



Neutral Citation Number: [2021] EWHC 1755 (QB)

Case No: QB-2019-001476 and
QB-2019-001479

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/06/2021

Before:

PETER MARQUAND
(Sitting as a Deputy High Court Judge)

Between:

SEBASTIAN CODY (1)
ANNABEL CODY (2)
ROSA CODY (3)

Claimants in
QB-2019-001476

MARTIN VOGEL (1)
CAROLYN BONNYMAN (2)
ADAM VOGEL (3)

Claimants in
QB-2019-001479

- and -

REMUS WHITE LIMITED (1)
MELISSA REMUS (2)

Defendants

Sarah Steinhardt (instructed by **Teacher Stern LLP**) for the **Claimants**
Melissa Remus (in person)

Hearing dates: 15th to 19th March and 22nd to 26th March 2021

Approved Judgment

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

.....
PETER MARQUAND

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be on 28th June 2021.

Peter Marquand:

Introduction

1. The hearing occupied 10 working days and was performed through Microsoft Teams. Ms Remus was assisted by her husband, Mr Joe Elliot, acting as her McKenzie friend. At the commencement of the hearing, I granted Mr Elliot a right of audience. Ms Remus and Mr Elliot had relatively recently suffered from Covid-19 and had ongoing symptoms, which necessitated frequent breaks. I am grateful to Mr Elliot for performing his role as a McKenzie friend appropriately and to Ms Steinhardt, as counsel for the six Claimants, for her assistance.
2. Mr Sebastian Cody and Mrs Annabel Cody are the parents of Rosa Cody. In this Judgment for convenience, I will refer to Mr and Mrs Cody as “the Codys” and Rosa Cody as “Rosa”. Mr Martin Vogel and Ms Carolyn Bonnyman are the parents of Adam Vogel. Again, I will refer to his parents as “the Vogels” and Adam Vogel as “Adam”. They are the Claimants in separate actions against Remus White Limited and Melissa Remus.
3. The claims brought by the Codys, Rosa, the Vogels and Adam concern Heathside school (“Heathside”), a private school. Remus White Ltd was the operating company of Heathside and Ms Remus was the proprietor and headteacher. Ms Remus was the majority shareholder of Remus White Ltd. Remus White Ltd went into administration and played no part in the hearing. A claim was brought in contract against Remus White Ltd and Ms Remus, but was not pursued by the Claimants. Solicitors were instructed by both Defendants initially and drafted the Defences that were served.
4. Broadly speaking, there are two sections to the claims. First, the circumstances in which the Vogels and then the Codys decided to send Adam and Rosa respectively to study for their GCSEs at Heathside. Secondly, the issues arising out of the quality of the education that Adam and Rosa received at Heathside.
5. It is alleged by the Codys, Rosa, the Vogels and Adam that in the pre-contractual discussions, Ms Remus made fraudulent representations concerning the ability of the school to deliver a GCSE course to Rosa and Adam. Alternatively, if those representations were not fraudulent, they were negligent. It is important to note at this point that in contrast to a criminal case of fraud, a civil claim does not require the Claimants to establish that Ms Remus was dishonest, as would be necessary in a criminal case. For that reason, I shall refer to this as a claim in deceit throughout the rest of this Judgment. It is also alleged by Rosa and Adam that there was educational negligence in the delivery of the GCSE course for them. Ms Remus, as headteacher and proprietor, it is further alleged is responsible for their lack of educational achievement as a result. Ms Remus denies all of the claims brought against her.

Background

Heathside school

6. Ms Remus founded Heathside in 1993 with her former business partner Jill White. Ms White left the school leaving Ms Remus as the sole proprietor and headteacher. The school is based in Hampstead, north London, and has a number of locations within the

area. At the relevant time, the school was made up of three parts: the junior school; the middle school and the high school. The school had an advisory board, which comprised Ms Charu Kashyap and Ms Judith Charlesworth. As the advisory board their role was to investigate complaints against Ms Remus. They also provided consultancy services to the school.

7. As required by the Education and Skills Act 2008 (“the Act”), Heathside Preparatory School, as it was then known, was registered with the Department for Education (DfE). Over time, the school had increased the age range of the children who had been taught there. Part of the information that must be provided on registration is the age range of children taught at a school. Any increase in that age range (and certain other specified changes) is a “material change” that must be reported to the DfE for approval prior to that change taking place (section 101 of the Act). As a result of a request for a material change the DfE may arrange an inspection of the school by the Office for Standards in Education (“Ofsted”) before giving any such approval.
8. All private schools must also comply with the “Independent Educational Institution Standards” (“the Standards”) which are set out in the “Education (Independent School Standards) Regulations 2014/3283” (“the Regulations”). I will return to the detail of some of the Standards further on in this Judgment. Ofsted was responsible for inspecting Heathside and judging compliance with the Standards. Ofsted prepares and publishes reports of its inspections, which are publicly available.

School years, GCSE and teachers

9. For the purposes of determining when a child starts school, their first year will be the year in which the child turns five during the year beginning 1 September and ending 31 August. The relevant information for this case is set out in the table below:

Usual age (in years) of child within year	The Year	Key Stage
11 – 12	7	3
12 – 13	8	3
13 – 14	9	3
14 – 15	10	4
15 – 16	11	4

10. Therefore, pupils who are in year 9 at a school will be between 13 and 14 years of age. However, there is no reason why a child who is older should not remain within year, if

that is necessary. Key Stages refer to particular levels of teaching and Key Stage 4 is the relevant two-year course culminating in the GCSE examinations at the end of year 11. However, there is no reason why GCSEs should not be prepared for and taken in an earlier year group, if the pupil(s) is/are capable and prepared.

11. A number of subjects may be taken at GCSE level, but some are compulsory. English (language and literature), mathematics and science are compulsory. Science GCSE is available as a double course or triple course. The science subjects are chemistry, physics and biology.
12. The GCSE syllabuses are set by a number of examination boards. A school may choose one or a number of examination boards to follow for the different GCSE subjects.
13. To teach in a state school in England, a person must have a degree and have obtained a qualification as a teacher. In a private school there is no legal obligation to have obtained such a teaching qualification.

Authorised age range at Heathside

14. An Ofsted inspection report dated 3 July 2014 shows that the permitted age range at that time was from 2 years up to 11 years. An email from the DfE dated 7 July 2015 records the approval of the material change to teaching pupils aged 12 years. In a September 2017 Ofsted inspection report the permitted age range was stated as 2 years to 14 years. However, an email dated 20 December 2017 to which I was not referred, is from Ms Remus to the DfE. The relevant parts of that email are as follows:

“I am writing to you further to our recent school and boarding Ofsted inspections that dealt with the material change applications that we had made earlier in the year. Our material change applications included the following changes:

increase of the total pupil numbers of the school to 600

change of statutory highest pupil age from 12 to 14 (i.e., year 9)

commence boarding in January 2018

At the school’s Ofsted inspection that took place on the 19 – 21 September 2017, the lead education inspector (Avtar Sherri) confirmed approval of the material change request for increase of capacity and age as requested. We also had a boarding registration visit by Ofsted on 1st Dec 2017 by Lee Kerwin (Social Care Regulator Inspector) whereby he has made a recommendation for the boarding school to be approved as well. We have been advised that the DfE will send us written confirmation for this...

Also, we are unable to submit our annual census return with the new changes (to age and numbers) as the website does not allow us to amend the field to enter information about the school in line

with the new changes. I would be grateful if you could help with that...”

15. It would appear that the report of the Ofsted inspection that took place on 19 – 21 September 2017 incorrectly referred to the age range of pupils permitted at the school, at the time of the inspection, to be up to 14 years. Presumably, because the inspector had supported that change and/or it had been approved by the DfE by the time Ofsted’s report was issued or s/he assumed it would be approved. The precise date of that permission being given by DfE is not apparent from the evidence. During the relevant period covered by this Judgment the upper limit of the approved age at Heathside remained at 14 years.

The key teaching staff

16. In order to understand the background that follows, I have set out below the names and roles of the teaching staff who appear frequently within this Judgment. Not all of the people identified gave evidence or provided a witness statement and those individuals are marked with an asterisk. There are other teachers and members of staff who I will refer to during the Judgment. There is also a dispute about whether there was a teacher called “Sarah”.

Name	Subject and role at the school
Andrew (family name unknown) *	History, religious studies and PSHE
Hannah Burman	Deputy head, responsible for the high school
Suzanne Christensen*	English teacher
Bysshe Coffey*	English teacher
Jacob Delin*	Physics teacher
Oscar Fullone*	PE teacher
Ian Groves	Mathematics teacher
Barbara Grusd*	Geography teacher, but qualified PE teacher

Emily Holmstoel	Special educational needs coordinator (SENCO)
Emily Jewell*	Head of GCSEs and art/design technology teacher
Maria (family name unknown) *	Spanish teacher
Pinal Patel*	Mathematics teacher
Dr Ioannis Raptis*	Chemistry teacher and head of mathematics and science
Annabel Ross Jones*	Chemistry teacher
Tom Wrigley*	Biology teacher

What happened?

17. In order to make the findings necessary to determine liability I need to go into detail about a number of issues which are relevant and contested between the parties. This is a summary of what happened and I will deal with the detail of my findings later in the Judgment. Adam was born on 25 September 2002. In June 2017, when he was then aged 14, he was in year 9 at UCL Academy. He was preparing to enter year 10 in September and commence his GCSE courses, however, he was not happy at the school and had started to refuse to attend. Ms Bonnyman had heard from a friend that Heathside was considering starting a year 10. Mr Vogel and Ms Bonnyman knew Hannah Burman as she had previously taught Adam. Contact was made with Ms Burman that resulted in the Vogels going to the school, Adam having a trial day at the school and two meetings with Ms Remus. Following those meetings, Adam left UCL Academy and joined Heathside for the last week and a half of the summer term in 2017.
18. In September 2017, Adam started at Heathside as the only pupil in year 10. On 19 September 2017, Ofsted inspected the school over three days, which resulted in a report rating Heathside as “outstanding”. Over the first term the Vogels had concerns about the teaching in a number of areas, although generally they felt Adam was better off at Heathside.
19. Rosa was born on 23 August 2002. She had started her year 10 GCSE courses at Mill Hill School, but she was also unhappy and was refusing to attend her school. Mrs Cody also heard from one of her friends that Heathside was considering GCSEs and she believed that the culture at Heathside might suit Rosa. She made enquiries of the school

and a taster day for Rosa was arranged, which she was positive about. Having dealt with the admissions department and Ms Burman there was a phone call with Ms Remus. Rosa started at Heathside in November 2017 when she was aged 15.

20. As time went on Rosa and Mrs Cody became concerned about the teaching in a number of areas and were of the view that there was an element of chaos. A third pupil, JJ, the son of one of the teachers at Heathside joined the other two pupils in year 10. Some of the teaching was on a one-to-one basis and some of the teaching was in small groups or the year 10 pupils were put at the back of the year 9 class to undertake their work.
21. The Vogels and the Codys were not in contact with each other initially, but separately their concerns about the quality of the teaching continued. They sought to liaise with Ms Burman and others about those concerns.
22. Matters came to a head in June 2018. On 6 June 2018 there was an emergency inspection of the boarding part of Heathside by Ofsted. This report identified a number of concerns and it was at this time the Codys and the Vogels became concerned that Heathside did not have authorisation to teach their children. At this point the Vogels and the Codys met and made joint enquiries of the school. Requests for confirmation sent to Ms Remus went unanswered. There was a further Ofsted inspection on 9 July 2018 and during that meeting it was made clear to Ms Bonnyman by the inspector that they would need to find an alternative school for Adam as Heathside did not have the necessary permission. Adam and Rosa left the school in July 2018.
23. The events at the school resulted in press coverage. Ms Remus brought judicial review proceedings against Ofsted, which were unsuccessful. She engaged Dawn Moore, a former headteacher of another school, to help. She also engaged Lesley Pan (who gave evidence). Ms Pan is a management consultant, whose children have been educated at Heathside. Ms Pan provided support on internal investigations and the management of the legal cases that were pending against the school. She conducted an internal investigation into the allegations, which I will come to in more detail subsequently.
24. Ms Remus came to the conclusion that there was a concerted effort to undermine the school and/or her. She believed this was conducted by Ms Burman, Ms Holmstoel and other senior members of staff. She believed that it included keeping information from her. Ms Burman and Ms Holmstoel left the school and Ms Holmstoel commenced proceedings in the Employment Tribunal arising out of the circumstances, although these were not pursued to a final hearing. Subsequently, a school opened called the Odyssey House School and Ms Burman went to teach there. Ms Remus says Ms Burman attempted to recruit various members of staff and attempted to attract parents with children at Heathside to move to Odyssey House School.
25. On 12 July 2019 Remus White Ltd went into administration and Heathside was bought by Dukes Education. Initially, there was a potential role for Ms Remus at the school, but that did not materialise.

The witnesses and the Civil Evidence Act

26. I heard oral evidence from Martin Vogel, Carolyn Bonnyman, Adam, Sebastian Cody, Annabel Cody, Emily Holmstoel, Ian Groves, Melissa Remus, Lesley Pan, Hugh Kelly

and Charlotte Pearson. Several other witness statements were admitted as hearsay under Civil Evidence Act Notices.

27. Section 4 of the Civil Evidence Act 1995 (“the CEA”) is as follows:

“Considerations relevant to weighing of hearsay evidence.

(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following—

(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;

(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;

(c) whether the evidence involves multiple hearsay;

(d) whether any person involved had any motive to conceal or misrepresent matters;

(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;

(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.”

28. Two of the first defendant’s witnesses were affected. Mr Andy Mirza had originally agreed to give oral evidence, but because of overrunning of the timetable he was no longer available. Ms Remus elected to adduce his evidence, by consent, as hearsay. Ms Rachael Webster Brake had technical difficulties in joining the hearing and then was not available. Again, Ms Remus elected to adduce her evidence, by consent, as hearsay.

29. The Claimants produced three Civil Evidence Act Notices for Rosa, Hannah Burman and Natalie Phillips. Rosa produced a witness statement explaining that her non-attendance was because she was at a boarding school in Suffolk, which had just returned to face-to-face teaching after the restrictions of the Covid pandemic had been relaxed. She is in her final year of A-levels and she was due to undergo a number of assessments and teaching prior to those examinations.

30. The Claimants’ solicitor, Mr Rabinowicz, produced a witness statement dealing with the circumstances of Ms Burman and Ms Phillips. Ms Phillips had been involved in some unspecified “serious family issues” and was no longer willing to attend. Ms Burman was recorded as having told Mr Rabinowicz, that “she had experienced trauma,

drawn out over many months, by giving evidence” in the Employment Tribunal case where Ms Remus was the defendant. The statement went on to say that Ms Burman believed: “she was effectively gas lighted and bullied by [Ms Remus] over a period of many months, necessitating intervention of union lawyers to bring that dispute a satisfactory close.... She cannot bear to relive the experience in court and she is unwilling to put herself through this again.”

31. These three notices on behalf of the Claimants’ witnesses were only served on 10 March 2021, very shortly before commencement of the trial. Ms Remus said that she had had no contact with Ms Burman and that she did not give evidence at an Employment Tribunal, because that case never got to hearing. Ms Burman’s evidence is important for the Claimants’ case, and I will, in particular, be careful to consider what weight I apply to her evidence when analysing it in accordance with section 4 CEA. I will consider it in conjunction with contemporaneous documentation and other evidence given orally.
32. This was an emotional and contentious case for the parties and for Ms Holmstoel. The evidence of the Vogels and the Codys included a number of conclusions that they had drawn about the evidence, that may or may not be correct and opinions on the education received by Adam and Rosa. They also focused on the lack of a teaching qualification as a basis for criticism. As I have explained, there is no legal requirement in a private school to have a teaching qualification to be a teacher there. No doubt there are good and bad teachers both with and without teaching qualifications. Notwithstanding those criticisms, when Martin Vogel, Carolyn Bonnyman, Sebastian Cody and Annabel Cody gave evidence I found them to be honest and straightforward.
33. Adam accepted in cross examination that his witness statement had been drafted by his parents. However, he said the statement did reflect his evidence. On reading his statement I came to the conclusion that some of it may have been influenced by his parents. I have taken that into account when considering his evidence in the course of this Judgment. However, I was very impressed by the way Adam gave his evidence when cross-examined. He made appropriate concessions and in particular came across as being honest and unscripted.
34. Ms Holmstoel at various times in her evidence came across as angry. Her views on Ms Remus are probably encapsulated in a text message she sent her after Heathside was sold. It reads as follows:

“So you finally did it. You lost your school. After all the pain, loss and grief you put me and others through I am happy that you have lost everything. Please note that the only single person responsible for all this mess is you. Shame on you. This is Karma. You have got what you deserve. Emily”

Some of her evidence, especially her conclusions on what certain facts may have represented may not have been carefully considered. For example, Ms Holmstoel criticised Heathside as being badly run, but when asked about it, she clarified that this did not apply to the junior or middle school. Generally, I accept that Ms Holmstoel was giving honest evidence to the best of her recollection, but I have been careful to consider her evidence against other evidence and I have been aware of the risk of exaggeration in her account.

35. Mr Groves, Mr Kelly, Ms Pearson and Ms Pan all came across as straightforward honest witnesses doing their best to assist the court.
36. My general observations about Ms Remus's evidence are that significant parts of her evidence were not accurate recollections or were post-fact justification. On a number of occasions, she did not answer the question that she had been asked, gave long repetitive answers or appeared to be trying to avoid giving an answer.

The claims in deceit

The law – deceit

37. The terminology used to describe the participants in a deceit in the legal texts and authorities may be confusing. The defendant to a claim in deceit will be the person who is alleged to have made the false statement (also referred to as the fraudulent misstatement/representation) and may be referred to as the “representor”. The claimant in such a claim will be the person to whom the false statement was made and may be referred to as the “representee”.
38. The general principle of the tort of deceit is set out in paragraph 17-01 in Clerk and Lindsell on Tort (23rd Edition) as follows:

“where a defendant makes a false representation, knowing it to be untrue, or being reckless as to whether it is true, and intends that the claimant should act in reliance on it, then in so far as the latter does so and suffers loss the defendant is liable.”
39. Although many of the reported cases concern deceit in pre-contractual negotiations, there is no requirement for a contract to have been entered into to found a successful claim, provided that a loss is caused as a result of the deceit. In *Vald. Nielsen Holdings A/S v Baldorino and Others* [2019] EWHC 1926 (Comm), Mr Justice Jacobs summarised the law at paragraphs 130 to 159. At paragraph 131 the basic five requirements are set out:

“The tort of deceit requires the claimant to show that: (i) the defendants made false representations to the claimants; (ii) the defendants knew the representations to be false, or had no belief in their truth, or were reckless as to whether they were true or false; (iii) the defendants intended the claimants to rely on the representations; (iv) the claimants did rely on the representations; and (v) as a result the claimants have suffered loss and damage: see e.g. *Hayward [v Zurich]* [2016] UKSC 48] at [58] per Lord Toulson JSC, and *Cassa [di Risparmio v Barclays Bank]* [2011] EWHC 484 (Comm)] para [210].”

The first requirement

40. A false representation is a positive assertion of fact that purports to be true, but is false. A representation that is substantially true will not support an action in deceit if: “the difference between what is represented and what is actually correct would not have been likely to induce a reasonable person in the position of the claimant to enter into

the contracts.”: (paragraph 144 of *Vald.*). An opinion or a projection about the future may also be a representation sufficient to support a claim in deceit where the person giving the opinion/making the projection does not honestly hold that view (paragraph 133 of *Vald.*). Where the facts are not equally well-known to both sides, then a statement of opinion by the person who knows the facts best will carry a further implication of fact. Namely, that the person expressing the opinion impliedly states that s/he believes that facts exist which reasonably justify it (paragraph 134 of *Vald.*).

41. Silence alone will not support an action in deceit. However, a representation may be implied from any express representations and/or active conduct (paragraph 135 of *Vald.*). As implied representations are important in this case, I have set out below in full paragraphs at 136 and 137 of *Vald.*:

“In relation to implied representations the 'court has to consider what a reasonable person would have inferred was being implicitly represented by the representor's words and conduct in their context': per Toulson J in *IFE v Goldman Sachs* [2006] *EWHC 2887 (Comm)*; [2007] 1 *Lloyd's Rep* 264 at para. [50]. That involves considering whether a reasonable representee in the position and with the known characteristics of the actual representee would reasonably have understood that an implied representation was being made and being made substantially in the terms or to the effect alleged. The test for implied representations has recently been reviewed by the Court of Appeal in *Property Alliance Group Ltd v Royal Bank of Scotland PLC* [2018] *EWCA Civ* 355; [2018] 1 *WLR* 3259 at paragraphs [122] to [132]. The Court of Appeal approved as "helpful" a formulation of Colman J in a previous decision, namely "whether a reasonable representee would naturally assume that the true state of facts did not exist and that, had it existed, he would in all the circumstances necessarily have been informed of it". But this was not to 'water down the requirement that there must be clear words or clear conduct of the representor from which the relevant representation can be implied.'

“In a deceit case it is also necessary that the representor should understand that he is making the implied representation and that it had the misleading sense alleged. A person cannot make a fraudulent statement unless he is aware that he is making that statement. To establish liability in deceit it is necessary 'to show that the representor intended his statement to be understood by the representee in the sense in which it was false': per Morritt LJ in *Goose v Wilson Sandford & Co* [2001] *Lloyd's Rep* PN 189 at para. [41].”

42. Other relevant principles are:
- i) The statement relied on must: “have the character of a statement upon which the representee was intended, and entitled, to rely.” (Paragraph 138 of *Vald.*);

- ii) To support a claim in deceit based on an ambiguous statement (paragraph 141 of *Vald.*):

“... it is ‘essential that the representor should have intended the statement to be understood in the sense in which it was understood by the claimant (and of course a sense in which it is untrue) or should have deliberately used the ambiguity for the purpose of deceiving him and succeeded in doing so’: per Rix LJ in *The Kriti Palm* [2006] EWCA Civ 1601; [2007] 1 All ER (Comm) 667 at [253].”

- iii) Where a person has made a misrepresentation, it can be corrected prior to it being relied upon. However, it is not a defence to show that the claimant could have discovered the truth: (paragraph 143 of *Vald.* and the cases referred to therein).

The second requirement

43. The necessary mental element in deceit is set out by Lord Herschell in *Derry v Peek* (1889) 14 App Cas 337:

“First, in order to sustain an action of deceit, there must be proof of fraud and nothing short of that will suffice. Secondly, fraud is proved when it is shown that a false representation has been made (1) knowingly, (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement from being fraudulent, there must, I think, always be an honest belief in its truth.”

44. Recklessness is established when the party making the statement does not care whether it is true or false, even if s/he has no knowledge that it is false (paragraphs 368 and 361 of *Derry*). There is no requirement for “dishonesty” as it is meant in criminal law and the defendant’s motive is irrelevant. There is no requirement to establish that the defendant intended to “cheat” or injure the person to whom the false statement was made (paragraph 147 of *Vald.* and the cases quoted therein). Importantly, negligence in making the statement is not of itself equivalent to deceit. However, as pointed out at paragraph 148 of *Vald.* and the reference to paragraph 136 of *Derry* a court may conclude that statement made without “reasonable foundation” would be enough to convince the court that the representation was a false one.

The third requirement

45. The defendant must have intended the Claimant to rely on the representations that were made. However, the only requirement is the intention that the representation should be acted upon. It is not necessary to establish that it was also intended to result in a specific action taken by the recipient of the statement (paragraphs 150 and 151 of *Vald.* and the cases referred to therein).

The fourth requirement

46. In a claim for deceit, the defendant must establish that s/he understood the statement in the sense which the court ascribes to it and relied on the statement: that s/he was induced to enter the contract/follow a course of action. There is an evidential presumption of fact that the claimant will have been induced by a fraudulent misrepresentation in such circumstances and the inference is: “very difficult to rebut”. The claimant only needs to show that the statement was “actively present in his mind” when the decision was made (paragraph 152, 153 and 154 of *Vald.* quoting from *Raiffeisen Zentralbank Osterreich v Royal Bank of Scotland* [2010] EWHC 1392 (Comm) and *BV Netherlandse Industrie Van Epiproductien v Rembrandt Enterprises* [2019] EWCA 1392 (Comm)).
47. Other principles are:
- i) it is not necessary for the misrepresentation to be the sole cause that induces the claimant’s course of action, it depends upon its significance in context (paragraphs 155 to 157 of *Vald.*);
 - ii) it is not a defence to a claim in deceit to show that the claimant could have discovered the falsity of the statement by taking reasonable care and skill, for example by looking at other information available to her/him (paragraph 158 of *Vald.*).

The fifth requirement

48. The claimant must establish that a loss has been incurred and that this loss was caused by the defendant’s false representation. The defendant is liable to compensate for all the damages that flow directly from the false representation. There is no need to establish ‘reasonable foreseeability’. The claimant is also entitled to recover any additional expense that s/he has been put to remedy the consequences of the deceit (*Doyle v Olby Ltd.* [1969] 2 QB 158 at B – E). The measure of damages is, in so far as money is able, to put the claimant into the position as if the deceit had never occurred (paragraph 17-43 *Clerk & Lindsell on Torts* 23rd edition).
49. The damages recoverable are not limited to financial losses, but may also be awarded for distress, inconvenience or personal injury (paragraph 17 – 49 *Clerk & Lindsell*). For example, in *Shelley v Paddock* [1978] 2 QB 120 the claimant received damages for anguish. In *Kinch v Rosling* [2009] EWHC 286 (QB) the claimant received damages for injury to feelings where he had been caused great distress and anxiety.

The relevant findings of fact for the claims in deceit

The claim by the Vogels and Adam

Background

50. Adam was attending UCL Academy in year 9, but for a number of reasons, he and his parents were considering moving him for the commencement of his GCSEs in year 10. Those reasons included that Adam was missing between four and eight hours of lessons every week because he was on an “Academy” programme with Tottenham Hotspur

football club and was taken out of school for matches. They perceived the regime at the school to be “very punitive”. Adam gave an example of one of his teachers requiring the class to line up outside the room and if they did not remain quiet, they had to stand there for the entire period. Another pupil had threatened to stab Adam and he had not been able to pursue his choice of Spanish as a language at GCSE. Adam had started to refuse to go to school. The “straw that broke the camel’s back” was when UCL Academy missed an appointment that had been arranged by the Vogels with an independent organisation, which might have been able to help Adam and the school with his anxiety and school refusal. Mr Vogel and Ms Bonnyman started to look for an alternative school where Adam could take his GCSEs from year 10 onwards.

51. The local state schools did not have a place and so consideration was given to private education. Adam visited one private school and did not like it and would not go and see any others. I accept that the Vogels at this stage were resigned to Adam remaining at UCL Academy. Mr Vogel said the family were in therapy over Adam’s school refusal and they did not know what to do, however, they tried to keep calm and loving. However, they were in touch with the deputy head at UCL Academy to try and resolve the problems. In her statement Ms Bonnyman states: “So the situation was pretty desperate, but we weren’t desperate.” In his statement, Adam states that he had friends at UCL Academy that made him hesitant to move, even though he was really unhappy. I find that the situation that the Vogels and Adam found themselves in was a difficult one, but they were not intent on moving Adam from UCL Academy at any cost.
52. On 28 May 2017, Ms Bonnyman received a telephone call from a friend, Emma Krikler. Ms Krikler knew the family and the problems that Adam was experiencing. She was also a friend of Ms Remus and explained to Ms Bonnyman that in a recent conversation with Ms Remus she had said that she was thinking of opening a year 10 in September 2017 at Heathside. Ms Krikler had apparently outlined some of Adam’s difficulties to Ms Remus.
53. Ms Remus said the conversation with Ms Krikler was not exactly as Ms Bonnyman reported it. Ms Krikler was helping Ms Remus out at the school and Ms Remus said that things were going well and she used to say: “we will move to GCSEs in the future”, but not “tomorrow”. Ms Remus did not speak about years 10 or 11. She talked about GCSEs. The scholarship work some of the children were undertaking was equivalent to the level required for GCSEs. She had teachers in place, she said. Ms Remus accepted she might have said “year 10”, but that was meant to apply to undertaking GCSEs, not starting a year 10. However, Ms Remus said a lot of people were asking about year 10. She had not decided to have a year 10. This would be for the future and she said she had said something along the lines of: “getting the teachers and hoping to do GCSEs”. Her evidence was the year 8 wanted to stay, but she never said she wanted to create a year 10 class.
54. Both Mr Vogel and Ms Bonnyman said that they knew that Heathside had a good reputation and Mr Vogel referred to it as “catering for children who were not thriving in mainstream schools”. They also both knew Ms Burman, who was the deputy head and ran the high school part of Heathside on a day-to-day basis, because she had been a teacher at another school Adam had attended. Adam had got to know her well and trusted her. Mr Vogel had been on the governing body of the previous school and worked with Ms Burman, as had Ms Bonnyman. She viewed her as an “exceptionally professional and gifted educator”.

55. Ms Krikler encouraged Ms Bonnyman to send Ms Remus a text message, which she did. In that message she asked whether it was true that Ms Remus would be opening year 10 in September 2017 at Heathside. No specific answer to that question was given in the response to that message and neither was it given in response to a further text message asking the same question. Ms Krikler advised Mr Vogel and Ms Bonnyman to contact Ms Burman.
56. Ms Remus agreed that the text message that she sent to Ms Bonnyman in response to Ms Bonnyman's message was enthusiastic, but without an actual answer about whether they were starting a year 10. Ms Remus said that that made sense as she was excited about GCSEs for the future. Ms Remus could not recall whether she had said "yes" or "no" to whether a year 10 was starting, but it was possible. However, she did not recall exactly what she was asked. Ms Remus said that the meeting that the Vogels had with Ms Burman was as a result of the texts. Ms Remus was away at that time.
57. Mr Vogel telephoned Ms Burman, who confirmed that Ms Remus had told her about their enquiry and she would find out more from Ms Remus about whether or not the year 10 was going ahead. Ms Burman suggested that Mr Vogel and Ms Bonnyman came to see her and the school, which they did in June 2017. They had a discussion about whether year 10 would go ahead and Ms Burman stated that Ms Remus had had a number of enquiries from families and so was thinking about starting a year 10 in September 2017. She thought Adam might be the one who "tipped the balance" so that there were enough pupils to bring that about. However, Ms Burman was clear that it was Ms Remus who would make the final decision. Ms Burman reassured Mr Vogel and Ms Bonnyman that the ethos at Heathside was nurturing and focused on the individual child.
58. Ms Burman told Mr Vogel and Ms Bonnyman that if the year 10 did not go ahead, Adam could join, but remain in year 9 to repeat the year. She explained that Ms Remus was keen on this approach. However, Ms Bonnyman and Mr Vogel rejected that idea, so that Adam could commence his GCSEs. They were of the view that if there was no year 10 opening, he would stay at UCL Academy. The plan was agreed to offer Adam a visit to the school with Ms Burman, which would be described as "work experience" in order to try and encourage him to attend.
59. After that meeting Ms Burman spoke to Ms Remus. As a result of that conversation, Ms Remus said in evidence that she understood that Adam had been "beaten up" in class and that he got into trouble for nothing. There were scary people with knives at his existing school and that Adam was talented, but refusing to go to school. Ms Remus was told he was out of school. Ms Remus said she felt for Adam. Ms Remus said that she was trying to think of a way to help Adam. There was a hundred percent not a plan for year 10, but she felt that Adam was a special case. The reasons for this were first, because he was adopted, secondly, he was out of school and thirdly, he would fit in well as he had an interest in chess, music and football. Ms Remus said that to her mind, if it had not been for Adam's story she would have said "no" to taking him. She tried to find solutions for children. Ms Remus said that although Adam would be a year 10 age, he could be on the curriculum with children in year 9. However, she said: "It is all foggy to me".

The evidence of what happened on 23 June 2017

60. On 23 June 2017, Adam went to Heathside for the day and when Mr Vogel and Ms Bonnyman went to collect him, he appeared “back to his old self”. Adam confirmed that he could picture himself enjoying the school. Ms Remus met Mr Vogel and Ms Bonnyman with Ms Burman. In her statement, Ms Bonnyman states that Ms Remus said:
- i) there were lots of families interested in year 10 because of problems with other schools and as a result Ms Remus was thinking of bringing forward their first GCSEs from 2020 to 2019;
 - ii) she could offer Adam year 10 and to sit his GCSEs on time; and
 - iii) Adam could repeat year 9, which Ms Bonnyman and Mr Vogel rejected.
61. Ms Bonnyman’s evidence was the conversation continued about Adam’s needs (it is not necessary for me to go into what those needs were at this point). There was a discussion about providing clear boundaries and kindness with positivity. Ms Remus and Ms Burman both said that what was being described was exactly Heathside’s ethos. Ms Remus said that she thought Heathside would be the “ideal” place for Adam.
62. They talked about the GCSE options and it was confirmed that Adam intended to take English language and literature, mathematics, triple science, geography, physical education (PE), engineering and Mandarin (although this was not his choice). Ms Burman said that engineering could not be offered as the school did not have the facilities. Ms Remus said that maybe they could find a way to offer it, but Ms Burman said they could not. Mr Vogel and Ms Bonnyman explained that they hoped that Adam would be able to take Spanish GCSE and Ms Remus said she would get a Spanish teacher in place for the start of term. Heathside did not at that point offer Spanish, apart from as an after-school club and their main language was French. There was a discussion about how it would be too difficult to undertake French GCSE from scratch in two years.
63. They discussed GCSE PE, which for Adam was a “dealbreaker”, as sport was a large part of his life and he was considering being a PE teacher. Ms Remus said that GCSE PE could be offered, explaining that she thought year 10 would be about 5 to 7 pupils initially. Arrangements could be made with other schools for Adam to join in team sports and that Heathside sports department would be able to “sort it out”.
64. Towards the end of the meeting Adam joined them and Ms Remus was “all kindness and hugs”. Adam says Ms Remus told him he could do all his GCSE choices, but not engineering, as clarified by Ms Burman. Mr Vogel and Ms Bonnyman noted that Adam was pleased. Ms Remus asked him what he thought about Heathside and asked him directly: “so would you like to come here?”. Ms Bonnyman describes Ms Remus as looking at Adam with hands clasped under her chin and: “looked at him with big eyes in a sort of jokey, cartoon ‘pleading’ gesture.” Mr Vogel describes Ms Remus as “pressing” Adam on whether he would like to join Heathside. Adam replied that he was not sure and Ms Remus, according to Ms Bonnyman, made a cartoon “sad face”. Adam explained that he would need to know that he could get his GCSE options. Confirmation was given by Ms Remus, but it was pointed out that he could not do

engineering, although again Ms Remus questioned that with Ms Burman. Ms Remus suggested design and technology and Ms Burman suggested history. Adam said he would think about it. Adam explained that he was not sure that he wanted to leave his friends and that he would not want to be the “only one”. Ms Remus said that there would be a small group of about five or seven pupils, which she illustrated by holding up five and then seven fingers. Adam said she gave the impression she wanted to help him take the subjects he wanted at GCSE and that he would be oldest in the school. There was no mention of being in year 9, but that year 9s would be around. Adam’s understanding was that Ms Remus was offering him a place in year 10. Adam said he would want to think about it and Ms Remus left the meeting.

65. Mr Vogel and Ms Bonnyman were impressed with Ms Remus’s energy and dynamism: “she was like a force of nature”, according to Ms Bonnyman. Ms Burman explained to Adam that he might be the only student, as other families might not be there on the first day of term. She suggested that he came again for another “taster day”.
66. Ms Remus said that when she met the Vogels, she said that Adam could do year 10 work and that she had pupils in year 9 who were doing year 10 work. When asked whether it was clear that Adam wanted a year 10 place, Ms Remus said that she had dreams and wishes to go to age 16 and she was putting things in place and hiring teachers. She agreed that the year 9 would not be doing GCSEs in all subjects, but when asked whether a year 10 place was offered, she said “yes and no”. Adam could be year 10, but not in a year 10 class and Ms Remus said she was a hundred percent sure that the Vogels knew that. Ms Remus said that everyone knew that they were trying to do something special for Adam to help him and that she thought that was more important.
67. Ms Remus agreed that on 23 June she was very positive about Adam. She could not recall specifically whether it was explained that he required a non-punitive approach, structure and nurturing or other matters about Adam’s needs. However, she accepted that it all made sense. She denied saying that Heathside would be ideal for Adam as she thought that Ms Burman had said that. However, Ms Remus said that she viewed Adam as if he was a friend’s child and she wanted to help.
68. Ms Remus was asked about her Defence, which stated that it would have been in Adam’s “interest” is to retake year 9. It was put to her that she was not in a position to know whether it was in his interests at the meeting on 23 June: she had no paperwork about him. Ms Remus said she had had the information from Ms Burman and Adam’s parents. It had been tricky for Adam going to school, she knew that: he was in the elite football team. Adam had told her on the day that he was concerned and that she felt that it was not right to push through childhood. It was acceptable to be a child for longer and consolidate knowledge, she said. In her mind a 15 or 16-year-old is a child and she suggested retaking year 9 at Heathside as being most beneficial for Adam. Ms Remus said she offered it as she thought looking at the whole picture it would be advantageous. Ms Remus explained that she did not recall the Vogels refusing this proposal, but she knew that was their wish. Again, Ms Remus said that the offer was not to start year 10, but with year 9 children. Ms Remus said she told them that she did not have permission and that she would have to “stick her neck out for Adam”.
69. In her witness statement Ms Remus stated:

“The Vogels absolutely knew that we did not have permission to go to 16: at first I said no to taking Adam as his birthday was in the Autumn and, although it was fully the School’s intention to teach GCSEs and get permission to go to age 16 plus, we were not there yet – and I made this clear to his parents. Also that we were in the process of applying to go to age 16 but were already teaching younger children at GCSE level.”

70. Ms Remus said that she was stalling and uncertain. She knew she still had to get permission and there was hesitancy on her part. However, she accepted that she did not say “no he cannot come”. She said she did not have permission and that she needed to talk to the DfE and maybe they should wait. Ms Remus said she was hazy about what happened in the two meetings (in June 2017).
71. Ms Remus said that she felt that the Vogels begged her to take Adam, not “on their knees”, but it felt a desperate situation. Adam was at a school where he had been threatened with knives. The Vogels were worried and distraught, understandably. Adam seemed relieved when he was at Heathside. Ms Remus accepted that the Vogels had come for information, but they had been with Ms Burman and they knew Heathside as well. Adam had spent a day at Heathside and Ms Remus felt like they wanted help. It was of no benefit to her or to the school per se to offer Adam a place. Ms Remus said: “The only benefit to me was helping him”. Although the fees of £6,000 a term would be paid, having teachers for one child was “crazy” she said, and that she did not care about the money. She wanted to help Adam.
72. Ms Remus accepted they discussed GCSE options, although she did not recall the conversation. She knew she remembered discussing adoption and that Adam was in the football elite academy. Ms Remus said it may be possible for Adam to take his existing GCSE options, although not engineering. Ms Remus said it seemed reasonable to have had that conversation, but she did not recall the words exactly. Ms Remus said that: “it seemed reasonable” to suggest that the proposal was that Adam was starting the two-year GCSE programme. Ms Remus said that she knew Adam had been out of school, but that he had chosen his GCSE options and taking 10 GCSEs for him made sense. From the Vogels point of view, she said that this was what they wanted, but she had her suspicions about him needing more time. She did not disagree that Adam had said that he wanted to do all his GCSE options, although not engineering. Ms Remus said that obviously not everything was in place at that time at Heathside: everyone knew that. Ms Remus said that she would aim to do what she could to give Adam “joy”. Ms Remus said she did not agree that Adam could start in year 10 and do the full two-year course, as they did not have a year 10 or have permission from the DfE. Ms Remus said she was trying to think “outside the box” and see how she could help Adam. Ms Remus said she was a “go getting” person and believed “we could do it”.
73. Ms Remus said she did not agree to have Spanish teaching at the beginning of the academic year 2017/18, but that: “we were talking about it”. It was correct that Heathside did not have a Spanish teacher, but the Vogels were very enthusiastic about it. Ms Remus said that if Adam wanted to do it, they would get a Spanish teacher. Ms Remus said that she wanted to offer Spanish. When asked whether she had agreed Adam could do Spanish GCSE, she replied that it would be a lot for Adam as he had not done it before, but she had all reason to believe he would get the GCSE, but she added that: “I needed approval”. Ms Remus was asked whether she told Adam he could

do GCSE PE and she replied “okay fine – I did not have it; we would endeavour to do it.” Ms Remus said that she was all about the “kids”, but did not say that she had a GCSE programme. Ms Remus said that she doubted that she had spoken to Adam about the fact that GCSE PE course included academic and practical components. She confirmed that she knew that that was part of the course. She said she imagined she would represent what GCSE PE needed and that there was a high percentage of the academic component. Ms Remus did not recall a conversation about other schools being used to provide team sports. Ms Remus says she spoke to Oscar Fullone (PE teacher) and believed that GCSE PE was happening. At the time, more was needed and she handed over to Ms Burman and Mr Fullone and she believed what was necessary had taken place. Ms Remus said they had various sports at Heathside and she was not sure what was said about arrangements with other schools to meet the GCSE criteria.

74. In his statement, Adam says in his conversation with Ms Remus on 23 June he was worried about being the only year 10, but that Ms Remus told him there were more pupils who wanted to join so there would be others in year 10. Ms Remus said that she could not have said year 10 as there were no year 10 pupils. However, she said she trusted what Adam said, but there was a misunderstanding. Ms Remus wanted him to be welcomed, but could not definitely say “year 10”. Ms Remus said there was lots of interest, but nothing formal going on, especially as she had to go via the DfE for permission. Ms Remus said she did not know how she could have said to him that there would be others in year 10. She said that she was really confused about what Ms Bonnyman said about having 5 to 7 families interested. Ms Remus said it was so unlike her. However, 5 to 7 made sense as she was bombarded with interest at that time, she believed from 5 to 7 families. However, she had never contacted them or put out an advertisement. Adam was “like a special case”. Ms Remus denied that she told the Vogels and Adam what they want to hear.
75. Ms Remus was shown the registration form from Heathside for Adam, which records that his entry year is for “year 10”. The form is dated 24 June 2017, which is the day after the meeting on 23 June. Ms Remus agreed that it appeared as if he was registered as a year 10, but she said the parents would have filled out this form, although she then realised that year 10 was repeated within part of the form marked “office use only” and thought that this looked strange. She questioned whether the parents had typed it. She agreed Adam was registered as a year 10 and that was important to the Vogels and she was happy to do what they wanted.

The evidence of what happened on 27 June 2017

76. Adam went for a further day at the school on 27 June 2017. Ms Bonnyman confirms in her statement that Adam enjoyed the day. When Mr Vogel and Ms Bonnyman went to collect him, he confirmed to her that he would like to attend Heathside.
77. Mr Vogel and Ms Bonnyman met Ms Remus and Ms Burman on 27 June 2017 and discussed how year 9 was the absolute cut-off for moving school as it was very difficult once a student had started the GCSE course. Ms Bonnyman says that Ms Remus agreed with this. They had further conversations about Adam’s GCSE options and confirmed them according to Ms Bonnyman. Ms Remus said the GCSE courses could be pressurised and students should keep some non-examination subjects alongside. Ms Remus emphasised this was possible because there were small class sizes and “great teachers”. Ms Remus said that they can be flexible about Adam changing subjects, if

he wanted. Ms Remus appeared to Ms Bonnyman to be “thrilled” to have Adam joining and very caring. Ms Remus explained that Adam would have a mixture of one-to-one tuition and differentiated work from the class below him. She explained there would be quite a few year 9s taking GCSEs early. Ms Remus said she would contact the other families that had enquired about year 10. It was agreed by those at the meeting that Adam would come in for the last week of term at Heathside, to get used to the change and that he would help with the school play.

78. When Adam left the meeting Mr Vogel and Ms Bonnyman spoke about Adam’s needs to Ms Remus and Ms Burman. There was a discussion that Heathside would not be registered as an examination centre and it would be necessary to make arrangements for the exams to be taken at another school. Ms Bonnyman states they established that Ms Jewell had been employed to be in charge of GCSE and that she had been in charge of GCSEs and A-levels at a large state school. They asked again about Spanish and PE to make sure that it would all be in place and Ms Remus, according to Ms Bonnyman said: “I am going to have a busy summer”. Ms Bonnyman felt that whatever they asked, Ms Remus had an answer which was always “yes”. Mr Vogel in his statement says it was on this occasion that Ms Remus raised the prospect of Adam repeating year 9, which was rejected. Mr Vogel also states:

“We indicated that if Adam did not start year 10 at Heathside, even though UCL wasn’t ideal, we would have kept him there. We were concerned about moving him and would have done so only if we were persuaded that Heathside was the right place.”

79. At the end of the meeting Ms Bonnyman in her statement records that Ms Remus:

“...rubbed her hands together and said, ‘Right I’ll get onto the DfE tonight!’. We said, ‘What? What does that mean?’. She said, ‘oh just to tell them were doing this, bringing it all forward... the GCSEs...’. She said they had to let the DfE know they were doing this now, so they could get a bit of paper from them officially saying they had permission to have pupils sit GCSEs a year earlier than they had originally planned.”

In cross examination she said Ms Remus referred it as being: “Oh, just for admin[istration]”. She said Adam would have to register for year 9 if the “bit of paper” had not arrived. Ms Bonnyman said that Ms Remus had said Adam would be taught with year 9 pupils, but not all the time. Mr Vogel in his statement records:

“As we were leaving, [Ms Remus] said she would need to get busy making the arrangements. She told us she would have to write to the Department for Education (DfE) to inform them that the school would be presenting pupils for exams a year earlier than originally envisaged. She presented this as a formality and gave no indication that she needed legal permission to take on Adam as a Year 10 GCSE student. She implied approval from the DfE was necessary for the school to be an exam centre. Since she had earlier spoken of Adam sitting his exams elsewhere, this explanation did not sound any warnings for me. Even with this

disclosure, it did not occur to us that legal permission might be an issue. The school was long established.”

Mr Vogel in cross examination said writing to the DfE was not described as “registration” and that Ms Remus indicated it was no more than a formality. Adam did not recall this part of the conversation and said he might have wandered off by this point. Mr Vogel referred to it as a “formality” in an email sent much later to Ms Burman on 25 June 2018. This is when the concerns about Heathside not having the appropriate permission from the DfE had been raised.

80. By the time Mr Vogel, Ms Bonnyman and Adam had returned home, an email was waiting for them offering Adam a place in year 10 in September 2017. The email states: “We are delighted to offer Adam Vogel a place in Year 10 commencing from 07-Sept-2017.” There was an invoice for the deposit of £5,000 and the acceptance was signed and the deposit paid that day. An invoice dated 5 July 2017 arrived for £6,150 for the first term in year 10 and £1,016.63 for Adam to attend the last two weeks of the summer term. That invoice is marked “Y10 Fees” and elsewhere “Y10”, meaning Year 10.
81. In response to cross examination Mr Bonnyman confirmed that Ms Remus did not explain at any point that Heathside did not have permission to teach someone of Adam age, when he was in year 10. It was presented by Ms Remus as some of the children who were in year 8 in June 2017, who would be going into year 9, might start a GCSE course and take the examination at the same time as Adam (which would have been in the summer of 2019). There was no conversation about Heathside applying for GCSE registration or permission. There was no suggestion that Adam would be in year 9 when he joined. She would not have considered the school under any circumstances if she had been told year 10 would not go ahead. It was put to Ms Bonnyman that Adam was in a very difficult situation and he needed a nurturing school to alleviate the problem of school refusal. The alternative to him not moving school was that he would not attend school at all. Ms Bonnyman responded to those question by saying that she was very concerned about Adam’s well-being, but she did not believe if Adam did not go to Heathside he would never go to school again. Mr Vogel gave a similar answer in his cross examination. Ms Bonnyman accepted that as a family they were extremely worried about Adam’s situation, but did not accept that they were in “crisis”. Her description of Ms Remus’s approach to the conversations was like a “salesman”. Ms Bonnyman accepted that Adam would be in the “vanguard” of the GCSE programme at Heathside.
82. It was put to Ms Bonnyman that there was a conversation with Ms Remus in the school’s reception when Ms Remus said that she: “would stick her neck out and wanted to help Adam”. Ms Bonnyman said she did not recall a conversation like that in reception and did not recall Ms Remus saying that she would be: “sticking her neck out”. However, she recalled Ms Remus saying several times that she wanted to help and: “we can do this”. Mr Vogel in his cross examination also did not recall a conversation in reception with Ms Remus along these lines. He said in her conversations, she was not hesitant, Ms Remus was very “bullish”. She said it would be challenging to bring forward the preparation for GCSEs. However, she was very forceful that she could make this work. His understanding was this was an acceleration in the plans, but the infrastructure was in place. She gave him the impression that she wanted to help, although he did not recall that word being used. If she had not given that impression, he would not have sent Adam to Heathside.

83. Mr Vogel maintains an electronic journal. He prepared an entry for 27 June 2017 recording the meeting with Ms Burman and Ms Remus. It is not a verbatim record, but a general reflection on the conversation. In particular it records the discussion with Ms Burman about Adam's GCSE choices and whether he will find other strength and enjoyments at Heathside. Included in the journal is the following: "The aim is to give [Adam] a broad repertoire of learning but to focus on GCSE only as far as necessary. So he may study some subjects simply because he likes them without bothering to take an exam." In context, that appears to be a conversation with Ms Burman. Mr Vogel explained to me that what he meant by this entry was that it was important for Adam to take the GCSEs that were necessary, but he might be able to study further subjects for "sheer enjoyment". Mr Vogel had evaluated Heathside to be able to provide the GCSEs that Adam wanted to take. The GCSEs were not a secondary consideration. Subsequently in the note it is recorded that Ms Remus exuded enthusiasm for Adam joining.
84. Both Mr Vogel and Ms Bonnyman denied that they were aware that Heathside only had permission to teach children up the age of 14¹ in June 2017 and had not noticed this in the Ofsted reports or the school website. Mr Vogel said the first time he was aware of this was on the 20 June 2018.
85. Ms Remus agreed she had another meeting with the Vogels on 27 June and agreed that she said it was necessary to register with an external examination centre for GCSE. Ms Remus said that she could not recall her exact words referring to the DfE. Ms Remus said that as she needed to bring forward the GCSEs to an earlier time, she believed that the Vogels knew that permission was required from the DfE. Ms Remus said she got across that there was some form of registration required and she thought that they would understand that meant "permission". Ms Remus said that she recalled explaining that there was no permission for 15-year-olds to be at Heathside, but she would "stick her neck out". Ms Remus said that she believed "hundred percent" that the permission would follow, as it always had and it was a matter of formality. She believed that the DfE and Ofsted would support her and she planned to extend the application, because she had achieved outstanding ratings from Ofsted. Ms Remus said that she looked at the Vogels' desperate faces and thought she would "help this boy". Ms Remus rejected the proposition that taking a student without the permission of the DfE was serious. Ms Remus said she thought it was a bureaucratic process and did not think she was doing anything "bad".
86. Ms Remus said that after the 27 June she thought that an official offer of a place was given to the Vogels and Adam. Ms Remus said she did not send the email to Mr Vogel offering the place, but she had alerted those staff who should send it. That document states: "We are delighted to offer Adam Vogel a place in year 10 commencing from 07-Sept-2017." Ms Remus agreed that the email of 27 June appeared to offer a year 10 place to do GCSEs, but said Heathside did not have a year 10.
87. The bundle contains an email dated 28 June 2017 from Ms Bonnyman to someone called Heather Atkinson. It is entitled "Adam update – good news!". It includes the following text:

¹ As I have stated above the evidence is Heathside, at this point, only had permission to age 12 years.

“First, we have found a new school for Adam and he is going to start officially in September, but in practice probably next week to ease him in. The school is really small and at the moment only goes up to the year below him, but they are opening a year 10 for the first time in September for a really small number of kids...”

Findings of fact on the representation made in the claim by the Vogels and Adam

88. In determining what representations were made I can take the evidence about the 23 and 27 June together. I find that the Vogels and Adam were expressly offered a place for Adam in year 10. Ms Remus’s position that Adam would be a year 10 pupil of one in the class of year 9 was not credible. Ms Remus sought to present the registration form referring to Adam as being in year 10 as having been completed by the Vogels, but then was clearly in difficulty when it was pointed out to her that this information was repeated in the section of the form marked “office use only”. As I have stated, she then described this as “strange”. I find she was attempting to avoid having to say the obvious, which was that he was offered a place in year 10. Similarly, the invoice sent after the second meeting on 27 June offered him a place in year 10. It is not believable to suggest that she, as the headteacher/proprietor, would not have had to authorise the use of “year 10”. This is especially the case given that this was a new venture and something that others had said she would have had to authorise. I accept the evidence of Mr Vogel, Ms Bonnyman and Adam that an offer of a year 10 place was made to each of them either together or individually. Their evidence is also supported by the email Ms Bonnyman sent to Ms Atkinson on 28 June 2017 referring to Heathside “opening a year 10” as reflecting contemporaneous evidence of what they were told by Ms Remus.
89. I find that an express representation was made to Adam and the Vogels that he could take 10 GCSEs. I find that nothing was said by Ms Remus about it not being possible to remain at Heathside for the required two years. The evidence of the Vogels and Adam is internally consistent on this point, in that they were looking for somewhere for him to pursue his GCSEs choices. Ms Remus accepted that such a discussion had taken place. She also accepted that it was reasonable to conclude that it would be a two-year programme. I accept that Ms Remus suggested that Adam might retake year 9 and that that was rejected by the Vogels, but I do not accept that Ms Remus could have made that suggestion upon a sound basis. She had only had a conversation with Ms Burman and then a conversation with the Vogels. She was in no position to determine whether or not it was in Adam’s best interests to retake year 9.
90. In her evidence Ms Remus said she was stalling and uncertain. She says that she informed the Vogels and Adam that she did not have permission from the DfE to teach Adam. She said the Vogels begged her to take Adam. She said she referred to “sticking her neck out” for them. I reject her evidence on all of these assertions. I accept the evidence of the Vogels and Adam that Ms Remus was enthusiastic and encouraging them to send Adam to the school. I specifically and particularly reject her evidence that she informed them that she did not have permission from the DfE or that she was “sticking her neck out”. My reasons for rejecting her evidence are first, in the registration form and the offer of a place, there is no caveat or restriction on the offer. Secondly, I accept the evidence of the Vogels that their primary motivation was to secure a school for Adam undertake his GCSEs. Thirdly, it is almost inconceivable that parents looking for somewhere that their child is to undertake GCSEs would accept a

place, together with the financial implications of that acceptance, where they had been told the school did not have permission to teach their child. Fourthly, the way that Ms Remus gave evidence and what she said were not credible. Fifthly, the evidence given by the Vogels and Adam was credible and consistent with the documentary evidence. I accept what Mr Vogel and Ms Bonnyman say about Ms Remus's reference to a "piece of paper" from the DfE, but no more was said on that by Ms Remus other than to give the impression it was purely administrative or a formality. Mr Vogel's email to Ms Burman dated 25 June 2018 is consistent with this and does not mean he knew (or that it can be implied that he knew) that permission was required, as was submitted on behalf of Ms Remus.

91. For the reasons that I have already given for rejecting Ms Remus's evidence, I accept the evidence of the Vogels and Adam that an assurance was given that he could do GCSE PE and Spanish. I also find that Ms Remus indicated specifically that 5 to 7 families were interested in joining the year 10. The description of Ms Remus holding up a number of fingers to indicate that number is credible.
92. In addition to express representations, it is necessary to consider whether there were any implied representations. I find that in conjunction with what was expressly said a reasonable person would have inferred that it was implicit in Ms Remus's conduct and in the context, that Heathside was registered to teach a person of Adam's age lawfully during the two-year GCSE course. This was not true, as I have stated at paragraphs 14 and 15 above, the school did not have permission from the DfE to teach children aged 15 or 16. From the point of view of the test of Colman J referred to at paragraph 41 above, the purpose of sending Adam to Heathside was for him to undertake his GCSEs. However, the school did not have the permission to teach someone of his age, but having offered to provide that teaching a reasonable representee would assume that Heathside did have that permission: otherwise, how could the offer have been properly made? That reasonable representee would also assume, given the significance of this information, that s/he would have been informed of it, given it is central to the decision that was being made.
93. Did Ms Remus understand that she was making that implied representation and it had the misleading sense alleged? I will deal with this below.
94. The Claimants' allegations were that a number of other representations were made by Ms Remus, expressly and/or impliedly, including that Adam would be taught with other pupils in year 10, that he would follow an appropriate GCSE syllabus with the necessary facilities/resources and the class would continue into year into 11. However, it is only necessary for me to consider the key representation above.

The facts relevant to the second requirement

95. The Claimants' case is that Ms Remus knew that what she was representing was false. They draw attention to evidence from before June 2017 and after Adam had joined the school to seek to draw inferences on her state of mind at the time she made the representation.
96. In evidence, Ms Remus said that she acted honestly and with integrity and in the best interests of the children, not to deceive. She believed it to be true and she had full confidence in what she had to do as she had done it before. She believed she could have

offered something special for the children and believed in it. Ms Remus could not foresee what would happen when she met the Vogels and the Codys – that permission from the DfE would not be forthcoming. She never imagined that permission would not be forthcoming and the people that she trusted at work would set out to snowball problems for Heathside.

What had she done before?

97. Ms Remus said the high school part of Heathside opened in September 2016. Years 7 and 8 were the first years in the high school. Ms Remus confirmed that some of the year 8s were out of cohort chronologically in other words, they were the age group for year 9, but they were in year 8. Ms Remus confirmed that was correct and that was something that she had done for 25 years. Ms Remus said that she believed that the permission from the DfE related to the year group and not the age of the child. Ms Remus said that she had always had pupils out of the usual year group and nobody had told her that she was wrong, she asked: “why would she do such a thing?” Ms Remus confirmed she was familiar with the legal framework, but disputed the way it was being seen. She would not jeopardise the school and acted with integrity and good heart. She thought she was doing something good and not something bad. She had talked to Ofsted in September 2017 about increasing the age range to 15 to 16 and doing GCSEs and they ‘loved it’ Ms Remus said she was not hiding anything.
98. In particular a pupil called Katie started in year seven in September 2017, but she was put back a year as the school as she was not ready for year seven. There is a dispute about why the student Katie remained within year six rather than going to year seven. Ms Remus said it was because Katie had enjoyed year six and wanted to remain in that class, but Ms Bonnyman’s evidence was that it was to do with problems of teaching. I do not have to resolve that issue for the purposes of this Judgment, but it is evidence that pupils were taught in a year group that was for children of a younger age.
99. Ms Remus said that she had taught children frequently out of their year group, as she went on their needs and not their age. She had been clear on this for 25 years. To her mind she did have permission from the DfE if she had them in the year group. Every Ofsted inspection had gone well. All the inspectors knew that she had children out of their year group. She had spoken to the Independent Schools Association. If a child needed to be in a class, it was allowed if it is better for their educational achievement, she said. She thought if she was a registered school in good standing and that an application was put into the DfE the school could keep extending. Ms Remus confirmed that she knew an application to the DfE was required for a material change.
100. On 14 September 2016 Ms Remus sent an email to the DfE headed “Material Change at Heathside”. Included in the response from the DfE the writer stated: “could you also confirm if there will be a change to your maximum number of pupils and the age range of the school”. Ms Remus replied on 13 October 2016 including the following: “we would like to increase our pupil numbers to 450. We currently have children from two (rising three) to 12 years of age (year eight). Next year, we would like to seek approval to extend to year 9.” Ms Remus accepted that this statement was not true as there was a 13-year-old at Heathside, but she said that the 13-year-old was in year eight.
101. It is clear that Ms Remus might keep a child within a particular year, even when in the normal course of events they would have moved into the next year. Ms Remus accepted

that in her email of 13 October 2016, she had not been truthful with the DfE as she had a 13-year-old child at the school, when she had permission only to take children to the age of 12 years at that time. The reference to “year 8” in that email is also misleading, as children in year 8 will start at the age of 12 but become 13 during the course of the year. As the email dated 20 December 2017 that I have referred to above at paragraph 14 demonstrates, it was the Ofsted inspection in October 2017 that led to Heathside obtaining permission to teach children to age 14. Prior to that there is no evidence of an application to raise the age range to 13 years or of permission having been given to teach children aged 13 years. I do not accept Ms Remus’s evidence that she believed that the permission from the DfE related to the year group. The emails demonstrate that was not the case and that she knew it in 2016 and she knew it in 2017.

Hiding year 10 information

102. In her witness statement, covering the time after Adam had started at the school, Ms Burman stated that Ms Remus made a fuss when she tried to put year 10 timetables on the wall. Ms Remus rejected that. Ms Remus accepted that at the beginning of September there was nothing on year 10 available, but later on in the year she did make things available. Ms Holmstoel stated that Ms Remus had told Ms Burman that she did not want a year 10 timetable on the computer system. Ms Remus said that she did not recall this and thought it was unlikely. There was no hiding it she said, as year 10s were referred to on the computer and there were other references to year 10. Ms Remus said she did not know what Ms Holmstoel was talking about and as far as she was aware she did not prevent a teacher from putting up a year 10 timetable on the wall.
103. Ms Remus accepted that Heathside’s externally facing website did not refer to taking children above the age of 14 years, but she said that the internal website did make reference to Key Stage 4 and year 10. However, she said she could not put the higher age range on the website externally as she did not have permission from the DfE. Ms Remus agreed that she could not say that the school took children to the age of 15 as she was waiting for permission and she could not say she had a year 10 as she was helping one person, Adam.
104. Ms Remus was referred to the school roll, which she accepted was a very important document. Ms Remus said she did not personally complete the roll; this was done by the registrar and an assistant. The role records that Rosa was in class “9S”. Ms Remus said the S stood for Suzanne Christensen, who was the class teacher. Ms Remus was also referred to the records of payments made to Heathside for Adam Vogel where it refers to him as being in “year 9” and “9S”. Ms Remus said that this was because when he started, he was in year 9. She had been clear and said he was in addition to year 9. Ms Remus said that when the Vogels were unhappy she changed it to 10. However, it was pointed out to Ms Remus that Adam was still described as being in year 9 in April 2018. Ms Remus said she was not sure what the document was and that it was all done by computer. She explained he was registered in 9S and he was known as that. Ms Remus said she was a bit hazy about it, but the Vogels did not want him to be in year 9. A similar document refers to Rosa in year 9 and class 9S. Ms Remus denied that she was trying to hide the fact that Rosa was at the school as a year 10 aged 15. Ms Remus said that as Rosa and JJ joined it made a separate group. She had no idea why Rosa was put in year 9. Ms Remus said she had never seen these documents as they were internal ones for finance. Ms Remus was referred to Adam’s school report in July 2018 which again refers to him as being class ‘9S’, by which time problems had already started.

105. The July 2018 school reports for Rosa and Adam both refer to them as being in year 9. The Vogels and the Codys asked for that reference to be changed to year 10. That did not take place for some weeks, which made the Codys and the Vogels suspicious that it was being done deliberately to hide what was happening at the school. However, Ms Remus pointed out by that time Ofsted already knew that overage children were at the school and she was not attempting to hide what was happening.
106. Ms Remus accepted that she was trying to hide from external eyes that she had a student aged 15 years at the school, because she did not yet have permission from the DfE. It follows, it is likely that she also wished to make sure that documents that might be inspected did not refer to pupils in year 10 (or even a single student) as that would alert anyone that pupils aged 14 to 15 were at the school. For example, the school roll, records payment and school reports. It is therefore consistent for Ms Burman to state that Ms Remus was trying to stop timetables for year 10 being put up on the wall. Ms Holmstoel corroborated this evidence and it is consistent with what Ms Remus herself said about hiding from external eyes that there were 15-year-olds at the school. Ms Remus's evidence was contradictory and not convincing in the way she delivered it or in its content.

Adam in a small office

107. The Claimants allege that Adam was hidden from the Ofsted inspectors during their inspection in September 2017. This was to avoid them detecting that there was a student above the permitted age range being taught at the school. Ms Remus agreed that in September 2017, Adam was tall, but said there were other tall children at Heathside and he looked like he belonged. She rejected that he "stood out". There were 14-year-olds in the school and the school always had older children.
108. Ms Remus was taken to her Defence to the allegation that Adam was asked to wait in Ms Holmstoel's office, so that the Ofsted inspectors were not aware of his presence. In the Defence, it was pleaded that Adam was asked to wait in that office because his "behaviour was disruptive and distracting the other pupils". Ms Remus said that she had heard about Adam being "locked in a closet" through the grapevine. Ms Remus said that at the time Ms Bonnyman was informed that Adam had been kept in a cupboard she did not know of this rumour and if she had she would have dealt with at the time.
109. Ms Remus explained she had no plan to put Adam somewhere, but a teacher had been upset and tearful because of Adam's behaviour. Ms Remus said she would normally have put Adam in Ms Burman's office to do his lessons, but because the Ofsted inspection was going on and the printer was needed Ms Remus said he could be overseen by the SENCO (who was Ms Holmstoel). He was given work to do in Ms Holmstoel's office and free to move around. Ms Remus said that she saw Adam in Ms Christensen's class, at lunch, outside and she was pretty sure she saw him in one of Dr Raptis's lessons.
110. Ms Remus said she asked Ms Burman to have Adam out of his lessons, but not specifically in an office. Ms Remus accepted that exclusion was a serious sanction or fairly serious. Ms Remus said she did not ask for a fixed term exclusion in the school for Adam because of his behaviour, but she did ask Ms Burman to keep Adam out of the way and she said: "who knows what I said". Ms Remus said that Adam's behaviour

was not serious. He was misbehaving, talking and it was handed to Ms Burman to deal with. Ms Holmstoel was in that office and interviewed in it by Ofsted, Ms Remus said.

111. Ms Remus denied that she thought she was doing something seriously wrong by having Adam in the school, she had done it with other children and she was not worried about Ofsted inspectors seeing him. She believed that she would get the approval to age 16 if unforeseen things had not happened. Ms Remus said she knew she had to get the permission, but did not know it was serious. She was a hundred percent sure she would get the permission. Ms Remus denied keeping him out of the way. She thought it was all a misunderstanding. Ms Remus did not know what to say and she did not want him in that office. Ms Remus said what she said in evidence was not set out in her Defence because, at the time the Defence was drafted, she was working hard and had passed the matter to the lawyers and to Lesley Pan.
112. Adam's evidence was that he had been in Ms Holmstoel's office for 2 ½ days. He said he had not seen the Ofsted inspectors during this period apart from at lunch and he had not spoken to them. Another parent told Ms Bonnyman at a social occasion when the outcome of the September 2017 Ofsted inspection was being discussed that she thought it was funny that Adam had been hidden in a cupboard during the inspection. At the time Ms Bonnyman asked Adam about this and he had said 'no'. Ms Holmstoel said that for the September 2017 Ofsted inspection, she was in the high school in the morning, but otherwise in the middle and junior school. She said that the inspectors had not interviewed her in her office. In her oral evidence she could not remember who had given the instruction for Adam to go into her office, but she believed it came from Ms Remus. Ms Holmstoel believed that she had spoken to Adam. However, this was not what she had written in her statement. Ms Burman deals with this in her statement recording that it was Ms Remus who told her that Adam needed to be "kept upstairs, out of the way." However, she records that nothing was said explicitly about why that was necessary.
113. There is an email in the bundle to which I was not referred from Ms Christensen to Ms Bonnyman dated 19 September 2017 at 16:54, which is the first day of the inspection. The text of that email is as follows:

"hi Carolyn, I am so sorry, I was not able to discuss with Hannah her view on the Adam staying after school today. He is here, eating outside with his other teammates, but he was not permitted to hang out in a room unsupervised.

Ofsted are here this week during an inspection and the boys can't (even under normal conditions) be in the building unsupervised.

I thought Adam was going to be by himself and he told me it would be fine if he sits in reception... But there are about seven boys with him.

I will ask Andrew about this for next Tuesday. The problem I have with it is some of the boys with him cannot be trusted the way Adam can..."

114. Ms Remus accepted that it was she who had asked for Adam to use Ms Holmstoel's office. Again, Ms Remus's evidence was contradictory and unsatisfactory in content and delivery and inconsistent with her Defence. However, Adam was clear and honest in that he had seen the inspectors at lunchtime and the email I have referred to above indicates that at the end of the school day on the first day of the Ofsted inspection that he was "in plain sight". I find that Ms Remus did want Adam out of classes and I find, based on my other conclusions about seeking to hide year 10, that Ms Remus was partially motivated by a desire to reduce Adam's exposure to the Ofsted inspectors. I also infer that Ms Remus was anxious that he did not disrupt existing classes through his behaviour, which might jeopardise a successful Ofsted inspection and may also draw attention to him as an overage pupil. For completeness, although it was not alleged by the Vogels or Adam, as it was raised in the evidence, I reject any suggestion that Ms Remus prevented Adam from moving round the school or that he was "locked" in a room or cupboard.

Conclusion on Ms Remus's state of mind in June 2017

115. Based on my findings above, I find that Ms Remus knew that she needed permission from the DfE to teach children aged 13, 14, 15 and 16. I add 13 and 14-year-olds into this group as the email dated 20 December 2017 is clear that the inspection that was done in September 2017 was part of the material change application that had been made previously to increase the age range from 12 to 14 (otherwise it would have said from 13 years). I find that what she believed she would be able to achieve was to take pupils outside the age range for which she had permission and subsequently obtain that permission. The evidence is that this is something that she had done before and she believed she would obtain that permission. However, at the time she spoke to the Vogels and Adam she knew very well that what she was saying and that what was implied by what she said and how she behaved, was not true. She may have referred to needing a piece of paper from the DfE as a way of flagging that something was needed. To the extent that that is an ambiguous statement I find it was deliberately said in a way that would not reveal the true position that what she needed was the DfE permission. That ambiguity was used deliberately to deceive the Vogels and Adam.

The third requirement – intention that the representation should be acted upon

116. I can deal with this shortly. The Vogels had been clear, and I accept their evidence, that what was required was a place for Adam to take his GCSEs. This was clear to Ms Remus and I find that she knew that saying anything that gave any doubt about Heathside's ability to admit Adam to the school would have meant he would not have come.
117. Given that I found that Ms Remus did not tell the Vogels and Adam the truth it is somewhat self-evident that Ms Remus took that course of action with the intention that the representation should be acted upon by the Vogels and Adam. To put it the other way round, if she had informed them of the true position, she knew they would not have accepted the place.

The fourth requirement – the Vogels and Adam understood/relied on the representation

118. I can also deal with this shortly, because as I have stated above there is an evidential presumption of fact in favour of the Claimants, which is very difficult to rebut. It is

again self-evident, that the Vogels and Adam believed that the Heathside had permission to teach someone of Adam's age throughout his time at the school. Again, because if it had not, they would not have taken up the place. I accept their evidence on this point. I also find as a matter of fact that they did not know Heathside did not have the necessary permission (as Ms Remus alleged they did). Ms Remus in cross examination sought to establish that the Vogels could have identified that Heathside did not externally represent itself as taking children of Adam's age. However, as I stated above, this does not provide Ms Remus with a defence.

The fifth requirement

119. Having been reassured by what Ms Remus had told them and as I have found what she implied to them, the Vogels and Adam agreed to Adam starting at Heathside. I find that the representation was a real and substantial part of the decision and caused the Vogels to enter into the contract with Remus White Ltd and for Adam to start at the school. The "but for" test is not an element required for causation in deceit, but as I found on the facts the contract would not have been entered into if the Vogels and Adam had been told the truth.

Conclusions on the claim in deceit for the Vogels and Adam

120. The Claimants have established the claim in deceit against Ms Remus. I will deal with the question of damages at the conclusion of this Judgment.

The claim by the Codys and Rosa

The evidence about Rosa joining Heathside

121. Mrs Cody dealt with Heathside and Ms Remus before Rosa started at the school. Rosa was attending Mill Hill School and showed "school refusal", which manifested itself by her staying in bed, being unresponsive day after day and nothing that her parents could do would help. Following discussions with her parents, Mrs Cody decided to investigate whether Rosa could move schools. She thought that it would not be possible, but she had heard about Heathside from a friend whose son had just started at the school. This friend told Mrs Cody that Heathside was planning to go up to GCSEs. Mrs Cody knew the school had a good reputation locally. Mrs Cody had met Ms Remus socially on the number of occasions and had considered Heathside preparatory school as an option for her son. Mrs Cody contacted the admissions department of Heathside on the telephone about year 10 and was told that it might be possible, but she would need to speak to Ms Remus directly.
122. Mrs Cody sent an email to Ms Remus dated 30 October 2017 as follows:

"Hi Melissa,

How are you? Seems a long time since we last spoke but I hear lots of great things via Nancy, who's over the moon to have Carlo and Bella with you.

Wondered if you might have a moment this week to chat either on the phone or I could pop in? My daughter, Rosa, has just done

her first half term in year 10 at Mill Hill but we would like to explore the possibility of a change. I spoke to your registrar who said it could technically be possible but I think it would be good if we spoke before going any further.

I am sure you are hugely busy but I would be very grateful if you might be able to squeeze me in.”

123. Ms Remus replied on the same day:

“Subject: Re: Year 10 entry?”

Hi Annabel,

You get my full attention every time- but after Hallowe'en! 🎃🎃🎃🎃🎃

Would love to discuss- but I fear missing emails bc [sic] of huge volume so please text if you need me urgently [telephone number] and please copy in Anja and Andy, too (as above).

Would looove [sic] to help!

Best wishes,

Melissa

Melissa Remus

Headteacher”

124. Ms Remus said that she never said to Mrs Cody that Heathside had permission to take year 10s. She did not advertise or promote it. Rosa was out of school. Ms Remus accepted that Mrs Cody was asking about a year 10 entry given the subject of the email. Ms Remus said that the Codys had a connection to her and a few years before she been invited to their house to have dinner with an educationalist. Ms Remus considered that they had the same educational outlook. Her response was not the same one that she would have given to anybody. Ms Remus said she felt the Codys were more like “friends”. Ms Remus said that because she liked the Codys she wanted to help them.

125. There is an exchange of text messages between Mrs Cody and Ms Remus indicating that the two of them had a conversation on 5 November 2017. Mrs Cody said that during this conversation Ms Remus said that year 10 was happening. Mrs Cody accepted that it was a new venture and it was not fully organised. Mrs Cody said that Ms Remus confirmed that a boy (who she now understands to be Adam) and others would be joining. This put the prospect of a year 10 place for her into the realms of certainty. After the telephone conversation the arrangements were dealt with by Ms Burman. Ms Remus did not recall the conversation. However, she agreed that it seemed plausible that she had told Mrs Cody all about Heathside and that there had been a lot of interest about offering GCSEs. However, Ms Remus said that she would not have said that Heathside was open for GCSEs and approved by the DfE: Heathside was applying to go to GCSEs in the future.

126. Ms Remus agreed that Mrs Cody was asking about a year 10 place and knew that Rosa had a place at Mill Hill. She said that when she spoke to Mrs Cody, she found out that Rosa was refusing to go to school. Ms Remus accepted that she knew that Rosa was in year 10 for her GCSEs, but said it was not as simple as that because of her exceptional circumstances. Ms Remus said she was quite clear that it was a GCSE programme in its infancy and Rosa would be a pioneer. She explained that there would be tiny classes evolving around her. Ms Remus said it was not a normal GCSE programme, it was a program developed around Rosa to try and work around her. The main thing was to get Rosa into school as she was refusing to go. Ms Remus said that she and Mrs Cody talked about Mill Hill being “strict”. After this conversation Ms Remus said she handed over to Ms Burman. Ms Remus agreed that most children start their GCSE courses at the age of 14/15 years in year 10, going through to Year 11. Her view was that it was different for Rosa as she would need to work around the child and helping school refusers was a strength of Heathside.
127. Ms Remus said her memory was clear that she would like to help and was successful with school refusers because of Heathside’s flexibility. They would work to the GCSEs that Rosa wanted, but Ms Remus felt Rosa needed to get into school and that doing GCSEs as part of that would make her happy. Ms Remus accepted she had not met Rosa at this point. Ms Remus thought Rosa had not yet started the GCSE programme, although she did not recall, but she believed Rosa was at the severe end of school refusal. Ms Remus said she would have said to Mrs Cody something indicating that she was applying to do GCSEs, meaning applying to the DfE to go to age 16. At paragraph 14 of her Defence, it states: “[Ms Remus] made clear that a decision would be needed from the DfE to permit an extension of the age range”. Ms Remus said that was written by the lawyers and other people: it was a correct statement but not “nuanced”. Ms Remus agreed that a GCSE curriculum was being offered, but it was provisional as she had to get GCSE approval, by which she meant approval to take 15 to 16-year-olds from the DfE.
128. The registration form for Rosa (which I was not referred to) records her year group as “year 10” in the box marked “for office use”. It is signed by the Codys and dated 16 November 2017.
129. On 10 November, Rosa went into Heathside for a taster day. Further text exchanges took place about when Rosa could start and the arrangements with Mill Hill. Ms Remus sent Mrs Cody a text on 17 November 2017 timed at 21:46 as follows:
- “Hi Annabel,
what is our plan?
Three more girls joining as well so timing is great.
Cheers!”
130. Mrs Cody replied:
- “Hi! I filled out all the paperwork and all is set for Rosa to start Monday. I spoke to Hannah and we will meet Monday to talk about subjects etc etc. there have been various emails

confirming. Great news about the other girls. Let me know if you need anything else from us, apart from the money which Sebastian was organising today x”

131. Ms Remus replied with three emojis: a face winking and blowing a small red heart (kiss) and a thumbs up on either side of that emoji.
132. Ms Remus said three more girls were joining because it was true and what she thought. However, she was not advertising or trying to bring in people, but she accepted that this reference implied three pupils were joining with year 10.
133. I was not taken to it during the hearing, but in the bundle, there is an email dated 15 November 2017 to Mrs Cody from Ms Remus entitled “formal admissions offer: Rosa Cody”. This records Rosa’s details, including her date of birth and her year group is referred to as “year 10”. The deposit of £5,000 was paid and acknowledged on 27 November.

Findings of fact on the representation made in the claim by the Codys and Rosa

134. I do not accept Ms Remus’s evidence that she was not offering the Codys and Rosa a place in year 10. Again, for the reasons that I have already set out in relation to Adam’s claim, Ms Remus’s evidence was unsatisfactory. It is absolutely clear that a student in year 10 will be looking for a place in year 10 and not in year 9. Mrs Cody had entitled her email enquiry “Year 10 entry?”. The registration form and the formal admissions offer referred to “year 10”. I accept Mrs Codys evidence.
135. For the same reasons that I have given in relation to the representation to the Vogels and Adam, in the case of the Codys and Rosa the reasonable representee would understand that what Ms Remus said, wrote and did implied that Heathside was registered to teach a person of Rosa’s age lawfully during the two-year GCSE course. This was not true. I find the representations were made to the Codys and Rosa. It is obvious that what was said (and implied) would be passed on and relied upon by all three of them.
136. For the same reasons that I have given in relation to the Vogels and Adam’s claim above, I find that Ms Remus knew that that representation was false. I find that she intended the Codys and Rosa to rely upon it. I find that the Codys and Rosa have established that this representation was in their minds when it was decided that Rosa would attend Heathside. I find again, for the same reasons, that representation was the cause of the Codys entering into the contract with Remus White Ltd and Rosa attending the school.

Conclusions on the claim in deceit for the Codys and Rosa

137. The Claimants have established the claim in deceit against Ms Remus. I will deal with the question of damages at the conclusion of this Judgment.

The claim for negligent misstatement

138. Given the findings I have made on the claim in deceit, there is no need for me to deal with the claim for negligent misstatement.

The claim in educational negligence

The law – private schools

139. Private or Independent schools (referred to as Independent Educational Institutions in the legislation) must be registered with the DfE pursuant to section 95 of the Act². Section 94 of the Act requires the Secretary of State to set out in the Regulations standards for private schools. I have referred to the Standards at paragraph 8 above.
140. The Standards set out a number of obligations placed on the proprietor (stating the Standard is met if “the proprietor ensures”). Those obligations which are relevant to this case are as follows:
- i) that there is a written policy on the curriculum supported by appropriate plans and schemes of work which are “implemented effectively”. The policy, plans and schemes of work must take into account the ages, aptitudes and needs of all pupils. They must include giving pupils an experience in linguistic, mathematical, scientific, technological, human and social, physical and aesthetic and creative education. It also includes personal, social, health and economic education (PSHE) (paragraph 2 of the Standards);
 - ii) relationship and sex education for those in secondary education, unless there is an exemption, which is not relevant in this case (paragraph 2A of the Standards);
 - iii) teaching at the school involves:
 - a) well-planned lessons and effective teaching methods, activities and management of class time;
 - b) shows a good understanding of the aptitudes, needs and prior attainments of the pupils, and ensures that these are taken into account in planning the lessons; and
 - c) demonstrates that a framework is in place to assess pupils’ work regularly and thoroughly and information from that assessment is used to plan teaching so that pupils can progress (paragraph 3 of the Standards);
 - iv) there is a framework for pupil performance to be evaluated, by reference to the school’s own aims as provided to parents or national norms, or both (paragraph 4 of the Standards);
 - v) pupils are properly supervised through the appropriate deployment of school staff (paragraph 14 of the Standards);
 - vi) an admission and attendance register is maintained (in accordance with the Education (Pupil Registration) (England) Regulations 2006) (paragraph 15 of the Standards);

² The Education and Skills Act 2008 - see paragraph 7 above

- vii) checks must be carried out in respect of teachers to confirm amongst other matters, their identity, qualifications and any criminal record (by performing an enhanced criminal record check) before their appointment (paragraph 19 of the Standards); and
- viii) Persons with leadership and management responsibilities at the school demonstrate good skills and knowledge appropriate to their role and fulfil their responsibilities effectively, so that the Standards are met consistently (paragraph 34 of the Standards).

The law – educational negligence

- 141. The claims in relation to educational negligence are brought only by the Third Claimants in each case, namely Adam and Rosa. In order to succeed, they must show first, that they are owed a duty of care. Secondly, that the duty was breached. Thirdly, that the breach caused or contributed to reasonably foreseeable injury.
- 142. In *Phelps v Hillingdon London Borough Council* [2011] 2 AC 619 Lord Nicholls of Birkenhead concluded that teachers owe a duty of care to exercise due care and skill with regard to their pupils (page 667 at C).
- 143. In *Faiz Siddiqui v University of Oxford* [2016] EWHC 3150 (QB) Mr Justice Kerr (paragraphs 41 to 46) identified three categories of negligent educational provision:
 - i) first, the exercise of academic judgement, for example awarding a particular grade to a student. This is not justiciable as a matter of law, referring to *Clark v University of Lincolnshire and Humberside* [2000] 1 WLR 1988;
 - ii) secondly, negligent teaching methods in devising of courses or the means of acquainting pupils with the educational content of the courses (referring to *Phelps*). This is an attack on a defendant's exercise of skill and care in a profession and therefore must be assessed against the test in *Bolam v Friern Barnet Hospital Management Committee* [1957] 1 WLR 582. Namely whether the defendants, acting in the way that they did, were acting in accordance with a practice accepted as proper by a responsible body of persons "skilled in that particular art". The facts are assessed against expert evidence;
 - iii) thirdly, at paragraph 46:

“[A] category of claim could be described as one founded on simple operational negligence in the making of educational provision. Again, hypothetical examples would include administrative error leading to a student sitting the wrong examination paper, containing questions about which the student had received no tuition; or where classes are cancelled due to non-availability of teaching staff; or a case where a teacher was habitually drunk or asleep during classes.”

This category of claim does not require expert evidence.

144. In *Phelps*, Lord Slynn of Hadley concluded that: "...psychological damage and a failure to diagnose a congenital condition and to take appropriate action as a result of which a child's level of achievement is reduced (which leads to loss of employment and wages) may constitute damage for the purpose of a claim." (page 664 at F – G). It is not a prerequisite for a successful claim that psychological harm has been caused by a failure to diagnose and ameliorate the consequences of a condition. That was the factual case in *Phelps*, but it is clear from the judgment that the principle applies to students without pre-existing psychological conditions, as otherwise the duty would be of no effect for such students.
145. It follows from this that damages may be awarded for loss of educational achievement alone, as well as the consequential damages of loss of earnings, if that is established on the evidence. Damages may also be awarded for any psychological harm caused.
146. The standard that is to be met is not lowered because of the inexperience of the person to whom the duty of care applies. This is derived from *Eric Nettleship v Lavinia Weston* [1971] 2 Q.B. 691 ([1971] EWCA Civ 6). This is the well-known case where it was held that the standard required of a learner driver was the same as any other driver. In the context of this case, it is no answer to any claim to state that this was a new enterprise for Ms Remus and she should therefore be judged against a lower standard.

Findings of fact on various issues concerning the provision of education

147. A number of issues were raised on which I need to make factual findings.

General management of the school

148. Ms Remus accepted that she was the headteacher and proprietor of Heathside. However, her evidence in a number of respects was that she had delegated certain responsibilities to other members of staff, that they had failed in those responsibilities and not informed her of problems. Ms Remus denied that there was a culture of bullying at Heathside and that she was not a good headteacher. She said she did not know what had happened and she was devastated about it. Ms Remus said that she had to deal with a number of issues with planning and boarding. Ms Holmstoel said there was bullying, but Ms Remus said that Ms Holmstoel said a lot of things that were not true. Ms Remus said "they" wanted Ms Burman to be headteacher and Ms Holmstoel told a job applicant to falsify her salary. Ms Remus said she had given Ms Burman a lot of responsibility, but Ms Holmstoel and Ms Burman misled her on how it was going with the year 10s. I need to decide the issues raised about Ms Remus's leadership style, whether there was a culture of bullying and whether Ms Remus required others to obtain her permission to take certain decisions.
149. A contemporaneous source of evidence comes from a report prepared by Ms Kashyap in 1 April 2018 ("the Report"). The Report was prepared by Ms Kashyap with some contribution from Ms Charlesworth, as a result of a complaint (not made by the Claimants). Several issues were raised relating to safeguarding, leadership and management. Staff were interviewed on safety arrangements, leadership and management. Some staff volunteered information and some were interviewed. The following statements are recorded in the Report:

“... Several staff stated that they were fearful of the repercussions of their statements for them personally as they have seen staff being victimised and bullied for speaking the truth. One member of staff called me the following day to say that they may have spoken with me in haste and want to know that they were tired and frustrated but hoped that they would be able to help making the school better.

There was a sentence that I heard five times from different members of staff in the various departments of the school which was – ‘I am really worried that there is an accident waiting to happen.’ Two members of staff... were worried as to how they would be blamed if something went wrong despite them raising concerns. Several members of staff reported that they were keeping a daily log of events and their actions because they felt that they needed to ‘cover their backs’.

There was a common theme amongst all staff spoken to of leadership not being transparent or decisive. Staff reported the decisions were not made in a timely manner and at times were fuzzy. They reported the decisions were not made to meet the needs of the pupils but were subject to the availability of the proprietor.

...

Communication was raised as an issue across the school and there was a general consensus that things were done in a chaotic and haphazard way with staff and parents receiving late to a last-minute communication about activities, trips or matches that caused much confusion, frustration and anger from the parents towards the staff.”

150. The reported issues about leadership and decisions being subject to Ms Remus’s availability were rejected by Ms Remus as not true. She said that she delegated to others the day-to-day running of the school. She did not agree that she held the purse strings and approved expenditure but said: “if only”. She thought there were strange payments going out of the school and she did attempt to get the bursar to check. At this time in April 2018, she was trying to get the GCSEs prioritised.
151. Ms Remus said that she was never asked about the complaints that formed the basis of the Report at the time. Ms Remus said she took action to remedy the deficiencies identified in the Report. As to the issues of staff keeping a daily log and being fearful of repercussions, Ms Remus said that throughout her 27 years at the school she had only got rid of a handful of staff. This included at around the time of the Report, the then newly appointed head of boarding, Ms Sue Williams. Ms Remus said that Ms Williams had done many things wrong, for example going on holiday in the middle of the week. Ms Remus said she was a kind person who loved staff.
152. Mr Remus stated that the Report was sent without her knowledge to her bank, which caused her problems with a loan. Ms Remus said there was a plot to remove her with

Ms Kashyap and Ms Burman taking over the school. Ms Remus's evidence was that Ms Kashyap took part in founding a school that was in competition with Heathside and initially that school employed Ms Burman as its headteacher, as well as employing other former Heathside teachers. The evidence available to me shows that that school, Odyssey House School, had its pre-inspection by Ofsted on 9 May 2019 and opened on 30 May 2019. It is not clear what role Ms Kashyap played at the Odyssey House School.

153. Ms Burman in her statement records she started making contemporaneous notes. Those are exhibited to her statement. One of those notes is dated 6 March 2018 and she records:

“there is also a shift because [Ms Remus] has opened a high school, started teaching GCSEs, but is not investing any money in it. Not enough toilets. Those in the building permanently smell. Science lab has been condemned in a risk assessment but not improved. Laptops old and broken. The bursar will not order any resources without written permission from [Ms Remus]. [Ms Remus] never gives written permission. Staff are getting more and more annoyed...”

154. Following the inspection in June 2018 by Ofsted of the boarding provision, Ofsted conducted another inspection of the school on 9 July 2018. This inspection raised a number of issues and some of the relevant ones are as follows:

- i) Scrappy handwritten notes of discussions with parents or carers following a staff or pupil concern were found in the proprietor's notebook;
- ii) The secure entry system to the upper school did not work. There was no procedure for staff or visitors to sign in or sign out of the school. Pupil registers were not taken daily and the comment was that: “all this poor practice places staff, pupils and visitors at risk”.
- iii) The proprietor did not ensure that pupils were properly supervised through the appropriate deployment of staff. On occasion, there were insufficient staff to supervise the boarders.
- iv) Staff did not maintain the daily registers. During the inspection some daily registers had not been completed by 2.44 pm.
- v) Inspectors had to ask repeatedly to see staff files. When provided, some of the information appeared to be correct. However, the Single Central Record of staff pre-employment checks was not made available to the inspectors before the conclusion of the inspection at 7.30 pm.
- vi) Pupils told inspectors that school communications were frequently received by email during the night or very early in the morning, informing the parents about trips or school events the same day. Pupils said the trips were “disorganised”, and that it was difficult for their parents to plan ahead. One also said that they did not feel safe, “because there is not much control in doing things like going on trips or going to sports”.

- vii) Parents and staff told inspectors that the proprietor (i.e., Ms Remus) does not respond to their concerns and complaints. They said that they have complained about many aspects of the school's work. These included the school safeguarding arrangements, the provision of curriculum equipment, employment contracts and adequate supervision of pupils. They had also complained about the proprietor's behaviour towards staff and pupils, and the proprietor's failure to confirm whether the school was legally registered to teach year 10 pupils.
 - viii) An unusually high number of staff and teachers shared concerns with inspectors about the running of the school and boarding provision. Staff reported feeling fearful of reporting concerns to the headteacher.
155. Ms Remus agreed that these were devastating findings. In relation to the failure to complete the register of pupils Ms Remus said that she was "amazed". She said that Ms Burman and her sister Abi, were in charge of the register and its completion. Ms Remus said that she understood the importance of the register and that she had a conversation with Ms Burman doublechecking that teachers did this every day. With regard to the inspectors' request for the Single Central Record, Ms Remus explained that the inspectors only asked for it after she came into the room with Mr Oran (the other director of Remus White Ltd at this time) after 6 or 6:30 pm. She said the inspectors had said it was too late to show it to them on the computer. Ms Remus disagreed with the findings that pupils could leave easily. There was a reception area that they had to go through, but she said that you cannot lock children in. If somebody came to reception then they had to ring a bell to gain entry. Ms Remus denied that trips were chaotic or disorganised. They were not planned in the morning, but messages were sent through the newsletter and the online calendar with all the dates for trips for the whole year. However, class texts were sent in the morning as a reminder. Ms Remus said that she was sorry that she had not had an opportunity to meet the parents who raised concerns and acknowledged that there were a large number of complaints.
156. The evidence of Mr Groves on this issue comes from his witness statement. Mr Groves worked at Heathside from 2012 until February 2019 as a teacher of mathematics. Prior to that he had taught in secondary schools for nearly 30 years, including being head of economics and business studies at William Ellis School in Highgate. He had been the head of year for six years. He was made the equivalent of an assistant headteacher with responsibility for a number of areas including behaviour management and pastoral care. After leaving Heathside, Mr Groves went to teach mathematics at Odyssey House School, although he had left that employment by the time he gave evidence.
157. In the context of the three year 10 pupils, Mr Groves stated that they had a range of abilities and therefore, there were challenges for the teachers to manage appropriate teaching and learning. This required strategic planning, but Ms Remus had not put in place the line management that was necessary both to support the staff and the pupils' learning. In Mr Groves' opinion, Ms Remus did not understand how to manage a secondary school for which she had no experience. Nor did she understand how to put people in place who could do so. For example, he said that his experience was never called upon.
158. Mr Groves' stated view was that Ms Remus was not a leader. She had no agendas for meetings and instead she would just turn up and ramble. She regularly would complain

that parents were giving her a “hard time”. She would not have any thought about how to deal with what they were complaining about. Mr Groves did not view Ms Remus as being charismatic, but rather he stated: “I found her rather superficial and a show off”.

159. Mr Groves stated that there was no strategic planning of the kind that one would expect from a chief executive. Ms Remus did not have the willingness to delegate. He gave an example of lack of structure as when Ms Remus was showing parents round the school, she would disturb classes and take pupils out of class to ask the pupils to show the parents their work. She would ask the pupils to help show the parents round the school, in order to strengthen the school’s appearance and reputation. This did not help the staff in teaching or the pupils’ learning.
160. Ms Holmstoel’s oral evidence was that the high school at Heathside was “shambolic” and nothing structured happened. Ms Remus would shout if she did not like something and she was inconsistent. In her view the high school was poorly managed, chaotic and a “disaster”. However, Ms Holmstoel accepted that the junior and middle schools were well run and that the children did well there. Ms Holmstoel also gave evidence that although Ms Burman was the deputy head and in charge of Adam and Rosa, Ms Remus oversaw everything. She said that Ms Burman had reported her concerns, but matters were often taken out of Ms Burman’s hands because of Ms Remus’s shambolic approach. She said that Ms Burman had argued with Ms Remus about Rosa and Adam’s schedules. Ms Holmstoel said that Ms Remus would interfere and “cause trouble”. For example, she would call a snap assembly, which would disrupt the school day and this caused an unsettled feeling.
161. Mr Hugh Kelly gave evidence. He was the maintenance manager at Heathside from 2004 to November 2019. He had known and worked for Ms Remus for over 20 years and in the 10 years prior to him leaving the school he was in daily contact with her. He had stayed at her flat with her family. The evidence from his statement was that if something was not working Ms Remus insisted it was fixed immediately and that if there was a safer way of doing things she would always say “yes”. In his view, Ms Remus was one of the kindest and most generous people. Various teachers had lived in her flat when they had problems and they were looked after with their food and accommodation paid for. Mr Kelly knew that Ms Remus went out of her way to hear the troubles of her staff and that she “went the extra mile” when members of staff were unwell or having a difficult time, including lending them money or giving them time off. She helped some members of staff by paying for them to go on a courses. Mr Kelly also described how she would help and look after the children at the school going “the extra mile”. He gave an example of her: “going to every show and concert and event and then speaking with the kids afterwards – if she had not directed the play or managed the concert herself, as she usually did.” Mr Kelly said in cross-examination that he did what he was advised to do and he would action anything in the maintenance arena that needed to get done. He had no insight into the finances. I will deal further with Mr Kelly’s evidence as it relates to the science laboratory later on in this Judgment under that heading.
162. Exhibited to Ms Remus’s witness statement were number of communications from former parents, pupils and teachers. The teachers’ comments relevant to this issue are as follows:

- i) Joshua Gierut - a friend and colleague since 2013 when he started work at Heathside, where he is now head of sport. Ms Remus is referred to as being a “very enthusiastic person who is full of ideas and energy”.
 - ii) Hamid Haidari – employed at the school since 1994 – Ms Remus is referred to as “a dynamic head who was able to steer the school with admirable energy, creativity and dedication”. Staff, it is stated were able to flourish in a happy and harmonious atmosphere.
 - iii) Leanne Harding-Williams a former preschool teacher at Heathside. Ms Remus is referred to as dedicated, professional and hard-working. She encouraged Ms Harding Williams to study and helped her. Ms Remus is described as “a wonderful person that I for one will always have the utmost respect for.”
 - iv) Seth Gascoigne – worked at Heathside since 2011 teaching children with learning difficulties. Mr Gascoigne worked part-time and “was made to feel like I was a member of the small Heathside teacher community...”
 - v) Philippe Lenzini - a music teacher at Heathside between 2007 and 2018. He comments that he had a very good working relationship with Ms Remus who did everything she could to promote the musical events. He comments that as a teacher he had always been impressed by the opportunities Ms Remus offered at Heathside and that he saw her as someone with a real vision for what education should be. He also comments that he saw the former head of boarding, Sue Williams, venting her frustration about how the school was run in front of the children, which he found unprofessional.
 - vi) Emma Berens – the mother of JJ – who taught at Heathside for four years. She comments that Ms Remus worked tirelessly into the night and was a truly dedicated headteacher with an obvious passion for her school above all else.
 - vii) Sarah Louise Ireland – she worked at Heathside preparatory school for four years from 2011 to July 2015. She commented that: “the ethos created by [Ms Remus] encourage wonderful teamwork and the feeling of family between those who work there.... [Ms Remus] was known to go out of her way to support her employees, often under very difficult circumstances.”
 - viii) Rebecca Burnman – a teacher who had worked for Ms Remus for 12 years. She comments that she continued her teaching career under Ms Remus’s management and that she “felt professionally valued and guided by [Ms Remus].” The pupils and teachers were very happy, she states.
163. Ms Lesley Pan provided a witness statement and gave oral evidence. Ms Pan is a management consultant with over 20 years’ experience. She provided support to Heathside from August 2018 until May 2019. Her children were educated at Heathside and her son is a friend of one of Ms Remus’s children. She had provided business support to Mr Elliot in the past. At Heathside from August 2018, Ms Pan provided support on internal investigation and management of the legal cases that were pending against the school, one of which was this case. She was not at Heathside at the time the events occurred, but she did conduct an investigation including intervening teachers and staff.

164. Ms Pan's evidence on the management and governance of the school was that, in her opinion, Ms Remus performed the role of headteacher and proprietor with appropriate care and skill. She had qualified staff and gave them authority and support to develop the curriculum. Ms Pan said it was the Ofsted report of July 2018 that alerted Ms Remus to the management and governance problems and as a result she took immediate action. She promoted Ms Christensen to be the deputy head and hired an experienced headteacher, Ms Dawn Moore to improve the management. She also engaged Ms Pan to help. Ms Pan says that she and Ms Moore concluded that Ms Burman seemed to have ceased doing her job sometime in March 2018. In her view Ms Kashyap had also been underperforming in her duties.
165. Ms Pan prepared a letter dated 12 October 2018 to the solicitors acting for Remus White Ltd's insurers to deal with requests for information that had been made. Ms Pan explained that Ms Remus did not have the "bandwidth" to prepare this letter. Ms Pan tried to go to the people who would have information as a witness, or other evidence. She also obtained evidence from Ms Remus. She pieced a lot of it together. However, she put the letter in front of Ms Remus to get her approval before it was sent.
166. The letter covers the circumstances in which Adam and Rosa were offered places, their time at the school and the issue of the permitted age range to be taught at the school. Towards the end of the letter, it states: "what we could not anticipate was that a disgruntled former member of staff (dismissed for gross misconduct) would make a series of unfounded allegations to Ofsted, triggering a series of Ofsted inspections." In her witness statement, Ms Pan refers in a number of places to "bad-mouthing" and her view that the numerous reports made to various authorities were unfounded and not based on evidence. She referred to having seen emails from Ms Burman encouraging parents, including Mrs Cody, to report Heathside to Ofsted. She refers to having seen other documentation showing "those same people" undermining Heathside and seeking to entrap Ms Remus. She referred to these as being "those people's" own lapses rather than doing their jobs. She believed that "those people" sought to co-opt the Codys and the Vogels into bad-mouthing Ms Remus in the school.
167. Initially, Ms Pan accepted that her reference to a single member of staff in the letter and the person doing the bad-mouthing in the witness statement was the same person. Ms Pan said at that time (when she wrote the letter to the insurers) the timing of the summary dismissal of the member of staff and the reports to Ofsted indicated bad-mouthing. Reading the negative comments in the July Ofsted report also suggested that a lot of teachers were repeating particular comments rather than giving evidence of what was happening. At the point she wrote the letter she did not know if it was more than one person or not. However later on it became apparent that there were more people involved. Ms Pan said she did not know (using the word "we") who else was involved. She referred to the fact that a parent had decided to remove his children from Heathside on the basis that teachers approached him with unspecified claims against Ms Remus. However, subsequently the police found those allegations to be of insufficient merit to investigate them further. However, Ms Pan said she was not aware of the Report prepared by Ms Kashyap, she had heard that a report had been prepared, but she had never seen it. She was also not aware of an anonymous letter written to Ofsted dated 10 May 2018 listing a number of concerns apparently from a parent (although it may not be from a parent). She was not aware of any of the complaints that had been made to LADO (local authority designated officer – the person who should

be notified when it is alleged that someone who works with children has behaved in the way which has harmed or might harm children). She was not aware of the Ofsted inspection report dated 6 June 2018. She was not aware if the complaints that led to that report came from Ms Williams or a parent. In the July 2018 Ofsted report, which Ms Pan was generally familiar with, she did not know that it referred to “an unusually high number of staff and teachers shared concerns with inspectors...”. Ms Pan was not aware of any of the reports alleging Ms Remus had been drunk on school trips with children. She was not aware that Mr Vogel had raised complaints with his member of parliament. However, Ms Pan said that she did suspect that the “rumour mill” was running and people were trying to mobilise around the complaints. She said she did not mean to downplay parents’ concerns and she had heard “this and that”. She agreed that she had no doubt that other parents and teachers were complaining, but that she was somewhat “agnostic” to their origin.

168. Ms Pan said that she agreed that several key members of staff made these complaints and passed on the hearsay. How far beyond the core number of three or four she did not know. At the time she wrote the letter to the insurers she had no evidence to go beyond what she had written. She did not want to “overstep the mark”. It became evident that multiple staff were critical. She did not know to what extent the head of boarding, Ms Williams, was involved. At the time she believed it was her, but that was all she had to go on. Ms Remus was still trusting the people around her and it did not occur to her that others were systematically forming these complaints. It felt like “being assaulted” she said. Ms Pan agreed that teachers were entitled to raise complaints and that they should be dealt with in a transparent and effective manner. However, her preference would be for a complaint to be made to the school so that the school could respond.
169. Ms Pan accepted that Mr Vogel had complained to Ms Burman, which was forwarded to Ms Remus whilst Adam was still at the school. Ms Pan confirmed she had no knowledge of any response by Ms Remus. She accepted that her witness statement was not correct when she said that no complaint had been made by a parent whilst their child had been at the school.
170. Ms Pan accepted that despite the Ofsted inspection reports in June and July 2018, improvements were still needed when she joined in August 2018. Although she could not remember much about the position of the high school, she did not believe there were really serious problems when she started in August 2018. However, she accepted that the first bullet point from the Ofsted inspection from the 19th and 21st of March 2019 stated that leadership and management required improvement and that there were other references in this report criticising Ms Remus specifically as the proprietor.
171. Ms Pan confirmed that she did not interview Ms Burman to prepare the letter to the insurer as Ms Burman was already on sick leave. I also note that Ms Holmstoel had been dismissed in August 2018. I will return to some other parts of Ms Pan’s evidence later in this Judgment.

Conclusions on general management of Heathside

172. My findings on Ms Remus’s leadership are focused on what happened at the high school at Heathside, not the middle or junior schools. Ms Holmstoel, to her credit, made clear that in her view the junior and middle school were well run and that her criticisms applied only to the high school. There is no evidence she tried to get someone to present

a false salary and I reject that allegation against her. I also accept that for a number of teachers who had been employed by Ms Remus, their experience had been a positive one and they had felt they were well managed. I am not able to tell from the various pieces of correspondence exhibited to Ms Remus's statement whether or not any of those teachers came from the high school. None of the names feature in the relevant documents before me, apart from that of Ms Berens who is the mother of JJ, but I am not sure in which part of the school she was teaching. I conclude the comments are not from relevant individuals.

173. The preparation for opening Odyssey House School, I can reasonably infer, are likely to have taken place at the beginning of 2019 or perhaps at the end of 2018. Whilst I have no evidence on this, it is reasonable to infer that it is unlikely that Ms Kashyap had an agenda to undermine Heathside or Ms Remus in April 2018, if indeed she ever did have such an agenda upon which I make no finding. The Report itself does not betray any such bias when read in totality. It relies on information obtained and analysed in a way that is reasonable. The email correspondence in general from this time does indicate that Ms Holmstoel and Ms Burman were indeed trying to make changes happen, but it does not support any conspiracy to undermine Heathside in favour of Odyssey House School. This reinforces my conclusion that I can rely on the evidence in the Report.
174. I found Mr Groves a particularly persuasive witness as he came across as somebody without any "agenda". He had not been involved in any of the contemporaneous communications with the Vogels, Codys, Ms Burman and/or Ms Holmstoel. There is a risk that in their communications evidence from one of them is repeated and appears to be new evidence from another and affected by the circumstances in which that group found themselves. Mr Groves also has considerable experience of teaching at a secondary school, not that I treat him as an expert witness, but what he had to say about the management therefore carries some weight. Mr Groves' evidence about the poor management at the school supports what Ms Kashyap had written in the Report. As I have indicated above, Ms Burman did not give evidence and withdrew at short notice. However, the notes that she prepared were contemporaneous and Ms Kashyap's Report contemporaneously identifies that staff were making such records. For the same reason that I have identified above about Ms Kashyap's motivation in March 2018, Ms Burman had no motive to conceal or misrepresent matters. At this time, I infer that her motive was to protect her own position in the event that something went wrong. Taking into account the factors in s4 CEA and bearing in mind how Ms Burman's note fits with the other evidence I consider it reliable and credible.
175. The criticisms contained in the July 2018 Ofsted report are clearly significant. However, I bear in mind that to some extent they may have been generated by the information provided to the inspectors by the Claimants, Ms Burman and Ms Holmstoel. I am careful therefore in isolation not to place too much emphasis on this report, but it shows that multiple complaints were made from various sources that the inspectors evaluated and felt justified in their conclusions. Mr Kelly's evidence is consistent with the correspondence exhibited to Ms Remus's statement. I found Mr Kelly to be straightforward and honest witness. However, Mr Kelly was not a teacher at Heathside and was not involved in the administration or the financial aspects of the school. I do not find his evidence useful on this aspect of the case, simply because it is not relevant to the issue that I have to decide. His evidence shows that there were a

number of people who were very impressed by Ms Remus and enjoyed working for her and that she was kind and supportive of them.

176. Ms Pan's evidence stands in stark contrast to the evidence of Mr Groves, Ms Holmstoel, Ms Kashyap's Report and the conclusions in the July 2018 Ofsted report. I found Ms Pan to be an honest and straightforward witness, but she did not have access to the relevant information about what was happening at the end of 2017 or at the beginning of 2018, as she accepted in her evidence. In addition, she was not aware of a number of key allegations. She accepted the view of Ms Remus uncritically that there was "bad-mouthing" and that a core group of people were seeking to discredit Ms Remus. There is no evidence at this time of unjustified comments about Ms Remus. It is also telling that despite Ms Pan saying that there were limited management deficiencies when she took over, the Ofsted report of March 2019 (when Ms Holmstoel and Ms Burman had left) still identified leadership concerns and made criticisms of Ms Remus in particular. Accordingly, I do not accept Ms Pan's evidence where it conflicts with the evidence of the Report, Ms Burman, Mr Groves, Ms Holmstoel or the Ofsted report from July 2018.
177. I accept that a number of teachers at Heathside may have viewed Ms Remus as a good head teacher and proprietor and that she views herself in that light. However, I also reject her evidence on these issues as it is not consistent with the evidence that I have found as reliable and credible on this issue, namely the Report, Ms Burman, Mr Groves, Ms Holmstoel and the July 2018 Ofsted report. I find the following facts about Ms Remus's leadership of the high school part of Heathside. Decisive decisions were not made and correspondence was not replied to promptly. Furthermore, a number of relevant staff did not feel able to raise concerns because of a fear, generated by Ms Remus, of what might happen to them if they did. I do not need to consider whether this technically amounted to "bullying". I also find that Ms Remus's agreement was required for decisions such as appointing new recruits, financial expenditure and other key decisions. It may be that for financial expenditure there was another layer of approval that Ms Remus had to obtain, but any such decision had to be made by her first.

Was DfE approval "imminent", curriculum policy and schemes of work

178. During Ms Remus's cross examination, there was some confusion about when an application was made to increase the age range from 12 to 14. The majority of pupils start their GCSE course in year 10, which as indicated at paragraph 9, means the pupils will generally be aged between 14 and 15. As I have identified at paragraph 101 the Ofsted inspection of September 2017 was the prelude to obtaining the DfE's approval to increase the age range to 14. This is what Ms Remus said in evidence.
179. The Claimants had instructed an education expert, Ms Juliet Strang. Ms Remus did not instruct such an expert. In her report, Ms Strang deals with the importance of curriculum policy and schemes of work. She explains that the curriculum policy is very important for setting out the framework and rationale for the curriculum plans. It provides the basis for defining the details of what will be taught, the experiences pupils will have at the school, the staff appointments to be made and the distribution of resources and spending of school budgets. The schemes of work are an essential tool to guide teachers in implementing appropriate standards and as a method of quality assurance. They give teachers detailed plans including learning and teaching objectives and timescales as well as a number of other key elements for delivering the subjects.

They must be written by subject experts as good subject knowledge and teaching experience is needed. However, they may also be downloaded from some exam boards or a head of department, or head of a key stage, may develop the schemes of work for the relevant groups. In any case, both of these sets of documents are required when making a submission to the DfE. They are part of the requirements of the Standards.

180. It was put to Ms Remus that the schemes of work identified all the work that was to happen during a course and the learning objectives and timetables. Ms Remus said she did have schemes of work in September 2017 for year 10 for relevant classes, but there was more work to do. She said Heathside had the staffing and would get more staff and she discussed it with the teachers and they had the necessary credentials. Everything was prepared a term ahead if not two years ahead. Ms Remus said that there were schemes for Adam and Rosa. Ms Remus agreed that a plan should be in place before a school opens, starts education at a new level or before the subjects were taught. Ms Remus agreed that there was no such thing as “half a scheme of work”, but said it was not necessary to have one for two years ahead. Ms Remus rejected what Ms Holmstoel said about there being no schemes of work. For the teachers it was not necessary to have a full two years’ worth of schemes of work they only needed the year ahead. Ms Remus said that from the time it was clear Adam was coming to the school, teachers put in place schemes of work. It was for Emily Jewell to prepare the two years’ worth and it took time to get the two-year schemes of work ready.

181. Ms Remus was referred to an email that she sent on 22 February 2018 to the DfE. That email stated:

“Further to our approval requests last year, we would now like to extend to KS4 (we are currently approved up to KS3)....

It included a hyperlink to something labelled “...our provisional Key Stage 4 Schemes of Work”.

182. Ms Remus explained that it usually took six weeks after a request for a material change to receive the approval from the DfE. She believed she had made this request in the autumn term, in other words during September and December 2017. The email of 22 February 2018 was not the first application for this material change, she said.

183. The response from the DfE on 16 March 2018 confirmed that the increase in age range required prior approval. Further information was requested on the proposed age range, but also it included:

“Please update the link you provided earlier with copies of curriculum plans and detailed schemes of work for all subjects being offered to the new age groups, including physical education and PSHE.

On receipt of this information we will let you know what further action may be required, which could include an inspection.”
(Original emphasis)

184. Ms Remus said that there were schemes of work in February 2018, which were provisional for some subjects. It covered the GCSEs that she was hoping/planning to

offer but not all of them. For example, it did not cover cooking or German. The team did not think to include PSHE, although they did subsequently, she stated.

185. Ms Remus said the DfE needed more information, which was supplied. Ms Remus said that the application for the age range to be extended was being prepared from the time Rosa joined between November 2017 and February 2018 “and before”. However, Ms Remus said that the schemes of work were not all in place. It depended upon which subjects and which teacher. The teachers were all required by Emily Jewell to prepare schemes of work to the end of the year 11 curriculum. Ms Remus said she felt the teachers were prepared and had schemes of work. However, not all the subjects were taught and not all went to the end of year 11. Ms Remus said she did not prepare the schemes of work; it was Ms Jewell and the team who dealt with what was required. It was before Rosa joined because of Adam joining and the task was handed over by her to Ms Burman and Ms Jewell.
186. Ms Remus said she believed that in September 2017 the DfE approval was “imminent”. Ms Remus was asked how that was possible given that she did not apply until 22 February 2018. Ms Remus’s reply was the date was wrong it was not like that. She spoke to the Ofsted inspectors and to DfE contacts.

Conclusions on the schemes of work etc.

187. I do not accept Ms Remus’s evidence on the preparation of schemes of work or curriculum policy being available in September 2017. Her evidence was evasive in that rather than accepting there were no such schemes she sought to portray them as being not really necessary or not necessary to their full extent. She accepted that there was no such thing as a “half scheme of work”, but then proceeded to justify that they only needed to go a term ahead and later on in cross examination only a year ahead. It is clear that whatever was provided in the email of 22 February 2018, some five months after Adam had started and three months after Rosa had started, were considered inadequate and incomplete by the DfE.
188. As I have indicated above at paragraphs 14 and 15, Ofsted seems to have indicated approval would be given to age 14 years before it was actually given by the DfE. As such, I accept that it is likely that Ms Remus had a positive conversation with the inspector about getting approval to age 16 years. Of course, such a conversation is not the same as the approval from DfE. However, there is no evidence of any attempt to get an approval for 15 to 16-year-olds until the email of 22 February 2018. The wording of that email indicates that this was the first attempt at obtaining such a material change, because of the use of the word “now”: in other words, having achieved something previously we are “now” in the position to take the next step. If steps had been taken prior to February 2018 to obtain the material change required, it is unlikely that the word “now” would have been used. I reject Mrs Remus’s evidence that she had sought approval from the DfE for such a material change before 22 February 2018. I do not accept her evidence that she believed approval was imminent before, or in the weeks after, she sent the email of 22 February. The wording of the email referring to “provisional” indicates she knew the documents were not complete and that an inspection by Ofsted would probably be needed. She would have known this was likely because of the previous application for a material change to age 14 years. After the DfE response, she would have known such approval was unlikely to be imminent. I find that she did not have in place schemes of work or a curriculum policy when Adam or

Rosa started at Heathside. Even though there may have been drafts of provisional documents circulating around February 2018 there is no evidence that schemes of work were implemented and I accept Ms Holmstoel's evidence that nothing was implemented. I find that the schemes of work and a curriculum policy were not in place during the period of time when Adam and Rosa were at Heathside. However, even if they were available, from the point of view of the DfE they were not adequate by 22 February and so would not have been prior to that date, or for some time afterwards. As will become apparent, the teachers were probably following a syllabus and to that extent had their own plans on particular subjects. I found Ms Remus's answers to this series of questions disingenuous and evasive, as she sought to conflate such plans with the schemes of work or a curriculum policy.

Preparedness for GCSEs

189. The Report includes the following:

“Staff reported concern at the lack of resources and the impact of boarding and potential GCSEs at the High School. One staff member stated that boarding issues were quite worrying for the staff as a whole as there are rumours around inaccurate boarding numbers being given to the council and the impact of the increase in boarding rooms leading to a reduction of facilities for the day pupils (i.e. cloakrooms, toilets etc.) Another member of staff was worried about the promise of GCSE exams to Year 9 pupils (it was reported that the school already has 3 Year 10 pupils) especially as no applications have been made to register the school as an exam centre and no arrangements are in place for an exam officer. If Year 10 pupils have been admitted then the school is admitting pupils beyond its current approval with the DfE. The school has recently made an application to increase the age range to include GCSEs along with the number of boarders for the school but I am not aware of written approval from the DfE in this regard.”

190. Ms Remus said that these concerns were raised and art, DT and photography resources that were requested by Emily Jewell were resolved. Ms Grusd was brought in to do the GCSE PE. English and mathematics were covered and Ms Remus tried to give the teachers what they needed. Ms Remus agreed that: “members of staff were worried about the promise of GCSE exams to year 9 pupils” and that this had been raised. Ms Jewell had interviewed an examinations officer. However, Ms Remus said that before the Report was prepared, she had sorted out the examinations officer and the safe required to store the examination papers. She had all of this in hand by Easter 2018.
191. Mr Groves' evidence on this issue was that he had some doubts that Heathside was ready to provide GCSEs. His concerns were about timetabling and structure. Mr Groves felt there was not enough structure. There were too many unsupervised classes. When he could, he would go in and sit with the Year 10 pupils to keep them focussed.
192. Ms Remus said that Mr Groves had never expressed his concerns to her about the readiness of Heathside to provide GCSEs and in particular timetabling and structure. Ms Remus said she had asked Ms Burman to be sure there was a full timetable. Ms

Burman did not say to Ms Remus that Heathside was not ready to teach GCSEs and had not expressed her concerns to her. Ms Remus said she had been telling the teachers “put in what you want” and if they asked for resources then they would get them.

193. Ms Holmstoel’s evidence from her statement was that Ms Remus said to her in their first meeting in 2016 that she wanted to grow the school and start offering GCSEs. Ms Holmstoel assumed this would build slowly, but in June 2017 Ms Remus started saying that Heathside was going to start GCSEs and she already had some Year 10s who were interested. Ms Holmstoel believed the change was going ahead without any preplanning or appropriate staffing and infrastructure. As I have already found, Ms Holmstoel stated that no resources could be bought without Ms Remus’s agreement “and she said she had no money, or failed to respond to calls and emails requesting resources”. Ms Holmstoel stated that Ms Remus would say negative things about staff who requested resources. She stated:

“It was a constant anxiety among staff and we were trying to communicate to [Ms Remus] that we weren’t ready. We had no Science lab (essential to teach Science GCSE), no GCSE curriculum or schemes of work in place, not enough equipment to teach DT, Photography, Music and Art GCSE and exam registration was not in place. Every teacher had real concerns.”

194. Ms Holmstoel stated that staff were too frightened to challenge [Ms Remus] as she was a “bully”, and I have already found that they were too frightened to challenge her. She goes on to state that Emily Jewell had fallen out with Ms Remus and she repeatedly said negative things about Ms Jewell. When Ms Williams was dismissed, according to Ms Holmstoel, Ms Jewell was very worried as she could not afford to lose her job, so she stopped complaining and just accepted the situation even though she knew it was wrong.
195. On 8 March 2018 Emily Jewell sent Ms Remus an email about employing an examination officer and looking for a local school to be an exam centre for GCSEs. It was forwarded again by Ms Jewell on 15 March 2018 and it recorded that she has not had a response from Ms Remus. Ms Remus denied that this was an expression of Ms Jewell’s concern about a lack of registration, but evidence of her being proactive. Ms Remus said she sorted this out and believed that she had replied to the initial email. She said she had replied before an email dated 4 May 2018 to Ms Jewell. This email asked Ms Jewell what was needed for art, DT (design technology), photography and textiles and explained everything was in hand for science and music and nearly ready to go with IT. It ends with: “please let’s get everything ready for the whole Art and DT departments!”.
196. Ms Remus said that there were daily meetings held by Ms Burman before school about what would happen that day. There were weekly staff meetings. It was put to Ms Remus that teachers repeatedly warned that there were no resources for GCSE provision. Ms Remus said that there was panic. There was concern about not having a GCSE examination centre and Ms Remus said she sorted it out. She denied that the concerns were raised repeatedly. Concerns were raised about photography, DT and art, but were resolved.

197. Ms Holmstoel and Ms Burman had a meeting with Ms Remus on 8 June 2018. They secretly recorded this conversation on one of their telephones and it was later provided by Ms Holmstoel to Ms Remus and transcribed by Mr Elliot and separately by Ms Holmstoel. It was intended to form part of the evidence before the Employment Tribunal. Ms Holmstoel is recorded as saying that they felt the school was not ready for GCSEs and that there were not enough staff or resources. Ms Remus accepted that this was an expression of concern about the availability of resources to provide GCSEs, but she did not accept that this had been raised before. In staff meetings she said she had worked hard to do what the other teachers had asked of her. Ms Remus said the concerns that were being raised were specifically about art and science (that is the case as can be seen from the full context of the note). Later parts in the note do refer to the resources needed for art and DT and Ms Remus saying “why does she not order it?”, this being I infer a reference to Ms Jewell. There is agreement in the conversation that they have an examination centre and an examination officer. Ms Remus is recorded as saying that the staff were available for the subjects that were being taken, even though more people were being hired. An issue with cookery was raised, but it was discussed that there was some time to resolve the issue.

Conclusions on preparedness for GCSEs

198. Ms Burman’s note for 6 March quoted at paragraph 153 above shows her concerns over preparedness. The evidence shows that by April 2018 Ms Burman and Ms Holmstoel were particularly concerned about the readiness of Heathside to deliver GCSEs and a lack of resources available to do so. However, I am satisfied that at this stage they had been raising these issues beforehand with Ms Remus, although probably not as determinedly as subsequently, as evidenced by their recording of a conversation with her on 8 June 2018. I accept the evidence of Mr Groves about his concerns about Heathside’s ability to deliver GCSEs and the evidence from the Report for the reasons I have already given. Ms Remus did not start to take action to address the concerns until April. It would seem that there was a significant delay until May in dealing with art and DT (although the provision of those subjects is not causally relevant to this case, it is indicative of wider issues). I take the two emails from Ms Jewell to Ms Remus about registration for an examination centre and appointment of an examination officer as being further evidence of Ms Remus’s level of control over decisions. Ms Jewell was worried that this was not being resolved. I find that Heathside was not as a matter of fact, adequately prepared generally to teach a GCSE programme, at a minimum of the mandatory subjects, when Adam or Rosa joined Heathside and probably that remained the case until the end of the summer term in 2018. I shall deal with some specific subject areas below.

Teaching

199. I have dealt with the teaching of Spanish, PE and religious studies separately. This section covers some of the other issues that were raised about the teaching of other subjects.
200. Adam’s evidence on how he was taught generally was that it might be by way of one-to-ones with the teacher or sitting at the back of the year 9 class, either doing his own work, or being taught with the class. When Rosa and JJ joined the three of them might be taught together, depending upon the subject. Some of the year 9s were also studying for GCSEs.

201. Adam's evidence was that in his first term he was taught physics by a teacher called Isabel, but she left fairly shortly after he started, although she returned for a brief period. Adam said he was "pretty sure" that she left before half term in the autumn term. Adam said that Rosa never met Isabel. Adam's evidence was that Isabel's replacement, Jacob Delin, started in February 2018 and that he taught Rosa and JJ.
202. It was put to Adam that he was taught biology initially by a teacher called "Sarah". Adam said that he did not remember a teacher called Sarah and was definitely not mixed up about that. Ms Holmstoel's evidence was that she had no recollection of a teacher called "Sarah", apart from her predecessor. Adam remembered that Tom Wrigley joined around the same time Isabel left. It was agreed that Tom Wrigley taught Adam, Rosa and JJ biology. Mr Wrigley was studying for a PhD in biology and he had tutored GCSE pupils, but had not previously taught a class of GCSE pupils and he did not hold a teaching qualification. Adam's evidence was that Mr Wrigley struggled to teach him and the other year 10s, but: "he did his best for us". Ms Holmstoel's evidence was his classes were "shambolic".
203. Ms Christensen was the form teacher and taught English. Adam agreed that she was a good teacher and had taught GCSE before and was very organised. However, they did not get on, but he respected how well she taught the subject. Bysse taught Adam English for a very brief period.
204. "Ian" took Adam for study skills near the end of the year. Adam felt he was very helpful. He enjoyed Dr Raptis's classes who he felt was a good teacher and helped him with learning. For history, Andrew provided one-to-one teaching. Adam chose the topics to cover. Mr Groves taught mathematics and Adam's evidence was that he had made good progress. However, another teacher called Pinal Patel also taught mathematics and Adam did not get on with her. I do not think it is necessary for me to go into the detail of what Adam said about their interactions, suffice it to say it was difficult for him.
205. In her statement Rosa states:

"The teachers seemed confused as to why we were there. Lots of them didn't seem to know about the GCSEs and how to teach them as they had only been teaching the younger children. They told us all on a regular basis how overwhelmed they were by the fact the school was going up to Year 11 and some of them were worried because they hadn't taught GCSE before. They spoke to us about this in almost every lesson and shared their worries. That made me feel confused. In fact, the whole atmosphere at the school was confusing. Nobody seemed to know what they were doing. The boys (Adam and JJ) just gave up trying but I felt pressure to do everything by myself and did lots of extra work to compensate and tried to work in breaktimes."
206. Rosa goes on to state that in the second term there were more lessons for year 10, but "it felt even more disorganised and stressful." She states the teachers were telling them that they were not ready for GCSEs and even that they might have to go back a year, which she found upsetting. In her evidence, Mrs Cody records that Rosa came home distraught and that she took this up with Ms Burman. Mrs Cody's evidence was that there was: "palpable concern and insecurity amongst staff members". Her opinion was

that their worry was becoming apparent because they were not supported. In oral evidence Mrs Cody said that in the spring of 2018 Rosa was increasingly concerned about her education and the pastoral support. There were concerns that they were not following the curriculum. Rosa liked Ms Christensen and thought Dr Raptis was good, but the other teachers were “patchy”. Mathematics was catered for well, but there was an absence of textbooks, she stated.

207. In cross examination Ms Holmstoel denied that she had been critical of colleagues, but she had raised her concerns with Ms Remus, in particular about Mr Wrigley and his management of the pupils and issues about Ms Patel. She had raised that Ms Grusd was having mental health issues and that Mr Fullone had not delivered GCSE PE. She had also raised that Dr Raptis and Ms Jewell did not have the relevant equipment (which I have dealt with elsewhere). Ms Holmstoel said this was done verbally and that Ms Burman had been present. She said that there was no structure at Heathside.
208. Mrs Cody could not recall whether at the parents’ evening she attended in the spring of 2018, they were shown grades or how Rosa was tracking against predicted GCSE grades. Mrs Cody said that when she was shown predicted grades it was only for English. Mr Vogel said that at a parents’ evening Ms Christensen showed him progress charts for English language. He did not recall about English literature. Mr Vogel’s evidence was that English was the only subject where he saw evidence of an assessment and Ms Christensen provided no information about progress on other subjects.
209. Mr Groves evidence was that for mathematics and science from the beginning of September 2017 they had the appropriate textbooks to follow the syllabus. He gave evidence that a representative from a particular company came to Heathside to show books to the different subject teachers. He expected that was before Adam and Rosa had started. He explained that it would not be possible to teach the subject without the books. He explained that there was not much difference in the syllabus between different exam boards except perhaps in English. There may be different texts to read. In her statement Rosa refers to going through textbooks in her own time. An email from Mrs Cody shows that on 24 April 2018, the year 10 parents were informed of the examination boards for each subject.
210. Ms Remus said that she hired teachers cleverly, who did more than one subject. For example, multiple languages such as Spanish, Russian and French etc., or a teacher who could teach history and German. She wanted to find what made children “tick”. She would have offered engineering if she could. The high school had fewer than a hundred children and she said she wanted to give them small group tuition.
211. Ms Remus said that the teachers at Heathside were very highly qualified and they could teach on the spur of the moment. The teachers were exceptional and pro-the children. She accepted that for a subject like electronics the facilities were needed, but she did not agree with the proposition that you can only teach a subject if it is prepared for and there are the facilities.
212. However, she accepted that more was needed than knowledge and enthusiasm. First, she said, you need to have kind people who like children and secondly, a love of the subject and knowledge of the subject. This spreads to the children. She had never said that she had a cure for dyslexia, but there is a way to teach and she could help children who were unhappy. She explained that for 25 years she had been the SENCO and also

been responsible for safeguarding. She had had hundreds of dyslexics through the school. She was keen to promote the school's expertise and to have happy children in the school.

213. Ms Remus said there was biology teaching from a teacher called "Sarah" from Haberdashers and she was "brilliant". She denied that there were no GCSE lessons at all for the first 3 to 4 weeks of the autumn term for Adam and said it was not possible, as he was taught mathematics and science GCSE. All new pupils were assessed in the first couple of weeks, but Ms Remus said ultimately, she did not know because Ms Burman was responsible.
214. Ms Remus said she felt sure that Isabel taught Rosa. Ms Remus agreed that it made sense that she was not replaced until February 2018 by Jacob Delin. Ms Remus said he had experience of GCSE and A-level. Ms Remus said it was incorrect that there was no biology teacher until November 2017. Ms Remus said it was incorrect that Tom Wrigley had no experience of GCSE: he had taught GCSE and A-level and was completing his PhD. However, she agreed that he privately tutored GCSE and she did not know whether he had taught a class.
215. Ms Remus was referred to Rosa's end of term report for March 2018. Ms Remus said there did not have to be indications within the report about whether or not a student was "on track". However, the form tutors kept detailed information including expected grades and the GCSE curriculum was referred to in every subject. In the summer term there were predicted grades. Ms Christensen kept this information in charts. Ms Remus did not accept what Ms Strang stated in her report about there being no assessments of Rosa and Adam. The expert had not looked at the GCSE files and she objected to the accusation that the scheme had not been followed. The teachers were "brilliant and wonderful", she said. There was a structure and planning, but Ms Remus said it had to be remembered that there were only one or two children. Ms Remus said that she did not know about the absence of assessment grades. Rosa had been missing school and Adam would be given feedback. For Adam's report for the same time period Ms Remus said that there were references to the GCSE and percentage marks. Ms Remus agreed that in some subjects there was no reference to whether Adam was on course, but it was not required. She said this was not put in the reports, but were seen as a separate "thing". For Rosa there is a report on art and DT, even though these were subjects she was not taking. Ms Remus explained that maybe this was just for her to have fun (I note the contents of the report are consistent with this explanation).
216. Ms Remus explained that the responsibility for disclosing the tracking against a grade for GCSE was something she handed over to the team and to which she did not have access. Ms Remus denied that those documents recording tracking did not exist. Ms Christensen would have that information. In her witness statement Rosa stated that there were only formal reports showing progress throughout the year in English and in chemistry and that they were given past papers for holiday work and there was nothing formal in the other subjects. Ms Remus disagreed and said she had belief in the teachers.

Conclusions on teaching

217. It was put to the Claimants' witnesses on behalf of Ms Remus that a number of the teachers did have relevant degrees, teaching qualifications and experience of teaching GCSE to classes of pupils, as opposed to tutoring individuals or small groups. The

qualifications and experience of teachers were not in the main in evidence or agreed. However, there was no criticism by the Claimants of the relevant experience of teachers in English, chemistry or of Mr Groves for mathematics.

218. I find that Adam was not taught by a biology teacher called “Sarah”. I accept Adam and Ms Holmstoel’s evidence. I do not need to go as far as finding that such a teacher did not exist at all, although on the basis of what Ms Holmstoel said, that is possible. Mr Wrigley taught biology and arrived at some time in November, but there are no biology reports in the end of term reports for December 2017. I find that the physics teacher Mr Delin did not start at the school until February 2018, as Ms Remus accepted. This does raise a conundrum, as there is in Rosa and Adam’s end of term report for December 2017 a report on physics. There is no evidence on which I can make a finding, either somebody was standing in or the entries have been concocted, as there is no evidence of a physics teacher at this time. The evidence supports Ms Remus’s enthusiasm and belief in the teachers. However, it demonstrates a lack of structure within which the teachers could deliver their subjects and a lack of planning to meet the requirements of the GCSE courses. I find based on the evidence as a whole, the relevant teaching staff were communicating to Rosa and Adam their general concern about their ability to deliver the GCSE courses. I find that there were assessments of Rosa and Adam’s progress in their GCSE courses to some extent, as evidenced by the end of term reports. However, I do not find that this was universal or structured. In particular, I find that Ms Christensen kept tracking information for English, but she did not keep this for other subjects (and I make no finding on whether she should have done). The parents at parents’ evening would have been informed of this and aware of it, if that were the case. I accept the evidence of Mrs Cody and Mr Vogel.
219. I find that although the exam boards had not been identified and communicated to the Vogels and the Codys until 24 April 2018, it does not follow that the teachers were not following a syllabus. In particular, the evidence is that in mathematics and science a syllabus was being followed. From the other evidence available to me, it is likely that Ms Christensen in English was following a syllabus. The evidence of Mr Groves makes it possible that the other teachers were as well, based on textbooks. The Claimants have not established that in other subjects a syllabus, through textbooks, was not being followed. There is simply not enough evidence for me to form a conclusion, as a syllabus might have been followed, but the exam board not communicated to the parents.

The timetables

220. Adam said he did not recognise the timetables Ms Remus had supplied. Ms Remus accepted the timetables for Adam that she had disclosed in the proceedings should be ignored, as they must be trial versions. Ms Strang, education expert, stated that a typical time allocation during the school week for subjects was as follows: mathematics three hours and 30 minutes; English three hours and 30 minutes; biology three hours; chemistry three hours; physics three hours; PSHE one hour; core physical education 1 and 30 minutes; option 1 - 3 hours; option 2 - 3 hours; and option 3 - 3 hours.
221. Adam and Rosa provided three different timetables. For all subjects other than mathematics and English the amount of time allocated was substantially less than that indicated by the expert evidence. For example, the amount of biology in the three timetables from Adam ranges from 40 minutes in a week to 2 hours. For physics

between one hour and 1 hour and 40 minutes. No time was allocated for PSHE and there are study periods in one timetable of one hour and 20 minutes. Rosa's timetables show study periods of eight hours and eight hours and 40 minutes. As with Adam there is no time allocated for PSHE and similarly reduced times for the other subjects. Ms Remus said that she agreed in general that 6 to 9 GCSEs were taken usually, but the benchmark timings provided by Ms Strang were not mandatory. Ms Remus said that she relied on the experienced teachers to choose best and for Ms Burman to give appropriate allocations of time. She trusted the team to put in extra time. For chemistry she relied on what Dr Raptis recommended. Often one-to-one teaching made a difference (i.e., less time was required) and all timetables are built around teacher availability, that is common sense, she stated. Ms Remus disputed that there were not enough teachers. There was no reason for her to think that this timetable was not working as she had not been told about any of this. The intention with Adam was to give him extra work and that he needed more time.

222. Rosa's statement contains the following:

"I was given a timetable but it only showed a couple of subjects – the core subjects – and it said that I was in year 9. I thought this was strange. Hannah discussed my other subject choices with me and this was reassuring. She said they would organise subject teaching would try to accommodate what I wanted to do. I think I got a handwritten timetable on the first day but then I got a printed one quite soon after."

Ms Remus said that sounded right and was exactly what she would have expected Ms Burman to have done.

223. In his witness statement, Adam stated that when he started in September 2017 no year 10 subjects were in place. He had to follow a year 9 timetable initially and to attend French and DT, even though he was not taking those subjects. Adam stated that he received his own timetable by around October 2017 and at this point he no longer had to go to French and DT. He said that he asked, more or less every week, about his GCSE classes and was told by Ms Remus and others, that there would be teachers joining soon. He worked at a small desk in reception at this point and was provided with a laptop and expected to do his own GCSE studying. He refers to studying Spanish in particular for a couple of hours each day. During October more GCSE work started, in particular, in English and history. Adam states that his timetables were changed "constantly", several times a term.

224. Ms Remus confirmed that Adam initially sat in on French but Ms Burman was responsible for timetabling, she did not know that Adam had been required to go to DT. Ms Remus said the Spanish teacher had not started in September and the French teacher taught Adam Spanish. Ms Remus said there was biology teaching from a teacher called "Sarah" from Haberdashers and she was "brilliant" (I have already found that if she existed, she did not teach Adam). She denied that there were no GCSE lessons at all for the first 3 to 4 weeks of the autumn term for Adam and said it was not possible, as he was taught mathematics and science GCSEs. Adam was assessed in the first couple of weeks, but Ms Remus said ultimately, she did not know because Ms Burman was responsible.

225. Ms Remus said she did not recall Adam asking her what was going to happen about his GCSE classes in the first term nor did she know what he had asked others. Ms Remus did not know whether Adam had been sitting on his own, she only knew that Ms Burman helped him with an online Spanish program. Ms Remus agreed that she gave him a laptop but, in any event, he was not alone he was with the receptionist, Abi, and she had no recollection of the tiny desk that Adam referred to. She felt that he was only in reception studying Spanish prior to November.

Conclusions on timetables

226. I accept Rosa and Adam's evidence. Ms Remus's evidence on this was not convincing and she denied having knowledge of the relevant detail, which was implausible. I find that the timetables for Adam and Rosa changed frequently. I find that the amount of time devoted in the timetable to certain subjects was substantially less than that recommended by Ms Strang (I make no finding at this stage on whether or not that was negligent). I find that initially Adam sat in the reception area and studied at a small desk. I find that there were times that were in the timetable where there was no provision for teaching ("study periods").

Supervision

227. There is no argument that the Regulations require those of compulsory school age to be in full-time supervised education. There is also no argument that Rosa and Adam at the time were of compulsory school age. I have referred in the section on timetabling to the study periods in Rosa and Adam's timetables, when they were not allocated any teaching time.
228. In his statement Adam says during the second term Rosa, JJ and he began to spend a lot of time unsupervised in the year 10 study room. He says towards the end of the spring term there would usually be a teacher or teaching assistant with them. However, there were occasions when nobody turned up. Often Rosa and JJ were not present and he would be left on his own. He describes having no resources available to help him study, just a worksheet. Ms Christensen gave them assignments, but not the other teachers. Sometimes they would do their homework in these periods. Adam's evidence was that in the third term the relevant timetable would not necessarily be followed if the teachers were not available. This would happen once or twice a week. Teaching assistants would be with them frequently in the study periods, but they were still on their own "quite a bit" and the teaching assistant might be called away at the last minute.
229. Rosa's evidence was that they were told they had to be supervised, "but we never were and somehow we got blamed for that". Younger children would come in and shout and disturb them. She was not given any special resources during the study periods and she was left to her own devices. Rosa states that they did not get much done in lessons and she was worried she was behind. She would use the time to go through the textbooks and go over what should have been covered in lessons. Ms Christenson gave her work, but the others were "patchy". Sometimes it would get marked and sometimes it would not.
230. Ms Burman's statement records that the teachers had to teach other year groups, as well as the year 10s and she could not put together a full timetable. The year 10 pupils ended up with more study periods than they should have had: "as I did not have the staff to

supervise them all the time I could not guarantee they were really doing their work.” The year 10 pupils had to be taught with the year 9 pupils in mathematics, because she says there were not enough mathematics teachers to go round. Ms Burman says she informed Ms Remus about this and the understaffing for GCSE, but when a parent complained Ms Remus denied she knew anything about it. When Adam joined in September 2017 the timetable was built around the availability of teachers. Ms Burman says she was not allowed to recruit teachers. The year 10 pupils were left unsupervised at least 80 minutes every day. Ms Burman says she told Ms Remus there were not enough staff to cover the periods. Ms Remus, she says, claimed not to have known and demanded to know why she had not been told.

231. Ms Remus’s response to this was that she agreed that the timetable was built around teacher availability, but denied that she knew about the situation. Ms Remus said she was shocked when she saw the timetable and said the Year 10s must be supervised. Ms Remus said that nevertheless, the year 10 pupils were in a room 2 feet away from another classroom, for example, one occupied by Mr Groves. They were not in the corridor alone. There was a lot of activity and “you could hear them and knew what was going on”. However, she wanted them to be overseen.
232. Ms Holmstoel’s evidence is that when Rosa and Adam started at Heathside she was quite cross with Ms Remus and said to her: “we do not have the staff or any support”. Ms Holmstoel was aware that Rosa, Adam and JJ had to spend time unsupervised. She sent teaching assistants (who were her responsibility) down to look after them, but she could not do this all the time as they had other responsibilities. Ms Holmstoel says that Ms Burman kept asking for more staff and was “ignored by” Ms Remus. Ms Holmstoel said the door to the room where Rosa, Adam and JJ were taught should have had a viewing window in it. It did not do so until May 2018, after Ms Holmstoel had raised this repeatedly, having previously been ignored by Ms Remus.
233. In his statement Mr Groves stated that his concerns were there were too many unsupervised and unstructured times during school days for Adam and Rosa. He stated that independent learning skills need initially to be overseen and developed, which he did not see. In cross examination he identified “a major problem” was unsupported lessons. As there were no teachers, this could be seen as “free time” by the pupils. Mr Groves explained that he would call in to check if Rosa and Adam had work to do. There was no structure and they would spend time talking and he could not stay because he had his own class. They needed more structure and focus and in Mr Groves’ experience at GCSE level there was a full timetable without study periods. It was different from A-levels when there may be study periods. He agreed that Rosa, Adam and JJ possibly enjoyed it, but again for GCSEs there should be a hundred percent timetable with supervision. Mr Groves said this had been discussed and he agreed that although Rosa, Adam and JJ might have had work, if there were no staff to oversee them, then they probably would not have been working.
234. Ms Remus did not agree that pupils had to be supervised at all times. In other words, it did not mean they needed to be “under someone’s nose” at all times. Ms Remus said initially she was not aware of the study periods and she did not want them. When she saw them, Ms Remus says she said: “every minute must be used”. Ms Burman told her it was normal for GCSE, but Ms Remus wanted a full course of study. However, the pupils did not have to be “under the eye of” a teacher, that felt restricted like a baby school. It was nice for them to have that time, but it was not what she wished for.

Conclusions on supervision

235. I found Ms Remus's evidence on this topic unconvincing. In addition to the way she answered the questions she was inconsistent in saying that she did not want the pupils to have the study periods and that every minute should be used, but to allow them to continue. Ms Remus was the proprietor and headteacher and for her to defer to Ms Burman is not credible. Furthermore, it is not consistent to claim that she did not know about study periods, but then when she found out about them not do anything about it. I do not accept that Ms Burman would have said to Ms Remus that the study periods were normal for pupils doing GCSEs, this is not consistent with her evidence. I have in mind that there is a risk that she is justifying her own position, but I find that is unlikely given the consistency of her evidence with the other evidence that I have heard and seen. Ms Burman's evidence is consistent with what Mr Groves and Ms Holmstoel have said in evidence and I accept her evidence on this issue. I find that Rosa and Adam were left for significant amounts of time, probably 80 minutes, every day without face-to-face teaching or supervised learning. I find that this was due to a lack of teaching resource. I find that Ms Burman had been asking for such resource and that Ms Remus was the person to authorise recruitment (as I have found elsewhere). Ms Remus either ignored those requests or decided not to action them.

Adequate facilities for science

236. The evidence of Ms Strang was that all science syllabuses at GCSE have the same requirement for practical work, which were mandatory requiring specialist science equipment. There are several pieces of equipment required, one of which is the Bunsen burner, which requires a gas supply. Adam's evidence was they did not have any science GCSE practicals. There was a "science day" when a number of sheep's heads were brought in and the whole school was able to dissect them. Dr Raptis also made crystals once and a bouncy ball, but those were not part of the science curriculum. Adam in his statement records that Ms Christensen told Rosa and him that they were not up to standard to do triple science. Adam states that this was the first time he had been informed of this.
237. Rosa's end of term report for December 2017 records her achievement as "good" and effort as "working hard" for chemistry and physics. The comments for chemistry record that she is willing to put in hard work, that her underlying knowledge was fragmentary, but the writer was confident this would be quickly overcome. It records they are working on the triple science chemistry syllabus and at the end states: "keep up the good work". The March 2018 end of term report has reports of biology and chemistry but not for physics. Her achievement in both reports is "good" and "adequate effort". The comments are not as positive in chemistry and it is recorded that she is not adequately driven to achieve her best. For biology, it appears there are problems with revision that she needs to work on. In the July 2018 end of term report achievement is rated as "very good/good" in chemistry and "good" in biology with effort recorded as "working hard" in both subjects. For physics she is rated as "very good" and effort is "excellent". The comment for physics includes that she is intelligent and engaged and that she has worked her hardest. The comments for biology and chemistry are also positive.
238. For both chemistry and physics Adam is rated as "good" and effort as "working hard" and the comments about his work are positive. There is no report for biology. The end

of term report for March 2018 has no report for physics. For chemistry his achievement is recorded as “very good/good” and his effort as “working hard/adequate effort”. In biology he is rated as “moderate” for achievement and with “adequate effort”. The comments for chemistry state that he has the potential to do very well and achieve “high” in GCSE chemistry. He is advised to take more responsibility for his work. In biology he is advised to revise and reported to have a lack of focus. The end of term report for July 2018 records achievement as “good” with effort as “adequate” and the writer states that Adam is very intelligent, but more effort from him is required. Chemistry is again achievement “very good/good” with effort of “working hard/adequate effort”. The comment is to be more focused and disciplined in study and revision. Biology has an achievement of “good” and “adequate effort”. The comment refers to the writer thinking good progress is possible next year for Adam.

239. Ms Remus was asked about the practicals in the science subjects and whether she agreed they were mandatory. Ms Remus said it depended on the examination board and the answer was “yes and no”. It was possible in a class of 2 or 3 to do the practicals at the school. Ms Remus said it depended on the year group. Practical can be done flexibly and they could be done in the Heathside science laboratory. Physics had been planned for the following year (last term in 2018) and there was no reason that Rosa and Adam could not have done the practicals. Ms Remus said that it was not true that Adam did not do science practicals. There were some physics practicals and probably biology practicals done at the beginning of the year.
240. Ms Remus said that when she met the Vogels on 23 June she did have a science laboratory at the school. The laboratory had been inspected and she needed to have it to go to Year 7. All that was needed was Bunsen burners. They had a chemical store and she bid for the tables in the science laboratory from a boarding school so that it had the “right look” and Mr Kelly confirmed this in his evidence. Ms Remus said that she had told the Ofsted inspectors that they were doing GCSE science. Ms Remus said she knew that the physics teacher, Isabel, did experiments. They added the gas for the Bunsen burners in 2018. Mr Kelly in oral evidence said that UK Gas fitted these in the summer of 2018 including the necessary safety device. A fume cupboard and large sinks were also installed with the appropriate worktop and anti-splash taps. Mr Kelly exhibited to his statement a gas safety installation report dated 3 October 2018. Dr Raptis was the head of science and Ms Remus said she consulted with him. Dr Raptis chose everything and she allowed him to order whatever he needed.
241. In Mr Vogel’s journal there is a record of a meeting with Dr Raptis on 8 July 2018. The relevant entry being as follows:

“[Dr Raptis] came round to discuss the Heathside situation. He told us he has been asking for financial approval for two years to develop a Science lab. He says he has a paper trail to prove this. For some reason, [Ms Remus] claims opportunistically not to receive emails and her head of IT, Andy, backs her up. [Dr Raptis] specified and costed the lab project himself, even though this isn’t his job as Science teacher. Initially the cost was estimated at c£25k but has risen to £45k most recently. The contractors were lined up to begin work in week commencing 2nd July 2018 but no deposit was paid. Although [Ms Remus]

claimed to [Dr Raptis] that she had given financial approval, the bursar told [Dr Raptis], ‘Don’t hold your breath.’”

242. The entry goes on to describe that Dr Raptis and Ms Ross Jones would not teach GCSE science unless the laboratory was in place and that Dr Raptis was considering resignation if there was no change of management. Ms Remus did not accept what was recorded in the journal.
243. Ms Remus said that in the summer of 2017 she had every intention of having the laboratory worked on, but the contractors could not start. There was a health and safety reason in September 2017, as the students would be at the school. Ms Remus decided to delay it, but the contractors could not do it at Christmas time. It had to be planned for summer 2018. The absolute plan was to develop the science laboratory originally 2017 and then in 2018, she said. However, she said no Ofsted inspector said that it was not a functioning laboratory. Ms Remus was told that they could do all the practicals necessary. She explained that Dr Raptis and Ms Ross Jones’s refusal to teach was much later in 2017.
244. There is a text message from Dr Raptis of 23 July 2018 which states:

“still InterFocus [presumably the contractor] has not seen any penny for the new Science lab. They have moved the completion date to mid-September. If she is still there in the beginning of September, I am not coming back.”

245. As to the necessary equipment to teach practicals in biology, chemistry and physics Ms Remus said that she did not check any list. She trusted Dr Raptis and Ms Burman to check. She agreed that Dr Raptis felt very strongly, as evidenced by the text message. Ms Remus said that she “begged borrowed and cried” to pay for the science laboratory. This was in July 2018 and that it would all be fine by September. Ms Remus said she had the gas taps put in and other things that were needed. In August 2018 the laboratory was updated to do GCSEs.
246. On 20 June 2018 Dr Raptis and Ms Ross Jones sent an email to the three sets of parents with children in year 10. The email was entitled “year 10 GCSE science” and the text is as follows:

“Dear Year 10 Parents,

We would like to inform you that from September 2018 your child will be entered for the Combined Science GCSE, representing the double GCSE Science award.

Our decision to offer them the Combined Science course is based on a careful consideration of two main factors:

- 1) The additional, demanding Extension Units and their associated mandatory experiments that comprise the Triple/Separate Science award.

2) Each candidate's application, proficiency and attainment in Science during Year 10.

Please do not hesitate to contact us should you need any more information or clarification about the GCSE course in Combined Science.

Yours sincerely,

Ioannis Raptis

Annabel Ross Jones”

247. Ms Remus was copied into that email, but she said that she did not know that Dr Raptis and Ms Ross Jones were going to write this email and it was done without her knowledge. Ms Remus said she was in reception when she received it and ran back and saw the science teachers. Her evidence was that they explained to her that Rosa and Adam were not going to get the grades. Ms Remus spoke to Rosa and Adam and wanted to get them extra tuition.

248. Mr Vogel forwarded that email to Ms Burman expressing his concern and saying this was contrary to what Ms Remus had assured them previously. He continued that there been no previous indications either at Heathside or at UCL Academy that Adam was not capable of doing the triple science GCSE. Ms Burman forwarded this to Ms Remus, who replied to Ms Burman on the same day as follows:

“wow.

Do they know how tricky he is!????

Poor Tom [this must be a reference to Mr Wrigley] is on his knees!

What happened to GCSE PE? We did not agree to him dropping this!”

249. Ms Remus accepted she was referring to Adam and she denied that she was “scapegoating” him for the lack of facilities. Ms Remus said that his behaviour in class was a problem. However, nobody had spoken to her or told her about a lack of equipment being the reason behind the email. Ms Remus said that she tried to call Mr Vogel for a meeting, but she did not respond to him in writing.

250. Ms Burman’s journal for 28 June 2018 includes the following entry:

“Told year 10 pupils the reason they could not do triple science was because they do not work hard enough – not the real reason (no facilities). [Ms Ross Jones] and [Dr Raptis] up in arms and writing me their concerns [illegible word].”

It is clear from the preceding text in the note that Ms Burman is referring to Ms Remus having told the year 10 pupils the reason they could not do triple science.

251. Ms Remus denied telling Adam and Rosa that they did not work hard enough. She denied “scapegoating” them and she said she did not know they were dropping triple science. She denied (100%) that the real reason was that there were no facilities, as no one had ever told her that.
252. Ms Remus said Dr Raptis did not resign over this he remained at the school for a year. Ms Remus said she had no idea he was upset about the laboratory although there were strange things happening (in 2018). Everyone was against her, she said. Ms Remus said she relied on the science teachers to tell her what was needed and in June 2017 she encouraged the teachers to tell her what they needed. The Vogels knew that she was trying to make things work for Adam.
253. Ms Remus said the concerns were not shared with her. Ms Remus said that she did have the laboratory fixed over Easter and she did get new laptops. Everything that Ms Jewell wanted for photography, art and DT was provided. There is no mention of the chemical or supplies that were provided.
254. Ms Pan’s evidence in her statement was that she had spoken to Dr Raptis and he confirmed that his view was that Adam and Rosa had not sufficiently advanced to continue with triple science.

Conclusions on adequacy of science facilities

255. Again, I found Ms Remus’s evidence about whether or not practicals were a mandatory part of the science GCSE courses to be evasive and disingenuous. It is clear on the evidence of Ms Strang that the practicals are a mandatory part of those courses. I accept that it may be possible to carry out those practical elements in a condensed program, at some point within the two-year period. However, what I find is that until October 2018 Heathside did not have a laboratory with sufficient specification to enable the science GCSE practicals to be performed, at a minimum it did not have gas for Bunsen burners. Mr Kelly’s evidence was that the lab was fitted out in September 2018, but it could not (or perhaps, should not have been used, if it was used) until the gas safety inspection had taken place. I find that Dr Raptis had been asking for the science laboratory to be upgraded from some point in 2016. I was not convinced by Ms Remus’s explanation about why it had not occurred earlier, but the reason is to my mind irrelevant. I have already set out my reasons for accepting the notes that Ms Burman exhibited as being evidence on which I can rely. The note that she made is consistent with the subsequent text message from Dr Raptis, albeit that is much later and is not about the reasons why there was a change from triple science to double science. It is however evidence of his strength of feeling and the need to upgrade the laboratory. I also take into account that Adam had previously at UCL Academy been going to undertake triple science as had Rosa. There is no indication from their end of term reports of a problem. I do not accept Ms Pan’s evidence as representing Dr Raptis’s true opinion. By the time Ms Pan spoke to Dr Raptis, Ms Holmstoel and Ms Burman would have left and it was clear that Ms Remus was still in charge. I have already found that staff, and I include Dr Raptis in this, were afraid of speaking out. His comments are also capable of being interpreted as reflecting that given what has happened with the lack of facilities, they were not in a position to take triple science, as opposed to not being capable. I find it is likely that Dr Raptis was being careful in what he said to Ms Pan, given that he was still employed at Heathside. It is possible that Rosa, Adam and JJ had not worked hard enough or were not capable enough. However, it is more likely, looking at all the evidence, that the

prospect of having to catch up with science practicals was the reason to require them to take a less demanding science GCSE. I accept that Ms Remus offered to provide extra lessons, but this would not have resolved the issue about the lack of suitable laboratory facilities.

Spanish teaching

256. Adam's evidence was that a Spanish teacher started in November 2017. Prior to that, as I have indicated above, he was in reception working on a Spanish program from a laptop. He says Ms Burman brought him in her son's Spanish vocabulary, which he learned. Mr Vogel's evidence was that there was no Spanish teacher by the parents' evening on 16 November 2017. Adam's end of term reports for December 2017 do not contain a report on Spanish and neither does the end of term report for March 2018. The report for July 2018 does contain a report for Spanish. This states Adam could perform better, if he was committed. There are comments about his lack of concentration irregular attendance and lack of practice to help him achieve that improvement. On the disclosed timetables for Adam, one shows Spanish allocated at one hour and 20 minutes per week and another three hours and 20 minutes. It is not possible to determine to which term those timetables apply.
257. Ms Remus agreed that it would be very tricky during the summer to recruit teachers and it would be a good idea to start immediately, but Ms Burman dealt with that. It was put to Ms Remus there was no Spanish teacher until November 2017 when Maria started, and she agreed that made sense. However, Ms Remus said she knew that the French teacher did work with Adam on his Spanish, although she was not sure when. Ms Remus agreed that a teacher needed term's notice, but it could be half a term's notice in some schools. Ms Remus said that she did not offer a Spanish teacher to be available by September 2017.

Conclusions on Spanish

258. I find that there was no Spanish teacher until November 2017. Ms Remus thought that the French teacher had taught Adam Spanish, but I find that this is not correct. Her evidence on this I found vague and even if she believed she knew it had happened, I accept Adam's evidence that it did not.

Core and GCSE PE

259. There is a requirement to provide PE as part of the school curriculum. However, in addition, Adam and Rosa were to study for a GCSE in the subject. The GCSE course has a practical aspect and an academic aspect, which is the majority of the course. The academic part requires the study of anatomy, amongst other matters. The head of sport and the person allocated by Ms Remus to provide PE, both GCSE and core PE was Oscar Fullone. He did not hold a teaching qualification (as I have said there was no need for him to do so in a private school). Ms Remus agreed that Mr Fullone was not a qualified teacher, but he was at a high level. She was not sure whether he had GCSE PE experience, although it sounded like he did. Ms Remus did not know whether Mr Fullone had a degree relevant to PE. Ms Remus said that he had indicated to her that he could teach GCSE PE and she left it with him and Ms Burman to "get on with it" and she had 100% faith in them. Mr Fullone was always very enthusiastic, she said. It was put to Ms Remus that there had been no check on Mr Fullone's training before

offering the GCSE PE. Ms Remus's response was that he had carried out high level coaching.

260. Adam's evidence was that in March 2018, towards the end of the second term Ms Burman identified that Ms Grusd, the geography teacher, was a qualified PE teacher who had experience of teaching GCSE. Ms Grusd taught Adam in two 40-minute periods per week. He found the amount of work to do daunting, but he wanted to "give it a go". In the third term he was still getting no practical GCSE PE, he stated. However, Adam found there was such a lot to get through having started late that it was just like cramming. Adam said that Ms Grusd told him how hard he would have to work and he felt the pressure building up and it became a vicious cycle. He felt he could not cram a year's work into the time that he had available. This was very disappointing for him as it was one of his best subjects.
261. Ms Bonnyman's evidence was that at a meeting in September or October 2017 with Ms Burman she expressed her concern about GCSE provision and specifically asked about PE and said that that she would find out what was happening. Ms Bonnyman said that by half term in October 2017 there was still no PE theory being taught. At a parents' evening in November 2017 Mr Fullone was present, but as a parent. However, he was asked to speak to Ms Bonnyman and Mr Vogel and her impression was that he was unprepared although he was enthusiastic and praised Adam. Ms Bonnyman says that when asked about the academic elements of the GCSE he said 'yeah... We can do that for him... Sure...'. Ms Bonnyman said that she was pushing Ms Burman for information about the elements of the GCSE PE and her reply was that she was asking Ms Remus. In March 2018, Ms Bonnyman states that Ms Burman had identified that Ms Grusd was a qualified PE teacher to GCSE level. Mr Vogel's evidence was that by February 2018 Ms Burman acknowledged to him that GCSE PE was not in place. After Ms Grusd was appointed, Mr Vogel stated that at a May 2018 parents' evening, Ms Grusd revealed that not only was there a mountain to climb to catch up with the PE theory curriculum, but Adam was also not getting the practical PE curriculum. Ms Bonnyman's evidence about that meeting was that at first Ms Grusd stated that Adam had not done enough work. However, she then accepted that it was a "tall order", given the time at which Adam had started the course. Ms Bonnyman said they asked about the lack of feedback that they had had to date and Ms Grusd replied:

"Look, you didn't get this from me... but the PE provision in this school is really, really awful. No one gets what they should. No cricket, no rugby, no athletics, no gymnastics, it's not graded, it's not PE. Adam hasn't done any practicals and they're not capable of giving him any'...."

262. Ms Bonnyman in her statement pointed out that prior to the parents' evening in May 2018, a list of options for GCSE was sent out to the year 9 parents (in other words those children that would be commencing GCSEs in the following autumn term) and it did not include GCSE PE. Ms Bonnyman stated that following the parents' evening they discussed the situation with Adam, but left him to make the decision about whether or not to continue. Adam denied the suggestion that he stopped GCSE PE because he had difficulty in learning the academic elements of the GCSE. He stated he gave it up because of the lack of time available. Ms Remus said that she arranged for Ms Grusd to step in and she believed that she could make a program work with that level of teaching talent.

263. Rosa's statement on the topic of GCSE PE is that this was a subject she wanted to do, but she never had any lessons. After about a month, she had not had any lessons and realised that nothing was going to happen and so she accepted that she was not going to be able to do it. She did not speak to the PE teacher and nobody was clear about it or took any action to get things organised. Mr Cody's evidence was that Rosa had drawn his attention to the absence of PE. At some point, he said that she told him she was playing games with "little ones". Mr Cody said that it was not correct to categorise Rosa as missing PE, because there was no PE provision, in his view what was described was "playing around". Mr Cody pointed out that Rosa had been the captain of netball at her previous school. He accepted what Rosa had said at the time in that she knew she should have been taught PE and she was not. She started to come home when there was nothing for her to do at school. Mrs Cody's evidence was that Rosa dropped GCSE PE as there was no curriculum. She stopped going to core PE because it was targeted at the younger children. She confirmed that Rosa started coming home during PE lessons. Mrs Cody accepted she did not contact the school, but the school did not contact her either. This was an optional GCSE for Rosa and Mrs Cody said she did not want to make a fuss.
264. Adam's evidence was that he never had proper PE lessons. Initially he had some lessons with year 9s, but they complained because he was older and more able than they were, which they found unfair. Nothing was done about the academic part of his GCSE. Adam spent all of his PE time coaching younger pupils. When Rosa arrived, Adam's evidence was that they would be with year 8 and year 9 girls and boys doing netball and football. However, that only lasted for a few weeks until they asked for their own PE lessons, which they did not receive. Adam would otherwise act as the sports coach for younger years. He was told this was part of his GCSE, but he did not get any guidance. Ms Remus said that she was not aware of this, but what Adam said made sense. She had handed the arrangements to Ms Burman and Mr Fullone and nothing was brought to her attention. Adam said that in the second term lunchtime football was the only exercise he took, but it was just a kickabout with younger children not training. He was not allowed to score. Adam says this is the PE that is referred to in his second end of term report.
265. Ms Remus's evidence was that for core PE they had a wide variety of sports on offer including golf, tennis and swimming. Ms Remus remembered Rosa doing sport but did not recall Adam not doing sport. Ms Remus agreed that Adam was effectively having an internship and that: "we thought it was a real plus". Ms Remus said she was told that was part of his course and thought he had enjoyed it and that it was a positive aspect. Ms Remus agreed that there was an obligation to provide statutory PE and said this was on his timetable and it was provided. Ms Remus said that she did not know whether or not Adam had received the academic work for GCSE PE. If Ms Burman had told her that he had not been, she would have acted immediately. Ms Remus did not know about Rosa doing PE for only a short period of time, she would have been scheduled with the year 9s. There was off-site netball football and golf. She did not know why there was nothing suitable for her or why Rosa was often watching rather than taking part. Ms Remus understood that Rosa went home for PE lessons and the school was trying to be flexible. Ms Remus said that there were 12 sports staff and they offered a high level of coaches. Her recollection was that sport was being done.

266. Ms Remus did not know that Adam had never played team sports, but he played with other classes. However, she did not know what the sports department were working on. It was put to Ms Remus that it was obvious that Adam could not play with the other children at Heathside as they were younger, shorter and less capable than him. Ms Remus said the whole of the school was less capable than Adam. She thought he was doing a proper PE course. Ms Remus feels that she was misled and she never knew about Adam and Rosa's experience of PE. Ms Remus did not know at the time Adam had given up GCSE PE.
267. Ms Pan's evidence is that Mr Fullone and Ms Grusd confirmed to her that PE was offered to Adam and Rosa, but Rosa would often skip class "because she did not enjoy the subject". Adam dropped sport, she says they stated, because he did not enjoy the anatomy and theory elements.

Conclusions on core and GCSE PE

268. I make the following findings of fact in relation to this issue. No provision was made at Heathside to teach GCSE PE until Ms Grusd started to teach Adam at some point before the May 2018 parents' evening. I accept Adam's evidence on the lack of provision of the academic and practical aspects of the course. This is consistent with Rosa's evidence (and I am satisfied I can rely on this evidence considering s4 CEA) and the reported comments of Ms Grusd from the parents evening in May 2018. I also find as a fact that Adam stopped the GCSE PE course because he felt it was not possible to complete it within the time available. I do not accept the suggestion that was put to him that he did do so because he was not academically able to achieve it, without deciding whether or not he was so able. The GCSE is a two-year course which he was being expected to complete when he had missed two terms worth of teaching. It is also a subject which he enjoyed and there is evidence that he performed to a high level in the practical aspects of sport generally, based on his involvement in the football academy. Whilst I accept that the academic element forms the majority of the GCSE and he would have needed to complete it, I find the reason he did not was the late start and consequent increase in pressure upon him. This also has to be seen in the context of the other findings that I have made on the other aspects of the courses being followed. I also accept Rosa and Adam's evidence as a matter of fact on the type of core PE that was available to them. In other words, although sports were available, there was no one of a similar age or physical capability to play those sports with as a team or, against as opponents, in competition. What was reported to Ms Pan is not the point, it is not "offering" PE that was required, it needed to be appropriate PE. What was said to Ms Pan about Adam dropping the GCSE PE was, I find, said because staff were concerned about speaking out, for the reasons that I have already identified above.

PSHE

269. It is mandatory under the Regulations to provide PSHE, which includes sex education. Ms Strang, as stated in paragraph 220 identifies that she would expect one hour to be allocated within the school week to this topic. The timetables provided by Rosa and Adam do not record any allocated time for PSHE.
270. In oral evidence, Adam said that it was not his experience that PSHE was taught to year 9 and year 10 together. He accepted that assemblies were held covering PSHE to year 6, 7 and 8. He denied ever having had any sex education at Heathside. Adam agreed

that there were various members of staff covering well-being, such as a doctor and nurse and a psychotherapist. He agreed that “Andrew” did the odd class on PSHE, although it was not like the PSHE he had experienced at UCL Academy. There were debates about topics, but often they conflicted with his other classes. When asked about the topic of bullying, Adam said Ms Remus held a number of assemblies and he recalled one occasion was about Internet fraud. He did not feel it was applicable to year 10. There was also an occasion when a year 7 had left a comment on another student’s “post” on the Internet, which was inappropriate. Ms Remus made a speech telling the pupils not to do it or else they would be punished. There were no lesson plans for PSHE. It was put to him that there were sessions covering sexism/racism, black history week and friendship week. Adam denied that there were such events, although he accepted that there was an English lesson where they done something on black history week, but it was not a big event. The assemblies were often arranged in the morning and this clashed with year 10 timetabled lessons. Rosa’s evidence was that there was no PSHE.

271. Ms Burman’s evidence was that there was some PSHE provision, but it did not include sex education. She also states that she tried to include sex education in PSHE and an anti-bullying week. However, Ms Remus did not agree to that week because, according to Ms Burman, she denied there was any bullying at Heathside. Ms Holmstoel gave evidence that there was no age-appropriate PSHE for the year 10s. Ms Holmstoel’s evidence about student sexual health and relationships education was that Ms Remus would become upset when the topic was raised. Ms Holmstoel says that when she suggested some of the teenagers might have had sex and needed to be educated, Ms Remus covered her face and told her to stop talking. She ignored advice she was given by Ms Holmstoel and others, including the doctor who attended Heathside, about providing PSHE. In oral evidence Ms Holmstoel said she had no recollection of the friendship week, but she did recall black history week and she remembered assemblies, although she did not recall outside speakers coming in to conduct those events. She agreed that there were occasional talks to small groups by a medical practitioner and talks on Internet safety. Ms Holmstoel specifically said that there was a plan to do a talk on substance abuse but this was not agreed to by Ms Remus. Ms Holmstoel said that there were plans for PSHE but they were either blocked by Ms Remus or she never responded to correspondence. Ms Holmstoel denied, when it was put to her, that there were sessions on racism, prejudice, discrimination and sex education. She accepted that there was possibly a session on peer pressure and there was a session on bullying. She recalled there was a large tree in the front hall to which were affixed kind notes written by students about each other.
272. Ms Remus agreed that PSHE was a matter governed by the Regulations and it required a written policy on the curriculum supported by appropriate plans and schemes of work. She did not agree that it required one hour per week on the timetable. However, Ms Remus said there was timetabled PSHE, there were speakers and week-long events. She had explained to the Codys and the Vogels that they had a different approach. Friendship week was equivalent to PSHE on bullying. There was a well-being team and assemblies were done and special talks provided. Ms Remus agreed that none of Adam and Rosa’s timetables had any PSHE time allocated, but, she did not know about those timetables. PSHE was not ad hoc, but woven into the assemblies. Ms Christensen gave some aspects of PSHE in form time. Andrew gave PSHE, for example by showing a video to pupils and then having a discussion on the topic with pupils.

273. Ms Remus agreed that relationship and sex education was required under the Regulations. Ms Remus said that Andrew taught this and it was his remit to do so with years 9 and 10. Ms Remus denied that she vetoed sex education. When she said: “I do not want to hear about it”, she was joking. There was sex education at Heathside. She denied blocking a talk on substance misuse. Ms Remus could not account for how Adam said he had not had any sex education or PSHE. Rosa may have missed it because of her absences, Ms Remus said. As to the evidence in Ms Holmstoel’s statement that the “health and well-being team” pressed Ms Remus to put a PSHE program in place, but she would not sign it off, Ms Remus said that Ms Holmstoel took something and made it totally untrue. Ms Remus said she did not know about refusing to “sign off”, as she always said “yes”.

Conclusions on PSHE

274. I find that there was some PSHE at Heathside. However, it was not part of the formal curriculum and not timetabled. For the year 10 pupils, as I have already found, there was no curriculum policy or scheme of works for PSHE. Taking all of the evidence together, I draw the inference that the PSHE was done in an unplanned way, in the sense that no specific consideration was given to the range of topics that should be covered and when those topics should be delivered to the students. I specifically find that there was no age-appropriate sex education for the year 10 pupils. I accept the evidence of Adam and Ms Holmstoel on this and reject Ms Remus’s evidence insofar as it relates to year 10 pupils. As I have already commented, I did not find Ms Remus a convincing witness in a number of respects. I found, as I have already said, Adam an honest witness and he provided evidence about certain elements of PSHE. I do not accept that he would forget, or deliberately conceal, any information about the provision of sex education. I find that the provision of a planned PSHE program, including sex and relationship education, as put forward by Ms Holmstoel and others, was something that Ms Remus had to sign off and that either she refused to do so, or did not respond to requests to authorise it. This is consistent with the other findings that I have made on Ms Remus’s authorisation being required to take certain actions. I accept Ms Holmstoel’s evidence on this having heard her give evidence and based on the fact that it is consistent with the absence of any sex and relationship education, as I have already found.

Religious studies

275. Rosa was to study religious studies GCSE. Her evidence was that it was some weeks before anything was organised. She eventually was taught by the history teacher (who I understand to be “Andrew”), who she stated seemed hesitant and gave the impression that it was too late to start the course and so she stopped. She stated that nobody talked to her about it and that “it just kind of faded out”. Mrs Cody was not able to add anything further to this in her oral evidence apart from repeating that this is what Rosa had told her. However, at the time Rosa gave up religious studies Mrs Cody said she still had faith in the school and felt it was not for her to “red flag things to the school”. Later on in cross examination, Mrs Cody’s evidence was that Rosa gave up religious studies as the teacher reflected that she would not be able to get the examination in the time that was left.
276. The end of term report dated December 2017 rated Rosa as “good” with an effort level of “working hard” and states that she has only been in a few lessons, but she has a sound

work ethic and desire to do well. It comments that she would have to work hard over the next two years to be ready for her GCSEs, but the writer has every confidence she will be ready. The March 2018 end of term report records her achievement as “good” and “effort and attitude” as “excellent”. The writer describes her as very conscientious and efficient and working well and autonomously. It records that she has asked for extra lessons which were to start next term. It is recorded that Rosa has a clear understanding of the concepts. There is a comment that Rosa’s writing was small which the GCSE markers may have trouble discerning. The end of term report for July 2018 does not include an assessment for religious studies.

277. Mr Remus disagreed that there was no religious studies teacher and said that “Andrew” was that teacher and very inspiring. She agreed he was the history teacher but he also took religious studies. Ms Remus was asked about what Rosa said about the lessons and replied that she did not know. She gave Ms Burman total control over all that Adam and Rosa needed. There is an email in the bundle of documents referring to “Andrew” as the teacher in history and religious studies.

Conclusions on religious studies

278. As Rosa did not give oral evidence and considering the inconsistency between what she states and the end of term reports, bearing in mind the s4 CEA criteria, I give little weight to her evidence on this point. I do not accept Mrs Cody’s evidence on this point for the same reason. I find that Rosa was being taught religious studies and, based on the contents of the end of term reports, that they were following a GCSE syllabus. I find that Andrew was the teacher who taught religious studies GCSE.

Adam’s behaviour

279. Adam accepted that at UCL Academy he had been in a certain amount of trouble because of his behaviour. He said it was mainly talking and nothing major. There was an altercation, but he was provoked and he had to stand up for himself when he was attacked by another student. He also accepted that he got into trouble at Heathside for talking and that he was often talkative. He had a difficult relationship with Ms Christensen. However, he felt that as time went on, in particular, as he was left alone it became difficult and he lost faith in the school. The school reports from DLD College, the school that Adam attended after leaving Heathside identify a significant number of, what are termed, “behaviour incidents”. However, the personal tutor’s comments do not contain any reports of significantly bad behaviour. There are comments about a lack of focus and concentration and distracting others. Mr Vogel’s evidence was that these were all small things such as talking in class. Mr Vogel and Ms Bonnyman were of the view that the teachers at Heathside were not able to provide a suitable learning environment for Adam because of their inexperience in teaching GCSE classes and their lack of attention to his particular needs. In the last term Ms Burman brought in a psychotherapist to help Adam. Mr Vogel accepted that there was an entry in his journal recording an argument with Adam late at night with him slamming doors. He also accepted there were entries in his journal when Adam was at Heathside in the autumn term 2017 where issues about his commitment were recorded and that he missed lessons.
280. Mr Groves records that he never had any rudeness from Adam, but that he needed boundaries and might have to be sent out of the class or to Ms Burman because of his

behaviour. His comment was that Adam's behaviour was normal for a teenage boy and he did not consider him to be disruptive. In oral evidence he said Adam was not difficult or argumentative, but it could be difficult keeping him motivated. He would eat in class and sometimes be late. However, he was isolated and had no one to work with. He was very supportive of Rosa and helping her to learn. He did not observe other teachers having problems with Adam (he did not say that he knew of them either). Mr Groves' conclusion was that Adam was sensitive and he needed "a way to talk to him". If he was told off, he was sensitive about it and it was necessary to nurture him.

281. In her statement Ms Pan records that she spoke to several teachers about Adam's behaviour. They confirmed that he had behavioural issues: "that required in most cases that he be taught individually and meant that he was unable to advance to his full potential." They confirmed to her that his academic level of maturity on starting at Heathside was not commensurate with his age.

Conclusions on Adam's behaviour

282. It is clear on the evidence and I find, that Adam could be disruptive in class by talking, distracting others or eating. I find that he could show a lack of focus, but I accept Mr Groves' evidence that Adam was normal for a teenage boy. I also find it likely that these incidences of behaviour increased as his time at Heathside continued. I accept what Mr Groves stated about Adam needing boundaries, in other words structure and supervision. I interpret Ms Pan's evidence as being consistent with these findings, and where it is not, I prefer the evidence of Mr Groves. I find that the deterioration, such that it was, in Adam's behaviour was as a result of the situation that he found himself in at Heathside towards the end of 2017 and through 2018.

Rosa's absences

283. Ms Remus's evidence was that Rosa was not at Heathside for 32% of the time. In her statement Ms Pan said that she had spoken to several teachers who confirmed that Rosa was frequently absent. Mrs Cody's evidence was that she did not know how much school Rosa missed. She said she had never received attendance records. Her impression was that at the beginning of her attendance at Heathside it was "bumpy". In January and February, she had been ill and did have days off. By March they were talking about the need for her to increase her attendance, but in June there was good attendance. Mrs Cody said she was telling Rosa to go to school and Rosa's response was that she wanted to be independent. Mrs Cody said she was aware of Rosa's boundaries, but when she needed to go to school this was what she needed. There is an email from Mrs Cody to Mr Cody on 1 March 2018 recording that Rosa should be at school during free periods (and so presumably she was not attending during those periods). There are emails from the beginning of 2018 recording that Rosa was not well and away from school. The attendance records were available. They are difficult to follow and interpret.

Conclusions on Rosa's absences

284. As I have found above Rosa stopped attending for her PE lessons. The attendance records are difficult to decipher and I cannot make any finding on them. I find that Rosa did not attend school regularly initially because of ill-health. However, as I have found elsewhere within this Judgment, I accept that Rosa's non-attendances latterly were

contributed to by the circumstances of the educational provision, free periods and lack of structure and/or supervision, as I have identified elsewhere within this Judgment. I make no finding on whether or not she was absent for 32% of the time.

Provision for Adam and Rosa's educational needs

285. Adam is adopted. His parents had identified this to Ms Remus and also discussed with her some of the difficulties that may be faced by children who were adopted. Adam had also been subject to a traumatic experience when he was aged three, which his parents felt meant he had a high need for safety. Ms Bonnyman referred to him as suffering from anxiety. They had considered having an educational psychologist report prepared on Adam around the time that he joined Heathside. In his third term, Adam's anxiety had been increasing and Ms Burman arranged for him to see Natalie Phillips, the school psychotherapist. Adam had a number of issues with teachers, in particular Ms Christensen. With the help of Ms Holmstoel, Adam was also assessed by an educational psychologist in June 2018. The psychologist concluded that Adam appeared to be of average to high intelligence. He had sufficient symptoms to meet the diagnosis of attention deficit hyperactivity disorder, although he did not fully meet the criteria for the diagnosis. The psychologist noted that some of Adam's functioning difficulties were common amongst adopted children.
286. Ms Holmstoel's evidence was that neither Ms Remus or Ms Burman told her about Adam's extra needs. She was informed about this information subsequently by the Vogels. Ms Holmstoel said she never had any issues with Adam and that his issues were of the social/emotional nature and therefore not something that came within her remit. Ms Holmstoel said she had no staff with any experience of teaching pupils who had been adopted. There was no policy at the school for teaching adopted children. Ms Holmstoel said that Ms Burman did not inform her of the organisation that the Vogels had discussed with Ms Burman and Ms Remus, which supported teaching of adopted children. She did not prepare a behaviour plan for Adam, because she did not believe that he needed one. However, she made an individual education plan for Adam after she had met the Vogels in around Christmas 2017. This was shared with the teachers and the parents. She then oversaw his support having conversations with the teachers, including Ms Christensen and Mr Groves. She observed Mr Wrigley's lessons.
287. Ms Remus's evidence was that managing behaviour was part of the teacher's job. It takes a while to build up trust. Ms Remus said that Adam should have had a behaviour plan and that most teachers had problems with him. He was distracting in class and disruptive. Ms Holmstoel and Ms Burman should have done a behaviour plan for him.
288. Rosa was diagnosed at a young age with an expressive speech disorder. She was also diagnosed with a significantly impaired working memory and processing difficulties as well as mental health problems. Mrs Cody told Ms Remus about these difficulties and filled in a medical questionnaire at the time Rosa joined. On Rosa's first day at Heathside she met with Ms Holmstoel to discuss Rosa. She asked for Rosa's information to be sent from Mill Hill to Ms Holmstoel. Mrs Cody stated that she was not aware of any support being a place for Rosa until she asked for it. In particular until after the 25 April 2018 when Mrs Cody had a report, following an assessment she had arranged by a specialist teacher, Alistair Coomes. That report indicated a moderate to severe dyslexic profile with very real learning issues. It made a number of recommendations to help Rosa's learning.

289. Ms Holmstoel said that Ms Remus did not inform her about Rosa's needs when she started. In her statement she said Rosa was overlooked because she was polite and friendly and staff were so overworked and stressed. Ms Holmstoel said that Mrs Cody had spoken to her about Rosa and her learning difficulties and mental health problems. Ms Holmstoel said she did not give Rosa the support she needed, because she did not always have the information required. In addition, the other issues in the school were time-consuming and causing chaos. Ms Holmstoel explained in cross examination that as the SENCO she was responsible for all interventions with children with special needs. She would have regular meetings with the parents and manage a small staff of learning support teachers. She was responsible for the whole school until Easter of 2017. Another SENCO was appointed for the middle school, but she was not qualified and so needed Ms Holmstoel's support. Ms Holmstoel did not believe that Rosa required a lot of intervention as a dyslexic, because of her age. Ms Holmstoel did not set up support for Rosa, but observed her and felt nothing specific was needed. She did not prepare an individual education plan for Rosa. Ms Holmstoel remembers at some point getting Rosa's educational psychologist's report and that a file had come from Mill Hill. That file arrived after Rosa had started, which was unusual as in her experience files usually arrived before a student started at the school.
290. Ms Holmstoel said that she had not informed Ms Remus about her meeting with Mrs Cody nor did she share the educational psychologist report with her. However, Ms Holmstoel maintained that Ms Remus knew about Rosa's difficulties. Ms Holmstoel agreed that it was her responsibility to manage students with dyslexia.

Conclusions on Adam and Rosa's educational needs

291. I find that Ms Remus did not inform Ms Holmstoel of the Vogels' concerns about Adam's needs. I find that towards the end of the first term, Ms Holmstoel became aware of the Vogel's opinions. However, Ms Holmstoel believed those needs were something that she viewed as requiring pastoral support rather than her intervention as SENCO. I find that Ms Holmstoel had no experience in dealing with adopted children (I make no criticism of that) and steps were taken to consider that, once she had found out that Adam was adopted.
292. I find that Ms Remus did not inform Ms Holmstoel of Rosa's needs, however Ms Holmstoel was aware of them very shortly after Rosa started at Heathside because of the conversation with Mrs Cody. I find that Ms Holmstoel received the records from Mill Hill and would have been aware of Rosa's mental health issues and learning difficulties. It is not clear to me that a formal diagnosis of dyslexia was made until after 25 April 2018 upon receipt of the educational psychologist report of Mr Coomes. However, in any event, Ms Holmstoel's evidence was that she would not have intervened because she said that in her view interventions were not effective for someone of Rosa's age and Rosa did not require support. As Ms Holmstoel accepted, she did not inform Ms Remus about the educational psychologist's report.

Other

293. A number of other allegations were raised about the educational provision at Heathside. These included failures in safeguarding, whether or not Ms Remus was drunk at Heathside on occasion, health and safety issues including whether and not Heathside complied with fire regulations. The Claimants alleged that Ms Remus paid herself

significant sums of money (which in brief, I am not satisfied the Claimants have established). I am not going to deal with those allegations because it is not necessary for me to do so in order to reach my conclusions and because not all of the matters raised are causally linked to the alleged losses of Rosa and Adam. To deal with them will make this Judgment even longer than it is already and will not add anything of significance.

Expert evidence of Ms Strang

294. The Claimants served expert evidence from Ms Juliet Strang. Ms Remus did not serve any expert evidence. Questions were asked of the expert by Ms Remus. Ms Strang did not give oral evidence. Ms Remus objected to Ms Strang's report on the basis that it relied on Ms Burman's evidence, who as I have stated did not attend the trial. Ms Strang also based her report upon the witness statements of the Claimants and I have not accepted in full all of the evidence that has been given. I have carefully considered Ms Strang's evidence bearing those points in mind.
295. Ms Strang's CV shows that she is eminently well qualified to provide expert evidence, having been a headteacher at a high school and worked on a number of educational projects. I have referred to some of the evidence that she provided elsewhere within this Judgment.
296. I will consider Ms Strang's evidence as it is applicable to the various issues on the alleged breaches of duty that I now go on to consider.

Conclusions on educational negligence

297. As I have identified in the section on the law on educational negligence, it is established that a teacher owes a duty of care to his/her students. In this case, Ms Remus owed that duty as headteacher and as the personification of the proprietor. It is important to note that there are no allegations that she was vicariously liable for the acts or omissions of other teachers. In addition, there is no allegation that Ms Remus had a non-delegable duty (by way of shorthand, one that may be delegated in practice, but one for which the legal responsibility cannot be delegated).
298. However, what is the extent of her legal responsibility? The obvious sources to identify that issue is the Standards and the expert evidence. This claim is not about a breach of the Standards per se, but they provide a framework for the minimum requirements against which to judge whether Ms Remus has exercised the skill and care of a reasonable headteacher/proprietor. However, they need to be looked at from the point of view of the tort of negligence. A breach of the Standards is not automatically negligent, but it is a strong indicator of negligence. Whether or not a headteacher/proprietor is in breach of duty, will depend upon an assessment of whether or not there is a total failure, in other words the third category of cases identified in *Siddiqui*. Alternatively, where an exercise of judgement is involved, whether it is in accordance with the practice of a responsible body of headteachers/proprietors i.e., the second category in *Siddiqui*. Some of the Standards are binary: in other words, the proprietor has either ensured the requirement is in place or has not. For example, an enhanced criminal record check has either been carried out on a prospective employee or it has not. Some of them require an exercise of judgment, for example, an adequate framework to evaluate pupil performance.

299. Against that background I shall now consider the various allegations.

Accepting Adam and Rosa on the school roll without registration

300. Heathside was not authorised to teach pupils of age 15 to 16 and it should have been. This was Mrs Remus's responsibility. This falls into the third category in *Siddiqui*. This falls below the standard of a reasonable headteacher/proprietor. Failing to have arranged the appropriate authorisation in advance of accepting students of that age, or who would become that age whilst at the school was a breach of duty.

Inadequate and substandard education

301. From Ms Strang's report, it is clear that the curriculum policy and schemes of work are important for two broad reasons. First, they are a prerequisite to obtaining the necessary permissions from the DfE to teach Key stage 4 to those in the age range of 14 to 16 years. Secondly, they are necessary to enable a school to plan properly for the delivery of that education and to enable the teachers to understand all the aspects of providing their particular subject to the pupils.

302. I have found that the curriculum policy and schemes of work were not in place during the period that Adam and Rosa were at Heathside. Even if they were at some point in draft or provisional, they were not implemented. This falls into the third category in *Siddiqui*. Neither of those circumstances meet the standard of a reasonable headteacher/proprietor and are a breach of duty. Even if this is a matter of professional judgement, Ms Strang concluded it was a breach of duty. These documents should have been in place before the students started to enable the appropriate planning, regardless of the requirement to have them in place to make the application to the DfE. This is a responsibility of the proprietor/headteacher under the Standards and I find comes within the duty at common law. Ms Remus said that she, as a matter of fact delegated the preparation of the materials. However, it was her responsibility to ensure that they were completed and implemented before Adam and Rosa started at Heathside.

303. I have found as a fact that Ms Remus had not taken steps to ensure that Heathside was prepared to provide a GCSE programme when Adam or Rosa joined the school. This goes hand-in-hand with my finding above about the lack of the schemes of work or a curriculum policy. In addition, at the beginning of 2017 she had not recruited a Spanish teacher for the beginning of term in September 2017 or a biology teacher. From shortly after the beginning of term in September 2017 there was no physics teacher until Mr Delin joined in February 2018. The teachers were complaining that they did not know how to teach GCSE (apart from Ms Christensen, Mr Groves and Dr Raptis). There was no framework for assessing pupils progress, apart from in English. Ms Strang identifies that as a breach of duty as the proprietor should ensure that the standards in 3c, d, e, f and g are met. These are summarised at paragraph 140 (iii) above. I accept Ms Strang's evidence and find that this was a breach of duty by Ms Remus.

304. Ms Strang identifies that it is typical to allocate 10% of the curriculum time per week to one GCSE subject. However, mathematics and English are usually given more time. PSHE and core PE are given around an hour each, however GCSE PE would be given three hours per week. In her opinion, the timetables provided do not indicate sufficient time for biology, chemistry, physics, history, geography, Spanish, German, religious studies and computing. There is no time at all for PSHE or GCSE PE. Her opinion is

too much time is given to mathematics, English and sport. Although it has not been stated, I anticipate that there is a range of opinion about precisely how much time should be devoted to each GCSE subject. I note that Ms Strang uses the word “typical” when referring to her opinion on the amount of time allocated. However, the difference in the time allocated at Heathside is significant, for example showing in most cases at least one hour short of Ms Strang’s recommendation. I have also accepted Rosa and Adam’s evidence that the timetables changed frequently. Ms Strang concludes that the timetabling was a breach of duty, referring to standards 2 a, d and e. I find that for subjects other than mathematics and English, the amount of timetable time was negligently inadequate. I have found that Ms Burman had been asking for teaching resource and I found that Ms Remus was the person to authorise recruitment, but did not do so. Ultimately, it is Ms Remus’s responsibility as the headteacher/proprietor to make sure that there are sufficient teachers available to provide sufficient teaching in the GCSE courses. I find that she failed to do this and Ms Burman was left having to do the best that she could with the resources that were available to her.

305. There was no sex education provided to Adam or Rosa, when it should have been in accordance with the Standards. Ms Strang does not comment upon this, but this comes under the third category in *Siddiqui*, in that there was a total absence of this requirement. I find that no reasonable headteacher/proprietor would have failed to have provided age-appropriate sex education. Some PSHE was provided and Ms Strang has not specifically commented upon the provision of PSHE in her report as a separate issue. She does find a breach of duty in failing to provide the right structures, systems, procedures and staff to ensure that Rosa and Adam could prepare well economically, culturally and socially for the future in British society. This is a slightly wider issue than just PSHE. However, on the evidence, I am satisfied that the PSHE was so limited and not provided in the systematic way that Ms Strang says it should have been (i.e., at around one hour per week) that what was provided did not meet the standard of the reasonable headteacher/proprietor.
306. The Claimants and Ms Holmstoel sought to make much out of the fact that a number of the teachers did not hold a teaching qualification. As I have already stated, whether or not a teaching qualification is held is irrelevant in itself for the purposes of being a teacher in a private school. It may or may not make a teacher a better teacher. As to whether the individual teachers were suitably qualified to teach GCSE, Ms Strang is unable to reach a view without sight of their qualifications. She concludes that the evidence suggests that some did have suitable qualifications and some did not. My conclusion is that the Claimants have not established as a matter of fact, any particular teacher had qualifications that were unsuitable. It follows that the Claimants have not established that it was a breach of duty for Ms Remus to have engaged any of the teachers who taught Rosa and Adam.

Inadequate supervision of Rosa and Adam

307. Ms Strang points out the requirement for students of Rosa and Adam’s age to have been in full-time supervised education, as I have referred to at paragraph 227 above. She states that neither Rosa nor Adam received full-time supervised education. She points out that this would also be a breach of the Standards as supervision goes not just to study, but also to safety. She does not expressly say that it was a breach of duty, but my conclusion on reading her report is that that is her view. I have accepted that the reason for the lack of supervision was the lack of resources that Ms Burman had been asking

Ms Remus to authorise. Accordingly, I am satisfied that this was Ms Remus's responsibility and that it was a breach of duty to fail to provide the resources to enable appropriate supervision of Rosa and Adam.

Inadequate equipment to follow the GCSE in science for Adam and Rosa

308. I have found that until after Adam and Rosa had left, the facilities in the science laboratory were not adequate to provide the practical elements of the science courses. They were not adequate as certain key facilities in the laboratory were missing. I have also found that Adam and Rosa did not undertake any of the practical elements of their science courses. Ms Strang is critical of the lack of these facilities but this is not a matter of professional judgement. This falls into the third category in *Siddiqui*. The facilities were absent and the practicals could not be done, which was a breach of duty. The responsibility for ensuring that the science laboratory did have adequate facilities in order to teach GCSE science subjects must fall to the proprietor. As a matter of fact, as I have already found, Ms Remus was the individual who was ultimately determining whether or not the works went ahead and this breach of duty falls within her area of responsibility.

Inadequate teaching in Spanish to enable Adam to follow the GCSE course

309. Ms Strang does not comment on this specifically. However, at least until the Spanish teacher arrived there is no evidence that Adam was following a GCSE course in Spanish. This comes within the third category in *Siddiqui* and my conclusion is that no responsible headteacher/proprietor would fail to have a Spanish teacher in place who was capable of providing the GCSE course, before commencement of that course. There is no evidence before me to enable me to make a finding about the adequacy or otherwise of the Spanish course following the appointment of the teacher, Maria. In any event, the teaching of the course would not have been Ms Remus's responsibility (i.e., it is outside her legal responsibility). Her responsibility would have only gone as far as providing a suitably qualified teacher.

Inadequate teaching of the GCSE in PE for Adam

310. Ms Strang does not comment upon this area specifically. Even in the absence of her evidence, it is possible for me to conclude that until March 2018, when Ms Grusd started to teach GCSE PE, a course had not been followed. That is clear from the evidence from Adam and from the fact that Ms Grusd took over. The lack of GCSE PE had been communicated to Ms Burman in the September/October 2017 and thereafter. Ms Burman is recorded as having been asking Ms Remus. As I have already found, as a matter-of-fact Ms Remus's authorisation was required to take significant decisions. I find that it is likely that Ms Remus either did not respond to Ms Burman or did not consider the issue. Accordingly, I find that Ms Remus's lack of a timely response to the issue that had been raised was a breach of duty.

Other allegations

311. Other allegations were made namely:

- i) Not following a recognised GCSE exam board curriculum for all subjects - I have made findings of fact on this at paragraph 219. In any event, it does not add anything to the findings that I have already made;
- ii) Not ensuring the school premises were secure. I am not going to deal with this allegation because it does not link causally to the injuries claimed. There is no suggestion that either Rosa or Adam were affected in any way because of the security of the premises;
- iii) Not taking adequate safeguards - Again, I do not see that this allegation is linked causally to the loss claimed or if it is it does not add anything to the findings that I have already made. As to the specific allegation in relation to Adam being instructed to hide in a small office during the September 2017 Ofsted inspection, I have already found that this is not an accurate description of what happened. It is also not causally significant.

312. I have also considered the evidence from the witnesses for Ms Remus. Mr Mirza does not add any relevant evidence. Ms Rachael Webster Brake and Ms Charlotte Pearson gave evidence about the positive experience that they and their children had had at Heathside. However, neither of them had children at the high school and so their evidence was not relevant to the issues that I had to decide. Similarly, the written testimonials that Ms Remus exhibited to her statement were not relevant. Ms Berens, JJ's mother, in her document dated 7 December 2020 stated that it was common knowledge that Heathside was waiting for approval to age 16. It may have been for teachers at the school, but not for the Claimants in this case, as I have already found. She also says that she regularly looked at her son's work and was pleased with the high standard of teaching in all subjects, preparing students very well for GCSE. Ms Berens comments are not consistent with the rest of the evidence that I have outlined above. In any event the issue I have to decide is the adequacy of the teaching for Adam and Rosa. As I have indicated elsewhere, the evidence indicates that for some parents and some pupils Ms Remus and Heathside was a positive experience and served them well. I have taken that into account when considering the evidence and I do not accept any of this evidence where it is inconsistent with the findings that I have already made.

Causation

313. The Claimants obtained reports from a psychologist, Dr Michael Hymans on both Adam and Rosa. He did not give oral evidence. Ms Remus did not obtain any expert evidence on this issue.

Adam's claim

314. Dr Hymans reached the following conclusions:

- i) Adam's special educational needs before attending Heathside related to his underachievement and anxiety in relation to a lack of trust in adults. He was easily distracted, lacked focus and could distract peers by over talking;
- ii) Adam's psychotherapy at Heathside ended abruptly (as he had to leave). This confirmed his lack of trust in adults;

- iii) Dr Hymans would have expected Adam to have obtained 10 GCSEs at grades 8/9 and his time at Heathside made a material contribution to his failure to achieve those grades;
 - iv) Adam has a particular ability in mathematics and his mental arithmetic was “very superior”. He could have studied for a sports degree or have read engineering, mathematics and/or science.
 - v) The events at Heathside have made a material contribution to a sleep disorder. It is likely that his sleeping problems have been exacerbated by combination of trauma experienced preschool and at UCL Academy as well as his treatment at Heathside.
315. Ms Remus asked Dr Hymans a number of written questions, in particular about the source of evidence for his opinions. Dr Hymans confirmed in his written reply that his responses were his professional opinions. His GCSE predictions for Adam were mainly based on Adam’s end of year seven report from UCL Academy and the psychological tests that he carried out himself during his examination of Adam. Dr Hymans was of the opinion that the concerns expressed by Adam in his witness statement have affected his GCSE performance.
316. Looking at his report in more detail, Dr Hymans comments that Adam would have learned best when provided with an individualised behaviour support plan. There was no such plan for Adam and Ms Holmstoel’s opinion was he did not need one. Dr Hymans is also not supportive of putting students in out of year groups. However, Ms Strang does not criticise that and there is no allegation that this is something that Ms Remus was responsible for. Dr Hymans records that Adam felt “demoralised, resentful and confused” by being with younger pupils. In relation to the number of GCSEs Adam could have achieved he states “I cannot say whether the matters complained of are wholly responsible for the discrepancy...”. However, when considering the question of whether the matters complained of made a material contribution to the loss of educational achievement, Dr Hymans states:
- “In my opinion the matters complained of made a material contribution to Adam’s loss of educational attainment in that the reported poor/inadequate education he received at Heathside as had a major contribution to Adam’s educational outcomes at GCSE.”
317. I have looked carefully at the evidence that Dr Hymans has relied upon in coming to this conclusion. Some of it relates to Adam being taught with year 9 pupils and the behaviour of teachers towards him. However, I am satisfied that there is no material difference between the evidence that Dr Hymans has relied upon in coming to his conclusions in the quote above and the findings I have made as being Ms Remus’s responsibility. His emphasis in the paragraph quoted above is on the inadequate education. Furthermore, this is not a matter of the breaches of duty making a material contribution, although that was the question he was asked and the response he gave. Dr Hymans does not identify any significant factors, other than those that are constitutional to Adam or happened to Adam before he came to Heathside, as contributing to his loss of educational achievement. A defendant (i.e., in this case, Ms Remus) has to take the injured party as they find them (the “egg shell skull” rule). Absent the breaches of duty,

it is likely that Adam would not have had to have moved schools after one year, the GCSE programme would have been properly in place and the teachers would have had a plan and the necessary resources (including the number of teachers) to deliver it. An assessments framework would have been in place for all subjects and probably followed. Therefore, if I ask the question: on a balance of probabilities but for the breaches of duty attributable to Ms Remus would Adam's educational failings have occurred, I obtain the answer "no". I conclude that it is reasonably foreseeable that the breaches of duty that I have identified would lead to a poorer educational outcome. In Adam's case, causation in the claim for loss of educational achievement is established.

Rosa's claim

318. In his report Dr Hymans identifies that Rosa achieved a grade 9 for both English language and English literature. For geography, biology and physics she obtained a grade 7 and a grade 6 in mathematics. He describes this as: "remarkable given her experiences at Heathside and having only one true year of GCSE study." The conclusions Dr Hymans reaches in relation to Rosa are as follows:
- i) as a young child, Rosa was diagnosed with an expressive language disorder. Rosa also had various mental health problems for which she received cognitive behaviour therapy and psychotherapy.
 - ii) Rosa has dyslexia and continues to show the presence of highly elevated anxiety, as well as highly elevated depression. Rosa's mental health difficulties continue;
 - iii) Rosa could have been expected to have achieved eight GCSEs, at least grade 7. Dr Hymans was asked whether her experiences at Heathside were a material cause for the discrepancy between what Rosa actually achieved and what his opinion was of her likely achievement. When dealing with mathematics he states: "This suggests that the matters complained of made a material contribution to this loss of educational attainment". However, his general conclusion is: 'I cannot say whether the matters complained of are wholly responsible for the discrepancy between my assessments of Rosa and those reported above. Nor is it clear from the evidence in the bundle and this assessment whether there are other explanations for Rosa's shortfall in attainments.';
 - iv) Rosa's experiences at Heathside made a material contribution to Rosa's ongoing mental health issues.
319. Ms Remus asked written questions of Dr Hymans in relation to his report on Rosa. Again, the majority of those questions related to the evidence upon which he had based his report. I am satisfied having reviewed the report and his responses that there is no significant evidence to which he has referred that has not been confirmed by the evidence before me. A further question was asked about possible reasons for Rosa avoiding coming to school other than the one she had given. Dr Hymans maintained his opinion.
320. Looking in detail in Dr Hymans' report on Rosa, when asked what was reasonably required to meet her special educational needs or other needs, Dr Hymans makes a

number of comments. He recommends Rosa should have been given extra time to go over her work, strategies to help with her executive functioning, cognitive distortions, working memory and perceptual reasoning. In terms of pastoral support, he recommends that Rosa should have been referred to the psychotherapist, Natalie Phillips. None of those things were done, but it is not alleged in this claim that they should have been or that they were Ms Remus's direct responsibility. When dealing with the question of whether it was reasonable to expect Rosa to commence the two-year GCSE programme with her chronological cohort, Dr Hymans states it would have been if the recommendations of Alistair Coomes had been implemented as well as his own recommendations. Mr Coomes' report confirms dyslexia and is focused largely on Rosa's issues with mathematics. As I have said above, it is dated the 25 April 2018. Dr Hymans' recommendations cover a number of paragraphs concerning her executive functioning skills, strategies to avoid cognitive distortions, mind maps strategies to deal with her working memory and perceptual reasoning. There is also a paragraph on helping to improve Rosa's resilience. Dr Hymans does not directly answer the question that has been posed to him about whether "the matters complained of" made a material contribution, apart from in relation to mathematics. I have considered whether I should infer that he does conclude that there was a material contribution to Rosa's educational underachievement. However, I am not prepared to do so because in the report on Adam and elsewhere within the report on Rosa he clearly answers the question on material contribution. In asking the question: but for Ms Remus's breaches of duty is it likely that Rosa would not have suffered a shortfall in her educational achievement, I am not satisfied that it is likely to have made any difference, even in mathematics or that she would have been in a position to complete the triple science. Dr Hymans, as I have indicated above, identifies a number of strategies were required in relation to her learning needs and pastoral needs so that Rosa could have been expected to have undertaken the 2-year GCSE course. Those adjustments were not made. The report of Alistair Coomes was not available until after the 25 April 2018, which was only shortly before Rosa left Heathside. Ms Holmstoel's evidence was that she did not believe that Rosa required any assistance as a result of her dyslexia (which she accepted was her responsibility). I conclude that the report of Alistair Coomes would not have been obtained any earlier than it was in any case. It has not been established that Mr Coomes' recommendations in isolation would have been enough to have made a difference in the absence of the further recommendations of Dr Hymans. No evidence was adduced about whether a referral would have been made to Ms Phillips at an earlier time, if at all. Even if Rosa had remained at Heathside absent Ms Remus's negligence, it has not been established by Rosa, the Claimant, that what probably would have happened would probably have made a difference to her educational achievement. Furthermore, it has not been alleged that Ms Remus personally should have taken steps to assess or ensure strategies were in place to deal with Rosa's difficulties. I conclude on Rosa's case, causation for loss of educational achievement is not established.

Damages for the claim in deceit

321. As I stated above, the measure of damages in a claim in deceit is based upon the situation that would have occurred if the events complained of had never taken place.

The consequences for the Vogels and Adam

Mr Vogel and Ms Bonnyman

322. Mr Vogel did not give any evidence either in his statement or in oral evidence about the impact upon him personally of these events. However, it was clear towards the end of when he gave evidence that he was upset. Ms Bonnyman in her statement records that Mr Vogel and she attended therapy in the aftermath of the experiences of Heathside, although no detail is given. She too was obviously upset at times during her evidence.
323. Prior to Adam attending Heathside, he was at a state school and therefore there were no school fees. I have found he would have stayed there if he had not moved to Heathside. The evidence is that the Vogels paid to Heathside fees for Adam's time at the school. They also paid fees to DLD College, which Adam attended having left Heathside. The amount of those fees is not agreed and I will determine them at a subsequent hearing. The measure of damages is to place the Vogels in the position they would have been if they had never entered into the contract. Therefore, they are entitled to recover the fees that were paid to Heathside and DLD College.
324. Mr Vogel and Ms Bonnyman seek £2,000 each for the distress that they have suffered. As I have stated above, in an action for deceit the claimant is entitled to recover not just for personal injury but for distress. In *Shelley*, the claimant received £3,437³ for considerable anguish having been defrauded of money that meant she had been living in reduced circumstances for something in the region of three years. In *Kinch* £15,500⁴ was awarded for seven years humiliation, distress and anxiety suffered as a result of bankruptcy caused by deceit. The claimant described this as: "the greatest distress and anxiety".
325. The assessment of damages under this head is a broad-brush exercise. I accept that both Mr Vogel and Ms Bonnyman have suffered distress and attended counselling. I do not know the detail of their distress, but considering it against the evidence and the case of *Shelley* the sum of £2,000 each is a reasonable recognition of the distress that they have both suffered. Accordingly, I award them each the sum of £2,000.

Adam

326. Mr Vogel's and Ms Bonnyman's evidence is that the experience at Heathside had an adverse impact on Adam's emotional and physical well-being, as well as his academic and sporting achievement. Ms Bonnyman says that he stopped going to orchestra, which he had done previously and cannot face explaining what happened to him. He found the course at DLD College caused him strain.
327. Adam's evidence is that he does not like change and he had to change schools after Heathside. He went to DLD College in London and undertook his GCSEs in a single year. He had difficulty concentrating and did not feel like learning much, because he was so disappointed and he had difficulty trusting the new school and new teachers. He struggled to sleep and had difficulty getting up on time and was frequently late. He has suffered an exacerbation of a sleep disorder, as Dr Hymans found. This is all been caused directly by the deceit.

³ Uplifted for RPI and *Simmons v Castle*

⁴ Uplifted for RPI and *Simmons v Castle*

328. The effect on Adam is worse than in *Shelley*, but although significant not as bad as in *Kinch*. Ms Steinhardt sought £5,000 for Adam. In my judgement that is a reasonable figure and I make an award of £5,000 to Adam for the totality of his claim in deceit.

The consequences for the Codys and Rosa

Mr and Mrs Cody

329. Mr Cody's evidence was that Rosa's experiences at Heathside caused the family emotional stress and Mrs Cody was visibly distressed during parts of her evidence. At short notice having to make alternative arrangements for Rosa's education will no doubt have been part of the background to that emotional stress. For the reasons that I have given above in relation to Mr Vogel and Ms Bonnyman, I award Mr Cody and Mrs Cody £2,000 each for their distress.
330. Prior to attending Heathside, Mr and Mrs Cody paid the fees for Mill Hill School. However, in preparing the Judgment I noted that the invoices from Heathside were addressed to the "MH Cody Will Trust". I raised this with the parties. The Codys' position is that they still paid the sums due. Ms Remus stated that the Codys should not be entitled to recover the fees if the trust was the contracting party. I will determine this at the subsequent hearing along with the amount of fees paid, as this is also not agreed. If Rosa had not gone to Heathside, then I find based on the evidence, that she would have remained at Mill Hill. Ms Steinhardt sought to claim the fees for Heathside in the sum of £19,208 without taking into account the fees that would have been paid for Mill Hill. She also sought to recover in full the costs of sending Rosa to Brampton College at £23,112. She relied upon the authority of *East v Maurer* [1991] 1 WLR 461 where Ms Steinhardt submitted that the cost of remedying the consequences of the deceit had been awarded in full.
331. In *East*, the claimants had bought from the defendant a hairdressing business. The defendant had said he would not run a business in competition, but in fact did so. The claimants were successful in their claim in deceit and were awarded damages at first instance, including damages for the loss of profits. The appeal concerned the claim for loss of profits. However, there is a review of the principles upon which damages are awarded in deceit.
332. *Doyle* is discussed and followed and the basis for the award of loss of profits is that the claimants' loss was due to the defendant's misrepresentation, which arose from the inability to earn the profits in a business which they hoped to buy. In other words, it was not the profits that they lost in the business that they had actually bought. Mustill LJ states that the: "...best course in a case of this kind is to begin by comparing the position of the [claimant] as it would have been if the act complained of had not taken place with the position of the [claimant] as it actually became." He analysed the losses including the costs that the claimants had incurred in improving the premises and legal fees in selling the business and approved the judge's finding on those aspects. In *Doyle*, Lord Denning MR stated: "The defendant is bound to make reparation for all the actual damages directly flowing from the fraudulent inducement.... [the Claimant has] been put to a large amount of extra expense as well and suffered this or that extra damages... [The Claimant] is entitled to damages for all his loss, subject, of course to giving credit for any benefit that he has received." (Page 167 paragraphs B – C).

333. Although a legal argument on this was not put to me by Ms Remus⁵, I have considered whether the Codys should give credit for what they would have spent in any event on Rosa's education. In Rosa's case, the Codys were already spending money in the form of school fees for the same type of service that they went on to purchase as a result of Ms Remus's deceit. There is evidence of the cost of the school fees at Mill Hill. The evidence was that Rosa would have stayed at Mill Hill if she had not gone to Heathside. Rosa has been sent subsequently to a fee-paying school and it seems likely that even if she had not stayed at Mill Hill, she would have attended another similar private school at similar cost. The cost in fees would probably have continued in any event, absent the deceit. If the sums which would have been incurred in any event are not deducted from the award of damages the Codys will be overcompensated, because there will be a saving to them of the school fees that they would have spent in any event. It is the additional cost of the fees at Heathside and the additional cost of the fees at Brampton College that is arguably the appropriate award.
334. However, that is not the correct approach, but neither is the one proposed by Ms Steinhardt. The authorities are clear that the measure is based on not having entered the contract at all. If a claimant is deceived into buying a property for too high a price, then in a claim for deceit the claimant has to give credit for the true value of that property, the award of damages being the difference between the artificially high price paid and the true value received⁶. However, this case does not concern an asset with a realisable value. What the Codys purchased was not an asset, it had no commercial value; it could not be sold to another person. Furthermore, on entering the contract there had been no educational provision to Rosa. The Codys believed that they were buying a two-year GCSE course for Rosa, but that is not what they received. When Rosa left Heathside after completion of the first year there was no commercial value either and what was intended had not been achieved. A year's fees at Heathside are recoverable in full as a consequence, as is the sum that the Codys forfeited by taking Rosa out of Mill Hill without the required notice period⁷. No deduction is made.
335. Consequential losses are also recoverable in deceit, such as the expenses incurred by the Codys for the fees at Brampton College. This was a one-year course, replacing the 2-year course that Rosa would have been on if she had remained at Mill Hill, if they had not entered into the contract with Remus White Ltd. What is the correct award for this consequential loss? Is it all of the cost of Brampton College or is it the difference between that cost and the cost of one year at Mill Hill, where Rosa would have been, but for, the deceit? What is the extra expense that the Codys have incurred as a result of the deceit? The answer is it is the difference between the costs of Brampton College and the costs at Mill Hill. The consequential expenses to sell an asset or improve an asset in a case like *East* are not directly comparable. Those expenses would never have been incurred if the asset had not been purchased, so they are recoverable in full as they are extra. In this case, the equivalent of that extra cost is the cost of "catching up" after the year at Heathside. If Rosa had re-started the 2-year course, the consequential loss would have been for a whole year's fees as that whole year would have been the extra cost incurred to replace what was lost by going to Heathside. However, Rosa did a compressed course, which cost more than the annual cost of a 2-year course. If the fees

⁵ Mr Elliot did submit the fees would have been paid in any case.

⁶ I am simplifying for the purpose of illustration and there are a number of variations, but this is the basic position.

⁷ Subject to determining the position of the MH Cody Will Trust, as discussed at paragraph 330.

that would have been incurred in any event are not deducted, the Codys would be over compensated, as no credit would be given for the cost they would have incurred if Rosa had never moved. Subject to deciding the position in relation to the MH Cody Will Trust, the full fees paid to Heathside plus what was paid to Mill Hill for Rosa leaving without notice together with the difference between a year at Brampton College and Mill Hill, will represent the total of the damages.

The outcome for Rosa

336. Mr and Mrs Cody in their statements describe the emotional toll on Rosa as significant. Having left Heathside, Rosa started at Brampton College to take her GCSEs in one year. In her statement Rosa describes the: “huge amount of pressure to do GCSEs in one year”. She could have taken seven GCSEs at Brampton, but her evidence was that the lack of teaching at Heathside meant that she could only do six. She enjoyed Brampton College and found the teachers efficient and she felt well supported. She is embarrassed to discuss what happened at Heathside. In September 2019 she moved to Framlingham College and has good A-level predictions and is applying to Cambridge University to read psychology. However, this does require her to provide an explanation for her interrupted education and why she only has six GCSEs. Dr Hymans’ evidence is that the events have exacerbated her mental health problems. These are the direct consequences of the deceit for Rosa.
337. Ms Steinhardt sought £5,000 for Rosa. In my judgement that is a reasonable figure and I make an award of £5,000 to Rosa for the totality of her claim in deceit. The effects on Adam and Rosa have been qualitatively different, but not so much as to justify a difference in the award of damages.

Damages in educational negligence for Adam

338. The course at DLD College required a certain level of knowledge, which Adam felt he did not have (because of the year spent at Heathside). He struggled and fell behind. He initially started seven GCSEs, but had to drop two of them and at the conclusion of the year only passed the GCSE in English. This has meant that he has not been able to do A-levels. He moved into the sixth form to take a Business and Technology Education Council (BTEC) and retook his mathematics GCSE, which he passed on the second attempt. Adam is not planning on going to university, but if he were to do so, he would have to go back into education to obtain the necessary qualifications.
339. Ms Steinhardt sought damages for “the wasted year” and the loss of educational achievement. In the absence of any authority, she sought £4,000 per GCSE that was not achieved, but would otherwise have been achieved amounting to £24,000 for Adam. She sought £18,000 for the “lost year” and referred me to damages settlements in Equality Act claims for possible comparators. In *Sahni v Poundland* (24 August 2010, unreported) reported in *Harvey on Industrial Relations* [1053.01] an award of £18,100⁸ was made to a partially sighted person who had to wait four years before recommended adjustments were made by his employer. He suffered depression, stress and anxiety. In *Da’Bell v NSPCC* [2010] IRLR 19 £16,200 was awarded to a claimant for an eight-

⁸ I have rounded the figures up or down to the nearest £100 and adjusted for RPI.

month delay in providing adjustments for her heart condition before she went off sick with stress and anxiety.

340. I do not agree that the correct approach to the loss of educational achievement is to make a tariff type award for each GCSE. Is a different value applied to different types of GCSE? Is mathematics worth more than a GCSE in PE? Are they worth the same? The claim is for loss of educational achievement and that is likely to vary from claimant to claimant. For one person, failing a GCSE in biology may have little or no consequence, but for another it may be very significant. If a claimant has been awarded 10 GCSEs, but not an 11th, the impact of that failure of educational achievement is likely to be less than for somebody who was awarded five GCSEs, but not the 6th. It is necessary to look at all of the evidence for the impact on the claimant of the proven lack of educational achievement and come to a figure that, as far as money is able, provides compensation to the claimant for that loss. For these reasons as well, it is not right to consider damages for a “lost” year as the consideration of the award incorporates the effect of that year in the lack of educational achievement. The year has not been “lost”, rather the inadequate teaching during that period has led to a lack of educational achievement.
341. I am careful not to include in my assessment any consideration of distress or psychological problems having dealt with those under the head of deceit. There is no claim on Adam’s behalf for any pecuniary loss, for example diminished earning capacity. As a result of the negligence, Adam has not achieved six GCSEs, he has been unable to take A-levels and is not going to university. These are things that would otherwise have been within his reach according to the evidence of Dr Hymans. This is a significant failure in educational achievement which warrants a significant award. The Equality Act claims are of limited assistance. Taking everything into account, I make an award to Adam of £20,000.

Conclusions

342. These cases concern two families who both decided to move their children, Adam and Rosa, to Heathside school to undertake their GCSEs. That decision was based upon the false representation made by Ms Remus to both families, separately. The false representation was that Heathside was authorised by the DfE to teach students of their children’s ages. I have awarded the Vogels the fees they paid to Heathside and to DLD College, in an amount to be decided. Subject to a further hearing to determine if the Codys are entitled to recover damages for entering the contract with Heathside, as the invoices were addressed to the MH Cody Will Trust, they too may receive damages for the school fees expended. I have awarded each parent £2,000 for the distress caused by the deceit. I have awarded Rosa the sum of £5,000 for the distress and exacerbation to her underlying mental health issues. I have awarded Adam the sum of £5,000 for his distress and exacerbation of his underlying psychological issues.
343. I have identified a number of breaches of duty in the provision of education to Adam and Rosa. However, I found that Rosa has not established causation in relation to a loss of educational achievement. I found Adam did establish causation for such a loss and awarded him the sum of £20,000.