

[2026] EWHC 2942 (KB)

Case No: KB-2024-001284

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 November 2026

Before:

MR JUSTICE JAY

- -

Between:

GDB **Claimant**

- and –

THE COMMISSIONER OF POLICE OF THE METROPOLIS **Defendant**

- -
- -

Sam Jacobs and Percy Preston (instructed by **Jaffa Law Ltd**) for the **Claimant**
Paul Stagg KC and Kate Wilson (instructed by **Weightmans LLP**) for the **Defendant**

Hearing dates: 12-16 October 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 13 November 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE JAY

MR JUSTICE JAY:

ANONYMITY

The parties to this action are GDB (whom I will hereinafter be referring to as "the Claimant") and the Commissioner of Police of the Metropolis ("the Defendant"). Given the nature of the claim and the personal and private rights of the Claimant, an Order was made on 18 November 2024 that the identity of the Claimant must not be published. Pursuant to CPR r. 39.2(4), it has also been ordered that there shall not be disclosed in any report of these proceedings or other publication the name and address of the Claimant or other family members, or any details (including other names, addresses or a specific combination of facts) that could lead to the identification of the Claimant in these proceedings. A procedure has been put in place to ensure that non-parties, including the Press, receive only redacted copies of court papers.

The identities of all children referred to in the court papers are also confidential. Nothing may be published which might lead to their identification.

In order to avoid the need for subsequent redactions, I have prepared this judgment in such a way that it may be published in its present form. The parties have been given the opportunity pre-publication to ensure that there is no risk of mosaic identification.

INTRODUCTION

1. I heard the trial of this action over five intense days in October 2026. The claims concern trespass, false imprisonment, interference with Article 8 rights, misuse of private information and breach of the Data Protection Act 1998. The principal questions are which claims are established, whether the unlawful conduct of the police caused the losses claimed, and the damages recoverable.

2. At the time of the events giving rise to this claim, the Claimant was the founder and headmaster of a private school ("the school"). His brother (whom I will anonymise using the cipher "STB") worked at the school as its principal.

3. The Claimant had dedicated his life to the school since its foundation decades ago. He had built it from nothing. Due to his charisma, work ethic and determination, and the qualities of others, the school became a great success with its particular emphasis on inclusivity, diversity, creativity, moral and physical education, and seeking to bring out the very best in its pupils. In some ways it was an "alternative" school. Although the market had become more difficult by 2017, primarily because the public sector had significantly improved, the Claimant had plans for expansion.

4. What follows in this introductory section of my judgment is a short summary of what happened. More detail is provided later.

OVERVIEW

5. On 8 February 2017 the relevant local authority ("Z") received three complaints, two clearly anonymised, which hinted at improper activities by the Claimant at the school. A Form 87A, a referral to the police, was completed on the same day.

6. In the first instance, these complaints appear to have been treated by Z's Local Authority Designated Officer ("the LADO") as raising principally a safeguarding concern. The Department for Education ("DfE") became involved and there was an emergency inspection of the school by Ofsted on 23 February 2017. Ofsted reported in March. Concerns were identified in two areas.

7. On 22 March 2017 DC James Carpenter, as he then was[1], attended an Allegations Management Meeting chaired by the LADO. On the basis of the anonymous complaints and other information imparted orally during the course of the meeting, on the following day DC Carpenter opened a report on the Crime Report Investigation System ("CRIS") and took further steps to advance the criminal investigation which, according to other evidence in the case which I have seen, had formally begun on 21 March.

8. In broad outline, these investigations comprised:

   (1) on 23 March 2017, applying for a search warrant or warrants;

   (2) on 24 March 2017, searches pursuant to warrants of the school and the Claimant's home;

   (3) on 4 April 2017, the arrest and interview of the Claimant on suspicion of offences of voyeurism and possessing indecent images of children;

   (4) on 4 April 2017 further searches of the Claimant's home and car.

9. The Claimant was subject to bail conditions which included a prohibition on attending the school when children were present. He also agreed with the school to remove himself from the premises until various investigations had been completed. School parents were given some information about this by email dated 18 April 2017.

10. On 20 April 2017 a journalist, somehow in possession of the information provided to parents two days earlier, approached the school and the Defendant for further details, including confirmation that the police investigation related to the Claimant. On the same day the Defendant provided information that, amongst other things, "a XX-year-old man was arrested on Tuesday 4 April on suspicion of voyeurism and possessing indecent images of children". An article was then published in a newspaper on 26 April 2017. That article did not name the Claimant but provided information about the allegations, linking those to the school.

11. On 24 May 2017 the Claimant was voluntarily interviewed in respect of a separate and historic allegation of sexual assault which had been made by a former pupil.

12. On or about 23 June 2017 the Defendant responded to a further press inquiry from the same journalist. It provided the incorrect information that the individual previously

[1] At the time of writing, Mr Carpenter is a Detective Inspector. I will continue to refer to him as DC Carpenter because that was his rank at the material time.

arrested for voyeurism and possessing indecent images of children had been further arrested in late May on suspicion of sexual assault. On 28 June 2017 the same newspaper published an article which contained the incorrect information in relation to the second "arrest" (there had been none). Following intervention by the Defendant, that information was corrected in the online edition the following day.

13. The Claimant was interviewed in relation to a second historic allegation by the brother of the first former pupil in February 2018.

14. The school was sold by the Claimant in September 2018.

15. In November 2018 the Defendant closed the file on all its investigations.

16. In these proceedings the Claimant alleges that: (1) the entries by the police into the school and the Claimant's home on 24 March 2017 were trespasses to land and property and/or violations of his rights under Article 8 of the Convention ("the trespass claims" and "the Article 8 claim"); (2) the Claimant's arrest was unlawful and resulted in false imprisonment ("the false imprisonment claim"); (3) the searches of his home and car on 4 April 2017 were unlawful ("the further trespass claim"); (4) the passing of information by the Defendant to the journalist which led to the publication of two newspaper articles in April and June 2017 was a misuse of private information ("the misuse of private information claim"); and (5) the provision of incorrect information on or around 23 June 2017 as to the Claimant having been arrested for a second time was a breach of the Data Protection Act 1998 ("the DPA claim"). I will be describing items (4) and (5) collectively as "the information claims".

17. The claim is for general damages, including aggravated damages, in respect of all the pleaded causes of action, and for special damages for misuse of private information attributable to what is said to be loss of profit and the enforced sale of the school at an undervalue. The detail is explained at a later stage in this judgment, but the total amount claimed is in the region of £3 million.

18. The Defendant disputes all aspects of liability and quantum.

19. The parties have identified the issues concerning liability and quantum. I address those issues below, distinguishing the loss attributable to each actionable wrong from the consequences of the investigation and other independent causes.

20. I first assess the witnesses, then determine liability and causation, and finally assess general and special damages. The liability analysis distinguishes the legal effect of the warrants from the separate Article 8 claim, and identification to the journalist from the consequences of publication. The special damages analysis distinguishes the sale that would have occurred in any event from the reduction in price attributable to the disclosures. The judgment is divided into the following sections:

    (1) The Witnesses.

    (2) Analysis of the Claims: Liability and Causation.

    (3) Analysis of the Claims: Quantum.

(4) Outcome.

THE WITNESSES

21. The witnesses for the Claimant were the Claimant himself, STB and his solicitor and personal friend, Mr Simon Gregory.

22. The Defendant's witnesses were DC James Carpenter, Ms Samantha Wickers and DS Alpesh Patel (whose statement was read).

23. In this section of my judgment I set out my assessments of the witnesses. Those assessments will inform my findings of fact.

24. The Claimant was an honest and reliable witness. His grasp of the detail was not always complete, but it was clearly his intention to answer questions in cross-examination as directly and accurately as he possibly could. The Claimant was not present when the search warrants were executed, and he was absent from the school and the local area from shortly after 4 April 2017. The Claimant was copied into all relevant emails, but in relation to what was happening on the ground he was reliant on what others, in particular his brother, were telling him. Although the events to which this claim relates must continue to be causing him considerable distress, he avoided any outward display of emotion during the course of giving his evidence. I agree with Mr Jacobs that the Claimant came across as dignified and understated. In cross-examination the Claimant freely accepted that the police did have reasonable grounds to investigate the complaints made against him. I take that opinion into account, but the Claimant's opinion is but one small part of the picture. The assessment is largely an objective one for the Court.

25. In cross-examination, Mr Paul Stagg KC drew attention to an aspect of school policy which placed an overriding duty on staff to be loyal to the school and to its headmaster. Ofsted identified failings in the governance of the school which may be crudely summarised as a finding that too much power was concentrated at the centre. From what I have seen, those criticisms were fair and evidence-based. Mr Stagg was no doubt hinting that the Claimant ran this school as his personal fiefdom. I do not think that the evidence bears that out, not that Mr Stagg's cross-examination was ever elevated into a later submission. It is belied by the almost universally positive views of parents and, in particular, staff, the latter elicited during the course of the police investigation.

26. Mr Stagg did submit that the evidence of the Claimant and his brother was afflicted by confirmation bias and "wishful thinking". I have reflected on that submission because many witnesses succumb, usually subconsciously, to these very understandable human traits. On balance, I reject Mr Stagg's submission, largely because both the Claimant and his brother came across as measured and fair-minded, and most of what they said was supported by contemporaneous documents. I will be indicating the specific areas where I am unable to accept the Claimant's evidence.

27. The Claimant's (elder) brother, STB, was the principal of the school and an important contributor to its success. He may have been less dynamic and charismatic, but he complemented his brother's work. They operated as a very effective team. My

assessment of STB is that he too was an honest and reliable witness who did not seek to exaggerate or, in the main, to argue the case. For example, STB said of DC Carpenter that on 24 March 2017, when the warrant was executed, the latter was assertive but not aggressive. STB said that he wanted to be co-operative with the police on that occasion. He gave DC Carpenter the keys to the Claimant's home not just in that spirit of co-operation but because DC Carpenter said words to the effect that if he did not there would have to be a forcible entry. Whether the exact words were, "he said he would kick the door down" does not really matter.

28. Two aspects of the evidence given by the Claimant and STB warrant particular scrutiny. First, the Claimant said that it was his understanding (derived from what he was told by his solicitor) that the purpose of police questioning on 4 April 2017 was to discuss "school policies". That may have been the Claimant's understanding, or his current recollection of what his understanding was at the time, but in my judgment police questioning was going to be about the allegations of voyeurism and possession of indecent photographs, and not about school policies. Secondly, both the Claimant and his brother strongly criticised the Ofsted reports[2]. They both felt strongly about this. In my view, these feelings do not reflect adversely on their reliability and credibility, but I will need to address in due course how far these matters may advance the Claimant's case.

29. Mr Simon Gregory was the legal and business adviser to the Claimant and, on my understanding, to the school, over very many years. He is also a personal friend. Mr Gregory was an excellent witness and, subject to one caveat, I accept his evidence in its entirety.

30. Ms Samantha Wickers is a press officer employed by the Defendant and has worked in that capacity since 2001. She is currently a Senior Media and Communications Officer and joint head of Newsdesk. Ms Wickers was not personally responsible for the press lines adopted in this case, and she could therefore speak only to the Defendant's policy and its general application.

31. Ms Wickers was a frank and honest witness whose evidence I will summarise in due course. The questions whether the Defendant's policy (1) was clear, (2) reflected its obligations not to misuse private information, and/or (3) was correctly applied in this case will require close examination.

32. DC James Carpenter, who was at the centre of the police investigation, subject to the oversight of his superiors, until 5 June 2017, was in general a frank and honest witness. However, as I will need to make clear in due course, he made serious errors of judgment in this case which led him to apply for search warrants when he did not have reasonable grounds to do so and to arrest the Claimant unnecessarily. There were other errors perpetrated in connection with the release of the police press lines.

33. Any assessment of DC Carpenter as a witness is hampered by the fact that he is not a particularly well man and was unable to complete his evidence. I had been informed of his medical conditions, and the stress of the proceedings clearly got to him. The parties

[2] As for the history, in respect of which I need to be somewhat vague in order to preserve anonymity, the school had been rated as "outstanding". In 2015, following an emergency inspection, there was one safeguarding concern relating to policies and training, and the overall outcome was "unmet school standard identified".

are agreed that I should not draw any adverse inferences from DC Carpenter's inability to complete his cross-examination: that, it seems to me, must be treated as a neutral factor. His witness statement, to the extent that Mr Jacobs could not cross-examine him upon it, has been admitted as hearsay and falls to be treated with some caution. Out of fairness to both DC Carpenter and the Claimant, I consider that I should place considerable weight on contemporaneous documents, take into account the answers DC Carpenter gave on the documents he was cross-examined about (and not speculate as to what answers would or might have been given to questions which were not asked), and take later documents (about which the witness was not asked questions) at their face value.

ANALYSIS OF THE CLAIMS: LIABILITY AND CAUSATION

THE TRESPASS CLAIM

34. On 8 February 2017 Z's LADO received three emails from two obviously anonymous accounts and "Louise Park" (who described herself as a Year 8 teacher) making allegations about the Claimant. The concerns were of conversations between teachers regarding inappropriate relationships of the Claimant with Year 7 and 8 pupils: for example, having a "special boy" each year who is given special attention; being the only teacher present whilst boys were getting changed; giving sex education classes; taking boys on lengthy field trips with no other male members of staff present; and taking photographs of boys. Whilst no doubt intending to create a miasma of suspicion by carefully worded suggestion and innuendo often expressly built on hearsay, these emails also stated:

> "I am sure that this might all be innocent but I felt that this information should be shared.
>
> The reason is that he may need [the photographs] for a school brochure.
>
> I do not think any abuse is taking place but some of the things I hear do concern me more and more."

35. On 9 February 2017 one of the informants named the "special boy" as GXY. On or shortly after 10 February 2017 the same informant stated that on field trips the Claimant insisted on being in the room when Year 7 and 8 boys came out of the shower.

36. The emails are in similar format and use similar language. What is immediately apparent is that they were either written by the same person or by two or more people colluding with one another. That the first batch of emails was sent on the same day cannot be a coincidence. DC Carpenter's evidence in cross-examination was that the emails were "strikingly similar" in some respects. One option was that they had been written by the same person. Another, much less likely, was that they had been written by a group who had co-ordinated. DC Carpenter accepted that if the emails had been written by the same person, that would be indicative of "malign intent". If three individuals acted together or colluded to write three separate emails, I would also be seriously questioning their good faith.

37. DC Carpenter said in evidence that before the search warrant was obtained the LADO and/or police had written to the three email addresses and had received no reply. This failure is particularly suspicious in relation to "Louise Park" who, in the highly unlikely event that she existed, was under a duty to engage in any investigation that related to safeguarding concerns. I will be returning to her.

38. There was an Allegations Management Meeting on 21 February 2017. One police officer (not DC Carpenter) attended. It was recognised that there was a likelihood of press attention if the matter was investigated. The Meeting recommended that "[Z] and police are to do a joint interview with whistle blowers as their details are available via email" and "Ofsted will obtain DBS records and names of children when they visit and forward to LADO for police to check names and addresses".

39. Ofsted carried out its emergency inspection on 23 February. Its draft report was sent to the school for comment before publication in March 2017. Ofsted concluded that the school was failing to meet independent school standards in two respects: viz. safeguarding practice and quality of leadership. Save in relation to safeguarding at a generic level, the report did not cover the specific concerns raised in the emails.

40. There was a second Allegations Management Meeting on 14 March 2017. The two points of note are that one of the "agreed actions" was that clarification be sought as to whether "Louise Park" (the name has been redacted in the report of the meeting but it is obviously her) was still a teacher at the school, and that "the whistle blowers are to be contacted again and interviewed". This second plan of action implies that the "whistle blowers" had already been contacted once. No one seems to have raised the obvious possibility (putting the matter at its very lowest) that the whistleblowers did not exist. No one appears to have undertaken the elementary forensic process I undertook at §36 above.

41. A further Allegations Management Meeting took place at 13:00 on 22 March 2017. This was the first involvement of DC Carpenter. Unfortunately, no LADO notes of the meeting have been provided although the continuous report on the CRIS, which was initiated by DC Carpenter at 13:38 on 23 March after the search warrants had been obtained, provides a summary. I cite (selectively) from this summary:

> "Actions from the meeting for the police are:
>
> - Arrest [the Claimant] and search premises for evidence of the allegations.
>
> - Police to speak with [GXY] to establish if he is victim of any offence."

42. DC Carpenter accepted in evidence that this decision (and it was his decision) was reached without the whistleblowers having been interviewed or GXY having been spoken to. DC Carpenter was not questioned about the absence of follow-up inquiry in relation to the alleged "Louise Park" although his CRIS entry timed at 15:22 states that she "has been checked as a staff member but is not there so could be an assumed name". I find that obtuse: either "Louise Park" did not exist at all, or she was a staff member using a pseudonym. The latter was by now highly unlikely.

43. The same CRIS entry states, in the context of the Ofsted report (albeit not suggesting that this information was contained in the report):

> "Ofsted confirms that students have further stated that they have been watched in the showers. This corroborates and adds further provenance [sic] to the initial information received by the email informants."

44. This is a puzzling entry. DC Carpenter's oral evidence was that this information was provided by the LADO although the latter has not recorded it. That is particularly surprising given the earlier arrangement, described at §38 above, that Ofsted would supply Z with the names and addresses of any relevant children.

45. The "87A", the original document provided by the LADO which DC Carpenter simply copied and pasted into the CRIS, stated – in the context of the anonymous emails - that "he watches children in the shower". That, as DC Carpenter had to accept in cross-examination, was not what the emails stated, although I agree with Mr Stagg that there is little difference between that allegation and the terms of the later email (see §35 above) which said that he watched boys when they came out of the shower. However, and as DC Carpenter accepted in evidence, there was nothing in the emails to indicate that the Claimant had placed recording equipment in the showers. Even so, I cannot accept Mr Jacobs' ingenious submission that the likely source of the idea that there had been corroborative student accounts was this later email. I reiterate that DC Carpenter's recollection was that the source was the LADO, and I do not doubt the honesty of that answer. However, his answer did nothing to dispel my puzzlement about this.

46. Mr Jacobs' far stronger point is that, although Ofsted had apparently been informed by pupils that the Claimant watched them in the showers, it did not provide some sort of written report to the LADO and the police. As I have said, Ofsted's formal report is silent about this. If child protection is one of the key missions of that organisation, it does not seem that it was taken very seriously. An alternative explanation, overwhelmingly likely in my view, is that the LADO was mistaken.

47. Furthermore, although I have not doubted the honesty of DC Carpenter's answer, I cannot accept his more elaborate account, reflected in the application for a search warrant, that the LADO told him that the boys had told Ofsted that this occurred at the school (where, as DC Carpenter was soon to discover, there were no showers), at locations abroad and at a separate location in the UK. DC Carpenter's day books are not available (through no fault of his) but it is not plausible that this important detail was omitted from the CRIS.

48. What is clear is that the anonymous allegations, taken individually or collectively, provided no proper basis for the application for a search warrant. The subsequent inquiries that had been undertaken had already served to undermine what was already the most tenuous of information. Furthermore, after the warrant was obtained on 23 March DC Carpenter recorded that it was necessary to obtain "records and details of with whom [Ofsted] had spoken during their assessments (staff and pupils)". On 29 March DC Carpenter wrote to the LADO saying that he "desperately needed" to see Ofsted documents. On 5 April the LADO informed DC Carpenter that Ofsted talked to pupils in a group and had no names. Ofsted was taking legal advice as to whether to

disclose documents – although Ofsted did not state that these documents contained the further information the police were seeking. Thus, within two weeks of the search warrant having been obtained, this line of inquiry had almost reached a dead end.

49. On 23 March DC Carpenter also reached the conclusion (which he was subsequently to revisit) that the Claimant needed to be arrested, the rationale being:

> "This plan of action was discussed in the Allegations Management Meeting of 22 March and was agreed by all as the only means by which safeguarding at the school could take place. It was explained [presumably by the LADO] that due to the setup at the school, there are no civilian legal powers able to remove him or protect the children.
>
> I have also taken the unusual decision to arrest [the Claimant] at the school. This would not be necessary apart from the unique circumstances of this case where offences are alleged to have taken place at the school, but that evidence may be at his home address. There is an explicit loyalty to [the Claimant] at the school, be that familial or in the staff code of conduct and there would be a risk of evidence being lost if he was arrested elsewhere and this information got to the school before it could be searched."

50. The premise of this reasoning was that the Claimant would be arrested at the time the search warrant was executed. The reasons for arrest are somewhat conflated with the reasons for obtaining a warrant. In the event, the Claimant was not arrested at the time because he was not at the school when the warrant was executed.

51. At 06:54 on 23 March 2017 DC Carpenter emailed two of his superiors. He attempted in oral evidence to downplay the significance of this email, stressing its informal character, but in my judgment it provides an illuminating insight into his thinking at the time. The key parts of this email are as follows:

> "It's a long complicated tale of woe to be fair so I won't go into the full details right now (I have to finish a warrant for this job and run to court this morning), but I wanted to raise it briefly with you both as soon as possible as it has the following implications:
>
> 1. I will be at court this morning requested an all premises warrant (this is by no means guaranteed with the available information gathered so far, but I can try!) instead of on duty
>
> 2. I will need to arrest the headteacher at the school with a plan to do this Friday afternoon near the end of school to minimise potential impact on children and parents
>
> 3. Following arrest I will need to search the school premises (looking for hidden cameras in changing rooms) and also the head's home address. ...

> 4. The school is well respected in the area (although there have been recent grumblings from parents) and as much as I try to keep everything calm and low key, the fact the head will be bailed to not go to the school will leak out I'm sure and there is likely to be press interest generated from it. I will prepare some very bland lines along with the press bureau, but this may also help identify other victims.
>
> This has been happening for years and there are scores of potential victims of voyeurism at least. The head does this to all boys in year 7 & 8 it seems which could be around 100 boys in total and multiply that by several years and it soon gets out of control. The school also has property in Wales and links to other properties abroad.
>
> The other complicating factor is that the head's brother is the safeguarding lead and there is no-one independent, hence having to arrest and not get more information from the school beforehand.
>
> As I say, not a straight forward common assault and I can give a fuller briefing later after my warrant application. I signed my warrant papers yesterday so he is aware of the bare basics of this case.
>
> I haven't put a CRIS on for this yet, that will be my other post court task today. Tariq is aware of some of the details too, but I attended the LADO and have researched everything so I need to put it all down on the CRIS. It was all quite rushed from getting the scant details to sending this email hence no CRIS yet."

52. Much of this email speaks for itself. I make some limited allowance for the context but it was still formal in the sense that DC Carpenter was explaining his reasoning to his superiors. The points I highlight, taking into account DC Carpenter's oral evidence, most of which I reject, are as follows:

    (1) He recognised that the application for a warrant was somewhat speculative.

    (2) There was no evidence that the Claimant took photographs of naked boys, whether in the showers or elsewhere.

    (3) The possibility that bland press lines might serve to highlight the Claimant as a potential perpetrator of sexual offences and bring other victims forward was not lost on DC Carpenter.

    (4) The scale of the alleged offending was grossly exaggerated.

    (5) The details were, indeed, "scant" – although I would go further.

53. DC Carpenter's written application for a search warrant was completed by about 10:25 on 23 March 2017 and it was then approved by his superintendent. The offences being

investigated were of voyeurism contrary to s.67 of the Sexual Offences Act 2003. The key parts of the application form were as follows:

> "It has been alleged that the headmaster, and proprietor, of [the school] has watched boys aged around 10-12 years old in the showers and changing rooms. This has happened at a number of locations including the school and on field trips both within the UK and abroad. The school also owns a farm in Wales where this has also happened.
>
> It is also alleged that the headteacher also takes photos of boys in the school. This has been witnessed to happen in classrooms with the children dressed. This is contrary to the school's own policy on photography of children.
>
> The 'normalisation' of photographing children and the fact that he is alone with the children when they are getting changed and showered raises concerns that this individual may also be taking photographs of the children in states of undress. This is not yet alleged, but at this stage no child has been spoken to as this would alert the school to the police investigation and therefore give opportunity for evidence to be destroyed.
>
> The headmaster also has a 'special' boy every year with whom he has private meetings in his office. No-one has been able to explain what happens in the office during this private time which also raises concerns as to the behaviour of the head. It has not been possible to speak to the only child this refers to at present as this could alert the school to police involvement and therefore risk the loss of evidence.
>
> (b) Why do you believe that the offence(s) under investigation has/have been committed? Explain briefly.
>
> Voyeurism is being investigated as it has been advised by three whistleblowers that the individual stays with the children whilst they are getting changed and showered. This has also been confirmed by pupils via an Ofsted inspection carried out recently. The headteacher does not have responsibility for PE or Games teaching and as such has no explainable purpose for him being present has been offered [sic]."

54. The material sought was as follows:

> "Items to be seized if found:
>
> - Any physical images (indecent or otherwise) of children not obviously related to normal school functions
>
> - Any visual recording equipment, both overt and covert

> - Any media, in any format, capable of storing a digital image of a child including but not limited to: computers, tablet devices, mobile phones with appropriate storage capacity, external storage drives such as hard drive or USB drives."

55. Under box 8 of the Application, DC Carpenter certified as follows:

> "**8) Duty of disclosure.** See also the declaration in box 9.
>
> Is there anything of which you are aware that might reasonably be considered capable of undermining any of the grounds of this application, or which for some other reason might affect the court's decision?
>
> Include anything that reasonably might call into question the credibility of information you have received, and explain why you have decided that that information still can be relied upon.
>
> There is no material I am aware of capable of undermining this application."

56. DC Carpenter conceded in cross-examination that he should have drawn attention to the possibility that the whistleblowers might be the same person. He also accepted that, in hindsight, the application form could have been "greatly improved".

57. In my judgment, DC Carpenter did not comply with his duty to disclose anything which might reasonably be considered capable of undermining the grounds of the application, and the signed declaration he gave under section 9 of the application form was incorrect. My reasons for these conclusions are as follows.

58. First, although it is clear that the District Judge was made aware that the information from the whistleblowers was anonymous, all the obvious difficulties with the emails were not explained, nor was the lack of response by their senders to follow-up emails from the LADO and/or the police. The District Judge was not informed that inquiries had revealed that no "Louise Park" was a teacher at this school. In consequence, the District Judge proceeded on the basis that the sources were "separate" and "reliable", his only amendment to the application being to require separate warrants for the premises.

59. Secondly, there was no evidence that the Claimant took photographs of boys in "states of undress", and the reference to the "normalisation" of photographing children was, frankly, bordering on the ludicrous. There were no reasonable grounds for believing that the Claimant was photographing boys either in or coming out of the showers.

60. Thirdly, it was not explained to the District Judge that any information relating to alleged disclosures by boys to Ofsted inspectors had not been corroborated or substantiated.

61. Fourthly, no reference was made to Part B of the PACE Code B, para 3.1.

62. I agree with Mr Jacobs that it is not entirely clear that the Defendant obtained separate warrants for the various premises including the Claimant's home address. The CRIS refers only to a single, all-premises warrant. However, if that were all that was obtained, I am not sure how that assists Mr Jacobs' argument. In any event, I am satisfied on the balance of probabilities that the District Judge's instructions were adhered to, and that he signed off on separate warrants, including a separate warrant for the Claimant's home address. I have seen a copy of a signed search warrant for the school. The existence of such a warrant is inconsistent with there having been an all-premises warrant and nothing else.

63. The obligations on those applying for search warrants are well established. The effect of s.8 of PACE is that the justice of the peace must be satisfied that there are "reasonable grounds for believing" that the offence specified has been committed, and that there is likely to be material on the premises that is relevant evidence. There are numerous authorities on the topic, and I mention only a limited number. First, the officer applying for a warrant "must give full, complete and frank disclosure to the magistrate so as to enable the latter to base his decision on the fullest possible information": see *R (G) v Commissioner of Police of the Metropolis* [2011] EWHC 3331 (Admin), per Laws LJ (at para 17.2); and, to like effect, *Chatwani and others v National Crime Agency* [2015] EWHC 1284 (Admin), per Davis LJ (at para 106(iv)). Secondly, the court must be placed in a position to be satisfied that there has been an effective investigation: see *R (Rawlinson & Hunter Trustees SA) v Central Criminal Court* [2012] EWHC 2254 (Admin), per Sir John Thomas P. (at para 97).

64. In my judgment, DC Carpenter fell well short of a proper, lawful discharge of his duties in this case. As I have already said, he failed in his duty of candour to the court: indeed, he misled the District Judge. Further, there had not been anything approximating to the level of investigation that should have been undertaken to enable the District Judge to have confidence in authorising this serious infringement of personal rights. I am not saying that any boy should have been spoken to. I am saying that basic enquiries should have been made of Ofsted to bottom out the vague, unparticularised and somewhat surprising allegation, in the context of the Ofsted report and the absence of any documentary follow-up on the topic, that boys in clusters were telling Ofsted inspectors that their headmaster was watching them in the showers.

65. In my opinion, there was also a breach by DC Carpenter of Part B of PACE Code B. Para 3.1 provides:

> "An application may not be made on the basis of information from an anonymous source if corroboration has not been sought."

66. Mr Stagg submitted that the reports to Ofsted inspectors, transmitted as they were to DC Carpenter by the LADO, amounted to "corroboration". There is no evidence that DC Carpenter applied his mind to this provision. If he had, he would surely have realised that this information was, to say the least, surprising and required documentary substantiation. The need for the latter was the very opinion that DC Carpenter expressly articulated after the warrants had been executed but he must have held it before. Given that neither the LADO nor the police had been given any names by Ofsted, the

allegations could fairly be described at that stage as "anonymous". They were simply not enough to go on.

67. It is difficult to avoid the conclusion that DC Carpenter rushed to judgment in this case. There was no need for such speed. Urgent inquiry of Ofsted should have been made before this application left the starting-blocks, and that inquiry should have been undertaken by the police directly, not via the LADO. Had it been, there would have been no search warrant and the most that the Claimant would have faced would have been, or might have been, a voluntary interview. Whether the Claimant would have consented to a voluntary search is speculative, and he was not asked questions about that in cross-examination.

The legal effect of the unchallenged warrants

68. My findings as to the serious defects in the applications for the warrants avail the Claimant only to a certain extent. He did not bring proceedings for judicial review, and these are private-law proceedings for damages. Unless and until quashed or declared invalid in public-law proceedings, the warrants must be treated as legally effective. On my findings, an application for judicial review would have succeeded, but none was brought. It follows that the Claimant cannot recover damages in trespass on the footing that they were nullities.

69. The Claimant relies on two further routes to damages. The first concerns execution of the warrants on 24 March 2017, at about 16:00. Unbeknownst to DC Carpenter, this was a staff day. I am satisfied that he timed his arrival for as late as possible to minimise disruption at the school and embarrassment to the Claimant. The Claimant was on holiday in Switzerland. In his absence, a copy of the warrant had to be left in a prominent place at his home. There is no evidence that this was done. The entry and search were therefore unlawful under s.15(1), read with s.16(7), of PACE.

70. The Defendant's only answer is that STB had the Claimant's apparent authority to permit entry. Under the PACE Code, an officer should usually seek the occupier's consent. But STB gave up the keys only after being told that the police would otherwise enter forcibly. He knew that they had a warrant, even if he had not read it. His wish to co-operate did not give him a free choice. The Claimant is therefore entitled to damages for trespass arising from the unlawful execution of the warrant.

71. For the reasons in §§68-70, the trespass claim concerns execution, not procurement, of the warrant. It rests on the failure to leave a copy at the premises, a requirement which could have been satisfied at the conclusion of the search under s.16(7) of PACE.

72. Mr Stagg did not submit that it was an abuse of process for the Claimant to rely upon the defect in the execution of the warrant in a private-law claim without first seeking judicial review. I therefore need not decide that question.

THE ARTICLE 8 CLAIM

73. The second route may be explicated as follows. The search of the school and the Claimant's home was an interference with the Claimant's rights under Article 8(1) of

the Convention. Once the interferences with the Claimant's rights under Article 8(1) are established, it is for the Defendant to justify them under Article 8(2) ("in accordance with the law", and "necessary in a democratic society … for the prevention of disorder or crime"). Mr Jacobs' argument was not that the warrant was not in accordance with the law because DC Carpenter failed to leave a copy of the warrant at the premises: that argument would have added nothing to the common law claim. His contention instead was that the warrant should not have been sought at all. In that connection he submitted in outline that the requirements of Article 8(2) are separate and cumulative, and that even if the Defendant can fulfil the first, it cannot – assuming that I find in his favour on the facts – fulfil the second.

74. In *Keegan v United Kingdom* (2007) 44 EHRR 33 the ECtHR found violations of Articles 8 and 13. It concluded that the search was unreasonable and disproportionate and that the applicants had not enjoyed an effective domestic remedy. It awarded just satisfaction under Article 41.

75. The events giving rise to *Keegan*, and the commencement of the domestic proceedings, pre-dated the coming into force of the material provisions of the HRA. The domestic proceedings comprised a private-law claim for damages for trespass and under the tort of malicious procurement of a search warrant. The trial judge dismissed both claims. The Court of Appeal ([2003] EWCA Civ 936; [2003] 1 WLR 2187; Lord Phillips of Worth Matravers MR, Kennedy and Ward LJJ) dismissed the appeal. I am not concerned with the claim in malice, but it is clear from the judgment of Kennedy LJ that the court proceeded on the basis that the warrant was valid on its face. There had been no attempt to strike out the trespass claim as an abuse but the Court of Appeal did not conduct an analysis which went behind the terms of the warrant.

76. The ECtHR did not consider that the *ex facie* validity of the warrant could be determinative of the issue under Article 8(2). It held that basic investigative steps had not been taken and that these would or should have led to the conclusion that there was no connection between the relevant address and any suspect or offence. The ECtHR's reasoning is not altogether clear (see paras 32-36) because the Court appears to have held that, although proper procedures had been followed, and the genuineness of the police officer's belief could not be questioned, the failure to carry out basic investigations meant that the warrant was unnecessary and disproportionate. On my reading of the judgment, the Court reached that conclusion under the necessity requirement in Article 8(2), without treating the warrant as having lacked a basis in domestic law.

77. Mr Jacobs is entitled to deploy *Keegan* in support of his submission that the requirements of Article 8(2) are both separate and cumulative. It is in any event what the provision says. However, it is to be emphasised that the domestic court was not seized of a claim for damages under Article 8, and the Strasbourg Court was not required to decide whether a domestic claim based upon proportionality amounted to an impermissible collateral challenge to a warrant that had not been quashed.

78. The issue is therefore whether the Claimant may accept that the warrants remain legally effective while contending, under the necessity requirement in Article 8(2), that the police should never have applied for them. Mr Stagg submitted that this amounted to an impermissible collateral challenge and an abuse of process. Mr Jacobs submitted

that the Claimant invoked a distinct statutory cause of action under the HRA and did not seek to invalidate the warrants.

79. The warrants' continuing legal effect does not determine whether the resulting interferences with the Claimant's Article 8 rights were necessary in a democratic society. Legality and necessity under Article 8(2) are cumulative and conceptually distinct requirements. An interference authorised by domestic law may nevertheless be disproportionate in the circumstances of the particular case.

80. The Article 8 claim does not require me to quash the warrants or declare them void. It is directed to the conduct of the police in procuring and acting upon them. Section 6(1) of the HRA makes it unlawful for a public authority to act incompatibly with a Convention right; s.7(1)(a) permits a person who is a victim of that unlawful act to bring proceedings against the authority; and s.8 confers the relevant remedial powers. The cause of action is therefore the alleged incompatibility of the Defendant's conduct with Article 8, not the invalidity of the warrants as a matter of domestic law.

81. Nor, in my judgment, is the claim an abuse of process under the procedural principle derived from *O'Reilly v Mackman* [1983] 2 AC 237. The Claimant invokes the express statutory cause of action conferred by s.7(1)(a) of the HRA. He seeks neither a quashing order nor any other remedy which would deprive the warrants of their domestic legal effect. The proportionality issue has been pleaded and fully tried, and the Defendant has suffered no procedural or forensic unfairness because it has arisen in these proceedings rather than in judicial review proceedings.

82. Moreover, Parliament has prescribed a specific limitation regime for HRA proceedings in s.7(5). In those circumstances, I do not consider that the Claimant is precluded from pursuing the statutory remedy merely because the same underlying facts might earlier have supported an application to quash the warrants. *Keegan* supports that conclusion at the substantive level: the formal validity of the warrant did not prevent the Strasbourg Court from holding that the resulting search was disproportionate.

83. For the reasons already given, the applications for the warrants were based on materially deficient information, important matters capable of undermining the applications were not disclosed, and basic inquiries which should have preceded so serious an interference were not undertaken. Had they been undertaken, no warrant would have been sought. The Defendant has therefore failed to establish that the resulting searches were necessary and proportionate for the prevention of crime. I therefore find that the searches were incompatible with Article 8. Whether the Claimant may obtain relief depends, however, on limitation.

Article 8: Limitation

84. Section 7(5)(a) of the HRA prescribes a one-year limitation period. Under s.7(5)(b), the Court may allow such longer period as it considers equitable having regard to all the circumstances. As the Supreme Court explained in *Rabone v Pennine Care NHS Foundation Trust* [2012] UKSC 2; [2012] 2 AC 72, at para 75, this is a "wide discretion". Relevant factors include the merits, the need to vindicate fundamental rights, prejudice to the defendant and the reasons for delay.

85. The Claimant was not left a copy of the warrant and spent considerable time seeking relevant documents. A Magistrates' Court is obliged to retain a copy for only 12 months: see s.16(10) of PACE. I have examined the chronology in relation to document requests, and in my view the Claimant took far too long. He did not act with anything like the required speed and issued his Claim Form only in April 2024. The delay may have prejudiced the Defendant: DC Carpenter's health has deteriorated and some documents, in particular his daybooks, are missing. Even so, the CRIS amounts to a highly detailed record.

86. The merits weigh strongly in the Claimant's favour. The applications should never have been made, and the District Judge was misled. I must balance those merits and the Claimant's fundamental rights against the lengthy delay, the lack of explanation for much of it, and the possible prejudice to the Defendant. The 12-month limitation period expired in March 2018. The police investigation was ongoing, but the Claimant should have taken brisk and proactive steps to prosecute his case thereafter. Had the claim form been issued in, say, March 2020 or even March 2021, I probably would have extended time. In my judgment, the delay here is simply far too long and I refuse to extend time.

THE FALSE IMPRISONMENT AND FURTHER TRESPASS CLAIMS

87. The warrants were executed, first at the school and then at the Claimant's home address, on 24 March 2017. The police took away a number of electronic devices, some of which contained very large numbers of photographs taken by the Claimant of the school and of children at the school and elsewhere. A micro-SD card was found at the Claimant's home address in a box. The micro-SD card was viewed by DC Carpenter on 31 March 2017. Unfortunately, digital copies of the photographs on the card are not available but it is the Claimant's case that these were "manifestly different in nature". It is said that some were pupil "selfies". The Claimant says that it is obvious from the nature and quality of these photographs that the micro-SD card contained images which had been taken on a pupil's phone that had been confiscated. It was unfortunate that DC Carpenter could not be asked questions on this topic although his witness statement covers in general terms the subject-matter of the photographs.

88. On 29 March DC Carpenter emailed the LADO, *inter alia*, in these terms:

> "I do desperately need to see the documents from Ofsted which record concerns by pupils and staff. Is it possible to pass my details on the them [sic]. I really do need them by the end of the week.
>
> Given some of the questions have been answered by [STB], some of the issues around the necessity to arrest have diminished. The safeguarding aspect is still there, but if I had the Ofsted information and allegations that would bolster my rationale to justify the arrest to a custody sergeant.

> I have also had a lawyer [the Claimant] has instructed contact me so I need to be covered in relation to an arrest as opposed to an interview under caution."

89. The Claimant's solicitor had offered an interview under caution. The Claimant had also offered to return from Switzerland early, but DC Carpenter had said that was unnecessary.

90. On 31 March, having viewed some indecent images, DC Carpenter completed the following entry in the CRIS:

> "Fuller update to follow, but prior to examining the media I had decided on an interview under caution and arranged with [the Claimant's] solicitor who has made contact with me. This has now changed with the finding of indecent images including ONE Category C image of a child wearing the school uniform … I believe that an arrest is necessary and that bail conditions are necessary and proportionate also."

91. It is not clear which particular "Category C" image DC Carpenter had in mind. According to his witness statement in these proceedings, on the micro-SD card:

> "[there were] several disturbing images of children, some of which I considered to be indecent.
>
> I found several photographs of topless boys. To put these into context, they had been extracted from groups of photographs that included the children clothed. There were also girls in swimwear. There were also videos of GDB speaking with the children including some inappropriate name calling. I considered that, combined with other matters, these could be deemed as Category C indecent images, namely, images that are or have become sexualised.
>
> There were several photographs of one boy. While they appeared to be general holiday photographs, none showed this boy looking at the claimant, and I was concerned that he did not know that he was being photographed.
>
> I also discovered photographs of one boy. In some in [sic] he appeared to be wearing female clothes, and in others he was topless.
>
> There was also a photograph of a young boy, under 10, kissing a girl. It was not a peck on the cheek, and I thought it a sexualised kiss. As such, this would be categorised as a Category C indecent image of a child.
>
> Amongst this collection of images, I found a photograph of some faeces.

> Next were two photographs of a penis, one of which showed a £5 note wrapped round the penis."

Nothing in this catalogue of images appears to be of the child wearing school uniform.

92. I agree with Mr Jacobs that much of DC Carpenter's witness statement is clutching at straws. Images which are objectively innocuous are not "sexualised" in the first place and they cannot somehow "become sexualised" so as to fall within Category C. A holiday photograph of a boy who did not know he was being photographed could not conceivably be an indecent photograph. The photograph of two young children kissing on the lips could, I suppose, be regarded as more borderline. Without more information about it, I decline to express a view about the photograph of faeces save to suggest that this is just the sort of photograph a child would take. Finally, the two photographs of a penis are potentially more concerning although the context and any surrounding detail are unclear.

93. DC Carpenter's rationale in the CRIS for arresting the Claimant (see the entry timed at 14:14 on 3 April) was based on the following:

(1) In relation to the one category C image that he highlighted, given that a pupil was wearing school uniform "as such offending against pupils at the school was suspected". Nothing is said about what that pupil was doing, or why it was Category C, or about the other images I have just mentioned.

(2) Arrest was necessary and proportionate because there was no other means of ensuring that the Claimant did not attend the school with children present save by imposing bail conditions.

94. On balance I consider that, despite the wording of the CRIS, it may be artificial to focus on the one Category C image that had been highlighted, not least because DC Carpenter's list of questions to be put to the Claimant at interview covered other images that may have been more troubling. It is also clear from this list of questions that DC Carpenter had in mind the possibility that the Claimant had seized the micro-SD card from a pupil. Again, it is regrettable that the officer could not be asked questions about this.

95. DC Carpenter's witness statement offers a further reason for arresting the Claimant:

> "He had been out of the country and was likely to have taken his personal phone with him. It was likely that this phone contained more images which I would need to examine. Even if he had deleted any such images, it would be possible to recover them. However, I could not be sure I would be able to seize his phone without first arresting him.
>
> Furthermore, I did not know whether GDB intended to bring his phone with him to the interview. If, for example, he had left it at home, I would not be able to search his property again without either his permission or another court warrant. Once arrested, I would have a power to do so under PACE s18. This would also

> allow me to additionally search other venues and vehicles which might also contain evidence."

96. The Claimant was arrested at 10:19 on 4 April on suspicion of committing the offences of voyeurism and possession of indecent images. The burden rests on the Defendant to prove that the arresting officer held objectively reasonable grounds for the arrest (see s. 24(2) of PACE) and that it was necessary to arrest him for a purpose specified in s. 24(5). The governing principles have been helpfully summarised in *Magee v Chief Constable of Derbyshire Police* [2020] EWHC 3569 (QB), at para 46, and are not controversial.

97. In respect of the first limb (s. 24(2)), I agree with Mr Jacobs that lawfulness turns on the identification of the grounds in the mind of the arresting officer. Although the Court evaluates the reasonableness of the officer's grounds on an objective basis, the logically anterior question is not whether the officer *could* rationally have made the decision under challenge because the Court directs itself to the particular decision-maker and his grounds (see *R(L) v Chief Constable of Surrey* [2017] EWHC 129 (Admin); [2017] 1 WLR 2047, at para 39).

98. If it were obvious that reasonable grounds did exist for suspecting that the Claimant had committed the offence of voyeurism, I might have been persuaded notionally to fill in the evidential gap. However, I have already commented on the flimsiness of the case against the Claimant and, if anything, that case had weakened since the warrants were executed. STB's written evidence is that on 24 March DC Carpenter could see that there were in fact no showers at the school. STB had also explained to DC Carpenter that the Claimant supervised the boys when the games teachers were not available. Despite the urgency, nothing had come from Ofsted. In my judgment, I cannot properly conclude that DC Carpenter did hold objectively reasonable grounds to suspect that the Claimant had committed the offence of voyeurism.

99. In any event, it appears from the CRIS that the Claimant probably would not have been arrested if the investigation had been limited to the offence of voyeurism. I return to this issue below.

100. Turning to the offence of possession of indecent photographs contrary to s. 160 of the CJA 1988, there were three questions to consider: (1) were the photographs objectively indecent? (2) was the Claimant in actual possession of the photographs? and (3) did he have a legitimate reason for having the micro-SD card in his possession?

101. As for the first question, although I reject most of DC Carpenter's analysis in relation to photographs which objectively viewed are not indecent at all, there was just about enough on the micro-SD card to lead him reasonably to suspect that the card contained images of an indecent nature. However, the case was somewhat tenuous.

102. As for the second question, the Claimant was in actual possession of the photographs because the micro-SD card was found in a room in his house.

103. As for the third question, the evidential burden would have been on the Claimant to raise a legitimate reason for possessing the images. Once that burden was discharged,

the legal burden would have rested on the prosecution to disprove that reason to the criminal standard.

104. DC Carpenter's thinking on this last topic emerges from paras 32 and 33 of his witness statement:

> "32. My role was as an investigator and to obtain evidence and pursue lines of enquiry. As such, ownership of material is a key and legitimate line of enquiry to explore. I held no belief in any particular point. In respect of the micro card, I held no belief as to whether the images had been taken by the claimant or by a third party. I was following the evidence where it led. In this case possession appeared to be related to [GDB], but there were other potential explanations that I needed to explore. Possession and knowledge for Indecent Images are key points to prove within the offence and exploring defences such as the item/image belonging to another or of knowing/ought to know the images were present were appropriate.
>
> 33. I did not understand why the claimant would keep this card for so long, and further investigation did not uncover any record of the confiscation of the phone."

105. Mr Jacobs submitted that the stated absence of any belief, one way or the other, means that DC Carpenter did not address his mind to the issue of whether the Claimant might have possessed the card for a legitimate reason. Agnosticism, although indicative of an entirely open mind, is not good enough for the purposes of s. 24(2) (my formulation, not Mr Jacobs'). Mr Jacobs further submitted that it is clear from the notes that DC Carpenter prepared for the purpose of interview that the possibility that the card was confiscated from a pupil did occur to him. Finally, possession for a long time is neither here nor there.

106. In my judgment, the wording of paras 32 and 33 of DC Carpenter's witness statement does him no favours, but I consider that the notion that he was seeking to convey was that he was keeping an open mind, that the Claimant was in possession of the images, and that whether he had a legitimate reason for doing so was something that needed to be explored. Given that, as the Claimant accepted in evidence, DC Carpenter could not have known that the images were taken by a pupil, I have reached the conclusion that he did have reasonable grounds to suspect that the Claimant was in possession of them. Although any fair-minded police officer would also have concluded that this was a weak case which was unlikely to travel very far, that judgment does not undermine the presence of reasonable suspicion. It was, however, relevant to the issue of necessity.

107. Thus, DC Carpenter did not have reasonable grounds to suspect that the Claimant may have committed the offence of voyeurism, but he did have reasonable grounds to suspect that he may have been in possession of indecent images. In my opinion, DC Carpenter did not have to possess reasonable grounds to suspect in relation to both offences: one offence suffices for the purposes of the first limb.

108. Next, I turn to consider the second limb and the issue of necessity. In that regard, the legal principles are straightforward:

(1) Necessity "cannot be envisaged as a synonym for 'desirable' or 'convenient'" (see *L*, at para 40).

(2) The Court must be sensitive to the operational judgment of police officers, but the liberty of the subject is at stake, and "careful scrutiny" is required (see *Alger v Commissioner of Police of the Metropolis* [2023] EWHC 1582 (KB), at para 60).

(3) The Court examines the officer's actual reasons for believing that arrest is necessary. Those reasons must be objectively reasonable (see *Alger*, at paras 61-63).

(4) The arresting officer must consider whether voluntary interview is a practical alternative (see *Alger*, at para 64).

(5) To the extent that the officer contemplates using the power of arrest for the purpose of the associated power of search and seizure (see ss. 18 and 32 of PACE), consideration should be given as to whether consent to such searches may be an acceptable alternative (see *Commissioner of Police of the Metropolis v MR* [2019] EWHC 888 (QB), at para 49, and *Rashid v Chief Constable of West Yorkshire* [2020] EWHC 2522 (QB), at paras 88-91).

(6) The ordinary position in the case of an investigating officer wishing to deploy a power of search and seizure is to apply for a warrant (see *L*, at para 73).

(7) A suspect's demonstrable ability to be "co-operative and able to engage in constructive dialogue with the police", and previous good character and background, are relevant to the issue of whether coercive measures are really necessary (see *ALK v Chief Constable of Surrey* [2025] EWHC 1964 (KB), at para 82).

(8) PACE Code G makes it clear that using the power to arrest to protect a child might be appropriate where the welfare of a child or other vulnerable person is likely to be harmed.

109. Applying these principles to the instant case, there is superficial force in the point that DC Carpenter wished to interrogate the Claimant's phone in the knowledge that the latter must have taken it with him to Switzerland. However, there is nothing to indicate that DC Carpenter took into account the Claimant's good character and highly responsible position in the community, or (and I accept that this is a limited point) that his brother was highly co-operative at the time the warrants were executed. Instead, DC Carpenter proceeded on the basis that he "could not be sure" that the Claimant would give up his phone if asked. Moreover, as part and parcel of his representations in favour of a voluntary interview on the morning of 4 April, the Claimant's solicitor offered a voluntary search. That offer included the Claimant's phone and would likely have included his laptop (also presumably taken to Switzerland) had DC Carpenter asked for it. It was unreasonable to proceed on the basis that the Claimant might have deleted images, even assuming that the opportunity might have presented itself to do so.

110. DC Carpenter's response to this offer was that it did not have "legal backing". That is true but would be so in respect of any or all acts of co-operation by a suspect. In my judgment, DC Carpenter misunderstood his powers and was being unreasonably inflexible. It is also noteworthy that the police carried out a further search of the Claimant's home and car. Had that search been just for the laptop, it might have been reasonable (subject to my finding that DC Carpenter should have asked for it), but there is a strong inference that DC Carpenter's objective was to hunt for devices that his team might have missed on 24 March.

111. Whether arrest was necessary in order to protect children raises issues which to my mind are more finely balanced. As I have already pointed out, DC Carpenter provisionally decided to arrest the Claimant as early as 22 March on the basis that the LADO was raising safeguarding issues. That is a point that cuts both ways: on one level, the decision was premature and based on the most exiguous information; on another, DC Carpenter was receiving advice from someone more knowledgeable about safeguarding issues than he was, albeit unqualified to opine on the necessity of the exercise of the power of arrest. On 29 March DC Carpenter appears to have been less convinced that arrest was necessary, although the safeguarding issues remained. This was because he assessed that the case against the Claimant had weakened. In the officer's mind the balance tilted back in favour of arrest once the indecent photographs were found, although – properly analysed – they too constituted a weak case. That was relevant to the level of risk. Further, there is force in Mr Jacobs' submission that DC Carpenter was aware that the school, and its headmaster, were under intense scrutiny and he ought to have apprehended that it would not have been possible for an honourable man in the Claimant's position, under investigation for sexual offences, to remain at the school pending the conclusion of that investigation. This was, of course, exactly what happened. The Claimant stepped down from his role, he hoped temporarily, and occupied a room in a hotel on the south coast.

112. The necessity assessment that DC Carpenter made appears to have been a composite one which related to both offences under investigation. I have found that DC Carpenter only possessed a reasonable suspicion in relation to possession of indecent images, and not to voyeurism. Yet, his safeguarding rationale was principally connected with voyeurism and risk to pupils. That creates a further difficulty for the Defendant with respect to the issue of necessity.

113. In my judgment, for the reasons I have given, DC Carpenter did not give any proper thought to whether it was necessary to arrest the Claimant in the particular circumstances of this case. It follows that the arrest was unlawful, the Claimant was falsely imprisoned, and the concomitant searches were also unlawful.

The Progress of the Police Investigation and of Other Relevant Investigations

114. The Claimant was advised by his solicitor to give a "no comment" interview. He did provide a prepared statement in which he said, amongst other things, that the micro-SD card:

> "include[d] images of a former pupil called [Redacted]. He was asked to leave the school approximately nine years ago for behaviour including drug taking. I am not certain but assume that these images must have come from his phone. I do recall that his phone was confiscated at some stage. I do not recall having previously seen these images though it is possible they were viewed around the time of him leaving. I cannot explain why this [card] was found where it was but computers and related devices have been moved by me regularly between the school and my homes."

115. As early as 5 April 2017 DC Carpenter had identified the boy. He had a conviction for ABH and DC Carpenter was able to compare the custody photograph with images on the card. The boy still lived in the area of the school and the Claimant's home address. My interpretation of the CRIS is that DC Carpenter visited the relevant property on 6 April, but the doorbell went unanswered. On 12 April there was a telephone conversation with the boy's father. This trail thereafter seems to have gone dead.

116. Also on 5 April, DC Carpenter received an email from the Claimant's solicitor suggesting various lines of inquiry. These suggestions were detailed. The tone of the email was co-operative. The email contained the following expression of concern:

> "In terms of the investigation I have been giving some thought … about what assistance can be provided to help you to expedite your enquiries and with a view to minimising the risk of adverse publicity. I know that you are alive to the significant risk of serious reputational damage to the school that could arise if the police investigation becomes public. It is not an over-statement to say that it could destroy the school. I want to minimise that risk."

117. DC Carpenter's CRIS file note (sketching out the terms of an intended reply to the solicitor, which I have not seen) was to the effect that the Claimant had been given every opportunity to answer questions at interview, and that what the solicitor was doing was attempting to bypass the adverse inference provisions in s. 34 of the Criminal Justice and Public Order Act 1994. Although I do question the correctness of the advice that the Claimant exercise his right of silence, DC Carpenter's attitude was, I think, both cynical and unfair.

118. On 18 April 2017 a "Notice to all Parents" was sent on the Claimant's behalf. This contained the following information:

> "I regret to say that concerns have been raised by Ofsted about our approach to some specific safeguarding regulations. It appears that the reason Ofsted were asked by the Department for Education to conduct an inspection just before the end of last term, was as a result of allegations that had been made against the school. We believe that the allegations were malicious and have no foundation. However, as is entirely proper, they have been referred to the relevant authorities for further investigation.

> Foremost in our minds is the safety and welfare of the pupils under our care.
>
> We are keen to provide you with as much information as we can at this stage. Whilst we are not clear as to the exact nature of the allegations, we understand that they were made by an un-named individual direct to the Department for Education. This triggered an emergency one-day Ofsted inspection of the school on 23rd February 2017 and the subsequent opening of a police investigation. This was a surprise to us all as no complaints were raised with the school directly, nor have we received any other recent safeguarding concerns from parents, pupils, staff or others.
>
> …
>
> On 24th March, the day after the end of term, the police attended the school and began an investigation. We believe that this was triggered by the same allegations that had led to the emergency Ofsted inspection. I was subsequently interviewed by them.
>
> The police investigation is on-going and for that reason I hope that you will understand that I am unable to go into detail. I can however say that the allegations put to me do not arise from any concern raised by either a pupil or parent, past or present. I can also say that as proprietor of [the school], I categorically deny any wrongdoing by me or any member of my staff. I hope that this matter can be resolved swiftly. Meanwhile, until the police investigation has been completed and the matter resolved, I am temporarily stepping aside from the day to day running of the school."

119. The Notice to all Parents also explained the school's response to the Ofsted report, both by rebutting its criticisms and explaining the steps the school was taking to address Ofsted's concerns.

120. Although the Claimant had agreed to withdraw from the school in late March/early April 2017 (the exact date is not clear), this was not formalised until 23 June.

121. When cross-examined, the Claimant denied that it was obvious from the Notice to all Parents that he was the (or, at least, a) subject of the police investigation. He said that parents would expect him to step down. He also said that he was advised not to inform parents that he had been arrested because that term is often misunderstood. He added:

> "This was a compromise. We were told to tell the truth but not to say anything that might be harmful."

122. Clearly, the Claimant was walking a metaphorical tightrope between not misleading school parents and not disclosing private information. Ms Kate Wilson, whose

submissions on all the matters she covered I found particularly helpful and persuasive, submitted that it was obvious from this Notice that the police were investigating the Claimant, and that is why he was stepping down. In my judgment, the Notice may be interpreted in one of two ways. On the first interpretation, the police were investigating possible criminal offences which included offences committed by the Claimant. On the second, the police investigation included an interview of the Claimant because, as headmaster, he was a valuable witness. Taken together, the Claimant's stepping down and denial that he had committed any wrongdoing are slightly more consistent with the first interpretation.

123. How parents actually interpreted this notice is difficult to say on the available evidence. In an email dated 19 April one insightful parent thought that the notice did relate to the Claimant but that he had been wrongly denounced. Others, as I have said, might have seen this differently. Events were soon to be overtaken by the publication of the newspaper articles which, as I shall explain, moved the dial more in the direction of my first interpretation. On either interpretation, parents would not have known what the police investigation was about, save that it was triggered by safeguarding concerns, and they were not told that the Claimant had been arrested.

124. On 8 May 2017 DC Carpenter interviewed GXY. That process will have completely assuaged his suspicions in relation to this particular "special boy" because GXY was very positive about the Claimant and explained that all that the latter was doing was providing one-to-one language tuition, English not being his first language.

125. In late May 2017, after information about the Claimant had been disclosed by the newspaper and likely in consequence of that disclosure, the Claimant was interviewed under caution about an historic allegation of sexual assault. The Claimant was not arrested and, as before, he went "no comment". The allegation was far from convincing, but the police had to investigate it. According to Mr Jacobs' skeleton argument, the complainant "promptly" disengaged from the police and said that he only wanted police "to be aware". However, according to DS Savage's email dated 28 August 2018, this was information imparted via the complainant's mother only on that day.

126. In February 2018 the complainant's brother made a similar allegation of sexual assault against the Claimant. The latter was voluntarily interviewed and, on this occasion, answered police questions.

127. On 27 April 2018 the Claimant was told that no further action would be taken on this second complaint.

128. Meanwhile, the police were undertaking further inquiries into the original allegations. To be fair to the Defendant, there were over six million photographs in all. The majority were not of children, but some sifting had to occur. A thorough and comprehensive exercise will have taken many weeks, but one would have thought that after the first 100,000 or so images this process could have been curtailed. In the event, this exercise continued well into the summer of 2018. Some of the photographs were of children in swimwear or partially clothed. The assessment was that these were "pictures a parent would take of their children on the beach". According to the CRIS, "the main victim in this matter [presumably, the boy with the criminal record, photographs of whom were found on the micro-SD card] is not engaging with police". Teachers had been spoken

to and all, save for one who had a concern about the Claimant taking photographs of children on the sports pitch, "give a positive view of the school and raise no concerns". Mysteriously, the CRIS also records that "all the other victims are not wishing to speak to police or have spoken about bullying at the school (name calling)". These victims are not specified, nor is it clear what they were complaining about. Eventually, on 19 November 2018 the Claimant was informed that the police investigation was closed.

129. The police investigation was lengthy. The Claimant does not advance a case on the basis that it took too long, and absent malice (of which there is no evidence) no such case could have been sustained. Nor does the Claimant advance a case on the basis that the police investigation should never have started. It follows, in my view, that the length of the police investigation is a matter that avails the Defendant rather than the Claimant. I will be developing this aspect when I come to address causation in the context of the information claims.

130. Once the police investigation closed in November 2018, the Teaching Regulation Authority undertook an investigation which was closed with no further action in February 2020. Having concluded that the Claimant had "engaged in conduct that harmed (or is likely to harm) a child", Z referred the matter to the Disclosure and Barring Service. On 8 March 2019 the DBS concluded that he would not be added to the Barred List.

131. On this chronology, it is clear that all criminal and regulatory investigations into the Claimant had concluded, with no further action, by February 2020.

Ofsted

132. I must deal separately with the Ofsted investigations. For understandable reasons, the Defendant placed considerable reliance on this aspect.

133. Ofsted carried out a full inspection over three days in the summer of 2017. It reported one month later. Ofsted's overall conclusion was that this was an "inadequate" school. The school "failed" under a number of rubrics, including "effectiveness of leadership and management", "personal development, behaviour and welfare", and "early years provision". Plainly, Ofsted's full report went well beyond the concerns ascertained in March 2017 and the subject-matter of the police investigation. Insofar as what Ofsted said had any bearing on the police investigation, however tangential, I highlight the following:

> "- The proprietor and principal have not ensured that the school meets the independent school standards.
>
> - There is no governing body. No one has checked or scrutinised leaders' work closely enough to spot weaknesses. As a result, there are significant deficiencies in the school's management systems.
>
> - Safeguarding arrangements are not effective. Leaders have not ensured that effective systems are in place to help keep

pupils safe."

134. Both the Claimant and STB were firmly of the view that Ofsted's conclusions were unfair and incorrect. However, everyone at the school knew that those findings had to be respected and "an incredible amount of work" was put in, by STB in particular, "to rectify any issues". The Claimant's evidence was that "I do not think that the adverse Ofsted findings were of great concern to [school parents] and were not instrumental in decisions that were made to withdraw pupils." Elsewhere in his witness statement, the Claimant opined that parents were "not overly perturbed" by the Ofsted findings, and some were "actually very angry".

135. STB's evidence was that he was frustrated that Ofsted were not able to take account of "all of the positive changes" that had been implemented after the emergency inspection in February 2017. In short:

> "32. The general feeling from [school] parents following the June 2017 Ofsted inspection was one of outrage with Ofsted. [The school's] market was the parents, and we always went over and above to keep them updated, through Notices to Parents and through conversations at the school gates on a daily basis. We always looked to find out what the parents thought – we were always attuned to the opinions and mood of the parent community – and we knew that they considered their children to be happy and safe at [the school]. Ofsted's findings were entirely at odds with how the parents saw [the school] operating on the basis of their experience and that of their children each day. [The school's] parent body was outspoken and was not shy about complaining if they felt it was warranted – but they did not. Having said that, we knew, and had to make sure the parents knew, that we had to take the Ofsted findings seriously and we knew we had to "toe the line" for the future of [the school]. We told parents what we were doing to ensure compliance – they understood and appreciated it.
>
> 33. As the Principal of [the school] at the time, and being "on the ground" at the school, I was in no doubt that [the school] could survive the negative Ofsted reports, and that it would have either no effect on pupil numbers, or only a minimal effect."

136. When Ofsted next reported in March 2018 all standards had been met.

137. The Claimant was cross-examined on the July 2017 Ofsted report. He said that Ofsted's findings were "completely unfair, ludicrous and unsupported". He did not agree that parents place reliance on Ofsted reports. He added:

> "Parents attended the school. They made a well-considered decision. Ofsted was a footnote. … "Inadequate" is not disastrous. Parents would know that Ofsted was untrue."

138. STB was also thoroughly (and properly) cross-examined on the July 2017 Ofsted report. Immediately before lunch on the second day of the trial, STB said this:

> "Schools do not lose pupils because of Ofsted inspections. As long as a school demonstrates improvement, parents do not lose faith. At the time [i.e. in 2017] schools took two years to turn around. We took 12 months. Parents knew what was going on."

139. The Claimant and his brother understated the impact of the July 2017 Ofsted report on parents. Its contribution to the loss was greater than "minimal". I assess that contribution below when considering causation and special damages.

THE INFORMATION CLAIMS

THE FACTS

140. The precise sequence of events is important.

141. Shortly before 12:41 on 20 April 2017, the school took a call from the journalist. The latter wanted to know whether the Claimant had "stepped down" from the school. As I have said, the journalist must have received a copy of the Notice to all Parents. The journalist was advised to speak to STB.

142. At 13:18 on 20 April, the journalist emailed STB immediately after having spoken to him. STB's oral evidence was that he asked the journalist to formulate questions. These questions were:

> "1) Do you accept the local authority's assertions that an investigation has been launched, that it involves your brother and that he has stepped down?
>
> 2) Do you accept its assertion it involves a police investigation?
>
> 3) What other authorities has the school involved in the matter and what is the school doing to remedy the situation?
>
> 4) An Ofsted inspection was commissioned by the DfE due to concerns around the area of safeguarding. Do you accept the current investigation is to do with safeguarding issues and surfaced as a result of this latest emergency inspection?
>
> 5) Are you able to say what you understand to be the full nature of the police investigation and other investigations by the authorities?"

143. At 14:54 on 20 April the journalist spoke to one of the Defendant's press officers. The journalist claimed that Z had told him that the police were involved in an investigation

at the school – "the headteacher has stood down – this is due to safeguarding issues"[3]. The press officer was asked to confirm that the police were investigating.

144. At 15:23 on 20 April the Claimant's solicitor emailed DC Carpenter in relation to the journalist's inquiry. He pointed out that the journalist may have heard about the police investigation from a number of sources. He said that the school had been very guarded in its response. The Claimant's solicitor suspected that the journalist would contact the police next, and added this:

> "as you know the school is extremely anxious about the effect of the negative publicity associated with your investigation. No doubt if you are contacted you will take internal advice though I don't suppose you will think it is appropriate to say too much. If the police do provide any kind of comment or statement I would be grateful if you could let me know what it is so that the school can try to manage the fallout from any news stories that arise from this."

145. Later that afternoon, there were email exchanges between DC Carpenter and the press bureau in which various proposed lines were crafted. DC Carpenter approved a form of words which included the following:

> "The allegation [of voyeurism] was reported to those Detectives on 21 March. A XX-year-old man was arrested on Tuesday 4 April on suspicion [of] voyeurism and possessing indecent images of children."

146. At 17:18 on 20 April DC Carpenter emailed the Claimant's solicitor with the following:

> "As general lines as possible have been drawn up by the Press Bureau if they are contacted again by the Press, although I would say that that is a fair assumption to make if they have already contacted the school today also.
>
> I am not authorised to give our press lines, but I will say that they will not mention the school or [the Claimant] by name. They will say, as most lines in similar circumstances do, that a male has been arrested in relation to allegations of voyeurism and possession of indecent images of children and has been bailed."

147. The Claimant's solicitor emailed DC Carpenter at 18:27 that evening. He said this:

> "One thing that strikes me is that if a statement along the lines of your email is given by the police in response to a request from a journalist about [the Claimant and the school] specifically then

[3] I should record the evidence that on or before 22 April the LADO denied that "they" provided any information to the police. It is likely, in my view, that the LADO or someone else within Z did speak to the journalist (that is more plausible than the proposition that the journalist lied in order better to obtain information). Either way, it was not suggested that Z told the journalist that the Claimant was being investigated for sexual offences.

> the effect will be to confirm the identity of both - with the probable consequence that [the] paper will feel sufficiently confident to confirm (or imply through its reporting) that it is [the Claimant] who has been arrested, the identity of the school, and the nature of the alleged offences. I think from your email that that is not the intention of the police. I wonder therefore if thought might be given to an even more anodyne response (if indeed any statement/ response at all is required) that does not either confirm the arrest or the nature of the allegation but merely that there is a police investigation underway.
>
> The fact of [the Claimant's] arrest and the identity of the school are both private matters, at least until such time as any charging decision is made. The privacy and welfare of the pupils at the school should also be carefully considered. There would be huge prejudice to [the Claimant], the pupils and the school if there is reporting in the media and this would be very unfair, particularly if ultimately no charges are brought against [the Claimant].
>
> If the police are able to indicate as and when they do provide comment to the media it would be much appreciated so that the school and [the Claimant] can prepare themselves for any adverse consequences."

148. The tone of the solicitor's email was conciliatory, emollient and understated. He needed to tread carefully. It will have been obvious to the solicitor that the journalist would contact the police press bureau about a police investigation. Obviously, he would have been even more concerned if DC Carpenter had disclosed that the age of the man would be revealed. There is no evidence that DC Carpenter replied to this email or conveyed the solicitor's concerns to the press bureau.

149. According to the Defendant's Media Log entry timed at 20:45 on 20 April, "CHO1" spoke to DC Carpenter. Exactly when this happened is unclear. DC Carpenter opined that the allegations may be malicious. He agreed with CHO1 the press lines recorded in this log and set out below. The journalist then telephoned and was given those lines, along with the usual statement that "we do not confirm names of people who may or may not be subject to a police investigation". The lines stated:

> "Detectives from Sexual Offences, Exploitation and Child Abuse Command are investigating an allegation of voyeurism believed to have occurred in Z. An investigation was launched by police on Tuesday 21 March. A XX-year-old man was arrested on Tuesday, 4 April on suspicion voyeurism and possessing indecent images of children. He has been bailed pending further enquiries to a date in early May while enquiries continue."

150. Before 09:58 on 21 April a different solicitor at the firm representing the Claimant in the criminal investigation spoke to the legal department at the newspaper. She stated that she represented both the Claimant and the school. The stated reason for the call

was that her understanding was that the newspaper intended to publish an article that day. She emphasised that in her view an arrest was a private matter and should not be published. Later that morning the solicitors emailed a letter to the newspaper which stated that both the investigation and the arrest were private matters. The newspaper was warned that in the event of publication legal action might ensue.

151. The newspaper had originally intended to publish on 21 April, but this was put back to 24 April, and then to 26 April, in light of the flurry of emails passing between the Claimant's team, which included media advisors, and the newspaper. I need not refer to all of these.

152. On 23 April the Claimant's criminal solicitor emailed DC Carpenter warning him that publication by the newspaper of the allegations against the Claimant would amount to a criminal offence under s. 141G of the Education Act 2002. The solicitor's legal analysis was that the allegations against the Claimant were made "by or on behalf of a registered pupil at the school", even if made anonymously. I need not resolve this issue, but it was a point which ought to have given DC Carpenter some concern.

153. On 24 April the journalist sought confirmation from the press bureau as to "where the offence happened and whether it was the headmaster". The journalist was given the same lines as before and told that the police do not discuss who may or may not have been arrested.

154. On 26 April an article appeared both online and in the newspaper's print edition. The headline referred to an arrest in a voyeurism inquiry involving the school, and a photograph of the school was included. The article stated that a man had been arrested on 4 April over allegations of voyeurism and possession of indecent images. The police investigation was said to follow the publication of Ofsted's emergency report. The article also quoted from the Notice to all Parents but not that section which stated that the Claimant had been interviewed as part of the police investigation and that he denied any wrongdoing. Clearly, the newspaper had taken some care not to identify the Claimant.

155. The parties have placed evidence before me as to the circulation of the newspaper in question. That was a futile exercise because I unhesitatingly accept the Claimant's evidence that it would not require many parents to read the article before it became common knowledge. That was the view the school reached at the time because on the very day of publication the school sent out a further Notice to Parents which referenced the newspaper and stated that it was not in a position to provide any further information.

156. On 28 April the Claimant's solicitor emailed DC Carpenter about the newspaper article (and a further article along the same lines published by a local newspaper). He said this:

> "Needless to say this has had exactly the anticipated result with many concerned parents getting in touch with the school wishing to know more details about your investigation. The school has not provided any further information at this stage but it is a critical situation and one that will only resolve with the conclusion of your investigation."

157. At 16:31 on 23 June the journalist inquired of the press bureau whether there were any updates in relation to the investigation. DS Birch was spoken to, and she confirmed to the press officer that a further victim had come forward and made an allegation of sexual assault. An updated press line was prepared which repeated the information previously provided and added, "he was further arrested in late May on suspicion of sexual assault". The newspaper was so informed.

158. On 25 June the journalist contacted the Claimant's public relations advisors. He was now under the impression that the Claimant had been arrested for a third time. The journalist was asked to "hold off" publication so that further inquiries of the school could be made. On 26 June the Claimant's solicitors wrote to the newspaper with the following:

> "[The journalist] has not set out in writing what he intends to put in this article, but did state in a telephone call on Sunday evening with the School's representative that he had further allegations that he wished to publish. From what [the journalist] said it would appear that he clearly has incorrect information. Publication of serious allegations such as the ones suggested by your journalist are defamatory. You must not publish these allegations or anything similar to these allegations. Publication of such allegations would also inevitably lead to the potential prejudice of any on-going investigation."

159. At 19:49 that evening the newspaper's legal representatives emailed the Claimant's solicitors repeating their understanding that the Claimant had been arrested on suspicion of sexual assault in late May. These legal representatives observed that the Claimant and the school had "chosen not to comment". At 07:04 the following morning the Claimant's solicitors stated that this "understanding" was incorrect. No details were given in what respect.

160. On 28 June 2017 the newspaper published the second article. It stated that "a member of staff" had been arrested for a second time in two months. The article, in both the online and the print editions, quoted directly from the Defendant's spokesman who had said, "he was further arrested in late May for sexual assault."

161. The Claimant was highly distressed by this article and STB said that he was "furious". I have no doubt this was so. The precise sequence of events thereafter need not be addressed in fine detail. In outline, what happened was that the Claimant's solicitors contacted the newspaper informing them that "the information provided to you by the police was incorrect". Again, no further details were provided on behalf of the Claimant, but the newspaper removed the second article before 11:00 on 29 June.

162. The press bureau then contacted the police investigation team who stated that on the second occasion the Claimant had not been arrested but interviewed under caution. The press bureau put out revised press lines which set out the correct position, together with an apology for the error. The lines clarifying the position and the apology for what came to be described as a "slight error" were shared with the newspaper. At 16:14 on 29 June its online edition was corrected accordingly. The Claimant did not seek a correction of the print edition. Finally, the school informed all parents on the same day that the

second article amounted to "the release of incorrect information" including the "factually incorrect headline".

163. It is immediately apparent from the narrative I have provided that this case raises complex issues of liability and causation. At the outset, however, I should deal with one issue which to my mind is straightforward. Mr Stagg submitted that it was incumbent on the Claimant, through his advisors, to provide more detail as to the "incorrect information" that was said to have been imparted by the police press bureau to the newspaper. The Claimant's advisors did not state in terms that the Claimant had not been arrested for a second time, and Mr Stagg's submission was that they should have done so. Mr Jacobs' riposte was that, had they done so, that would have amounted to confirmation that the Claimant had been arrested once.

164. In my judgment, the conundrum from the Claimant's perspective was that he did not want to confirm either that he had been arrested on 4 April or that he was now being investigated in connection with a further offence in May. The Claimant was, of course, entitled neither to confirm those matters nor to provide limited information which ran that risk. One way or another, the Claimant would have found it very difficult to alight on a form of words which did not disclose private information. In these circumstances, I fail to see how and why what the Defendant did (viz. provide inaccurate private information to the newspaper) should have placed an obligation on the Claimant to disclose private information about himself. My overall conclusion is that Mr Stagg's submission was not well-founded and that the Claimant's inaction did not break the chain of causation.

The Defendant's media policy

165. I was referred to the Defendant's Media Policy as well as to its "Media PolicyToolKit – Q&As". For present purposes I may confine myself to the relevant edition of the second document ("the Toolkit") because it formed the focus of questioning of Ms Wickers.

166. The Toolkit contains the "overriding principle" that the Defendant should be as open and transparent as possible about police investigations provided that confidential information is appropriately protected. There are three sections of the relevant policy which merit specific citation:

> "Any information we do release – proactively and reactively – should as a minimum include the allegation/offence, date information received, which unit is investigating, arrests, interviews under caution … It is good practice to remind journalists that the information provided should not be seen as confirmation of the identity of any individuals.
>
> …
>
> The current MPS policy is that people who have been arrested are not named by police unless there are exceptional circumstances [inapplicable here]. This is in line with Lord

> Justice Leveson's advice that save in exceptional circumstances *the names or identifying details of those who are arrested or suspected of a crime* should not be released. [emphasis in original]
>
> …
>
> In circumstances where the MPS is reactively answering questions from the media about a particular arrest, it was previously our practice that when a journalist put the correct name of an arrested person to us we would not confirm it but would confirm that, for example, "a 50-year-old man had been arrested". It has been argued that this could be interpreted as confirming the name so the phrase, "we neither confirm nor deny the arrested person's identity". …"

167. I observed during the hearing that there was some tension between these various paragraphs. I have no doubt but that they would benefit from being re-ordered and reformulated. The starting point is that the police should provide to the press as much information as possible to uphold public confidence in the investigation of crime. That, however, is just the starting point. Then, the cardinal principle is that the police should not name or release the identifying details of persons suspected of crime, or arrested, unless there is a strong countervailing public interest. The term "identifying details" is not problematic, and Lord Justice Leveson explained the position with complete clarity. If details about someone are provided which, given the context of the press request and the information known or understood already to be in the hands of the journalist, are liable to identify him or her, those details should not be provided at all. This is because the effect of providing them is to run the unacceptable risk that the press will now have sufficient confidence to run a particular story in the knowledge that they probably have the right person.

168. And, importantly, the position is not altered by simultaneously supplying a routine form of words to the effect that it is not police practice to confirm the identity of individuals. That formula does not in some way nullify the identifying character of the details being provided at the same time. Put another way, the Defendant cannot be heard to say that the details that have been provided are anonymous if in fact those details do serve to identify the individual or amount to information from which that individual's identity may be established.

169. As will be seen, this analysis of the Toolkit (or, more precisely, what the Toolkit should be saying more clearly) is borne out by an examination of the key jurisprudence in this area.

170. Ms Wickers appears to have an understanding which contains an obvious internal inconsistency:

> "30. … my personal view is that the arrest of any individual for alleged offences of this nature – and in particular if they hold a role with safeguarding responsibilities such as working in a school – is of clear public interest. That does not mean that I or

> the press team confirm to media names or identifying details of people arrested. We follow our media policy at all times."

171. I can agree with Ms Wickers that the press officer responsible for supplying the press lines in the Claimant's case did follow the guidance set forth in the first paragraph in the Toolkit that I have cited above. However, it is a clear inference that no attention was properly given to whether the Claimant's "identifying details" were being provided. The inference is also that the press officer somehow believed that, by providing the routine formulation – whatever information is provided "should not be seen as confirmation of identity" – the journalist could not deduce that identifying details were being supplied. What is more, although the journalist did not ask whether the Claimant had been arrested, that detail was volunteered, as well as details of the offences for which he had been arrested. The press officer also gave the arrested person's age, which was the Claimant's age.

172. Ms Wickers was skilfully cross-examined by Mr Jacobs. She was constrained to accept that the journalist's inquiry was about the school because she agreed with counsel's proposition that if the press lines were not about the school, they would have been deeply misleading. The Defendant places an obligation upon itself to be "open and transparent". Mr Jacobs went on to ask further questions (what follows is not necessarily verbatim but is counsel's agreed note):

> "Q. Plainly Ms Wickers that was a request about the school?
>
> A. The response was about the investigation.
>
> Q. [refers to] a XX-year-old?
>
> A. Doesn't name the school. [we] wouldn't routinely do this.
>
> Q. Response was about the investigation at the school, wasn't it?
>
> A. Yes.
>
> Q. When your colleagues are providing the information, as at para 12, that is information about an investigation at the school, isn't it?
>
> A. Yes, investigation concerned the school, yes.
>
> …
>
> Q. OK, if this man, this XX-year-old man, who was arrested for voyeurism … was not related to the school, response would be misleading, wouldn't it?
>
> A. Yes.
>
> Q. So, a journalist is going to proceed on the basis that the police won't provide misleading information, aren't they?

A. Yes.

Q. Department knows that journalist will take the response as confirmation that in connection with the named school a XX-year old man has been arrested on voyeurism and possessing indecent images?

A. Yes.

…

Q. A journalist would presume that it related to the school?

A. Yes.

…

Q. Seems to be about headmaster standing down in the context of an investigation?

A. Yes.

Q. Likely to take response as being about the headmaster?

A. No.

…

Q. In this situation, given the request is about an investigation at named school is a XX-year-old man not an identifying detail?

A. No.

…

Q. If you have a teacher who is no longer present, you do have that information, is saying that a XX-year-old man has been arrested not likely to identify the individual in question?

A. I don't know. I don't know enough information about the makeup of the school. If journalist, that is a step which you could presume.

…

Q. Or other inquiries could be carried out to see if the head is XX?

A. Yes."

This last question came from me.

173. I interpret this last answer as amounting to an acceptance by Ms Wickers that the journalist could take steps to ascertain or infer the exact or likely age of the person being referred to. In any case and regardless of her answer, this was an obvious line of inquiry for any competent journalist.

GOVERNING LEGAL PRINCIPLES

174. These principles need to be formulated with precision in light of authority and the parties' submissions.

175. In *McKennitt v Ash* [2006] EWCA Civ 1714; [2008] QB 73 the Court of Appeal proposed a two-stage test in the context of the English law of breach of confidence (see para 11). That test is designed to achieve a balance between the competing claims of Articles 8 and 10 of the Convention. The first question is whether the information in question is private in the sense that it is in principle protected by Article 8. If not, the inquiry stops there. If it is, the second question is whether the interests of the owner of private information must yield to the right of freedom of expression conferred on the publisher by Article 10. That involves a balancing exercise. In my opinion, although Ms Wilson valiantly sought to defend her client's position under the rubric of the second question, the real battleground here is in relation to the first.

176. The *locus classicus* on both questions, in the context of a claim for misuse of private information, is *ZXC v Bloomberg LP* [2022] UKSC 5; [2022] AC 1158 ("*ZXC3*"). The ultimate question is whether the individual has a reasonable expectation of privacy in connection with the information at issue. That is an objective question (para 49). In order to answer that question, regard must be had to all the circumstances of the case (para 50), including the attributes of the claimant, the nature of the activity in which he was engaged, the nature and purpose of the intrusion, the effect on the claimant, and the circumstances in which and for which the information came into the hands of the publisher. I interpolate: given that the tort (on these present facts) would be complete when the Defendant released the information to the journalist, the focus must be on the circumstances surrounding that disclosure.

177. *ZXC3* further makes clear that certain types of information will normally be regarded as engendering a reasonable expectation of privacy so as to be private in character (para 52). "Involvement in crime as a victim or witness" is an example of information of that type. "Involvement in current criminal activity" does not normally engender such an expectation (para 53). Whether information is already in the public domain is relevant (para 54).

178. The Supreme Court concluded that as a general rule an individual under criminal investigation (and in my view, arrest is *a fortiori*) does have a reasonable expectation of privacy. This is because:

> "81. Several themes emerge from the material articulating those concerns. First, the growing recognition that as a matter of public policy the identity of those arrested or suspected of a crime should not be revealed to the public has now resulted in a

> uniform general practice by state investigatory bodies not to identify those under investigation prior to charge. Second, the rationale for this uniform general practice is the risk of unfair damage to reputation, together with other damage. Third, the practice applies regardless of the nature of the suspected offence or the public characteristics of the suspect. To be suspected by the police or other state body of a crime is damaging whatever the nature of the crime. The damage occurs whatever the characteristic or status of the individual. Fourth, there is uniformity of judicial approach, at first instance in a series of cases and in the Court of Appeal in this case, based on judicial knowledge that publication of information that a person is under criminal investigation will cause damage to reputation together with other damage, irrespective of the presumption of innocence. This has led to a general rule or legitimate starting point that such information is generally characterised as private at stage one."

179. I have said that the fact of arrest is *a fortiori*. That is because, in the public mind at least, reasonable people will think that a person will not be arrested unless the police have some evidence.

180. The Supreme Court endorsed both the conclusion of Lord Justice Leveson and the College of Policing's Guidance published in 2017. The latter stated that:

> "3.2 **Respecting suspects rights to privacy**
>
> Suspects should not be identified to the media (by disclosing names or other identifying information) prior to the point of charge except where justified by clear circumstances e.g. a threat to life, the prevention or detection of crime or a matter of public interest and confidence. (Emphasis added.)
>
> …
>
> 4.2 This approach recognises that, in cases where the police name those who are arrested, there is a risk of unfair damage to the reputations of those persons, particularly if they are never charged. (Emphasis added.)"

181. At para 109 the Supreme Court added this:

> "We would add that in the course of submissions reference was made to expressions such as there being no smoke without fire and that mud sticks. These expressions were then followed by debates as to whether smoke represented rumour and fire was the equivalent of guilt, or whether fire could be reasonable suspicion of guilt. We consider that such expressions obscure rather than elucidate the essential point, which in the event was accepted by Bloomberg, namely that reputational and other harm will ordinarily be caused to the individual by the publication of such

> information. The degree of that harm depends on the factual circumstances, but experience shows that it can be profound and irremediable."

182. Further, at para 125:

> "We consider that article 8 does encompass a reputational dimension which in the United Kingdom is primarily protected by the tort of defamation. However, reputational damage attaining a certain level of seriousness and causing prejudice to personal enjoyment of the right to respect for private life, can also be taken into account in determining whether information is objectively subject to a reasonable expectation of privacy in the tort of misuse of private information. It is included in all the circumstances of the case which should be considered and the effect on the claimant is expressly one of the Murray factors. On this basis, we reject Bloomberg's argument at para 74(c) above, and we consider that information may be characterised as private because it is reputationally damaging provided it attains a certain level of seriousness and consequentially impacts on the personal enjoyment of the right to respect for private life."

183. The Defendant's primary argument in the present case is that the information it provided to the journalist was anonymous in that it did not name the Claimant and could not reasonably have been understood as relating to him. Mr Jacobs had two answers to that submission. The first was that, as a matter of law, there is no requirement that a claimant prove that he can be identified by the information that has been disclosed: the issue is whether it relates to him in such a way that it can reasonably be said to affect or be about him. The second was that, on the facts, the Claimant was identified to the journalist by the information supplied even though he was not named.

184. I was referred to a number of authorities relevant to the first submission. I have taken time to read them carefully, but for the purposes of this case no extensive analysis is required. I accept that there will be circumstances in which the disclosure of information that does not identify a claimant may nonetheless be actionable. For example, in *L v G*, [2002] DCR 234, the District Court in New Zealand awarded the claimant damages after the defendant sold explicit pictures of her notwithstanding that she could not be identified. In that case, there was clearly an intrusion upon the claimant's dignity and autonomy. In oral argument I suggested that anonymised disclosure of x-rays of my teeth would not be actionable. In the present case, the disclosure did not relate to some inherent characteristic of the Claimant, but to what he was accused of doing. The information was extraneous to the Claimant but was clearly "about him" once the link to him in some identifiable way was established. Thus, had there been no prospect of identification, the Claimant could have had no complaint.

185. In any event, Mr Jacobs' first submission was somewhat theoretical. In order to bring home his claim for substantial general and, in particular, special damages, the Claimant has to show that he was identifiable.

186. A further question is whether a risk of identification by the journalist is sufficient, or whether probable identification must be established. This requires consideration of the principles of data protection law on which the tort of misuse of private information draws for this purpose. As explained below, I need not determine the minimum threshold because the Claimant satisfies the higher threshold on the facts.

187. In *Vidal-Hall v Google Inc* [2015] EWCA Civ 311; [2016] QB 1003, the Court of Appeal cited passages from the preamble to the relevant EU Directive on data protection as well as the terms of Article 1. I agree with Mr Jacobs that it is clear that data protection is concerned with the safeguarding of the privacy rights vouchsafed by Article 8 of the Convention. Conceptually, misuse of private information is based in this regard on the same legal platform as data protection. In my view, the principles of data protection law *in this particular context* can be read across to this domestic tort. There are other contexts (e.g. in defining "damage") where they cannot: see *Lloyd v Google LLC* [2021] UKSC 50; [2022] AC 1217.

188. The terms of recital 26 of the preamble to Council Directive 95/46/EC are instructive:

> "Whereas the principles of protection must apply to any information concerning an identified or identifiable person; whereas, to determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the said person; whereas the principles of protection shall not apply to data rendered anonymous in such a way that the data subject is no longer identifiable."

189. In *OC v European Commission* [2025] 1 CMLR 4, the CJEU provided the following guidance:

> "45 The Court has held that the use of the expression 'any information' in the definition of the concept of 'personal data' in Article 4, point 1, of the GDPR reflects the aim of the EU legislature to assign a wide scope to that concept, which potentially encompasses all kinds of information, not only objective but also subjective, in the form of opinions and assessments, provided that it 'relates' to the data subject. Information relates to an identified or identifiable natural person where, by reason of its content, purpose or effect, it is linked to an identifiable person (judgment of 4 May 2023, *FF v Österreichische Datenschutzbehörde* (C-487/21) EU:C:2023:369; [2024] 1 C.M.L.R. 30, paragraphs 23 and 24).
>
> 46 With regard to the 'identifiable' nature of a natural person, Article 3, point 1, of Regulation 2018/1725 states that an identifiable natural person is 'one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical,

> physiological, genetic, mental, economic, cultural or social identity of that natural person'.
>
> 47 The use by the EU legislature of the word 'indirectly' suggests that, in order to treat information as personal data, it is not necessary that that information alone allows the data subject to be identified (see, by analogy, judgment of 19 October 2016, *Breyer* (C-582/14) EU:C:2016:779, paragraph 41).
>
> 48 Recital 16 of Regulation 2018/1725 states, in that respect, that in order to determine whether a natural person is identifiable, account should be taken of 'all the means reasonably likely' to be used, either by the controller or 'by another person', to identify the natural person 'directly or indirectly' Thus, for information to be treated as 'personal data', it is not required that all the information enabling the identification of the data subject must be in the hands of one person (see, by analogy, judgment of 19 October 2016, *Breyer* (C-582/14) EU:C:2016:779, paragraph 43)."

190. Article 4(1) of the GDPR defines personal data as:

> "any information relating to an identified or identifiable person … an identifiable person is one who can be identified, either directly or indirectly."

191. The disclosure did not name or identify the Claimant in the sense that it did not state who he was. The question is whether the information nevertheless rendered him identifiable to this journalist. In addressing that question, regard must be had to the "means reasonably likely to be used" by the journalist and the information which the Defendant knew, directly or by inference, that he already possessed.

192. The decision in *OC* does not assist in specifying the degree of likelihood which must be established before an individual is identifiable, and I received only limited submissions on this topic from the Claimant. The Defendant's case, advanced by Ms Wilson, was that the issue was not about concepts of risk or even of likelihood. The identifying details must be "about" the Claimant, and they either are or are not.

193. I agree that the identifying details must be "about" the Claimant because if they are not there is no claim, but putting the issue in those terms does not answer the anterior question of what "identifiable" means. It cannot be the law that "identifiable" means, "certainly can be identified". A lower test is required, and one which embraces considerations of common sense and the need to do justice.

194. There is force in the argument that a "significant risk" of identification is sufficient, but I need not decide that point. For present purposes, I assume that the Claimant must establish that he was likely to be identified by the recipient of the information. He satisfies that threshold on the facts of this case.

195. The modest claim under the Data Protection Act 1998 does not require a separate summary of the governing principles. I turn to the legal framework on causation.

196. It is important to distinguish liability from causation. Liability turns on whether the Defendant disclosed to the journalist private information relating to an identifiable person. Causation concerns whether that disclosure caused the Claimant any loss and the extent to which the newspaper articles enabled his identification within the school community. The test for identifiability at the liability stage is not the test governing those causation questions.

197. Subject to the Defendant's other causation arguments, the direct and proximate cause of the Claimant's loss was the newspaper's two publications, rather than the disclosure to the journalist itself. The question is whether publication broke the chain of causation. The governing approach is explained by Waller LJ in *McManus v Beckham* [2002] EWCA Civ 939; [2002] 1 WLR 2982, at para 34:

> "What the law is striving to achieve in this area is a just and reasonable result by reference to the position of a reasonable person in the position of the defendant. If a defendant is actually aware (1) that what she says or does is likely to be reported, and (2) that if she slanders someone that slander is likely to be repeated in whole or in part, there is no injustice in her being held responsible for the damage that the slander causes via that publication. I would suggest further that if a jury were to conclude that a reasonable person in the position of the defendant should have appreciated that there was a significant risk that what she said would be repeated in whole or in part in the press and that that would increase the damage caused by the slander, it is not unjust that the defendant should be liable for it. Thus, I would suggest a direction along the above lines rather than by reference to "foreseeability"."

Laws LJ emphasised at paras 39–40 that causation should not be confined by rigid rules. The question is the extent of the loss for which the defendant should justly be held responsible. At para 39, quoting his judgment in *Rahman v Arearose Ltd* [2001] QB 351, 366–368, he stated:

> "29. … The law is that every tortfeasor should compensate the injured claimant in respect of that loss and damage for which he should justly be held responsible. To make that principle good, it is important that the elusive conception of causation should not be frozen into constricting rules."

198. These general statements of principle provide a helpful framework for the determination of the problem which arises in the present case: that it was not the Defendant who published to the world at large but the newspaper. Assuming that the Defendant's disclosure to the journalist was such that the Claimant could be identified, and that the newspaper's publications were such that the Claimant could be identified by those with some connection to the school, to what extent did the newspaper's editorial decisions break the chain of causation? The newspaper did not publish the information in precisely the form provided to it by the Defendant. Further, if the newspaper committed the tort of misuse of private information, is that a problem for

the Claimant? Ms Wilson strongly submitted that it is, particularly in relation to the second article.

199. The obvious starting point for answering these questions is that the Defendant's media policy has two clear purposes. The first is to provide information to the press which it is in the public interest to publish. The second is to ensure that information which is private, and is not in the public interest to publish, is not provided to the press. In my judgment, if the Defendant wrongly provides information which does not respect the privacy rights of the individual, it will or ought to know that there is a significant risk, if not a likelihood, that the press will nonetheless publish that information. The Defendant may appreciate that, in publishing the information, the newspaper will be committing the very tort that the Defendant itself has perpetrated; but, applying the principles in *McManus v Beckham*, that in most circumstances will not break the chain of causation.

200. Questions of fact and degree may well arise. There will be situations where the actions of the publisher travel beyond any reasonable expectation. The causal link is established, if appropriate, by a close examination of the evidence in the case under consideration, including the common-sense inferences to be drawn from that evidence.

201. The remaining causation questions concern prior disclosures and the solicitor's intervention, the newspaper's editorial decisions, publication without the Defendant's disclosure, and the possibility of the information becoming known by another route. Other questions about the extent of financial loss are addressed when assessing quantum.

202. As to prior disclosures and the solicitor's intervention, two questions arise: whether the Notice to all Parents already sufficiently identified the Claimant to constitute the operative cause of his loss; and whether his solicitor's implicit confirmation of the arrest broke the chain of causation. The journalist knew whom the solicitor represented.

203. As to publication without the Defendant's disclosure, I must assess whether the newspaper would nevertheless have published an article and, if so, its likely content. I consider those questions together, recognising the absence of evidence from the newspaper and avoiding speculation.

204. As to disclosure by another route, I must evaluate the chances that the same information would have entered the public domain regardless of the Defendant's and newspaper's actions.

THE PARTIES' SUBMISSIONS

205. Ms Wilson submitted that the Defendant did not disclose any identifying details of or about the Claimant to the journalist. As she put it in oral argument "NCND[4] is firmly writ large". The Defendant had made clear in terms that the information it was providing did not relate to any particular individual. Further, the information did not

[4] Neither confirm nor deny

indicate that the individual arrested was a member of staff. It is, therefore, a "leap" to contend that the information provided by the Defendant in relation to an anonymous man's arrest was about the Claimant so as to afford him a reasonable expectation of privacy.

206. Ms Wilson submitted that the Defendant's media policy made clear that it was not "one size fits all", and she argued that the information was disclosed to the journalist in a proper application of that policy. Ms Wilson invited me to place little weight on the concerns expressed to DC Carpenter by the Claimant's solicitors: the latter did not have sight of the press lines. In any event, it was contended that the information provided could not reasonably have given the newspaper the confidence to publish to the world at large the information identifying the Claimant as having been arrested.

207. Ms Wilson advanced a number of submissions on the balancing exercise. It was accepted that the Defendant does not possess Article 10 rights. She submitted that the limited information provided, and the Defendant's advice that it did not confirm names, remained relevant. It allowed the police to be transparent with the media as to an ongoing investigation while expressly warning journalists not to understand or interpret the press lines as referring to any individual. It could reasonably be expected that a responsible news organisation would respect that information. Any invasion of the Claimant's privacy was therefore limited.

208. On causation, Mr Stagg and Ms Wilson submitted that the first article did not identify the Claimant as the person arrested, and it named the school whereas the Defendant did not. Mr Stagg reminded me of STB's evidence on this issue. At least four emails received from parents did not connect the person arrested with the Claimant. Further, the journalist clearly had other sources: Z; the Notice to all Parents; and the Claimant's solicitor.

209. Mr Stagg and Ms Wilson submitted that the second article was "sensationalist" and that it did in effect identify the Claimant. Mr Stagg relied on the fact that the second article named the school, identified that the man arrested was a staff member, and framed the matter as being that the school was "at the centre of sex abuse claims". The Defendant was responsible, he submitted, for none of those statements. Applying the guidance in *McManus v Beckham*, it would not be just and reasonable to hold the Defendant liable for the consequences.

210. Mr Jacobs submitted that the Claimant clearly enjoyed an expectation of privacy in this case because: (1) he was identifiable from the information disclosed, and (2) that information – his arrest for sexual offences – fell within *ZXC3*. In his written closing argument, Mr Jacobs advanced his client's case in this way:

> "The essence of the MPI claim is narrow and straightforward. It is that:
>
> (1) The request to the Press Bureau was <u>about the school</u> and referred to the headmaster standing down.
>
> (2) The response was also about the school. (If the response that a man had been arrested in relation to offences of voyeurism

> and possession of indecent images was not related to school, it would have been an absurd and grossly misleading response).
>
> (3) Given that only one XX-year-old man had recently stepped back from their duties at [the school], and furthermore, that the enquiry referred to the headteacher, [the Claimant] was identifiable to [the journalist].
>
> (4) Even without the age, [the Claimant] would have been identifiable given the small pool of male teachers who had recently ceased attendance at the school (let alone stood down further to safeguarding issues).
>
> That, in fact, is sufficient to dispose of the claim in [the Claimant's] favour. The only real defence to the claim is that the information was anonymous in not naming either the school (instead referring to the area of 'Z') or [the Claimant] by name. But that is a wholly unrealistic interpretation of the exchange."

211. On causation, Mr Jacobs submitted that the critical information disclosed by the Defendant was the arrest and the nature of the suspected offences. No other source had supplied that information. He accepted that the Claimant's solicitor had confirmed the arrest to the journalist, but submitted that this was a reasonable attempt to limit the damage after DC Carpenter had explained the intended press lines. It did not break the chain of causation. He further submitted that both articles enabled identification, that the second was more damaging, and that both fell within the principles in *McManus v Beckham*.

212. I have considered the parties' oral and written submissions on liability and causation. My conclusions follow.

ANALYSIS: THE MISUSE OF PRIVATE INFORMATION CLAIM: LIABILITY AND CAUSATION

Identification of the Claimant to the journalist

213. The disclosures must be assessed by reference to the information available to those involved at the time, without the benefit of knowing subsequent events.

214. Information about the arrest of the Claimant for sexual offences would be information in respect of which he had a reasonable expectation of privacy, provided that the Claimant proves that he was identifiable to the journalist by the information the Defendant disclosed.

215. When the journalist contacted the press bureau, he was seeking confirmation that the police were investigating the school. He said that it was his understanding that the headmaster had stood down. In my judgment, the Defendant was therefore aware that any information it provided in response to the journalist's request would be understood

by him as relating to the school (as Ms Wickers said in evidence, to have provided information on any other basis would have been grossly misleading) and that he would assume that it related to the headmaster (although he could not be sure of that). The Defendant did not know that the journalist had received other information from the school which could properly be described as sensitive – the Notice to all Parents. The journalist's only stated source was Z, and the Defendant could have had no idea what Z told him. The Defendant would not of course be responsible for that in any event, and there is no evidence that Z disclosed the fact of arrest for sexual offences.

216. The information that the Defendant provided went further. The journalist was told that a XX-year-old man had been arrested for sexual offences. None of that information came from any other source, and the journalist had asked for less. In my judgment, the journalist could probably work out that the XX-year-old man was the Claimant; and, if he could not, it would not have been too difficult to find out by conducting public-source searches, including at Companies House. Those would have confirmed the Claimant's age, if such confirmation were needed. In my judgment, it would scarcely be a "leap" to put all these pieces together - including the piece that the headmaster had stood down (the Defendant knew that the journalist was aware of that) - and to reach the conclusion that the headmaster had been arrested for sexual offences.

217. For the reasons given above, the NCND qualification did not neutralise the identifying information supplied with it.

218. At this point, I should deal briefly with the balancing exercise. Ms Wilson's submissions on the second limb of the test were predicated almost entirely on the proposition that the information disclosed was anonymous; but I have rejected that submission. Any public interest in disclosure was clearly outweighed by the Claimant's Article 8 rights.

219. For all these reasons, the journalist should not have been told that a XX-year-old man had been arrested for two sexual offences. The most that he should have been told was that a police investigation was ongoing in the Z area, and that the police were unable at this stage to give any further details. It follows that the disclosure constituted a misuse of the Claimant's private information. The extent of the resulting recoverable loss depends on the causation questions to which I now turn.

Prior disclosures and the solicitor's intervention

220. On prior disclosures and the solicitor's intervention, Mr Stagg emphasised that the solicitor had implicitly confirmed to the journalist that the Claimant had been arrested. Although the solicitor gave no particulars of the suspected offence, his communication clearly identified his client.

221. Here, the precise sequence of events is important. DC Carpenter told the solicitor what the press lines would be although he omitted the details of the XX-year-old man. DC Carpenter was involved in the preparation of these press lines, and he therefore knew what these lines would be. The solicitor told DC Carpenter that releasing this information would serve to identify both the school and the Claimant. Although I cannot accept Mr Jacobs' submission that DC Carpenter positively hoped that the Claimant would be identified, I consider that it is very surprising that DC Carpenter did

not transmit the solicitor's concern to the press bureau. The issue for my resolution is whether in all these circumstances the solicitor's decision to engage with the newspaper served to break the chain of causation. As it happens, the solicitor's contact with the newspaper was *after* the journalist had received the press lines, but the precise timing does not matter.

222. The solicitor's intervention did not break the chain of causation. Knowing that the police had disclosed, or were about to disclose, his client's private information, he reasonably sought to prevent publication or limit its damaging effects. His approach to the newspaper was a response to the Defendant's disclosure, not an independent cause displacing it. Although the established principle permitting recovery of loss incurred in mitigating damage is not directly applicable, it supports that conclusion. The solicitor acted reasonably throughout, and the Defendant remains liable for the consequences of its disclosure.

223. In any event, the Claimant's solicitor did not disclose to the journalist any information which related to the subject-matter of the arrest. Although the solicitor's communication with the newspaper did serve conclusively to confirm identity, the only entity responsible for providing information about the subject-matter of the arrest was the Defendant.

Whether the newspaper's editorial decisions broke the chain of causation

224. The next question to address is whether, applying *McManus v Beckham*, the newspaper's editorial decisions broke the chain of causation.

225. In releasing the press lines it did, the Defendant must have been aware that there was a high risk that the newspaper would publish an article which contained the information disclosed. That in so doing the newspaper itself violated the Claimant's privacy rights does not in my judgment break the chain of causation in these circumstances because: (1) those were the very matters which the media policy, properly understood, was designed to protect, and (2) the newspaper did not materially depart from the substance of the information disclosed by the Defendant. Although it added identifying contextual material and presented the story in more vivid terms, those features did not amount to an independent intervention sufficient to break the chain of causation.

226. The point may be illustrated in this way. Had either the first or the second article cited the press lines verbatim, the chain of causation would be intact.

227. The first article was, in any event, relatively restrained. It is possible that the solicitor's representations had some sort of impact. The first article identified the school, but it did not name the Claimant, nor did it provide his age. Reading the subsequent emails of parental concern, it might be difficult to say that many parents, mentally conjoining the first article with the Notice to all Parents, in fact concluded that the first article was about the Claimant. Some, however, would have reached that conclusion; and a parent would, frankly, have to be fairly blinkered not to have understood that the person arrested was at the very least a teacher in the school.

228. Ms Wilson strongly submitted that the Notice to all Parents "obviously" related to the Claimant. I have not accepted that submission at its zenith, but had I done so it would

prove too much. If the notice was "obviously" about the Claimant, readers of the first article (in reality, all parents, since this news must have spread like wildfire) would have concluded that it also related to the Claimant. The fact remains that the first article went considerably further than the Notice to all Parents in detailing an arrest for sexual offences.

229. I do not consider that it is necessary to make a finding as to how much damage was caused by the first article as distinct from the second. The claim for special damages is based on both articles taken together. The second article deployed the information supplied by the Defendant on 20 April and combined it with the further information disclosed on 23 June. It was far from remarkable that this would happen. The journalist's belief that there had been a second "arrest" for an even more serious sexual offence was likely to have emboldened the editor. In my judgment, the key point here is that the second article did not materially go beyond the substance and reasonably foreseeable implications of the Defendant's disclosure. The second article made express reference to a member of staff but, as I have found, that was a clear inference from the information disclosed by the Defendant, taking into account the overall context and basic common sense. Mr Stagg and Ms Wilson submitted that the newspaper used "sensationalist" language. The way I would prefer to put it is that the journalist, or his editor, spiced up the story but it was not over-spiced. That newspapers write in this way is not unheard of.

230. As I have pointed out, the Defendant accepts that the second article did relate to the Claimant. Save for the alleged second arrest, everything in the second article could have been put into the first. Editorial decisions of the newspaper are a factor but here these were neither surprising nor unreasonable.

Publication without the Defendant's disclosure

231. I next consider whether the newspaper would have published without the Defendant's disclosure and, if so, in what terms. There is no evidence from the newspaper about its decision-making. It is possible, albeit unlikely, that it would have published an article based on the Notice to all Parents. Such an article would have been considerably less newsworthy and would have had little impact on the Claimant's position at the school or on parental perceptions. The disclosure of the arrest and the nature of the suspected offences gave the actual story its significance.

Disclosure by another route

232. I also consider whether the same or similar information would have entered the public domain, or become known to parents, by another route. In my judgment, that is very unlikely if the Defendant had respected the Claimant's reasonable expectation of privacy. STB identified the small group at the school who knew the nature of the investigation and said that he trusted them implicitly. I accept that evidence.

233. That conclusion does not determine whether the Claimant would have sold the school at approximately the same time in any event, or the extent of any resulting financial loss attributable to the Defendant's tort. I address those questions when assessing special damages.

THE DPA CLAIM: LIABILITY AND CAUSATION

234. It is unnecessary to dwell at length on this claim, for three reasons.

235. First, assuming that the information relating to the second arrest was about the Claimant, the Defendant clearly did breach the first and fourth data protection principles. I have already found that the information was about the Claimant.

236. Secondly, the damage attributable to the DPA breach, as opposed to the misuse of private information, was less because the error was soon corrected. I do not agree with the Defendant that the error was "slight", and I think that for some parents the second "arrest" created a lasting problem. The correction in the online edition served to mitigate only some of the damage.

237. Thirdly, in terms of the claim for special damages, the primary cause of the Claimant's loss was not the breach of the DPA. As I suggested in oral argument, the claim for special damages could not succeed if only the DPA claim succeeded.

238. In my view, the appropriate course is to make a combined award, reflecting any additional harm attributable to the inaccurate information while avoiding double recovery.

ANALYSIS OF THE CLAIMS: QUANTUM

GENERAL DAMAGES AND AGGRAVATED DAMAGES

239. I have upheld the trespass claims (in part) and the claim for false imprisonment.

240. The first trespass consisted only of the failure to leave a copy of the warrant at the Claimant's home. The failures in obtaining the warrants do not form part of this award. This technical breach warrants damages of **£500**. Aggravated damages are not appropriate.

241. As for the Article 8 claim, that has failed on limitation, but in my view it remains appropriate for me to rule on what the appropriate award would have been. Section 8(3) of the HRA provides that damages may be awarded only if, having regard to all the circumstances, including any other relief or remedy granted, the Court is satisfied that an award is necessary to afford just satisfaction. Under s.8(4), the Court must take account of the principles applied by the ECtHR under Article 41. Damages for just satisfaction are generally modest and, although aggravating circumstances may be taken into account when fixing the award, there can be no separate award of aggravated damages.

242. The searches involved serious intrusions into the Claimant's home and private life and resulted from applications which should never have been made. Had the claim been brought in time, I would have considered an award necessary to afford just satisfaction. Taking account of the other damages awarded, and avoiding double recovery, I would

have awarded £4,000 under s.8 of the HRA. In short, I have taken the Defendant's figure but subtracted £500 to avoid double recovery.

243. I have upheld the claim for false imprisonment. However, the Claimant had in any event agreed to be interviewed on the same occasion. A voluntary interview might have been shorter, since the formalities associated with an arrest would not have been required. In my judgment, damages for false imprisonment should be awarded in the sum of **£4,000**. The decision to arrest the Claimant was erroneous, but I have found no aggravating features.

244. The Claimant is also entitled to damages for trespass in relation to the searches of his car and home carried out on 4 April. There is no evidence of any particular disruption. I agree with the Defendant's figure of **£3,000**. Again, there are no aggravating factors.

245. On the misuse of private information claim, the Defendant accepts that damages may compensate loss of control and distress, but disputes recovery for injury to reputation. In *Sicri v Associated Newspapers* [2020] EWHC 3541 (QB); [2021] 4 WLR 9, at para 163, Warby J stated, obiter, that reputational damages were unavailable in such a claim and should be pursued in defamation or another tort in which they are established as recoverable. During closing argument I indicated that I was minded to follow that view. Mr Jacobs reserved the Claimant's position. After the hearing, I invited further written submissions from both parties on the issue and have considered them in reaching the conclusions below.

246. At the heart of Warby J's analysis lie the following propositions. First, it would be wrong in a claim for misuse of private information to allow a claimant to recover damages for harm to reputation in circumstances where the harm derives from a truth rather than a falsity. One example would be a terror suspect whose private information is disclosed following arrest and who is subsequently charged and convicted. Secondly, it is sound to allow the recoverability of reputational damages to be the preserve of defamation, which is the more mature tort in relation to which Parliament has recently legislated. Thirdly, where the nub of the complaint is the falsity of the allegation, it might be an abuse of process to bring the claim in an alternative tort to avoid the rules of defamation. The core of Warby J's concern is the (wrongful) use of the tort of misuse of private information to enable the recovery of damages for reputational injury caused by the publication of information that is defamatory but substantially true.

247. In order to test these propositions, my starting point is the decision of the Supreme Court in *ZXC3* which post-dated *Sicri*.

248. Paragraphs 81 and 125 of *ZXC3*, cited above, explain that the risk of unfair reputational harm is an important reason why a person under criminal investigation has a reasonable expectation of privacy. That reasoning is relevant to the scope of recoverable loss: the harm which underpins the protection should not be excluded from compensation merely because it has a reputational dimension. The question remains whether that harm has affected the claimant's personal and private life, rather than simply whether the disclosed information was defamatory or untrue.

249. At para 95 of its judgment, the Supreme Court cited, and impliedly endorsed, para 248 of Mann J's judgment in *Richard v BBC* [2019] Ch 169:

> "It seems to me that on the authorities, and as a matter of general principle, a suspect has a reasonable expectation of privacy in relation to a police investigation, and I so rule. As a general rule it is understandable and justifiable (and reasonable) that a suspect would not wish others to know of the investigation because of the stigma attached . . . If the presumption of innocence were perfectly understood and given effect to, and if the general public were universally capable of adopting a completely open and broad-minded view of the fact of an investigation so that there was no risk of taint either during the investigation or afterwards (assuming no charge) then the position might be different. But neither of those things is true. The fact of an investigation, as a general rule, will of itself carry some stigma, no matter how often one says it should not."

250. And at para 108 of its judgment, the Supreme Court stated:

> "The presumption of innocence is a legal presumption applicable to criminal trials. In that context the presumption weighs heavily in the directions that a jury is given or in the self-directions that a judge sitting alone applies. However, the context here is different. In this context the question is how others, including a person's inner circle, their business or professional associates and the general public, will react to the publication of information that that person is under criminal investigation. All the material which we have set out between paras 80—99 above [including Lord Justice Leveson's report] now admits to only one answer, consistent with judicial experience, namely that the person's reputation will ordinarily be adversely affected causing prejudice to personal enjoyment of the right to respect for private life such as the right to establish and develop relationships with other human beings. Accordingly, we reject the submission that a general rule or starting point is unsound because it significantly overstates the capacity of publication of the information to cause reputational and other damage to the claimant given the public's ability and propensity to observe the presumption of innocence."

251. I note that at para 97 of its judgment the Supreme Court cited *Sicri* but did not refer to paragraph 163.

252. It is true that in *ZXC3* the Supreme Court was not deciding the question that I have to determine. Even so, I consider that the Supreme Court's treatment of reputational damage as a factor in determining whether a reasonable expectation of privacy exists lends support to the proposition that, where liability is established, damages may be recoverable for the resulting reputational harm. This is because, as Mann J in particular made clear, reputational damage in a case such as this does not ensue because the public has a fine intellectual apprehension of the presumption of innocence and is open and fair-minded at all material times. The public perception is that there is "no smoke without fire".

253. It is unnecessary to decide the parameters of recoverability of reputational damage across all possible factual patterns. I am concerned with a case where the private information at issue relates to a police investigation and arrest. In a scenario such as the present, care must be taken to delimit the bounds of potential recovery. In my judgment, this claim must be predicated on the footing that the information disclosed was substantially true. This means that the claim proceeds on the premise that the Claimant was being investigated for two offences and had been arrested on suspicion of committing them. Those bare facts were true. In my view, the Claimant cannot deploy this tort as the vehicle for questioning the lawfulness of the arrest or the reasonableness of the police officer's suspicion: these must be treated as givens. The separate consequences of the inaccurate report of a second arrest are addressed under the DPA claim. Finally, it was not the Defendant's case in these proceedings that the Claimant had committed the offences for which he was under suspicion.

254. I am not ignoring the conceptual problem identified by Warby J. For centuries, reputational damages have been awarded for defamatory statements which, assuming that the point was put in issue by a defendant, were untrue. The notion that reputational damages may be recovered for breach of duty in relation to this fairly new tort seems, at first blush, to be anomalous. In my view, the anomaly falls away provided that it is understood that a disclosure of what is private is capable of causing serious reputational harm even if the bare facts disclosed are true.

255. I would formulate the principle in this way. Damages are recoverable for the impact upon the claimant's personal and private life caused by reputational harm flowing from the misuse of this private information. That the Claimant was under police investigation and had been arrested was factually true, but the policy of the law, confirmed by *ZXC3*, is that he had a reasonable expectation of privacy in relation to those (true) facts.

256. There is, in any event, a significant degree of overlap in a case such as this between damages for distress and damages for reputational harm. The Claimant's evidence is that the publications in the newspaper were "disastrous" and "intrusive", and left him "feeling like damaged goods". The stigma was obvious. The claim for reputational damage in this particular case does not add much to the claims which are uncontroversial.

257. This is a strong case for compensating the impact on the Claimant's personal and private life of the reputational harm caused by the disclosures. The Claimant, as the headmaster of a school, responsible for the physical, moral and psychological well-being of its pupils, was being investigated, and had been arrested on one occasion, for serious sexual offences. The reference to possession of indecent images expressly concerned children. Although the disclosures did not specify that the other suspected offences involved pupils, many parents would have inferred that they did. This information was exceptionally sensitive because of its obvious potential to cause devastating damage to a headmaster's career.

258. The claim for general damages must also include an important element for "loss of control" and distress. The "loss of control" was significant in this case because the Claimant's advisors had been assiduous in providing limited information to the parental body in a way which would not be misleading, would preserve trust, and would cause as little damage as possible to the reputation of the Claimant and the school. The Notice

to all Parents was very carefully crafted; the Claimant's advisors must have felt that they were treading very carefully. Once the publications occurred, in particular the second publication, all control was lost.

259. The Defendant submitted that there is little evidence of the Claimant's distress. He gave his evidence calmly and in a measured fashion, but his witness statement addresses the subject at length. His account of what the school represented to him helps explain the depth of that distress:

> "Creating a beautiful and successful school and institution is an intricate, lengthy and arduous process, involving the contribution, spirituality, and individuality of all who are part of it. Sustaining its beauty and success involves constant vigilance, care and compassion. Destroying it, meanwhile, can be the work of moments. Right from its inception, a core value of [the school] was truth, and I encouraged pupils to be truthful and to live with integrity, to uphold and speak the truth, and to seek out the truth at school and in their lives."

The Defendant's more persuasive submission was that the Claimant cannot receive damages for distress consequent on the police investigation.

260. My attention has been drawn to awards made in other cases. In *Richard*, Mann J awarded £190,000 (£275,000 at current values) in general damages and a further £20,000 for aggravated damages following publication of claims that the singer was being investigated about historic sexual assault claims. In *ZXC v Bloomberg LP* [2019] EWHC 970 (QB); [2019] EMLR 20 Nicklin J awarded £25,000 (now £33,000) for publication of information that the Claimant was being investigated for possible offences of corruption and bribery. This caused him significant distress and anger and affected his standing and family life. In *Sicri*, where the claimant had been arrested for alleged involvement in the Manchester bombing, the award was £50,000 (now £64,000) including aggravated damages.

261. Plainly, this exercise is acutely fact specific. I propose to follow the approach of Warby J and Nicklin J which is not to award a separate amount for aggravated damages but to treat the obvious aggravating factors of this case as an element of the overall award for general damages. Those factors include:

(1) the obvious sensitivity of this particular case, of which the Defendant was reminded more than once;
(2) the particular care required before disclosing information about an untested allegation;
(3) the Defendant's failure to promulgate media guidance which placed the Leveson recommendation front and centre, and
(4) DC Carpenter's failure to pass on the Claimant's solicitor's concerns to the press bureau.

262. In assessing the award, I exclude distress and other harm attributable to the continuing investigation and other independent causes, rather than to the Defendant's disclosures. In my judgment, for the misuse of his private information on two occasions the

Claimant should receive an award of general damages of **£80,000**. This includes a modest award in respect of the DPA claim.

THE MISUSE OF PRIVATE INFORMATION CLAIM: SPECIAL DAMAGES

Introduction

263. Before I address the evidence, it is necessary to be clear how the claim for special damages is constructed. This will help identify the issues.

264. First, the Claimant advances a loss of profit claim based on the fall in pupil numbers in 2017/18 compared with the previous year, allowing for the slight downward trend caused by market forces. The forensic accountants, Mr Nicholas Woodmansey for the Claimant and Mr Vitek Frenkel for the Defendant, are close to agreement: their analyses identify reductions of 67 and 61 pupils respectively. Both defer to the Court on the proportion attributable to the Defendant's misuse of private information rather than other factors. Once that proportion is determined, the parties should seek to agree the loss of profit calculation, obtaining the experts' assistance if necessary.

265. The next issue concerns reflective loss. In the three years ended August 2017, approximately 87% of the profits went directly to the Claimant and the remainder to a limited company which he owned. The evidence is that the profits accruing to the company would have been distributed to him in due course. The Defendant relies on the reflective loss principle to dispute recovery of that 13% of the loss of profit claim.

266. The Claimant also seeks compensation for loss on the sale of the school based on the difference between its market value at the time of sale and the sale price achieved. As for the latter, the school was sold in September 2018 for £6.8 million. Numerous factors contributed to that price. The parties agree that the fall in pupil numbers was important. In July 2018 the price was reduced from £7.1 million because the projected number of fee-paying pupils for September 2018 was 22 lower than the projection in February or March 2018.

267. As for the former, the parties are not (quite) in agreement as to the market value of the school unaffected by the police investigation and the Defendant's torts, if any. Both experts have valued the school on that basis as at 1 September 2017, disregarding the downward pressures which led to the actual sale price in September 2018. The Claimant has not contended for a later date (on the premise that he would, for example, have retired later), and neither party has said that the unaffected value should be assessed as at September 2018. Both experts use agreed maintainable earnings of £785,000 and an earnings multiple, a common valuation method for private schools offered for sale. On my understanding, the multiple is not based on pupil numbers.

268. As for that multiple, Mr Woodmansey proposes 12 and Mr Frenkel 10. A midpoint multiple of 11, used illustratively in their joint statement, would produce an unaffected value of £8,635,000. I was minded to adopt that midpoint, but no submissions were advanced on the multiple and the parties do not wish me to determine it on that basis. The figure is therefore illustrative only. I expect the parties to compromise this issue promptly.

269. Three issues require determination. First, the Defendant contends that the capital loss was unforeseeable or too remote. Secondly, it argues that the Claimant had decided to sell by April 2017 or, at the latest, July 2017. It is unclear whether the argument is that the tort made no difference to an existing decision, that the sale was premature, or that the Claimant failed to mitigate his loss. I address each possibility below. Thirdly, the capital loss assessment must isolate the adverse effects of the pupil losses attributable to the Defendant's tort, excluding those attributable to pupil losses which would have occurred in any event. On the approach explained below, the recoverable loss is the difference between the school's unaffected value and its hypothetical sale value in September 2018 on the footing that it had suffered only the pupil losses attributable to the tort, rather than the whole difference between the unaffected value and the actual sale price of £6.8 million.

270. The parties initially gave me little assistance on this third issue. I was told that my findings would be transmitted to the experts, who would then agree the calculations. I agree that the loss-of-profit calculation can be completed once the relevant findings are made. The capital-loss claim, however, requires a further evaluative determination of the counterfactual sale price, rather than merely an arithmetical calculation. After the hearing I invited further written submissions from the parties.

271. In my view, I should address the issues I have identified in the following sequence:

(1) Foreseeability and remoteness.

(2) Whether the Claimant had already decided to sell the school before September 2017 (finding a buyer and completing the sale took about one year).

(3) The fall in pupil numbers caused by the Defendant's misuse of the Claimant's private information.

(4) The price that would have been achieved in September 2018 allowing for pupil losses that would have occurred in any event.

(5) The "reflective loss" issue.

The evidence

272. The Claimant accepted in his first witness statement that there was no disputing the fact that his absence from the school was hugely damaging because the school was "inextricably linked" to him. However, his evidence was also that the school structure was resilient and that it was more than capable of functioning without him being there. On the other hand, the publication of the two articles was "enormously damaging" both for him and the school. As he puts it at para 128 of his first statement:

> "Following the publication of the second article, the tidal wave of parental worry, particularly around [the school's] future, was immediate. … [Parents] were horrified at the thought that there had been voyeurism, indecent images, and even sexual assault at the school. Even some parents who did not give the allegations

> any weight were forced to consider their options for their child's future education because of the obvious fact that my public association with such horrific allegation would have an impact on [the school's] future viability."

The Claimant accepted in cross-examination that he did not speak with parents directly. His information was derived from his brother, senior managers and his legal advisors.

273. The Claimant's evidence was that he had discussions with his brother and the school's legal and financial advisors as early as 5 April 2017 about the future of the school. He did not want to close the school and was advised that it would not be financially viable to do so immediately. By mid-May 2017, with the investigations continuing, it was decided that "we should explore what selling [the school] would look like". By the summer holidays in 2017, and with pupil withdrawals beginning to mount and have a significant financial impact, it was clear that the only option was to sell. As the Claimant puts it (see para 131 of his first witness statement):

> "I was effectively forced to sell the school under the shadow of the investigation which had a significant impact on the sale price."

274. In his second witness statement, the Claimant explained that a decision to sell the school had not been made as early as 5 April 2017 (as Mr Frenkel had understood). He also explained that with the police investigation continuing until November 2018, it would not have been possible to keep the school going. The situation had already become critical by September 2017.

275. The Claimant was asked in cross-examination whether the school had over-stretched itself by developing rural premises and intending to create a sixth form. He denied that it had. He was asked about his Notice to Parents dated 18 September 2018 in which he announced the sale of the school and added that he had for some time "considered succession". The proposition being put was that he was thinking of retiring in any event. The Claimant's answer was that even if he varied his role, he would have kept going. I am entirely satisfied that he would have kept going, in whatever role, for as long as he possibly could.

276. The Claimant denied that when in Switzerland in late March 2017 he discussed the possibility of sale. He is not right about that, but I find that he had simply forgotten the conversation. The reason that he and his brother were having such a conversation was that they were trying to anticipate all possible eventualities in the context of a potentially very serious situation.

277. The Claimant was taken in cross-examination to various documents from the spring and early summer of 2017 which indicated that the school was exploring the possibility of sale. I have no doubt that it was. The school was, as before, trying to anticipate all possible contingencies.

278. The Claimant was shown a draft email dated 28 June 2017 in which it was said, "we have decided to seek a buyer". A confidentiality agreement with a selling agent was drawn up. My assessment is that the Claimant and his team were taking preparatory

steps; they had not yet decided to sell. That decision was not made until September 2017 and, as Mr Gregory told me, was always reversible (and the Claimant hoped that circumstances would change so that it would be reversed).

279. Although the Claimant was not fully abreast of all the detail, I accept the general purport of his evidence on all these matters. In particular, I accept his evidence that the decision to sell the school was not made until September 2017. I also accept his evidence, recognising as I do much of its hearsay quality, that the two newspaper articles played an important role in lowering both him and the school in the estimation of many parents. I will be seeking to quantify that, as best I can, in due course.

280. STB's evidence was that the second article was far more damaging than the first. The parental reaction to the first was "largely one of confusion". STB is convinced that the second article obviously identified the Claimant as the subject of the police investigation. STB goes on to explain:

> "88. Whilst some pupils and parents, as well as anyone associated with [the school] might have identified the Claimant as having been arrested from the contents of the First Article, there is no doubt that the Second Article led to widespread identification. The Second Article was a huge blow to [the school] and the Claimant. Not only was the Claimant easily identifiable, but the mention of "sexual abuse" and "sexual assault" brought a whole new level of seriousness to the matter. Further, the incorrect mention of a second arrest, carried the inference that there is more evidence to be concerned about, as opposed to the Claimant simply being questioned. The publication of the Second Article and the days that followed felt like the moment where the challenges to keep running [the school] were becoming insurmountable. Around the same time, the words "*[the Claimant] is a pedo*" were graffitied in large letters on the outfacing wooden school fence, next to the school gate."

281. STB's evidence was that following publication of the second article the school noted diminishing applications for places and a steady withdrawal of pupils. Parents did not always give reasons for withdrawing their children, and some records are no longer available because they were retained by the new owners. STB's contention was that "the first, and particularly the second, articles were the direct cause of many of the pupil withdrawals, which caused irreparable financial damage to [the school], leading to its eventual sale".

282. As for the timing of the sale:

> "97. The Claimant, myself, and my [other] brother [redacted] (who was consulted about the future of the school) are pragmatic, and from the first day after the Claimant's arrest, the fact that the school might need to be closed as a result of the investigation was acknowledged. However, the Claimant did not want to close the school – it was his life. In any event,

> professional advice received in April 2017 made it clear that closing the school at that point was not financially viable. However, there was a very real possibility that the business might collapse through catastrophic loss of fee income with no ability to cut employment or other costs in the short term. We also had to service the bank loans and fund our day to day running of [the school]. The school had an overdraft facility of £1 million, which previously had not been used beyond approximately £50k, usually in August of an academic year. At the time [the school] was sold, it had an overdraft of £1.5 million, £500k of which was unauthorised. The fact that the bank did not call in the loans is testament to the high regard the bank had for the business and [the school], supported by [the school's] professional advisers, both legal and accountancy. It is my firm belief that it would have been possible for [the school] to survive the investigation with the Claimant as the owner, had the [newspaper] Articles, with quotes from the Defendant's Press Bureau, not been published."

283. In cross-examination, STB said that staff were instructed to refer parental enquiries to him rather than be drawn into discussion. He did not know what was being said on Mumsnet or parental WhatsApp groups, and there is no evidence before me of those discussions. STB was also asked about a manuscript document in the Claimant's handwriting, apparently dated March 2017. I find that it probably formed the basis of the brothers' discussions in Switzerland. It identified three strategic options, including sale of the school. Exploring those options after execution of the search warrant did not establish that a decision to sell had been made.

284. I largely accept STB's evidence, although it was less detailed than his brother's regarding the timing of the sale. I accept his account of the school's financial position and the steps taken to preserve it. For the reasons given in §300 below, I do not, however, accept his assessment that the school could have survived the continuing investigation with the Claimant as owner.

285. Mr Simon Gregory's evidence was that his business relationship with the Claimant had lasted for some 27 years. His opinion was that at the beginning of 2017 the school was doing well despite a slight cyclical drop in pupil numbers. In particular:

> "11. The Claimant was [the school's] charismatic leader, and the future looked bright for [the school], both as an educational institution and as a business. The Claimant had developed various expansion plans, with which I was closely involved, especially with regard to securing development funding from a bank to whom I had introduced the Claimant.
>
> 12. Notwithstanding the financial well-being of [the school], the early part of 2017 was extremely difficult. Matters came to a head when the Claimant was arrested and interviewed under caution on 4th April 2017. I was concerned about the future of [the school], but I believed that the Claimant would be

> exonerated, hopefully quickly, and that he and his Senior Management Team would find a way through the crisis. At the time, I did not regard the situation as an existential threat to [the school]."

286. Mr Gregory explained that, although the Claimant was theoretically able to return to the school in early May 2017 when police bail conditions were revoked, the Claimant himself was "firmly of the view" that a return to work would not be appropriate until the police investigation was over and then "a full, honest and open explanation" to staff, parents and pupils could be provided. An agreement formalising the position was signed on 23 June.

287. Mr Gregory's evidence about the second newspaper article was as follows:

> "21. … I knew that these statements from the police were untrue, but I was equally certain that readers of the articles would not know this. I was also sure that although the Claimant had not been named, those readers who were familiar with [the school] would instantly know the identity of the arrested man. I was sure there would be gossip and rumours, and 'no smoke without fire' type of commentary.
>
> 22. The consequences of the 28 June 2017 article soon became apparent. On dates I cannot now recall, I became aware that [the school's] administrative staff were receiving a large number of enquiries about what had happened to the Claimant. I was also aware that multiple notices were being given that children would be removed from the school. I was told that there was much gossip amongst parents and staff. The subject matter of the gossip could not be worse for the well-being of a school.
>
> 23. I cannot overstate how awful this period was for [the school] as a business, and its people. The pressure on everyone involved in managing [the school] was immense, and the future was looking bleak."

288. As for the timing of the sale:

> "24. Accordingly, although I had hoped in April and May 2017 that the sale of [the school] might be avoided, by July 2017, it was absolutely clear to me that the school had to be sold and sold quickly. In my view, this was the only way any equity could be preserved and insolvency avoided. I knew that if this drastic step were not taken quickly, the dramatic fall in pupil numbers would result in the return of deposits to parents, significant redundancy costs, a cash flow crisis, intervention by the bank, and liquidation or some other insolvency procedure. I knew that the value of the real estate would probably be maintained, but it was my understanding that empty school buildings are difficult to value and sell, and planning constraints in this part of [redacted] would

> probably make any developer think twice about buying the land and buildings. I was also aware that [redacted] was subject to restrictive covenants which made a change of use difficult.
>
> 25. In short, my view was that the only realistic option was to sell [the school] as a going concern for the best possible price. It would be a complicated 'fire sale', but in my opinion, this was the only way that the losses could be mitigated."

289. In cross-examination Mr Gregory confirmed that in March 2017 he was aware of the Ofsted inspection. He clarified that the decision to sell was made in late summer 2017, probably in September. He could not be exact about the date. As for the timing of the decision, Mr Gregory gave this important evidence (per counsel's agreed note, albeit not necessarily verbatim):

> "I think it's important that I try and help you with dynamic of decision making. The claimant was the proprietor of the school. Ultimately, he made all the decisions. He was comfortable taking advice from people like myself and his accountant, Mr Richards, but we were at best trusted advisors. When I am talking about the sale of the school, I'm thinking this is a very difficult position, how are we going to deal with this, how do we sell a school, it will take a long time, I'm thinking that this is one of the contingencies. If we are going to think about it, we are going to have to get on with it. As it happened, it took ages and was painful and slow. I don't think, I'm sure you know how dedicated the claimant was to the school and its success, and he is an extremely difficult situation at this stage. He hopes this sale will not be necessary. A lot of this is being driven by me, getting the process ready. I was worried about the school. Attitude of the Claimant was far more "I hope I don't have to sell". There is email evidence in December and even in August 2018. Driven slightly by me. And that's how this thing worked. Claimant would certainly listen to what I might say. Might even go along with process, but whether he had made up his mind that he was selling was an entirely different thing."

This evidence distinguishes the advisers' decision to begin preparations from the Claimant's decision to commit to a sale. It explains why preparatory steps do not, by themselves, establish an earlier decision to sell.

290. Mr Gregory was asked about a draft agency agreement with the selling agent and a draft email to the DfE probably dated June 2017 which stated that the Claimant had decided to seek a buyer for the school. Mr Gregory referred counsel to his previous answer (cited above) and said that they were trying to assess the market. It was all highly confidential. A decision had been made to try and find a buyer but that was not the same as deciding to sell.

291. In re-examination Mr Gregory was asked about the marketing efforts made in the summer of 2017. He said that they were "pretty unsatisfactory", and that they were not doing very well trying to sell the school. The Claimant hated the idea of it. His whole life had been the school, and he wanted to continue. Indeed, it appears from an email the Claimant sent as late as 6 August 2018 that he thought that the school's circumstances were "much improved" and that, subject to the "fly in the ointment" of the continuing police investigation, the "genuine position … could be to carry on ourselves". Mr Gregory's explanation was that this assessment was "somewhat optimistic".

292. Mr Gregory explained the relationship between pupil numbers, cash flow and profitability:

> "The finances of a school are very much governed by pupil numbers. Something I had discussed with the Claimant over very many years. The Court will have seen the decline in pupil numbers between Summer Term of 2017 and Autumn Term of 2017 and the remainder of that academic year. The loss of numbers was around 65, almost agreed. The consequence of that loss of numbers was an appalling financial result in 2017/18. Classic case of less income, very similar costs and you can't adjust the costs base of the business quick enough to restore profit. Further complicated by the way school finances work. Fees are paid in advance. The school has strong cash flow, and that strong cash flow can disguise a very poor financial performance. It is not only the loss of numbers, and the return of deposits, also the fact that there are fewer pupils joining, because parents will have seen the second article, and presumably have decided not to take risk of sending child. Financial numbers continue to decline. When we signed a Heads of Agreement with [Redacted] in March 2018, they renegotiated it in July 2018 because according to them, the number of pupils attending the school was not going to be 272 in September 2018, it was going to be 250."

293. I accept Mr Gregory's evidence almost in its entirety. My qualification concerns his account of the second article's impact, which was based on hearsay and included opinion. I take those limitations into account, but give the evidence weight because it is supported by other evidence.

294. Both parties placed reliance on emails and notifications from parents explaining the reasons for the withdrawal of their children from the school. Counsel have prepared summaries of these emails, which I have considered carefully alongside many of the underlying emails. Very few emails pre-date the second article, although the decisions they record may have been made appreciably earlier. Many list several factors, and it would be wrong to infer too much from their order or wording. It would also be wrong to quantify the relative causative potency of those factors from the text alone. Whether the emails disclose the parents' actual reasons is unclear: a parent may state one reason when another was decisive.

295. The parents mentioned seven factors:

(1) the police investigation and the Claimant's suspension from the school;
(2) the newspaper articles;
(3) the school's failure to provide information;
(4) the Ofsted report;
(5) imbalance between the sexes;
(6) the "snowball" effect of children leaving, particularly girls; and
(7) concerns about teaching standards.

296. Item (4), the Ofsted "inadequate" rating, features in many of the emails, often as one factor among several. The report had a significant impact. The extent of the pupil losses it would have caused without the Defendant's tort is less clear.

Analysis of the issues

297. I have taken the parties' submissions into account, but it is unnecessary to set these out.

Foreseeability and remoteness

298. The first issue (see §271(1) above) is whether the claimed loss of capital value was foreseeable or is too remote to be recoverable. The Defendant does not advance the same objection to the loss of income claim, no doubt aware that such a claim was recognised in *Sicri*. In my judgment, if it is foreseeable that the misuse of private information may have an impact on pupil numbers, it is also foreseeable that a marked decline in pupil numbers could lead to a "fire sale" of the school. The real question is whether the Claimant's reaction to the predicament in which he found himself was reasonable. I find that it was.

The decision to sell and the sale that would have occurred without the disclosures

299. On the second issue (see §271(2) above), I find that the Claimant did not decide to sell the school until September 2017, following the severe decline in pupil numbers before the autumn term. Mr Gregory had taken preparatory steps in case a sale became necessary, but those steps were reversible and did not commit the Claimant to a sale. Even after making his decision, the Claimant hoped that he would not have to complete the sale. I do not accept Mr Frenkel's assessment that the position could then have been turned around, particularly while the police investigation continued.

300. I nevertheless find that the continuing police investigation would probably have forced the Claimant to sell at approximately the same time, even without the Defendant's tort. His prolonged absence from the school, without a sufficient explanation that he could give to parents, would have made his position untenable.

Pupil losses attributable to the disclosures

301. I turn to the fall in pupil numbers caused by the Defendant's misuse of private information (see §271(3) above). The evidence does not allow me to say precisely

which pupils would have left in any event and which would have stayed. I must assess what parents would have done without the tort, taking account of the competing reasons for withdrawing their children.

302. There was some debate between counsel as to the correct legal test. Mr Jacobs submitted that it was sufficient for his purposes to prove that the Defendant's tort was *a* cause of his client's loss rather than the sole or dominant cause. That submission was correct as far as it went, but it would establish only that the Claimant had suffered some loss, not its extent. If, for example, the Ofsted report was the dominant cause of pupils leaving, the number of lost pupils attributable to the tort would be substantially lower than the 61–67 identified by the experts.

303. Mr Stagg submitted that the Court should assess the loss of a chance, relying on a textbook passage[5] distinguishing that approach from determination on the balance of probabilities. The distinction is this: a past fact, or what the claimant himself would have done, is determined on the balance of probabilities. Where the uncertainty concerns what a third party would have done, the Court assesses the lost chance, provided it was real and substantial rather than merely speculative, and discounts damages to reflect its probability.

304. The loss of a chance approach applies because the uncertainty concerns the decisions parents would have made without the Defendant's tort. I must assess those decisions across the cohort, taking account of all the evidence, to determine the pupil losses attributable to the tort. In practice, assessing chances across many parents, rather than one, produces little difference from a probabilistic assessment.

305. In my judgment, I have to assess all the available evidence, including the emails from the parents as well as the oral evidence I heard. It is clear that the Ofsted reports played an important role, but there is force in Mr Jacobs' submission that the "inadequate" grading does not fall to be considered in isolation. It must be considered in conjunction with the knowledge that the headmaster of this school had been arrested for alleged sexual offences and remained under police investigation. The correct analysis is that for some parents the Ofsted report was determinative, and for others it was not. For many parents, the adverse Ofsted findings, taken by themselves, were capable of being managed. Although the Claimant and STB somewhat understated the impact of the Ofsted report, parents had considerable affection for the school, and – provided that the latter could demonstrate that the issues were being addressed – many parents would not wish to take the extremely disruptive step of removing their child or children from a school. However, the school's ability to demonstrate that it was taking steps to address the Ofsted concerns was considerably undermined by the loss of trust brought about by the Defendant's disclosures.

306. I also see force in Mr Jacobs' submission that the Defendant's tort meant that the Claimant and the school lost control over the dissemination of information. The Notice to all Parents dated 18 April 2017 could be carefully crafted and worded and amounted to an exercise of control. Once the articles were published, in particular the second article, the stream of information was both at large and out of the school's hands. The

[5] *McGregor on Damages*, 22nd. Edition, para 11-044 which references the decision of Andrew Burrows QC, as he then was, in *Palliser Ltd v Fate Ltd* [2019] EWHC 43, at para 27.

school's ability to correct any parental misapprehensions was constrained by a number of factors including the ongoing police investigation.

307. Furthermore, the loss of control was matched by a loss of parental trust. Parents were entitled to feel that the Notice to all Parents dated 18 April 2017 had not given them the full picture. That, of course, was correct but the Claimant was entitled to withhold his private information from parents provided that what he *did* tell them was not misleading. But parents would not see it that way, and one in particular – no doubt articulating the thoughts of many parents albeit with greater eloquence – clearly did not:

> "We understand the parameters around information sharing during an ongoing criminal investigation but we believe that more information could and should have been shared by the school. We have been both surprised and disappointed to learn of key information about the safeguarding investigation, not from [the school], but through media reports. The absence of information from the school has left a vacuum which has been filled by the press and has left parents in the position of relying on the media to understand what may be happening. It is our view that the school has fallen far short of its commitment to "frequent and effective communications between home and school."
>
> On Thursday morning we were extremely concerned to be telephoned by [redacted] on his way to school. With some clear anxiety, he said that a school friend had told him that there had been further coverage of the criminal investigation in the [newspaper] the previous evening. We have, since learning of the investigation, taken considerable care in supporting [redacted] to achieve an appropriate and accurate understanding of the concerns. We have been honest and open with him and have answered lots of questions he has had which we suspect may be shared by other pupils at the school. It has been a real strain to achieve the correct balance, to attempt to correct incorrect assumptions or information he may have picked up and also to protect his younger sister from receiving information which may have caused her concern or worry about her secondary school transfer.
>
> In your email of 21 June, you started by stating of the safeguarding investigation that the "the situation remains much the same." The situation as reported by the [newspaper] last week in its revised online edition of 29 June, presumably altered following representations from [the school], is in our view very different to your description.
>
> To be frank, in the light of our recent correspondence with you, we feel enormously let down to hear of these developments indirectly via a report from our thirteen-year-old son. We feel as

> though any confidence we had in [the school] about the handling of the current or future safeguarding concerns has now evaporated."

308. As against the obvious and almost immediate deleterious impact of the Defendant's tort, I have to weigh in the balance the following: (1) the Ofsted reports; (2) the fact that the Notice to all Parents will have been interpreted by some parents as a reference to the Claimant; (3) the impact of the continuing police investigation, and consequent absence of the Claimant from the school, on parental morale (even on the premise that parents did not know the subject-matter of the investigation); and (4) the slight risk that the subject-matter may have leaked at some point in any event. I have already found that the ongoing police investigation would have brought about a sale of the school at about the same time in any event. However, at this stage of the analysis I am ascertaining the number of pupils who would have left for reasons unconnected with the Defendant's tort. In that context, the ongoing police investigation was just one factor amongst several.

309. Weighing all the evidence in the balance, my overall conclusion is that about one-third of the relevant pupil losses would have occurred in any event, regardless of the Defendant's tort. Taking 64 as the midpoint of the experts' range of 61–67, and rounding to the nearest whole pupil, I attribute the loss of 43 pupils to the tort.

310. The parties should calculate the loss of profit for 2017/18 on the basis of 43 lost pupils. In order to aid the process, I can offer the following suggestions. The calculation could be based on a staff cost saving of £30,000, the midpoint of the experts' figures, and agreed savings in food and consumables of £532 per pupil per annum. For 43 pupils, the latter deduction is £22,876.

311. Mr Frenkel's tax methodology seems preferable because Mr Woodmansey does not distinguish between the individual and the company. On that footing, income tax is payable on the Claimant's 87% share and corporation tax on the company's 13% share. Rejection of the reflective loss defence does not alter that treatment.

312. The parties should obtain the experts' assistance if necessary and submit either an agreed calculation or a short schedule identifying the outstanding calculations and their respective positions for determination.

The capital loss claim: assessment of the counterfactual sale price

313. The counterfactual sale price remains to be agreed or determined. For this purpose, it must reflect the adverse effects of the 43 pupil losses which I attribute to the Defendant's tort, excluding those attributable to the 21 pupil losses which would have occurred in any event. It is therefore not a valuation of the school in the absence of the tort, but a hypothetical valuation isolating its adverse effects. My findings on attributable pupil losses govern the assessment. I invited and have considered further written submissions on this issue. At the conclusion of the hearing, the only evidence directly assisting the valuation was Mr Frenkel's observation that a projected reduction of 22 pupils led to a £300,000 reduction in the negotiated price in July 2018. For the reasons below, that evidence is of limited assistance. My following observations are not writ in stone and are intended to help the parties reach agreement.

314. The school's unaffected value in September 2017, once agreed or determined, provides a starting point for the assessment, but the Defendant is not responsible for the whole of the difference between that value and the actual sale price of £6.8 million. The assessment must identify the adjusted price achievable in September 2018 on the hypothetical basis that the school had suffered the 43 tort-caused pupil losses, but not the additional 21 pupil losses attributable to other causes. The recoverable capital loss is the difference between the school's unaffected value and that counterfactual or adjusted sale price.

315. I am not invited to assess the counterfactual sale price, and cannot properly do so on the existing evidence, but I can offer the following observations. Lost pupils and sale value are not likely to have a linear relationship. The 61–67 pupil reduction assessed for 2017/18 and the later projection of 22 fewer pupils used in the 2018 negotiations also concern different comparisons. Their relationship must be examined before the £300,000 price reduction can serve as a cross-check. The accountants may assist by assessing profitability on the basis of the 43 pupil losses attributable to the Defendant's tort, rather than the total of 64. But an earnings calculation alone cannot establish the price achievable in the relevant market. That price depends on a range of factors about which it may be possible to obtain expert evidence, although the parties would be well advised to seek agreement rather than incur that expense. The assessment must therefore address the price achievable in September 2018 on the counterfactual basis described in §§313–314 and in this paragraph of my judgment, rather than apply a proportionate reduction to the overall diminution in value.

316. Once the counterfactual sale price has been agreed or determined, it must be deducted from the school's unaffected value, and the appropriate tax adjustment of 10% must be applied to the resulting loss.

317. For the avoidance of doubt, not least because the Defendant's further written submissions seek on my understanding to make something of this point, I must spell out in this context the relevance of my finding that the ongoing police investigation would have brought about a sale of the school at about the same time in any event. That finding does not alter my analysis that the valuation of the capital loss claim must be based on the difference between the unaffected value of the school and its hypothetical value on the footing that 43 pupils left owing to the Defendant's tort. The ongoing police investigation was just one of the factors that contributed to the number of pupils who would have left in any case. The fact that the Claimant would likely have sold the school owing to the police investigation alone does not in and of itself determine the price that would have been achieved on that basis. Furthermore, and as I have already explained, the ongoing police investigation is just one factor amongst the several that need to be considered.

Reflective loss

318. The final issue is "reflective loss".

319. Mr Jacobs relied on *Burnford and others v Automobile Association Developments Ltd* [2022] EWCA Civ 1943. At para 30, Newey LJ summarised the relevant principles. Items (i) and (iv) are decisive here:

> "For present purposes, I would draw the following points from the authorities:
>
> i) The "reflective loss" principle applies where a shareholder brings a claim "in respect of loss which he has suffered in that capacity, in the form of a diminution in share value or in distributions, which is the consequence of loss sustained by the company, in respect of which the company has a cause of action against the same wrongdoer" (*Marex* at paragraph 79);
>
> …
>
> iv) The "reflective loss" principle will not be in point if, although the shareholder's loss is a consequence of loss sustained by the company, the company has no cause of action against the defendant in respect of its loss;
>
> …"

320. The Claimant's company has no cause of action against the Defendant: see items (i) and (iv) above. The reflective loss principle therefore does not bar recovery of the 13% portion. That conclusion is distinct from the question whether the Claimant has proved personal loss. As explained in §265, the evidence is that the profits accruing to his company would have been distributed to him in due course. That anticipated distribution is the basis of his personal loss in respect of this portion of the claim, rather than any claim to recover the company's loss as such.

OUTCOME

321. The claims in trespass and false imprisonment succeed. The Article 8 claim is dismissed as time-barred, although I have found that the searches were incompatible with Article 8. I award general damages totalling **£7,500** in respect of those claims: **£500** for the trespass on 24 March 2017, **£4,000** for false imprisonment, and **£3,000** for the further trespasses on 4 April 2017. I have not awarded aggravated damages.

322. For the claims in misuse of private information and wrongful processing of personal data, I make a single combined general damages award of **£80,000**, avoiding double recovery while reflecting the additional harm attributable to the inaccurate information. Together with the awards in §321, the total general damages are **£87,500**.

323. As for the claim for special damages referable to the information claims, the outcome is as follows.

324. **Loss of profit: findings.** The loss of profit calculation is to proceed on the basis of 43 lost pupils and the rejection of the reflective loss defence in §320. I have offered some further suggestions in §§310-311.

325. **Loss of profit: calculations required.** The parties should submit an agreed loss of profit calculation or a schedule of outstanding calculations for determination, obtaining

the experts' assistance if necessary. If the parties require it, a short hearing could be arranged.

326. **Capital loss: valuation remaining.** The unaffected value, the counterfactual sale price and resulting capital loss remain to be agreed or determined. The assessment must allow for the pupil losses that would have occurred in any event. No earnings multiple or counterfactual valuation is adopted: §§314-316 offer a possible methodology only. If necessary, I will determine the outstanding valuation issues at a short hearing.

327. At the appropriate time, the parties should co-operate to agree interest and costs. If agreement is not possible, I will resolve disputed matters either on the papers or at a short hearing.

328. For obvious reasons, this has been a quite extraordinary case. According to his first witness statement, the Claimant is a risk-taker. At the start of the trial, my provisional assessment was that pursuing this claim was itself a considerable risk, not least owing to the causation difficulties which were both numerous and formidable. But, in relation to the Claimant's main claim the forensic dial moved slowly albeit inexorably in the Claimant's favour during the course of the evidence, submissions and post-hearing reflection.