Case Note: *PCB v Geelong College* [2021] VSC 633

6 October 2021

By Nicola Murray, Lawyer

1. Overview

1.1 Case details:

Jurisdiction	Victorian Supreme Court
Hearing type:	1st instance trial
Date of judgement:	1 October 2021
Bench:	O'Meara J
Catchwords:	PERSONAL INJURIES — Institutional abuse — Whether perpetrator employee — Vicarious liability — Duty of care — Breach of duty — Damages
Authorities Considered	**Bench** *Prince Alfred College Incorporated v ADC* (2016) 258 CLR 134. *A & B v Bird* [2020] NSWSC 1379. *The Trustees of the Roman Catholic Church for the Diocese of Bathurst v Koffman* (1996) Aust Torts Reports 81-399. *Shire of Wyong v Shirt* (1980) 146 CLR 40. *State of New South Wales v Fahy* (2007) 232 CLR 486. *Wrongs Act 1958* (Vic) Part VB **Relied on by Defence** *Erlich v Leifer* [2015] VSC 499 vs *Sweeney v Boylan Nominees Pty Ltd* (2006) 226 CLR 161, [26]-[28]. *Sweeney v Boylan Nominees Pty Ltd* (2006) 226 CLR 161, [26]-[28]. *Morris v West Hartlepool Steam Navigation Co Ltd* [1956] AC 552. *State of Victoria v Thompson* [2019] VSCA 237. *Zorom Enterprises Pty Ltd v Zabow* [2007] NSWCA 106. *Malec v Hutton* (1990) 169 CLR 638.

	Brisbane South Regional Health Authority v Taylor (1996) 186 CLR 541, 551-555. **Relied on by Plaintiff** *Erlich v Leifer* [2015] VSC 499 *Prince Alfred College Incorporated v ADC* (2016) 258 CLR 134.

1.2 Factual summary

Abuse setting(s)	Abuse date(s)	Perpetrator(s)	Nature of Abuse	Injuries / Impacts
• School - woodworking workshop; • Perpetrator's car (parked on school property) • Perpetrator's residence • Claimant's residence	• 1988 to mid-1990 • Est. 50+ instances	• Mr Palframan, member of the public who used the woodworking workshop	• At school - Groping (over & under clothing) • In car / at residences - masturbation of plaintiff; • In car / at residences - ejaculation on plaintiff's legs	• 'lump' on penis at time of abuse; • PTSD; • Anxiety Disorder; • Depression • Nightmares/ disrupted sleep • Workplace difficulties • Significant breakdowns in 2007 & 2019
Pre-Abuse Factors	**Post-Abuse Factors**	**Apportionment Factors**	**Causation Factors**	**Other Relevant Factors**
• Nil – parents both worked in education, family was close & supportive.	• Work stress • Retrenchment from work – *ultimately found to be an impact not an external factor.*	• Whether any apportionment between School & plaintiff's parents (ans: no.)	• Whether the school ought to be liable for the abuse which occurred off school property (ans: yes)	• Abuse found to have affected mood but not Year 12 academic performance

1.3 Outcome & Key Findings Summary

Judgment was given in favour of the Plaintiff.

Justice O'Meara found that:

1. The School was **not vicariously liable** for the actions of the perpetrator in circumstances when the perpetrator was a member of the public who was permitted to use the woodworking workshop on school grounds.
    (a) *Prince Alfred College* ought to be interpreted as requiring a relationship of employer/employee as a pre-requisite to applying the 'special role' test (at [303])
2. The School **was negligent** in relation to the actions of the perpetrator:
    (a) The submission that there were no appropriate programs or processes available having regard to the standards of the times was rejected (at [344-349]).
    (b) The defendant breached its duty of care by failing to apprehend the import of the complaint being made by (another student) because: (at [357])
        (i) it did not emphasise the potential immediacy of the risk [of sexual abuse] to teachers such as Mr Egan; and
        (ii) it did not specify and emphasise the importance of either:
            (A) excluding a pest such as Palframan; or
            (B) raising the issue at the highest levels of the school following which Mr Baldwin-Cole would surely have been further questioned and Palframan excluded from the House of Guilds or, as senior counsel for the plaintiff put it, 'watched like a hawk'.
    (c) The plaintiff said that he had not been educated about sexual consent or child abuse. He had no idea about the concept of paedophilia. He had not been instructed about any 'pathway' for complaints. He assumed that he could have spoken to a teacher, although no specific pathway was identified (at [52]).
3. In respect of **causation** regarding the abuse that occurred outside of school premises, it was held that there was no break in the chain of causation between the abuse which commenced and exclusively occurred at the school for some months and the subsequent abuse in the perpetrator's car, residence & at the plaintiff's residence (at [415]-[420]):
    (a) One possible exception was arguably the abuse which occurred in connection with a purported 'pamphlet run' and 'without any preamble commencing in [the School woodworking workshop]'. However, the psychiatric evidence was that this abuse could not be separated from the injury as a whole and even so the likelihood of that abuse occurring was exceedingly low but for the prior grooming that occurred on school grounds (at [421-429]).
4. Any argument on **apportionment** to the effect that the plaintiff's parents owed and breached a duty of care (to the extent that it was 'floated') was rejected (at [400]):

(a) No suggestion was ever advanced during the course of the trial to the effect that the plaintiff's parents either knew or ought to have known that Palframan – a man introduced to their young son via the school while he was in its care – was a specific threat;

(b) There was no cogent evidence that the parents knew or ought to have known of the risk presented; and

(c) the parents were not parties to the proceeding and did not give evidence in it. It would be grossly unfair to them to draw any conclusion of whatever kind is ultimately now sought by the defendant.

5. Part VB of the *Wrongs Act* does not apply to this case because s 28C(2)(a) excludes "*an award where the fault concerned is an intentional act that is done with intent to cause death or injury or that is sexual assault or other sexual misconduct*."

6. Damages were assessed as follows:

(a) Pain and suffering – $300,000;

(b) Past loss of earnings – $676,583.05;

(c) Future loss of earnings – $1,634,995.20;

(d) Other/medical and like – $20,741.00

Total - $2,632,319.25

2. Detailed Case Summary

2.1 Key Facts

Background

The Plaintiff enrolled in the Geelong School in Year 7 in 1987, having come from a supportive and close family.

The School owned and operated a building or complex of spaces on the grounds of the senior school campus called the "House of Guilds." The House of Guilds was fitted out to facilitate woodwork, ceramics and other crafts and was open to students of the school and could be attended out of school hours. It was also open to students of other schools and members of the community upon the payment of a membership fee. The particular part of the House of Guilds at the focus of the present case was the 'woodwork room'.

The perpetrator, Bert Palframan was an honorary member of the House of Guilds and attended the woodwork room regularly. Palframan was in his early 70s as the time of the abuse, and passed away in or around 1999. Palframan was not a teacher at the school.

The woodwork room was supervised primarily by two teachers from the school, Mr Elliot, who was the warden of the House of Guilds, and Mr Egan. Mr Elliot has since passed away and could not be reached to provide evidence, but Mr Egan gave evidence at trial.

Circumstances of Abuse

It was not in dispute that the Plaintiff was abused on multiple occasions between 1988 and mid-1990, including by:

(a) having been groomed by Palframan in the woodwork room including by 'coming up close' and 'invading [the plaintiff's] personal space';

(b) having been touched on the crotch and upper legs above the clothing in the woodwork room;

(c) having been touched under the shirt and up his shorts in the woodwork room;

(d) Palframan sexually assaulting the plaintiff in Palframan's car and residence, including by masturbating the plaintiff; and

(e) Palframan sexually assaulting the plaintiff at the plaintiff's own residence, including by masturbating the plaintiff.

Relevantly, the abuse that occurred off school premises came about as a result of Palframan having:

(a) On one occasion in First Term 1989, Palframan offered to give the plaintiff a lift home. This led to Palframan and the plaintiff attending the office of the warden, Mr Elliott, in which there was a telephone. The plaintiff gave evidence that Mr Elliott was in the office at the time. The plaintiff rang his mother and his mother allowed the lift;

(b) Palframan befriending the plaintiff's parents and thereby gaining access to assault the plaintiff in his own home; and

(c) Gained access to the plaintiff in connection with delivering pamphlets in the Belmont area.

Relevant Complaints/ Disclosures

Whilst the Plaintiff never made a complaint about Palframan, another student, Mr Baldwin-Cole, did make a complaint to Mr Egan, and later to Mr Elliot in or around 1987. The complaints were along the lines of "[Palframan] is grabbing us on the dick and being a sleaze." Mr Egan had no recollection of the complaint being made to him and could not confirm his response. Mr Elliot purportedly responded to the effect that Palframan was "harmless" and "not to worry about him."

Details of Mr Baldwin-Cole's evidence can be found at paras [148]-[152].

Details of Mr Egan's evidence can be found at paras [182]-[228].

Impact of the Abuse

The plaintiff's evidence of the impact of the abuse was that:

(a) he felt shame, fear and disgust both at the time of the abuse and after the fact;

(b) he suffered nightmares and disturbed sleep;

(c) he feels 'endlessly guilty' in relation to his difficulties with intimacy and daily function and the impact it has on his relationship with his wife;

(d) he has difficulties managing his weight because he is an 'emotional eater';

(e) he built a 'façade' as a coping mechanism to deal with the abuse, which collapsed in or around mid-2007 in circumstances when he suffered a major emotional 'breakdown' whilst attending a training course in Sydney. The breakdown included:

a. thoughts of self-harm and harming others;

b. experiencing nightmares relating to the abuse;

c. struggling with travelling for work; and

d. feelings of distress and being out of control; and

(f) the entire trajectory of his life had been affected by the abuse.

It is unclear from the judgment as to whether any evidence was given to explain the cause of the 2007 breakdown, and whether that was solely related to the abuse-related trauma or whether there were some other triggering factors.

Medical Evidence

The plaintiff was assessed by psychiatrist Dr Matthew Tagkalidis.

Dr Tagkalidis gave evidence that:

(a) The abuse occurred when the plaintiff was 13 to 15 years of age, which is when major developmental changes occur;

(b) The abuse altered the capacity of the plaintiff to manage stress and 'dramatically shifted' 'the whole of [PCB's] educational and working career;

(c) The plaintiff's 'façade' & coping mechanisms had significantly broken down, and it is difficult to remake such mechanisms once they are gone. Consequently, the plaintiff was going to struggle for the indefinite future;

(d) The plaintiff would remain unable to return to work for the foreseeable future, and if and when he did re-enter the workforce, it was likely to be in "far less stressful and lower remunerated work" and not until some 5-10 years from the trial dates;

(e) The separation/apportionment of the abuse based on the location at which it occurred was clinically inappropriate and that the abuse ought to be viewed as part of a single continuum:

It's very artificial to separate off where they occurred or where they didn't occur or where certain elements were or weren't occurring. At a clinical level it makes absolutely no sense to separate. So very artificial to do so. So hopefully I've emphasised that that's the case. It makes no sense to me as a clinician, as a psychiatrist, that there was a distinction between

the two. There may be a legal one, I don't know, but certainly not in the plaintiff's experience of what occurred.

The plaintiff's current treating psychologist, Anne-Marie Davis, also gave evidence that:

(a) She had treated the plaintiff since November 2019;

(b) The plaintiff would have 'enormous difficulty' in returning to work and she did not believe he was 'anywhere close' to returning to work;

(c) The plaintiff had a number of triggers in daily life including travel and cases in the media and that he was 'very vulnerable' to future breakdown.

Education & Employment history

The plaintiff finished high school and commenced a of Commerce at Deakin University in Geelong. He failed quite a few of his subjects at that time and discontinued in 1995 in circumstances he described as having been 'kicked out.'

He then undertook a traineeship at Carlton Football Club, which did not last, and subsequently went to work at the Eureka Hotel and became the general manager there.

At the encouragement of his future-wife, PCC, he returned to university and completed a commerce degree in 2000 at the age of 25 or 26.

In late 2004, the plaintiff left the pub and embarked upon a career in sales at Diageo, where he held several positions and had one or more promotions. He suffered his breakdown in 2007 whilst in this role, but did not cease working at Diageo until 2011.

He was unemployed between late 2011 and July 2012.

He then worked for a short time as national account manager with Modern Baking, which did not work out.

In late 2013, the plaintiff became key account and network manager with Lion Dairy & Drinks. That required him to travel, which caused him considerable distress. He gave evidence that he had difficulties in that employment, albeit that he achieved at least one promotion in his time with that company.

In about September 2017 the plaintiff commenced as a regional manager with Treasury Wine Estates. He gave evidence of further struggles in that employment, especially with travel. That said, he held more than one position with that company as well.

In mid-2018, the plaintiff progressed to the position of head of field sales at Treasury Wine Estates. His manager was Sarah Parkes, who gave evidence at the trial. The plaintiff had a base salary of $240,000 per annum. There was also an incentive plan.

In August 2019, the plaintiff was made redundant from his employment with Treasury Wine Estates. He was consumed with anger and distress. He has not worked since.

2.2 Liability

Vicarious Liability

The School was **not** vicariously liable for the actions of Palframan because Palframan was not an employee of the school but rather a member of the public who was permitted to use the woodwork room by virtue of his membership to the House of Guilds.

In particular, it was held that *Prince Alfred College* ought to be interpreted as requiring a relationship of employer/employee as a pre-requisite to applying the 'special role' test (at [303]). It was also said this interpretation was necessary to ensure consistence between *Prince Alfred College* and *Sweeney v Boylan Nominees Pty Ltd* (2006) 226 CLR 161 (at [305-306]).

Counsel for the plaintiff also referred to *A&B v Bird*, but it was held that the reasoning in that decision simply did not apply due to the unique facts of that case as distinct from the current facts (at [308-312]).

Duty of Care

The defendant admitted that it was the 'occupier' of the House of Guilds and that it owed to the plaintiff a non-delegable duty 'to exercise reasonable care to avoid him suffering reasonably foreseeable injury while he was a student', and did not contest the occurrence of the abuse perpetrated upon the plaintiff or the proposition that the plaintiff consequently suffered psychiatric injuries.

Rather, the key issues that arose in respect of the claim for negligence were:

(a) Whether the school had discharged its duty of care by having appropriate systems in place; (the '**systems issue**') and

(b) Whether the 'scope' of the defendant's duty extended to those instances of abuse that occurred off school property (the '**scope issue**').

The Systems Issue

With respect to the systems issue, O'Meara J found at [336] that the systems in place included:

(a) A warden of the House of Guilds was provided; and

(b) Teachers were rostered on duty to supervise the use of the House of Guilds.

However, O'Meara J did not consider these systems adequate to protect against the risk of child abuse. Rather, necessary systems that were *not present* included:

(a) The risk of sexual or other abuse ought to have been emphasised to those supervisors by the school (and there was no evidence that it was);

(b) More particularly, it ought to have been specifically identified as an important or necessary part of the process of supervision that either Mr Elliott or Mr Egan or any of the other teachers concerned should keep any particular eye out for risks of child abuse;

This emphasis was required because:

(a) The risk of abuse was foreseeable from the very conception of the House of Guilds because the structure of the House of Guilds potentially exposed students of the school to adults from outside the school and in circumstances in which no evidence was led concerning any processes for the consideration of any risks presented by all or any of those adults; and

(b) More particularly in the case of Palframan, the defendant facilitated him interacting with young and vulnerable students of the school over a period of several years, whilst at the same time evidently attending to no particular woodwork or any other such projects of his own that any witness was able to remember (which should have been the very reason why he was there).

The Scope Issue (aka Causation & Apportionment issues)

The defendant sought to rely upon authorities to the effect that the duty of the school generally ends 'at the school boundary' and otherwise emphasised the 'duty' of the plaintiff's parents to look after the plaintiff outside of school hours.

These arguments were rejected because:

(a) the Defence made no reference to the plaintiff's parents, and nor were they parties to the proceeding, and nor was any reference made to them in the defendant's opening – see [388];

(b) the evidence was that Palframan had sought to develop a friendship with the plaintiff's parents & not the other way around – [396];

(c) no suggestion was ever advanced during the course of the trial to the effect that the plaintiff's parents either knew or ought to have known that Palframan – a man introduced to their young son via the school while he was in its care – was a specific threat. On the evidence, if anyone was in a position to evaluate that threat and report it to the parents it was the school, and, as I have indicated, that did not occur – [398];

(d) Palframan's abuse of the plaintiff commenced in late 1988 and took place for some months extensively and only on the premises of the House of Guilds. After the end of the first term in 1989, the abuse progressed to Palframan's vehicle, unit and at least one occasion elsewhere. However, the unchallenged evidence of the plaintiff was that it remained overwhelmingly a 'process' or 'routine' of abuse that continued to commence in the House of Guilds and from there progressed to the other locations –[407] & [408]

(e) if the school had either heeded the complaints of Mr Baldwin-Cole or properly been supervising the activities of Palframan in the woodwork room, it would not have taken much in the way of imagination to be apprehensive that conduct in the nature of abuse might be occurring outside the premises of the school, *especially* where telephone calls made from the office of the House of Guilds and by which it was arranged that Palframan would give the plaintiff lifts home at night in his personal vehicle – [415]-[416].

Ultimately, O'Meara J concluded that there was no break in the chain of causation between the abuse which occurred on school premises and the that occurred outside of school premises (at [415]-[420]).

One possible exception was arguably the abuse which occurred in connection with a purported 'pamphlet run' and 'without any preamble commencing in [the School woodworking workshop]'. However, the psychiatric evidence was that this abuse could not be separated from the injury as a whole and even so the likelihood of that abuse occurring was exceedingly low but for the prior grooming that occurred on school grounds (at [421-429]).

The Decisive Factor – The Complaint Issue

Ultimately, however, the decisive factor in the negligence claim was the existence of the complaint made by the former student Mr Baldwin-Cole, and the school's lack of reaction to the same.

O'Meara J found that:

> [333] *The defendant had specific warning of the risk to students posed by the activities of Palframan in the House of Guilds, or, at the very least, was in a position further to investigate matters with Mr Baldwin-Cole which would likely have led to a specific understanding of that risk.*
>
> [334] *In response, of course, the school did nothing. Whilst in some instances, it is not negligent for a defendant to do nothing in response to a specific risk, the present instance was not directly said to be one of them…*
>
> [359] *…the failure of the defendant to apprehend and act upon the complaint made by Mr Baldwin-Cole was and is 'game over', at least in respect of the issue of liability in negligence.*

2.3 Quantum

Non-economic loss

It was, however accepted that the plaintiff suffered the balance of the alleged impacts.

Application of Part VB of the *Wrongs Act*

The defendant pleaded that the hat the provisions in Part VB of the *Wrongs Act* apply to the claim. The only practical significance in the submission relates to the applicable discount rate.

The application of Part VB depends upon the construction and application of s 28C(2)(a) of the Wrongs Act, which excludes the application of that Part to –

> An award where the fault concerned is an intentional act that is done with intent to cause death or injury or that is sexual assault or other sexual misconduct. 476 Section 28B defines 'fault' to include 'act or omission'.

The plaintiff contended that the effect of s 28C(2)(a) was to exclude the operation of Part VB and relied, upon other things, upon *State of Victoria v Thompson*, although that decision concerns s 28LC of the Wrongs Act, which is in Part VBA, and is in terms slightly different to the present.

The term 'fault' is defined inclusively and, one might think, somewhat unnaturally to include 'act or omission'. It follows that the term is specified to cover acts (or omissions) without specifying that such acts or omissions need be the acts or omissions of the defendant concerned. It is unnecessary that the act or omission be that of the defendant, only that the defendant be liable in damages for it and that it be 'sexual assault' or 'sexual misconduct'.

Consequently, s 28C(2)(a) applies to the present claim and the provisions of Part VB of the Wrongs Act are excluded. Consequently, I accept the submission of the plaintiff that the applicable multiplier is 3%.

Full discussion of this issue can be found at paras [474]-[483]

Economic Loss

Past & Future Medical Expenses

The plaintiffs past care included:

(a) Care prior to the 2007 breakdown

(b) Care immediately following the 2007 breakdown:

a. attending his GP

b. initial treatment with psychologist Gary McMullen;

c. 12 months therapy with psychologist Pippa Grange

The award for future medical expenses also allowed an amount for medication and ongoing therapy notwithstanding the plaintiff's evidence that he is wary of taking medication. It was noted that the 'a need for psychiatric assessment is quite foreseeable and in that setting anti-depressant or other such medication might well be prescribed.' [550-551].

Loss of Past & Future Income

The essential issues in the assessment of damages for economic loss were –

(a) the plaintiffs contention that the abuse had an effect upon the overall 'trajectory' of his career progression such that he has suffered a general loss of earnings or earning capacity the (**trajectory issue**);

(b) the point in the future at which the plaintiff might return to work (if at all) and what he might earn when so returning (**return to work issue**); and

(c) the plaintiff's likely retirement age (**retirement issue**).

Trajectory Issue

O'Meara J did not accept that the abuse had had a significant impact upon:

(a) The plaintiff's academic performance in year 12, having regard to the fact that:

a. the Plaintiff passed VCE in 1992; and

b. O'Meara J did not assess him as 'as likely to have been an academic style of student and he did not describe himself that way'; or

(b) More generally the trajectory of the plaintiff's life in his early 20s having regard to the fact that:

a. some of the evidence showed him to have been 'social' 'outgoing' 'gregarious' and ultimately attractive to his future wife;

b. the success and career 'trajectory' of the plaintiff's brothers, with whom he might in a general sense be thought to share overall personality or character traits, exhibited "the kind of freedom, latitude and underlying confidence evident in members of a privately educated and supportive family where a degree of exploration in years of or surrounding tertiary education is neither uncommon nor discouraged," and these features were likely to have been evidence in the plaintiff absent the abuse; and

c. the considerable positive influence of the plaintiff's wife, PCC, which - [492].

Therefore, O'Meara J concluded she could not accept that it was more likely than not that he would have simply ploughed through his commerce degree and, at the age of about 20, set upon the career in sales and ultimately management that he settled upon much later in his actual life, but rather:

> "*To me, it is from about the completion of the plaintiff's commerce degree, at the end of 2000, that the abuse more likely affected the plaintiff's career 'trajectory' by forestalling his transition into more 'professional' employment of the kind that he later undertook*."

It follows that damages for past economic loss should be calculated as follows:

(a) For the period to mid-2019: two years at $240,000 per annum before tax, being $480,000 in substitution for and thus less two earlier years of earnings during the 'lost' period between 2001 and 2004, namely $54,849, 295 less tax of $137,781.95, 296 being $287,369.05, plus superannuation of $35,704, 297 being a total of $323,073.05;

(b) For the period from mid-2019 to mid-2021: two years at $240,000 per annum before tax, being $480,000, less tax of $162,194, 298 being $317,806, plus superannuation of $35,704, being a total of $353,510;

In relation to future economic loss, it was held that, having regard to the plaintiff's evident aptitude for the sales and management work that he ultimately settled into after late 2004, absent the abuse, his career would likely have continued in management work of that general kind until about normal retirement age.

Return To Work Issue

O'Meara J afforded considerable weight to the evidence of:

(a) the plaintiff's presentation at trial;

(b) the evidence of the plaintiff's wife; and

(c) the evidence of Dr Tagkalidis.

Ultimately, it was concluded that:

> *"The plaintiff is intelligent, practical and possessed of both ability and valuable corporate experience. He is also a relatively young man, at 46 years of age. His brothers are in successful and established employment, as is his wife. His children are at private school. As I have noted, he has other trappings of middle class life. If he could work, I imagine that he would. When he can return to work, I imagine that he will.*
>
> *This is no more than to say that I would reject any suggestion that the plaintiff is choosing not to work. Nor do I think that he will either choose permanently not to work or not ever return to the workforce."*

Damages were calculated on the basis that the plaintiff would likely return to work within around 6 years.

Retirement Age Issue

There was some argument from the defendant that:

(a) there was a general trend in senior sales management positions towards early retirement; and

(b) the plaintiff's wife is slightly older than him, and as such there is a possibility that the plaintiff would only work until shortly before normal retirement age.

The first of these arguments was rejected on the evidence, although it was acknowledged a career in the plaintiff's field is likely to be punctuated by multiple job changes and possible periods of unemployment.

Consequently, these arguments were accommodated in the assessment of an overall discount for vicissitudes of 20%, being slightly higher than normal.

3. Helpful Quotes

- Re: proper interpretation of Prince Alfred College:

[303] *In my view, the presence of a relationship of employer and employee is a necessary intermediate step or foundation in the reasoning of the High Court in Prince Alfred College. I do not read that reasoning as supporting any proposition to the effect that the intermediate step may be removed, and a vicarious liability for the criminal acts of another imposed, merely by searching for what might in general terms be described as being a 'special role' to be discerned by reference to a multifactorial analysis untethered to any distinct, assigned or formal relationship between the parties*.

- Re: establishing fault on the part of a school without condemning the actions of one teacher's failure in particular:

[338] *To me, the truth is somewhere in the middle. Having seen Mr Baldwin-Cole give evidence, I have no doubt that he complained to Mr Egan in the manner he described. Mr Egan, for his part, most likely received but did not fully process or comprehend the complaint and now has no memory of it. The latter is understandable and the former is not wholly surprising.*

[339] *Nothing of what I have said should be read as critical of Mr Egan. He is a plainly decent man. However, none of us is immune to misunderstanding, particularly when looking for the good not bad in people, and absent any emphasis to the contrary from his employer.*

- Re: arguments relating to the 'standards of the time':

[352] *In the circumstances as highlighted by the evidence of Mr Egan, it is not easy to accept that there was anything about 'contemporary society' at that time that prevented or rendered impossible or inappropriate the highlighting of the known risk of sexual abuse together with a direction to keep a careful eye out for any signs of such conduct and the identification of a ready pathway for the making and investigation of complaints and the implementation of response by either barring offenders from the House of Guilds or supervising their activities very closely. Indeed, the evidence of Mr Egan suggests that such an approach would have given effect to the standards of the time.*

[353] *However, the unfortunately reality appears more to have been that whilst the risk of sexual abuse was or should have been appreciated at that time, it was neither highlighted by the defendant nor specifically responded to. It may be that it was either hoped either that such a thing would not occur at the school or that no significant harm would come of doing nothing specific in response. Whether that be so or not, I do not regard the approach then adopted as having been any more a reasonable response to the risk than it would be now*

- Re: causation issues:

[419] *It follows that the 'other abuse' is, on the evidence, no more than a consequence of the abuse established in and continued within the House of Guilds until the overall abuse was ceased by the plaintiff refusing Palframan in mid-1990.*

[420] *In that sense, the defendant's breach of duty in respect of the abuse that occurred on the premises of the House of Guilds was and remained a cause of the 'other' abuse and the defendant must bear liability for the damage suffered as a consequence of its negligence…*

[428] *Moreover, as I have already indicated, it does not seem likely that any of those episodes of abuse could have occurred without the early months of 'grooming abuse' in the House of Guilds that both preceded them and established the 'process'.*