelle and Isabelle’s friends to her parents for the first time when she was 20 years old (around 2001) but had asked her parents not to report it, because ‘people could not say anything bad about this group and no one would believe it anyway’. Abigail told the foreign domestic authorities that the matter ‘had continued to hurt her’ and that she was ‘now ready to file a complaint, feeling strong enough to face the investigations and any criminal proceedings’. Several things are of significance about what happened in the course of the investigation by the foreign domestic authorities, and I will discuss them next.

*‘Breaking off contact’*

65. In a foreign domestic police report dated 15 May 2008 it was recorded: that questioning of Abigail had elicited from her the assertion that “in December 1995” she “completely broke off all contact” with all the persons against whom she was making allegations; but that Isabelle had subsequently provided the foreign domestic police with letters from Abigail dated up to 1999 as evidence that the contact was not broken off; and that under additional questioning Abigail had explained that “she completely terminated” the ‘relationship’ with Isabelle in 1995 “but they remained in touch via letters”. It is not difficult to see why the foreign domestic authorities should have found this striking. When cross-examined by Mr Ford QC about this, and about the friendly terms of a letter dated 12 February 1999, Abigail said “it may be that my mother asked me to write a letter to my former violin teacher because she didn’t know what occurred between us”.

*Dr Sankl’s report*

66. The expert report of Dr Sankl regarding Abigail’s “ability to provide information and testify” concluded as follows:

*Due to [Abigail]’s difficult past, her confusion of affection and sexuality, and the differences in her description of the events that occurred, as well as her long-term memory which falls*

*significantly below the normal level, from a psychological point of view there are significant doubts surrounding her ability to provide information and testify.*

Dr Sankl's report listed seven respects in which it was said that details which Abigail had given to the police and to Dr Sankl "were contradictory or differed with regard to content". Professor Maden's view, in his expert evidence to this Court, was: "I have no reason to question Dr Sankl's overall conclusions as she appears to have approached the task in a thorough and conscientious way". Dr Freedman's view, in her expert evidence to this Court, was that she did "not believe that Dr Sankl's psychological report is satisfactory as evidence. It is not compatible with UK psychological reports". The CPS letter of 9 March 2016, discontinuing the proceedings against Mr Li, relied on the fact that Mr Li's defence team would "invite the jury to accept that the allegations that [Abigail] made in [Abigail's country of origin] were not true, because the Court in [Abigail's country of origin] came to that conclusion" and that: "If the jury accepted such an assertion, then this would inevitably influence their views on this case... in an adverse way".

67. I am in no position to make findings of fact on whether the allegations which Abigail made to the foreign domestic authorities relating to Isabelle and the other individuals were true. Neither party in these proceedings invites me to do so or submits that it would be appropriate for me to do so. As to the psychological report of Dr Sankl, this is not, in my judgment, a reliable basis for me to arrive at any adverse conclusion. The conclusions expressed in relation to "long-term memory" are not, in my judgment, sufficiently explained or evidenced in a way that could form a proper basis for an adverse conclusion by this Court. This Court has the benefit of expert evidence from Dr Freedman and Professor Maden, provided in accordance with the CPR standards for expert evidence. Moreover, suggestions relating to any weakness or incapacity so far as concerns Abigail's "long-term memory" need to be put alongside the cogent and reliable evidence of Mr Joo as to what Abigail revealed to him in June 1997, at a time when the alleged events concerning Mr Li would have been recent. I agree with Dr Freedman that Dr Sankl psychological report does not stand as satisfactory evidence of Abigail's unreliability or inability to provide information or testify to a Court, whether in 2008 or now, or at any time between. In November 2008, when Dr Sankl assessed her, Abigail was not a child. She was a 27-year-old adult. She had a range of academic qualifications (including a number of high-level examination results from her time at YMS and CSM in a foreign language, English). She had a degree in music. The Sankl report does not identify any lack of capacity. The two experts whose evidence has been adduced at this trial agree that Abigail has not, at any stage, lacked capacity. There is, moreover, force in Mr Levinson's submission that the seven listed items in Dr Sankl's report in which it was said that "details... were contradictory or differed with regard to content", do not in truth identify inconsistencies which would be likely materially to undermine the veracity of Abigail as a witness in court, still less to justify an opinion as to inability to provide information and testify. On the face of it, I agree with Mr Levinson that there is really only one 'inconsistency' in the list of seven: namely, a point relating to whether sexual acts between Abigail and one of Isabelle's female friends were, or were not, carried out at the instigation of and in the presence of Isabelle. The 'breaking off contact' point which

I have described above does not feature, as it could have done, among the list of seven ‘inconsistencies’ on which Dr Sankl focuses. If Abigail, with belated parental support, was making serious allegations which were unreliable – and this includes Professor Maden’s belated introduction of the possibility of a diagnosis of “delusional disorder”, a diagnosis which is “reliant on findings of fact” – then that could provide strong evidential support for doubting the reliability of the allegations made in relation to Mr Li. What is clear is that, in the summer of 1995, 14 year old Abigail spent a month on a boat with Isabelle and the other named adults whom she later accused. Her evidence to the foreign domestic police investigation included describing how each of the four women on that boat were having, at that time, a sexual relationship with the man. Evidence obtained in the foreign domestic police investigation, from the women themselves, confirmed that to be true. I am satisfied that the relevant conclusion for the issues which I have to determine, so far as concerns the problems identified by the foreign domestic authorities and in the Sankl report, is this. I find that I cannot rely on the Sankl report as any basis or support for concluding that Abigail’s evidence to this Court is unreliable.

*Non-Mention: Dr Sankl’s report*

68. When Abigail was interviewed on 12 February 2013 she told GMP about the abuse which she had reported to the foreign domestic authorities and about the investigation into those allegations. She was asked by GMP what she had reported to the foreign domestic authorities. She was asked “At that point did you mention anything about [Mr Li]” and she answered “no”. That is true, and is borne out by the foreign domestic police investigation documents. It is relevant to consider what Abigail is recorded as having said in the context of the foreign domestic police investigation, and what her parents are recorded as having said in conjunction with that investigation. In considering those matters it is important to keep in mind that at the time of the complaint to the foreign domestic authorities Abigail was aged 26. Her case is that she had disclosed the abuse by Isabelle and the other accused to her parents in about 2000 when she was aged 20. Her case is that it was about then that she also came to understand that Mr Li’s actions in 1996/97 had constituted sexual “abuse”. Her case, and the evidence of her mother and the documentary material emanating from her father, includes the Revelation (summer 1997) followed by the Accusation. Within Dr Sankl’s report is this sentence:

*When asked by the expert [Dr Sankl], [Abigail] stated that she did not have any negative sexual experiences in England.*

I find as a fact, as Mr Ford QC invited me to, that Abigail was asked by Dr Sankl ‘did you suffer any negative sexual experiences in England’, and that Abigail answered ‘no’.

69. However, I also find as a fact that this was a question which was asked by Dr Sankl and answered by Abigail in the context of allegations about 1995, at the end of the second of Abigail’s three years at YMS, after which Abigail returned to YMS for a third year. When, on 22 September 2014, Abigail was asked by GMP about Dr Sankl’s report Abigail made a statement. In it she made four points. The first was a continuity point: that she recalled Dr Sankl asking something like “did the abuse continue in England?”, to which she had replied “no”. The second was a point about the time at YMS: that she

recalled Dr Sankl “asked me if I was abused at [YMS] to which I replied ‘no’”. The third was a point about perpetrators: that at no stage did Dr Sankl ask a direct question about any other violin tutor. The fourth point was about fear: that “I didn’t want to mention the abuse (in England with [Mr Li]) for fear of harm to see the foreign domestic police again. I found very intimidating and most unpleasant when they dealt with me”. Cross-examined by Mr Ford QC at this trial on this topic, Abigail said: “I remember that I was asked something similar, like ‘was I abused at school in England’ or ‘at school in London’”. Asked about the clarificatory statement to GMP (22 September 2014), Abigail said: “I was asked if the abuse continued in England and they were talking about the abuse or the type of abuse I was experiencing in [my country of origin]. The abuse didn’t continue in England with the people who had abused me in [my country of origin] and there was no similar situation in England, with regard to being abused by a group of people. That’s what I meant. That’s why I said no”. Cross-examined about the sentence in the Sankl report, Abigail said: “I wasn’t being asked whether this I was sexually abused in England. I was asked whether I was being sexually abused in London or at school.” I find that what Abigail says about a focus on YMS (“London”), does fit with the context. Abigail was alleging sexual abuse which took place during her school holidays during her second of the three years at YMS, the middle year 1994/95. It is important to put the sentence in the Sankl report, on which Mr Ford QC relies, in the context of the paragraph in which it appears:

*[Abigail] stated that she was very popular with the boys in England. She had her first kiss when she was 12, which was not a nice experience because ‘the chemistry wasn’t right’. It was a kiss with tongues shared with a 14 year old, which was too much. When asked by the expert, [Abigail] stated that she did not have any negative sexual experiences in England.*

The rest of that paragraph – about “England” – reads as a description of Abigail’s experience at YMS. The sentence is not freestanding. Moreover, it does not say “ever” (“ever have any negative sexual experiences in England”). When discussing this passage from Dr Sankl’s report, Professor Maden says this:

*on page 14 [of the Sankl report] [Abigail] is quoted as saying that she was very popular with the boys in England and had her first kiss aged 12 years, which was not a nice experience because the chemistry was not right. It is said to have been a kiss with tongues shared with a 14 year old, which was too much. It is said that when asked by Dr Sankl, [Abigail] said she did not have any negative sexual experiences in England. I note that [Abigail] does not appear to have told Dr Sankl about the three sexual relationship she told me she had with boys at YMS.*

This passage adopts the same focus, on the period while Abigail was at YMS. I find that Dr Sankl’s question about negative sexual experiences in England was asked, and understood by Abigail to have been asked, in the context of Abigail’s time at YMS.

#### *What Abigail’s parents told the foreign domestic authorities*

70. Abigail’s father was questioned by the foreign domestic police on 21 January 2008 in conjunction with the allegations which Abigail had made in December 2007. Abigail’s father’s evidence to the police was as follows:

*When she was 12 years old, [Abigail] attended a music boarding school in England and only travelled home during the holidays. When she was at home she continued to have lessons from*

*[Isabelle] because she had to keep practising for her concerts. Over the years a very good relationship developed with [Isabelle] and we were never worried about her going to music lessons. When she was around 14 years old – I cannot be more exact than that – my daughter’s behaviour changed.. She became more and more reserved and quiet. My wife said at that point that something bad must have happened to [Abigail]. My first thought was that she could have been raped in England because there had been no one to look after her there. When I mentioned this to her, she denied it. I never would have guessed that this kind of incident could have happened to her because she was constantly under proper supervision. Approximately between the ages of 15 and 19, my daughter suffered from bulimia. No one could explain why. I did not become aware of the sexual abuse until the year 2000.*

Conspicuously absent from Abigail’s father’s narrative is Revelation (Abigail’s revelation of Mr Li having taken sexual advantage of her in 1997) followed by Accusation (Abigail’s father’s phone call). Questioned by the foreign domestic police on 13 March 2008 Abigail’s mother said the following:

*After the cruise [in 1995], I noticed the first change in my daughter. [Abigail] changed in a very negative way and did not want to tell me anything about the cruise, which I found very strange. I considered her behaviour to be extremely ungrateful... She did not mention anything about a rape ... In 1996/97, my daughter returned from England and also stopped playing violin. She said she did not want to anymore; it was only us parents who wanted to carry on playing. She should have stayed in England for another two years in order to finish school... After the summer of 1996 – I cannot be more specific than that – my daughter told me that something terrible had happened to her. She gave me the information in a very bitty way. She said that she had been in the room which she could not get out of. She had been terribly frightened and that the man was a lot stronger than her. My daughter would always have these outbursts when we were arguing about something such as the housework. She would always say to me that I shouldn’t get so worked up about such petty things, because she had experienced something so big and terrible. I would be taken aback that she would then stop giving me information. After these statements, my ex-husband and I thought something very bad had happened to our daughter and that she might have been raped. I believed everything my daughter said, because her behaviour could be put together like pieces of a jigsaw puzzle. Initially we thought that this event must have happened at the boarding school in England, because it was there that she had spent most of her time. At the school in England/London there were mixed classes, and at the boarding school in Manchester girls and boys were housed on the same site. Before January 2001 – I cannot remember the exact time – my daughter kept making clearer and clearer statements about being raped by [the male friend of Isabelle’s] after her 14<sup>th</sup> birthday. Abigail said that he had not been alone. She said that that was when she lost her virginity because the sheet was filled with blood. Sometime later, she suddenly spoke for the first time about the serious sexual assault by [Isabelle] before her 14<sup>th</sup> birthday... Since I perceived the situation to be desperate and I did not know what else I could do to help on 16 January 2001 I contacted the child protection centre ‘MOWE’ and told the adviser there – Ingrid Lauber-Pils – that my daughter had been seriously sexually abused and rape[d].*

Conspicuously absent from Abigail’s mother’s narrative to the foreign domestic authorities is Revelation (Abigail’s revelation in summer 1997 regarding Mr Li), Accusation (the accusation phone call). Also absent is Enquiry (further phone calls from Abigail’s mother to Mr Li to ask what had happened in England). These responses by Abigail’s parents to the foreign domestic authorities in the context of the allegations made by Abigail in December 2007 are an important part of the factual and evidential matrix, particularly in relation to Revelation and Accusation.



*The Wabnig memorandum*

71. Within the foreign domestic police investigation documents there is a contemporaneous note following an interview by the foreign domestic police with a tax adviser Mr Armin Wabnig, on 15 May 2008. It reads as follows:

*[Mr Wabnig] stated that he has known [the mother of Abigail] for years. He knows the whole family.*

*A few years ago, [Abigail's mother] told him that [Abigail] had left [YMS] in England because certain 'events' had occurred that [Abigail] had been raped by someone (she did not name names) at the school.*

*On 07.01.2008 [Abigail's mother] allegedly contacted [Mr Wabnig] by telephone and told him that years ago, [Abigail] had been sexually abused by her music teacher [Isabelle]. She had allegedly been on a boat in Yugoslavia at the time and was practising for a concert...*

*On 08.01.2008, he was contacted by telephone again by [Abigail's mother] and she told him that a year later,... [Abigail] had been on this boat again with [Isabelle] and had been raped by [the male friend of Isabelle's] there. When he asked why [Abigail] went on the boat again after such an incident (sexual abuse by [Isabelle]), [Abigail's mother] allegedly answered that there had been a 'bad atmosphere' (divorce intentions) at home at that time.*

*[Abigail's mother] allegedly contacted [Mr Wabnig] by telephone 3 times in total. He is therefore able to provide such an exact description of the content of the conversations because he took handwritten notes. If necessary, he can make his handwritten notes available to the Court at any time for any further measures.*

Abigail's mother responded to the Wabnig memorandum, telling the foreign domestic authorities:

*Years ago, after the end of 2001, I informed Mr Wabnig that contrary to our original suspicion that the rape had taken place in the presence of a group, it did not take place at [YMS] but instead on [Isabelle's male friend's] boat.*

When Dr Sankl's report summarised the Wabnig memorandum, Abigail's list of corrections (23 January 2009, forwarded 2 February 2009) dealt with this point: "'Abigail... was raped at [YMS]' is not true and is corrected by my mother. I only told my mother that 'something bad had happened' to me, without specifying a place". Again, what is conspicuous is that the Revelation (about Mr Li in 1997) does not feature.

*Abigail and her parents could have mentioned Mr Li to the foreign domestic authorities*

72. I am satisfied (and find) that Abigail could have told Dr Sankl about what by then she says she recognised was sexual abuse on the part of Mr Li, two years after the alleged abuse by Isabelle and Isabelle's friends, in her year at CSM in 1996/97. It is obvious, reading the report of Dr Sankl as a whole, that aspects of the investigation and aspects of the interview with Dr Sankl related to that later period. Indeed, Abigail's original complaints dated 3 December 2007 had described how "between the ages of 14 and 16, I attended school in England, more specifically in London and Manchester in order to study music". As she accepted in her own classificatory statement to GMP on 22

September 2014: “I didn’t want to mention the abuse (in England with [Mr Li])” to Dr Sankl “for fear of having to see the [foreign domestic] police again”. I also find that Abigail, and her parents, had the opportunity to describe sexual abuse by Mr Li in 1997/98 – and Revelation in 1997 – to the foreign domestic authorities during their investigation, and did not do so. This fits with Abigail’s parents never having taken seriously what Abigail had revealed to them in 1997 about a sexual relationship with Mr Li (aged 16): they had not been supportive; they had not regarded it as “abuse”; they had soon acted as if it had not happened; they had treated Mr Li, about whom they thought so highly, as the person capable of restoring the ambitions they held for their daughter. Such concerns as they had about Abigail and any suffering on her part in and after the late 1990s were, by the time of their giving evidence to the foreign domestic authorities, being channelled exclusively into support of Abigail’s complaints against Isabelle and Isabelle’s friends. As to Abigail’s position, Professor Maden’s view is that: “if [Abigail] chose not to mention the UK allegations to the [foreign domestic] police, that was a free choice”. I agree. I find as a fact that that is what happened, and that it was a matter of free choice. I have needed to give careful consideration to the implications of all this for my evaluation of the key questions at this trial, and whether I can rely on the evidence of what Abigail and her mother have told me in their evidence at this trial, together with the materials recording what Abigail and her parents told GMP. One point which weighs heavily is this. There is no disputing that Abigail (in 2007-2009) never mentioned to the foreign domestic authorities that Mr Li had sexually assaulted her (in 1997), which was not the focus of their investigation into allegations two years earlier in Abigail’s country of origin. However, I am and remain quite satisfied that Abigail (in June 1997) did mention to Mr Joo that Mr Li had sexually assaulted her (earlier in 1997). The failure to mention that to the foreign domestic authorities in 2007-2008, in my judgment, does not in any way undermine the cogency and reliability of the evidence relating to what was mentioned to Mr Joo ten years earlier, in June 1997.

*Character assassination and cover-up*

73. Abigail’s description of the outcome of the foreign domestic police investigation involved what Mr Ford QC characterised as “extreme” and “bizarre” suggestions. Abigail characterises the Sankl report as a “character assassination”. She characterises the discontinuance of the foreign domestic police investigation as a “cover-up”. She has referred to coordinated action between the authorities, and even her own lawyer in that investigation, together with Dr Sankl. She attributes that to the wealth and power of the male friend of Isabelle’s (who she says raped her) and his associates, whom she describes as a “cult”. She also claims that certain documents produced by Dr Liane Saxer-Novotny in the foreign capital city relating to treatment carried out in February 2009 (when the foreign domestic police’s proceedings were being discontinued) are false in the sense that treatment was not in fact provided and a report which ought to have been written was not. Mr Ford QC, understandably, draws attention to the ‘extreme’ nature of these suggestions. He cross-examined Abigail about them. I find as follows. Abigail has a sincerely held and genuine belief that the discontinuance of the foreign domestic police investigation was related to an improperly held lack of appetite for investigating the male friend of Isabelle’s and his associates. I do not accept that that is a ‘conspiracy theory’,

still less that it serves to undermine her reliability as a witness in relation to the questions of fact which I have to decide at this trial. Again, I am not being invited to make findings of fact as to whether Abigail's allegations made to the foreign domestic authorities are true or untrue. But I have no difficulty in seeing how the Sankl report was received as a "character assassination", by an intelligent 26-year-old graduate being assessed as incapable of giving reliable evidence in legal proceedings, based on an asserted "long-term memory" deficiency and seven supposed "inconsistencies". As to Abigail's belief in the powerful position of the male friend of Isabelle and his associates, and its knock-on effect, this was clearly a point on her radar throughout: her original documented complaint (December 2007) had referred to her original belief that "people could not say anything bad about this group and no one would believe it anyway".

*The evidence about Candice (2000)*

74. I turn to another topic: the evidence concerning events in 2000 relating to Candice. This evidence was part of the trial. It was a topic addressed by Mr Li in his evidence in chief (witness statement), on which he was cross-examined. Candice was a violin student at CSM, in the sixth form when Mr Li began teaching there in 1996 (and when 15 year old Abigail transferred there). At that stage, Mr Li was in a relationship with Joanne Quigley, a student to whom he taught violin at RNCM. After leaving CSM, Candice continued with violin at RNCM where Mr Li was her violin teacher. Mr Li's evidence in chief at this trial was that in 2000 he and Candice:

*dated each other for a short period when she was a fourth year student at RNCM; she was about 21 years old. The relationship did not develop and I therefore did not disclose it to college*

Mr Li described how, at the time, Candice complained to the RNCM authorities that Mr Li had sexually assaulted her, which he denied, and there was an RNCM investigation, as to which he said in his evidence in chief:

*The outcome of the investigation was that there was no evidence I had sexually assaulted [Candice]... I was given a warning from the school for not having declared my relationship with [Candice].*

As with the evidence relating to Ghisele and Effie, I tread carefully. Again, Counsel were agreed: that neither party was inviting me to make any finding of fact as to whether what was alleged by Candice took place, or did not take place; but that I can take into account the fact that the allegations were made and put; and that I can take into account Mr Li's response to them. Documents before the Court evidence the fact that allegations made by Candice were indeed the subject of a formal complaint and investigation by RNCM. When Mr Li was arrested on 14 February 2013 in connection with Abigail's allegations, he assumed – incorrectly – that the arrest related to Candice. GMP subsequently rearrested Mr Li on 28 March 2013 and interviewed him in relation to the allegations raised by Candice, with whom GMP had been in contact, those allegations being "rape" and "indecent assault". At that stage Candice had provided the police with a written account. On 2 October 2013 Mr Li was reinterviewed by GMP, in circumstances where, by then, Candice had provided a video interview. On 28 March 2014 Mr Li was again

interviewed by police in relation to Candice's account. At his original interview on 14 February 2013 Mr Li had said this to GMP about Candice's allegations:

*So I give my version, she gave her version, then the college did a thorough investigation then said we believe that is not true. You had a relationship, it didn't go on but it's not, as far as the evidence is concerned, it's not rape. But, nevertheless Wen Zhou you are the senior teacher, maybe you shouldn't have close relationship in this sense ... We give you a third [level] warning.*

At his police interview on 29 March 2013 Mr Li repeated that in the investigation, RNCM:

*decided... you know you are, you are innocent. But nevertheless college would like to carry out discipline saying you got too close to the students which you should not do. And so I was being given the third level of warning.*

There is a problem with Mr Li's assertions that RNCM's investigation found there was "no evidence" of sexual assault and that he was "innocent". Having obtained the files from RNCM, GMP told Mr Li at his police interview on 2 October 2013 that RNCM's files did not record Mr Li being "found innocent", but instead:

*The files actually state that as a result of the thorough internal investigation it concluded with you being given a final warning after it was found both parties were diametrically opposed in the most crucial aspect of the case. That meaning that they couldn't determine who was telling the truth.*

Asked about this in cross-examination, Mr Li said:

*I did not know the decision was being read in that way. As far as I was concerned, it didn't happen like that. If they cannot decide who is the true storyteller, they should do further actions. They decided and carried on with the final warning. I didn't know what was going on in that file.*

I found Mr Li's 'exoneration' narrative significant. It concerns an investigation into sexual assault and a formal warning. Mr Li had it in mind when he was arrested. His claim, maintained in his evidence in chief before this Court, that he had been exonerated in the investigation is significant, but is demonstrably incorrect. I cannot accept that Mr Li "didn't know what was going on" with the investigation and outcome. This is another feature of the case undermining my ability to treat Mr Li's evidence as reliable.

75. Candice's allegations, as made to GMP and put to Mr Li in his interviews and reflected in the documents before the Court, included the following. She was at Mr Li's home address in Acresfield Road for extra tuition. Mr Li went through to the living room and lay down on the sofa, lay on top of her and kissed on the lips. On another occasion, at Mr Li's house after a violin lesson, Mr Li laid Candice on the floor and began touching her between the legs through her jeans, then Mr Li unzipped her jeans and began rubbing her between her legs, progressing to penetrating her vagina with his fingers. On a further occasion at his house Mr Li got into bed with Candice and played with her sexually. Then on 12 September 2000 (the night before a trip to Poland) when they were in the living room at Mr Li's house, Mr Li undressed Candice and then himself, and they had sexual intercourse with Candice sitting astride him. On another occasion, after another lesson at his house, Mr Li took Candice upstairs and, having threatened to tie her up with a towel,

raped her. At the safeguarding meeting with the City Council and CSM representatives on 1 October 2014, GMP’s DC Booth summarised what Candice was saying:

*[Candice] describes that she was psychologically manipulated and groomed by [Mr Li]. She stated that she found it difficult to play the violin. She stated that if you want to get attention, you would learn more. [Candice] stated that [Mr Li] invited her for practice sessions at his home and school. This then led to having coffee together, meals, gifts, kiss on the cheek, kiss on the lips then heavy kissing. [Candice] stated she didn’t know what to do as she didn’t want to lose him as a teacher. [Candice] then alleges that he raped her. After that, they had a consensual relationship.*

These matters were put to Mr Li in cross-examination by Mr Levinson. Mr Li denied them. I found the following points relevant. First, Mr Levinson is right to suggest that there is, on the face of it, some real similarity between the experiences described in 2000 by Candice (aged 20/21) as Mr Li’s violin student at RNCM, and what Abigail says she experienced around age 16 as Mr Li’s violin student at CSM in 1996/97. Secondly, when Mr Li was interviewed by the police on 29 March 2013 he said this:

*[Candice] and Joanne they know each other very well though [Candice] knows that Joanne was my girlfriend. But eventually we decide to part with Joanne so [Candice] very much aware of that. So at that time for a period of time I was there with [Candice] meet and work, together in a social, she came to my home and we have bad things. I remember we sort of start to being together towards the end of the term, at least you know winter part of 2000. 2000 towards the end of 2000 the year, so she came to my home so we, we, we got together, and erm, and so get together means we start you know had a relationship with her.*

Cross-examined by Mr Levinson about the phrase “we have bad things”, Mr Li was unable to explain it:

*... to be honest, it’s very strange I say bad things. It must be some kind of misunderstanding. I couldn’t say bad things to the police without explanation. To be honest with you, I really don’t recall saying, or at least meaning, bad things. I am quite sure it’s not in that sense. It is quite odd. Obviously I can read that but I didn’t notice that. I cannot answer that. I don’t know what that means.*

Asked by Levinson whether “bad things” was a reference to having sex with Candice on 12 September 2000, Mr Li said:

*... it can’t be bad things. I wouldn’t say bad; why would I say bad; I don’t understand. Whatever reason it’s there I’m not sure. I definitely would not say that.*

The phrase “bad things” appears on the face of the transcript of the police interview. I find as facts: that Mr Li did use that phrase to the GMP; and that he used it (and “get together”) to describe having sex with Candice. It does not follow from that, of course, that what Candice alleged against Mr Li is what took place. Still less does it follow from that that what Abigail alleges against Mr Li is what took place 3 years earlier. It is possible that “bad things” was a description of an ‘overlap’ – a time when he was in a sexual relationship with Joanne and Candice – which Mr Li denied (“we did not have sex when Joanne was my girlfriend. I am 100% sure”). It is also possible that Mr Li was

referring to the relationship with Candice as having been an awkward mistake. In his opening description to the police (14 February 2013) Mr Li had said this about Candice and the sexual relationship with her:

*she has always been a good friend, you know, a good student, a close you know, student and friend, then at that time we developed... we just turned it into a relationship which we didn't intentionally do, it just happened, then after that I just feel it's maybe not right, okay, so we said, you know, [Candice] you know, maybe ... then later on, about a month later I just find that she's a little strange, I said '[Candice] are you okay', [she] said 'yeah, fine'. Then later on I'd been called to the management college and said... you know [Candice] say you raped her.*

The phrases “it just happened”, “it’s maybe not right” and “she’s a little strange” – when put alongside “bad things” – are striking. So is the insistence on the word “we” in phrases like “we developed” and “we ... turned it into a relationship”. The fact remains that Mr Li did describe the sexual relationship with Candice as “bad things”, and he was unable to explain what that phrase meant. Finally, when asked by Mr Levinson in cross-examination “why would [Candice] make it up?”, Mr Li said:

*Good question. I don't know. She did not complain. I never ever had any complaint. It was the same with Abigail. They were always very happy.*

There is a resonance in: “She did not complain. I never had any complaint. It was the same with Abigail”. That is about ‘signals’, a theme to which I will return.

*The evidence about Effie (1990)*

76. The evidence about Effie was also evidence in the case. Mr Li addressed this topic in his evidence in chief and was cross-examined about it. In 1990 Effie was a 20-year-old violin student who Mr Li taught at RNCM in Manchester, at a time when Mr Li was also teaching at YMS where he shared on-site accommodation at The Bothy. The documents record that Effie also made allegations to GMP, about which Mr Li was rearrested and interviewed on 14 February 2013. Effie said Mr Li had invited her to stay at The Bothy at YMS in London, for extra tuition. She told the police that on one such occasion, when she was staying at The Bothy during the school holidays, Mr Li lunged towards her and kissed her. She also said Mr Li has stayed at her flat in Manchester. She told the police about an occasion there when she was aware of the bedroom door opening and could see Mr Li entering her bedroom. She said that she immediately felt vulnerable and intimidated, and that he threw himself on top of her hands and pinned her down on the bed while lying on top of her. She said despite twisting her head about and wriggling her body she was trapped underneath him. Mr Li’s response was that he accepted that he stayed at Effie’s flat in Manchester. He also accepted that he invited Effie to YMS and that she stayed at The Bothy, but he did not recall that as having been during the holidays. In his evidence to this Court, as in his response to GMP, he denied the allegations of sexual assault made by Effie. Cross-examined about the incident in Effie’s bedroom at her flat, Mr Li said: “it’s not true at all. For context, she was not as advanced as the other students in the class. She was about to graduate. I saw her a lot more. I invited her to YMS and gave her extra lessons. Sometimes there were extra lessons for her to get ready for her final exams. One day she said come over to my house. By that time she had got

her degree and was very happy. She said I would like to say big thanks for your help. I went we had dinner and even her boyfriend was there that I don't remember whether he left or not. I was in her house. We had dinner and we talked, then I went to bed. Somehow she said I came to her for sex. I do not recall at that time. She said I kissed her. That's what I remember". Asked why Effie would make an untrue allegation of rape, Mr Li said "I don't know." Asked what she stood to gain by making such an allegation, Mr Li said "I don't know. I have asked myself. It was all very friendly. I was travelling weekly to Manchester. [Effie] invited me to stay at least 2 or 3 times. That time she cooked dinner." Asked why she would make it up, Mr Li responded: "that is the question I have been asking myself. One suspicion, maybe, I'm not sure, is that they met together with [Abigail] and a mutual friend and they discussed this. I don't know. That is my guess. Otherwise I don't know why".

*A bandwagon?*

77. Cross-examined as to why all these women – Effie, Ghisele, Abigail and Candice – should make false allegations of terrible behaviour Mr Li said: "I don't know why. Maybe they follow the wagon, the back of the wagon. I have no idea." The idea of Effie, Ghisele, Abigail and Candice 'jumping on a bandwagon' is not, in my judgment, a tenable explanation for what happened. Candice complained about what she said happened to her at the time, in 2000. When RNCM finished its investigation, and after an internal appeal was rejected, Candice did not complain to the police. There is no evidence that Abigail was aware of Candice's or Effie's allegations when Abigail went to the police in January 2013: she described the allegations of which she was aware, namely those reported by Brian to Mr Joo regarding Ghisele, about which Mr Joo had told Abigail. Ghisele jumped on no bandwagon. The evidence is that she had confided in Brian in 1993/94, something which was communicated to Mr Joo (whose evidence I accept) and by Mr Joo to Abigail. Ghisele was, as the documents reliably show, contacted through Mr Joo and through Brian: Ghisele told her story to GMP but then said she did not wish to proceed with the matter and disengaged from the GMP investigation. Abigail had herself confided in Mr Joo, in 1997. There is no evidence to indicate that Effie came forward to GMP because of Abigail's allegations rather than because of the well-publicised investigation in relation to teachers at CSM.

*'No signal at the time'*

78. I have referred to Mr Li's response when asked about Candice's allegations:

*She did not complain. I never had any complaint. It was the same with Abigail.*

In cross-examination, after being asked about Candice, Effie and Ghisele, Mr Li said this:

*Once again I was really very, very sad to see all these people saying 'you're a bad guy' which I wasn't. I was trying to help and they are all against me. But the difficult thing is I have not any – I mean I should have some sort of – sense from these people, but I never had. That's the difficult part, as I honestly told the police.*

Asked about Mr Joo and Brian Mr Li said:

*no signal was given to any of my direction about it, none.*

Asked about Abigail's allegations Mr Li said:

*we got along well. I never heard her complain about my behaviour about some kind of sexual assault, that I do something she don't like – ever.*

This was a clear theme in Mr Li's evidence. I have put this alongside the fact that Mr Li did not apply boundaries of self-restraint so far as concerned sexual relationships with students whom he was teaching the violin, relationships which he accepts in the cases of Joanne Quigley and Candice. I found it striking that Mr Li should describe as "the difficult thing" and "the difficult part" having received no "sort of sense from these people", a "sense" which he later described as a "signal". Put alongside the other evidence in the case – and focusing on my function of making findings in relation to Abigail's allegations – I find as follows. Mr Li acted, opportunistically, in the shadowy area in which he did not distinguish between consent and submission, within the context of having the upper hand in the special and trusted relationship of principal instrumental teacher, where he was able to initiate and then escalate physical and sexual contact, and when – alongside his denials of sexual activity – he is now affronted by allegations of sexual assault in relation to a person who did not, as he sees it, give a clear or clearer "signal" at the time of his opportunism and escalation.

*Brian's evidence of encounter and reunion*

79. I now return to one further piece of evidence relating to Brian. As has been seen, Brian was a YMS student (1988-1994) and was Mr Li's student at YMS (1990-1994). This was the context, in Brian's words:

*At [YMS] I was extremely close to [Mr Li], indeed, he became something of a father figure for me. The relationship between a violin student and teacher is always an intense and intimate one at that level, but I also considered [Mr Li] to be a good friend. He was an individual whom I admired immensely and trusted implicitly. It is hard to explain to non-musicians, but it cannot be over emphasised how unique and important the relationship between our students and our principal instrumental teachers were at the school. I had left my home at the age of 12 and moved to England solely for the intention of becoming a violinist, so while I had other academic lessons and other music lessons, my violin studies and my violin teacher were absolutely central to my whole world.*

There are some further events recounted in Brian's section 9 witness statement to GMP, events which Mr Li denied to GMP and denied in his evidence to this Court. As with other individuals who did not give evidence at this trial, I tread cautiously. This was Brian's story, according to his statement (21 April 2013) to GMP. During the time when he was Ghisele's boyfriend (1993/94), Ghisele confided in Brian that Mr Li had sexually abused Ghisele in the early 1990s, as he told Mr Joo (which Mr Joo, whose evidence I accept, corroborates). Ghisele had told Brian, and also her mother, about the abuse. Ghisele's mother did not believe her. In that situation, Brian (aged around 17) had an encounter with Mr Li, at YMS. Mr Li was "extremely upset, ashamed and contrite"; he



said he was “so sorry”; he claimed that he himself had suffered sexual abuse as a child in China; he said he understood that Brian would likely not now want to continue to study with Mr Li at RNCM, as planned. Subsequently, Mr Li was “perfectly calm and collected”, was insistent that he had done absolutely nothing wrong, and made clear that there was no reason why Brian should not go to RNCM. Brian did go to RNCM (1994-1998), where Mr Li taught him “as if nothing had happened” and there was “a sort of uneasy status quo”. I mention this piece of evidence because it is a narrative about an awkward conversation, about putting something to one side, and about reunion with a violin teacher, in the context of a pupil/student’s aspirations to succeed with violin playing. I am not making findings of fact about whether these things happened between Brian and Mr Li. But I have found the description helpful in thinking about ‘inherent improbability’ and ‘untenability’ in the context of Abigail’s own Reunion (2002), including in the context of Revelation, Accusation and Reunion, all of which I have discussed earlier.

### *Delusional Disorder*

80. I end my discussion of the evidence with this topic. I have considered, and deliberated upon, the evidence from the two experts (Dr Freedman and Professor Maden). I have taken into account what they say, and the submissions made by Counsel about what they say, as bearing on issues which I have needed to evaluate and determine. I want to return to one specific topic. In his closing submissions, Mr Ford QC relied on “delusional disorder” described by Professor Maden in the Joint Expert’s Schedule of Areas of Agreement and Disagreement (13 November 2020). That reliance has a particular significance, placed alongside Mr Ford QC’s confirmation that CSM is not advancing the position that Abigail has given a deliberately false account. The point comes to this. If Abigail has a “delusional disorder”, that would account for her – convincingly and honestly – recalling and recounting events which did not in fact occur. It would be relevant to the allegations made about Mr Li, and also about the allegations made to the foreign domestic authorities about Isabelle and her friends, as well as the allegations made about the foreign domestic authorities (including ‘cover-up’). I have considered this thesis. I cannot accept it. I do not accept that what Abigail has alleged about Mr Li is attributable to a delusional disorder. I find that it is not. Professor Maden’s suggestion of a delusional disorder is not supported by Dr Freedman. It was not put forward by Professor Maden himself, in his very detailed report (26 July 2020) following his thorough assessment of Abigail. That was a report which followed, and included, detailed consideration of the materials in the case and points made as to reliability. Professor Maden, as Mr Levinson points out, has published work on delusional disorder. There is, moreover, no cogent expert opinion before the Court to the effect that Abigail was suffering from a delusional disorder aged 16, in June 1997, in the disclosure she made to Mr Joo. That disclosure is, in my judgment, highly material and it appeared clearly in the papers in the case. When delusional disorder was put forward by Professor Maden, belatedly (13 November 2020), it was described as a “possible diagnosis”. Further, it was “reliant on findings of fact”. In other words, if conclusions are arrived at that Abigail has convincingly and honestly presented a recollection of allegations which did not happen, then it could be that she has a “delusional disorder”. I have not reached those conclusions;

I have not made such findings of fact; nor does Professor Maden’s suggested possible diagnosis, on which I have reflected, inhibit or cause me to doubt those findings of fact that I have made. I add this. No material before the Court suggests, still less convincingly, that this is a case of what courts know as ‘recovered memory syndrome’ or ‘false memory syndrome’, and any such material would need to confront the same point about what was recounted to Mr Joo in June 1997. With this, I conclude my discussion of the evidence. As I have explained, I am satisfied – and find – that Abigail’s account of the core events of this case are not only honestly held as recollections, but they are reliable. For all the reasons which I have given, I find in her favour on the Factual Issue.

### **The Vicarious Liability Issue**

#### *Line of authority*

81. In their submissions on the vicarious liability issue (whether CSM is vicariously liable for any assaults which occurred away from school premises), Counsel relied in particular on this line of appellate authorities. *A v Hoare* [2006] EWCA Civ 395 [2006] 1 WLR 2320 (Court of Appeal, 12.4.06) (Hoare CA); *Various Claimants v Catholic Child Welfare Society* [2012] UKSC 56 [2013] 2 AC 1 (Supreme Court, 21.11.12) (CCWS); *Mohamud v Wm Morrison Supermarkets plc* [2016] UKSC 11 [2016] AC 677 (Supreme Court, 2.3.16) (Mohamud); *Haringey LBC v FZO* [2020] EWCA Civ 180 (Court of Appeal, 18.2.20, upholding the judgment of Cutts J at [2018] EWHC 3584 (QB)) (FZO); *Various Claimants v Wm Morrison Supermarkets plc* [2020] UKSC 12 [2020] AC 989 (Supreme Court, 1.4.20) (Morrisons 2020). In Mohamud the Supreme Court decided that Morrisons supermarket was vicariously liable for the actions of its petrol station kiosk employee (Mr Khan), who had followed a leaving customer out of the kiosk and assaulted him near the air pump. In Morrisons 2020 the Supreme Court decided that Morrisons supermarket was not vicariously liable for the actions of its internal auditor employee (Mr Skelton), who had uploaded payroll data onto the internet. The other three cases all involved teachers, pupils and sexual assaults. In Hoare CA the Court of Appeal decided that the local authority (Wandsworth) was vicariously liable for sexual assaults by a teacher and head of year (Mr Harding) on two pupils (X and Y). In CCWS the Supreme Court decided that a lay Catholic teaching order (the institute) who ‘placed’ brother teachers and had control over their actions was – alongside the Catholic diocesan bodies who contractually employed the brother teachers and managed the school – vicariously liable for sexual assaults by brother teachers on pupils of a Yorkshire boarding school. In FZO the Court of Appeal decided that the local authority (Haringey) was vicariously liable for sexual assaults on the claimant (FZO) by a Highgate Wood school PE teacher (Mr Adams).

#### *Law: General*

82. For the purposes of the present case, relevant features of the legal landscape can I think be mapped as follows. I start with the general. (1) The test for vicarious liability involves these two stages (CCWS paragraphs 21, 88): (a) first, asking whether the relationship between defendant and perpetrator is capable of giving rise to vicarious liability; (b) secondly, asking whether the connection that links that relationship with the perpetrator’s conduct is such as to establish liability on the defendant’s part. The test of vicarious

liability involves a “synthesis” of these two stages (CCWS paragraphs 21 and 48). The second stage is about a relationship-conduct link. (2) An employer-employee (defendant-perpetrator) relationship will in principle satisfy the first stage (CCWS paragraph 35). It is common ground in the present case that the first stage is satisfied on that basis. (3) The second stage (the relationship-conduct link) requires consideration of two matters (Mohamud paragraphs 43-46). Expressed for an employer-employee relationship (as in the present case) they are: (i) what functions (field of activities: the nature of the job) have been entrusted by the employer (defendant) to the employee (perpetrator) (Mohamud paragraph 44); (ii) whether there is a sufficient connection between the position in which the employee was employed and the employee’s wrongful conduct to make it right for the employer to be held liable for the employee’s conduct (Mohamud paragraph 45). This produces “the close connection test” (Morrison 2020 paragraph 36). It involves looking for the “necessary connection” which has been found in “cases where the employee used or misused the position entrusted to them in a way which injured the claimant” (Mohamud paragraph 45). There is no “social justice” or “unbroken sequence of events” test (Morrison 2020 paragraph 16-17). (4) There may be “dual” vicarious liability, where the two-staged test of vicarious liability – including the two matters relevant to the second stage – is satisfied on the part of each of two distinct defendants, in respect of the same action by the perpetrator (CCWS paragraphs 44, 94). In CCWS, a brother teacher’s conduct was capable of being sufficiently connected to his relationship with the institute, whether or not it was even more closely connected to his relationship with the diocesan bodies, and vice versa: it is a “close connection” test not a “closest connection” test.

*Law: Specific*

83. Continuing with the legal landscape, I turn to the specific context of sexual abuse, including by teachers. (5) In applying the close connection test it is necessary to have regard to the assistance provided by previous court decisions, including those decided cases most closely comparable to the case before the court (Morrison 2020 paragraph 36). The application of the vicarious liability test has thus been called “an evaluative judgment ..., having regard to all the circumstances and to the assistance provided by previous court decisions on the facts of other cases” (Mohamud paragraph 50). (I interpose that I accept Mr Ford QC’s submission: that a judgment of the county court on vicarious liability in a case about a scout chaplain which went to the Court of Appeal and was disposed of there on other contentious issues without reaching this one (*JL v Archbishop Bowen and Scout Association* 27<sup>th</sup> May 2015, unreported) is, whether right or wrong on its facts, best treated as being outside the class of previous court decisions to which this Court can have regard for assistance.) (6) In sexual abuse cases “a more tailored version of the close connection test is applied” (Morrison 2020 paragraph 36) and so “the close connection test has been applied differently in cases concerned with the sexual abuse of children” (Morrison 2020 paragraph 23). (7) In these cases, there are “criteria ... particularly relevant to that form of wrongdoing” (Morrison 2020 paragraph 23). Contextual features which have been emphasised (using the language of the employment relationship), where vicarious liability has been found, include the following interrelated and overlapping points. (a) The employer’s conferral of authority

on the employee over the child victim, which authority the employee has abused (Morrison 2020 paragraph 23). This fits alongside the idea of the employee having “used or misused the position entrusted to” them (Morrison 2020 paragraph 45). (b) That the employer-employee relationship has “caused” the perpetrator (employee etc) “to have access” to the child “in circumstances” where abuse has been “facilitated” (CCWS paragraph 85). (c) That the employer provided the employee with “the opportunity to abuse [the employee’s] power”, that opportunity being “incidental to the functions” of the employee (CCWS paragraph 66, discussing influential Canadian authority). (d) That the employer through the employment relationship had “created or significantly enhanced the risk that the victim ... would suffer the relevant abuse” (CCWS paragraph 86), which risk can be a function of aspects such as “close proximity” and “position of trust” (CCWS paragraph 72, citing earlier House of Lords authority). Creation of risk is not, of itself, enough to give rise to vicarious liability, but it is “one of the criteria” and “always likely to be an important element in the facts that give rise to such liability” (CCWS paragraph 87). (e) That the relationship “facilitated the commission of the abuse by placing the [abuser] in a position where they enjoyed both physical proximity to their victims and the influence of authority over them” (CCWS paragraph 84). (f) That the employment relationship “entrusted” the employee with “responsibility” for “care” (Mohamud paragraph 39). (8) An important statement of principle is that: “The essential closeness of the connection between the relationship between the defendant and the [perpetrator] and the acts of abuse ... involves a strong causative link”; as is apparent from the imposition of vicarious liability on a defendant who, in deploying the perpetrator to carry on its own business or further its own interests, has “done so in a manner which has created or significantly enhanced the risk that the victim or victims would suffer the relevant abuse” (CCWS paragraph 86).

*Mr Harding’s sexual assaults on X*

84. In passages which I have already referenced, Lord Reed (Morrison 2020 paragraph 36) and Lord Dyson (Mohamud paragraph 50) encourage this Court to follow the assistance provided by decided cases most closely comparable, including by reference to the facts of those other cases. In doing so, I start with the case of Mr Harding and X and Y, in Hoare CA. Mr Harding was a teacher of maths and geography (Hoare CA paragraph 189) and was head of year (paragraphs 14, 129) at the local authority-maintained (paragraph 187) secondary school in Wandsworth, giving him “a measure of” (paragraph 131) pastoral responsibility towards pupils (paragraph 124, 129). In X’s case, events “started” with Mr Harding making “a promise to X’s parents that he would look after X” (paragraphs 127, 190). Mr Harding raised indecent topics with X in Mr Harding’s office in the corner of the classroom (paragraphs 127, 190-192). Mr Harding indecently assaulted X in the school toilets (paragraph 193). It was “artificial” to seek to “segregate” the assaults from the “improper discussions” (paragraph 127). The local authority was vicariously liable.

*Mr Harding’s sexual assaults on Y*

85. In Y’s case, there were “limited acts of grooming” which “took place in school hours”, involving Mr Harding “inviting [Y] into his office and asking him how he was getting

on” (Hoare CA paragraph 131), and asking if Y would like Mr Harding to help Y with his fitness (paragraphs 131, 202), helping Y to prepare for Sunday American football activities which had nothing to do with Y’s school activities (paragraph 202). Y trusted Mr Harding because of the school post Mr Harding held (paragraph 131) and because Mr Harding said he had played a lot of sport (paragraph 202). Mr Harding arranged to meet Y at a tube station (paragraph 203). They met, and Mr Harding took Y by car to Mr Harding’s house where he sexually assaulted Y (paragraph 203). They continued to meet in the same ways, during the school term and during the holidays (paragraph 204). Sometimes, Mr Harding drove Y through quiet residential streets to secluded areas where he would indecently assault Y (paragraph 204). Mr Harding gave Y presents, took him to Richmond Park, Esher golf range and Brighton (paragraphs 204-205). The local authority was vicariously liable for the sexual assaults. The fact that the sexual acts took place off the school premises (paragraph 131) was not a reason to reject vicarious liability (paragraph 132). Mr Harding’s acts were “closely connected” to “his pastoral responsibilities”, by contrast with – for example – a member of school groundstaff or acts of a teacher during “school holidays” which acts “had no connection with the teacher’s responsibilities at the school” (paragraph 132). (I interpose this. I accept Mr Levinson’s submission that the Court of Appeal was not saying that indecent acts in the school holidays would, for that reason, lack a close connection to satisfy the test of vicarious liability. After all, Mr Harding’s acts, for which there was vicarious liability, included during the school holidays (paragraph 204). The Court of Appeal was giving an example of acts which had not arisen from the teacher-pupil setting: like a teacher who meets a child in the school holidays where there has been no relevant encounter (in Y’s case, “limited acts of grooming”) in the school setting.)

*Mr Adams’s sexual assaults on FZO*

86. Mr Adams was a PE teacher at Highgate Wood school (FZO paragraph 10). As a teacher, he had “pastoral duties” (paragraph 141): “the pastoral relationship between teacher and pupil” (paragraph 151). FZO attended Highgate Wood as a pupil, between 1980 and 1982 (paragraph 10), then left to attend a private school (1982-1983) (paragraph 17), then returned to Highgate Wood (1983-1984) (paragraph 17), and finally left the school but remained in the United Kingdom (1984-1988) until the age of 21 when he went to Australia (1988) (paragraphs 18, 22). The relevant sexual activity between Mr Adams and FZO was throughout all of these periods. What happened was this. FZO had been raped by a man at a flat after a party (paragraph 13) and had returned to school after a period of absence. Mr Adams had noticed that something was wrong and asked FZO about it, then began to drive FZO home after school and told FZO that he could rely on him and trust him (paragraph 14). (I interpose that in the judgment of Cutts J at [2018] EWHC 3584 (QB) this is described at paragraph 28: Mr Adams had noticed that FZO was not himself and asked him what was wrong; they spent some time together at school; sometimes Mr Adams called FZO into his office at school to ask FZO how he was feeling; then Mr Adams offered to drive FZO home, picking him up from the bus stop outside school and dropping him near home.) The first act of touching and kissing was in Mr Adams’s car on one of the drives home from school (FZO paragraph 15). What followed were sexual assaults in Mr Adams’s house (paragraph 15). While FZO was a

pupil at Highgate Wood, sexual assaults took place: at Mr Adams's house; in Mr Adams's car in car parks; in the school changing rooms; at Hampstead Heath; on a school visit to a mosque; on a school camping/kayaking trip (paragraph 15). While FZO was at the private school, sexual assaults took place: at Mr Adams's house; on Highgate Wood sailing trips which FZO was allowed to join (paragraph 17). The sexual assaults continued after FZO had left school aged 18, until the time he left for Australia aged 21. The position was:

- (1) The local authority (Haringey) accepted vicarious liability for Mr Adams's sexual assaults on FZO during the first period (1980-1982) while FZO was first a pupil at the school (paragraph 4(6)). That included the sexual assaults which took place: in the school changing rooms; on the school visit to a mosque; on the school camping/kayaking trip. But it also included the sexual assaults which took place: at Mr Adams's house; in Mr Adams's car; and at Hampstead Heath. However, Haringey denied vicarious liability for sexual assaults which occurred after 1982. Haringey said (paragraph 145): that at the time of some of these, FZO was no longer a pupil at Highgate Wood (1982-1983 and after 1984); that, as regards those taking place at the time when FZO was again a pupil at Highgate Wood (1983-1984), Mr Adams was not his teacher at that time; that events in the car and at the home of Mr Adams and in other locations were essentially private; that these were away from the school; that Mr Adams was off-duty; that there was no 'unbroken chain of events'; and that events were not 'within the course of employment'. In the circumstances, said Haringey, the relationship was not sufficiently close (paragraph 146).
- (2) Haringey was found to be vicariously liable for all of the sexual assaults, in all places and during all periods. On this, the Court of Appeal declined to disturb the judge's evaluative conclusion (paragraph 154). The test of vicarious liability was not a 'course of employment' test (paragraph 149). The focus was not on time and place (paragraph 150). Here, there had been a "pastoral relationship between teacher and pupil", which had then been "abused by the perpetration of regular sexual assaults on a pupil/former pupil" (paragraph 151). In the period up to 1984 a "position of trust" had been "created", "undoubtedly within a relevantly close connection", of which there was an "abuse" (paragraph 153). There was "control and manipulation" – "grooming" – which "began during" Mr Adams's "employment by [Haringey]" (paragraph 154). As to the period after 1984, when FZO was over 18 and had left school, the "abuse of the position of trust" that had been created in the period to 1984 was "still operating" upon FZO (paragraph 153). The "control and manipulation" – the "grooming" – which "began during" Mr Adams's "employment by [Haringey]" had "continued to be operative upon [FZO]" and FZO's submission (not consent) as to sexual activity (aged 18-21, as an adult and former Highgate Wood pupil) was a "situation" which was "caused by what happened when the relevant relationship undoubtedly satisfied the second [ie. sufficient connection] criterion for vicarious liability", which criterion therefore "remained satisfied throughout" (paragraph 154).

*CSM's case for rejecting vicarious liability*

87. Mr Ford QC's submissions on vicarious liability, in essence as I saw them, were as follows. It is accepted that: that the relationship between CSM and Mr Li during 1996/97 (employer-employee) satisfies the first stage (stage (a)) of being a relationship capable of giving rise to vicarious liability; that acts by Mr Li of kissing Abigail in the practice room at CSM would be sufficiently closely connected to the employment relationship to give rise to vicarious liability; that acts taking place outside school hours, or off school premises, or both, could in principle be sufficiently closely connected to the employment relationship to give rise to vicarious liability. As Lord Reed recognises (Morrisons 2020 paragraph 23), vicarious liability in cases such as the present is about the conferral by the employer on the employee of authority over the victim, which authority the employee has misused. The "authority" over the victim, conferred by the employer on the employee, has to be "present and operative at the time of the wrongdoing", because that provides the connection between the employment relationship and the tortious conduct. In Hoare CA, the reason why Y was prepared to be with Mr Harding for 'fitness training' was because of Mr Harding's position of authority at the school, and it was significant that Mr Harding as head of year had a pastoral responsibility. It is necessary to ask who it is who has conferred the authority which has been abused. In this case, the question is whether assaults occurred (i) because Mr Li was misusing authority conferred by CSM as employer or (ii) because Mr Li was misusing authority conferred by Abigail's parents under the guardianship arrangement or (iii) both. The answer is (ii), but not (i), and therefore not (iii). No vicarious liability therefore arises. Leaving aside the assaults in the practice room at CSM, which CSM accepts attract vicarious liability, all of the acts of sexual assault – in Mr Li's car, and at Mr Li's flat in Salford Quays – were at a time when Mr Li was hosting Abigail as her guardian. That does not 'displace' a vicarious liability otherwise arising if Mr Li had assaulted Abigail in his car or flat. Had Mr Li had Abigail in his car or flat otherwise than in conjunction with the guardianship arrangement, there would necessarily have been a different set of facts and circumstances as to how that situation had arisen. Depending on those facts and circumstances, there could be vicarious liability. However, on the facts and in the circumstances of the present case there is no vicarious liability. When Abigail was in Mr Li's care, during free weekends and school holidays when he was acting as guardian, "he was not conferred with authority vested in him by CSM, but by [Abigail]'s parents" and "if he abused or betrayed a trust it was a trust vested in him by [Abigail]'s parents, not CSM", acting as ("qua") guardian rather than as ("qua") violin teacher. The guardianship role was a distinct role. It was an arrangement made with Abigail's parents. It was an arrangement made before Abigail left YMS and before she joined CSM. Moreover, CSM had nothing to do with Abigail's parents' choice as to who should be Abigail's guardian. It was squarely pursuant to that relationship that Abigail was present with Mr Li, at free weekends and half-term. Abigail would not have been present with Mr Li unless he had been her guardian under that arrangement. Accordingly, the relevant pastoral authority was that conferred by Abigail's parents. There was "no real connection" between Mr Li's employment relationship with CSM and assaults committed in his home or his car in the school holidays or over free weekends. Those were the submissions, in essence.

*My overall evaluation*

88. I cannot accept these submissions. In my judgment, the connection that links the employment relationship between CSM and Mr Li is such as to establish liability on CSM's part for the sexual assaults by Mr Li on Abigail in 1997 in Mr Li's car and flat, while Mr Li was acting as host under the guardianship arrangement with Abigail's parents. In my judgment, there is the necessary close connection between the position in which Mr Li was employed by CSM and Mr Li's sexual assaults on Abigail in his car and flat, while he was acting as host under the guardianship arrangement with Abigail's parents, to make it right for CSM to be held liable for Mr Li's conduct. In explaining why, the starting point is with the functions entrusted by CSM to Mr Li. These included the function of principal instrumental teacher. That is a special one-to-one relationship. Those functions also included a pastoral responsibility owed by a teacher to a pupil. Mr Li did not have the pastoral responsibility of a head of year like Mr Harding (cf. Hoare CA paragraphs 14, 129), but he certainly had a measure of pastoral responsibility (cf. Hoare CA paragraph 131), and there was the pastoral relationship between teacher and pupil (cf. FZO paragraph 151), under which Mr Li had pastoral duties as a teacher (cf. FZO paragraph 141). Mr Li used, and misused, the position entrusted to him by CSM in a way which injured the claimant. The employment relationship at CSM caused Mr Li to have access to Abigail at CSM, as her one-to-one instrumental tutor, and on a day-to-day basis. The circumstances of that access to Abigail facilitated the sexual assaults which occurred. The employment relationship at CSM gave Mr Li an opportunity, one which was incidental to his functions as violin teacher, to abuse his power. Through the employment relationship with Mr Li, CSM created or significantly enhanced the risk that Abigail would suffer the relevant abuse. That risk was a function of close proximity and a position of trust. The employment relationship at CSM facilitated the commission of the abuse by placing Mr Li in a position where he enjoyed physical proximity to Abigail and he enjoyed the influence of authority over her. The employment relationship entrusted Mr Li with responsibility for care of Abigail. The essential closeness of the connection between the employment relationship between CSM and Mr Li and Mr Li's acts of abuse involved a strong causative link.

*Present and operative authority*

89. Mr Ford QC's "present and operative authority" point runs as follows: (i) the relevant acts of abuse or misuse of authority were the sexual assaults in Mr Li's car and flat; (ii) those acts could not have been an abuse or misuse of authority conferred by CSM as employer because there was no "present and operative" authority conferred by CSM at the time of that wrongdoing; (iii) at the time of that wrongdoing there was a present and operative authority but it was that conferred by Abigail's parents under the guardianship arrangement. In response to that argument, the starting point is to recognise that it is right, of course, that Mr Li's sexual assaults on Abigail in the car and flat are 'the relevant wrongdoing constituting the tort in respect of which the question of vicarious liability arises'. In Hoare CA it was Mr Harding's sexual assaults on Y, in Mr Harding's house and in his car in quiet secluded areas, including assaults taking place during the school holidays, which were 'the relevant wrongdoing constituting the tort in respect of which the question of vicarious liability arose'. In the same way, in FZO it was Mr Adams's



sexual assaults on FZO – in his car driving him home, in his house, in his car at car parks, as well as in the school changing rooms and on school trips – that were ‘the relevant wrongdoing constituting the tort in respect of which the question of vicarious liability arose’. In FZO, this ‘relevant wrongdoing’ continued when FZO had left the school and was at a private school, and they continued after FZO had left the school aged 18 and until he was 21 and travelled to Australia. In Hoare CA the Court of Appeal did not say that Mr Harding had an “authority” over Y, conferred by the employment relationship, which was “present and operative” when Mr Harding was sexually assaulting Y in his car or at his house, even in the school holidays. In FZO the Court of Appeal did not say that Mr Adams had an “authority” over FZO, conferred by the employment relationship, which was “present and operative” when Mr Adams was sexually assaulting FZO, including in his car driving him home, in car parks, and at his house, and including during the time when FZO was a pupil at a different school, when he had returned to Highgate Wood but was no longer taught by Mr Adams, and then when he was aged 18-21 and was a former pupil. The features of these cases which really matter are ideas to do with ‘initiation’ (as I shall call it) and ideas to do with ‘causation’. I will deal with each in turn.

### *Initiation*

90. As to initiation:

- (1) In Hoare CA, the conduct of Mr Harding in the case of X started, after the promise to the parents, with raising indecent topics with X in the office in the corner of the classroom at the Wandsworth secondary school where Mr Harding was employed as teacher and head of year, and where X was pupil. Mr Harding’s conduct in the case of Y started with the “limited acts of grooming” which “took place in school hours”, when Mr Harding invited Y into the office and then made the offer to help Y with his fitness for his Sunday American football activities. In FZO, the conduct of Mr Adams started at school: seeking FZO out after his absence from school; asking him what was wrong. Then there was the offer to drive FZO home from school, and the drives home from school themselves, including the statement by Mr Adams that FZO could trust Mr Adams. This was the “control” and “manipulation” which began at school (paragraphs 14 and 154: in the judgment of Cutts J, paragraphs 28, 216 and 218). These are all ‘initiation’ activities. They link, very directly, to the authority over the pupil conferred by the employer on the teacher. They are acts of a teacher in a setting where he is a teacher. They all start from a setting of a “present and operative” authority over the student, conferred by the employer: ‘come into my office’; ‘let me give you a lift home’.
- (2) It is unsurprising that the law should focus on ‘initiation’ activities. Viewed in terms of the features emphasised in the case-law: here there is “authority”, and it is being “abused”; here there is a “use[] or misuse[] [of] the position entrusted” to the teacher; here the employment relationship has “caused” the teacher to “have access” to the child, in “circumstances” which have “facilitated” the sexual assaults which followed; here is the “opportunity” to “abuse power”; an opportunity

“incidental” to the teaching function and pastoral responsibility; here the employer has “created or significantly enhanced the risk” that the pupil would suffer the sexual abuse; here the risk is a function of the “close proximity” which the employment relationship provides; here, the risk is also a function of the “position of trust” which the employment relationship brings; here the employment relationship has placed the teacher in a position of enjoying “physical proximity” to the pupil and “the influence of authority over” the pupil; here the employment relationship had “entrusted” the employee with “responsibility” for “care”. This is the gateway. This is where it starts.

- (3) All of this is true in the present case. In the present case there were not, at school, the “limited acts of grooming” of inviting Abigail into an office and asking how she was getting on, and offering to give her help out of school hours and off-site (as with Y and Mr Harding). Nor were there, at school, the expressions of concern followed by the offers to drive a pupil home (as with FZO and Mr Adams). In this case there was the continuation of the close relationship which had started at YMS, where Abigail had been singled out, treated and made to feel special; there was the continuation of a relationship involving conversations in which Abigail felt she could confide in Mr Li; there were actions of manipulation and control at CSM, leading to and including Mr Li’s actions of kissing Abigail on multiple occasions in the corner of the practice room at CSM, not visible from the corridor. These were initiation acts of control and manipulation, of grooming, and incidents of the first assaults, all of which happened at CMS when Mr Li was the teacher, with a present and operative authority over Abigail, conferred by CSM. The initiation actions were ‘use’, ‘misuse’ and ‘abuse’ of authority, over Abigail, conferred on Mr Li by CSM. That initiation is part of the reason why it was no answer for Wandsworth to say that Mr Harding was ‘not Y’s teacher’ at Mr Harding’s house or in his car or at Esher golf course or in the school holidays; and why it is no answer for Haringey to say that Mr Adams was ‘not FZO’s teacher’ in Mr Adams’s car or house, including when FZO was a pupil at another school, and including when FZO was aged 18-21 and no longer a pupil at any school.

### *Causation*

91. I turn to causation. What features here is the “strong causative link” involved in the “essential closeness of the connection between the relationship between the defendant and the [perpetrator] and the acts of abuse”. When Wandsworth deployed (used) Mr Harding at X and Y’s school, and when Haringey deployed (used) Mr Adams at Highgate Wood School, they did so “in a manner which has created or significantly enhanced the risk that the victim or victims would suffer the relevant abuse” (CCWS paragraph 86). The same is true of CSM’s deployment (use) of Mr Li as Abigail’s violin teacher, with a teacher’s authority and pastoral responsibilities, at CSM. The same theme is seen in the idea that the employer-employee relationship “caused” the perpetrator (employee) “to have access” to the child “in circumstances” where abuse has been “facilitated” (CCWS paragraph 85). All of this was true of Mr Harding and Y, was true of Mr Adams and FZO, and is true of Mr Li and Abigail. All of these pupils trusted their teachers. Their

teachers all exploited the position of authority over the pupil, arising from the employment relationship. There was a direct causative link between the employment relationship and the sexual assaults. Indeed, so powerful is the ‘causation’ theme in the case-law that Haringey were vicariously liable for sexual assaults committed: in the year (1982-1983) when FZO had left Highgate Wood School and was at a private school; in the years (1983-1984) when FZO was back at Highgate Wood School but Mr Adams was no longer FZO’s teacher; and in the years (1984-1988) when FZO was a former student and over the age of 18. As the Court of Appeal put it (FZO paragraph 151) the teacher’s pastoral relationship was abused “by the perpetration of regular sexual assaults on a pupil/former pupil”. As it also put it (paragraph 154) the “situation” regarding the “subsequent sexual activity”, in which the “control and manipulation” (“grooming”) “continued to be operative” on FZO, was “caused by what happened when the relationship undoubtedly satisfied the [close connection] criterion for vicarious liability”. The present case is much closer to FZO’s case in the uncontroversial first period (1980-1982), a period of time when Mr Adams was FZO’s teacher at Highgate Wood School, but was sexually assaulting FZO, including in his car and at his home.

### *The Guardianship Arrangement*

92. The question is whether the guardianship relationship entered into between Mr Li and Abigail’s parents means that there are present, on the facts of this case, features which produce a different analysis and a different answer. One way to ask that question is to ask whether the “strong causative link” is broken. Another is to ask whether there is a different origin of “authority” – of a “position entrusted”, “access”, “opportunity”, “proximity”, “trust”, and “responsibility” for “care” – which operated. And that is Mr Ford QC’s argument: the relevant features, he says, are all found in the external, pre-existing, guardianship arrangement between Abigail’s parents and Mr Li. At this point in the analysis, it is helpful to return to Mr Harding and X. That was a case in which started with a promise made to parents. As the Court of Appeal explained (Hoare CA paragraph 190), part of Mr Harding’s role “involved caring for pupils who were bullied” and, when X was bullied, “Mr Harding invited his parents to come and talk to him. He told them he would take good care of [X] ...” Thus, it all “started with a promise to X’s parents that he would look after X” (paragraph 127). That, of course, was a promise directly linked to a pastoral role within the teacher’s employment. But it is helpful to suppose a conversation with parents in the cases of Y and FZO. Take the case of Y, where Mr Harding made an offer to Y to help with ‘fitness’ for Sunday morning American football activities. Or take the case of FZO, where Mr Adams started giving FZO lifts home from school. Suppose a conversation between Mr Harding and Y’s parents in which – unknown to the school – Mr Harding offered the ‘fitness’ help for Y. Or suppose a conversation between Mr Adams and FZO’s parents in which – unknown to the school – Mr Adams offered to give FZO lifts home from school. Suppose those were phone calls made from the teacher’s mobile phone in the evening. Reading the authorities, and tuning-in to the principled parameters and flow of legal analysis, I find it impossible to believe that Wandsworth or Haringey would have been able to avoid liability for what Mr Harding did to Y, or for what Mr Adams did to FZO, on the basis of an analysis along the lines that the relevant “authority” in such situations was conferred by the parents.

*Postulating a Guardianship Agency*

93. The guardianship arrangement was stronger in those examples: Mr Li was agreeing to be ‘in loco parentis’. Abigail’s parents knew this, so did Mr Li and so did the school. Mr Ford QC and Mr Levinson both addressed me on a scenario in which an agency had appointed Mr Li as guardian for Abigail, inviting me to consider what the position would be had such an agency existed. That is, I think, a helpful exercise. I will confront it, as they did.

(1) The position can, I think, be tested in this way. Suppose regulations made by central Government require that any overseas pupil at a UK boarding school must have a UK-resident guardian, to act ‘in loco parentis’ for the pupil, including as a host at the guardian’s home at weekends or half-terms. Suppose a Guardianship Agency has the function of dealing with appointments of suitable guardians. Suppose the Guardianship Agency appoints a teacher (Mr Li) at a boarding school (CSM) to act as guardian for an overseas pupil there (Abigail). Mr Ford QC makes the powerful submission that the Guardianship Agency, having appointed the teacher-guardian, would in principle be vicariously liable for sexual assaults in the guardian’s car or flat at times when the guardian was hosting the pupil. It is a powerful submission for these reasons. Mr Li would have had pastoral responsibility as a guardian. Mr Li would have used, and misused, the position entrusted to him by the Guardianship Agency in a way which injured Abigail. The relationship between Mr Li and the Agency would have caused Mr Li to have access to Abigail in his car and his flat. The circumstances of that access to Abigail would have facilitated the sexual assaults which occurred. The relationship between Mr Li and the Agency would have given Mr Li an opportunity, one which was incidental to his functions as guardian, to abuse his power. Through the relationship between Mr Li and the Agency, the Agency would have created or significantly enhanced the risk that Abigail would suffer the relevant abuse. That risk would have been a function of close proximity and a position of trust. The relationship between Mr Li and the Agency would have facilitated the commission of the abuse by placing Mr Li in a position where he enjoyed physical proximity to Abigail and he enjoyed the influence of authority over her. Mr Li’s relationship with the Agency would have entrusted Mr Li with responsibility for care of Abigail. The essential closeness of the connection between Mr Li’s relationship and Mr Li and Mr Li’s acts of abuse would have involved a strong causative link.

(2) I accept the logic of all of that. So did Mr Levinson. But Mr Ford QC would need to go further in that scenario: he would need to exclude vicarious liability on the part of the school. It is not enough that there would be a sufficiently close connection to Mr Li’s relationship to the Guardianship Agency, to make the Agency vicariously liable for sexual assaults committed while hosting the pupil under the guardianship arrangement. It is necessary to say that there would not also be a sufficiently close connection to Mr Li’s employment relationship with CSM, to make CSM also vicariously liable for those sexual assaults. Mr Levinson emphasises, Mr Ford QC accepts, and I have explained, that there can be “dual”

vicarious liability: that is what CCWS authoritatively decided. I do not accept that the Guardianship Agency example is one in which the school would not also have vicarious liability. In CCWS the institute was able to say of the diocesan bodies that it was those bodies who dealt with the management of the boarding school in Yorkshire, and it was they who were the employers of the ‘brother teachers’ at the school. The institute had powerful arguments for saying that the diocesan bodies were vicariously liable for any sexual abuse of pupils by ‘brother teachers’. The diocesan bodies, on the other hand, were able to say that the institute was also vicariously liable. It was the institute which placed the ‘brother teachers’ at the school, and it was the institute’s arrangements which provided control over the actions of ‘brother teachers’. The Supreme Court held that there was “dual vicarious liability”. Mr Ford QC has powerfully submitted that the Guardianship Agency would be vicariously liable; but he has not, in my judgment, shown that the school would not also be. As I have explained, the test is not “closest connection”. It is unsurprising that this should be so. After all, a child abuser may very well exploit a combination of roles – a chaplain connected to a school or hospital is an obvious example – and may very well use a combination of interrelated opportunities afforded to them, in order to manipulate and control the victim into a situation of being able to perpetrate sexual abuse. I would not expect the Courts to be reluctant to find CCWS dual vicarious liability in such situations.

#### *CSM and the Guardianship Arrangement*

94. In fact, this case is materially different from the Guardianship Agency example which I have just described. First, in the present case, the requirement of a designated guardian was a requirement imposed not by an external agency (such as central Government). The guardianship arrangement was required by CSM. It was CSM who required that every overseas pupil have a designated guardian. Secondly, the question whether a teacher – including the student’s instrumental teacher – could stand in the position of designated guardian was a question for CSM. There was the opportunity to say yes or no to that. CSM allowed it. In a real sense, the guardianship arrangement, involving a teacher as guardian (teacher-guardian) was ‘enabled’ by CSM. Thirdly, the situation which placed the pupil in the care of the guardian was CSM’s action in closing the school to overseas students at ‘free weekends’ and at half-terms. The combination of being a boarding school, taking overseas pupils, and closing for weekends and half-terms – all actions of CSM in the way in which it conducted its operations – led to pupils being hosted on those weekends and half-terms by guardians. In a real sense, the hosting arrangement was necessitated by CSM’s actions. Fourthly, having chosen to allow teachers to serve as guardians, it would have been open to CSM – and would have made a lot of sense for CSM – to make provision regarding the conduct of ‘teacher-guardians’. Certainly, a ‘teacher-guardian’ could be disciplined by CSM for what happened ‘privately’ in the teacher’s house, just as RNCM could give Mr Li his third (final) warning for having a sexual relationship during ‘private lessons’ at his house with Candice. Thus, a ‘teacher-guardian’ can be seen as “accountable” to CSM (I note in passing that accountability was a feature, within the two-stage synthesis, which had been emphasised in the Court of Appeal in the CCWS case: see CCWS at paragraph 49). Fifthly, although it is true that

the guardianship arrangement between Mr Li and Abigail's parents was all agreed before Abigail started at CSM, it was nevertheless arranged against the backcloth of Mr Li knowing he was starting at CSM, a situation in which he was able to host Abigail and her parents and show them around CSM in late March 1996. Abigail transferred to CSM so as to be able to continue to be taught by Mr Li, and she and her parents entered into the guardianship arrangement with Mr Li so that she could transfer to CSM (to be taught by Mr Li). These five things are all distinguishing features compared with the Guardianship Agency example. None of this is to say that being a guardian (or 'teacher-guardian') was a role performed for CSM. Nor is it to say that vicarious liability arises out of a relationship between school and guardian (or school and 'teacher-guardian'): the relevant relationship is employer-employee. But, in my judgment, these are features which make it even harder for CSM to point to Mr Li's guardianship role in order to seek to attribute the relevant authority to Abigail's parents, and deny it on the part of CSM. As of course does the fact – which I have emphasised – that the 'initiation' activity, the 'grooming', manipulation and control, started at CSM which is where the physical assaults had begun, with the kissing in the practice rooms during violin lessons with Mr Li.

#### *A Medical Example*

95. I put to both Counsel at the hearing a different scenario. Suppose Mr Li, acting as guardian and 'in loco parentis', had recklessly given consent to some medical intervention. Would CSM be vicariously liable for that? If not, does that undermine Mr Levinson's argument that CSM is vicariously liable for sexual assault while hosting Abigail as guardian? The answer to this question, in my judgment, lies in the "more tailored" close connection test, which is "applied differently" in cases concerned with sexual abuse by teachers and the like, especially in the case of children. In FZO, Haringey posed this example: what if Mr Adams had had a road traffic accident while driving FZO in his car, at a time when FZO was no longer a pupil at Highgate Wood? The answer was that such examples are not to be equated with sexual abuse. In sexual abuse cases, vicarious liability arises when the teacher abuses the pastoral relationship between teacher and student "in order to commit" the subsequent sexual assaults. That analysis would not apply to negligent driving, said the Court of Appeal (FZO paragraph 151). Nor, in my judgment, would it be true of a negligence in giving parental consent for medical treatment, acting as guardian. Ultimately, these examples are good illustrations of the fact that there is a "differently" applied, "more tailored" close connection test. If the test is differently applied, it is to be expected that the parallel will be inexact.

#### *Mr Levinson's encapsulation*

96. I accept the analysis which Mr Levinson encapsulated as follows in his skeleton argument:

*Mr Li's 'field of activities' at [CSM] was plainly broader than merely teaching violin. He also had a pastoral responsibility as a teacher. It was through distortion of this pastoral role that Mr Li groomed or manipulated [Abigail] into submitting to sexual activity. It is irrelevant to liability that the sexual activity continued beyond the school gates. It was simply a continuation of the behaviour that commenced while and because Mr Li was a teacher. The grooming or emotional manipulation occurred within the context of a teacher's duties and was an essential part of the conduct causing harm. The actual assaults were merely the completion of that earlier process*

*and so it is irrelevant that some of them occurred in a context that may have had a less obvious close connection Mr Li's role as a teacher – see the approach of the Court of Appeal in [Hoare CA in the cases of] X & Y. The later assaults were simply a continuation of the behaviour that commenced while (and because) Mr Li was [Abigail's] teacher. The conduct was indivisible. When considered broadly, as it must be, all of the assaults were closely connected with and arose out of the 'field of activities' entrusted to Mr Li by the CSM.*

...

*... In essence, the court should consider whether each assault was closely connected with Mr Li's work for the Defendant as a teacher. If ... it was sufficiently closely connected as to give rise to vicarious liability, then the fact that Mr Li may additionally have been acting in some other capacity does not affect [CSM]'s liability. It is a perfectly permissible legal analysis to find that the Mr Li was misusing both of his roles concurrently and that the abuse was closely connected with both. That is what occurred here. Dual vicarious liability is possible and if Mr Li had been employed by an agency to work as [Abigail's] guardian, then that agency would also likely be vicariously liable for the entirety of his abuse. That would not reduce the Defendant's liability.*

### *Conclusion on vicarious liability*

97. In my judgment, the connection that links the employment relationship between CSM and Mr Li in this case is such as to establish liability on CSM's part for the sexual assaults by Mr Li on Abigail in 1997, not only in the practice room at CSM during violin lessons, but also in Mr Li's car and flat, while Mr Li was acting as host under the guardianship arrangement with Abigail's parents. In my judgment, there is the necessary close connection between the position in which Mr Li was employed by CSM and Mr Li's sexual assaults on Abigail in his car and flat, while he was acting as host under the guardianship arrangement with Abigail's parents, to make it right for CSM to be held liable for Mr Li's conduct. This is supported, in particular, by the following features. (1) The functions which CSM entrusted to Mr Li by CSM, as Abigail's lead instrumental teacher included the pastoral responsibility owed to her as a teacher, these being within his field of activities and the nature of his job. (2) CSM conferred on Mr Li authority over Abigail. (3) Mr Li abused that authority, by actions at CSM and in the teacher-pupil setting: of exercising control over Abigail and manipulating her (acts of 'grooming'), paving the way for the sexual assaults which followed, as the beginning of a course of conduct which manipulated Abigail into a position of submission in relation to those sexual assaults. (4) Mr Li further abused that authority, by actions at CSM and in the teacher-pupil setting: of repeated sexual assault in the practice room at CSM, actions which were the beginning of an escalating course of sexual assaults which followed, in the private setting of actions in Mr Li's car and at his house when hosting Abigail as guardian. (5) The employment relationship between CSM and Mr Li caused Mr Li to have access to Abigail, in circumstances where sexual abuse was facilitated. (6) CSM through the employment relationship with Mr Li provided him with the opportunity – an opportunity incidental to his functions as CSM's employee – to abuse his power. (7) CSM, through the employment relationship with Mr Li, created or significantly enhanced the risk that Abigail would suffer the sexual abuse. (8) The risk that Abigail would suffer the sexual abuse, which CSM through the employment relationship with Mr Li created or significantly enhanced, was a function of both close proximity and a position of trust. (9) The employment relationship between CSM and Mr Li facilitated the commission of the sexual abuse of Abigail by Mr Li, by placing Mr Li in a position where he enjoyed

both physical proximity to Abigail and the influence of authority over her. (10) The employment relationship between CSM and Abigail entrusted Mr Li with responsibility for care of Abigail. (11) There was a strong causative link between the employment relationship between Mr Li and CSM and Mr Li's sexual assaults of Abigail. (12) This strong causative link can be seen in the fact that CSM's use (deployment) of Mr Li, in the furtherance of CSM's operations, as Abigail's principal instrumental teacher – with the pastoral responsibility of a teacher – was done in a manner which created or significantly enhanced the risk that Abigail would suffer the relevant abuse. (13) The sexual assaults in Mr Li's car and flat, while he was acting as host under the guardianship arrangement with Abigail's parents, flowed directly from actions of control and manipulation by Mr Li at CSM and in the teacher-pupil setting. (14) The sexual assaults in Mr Li's car and flat, while he was acting as host under the guardianship arrangement with Abigail's parents, were an escalation of a course of conduct of sexual abuse of Abigail by Mr Li which began at CSM and in the teacher-pupil setting. In my judgment, having regard to these features and for all the reasons I have given, on the facts and in all the circumstances of the present case, CSM is vicariously liable for all of the sexual assaults in this case.

### **Conclusion**

98. It follows that the claim succeeds on all three issues and in full. Abigail is entitled to recover damages in the agreed quantum: £45,000. In those circumstances it is common ground that I should order, as I do, that CSM is to pay Abigail's costs to be the subject of detailed assessment if not agreed.