Case Nos:. G67YJ147 and G67YJ153

IN THE COUNTY COURT SITTING AT CENTRAL LONDON

Thomas More Building,
Royal Courts of Justice,
Strand,
London,
WC2A 2LL

Date: 5 October 2023

Before:

RECORDER HALFORD

- -

Between:

SYDNEY FEDER

First Claimant

-and-

ALYCE McCAMISH

Second Claimant

-and-

THE ROYAL WELSH COLLEGE OF MUSIC AND DRAMA

Defendant

- -

Gemma Witherington (instructed by **Bater Law Ltd**)
Gareth Weetman (instructed by **DAC Beachcroft**)

Hearing dates: 24 to 28 April, 31 May 2023

- -

Approved Judgment

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

Recorder Halford:

I. INTRODUCTION

1. What legal consequences follow when students report to their higher education institution that they have been harmed by another student? This question arises in the context of a series of events between 2016 and 2018 at the Royal Welsh College of Music and Drama (referred to below as 'the College'). The answer is important to all the parties involved in these claims. It is not straightforward.

2. The Claimants are Sydney Feder and Alyse McCamish. Both are College alumni. In January 2018, Ms Feder reported that she had been assaulted by a male student the previous November. She said he had come into a College changing room, spontaneously pushed her face down onto a table where she was working and rubbed her back aggressively, persisting despite her crying out in pain. In June 2017, Ms McCamish reported she had been sexually assaulted four times the previous September by the same student in a shared flat, that there had been violence and threats involved, and on one occasion her drink may have been 'spiked' with an intoxicant.

3. Their reports were made to the College which is the Defendant to these claims. There was an investigation and in February 2018 a College Disciplinary Committee concluded there was "insufficient evidence to come to a view on the allegation of sexual misconduct" in Ms McCamish's report. In the same decision it concluded Ms Feder and other students had been subjected to "inappropriate touching" by the male student. He was then told he would be formally warned, suspended for a fortnight and required to agree a reintegration plan. Following an appeal, the suspension was reduced to a week and some time was treated as served.

4. In her claim Ms Feder argues that, had the College acted decisively in response to Ms McCamish's report, the male student would not have gone on to assault her and, in any event, the response to her own report fell far short of what the law demands. Ms McCamish makes similar criticisms of the College's response. Both say they were not sufficiently protected, listened to, or supported. They also say that the College's investigation of their reports was unfair, not properly completed, the conclusions that were reached were fundamentally flawed and the action taken against the male student was insufficient. Ms Feder adds that the investigation's outcome was not shared with her and should have been. Ms McCamish contends that the College inappropriately shared information about the investigation and its outcome, or rather a distorted version of it, including by giving the male student a platform to exonerate himself publicly. She adds that the College ought to have reopened the investigation at that point because there were significant inconsistencies between the account the male student had originally given of his actions and the one publicly presented. She also says the College ought to have taken steps to keep him and her in separate classes and ensure he did not attend when she was performing in final year shows that were a critical part of her course. The College made some attempts to do so, but she argues these were inadequate. Both Claimants say that in these and other respects the College breached common law duties of care it owed to them and that they experienced psychiatric injuries including the exacerbation of pre-existing conditions as a result.

5. In support of their claims, Ms Feder and Ms McCamish point to the experiences of other women at the College. First, they rely on reports by other students about the same male student having assaulted them. They also contend that the College's response to these reports were part of a broader pattern. With the Court's permission, two other students, Beth Wischhusen and Phoebe Eldekvist, gave evidence that they had made reports to the College of sexual violence involving different male students. Both criticised the College's responses on the basis that they were never told about the option of initiating disciplinary action against those students.

6. The College resists both claims on several bases. In summary, it says it owed no relevant common law duties of care to the Claimants and, even if that were wrong, no duties were breached because the responses to their reports were considered and fair, aligned with its policies and were reasonable in all the circumstances. It disputes that psychiatric injuries of any significance were caused or exacerbated by any breach of duty that may be established. It considers the Claimants have wrongly impugned the professionalism of the College staff who investigated their reports. It does not accept there is any pattern of failures in the handling of such reports or broader issues of sexual misconduct at the College not being properly tackled.

7. The background to the Claimant's claims is, therefore, highly sensitive. Notwithstanding this, neither sought to be anonymised in these proceedings. Ms Wischhusen and Ms Eldekvist did not seek anonymisation either and indicated positively, when asked, that they were content to be identified in this judgment. Given this, the complexity of the facts and the nature of the case, I will continue to refer to Ms Feder and Ms McCamish individually by their names rather than as 'the First Claimant' and 'the Second Claimant', but as 'the Claimants' collectively.

8. The position is less straightforward as regards identification of the male student said to have assaulted Ms Feder, Ms McCamish and other students. He was not represented at the trial nor present. It is possible, though unlikely, that he was unaware of the litigation. At the start of the trial, I was asked by Mr Weetman, Counsel for the College, to consider whether it might be appropriate to make directions pursuant to CPR 39.2(4) to prevent publication of his name by the press, of which representatives were present. I decided not to do so, primarily because the likelihood of his identification from material already in the public domain meant the exceptional step of making such directions was likely to be futile. However, at the trial's conclusion, I indicated that I proposed to refrain from identifying him by name in this judgment because the name he used while at the College (which I was told he has since changed) was not an unusual one and so there would be a risk of misidentification. Both Counsel indicated they were content with this approach and neither have suggested since that it should be reconsidered.

9. Mr Weetman made more forceful submissions shortly before the trial and when it opened about the importance of avoiding findings about the male student's conduct, given his non-involvement. These submissions sat a little uneasily with the position taken in the College's pleaded Defence, which included putting both Claimants to "strict proof" as to their allegations about that conduct. Similar points were made in correspondence from the College's solicitors, such as a letter of 14 February 2023 in which it was said that Mr Weetman would inevitably have to put questions to Ms McCamish about her account of sexual abuse. In fact, during the hearing itself, Mr Weetman dealt with her account with commendable sensitivity and professionalism and it was not directly challenged. Clarification of the College's final position was sought following the hearing. In response, Mr Weetman indicated that the College could not advance a positive case about the reported assaults having no knowledge of them and renewed the request that no findings should be made. In these circumstances, I consider that direct findings about the male student's conduct can, and should, be avoided as far as the reported assaults are concerned. I will, however, need to comment on aspects of the account he gave during and following the investigation as this has a direct bearing on the College's response. I will also need to make findings on the Claimants' credibility in relation to their accounts of psychiatric injuries as it was the College's consistent position that the reliability of the expert evidence depended on such findings.

10. There are two other sets of introductory points to make.

11. The first concerns the issues to be determined. The trial lasted six days, and issues for determination were helpfully clarified and agreed by Counsel during its course. It became clear that the existence and scope of duties of care relevant to the claim were a central battleground. This is the first of the legal issues I will return to below: see paragraphs 436 to 572. The second issue is the standard of care the law imposes on a higher education provider if there is a relevant duty: see paragraphs 574 to 581. The third is the legal relevance of the Health and Safety at Work Act 1974: see paragraph 582. The fourth is whether any relevant common law duty was negligently breached: see paragraphs 583 to 683. The fifth is foreseeability and the sixth is causation, if damage was foreseeable: see paragraphs 684 to 696 and 697 to 740 respectively. The seventh and last issue is quantification of loss: see paragraphs 741 to 749. There was no agreement between the parties on any of these issues.

12. For completeness' sake, I should mention one other issue that is raised in correspondence from the Claimant's solicitors and in their pleadings: that there was an "anything goes", "wholly inappropriate culture" at the College (see, for example, paragraphs 46 and 80 of the Claimants' Skeleton Argument and Closing Written Submissions respectively). I do not consider this issue needs to, or practically can be determined in the context of the present claims. The focus in a case such as this needs to remain firmly on the pleaded instances of negligence and the defences to each. The court's role is very different from that of an internal or independent reviewer of the kind that are sometimes tasked with considering how higher education institutions respond to reports of the kind the Claimants made.

II. FACTS

Overview of the evidence

13. The next four parts of this judgment discuss the backdrop to the case, the key events, what the contemporaneous documents show and what the witnesses say. Given their length, a brief overview may be helpful.

14. All three parties' pleadings were concise. There was no agreed statement of facts and the chronology prepared for case management purposes was sparse. By contrast, over 3000 pages of evidence were filed before the start of the hearing, much of which was correspondence, along with guidance and reports from national bodies, College policies and records of its meetings and decisions. There were also some audio recordings of meetings and transcripts of those recordings. However, it was apparent from the correspondence between the parties' solicitors and cross references in disclosed documents that there was still relevant material that had not been disclosed. Helpfully, searches were made, and further documents were provided to the Court during the trial. The success of the Claimants' application to allow Ms Wischhusen and Ms Eldekvist to give evidence prompted further disclosure. The net result of all of this was a very large amount of material that needed to be considered, much of it contemporaneous with the events which prompted the litigation.

15. The Court also had statements from several witnesses and heard oral evidence from most of them. In general, the witnesses sought to assist the Court. Most of their evidence was consistent with the available contemporaneous evidence and, in my view, accurate. There are some conflicts of evidence and issues of credibility I have had to resolve, but in general I consider these are more likely to be attributable to the impact on recollection of the passage of time since the events being discussed than any deliberate untruthfulness. There are a handful of instances of certain witnesses' evidence being inaccurate and appearing reverse-engineered to support particular arguments being advanced, probably unconsciously (I have kept Leggatt J's observations at [15]-[18] of *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) firmly in mind).

Rather than catalogue these here, I will deal with them in context below along with the challenges that were made to witnesses' credibility that are significant. There were also differences of opinion between the experts which need to be confronted, though I should stress that I found both impressive and helpful.

16. Presumably because her report was the first of those the Claimants made to the College, Ms McCamish gave evidence first, followed by Ms Feder. I will deal with their evidence and submissions in that order for the same reason. Lewis Coster gave evidence next. He was Ms McCamish's friend and then boyfriend during much of the relevant period, and primarily discussed what he had been told by her, the support he had given to her to prompt the College's investigation and during its aftermath along with her state of health at certain times. Next, the Claimants called evidence from Marilyn Le Conte, who had been a senior acting tutor at the time and had some pastoral responsibility for US overseas students. She had since left the College and was critical of the investigation and its subsequent actions towards Ms McCamish.

17. The next witness was called by the College. She was Frances Newman, Head of Movement, which discipline involves movement, dance and other physical skills. She tutored Ms McCamish and the male student at the time when Ms McCamish's report was made and investigated. Ms Newman discussed the support she had offered both students along with her communications with those handling the investigation and others. The College's next witness was Iestyn Henson, a senior administrator who was Head of Academic Services at the relevant time and is now College Academic Registrar. Mr Henson had a special responsibility for the College's policies. Mr Henson's evidence was paused to enable the Court to hear from Scott Allin, who was both the College's Vice Principal (Resources) and one of its designated safeguarding officers. Critically, Mr Allin was responsible for much of the investigation prompted by the Claimants' and other students' reports. Mr Allin no longer worked for the College and a witness summons had needed to be issued to secure his attendance.

18. Ms Wischhusen and Ms Eldekvist then gave their evidence. Ms McCamish was recalled to give evidence on a specific issue about one of the College's policies concerning complaints.

19. Next to give evidence was Brian Weir. At the relevant time he was the College's Head of Student Experience as well as a Designated Safeguarding Officer and Designated Person to be contacted in safeguarding matters. He also assumed the role of 'support person' for the male student in the disciplinary process. His evidence discussed these roles, his involvement in the investigation and endeavours to support Ms McCamish.

20. Last, as I have mentioned, the Court heard from two experts, Ms MacArthur Kline, who is a Chartered Clinical Psychologist, and Dr Mallet, a Consultant Psychiatrist. Both had met the Claimants and reviewed medical records to prepare their own reports and two joint statements about the Claimants' mental health.

21. Three further witnesses provided signed statements but were not called. The first was Alex Wanebo, another student who had said she had been sexually harassed by the male student. Ms Wanebo had also played a co-ordinating role, gathering signatures from other students for a note to the College stating they felt uncomfortable and unsafe around the male student. She was also present at important meetings with Mr Allin first to gather information and later to explain the College's decision-making. Her statement introduces contemporaneous emails and a transcript of a recorded meeting which are relevant to the report she made of incidents she believed were sexual misconduct for the purposes of the College's policy. The second was from another student, Abbie Hern, who also discussed her and other students' discomfort at taking classes with the male student, information about Ms McCamish's report communicated to her by Ms Newman

and the end of year shows. The third statement was from Kieran Burrows, a member of College staff who had been present throughout the Disciplinary Committee meeting. This statement was prepared, served and filed at my request after other witnesses' evidence had been heard, but before closing submissions. None of the parties indicated live evidence from Mr Burrows would add anything. No member of the Disciplinary Committee gave evidence about their decision-making, though I should record that the chair has passed away since it met.

22. Last, there was an unsigned witness summary prepared by the College's solicitors of the evidence it had wanted to call from David Bond who was Director of Performance (Drama) when he left the College in 2020. At trial he was said to be a reluctant witness and like Mr Allin, was the subject of a witness summons. Unlike Mr Allin, he did not answer the summons and attend or explain why not. Mr Weetman submitted that weight to be given to this document was a matter for me. I have reviewed it and consider it has no evidential value. It was not prepared in Mr Bond's own words, is largely a summary of contemporaneous notes and emails which were before the Court and on almost all factual disputes of significance it simply says Mr Bond would be able to confirm the position at trial. On Ms McCamish's pleaded allegation that he had described her as "promiscuous" to other students, the witness summary records Mr Bond denying this. There was no direct evidence of this being said. In such circumstances I make no finding either way.

Background, the College's ethos and decision-making

The College

23. The College was established in 1949 as Cardiff College of Music and has an international reputation and many distinguished alumni. Although it remains a conservatoire, it has broadened its academic focus to take in other performing arts including drama. Most students are adults, but the College offers courses to children, including at weekends and during summer holiday periods, and works with local schools. It operates from a purpose-built campus in Cardiff. There is shared, fully managed off-site accommodation for adult students in halls of residence known as Severn Point. The College is relatively small in comparison to other higher education institutions. Witnesses described students and staff having frequent informal contact with one another for this reason.

24. As the above summary of the witnesses' evidence suggests, the College is staffed by a mixture of academics and administrators. Sometimes academics are called upon to deal with non-academic matters. Consistent and principled decision-making is encouraged by the College's policies, procedures and regulations.

Relevant policy material on the HUB/HWB

25. It is clear from the policy material the College prepared for students and staff that it seeks to promote a community ethos based on shared values. They include supportiveness, mutual respect and, with an eye to students' future careers in their chosen fields, professionalism. For example, the 'Student Charter' on the College's intranet or 'HUB/HWB', explained:

> "We are a relatively small institution by conservatoire standards which means that we can get to know each other as individuals. But we are a supremely productive artistic and creative community, out of all proportion to our size. Whatever your artistic interests and passions, it is likely that you will find someone – either within your discipline or outside it – who is willing and excited to help you 'make things happen'…

> The College sets out to deliver high quality training in an environment that is both challenging and stimulating. Our training is founded on the practices that you will meet in the arts industry and we aim to replicate industry conditions wherever possible. So our schedules, working practices, extensive interaction with artists and audiences are all designed to prepare you for professional life. Staff will treat you as a professional and we will expect you to adopt a professional attitude from the time of your arrival…
>
> Our students work hard but we set great store by making sure they receive the support, welfare and representation they need. Do take time to explore the Student Portal which provides information on the many services that are designed to assist you. We are proud of our 'open door' policy; if you can't find the help you need, don't dwell on it alone – come and ask. There will always be someone who can help you find the solution! I very much look forward to getting to know you.
>
> The Royal Welsh College 'family' is its students and staff; we're delighted that you have chosen to be a part of it."

26. Mr Weir was the signatory of this statement.

27. Elsewhere, under the heading "A partnership based on Commitments", the HUB/HWB stated variously:

> "The College will:
> • provide a high and appropriate level of teaching, learning and administrative support…
> • provide sensitive and responsive support and welfare services…
> • provide a safe and healthy environment for students to work under…
> • be committed to equality of opportunity and oppose discrimination
>
> You [i.e. students] will:
> • make yourself familiar with the contents of this portal, the College Rules and Regulations, Complaints Procedure and Appeals Procedure…
> • display a professional attitude (see below)
> • respect the views and opinions of other individuals and oppose discrimination…"

28. In relation to the College's regulators and rules, the HUB/HWB stated:

> "Membership of the College is subject to the Articles, Ordinances, Regulations and Rules of the College and upon Registration students undertake to comply with them. It is therefore your duty to familiarise yourself with the Rules and Regulations, which can be found at HERE"

29. This text was followed by a links including 'Regulations Governing Student Conduct' and 'Student Complaints Procedure and Complaints Form'.

30. The importance of the HUB/HWB as an authoritative source of information was stressed by Mr Weir in his witness statement. He explained that, on 16 September 2016, the College hosted one of a series of 'Fresher's Fayre' welcome events for students including Ms McCamish and the male student. It included a presentation he had given discussing its ethos, making students generally aware of what the HUB/HWB labelled the "Regulations Governing Student Conduct" and the Complaints Procedure. Parts of the HUB/HWB were displayed on a big screen. Mr Henson echoed this in his evidence as did Mr Weetman in his cross examination of Ms

McCamish, who recalled the induction. Ms Feder recalled being told about the HUB/HWB too. In response to a question I asked, Mr Henson agreed that there was an expectation of "reciprocity" at the College in that students were expected to adhere to the College's rules and policies, and could, in turn, expect adherence by the College. None of this evidence was challenged.

The College's public position on sexual harassment and unacceptable behaviour

31. I will turn to the material that was accessible through the HUB/HWWB shortly, but first it is worth highlighting that, in November 2017, the College and other similar institutions made a public commitment to maintaining and implementing policies concerned with addressing conduct of the kind with which the Claimants' and similar student reports were concerned. This took the form of an open letter to Alistair Smith, the editor of The Stage newspaper, from the London Academy of Music and Dramatic Art ('LAMDA'), which is Britain's oldest specialist drama school, and the Federation of Drama Schools, of which LAMDA and the College are members. It stated:

> "Dear Alistair,
>
> In light of reports and allegations across our industry on sexual harassment and unacceptable behaviour we welcome the contents of the Code of Behaviour published by the Royal Court Theatre on Friday 3 November. We are grateful to all those who contributed their stories and insights during the Day of Action on 28th October.
>
> All of the member schools in the Federation of Drama Schools have robust measures, policies and mechanisms in place to prevent unacceptable or inappropriate conduct including sexual harassment in school and to support their students as they transition into the profession.
>
> We believe in empowering students and colleagues to be confident and speak out. We therefore fully support the contents of the Code of Behaviour and will continue to work with our students, colleagues and the wider industry to make positive changes to our industry's norms and values, and build a sustainable culture of dignity and respect.
>
> Federation members will be discussing how best we can further address these issues together at an extraordinary meeting later this month and during our annual conference (13th January 2018), to which the Royal Court Theatre team have been invited."

32. The Code of Behaviour referenced in the letter included the following:

> "Every organisation signs up to leading an active sexual harassment policy. Make it a living policy. It should be based around workshops and scenarios to clarify the so-called grey areas. (See the Royal Court Theatre policy on Bullying, Harassment and Unwanted Sexual Attention.)"

adding:

> "Some suggested codes of behaviour to avoid these patterns and protect the areas of risk (this is only a beginning):

- It is never appropriate to initiate unwanted intimate physical contact…"

33. The Royal Court's Bullying, Harassment and Unwanted Sexual Attention Policy was appended to the Code as an exemplar.

34. All of this must have been intended to publicly communicate recognition of the serious problems of sexual harassment and sexual violence across the industry (which was then, and still is, receiving attention, not least because of the #MeToo movement), the signatories' resolve to tackle it and the fact they already had robust measures, policies and mechanisms for that purpose. However, when cross examined about the letter, Mr Henson candidly accepted there was no College policy that expressly dealt with sexual harassment between students.

Significance of the College's membership of the University of South Wales Group

35. The College is self-governing, but part of the University of Wales Group along with the University of South Wales and the Merthyr Tydfil College. This is significant for two reasons.

36. First, the group is a member of a national umbrella body of 135 higher education institutions called Universities UK. It convened a Taskforce in 2015 to examine higher education institutions' response to violence against women, harassment and hate crime. The result was 'Changing the Culture', a report that strongly recommended revision of the 'Zellick guidelines' on disciplinary procedures. Those guidelines had been produced by Universities UK's predecessor, the Council of Vice Chancellors and Principals ('the Council'), which had reported on university discipline in 1994. The Taskforce concluded the Zellick guidelines did "not adequately reflect that institutions have a duty of care to students", a duty said to be owed to both "victims/survivors" and "alleged perpetrators". Pinsent Masons solicitors and members of the Taskforce then collaborated to produce the 2016 'Guidance for Higher Education Institutions – How to handle alleged student misconduct which may also constitute a criminal offence' ('the Universities UK Guidance') in discussion with Universities UK and organisations with expertise in sexual violence.

37. When cross examined, Mr Weir's evidence was that he had the Universities UK Guidance in mind when dealing with Ms McCamish's report. Mr Henson's evidence was that the guidance applied both to the university and the College and he had been aware of it at the time. It had also been considered by the College committee responsible for policymaking which he chairs. Mr Allin said the guidance was best practice and College staff like himself would look at it to alongside the College's policies when necessary to inform decision-making and comply with it where they could. I accept this evidence. I discuss relevant sections of the Universities UK Guidance in context below bearing in mind its provenance as a document produced by the leading industry body to guide its members after close scrutiny of the issues it concerns.

38. Secondly, Mr Henson's evidence was that there were governance arrangements in place between group members which meant that the College was required to have its own rules and policies but that their content had to be aligned with those of the university. As regards discipline of students on the grounds of misconduct, suspension and exclusion, this requirement was set out at Article 31.1 of the College's Articles of Association, subject to the caveat that variations to meet the requirements of the College may be approved by the university. He added that the requirement of separate but aligned policies had been required by the Office of the Independent Adjudicator from 2015. This evidence was not challenged and I accept it.

39. Mr Henson went on to explain that a document entitled 'Student Conduct Regulations 2017-18' ('the 2017-18 Regulations') was the university's conduct policy and not that of the College as the Claimants had assumed in their pleadings. Asked about a reference to 'conduct regulations'

on the HUB/HWB at the time of Ms McCamish's report, Mr Henson said that would have taken a student to the College's own policy at the time rather than the 2017-18 Regulations. Those regulations also bear the university's logo and make repeated references to "the University". The investigation report Mr Allin prepared makes no reference to the 2017-18 Regulations whereas the 2016 Conduct Policy is expressly cited. Given all these factors, I accept Mr Henson's evidence that the 2017-18 Regulations did not set out the College's conduct policy at the time.

40. The 2017-18 Regulations are relevant in one respect, however. They identify the following in the "non-exhaustive list of examples of possible misconduct":

> ***"3.3.2 Sexual misconduct***
>
> • Engaging, or attempting to engage in sexual intercourse or a sexual act without consent
> • Sharing private sexual materials of another person without consent
> • Kissing and/or touching inappropriately without consent
> • Inappropriately showing sexual organs to another person
> • Making unwanted remarks of a sexual nature
> • Failure to keep appropriate professional and sexual boundaries.
>
> ***3.3.3 Abusive behaviour***
>
> • Threats to hurt another person
> • Engaging in any activity or behaviour which contravenes the University's Strategic Equality Plan or Dignity at Study/Dignity at Work policies, including acts of racial hatred, non-violent extremism, violent extremism and/or terrorism and abusive comments relating to an individual's sex, sexual orientation, religion or belief, race, pregnancy, marriage/civil partnership, gender reassignment, disability or age."

41. Given the requirement for the College's conduct policies to be aligned with the university's, these paragraphs might be expected to feature in both.

The College's policies on conduct

42. Besides what was said on the HUB/HWB, the College had a specific conduct policy in place. It had been revised a number of times. Two iterations of this document were before the Court.

43. The first is entitled 'Policy and Procedures Governing Student Conduct, September 2016' ('the 2016 Conduct Policy'). It is necessary to quote extensively from this policy as one of the Claimants' concerns is that the College did not follow it and, in any event, it was defective.

44. The 2016 Conduct Policy provides at paragraph 1:

> "Students must observe all College and University regulations and policies which govern the effective organisation and management of specific areas of activity within the College, (including those relating to… health and safety…"

45. Paragraph 2 states materially:

> "Definition of Misconduct
>
> 2.1 An act will be regarded as misconduct, and therefore the subject of disciplinary action:

- if it constitutes or is likely to constitute improper interference with the proper functioning and activities of the College, or of those who work or study in the College
- or if it damages or is likely to damage the reputation of the College…

The following constitutes a non-exhaustive list of examples of possible misconduct.

2.4 Students must not whilst on campus, in College and/or University premises off campus or engaged in College activities:

a) commit physical assault, serious threatening behaviour or verbal or written abuse to other students, staff or visitors to the College, including via internet websites such as social networking ones…
e) act in any way which is likely to cause injury to any other person within the College community, including impairing the safety of premises or equipment and interfering with anything provided in the interests of Health and Safety at Work as detailed in the College's Health and Safety Policy document;
f) commit any criminal act whilst upon College premises or engaged in College activities;
g) engage in any activity or behaviour which contravenes the College's Equal Opportunities or Harassment policies;
h) behave in any way which unreasonably interferes with the legitimate freedoms of any other student, member of staff, or visitor, or which disrupts or interferes with activities properly carried out by the College…"

46. As noted above, Mr Henson accepted sexual harassment was not mentioned in the 2016 Conduct Policy. He also accepted no other forms of sexual misconduct were discussed in the College's policy, in contrast to the 2017-18 Regulations. When asked to explain this in cross examination, he said that the omission was an "error" for which he bore responsibility and that the policy had not been updated, but that sexual misconduct was covered "in principle… if not in the letter of the procedure" and the idea that sexual assault would not be considered misconduct was anathema to his colleagues and himself. I accept Mr Henson's evidence about the omission, but it is striking and significant in this case.

47. During the trial I enquired whether the "College's Equal Opportunities or Harassment policies" referenced in paragraph 2.4 g) above were relevant. Searches were made by the College's solicitors but nothing relevant of this description was found.

48. Paragraphs 2.6 and following discuss complaints and allegations of misconduct which trigger the 2016 Conduct Policy:

"2.6 Students may on occasion believe that they have a cause to complain about the behaviour of another student towards them which has affected them personally. Where the issues concerned have no bearing on College activities, they will not be dealt with under this policy…

3 Procedures for Dealing with Allegations of Misconduct

3.1 General Principles

a) The procedures are designed to ensure that in taking disciplinary action against a student the College acts fairly and consistently in relation to all students.
b) The College will conduct disciplinary cases in a confidential and sensitive manner. The identity of individuals who make complaints against others will be

kept confidential so long as that does not hinder or frustrate any investigation. However, the investigation process may reveal the source of the complaint and the complainant may need to provide a statement as part of the evidence required.

c) The outcome of any disciplinary or appeal hearing shall be determined on the balance of probabilities, according to reasonable belief in the student's innocence or guilt.

d) The College will not disclose any information to third parties regarding investigations and outcomes from student conduct cases unless legal exceptions under the Data Protection Act apply."

49. Paragraph 3.2 discusses the Vice Principal's overall responsibility for the operation of the procedure and providing information about it.

50. Paragraph 3 continues:

> *"***Reporting of incidents of misconduct**
>
> 3.3 Allegations of misconduct against a student should be made to the Head of Academic Services. They will then be passed to the Vice Principal who will be responsible for overseeing the handling of the allegations, drawing on advice from the Head of Academic Services (or nominee).
>
> 3.4 Allegations of misconduct should be made promptly, in writing using the Allegation of Student Misconduct Form, and include the following information:
> • the identity of the person(s) against whom the allegations are made
> • the nature of the misconduct
> • the time and location
> • possible witnesses and
> • details of any action already taken.
>
> 3.5 Where there is doubt as to whether the Vice Principal is the appropriate person to deal with the allegations (e.g. where the incident is related to the work of a College administrative department, or where the incident occurs in Halls of Residence) the Head of Academic Services will advise.
>
> 3.6 The Vice Principal (or nominee), in consultation as appropriate with the Head of Academic Services will consider the nature and seriousness of the allegations with a view to deciding whether there is a prima facie case for formal disciplinary proceedings, on the basis of the information available, or whether the matter should be handled informally outside the College disciplinary procedures.
>
> **Investigations into cases of misconduct**
>
> 3.7 Any student against whom the allegations are made will be informed immediately, in writing, of the nature and seriousness of the allegations made, that they are the subject of an investigation, and the identity of the investigating officer who will look into the case against them.
>
> 3.8 In each case which is to be the subject of formal disciplinary proceedings an investigating officer will be appointed, who will normally be an appropriate nominee of the Vice Principal (e.g. the Director of Drama or the Director of Music). However, where the allegations are of sufficient seriousness to warrant suspension

> or expulsion from the College, then the investigating officer will normally be the Vice Principal.
>
> 3.9 Investigating officers, when they are first appointed, will be required to undertake a briefing session about their role with the Head of Academic Services.
>
> 3.10 The investigating officer shall conduct an investigation of the allegations within 15 working days. The timescale may be extended by agreement with the individual(s) who is (are) the subject of the allegations or, in exceptional circumstances, by the College. Any meetings with the student will be held at the College, unless, due to the allegations, this is inappropriate.
>
> 3.11 Following completion of the investigation, the investigating officer's report will be presented either to the Vice Principal or in the case of serious allegations where the Vice Principal is the investigating officer, to the
> Principal. A decision will be taken as to whether there is a case to answer, and if so, whether the College already has sufficient evidence to reach a conclusion on the case and to apply a penalty or whether the case should be referred to a Disciplinary Committee. Alternatively, the Principal or Vice Principal will determine whether the matter could be resolved in other ways (e.g. counselling/advice or informal warning).
>
> 3.12 Serious allegations of misconduct will be heard by a College Disciplinary Committee.
>
> 3.13 The student is allowed to be supported at any hearings held by a College Disciplinary Committee, for example by a friend or a representative of the Students' Union. At least twenty four hours before the meeting, the student should advise the member of staff organising the hearing of the name and status of the person accompanying them. Although the College would not anticipate the attendance of a legal representative, the Chair of the hearing may exercise discretion should the student indicate that they wish to bring someone with a legal background.
>
> 3.14 Students will be provided with a date for their hearing. Should the student require a revised date the hearing will be rearranged once only. Students should inform the College at least 48 hours in advance of the original hearing if they require a revised date. Should a student not attend the hearing, the meeting will take place in their absence; in that case, however, students are strongly advised to provide a written submission.
>
> 3.15 It is the student's responsibility to ensure that any witness they wish to call attends the meeting."

51. Allegations of misconduct need not come from any particular person. Mr Henson confirmed they could be made by a staff member who became aware of misconduct and gave an example of this happening when one student was witnessed striking another. Mr Allin echoed that in cross examination. This option was briefly considered in the present case: see the discission of Ms Newman's email of 27 November 2017 to Ms McCamish at paragraph 154 below. However, ultimately Ms McCamish submitted a Student Misconduct Form herself and there was also one from a tutor, Mr Garven: see paragraph 180 below. Ms Wanebo was asked to complete one by Mr Henson, but he confirmed in evidence that she never did. What she and others had alleged

was nonetheless investigated, so the form was not a precondition to investigation. Ms Feder was never asked to complete a form or offered the opportunity to do so.

52. Paragraph 4 of the policy is headed 'Suspension for the purposes of investigation'. It continues:

> "4.1 Where an allegation is of sufficient seriousness, the Vice Principal may approve suspension of a student until the hearing by a Disciplinary Committee takes place and a conclusion has been reached. Such suspension should only be instituted in exceptional circumstances where it is deemed necessary to protect members of the College.
>
> 4.2 Suspension shall normally be interpreted as exclusion from all College campuses and services. However, the student may visit the campus to access any support required in preparing a defence, e.g. from the Students' Union or Student Services, providing appointments have been made in advance through Academic Services.
>
> 4.3 The student may make representations about such suspension (including verbal representations) to the Principal or his/her nominee, for which purpose s/he may be accompanied by a chosen representative. If no disciplinary action is subsequently taken the College will ensure so far as possible that the student has not been disadvantaged by the suspension.

53. Paragraph 5 concerns 'Misconduct which is also a Criminal Offence'. It states:

> "5.1 The College through the Vice Principal will promptly report to the Police any incident or allegation which may involve a serious criminal offence. Where the Vice Principal is not available (e.g. in an emergency situation) serious incidents may be reported to the Police but the Vice Principal must then be contacted as soon as possible.
>
> 5.2 Conduct which may constitute a criminal offence may also amount to misconduct which, in addition to any criminal process, may therefore fall to be dealt with under this policy, if that conduct:
> - took place on College and/or University premises; and/or
> - affected other members of the College and/or University; and/or
> - damaged or was likely to damage the reputation of the College and/or University.
>
> 5.3 The following procedures apply where the alleged misconduct would also constitute an offence under the criminal law if proved in a court of law:
> a) Where the offence under the criminal law is considered by the College to be not serious, action under these regulations may continue but such action may be deferred pending any police investigation or prosecution.
> b) In the case of all other offences under the criminal law, no disciplinary action (other than investigatory suspension pursuant to 4.1 above) may be taken under these regulations unless the matter has been reported to the police and either the student has been prosecuted or a decision not to prosecute has been taken, at which time the Vice Principal may decide whether disciplinary action under these regulations may be taken.
> c) Where a finding of misconduct is made and the student has also been sentence by a criminal court in respect of the same facts, the court's penalty shall be taken into consideration in determining any penalty under these regulations."

54. Paragraph 6 describes the membership and functions of Disciplinary Committees, which include:

> "a) To consider reports from investigating officers in respect of serious allegations of misconduct by students…
> c) To establish, as far as possible, the facts of the case, including the ability to call witnesses.
> d) To consider appropriate action as follows:
> i. to approve a period of suspension on disciplinary grounds;
> ii. to approve expulsion of a student;
> iii. to impose other restrictions where it is deemed appropriate (for example, restrictions on use of IT);
> iv. to take any action available in the penalty list
> v. to confirm that action taken so far is sufficient and appropriate;
> vi. to agree that the offence has not been established and there is no case to answer. Under these circumstances the College will ensure so far as possible that the student has not been disadvantaged by any disciplinary action or suspension.
> e) To report its decision to the Principal and to the Clerk to the Board of Directors."

55. Paragraph 6.3 concisely sets out the procedure to be followed at hearings:

> "Hearings by the Disciplinary Committee should take the following format:
> - The case against the student should be explained first by the Chair of the Disciplinary Committee.
> - This should be followed by the Investigating Officer explaining their findings.
> - The student should then be given an opportunity to make their case prior to any witnesses being called.
> - The Disciplinary Committee will ask questions of the student and the Investigating Officer, calling witnesses as appropriate.
> - The student and the Investigating Officer will be given the opportunity to sum up their case for the Disciplinary Committee prior to withdrawing."

56. Paragraph 7 discusses various penalties which may be imposed where allegations of misconduct are proven including formal warnings, compensation, suspension "for such period as the Disciplinary Committee considers just and reasonable in the circumstances" and expulsion. Paragraph 8 provides for an appeal against suspension on grounds of new evidence or extenuating circumstances, fairness and where a penalty is said to be excessive. Students who appeal and are dissatisfied with the outcome may complain to the Office of the Independent Adjudicator. In cross examination, Mr Henson confirmed that the right of appeal was only for students that are the subject of allegations and I accept that.

57. The final part of the 2016 Conduct Policy is a 'penalty range' table which gives examples of forms of misconduct and possible penalties. Sexual misconduct, harassment and violence are not mentioned. Commission of a physical assault or serious threatening behaviour against a member of staff or fellow student may lead to a verbal formal warning, suspension or expulsion. Senior staff may issue a warning, but suspension and expulsion powers are reserved to the committee. The same principle applies to the imposition of those penalties for other forms of more serious misconduct such as commission of criminal acts and behaviour which unreasonably interferes with the legitimate freedoms of another student.

58. A further, near-identical iteration of the policy was issued in September 2018. This too omitted to mention sexual harassment and other forms of sexual misconduct. Mr Henson told the Court that the College's policies had been reviewed and changed in the light of its experience of investigating the Claimants' and others' reports, but the updated policies were not provided and are not strictly relevant.

The College's Dignity at Work Policy and Procedure

59. The College also had in place a Dignity at Work Policy and Procedure dated October 2016 ('the Dignity at Work policy'). By contrast to the 2016 Conduct Policy, it stated:

> "4. Definitions
>
> 4.1 This policy uses the term 'unacceptable behaviour' to describe any unwanted conduct which violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that person. This includes inadvertent or deliberate exclusion…
>
> 4.3 Unacceptable behaviour can occur without intent; however, lack of intent to use unacceptable behaviour is not a defence.
>
> 4.4 Unacceptable behaviour includes discrimination, harassment, victimisation, bullying and exclusion. Definitions and examples what could constitute 'unacceptable behaviour' are contained within Appendix 1."

and the appended examples include:

> "2.9 Examples of Harassment related to Sex and Sexual Harassment
> • Sexual harassment can occur towards women by men, towards men by women or between members of the same sex.
> • Unwanted sexual advances or requests for sexual favours.
> • Displaying offensive posters or publications.
> • Staring or leering.
> • Sexually explicit jokes, language or innuendoes.
> • Getting too close, deliberate body contact or unnecessary touching."

60. This policy then sets out a separate procedure for investigating dignity at work concerns. Section 2 makes it clear that it applies only to employees, concluding "[s]tudents who feel they have been subject to unacceptable behaviour within the College should use the Student Charter". Mr Henson stated the policy was "staff facing" in his evidence and did not apply to students. Asked in cross examination whether it had ever been applied in the investigation over the matters raised by Ms McCamish, Mr Henson said it had not. I accept that.

The College's Safeguarding Policy

61. In parallel with the policies on the HUB/HWB and the conduct policies, the College maintained an undated policy concerned with safeguarding "all children and young people, disabled children, vulnerable adults, minority communities" which it accepted was relevant to the Claimants' reports ('the Safeguarding Policy'). In the policy, adults are described as potentially vulnerable in certain situations, including when they are unable to protect themselves from significant harm. Its strategic aims echo what is said on the HUB/HWB and include providing "a safe and supportive learning environment for children, young people and adult students where they can develop their potential to the full". The document is said to accord with Welsh Government guidance on adults who might be particularly at risk of abuse. Its introduction stresses the mandatory nature of the procedures that follow.

62. Paragraph 8 states that abuse of vulnerable adults may, for example, be physical or sexual, i.e. "sexual acts to which the adult has not or could not consent, or has been pressurised into consenting". 'Abuse', 'physical abuse' and 'sexual abuse' are further defined in these ways:

> "Abuse is a violation of an individual's human and civil rights by another person or persons. Abuse may consist of a single act or repeated acts. It may occur when an adult at risk is persuaded to enter into a financial or sexual transaction to which s/he has not consented, or cannot consent. Abuse can occur in any relationship and may result in significant harm to, or exploitation of, the person or child subjected to it. Abuse is about the misuse of power and control that one person has over another. Where there is dependency, there is a possibility of abuse or neglect unless adequate safeguards are put in place…
>
> Physical Abuse : Physical abuse is the unnecessary infliction of any physical pain, suffering or injury by a person who has responsibility, charge, care, or custody of, or who stands in a position of, or expectation of, trust to a vulnerable person. Physical abuse may also be perpetrated by one vulnerable adult upon another.
>
> Sexual Abuse : Adult sexual abuse refers to the direct or indirect involvement of a vulnerable adult in sexual activity to which they are unwilling or unable to give informed consent, or which they do not fully comprehend, or which violates the social taboos of family roles, eg, incest. Sexual abuse may also be perpetrated by one vulnerable adult upon another. Any sexual activity that is not freely consenting is criminal. Where there is an abuse of trust, sexual activity may appear to be with consent, but is unacceptable because of the differences in power and influence between the people involved."

63. 'Emotional abuse' is also defined as including "threats".

64. At paragraphs 3 and 4 respectively, Mr Allin is identified as the Lead Safeguarding Officer and Mr Weir as Deputy Safeguarding Officer and Designated Person. Paragraphs 12.1 and 12.3 explain that the Designated Person role includes providing "a clear and consistent route for action", maintaining confidentiality, being "protective and supportive of those who raise concerns", recording those concerns, "assessing the information provided promptly and carefully, clarifying or obtaining more information about the matter as appropriate". Paragraph 13 stresses the Designated Person's role is not to investigate or to determine allegations, however, but rather to gather and record information and decide whether it should be referred to others, including "where indicated, [to] make a formal referral to social services or the police without delay" and "ensuring that any necessary correct action is taken to safeguard a child, young person or vulnerable adult who may be at risk." The Designated Person is also responsible for checking for "any immediate or short-term safety requirements", telling "the appropriate person so that those with experience support and help" the vulnerable adult and deciding on action. The policy makes clear that decisions not to refer and take no action should be recorded with reasons.

65. Paragraph 6 concerns confidentiality. It explains that private and sensitive information may need to be shared for safeguarding purposes, but that this will happen "on a 'need to know' basis and will comprise only the information necessary to effect such action.". Paragraph 11 reiterates this. Concerns or reports "must be treated in the strictest confidence and respect for the privacy of the child and family or individual involved and should only be discussed with those who 'need to know' in order to decide on any safeguarding action."

66. After discussing the ways safeguarding concerns may arise, the policy explains at paragraph 10.1 how to respond if a vulnerable adult tells a member of staff about abuse. It includes offering reassurance and checking "any immediate or short-term safety needs (eg, Does the child/young person/adult feel safe to return home? Might others also be at risk?)". Paragraph 10.6 stresses "it is very important that you do not dismiss the concerns."

67. At paragraph 9 the policy states that, however concerns arise, they must be reported to the designated person at the earliest opportunity. Paragraph 9.4 adds that "a written record of your concerns, together with decisions made and action taken or to be taken, should be made, dated and signed by both you and the Designated Person. The Designated Person will decide on what further action needs to be taken…"

68. In cross examination, Mr Weir indicated he had the Safeguarding Policy in mind at all times. Mr Allin's evidence was that he was considering safeguarding issues in relation to Ms McCamish from January 2018. However, when Mr Henson was asked whether the safeguarding policy was engaged at that time said "not directly". Ms Witherington asked if he ever considered measures under the policy in relation to Ms McCamish or Ms Feder. He had no recollection of that. Asked if measures, formal or informal, were taken, he said the attempt the College made to keep students in two separate groups might be considered measures in respect of Ms McCamish, but not in respect of Ms Feder.

The College's Complaints Regulations

69. The HUB/HWB included a link to the College's complaints policy. This was set out in iterations of a document entitled 'Student Complaints Regulations', including for 2017/18 ('the 2017-18 Complaints Regulations').

70. Paragraph 1.2 says if a complaint is received, the College seeks to resolve it as quickly, fairly and equitably as possible, whether the complaint is about services provided by the college, treatment by any staff member, student or visitor, or any other issue. Section A provides for an informal resolution stage. Paragraph 8.2 reiterates what was said on the HUB/HWB, i.e. "[s]tudents may complain about any aspect of their experience at the College, including their learning and relationships with the administration or support services." However, paragraph 9 includes the following:

> "9.2 Harassment
>
> Allegations of harassment by a student or member of staff fall under the Dignity at Study Policy. Students believing, they are being harassed in any way should first seek the advice of the Head of Student Experience.
>
> 9.3 Allegations of misconduct
>
> Allegations of misconduct by any student or member of staff are governed by the Student Conduct Regulations and the Staff Disciplinary Procedures respectively. Students wishing to raise such allegations must bring them to the attention of the Head of Academic Services, who will then act under these separate regulations/procedures. The student making the initial complaint will be informed of the eventual outcome."

71. I asked Mr Henson what the references to "treatment by… any student" and "any aspect of student experience" in paragraphs 1.2 and 8.2 meant, given paragraph 9.3. He agreed those paragraphs were "unclear". Students might need guidance, as did staff at times, he said. As to paragraph 9.2, he said there was no Dignity at Study Policy operated by the College. He did not know why that was.

Recruitment of adult students from overseas

72. There is one further background matter that needs to be mentioned. Ms Le Conte told the Court part of her role involved travelling to the United States, attending prospective student auditions and, on occasion, persuading their parents that their children would be "safe and looked after", especially as some would never have travelled abroad before. Some were "vulnerable" at 18, which was the age of most. Their experience with alcohol might be different too, given the differences in legal drinking age between the two countries. She had held herself out as a "personal contact", should problems arise. Sometimes they did, including as homesickness and relationship issues. Ms Le Conte described the College as having a competitive advantage in these respects over other drama schools. Competition was significant because overseas students were charged much higher fees. Ms Le Conte had met Ms McCamish in one of these recruitment trips and later had contact with her parents. None of this evidence was challenged.

The reports made by Ms Wischhusen's and Ms Eldekvist's and the College's responses

73. I now turn to the key evidence in this case regarding the reports made by the Claimants and others and the way the College responded to them. It is logical to begin with Ms Wischhusen's and Ms Eldekvist's reports.

Admissibility of evidence from Ms Wischhusen and Ms Eldekvist and Mr Allin's comments

74. Ms Wischhusen and Ms Eldekvist came forward as potential witnesses shortly before trial and so long after the deadline for the Claimants to file witness statements. Ms Witherington sought relief from sanctions and permission to rely on their statements and to call them. That application was resisted by Mr Weetman, primarily on the basis that the lateness of their statements would present practical challenges for the College in gathering, reviewing and, if necessary, disclosing, contemporaneous documents that related to what they had to say. Mr Weetman also questioned the relevance of their evidence.

75. Permission was granted to rely on limited parts of their statements and for focussed oral evidence to be given because I took the view that what they had reported to the College and its response to their reports, including any action, was relevant. Part of the Claimant's case was the College's policies were deficient and disregarded, so the handling of other, similar reports might shed some light on that. There was also evidence in Mr Allin's witness statement about past cases. In the version filed, he said at paragraph 16:

> "The allegations that I was asked to consider were unusual in terms of their seriousness. I joined the College in 2013 - three or four years before Alyse's allegations - and I had not come across anything so serious before. It is the most serious I have seen in my time at the college."

76. Mr Allin said he wished to clarify this when presenting his statement as evidence in chief. There were other incidents as well, he said, but the students concerned had left the College by the time the College became aware of the incidents. One was Ms Eldekvist's case. The incident had occurred, the student was expelled for something else and then the College had become aware of the incident. The other was a criminal prosecution. He knew Ms Wischhusen's case had been handled by Mr Weir, but he did not know the details. He went on to say that "anything so serious" he had meant serious in terms of the impact on the whole College because both students had continued studying.

77. Mr Allin's evidence on this point was not straightforward. What paragraph 16 was discussing was the relative seriousness of the "allegations" he had "come across" whilst at the College and characterising that made by Ms McCamish as an outlier. It is hard to see how he could have thought the rapes he mentioned for the first time when introducing his evidence were not "so

serious" because those alleged to have committed them had left before the College became aware of them. Self-evidently rape is very serious, not only as a crime but as a brutal denial of another person's dignity and autonomy. It is also troubling that Mr Allin was unaware that Ms Eldekvist had reported being raped before the other student involved was expelled and, although he was aware of Ms Wischhusen's case, he did not know the details, including the fact that she and the student she reported as having raped her continued to study at the College together. These facts emerged in their evidence to which I now turn.

Ms Wischhusen's report and the College's response

78. Ms Wischhusen was a student at the College from 2014 to 2018. Her statement was adopted in her evidence in chief. It records that, in September 2015, she was raped by a fellow student who she knew well. After speaking with her local sexual health clinic, she took advice from a local Sexual Assault Referral Centre ('SARC') whose staff assisted her in reporting the rape to the police. She also spoke with a member of the College's academic staff, a singing teacher, who referred her to Mr Weir. She met with him. Her impression was that he was happy others were dealing with the situation, but he suggested she might have another meeting with him later on. The statement concludes by emphatically stating neither Mr Weir nor anyone else told her that she could make a disciplinary complaint about the conduct of the fellow student who had raped her, which would have led to an investigation and his possible expulsion. She adds that she would have made such a complaint had she known about the process because every day at College she had to face the man who had raped her while they were both still students there.

79. The contemporaneous correspondence disclosed by the College includes a number of emails to and from Mr Weir, several of which express gratitude for his supportiveness. There are similar exchanges with Ms Wischhusen's mother. Arrangements for counselling are discussed with Ms Wischhusen. The emails also indicate that the police told her on 30 November 2015 there would be no action against the fellow student because there was insufficient evidence and record Ms Wischhusen's concerns about him being in a group session with her and in future timetables language classes. Mr Weir canvassed various options to avoid this.

80. During cross examination by Mr Weetman, Ms Wischhusen confirmed Mr Weir had given her information about counselling, he was supportive and had met with her a number of times. She had not been told how to complain about the student whose conduct she had reported, or looked at the HUB/HWB at the time. Asked whether she had told Mr Weir she had wanted to complain, she said she had not but that "being raped by another person might suggest you want to make a complaint about them".

81. Ms Wischhusen was a compelling, credible witness. Her oral evidence was consistent with her statement and the contemporaneous emails the College had disclosed. It was balanced. She was not generally critical of the College. Her main concern, simply put, was that she had not been told about an important option which she would have wanted to take had she known about it because it could have led to action being taken by the College against someone whose ongoing presence was acutely distressing for her. She had already decided to make a report of rape to the police, so her assertion that she would want to complain made sense.

82. Mr Weir discussed what had happened with Ms Wischhusen when cross examined by Ms Witherington. He said that she had made a formal complaint to the police, that the College had to take a "stepped approach" and it would not have been "relevant for Beth to make a student misconduct allegation while the police were investigating the allegation of a criminal offence". Ms Witherington asked if he had directed her to the process afterwards. Mr Weir said he could not point to any written evidence to say so, but that he had been in touch and to give support and she was getting support from the College counsellors. Pressed about whether either Ms

Wischhusen or Ms Eldekvist had, at any time, been directed to the procedure by which complaints could be made, Mr Weir said that he could not point to any documentation, but it was his "standard working practice to make sure people are aware of every option available to them". However, in answer to a question from the Court he said he could not recall such a conversation with either of them about that option.

83. What I take from this is that Mr Weir was communicative with Ms Wischhusen and supportive. He facilitated access to counselling and explored options to address one of her concerns about being present in classes attended by the student who was the subject of her report. Mr Weir decided the Conduct Regulations were irrelevant while the police were investigating. Nothing suggests there was a rethink when the police's decision to take no action was made. I find that Mr Weir did not inform Ms Wischhusen or Ms Eldekvist of the option of complaining about the fellow students that were the subject of their allegations to prompt any disciplinary investigation. I prefer their clear recollections of the conversations over Mr Weir's evidence of his general working practice.

Ms Eldekvist's report and the College's response

84. Ms Eldekvist's statement explained that she was a student at the College from 2015-18 and that she too was raped by a fellow student. She was frightened and paralysed, then felt sick and overwhelmed. Within a week of the rape, she told a College lecturer, wanting some form of action to be taken even if it was merely a conversation with the student responsible about his behaviour. Nothing more formal happened until much later when another student told her she too was being sexually harassed by the same student. They met with Mr Weir and told him what had occurred. He asked, she recalled, "well, what do you want us to do?". She did not know what was possible. She was offered counselling, but not told disciplinary action could be taken. She decided to speak to the SARC who referred her to the police. She made a statement. The police arrested the student, but a decision was made to take no action.

85. Ms Eldekvist confirmed her statement was accurate, subject to clarification of the date of her rape, which was January 2016, and the first report to the College lecturer, which was in February the same year. On that occasion she had asked to be kept apart from the fellow student. When cross examined by Mr Weetman, Ms Eldekvist explained she had support, a mentor, at the College at that time. Mr Weir had supported her with an extenuating circumstances form, discussing the fellow student. There had ultimately been a meeting with Scott Allin in which he informed Ms Eldekvist that action could not be taken against her fellow student because he had been expelled for reasons unrelated to the rape. In answer to a question I asked, she said that she and the fellow student had been separated into different classes in 2016. He had also kept his distance so she assumed he had been spoken to, but they were later assigned to work together closely on a show.

86. Ms Eldekvist was a straightforward and believable witness. What she said was consistent with the contemporaneous material disclosed. I accept her evidence. As discussed above, there is a tension between her evidence of what she was not told and Mr Weir's standard practice, as described. I have already found that the complaint option was not explained to Ms Eldekvist. The College did take steps to support her, however.

<u>The reports made by Ms McCamish, Ms Feder and other BA 2 students and the College's response</u>

87. Although the basic chronology of events is agreed by the Claimants and the College, their perspective on what the contemporaneous evidence shows is fundamentally different in many ways. There is also the risk of recollections fading over time which I have mentioned. Given these factors, it is necessary to identify the most significant material and discuss some it in detail.

To avoid having to discuss the same events from different witnesses' perspective consecutively, I will take a broadly chronological approach, introducing and discussing that evidence as and when it becomes relevant and dealing with credibility issues.

Ms McCamish

88. Ms McCamish was born on the 25 February 1997 and is a US Citizen. In her witness statement, Ms McCamish described how she had dreamt of being an actor as a child. She went to singing, acting and dancing classes and was involved in high school productions then local community theatre. She resolved to pursue acting as a career. She enrolled on the College's Batchelor of Arts ('BA') Drama course in September 2016 following the meeting that she had with Ms Le Conte that led to a successful audition. UK Drama schools had a reputation as being the best in the world and so she chose to study at the College despite having eight other drama school offers. She hoped to work in the UK after graduating.

Ms Feder

89. Ms Feder was born was born on 14 September 1997. She is also a US Citizen. She went to music theatre camp over a series of summers, attended a Shakespeare programme at RADA, was in school plays and went to acting lessons on weekends. She had an agent and narrowly missed being cast in a Broadway production and a film. The College made her an offer for a place on its BA Drama courses which she decided to accept even though she had another offer. She moved to Cardiff in September 2015 to take up her place. It follows that she was in the year ahead of Ms McCamish, though on the same course.

90. Ms Feder's evidence was that she felt "unsupported and very uncomfortable" for most of her time at the College, which she attributed to staff actions and attitudes. She considered there was an emphasis on physical appearance, students ingratiating themselves with staff members and inappropriate physical contact between students but also between some staff and students. On occasion, male students behaved towards female students in ways she considered fundamentally wrong. Her evidence was that she had witnessed some of these things and was the subject of others. What happened on 27 November 2017 with the male student was not, therefore, her only negative experience, but she said it was very significant because of the College's response.

91. Some of her evidence about events before then was questioned by Mr Weetman. She confirmed she understood that students should not be pressurised into doing things they were uncomfortable with and that she had been aware of the HUB/HWP policies since induction, who she could go to and of the facility for complaining. I accept this evidence. There was a particular past event which, in cross examination, Ms Feder explained had made her reluctant to complain about the actions of the male student. This is relevant and I discuss it below.

92. However, in my view the further lines of questioning about Ms Feder's experiences as a student described in her witness statement had very little relevance to the case she was advancing or to the College's defence. They are serious matters but were not part of her pleaded case on negligence. The College had a very different perspective from hers and some events were disputed altogether. For example, Ms Newman was briefly cross examined about some of the things she said, disputed some and argued others were being taken very much out of context. I have decided it is unnecessary to set out and make findings on aspects of Ms Feder's experience as a student which are unconnected to the College's response to her report. For completeness, I should say that none of Ms Newman's evidence about these matters gave me any reason to doubt my assessment of the credibility Ms Feder's evidence on the issues that are part of her negligence case.

February 2016

93. Ms McCamish's mother accompanied her when she first came to the UK in February 2016. Ms McCamish and the male student were offered and moved into accommodation in a Severn Point flat. She would later report she was sexually assaulted on four occasions during her first few days there.

June 2017

94. In June 2017, Ms McCamish and the male student were participating in a small improvisation class overseen by a tutor, Jamie Garven. The door was locked and the male student took off all of his clothes. Ms McCamish's evidence was that she was distressed by this and felt unsafe. She felt a "paralyzing fear of knowing I was unable to escape". What was happening brought to mind a series of events the previous September. I will come to the detail of them shortly.

95. Ms McCamish was still living in the same student accommodation as the male student, so after the class she made her way to Mr Coster's house. She was distressed, something Mr Coster confirmed in his evidence. Ms McCamish has back problems. Her back began to spasm, he ran her a bath and she told him about the September 2016 events. She reported them to Mr Garven shortly afterwards, on 10 June. Mr Coster was present. Mr Garven said the accusation was serious and he needed to tell somebody about it.

96. A meeting was then arranged between Ms McCamish, Ms Le Conte, Mr Bond, Patricia Logue and Claire Brown and took place on 13 June.

97. Ms McCamish's evidence was that Ms Le Conte and Ms Brown appeared sympathetic, but Ms Logue was not. Mr Bond was not sympathetic either. Once Ms McCamish had given her account of events, he said "sounds like a relationship gone wrong" which shocked her and suggested he was not taking her seriously. Her response was "I don't know many relationships that start with one person unconscious." Asked what she wanted, she said it was to be in different classes from the male student because she felt unsafe in class with the person who had repeatedly assaulted her. Mr Bond said they would be able to separate them in the morning class, but the afternoon one involved the whole year group. Mr Bond added he couldn't guarantee they wouldn't be cast together in third year shows in intimate roles. She was taken aback by this.

98. This evidence was challenged in cross examination. Mr Weetman drew Ms McCamish's attention to the emails of 14 and 16 June discussed below, in particular her expression of gratitude for the acting staff's support. Her pleaded case was that staff had intentionally misunderstood her, he said. She said that she was vulnerable, in their hands and needed help. Her emails were overly polite towards people who were responsible for her career. She was not lying when she said she was comforted. In some ways she was, but not by Ms Bond or Ms Logue. Mr Weetman pointed out that she had specifically said she was thankful towards Mr Bond for support and guidance in an email to Ms Le Conte sent on 11 September. Ms McCamish said she had not totally meant those words and accepted Mr Weetman's characterization of them as a "partial lie". There was no need to use such warm words, he said, the simple truth had been that the College's response was receptive and supportive, the reality was not as she was describing it. She disagreed. Mr Weetman quoted from a website in which she apparently said she was holding up a megaphone to highlight corrupt system. This material was not before the Court. When I raised this, he did not pursue that line of questioning further. Mr Weetman also asked about the timing of separation in the morning classes. Ms McCamish said that was to start from the following September.

99. I accept Ms McCamish's evidence about the 13 June 2017 meeting for a number of reasons.

100. First, Ms Le Conte was the only other witness present, and she too was observant and critical of the reaction of some of her colleagues. In cross examination she said Ms McCamish had wanted to be separated in classes. Ms McCamish "didn't receive a particularly sympathetic hearing". Ms Logue had shown signs of "impatience and mild incredulity". She too recalled eye-rolling. Mr Bond had made a comment about a "relationship gone bad" (Ms McCamish recalls "gone wrong", but the meaning is the same). Ms McCamish made her response about being unconscious. All Ms McCamish had asked for was segregation from the male student in the coming year. Ms Le Conte's statement observed that the second year acting classes were small and involved conflict. What she was seeking was understandable, a simple request. Mr Weetman asked why Ms Le Conte had not challenged the others or recorded what had happened in her diary. She said but they would not have cared had she done so and what happened at the meeting was "imprinted" on her brain. She did not expect notes would be scrutinised later. She was asked about her own response to Ms McCamish's 11 September email, which had suggested Ms McCamish having a chat with Mr Bond and Mr Weir. Had she not thought they would have a genuine concern for Ms McCamish's welfare? Ms Le Conte agreed adding she that she trusted there was a protocol in place that they would have acted on. This line of questioning did not undermine Ms Le Conte's evidence which I accept.

101. Secondly, it is clear from a great many emails from Ms McCamish she has a consistently upbeat, complimentary style even when dealing with people she has concerns about. Her explanation that she continues to express herself in this way in situations where she has comparatively little power rang true.

102. Thirdly, the 11 September email was dealing with several events compendiously. It is evident that she considered she was getting some welcome support and guidance. A lack of sympathy is not necessarily incompatible with this.

103. Mr Coster gave evidence that he believed there had been a lack of sympathy at the 13 June meeting. I gave this limited weight to this because he was not there and so could only speak to Ms McCamish's impressions when she shared them with him.

104. A brief note of Ms McCamish's account was made by Mr Bond, though not of the full meeting. The note was forwarded to Mr Weir under cover of an email that simply stated "FYI" and was sent to Ms McCamish and to a Elayce Ismail, who had been a visiting lecturer. Mr Bond's email invited Ms McCamish to confirm its accuracy, adding she should "come to me or any member of staff if you feel that you are at risk or have concerns." There are issues regarding the accuracy of the note. For example, it named Ms McCamish as Ms Ismail.

105. Mr Weetman cross examined Ms McCamish about Mr Bond's note. If he had misunderstood her, why not correct him? Ms McCamish said she had felt embarrassed giving her account to her tutors and was going to have to restate it anyway. Rather than edit Mr Bond's note, Ms McCamish replied to him on 14 June saying, "the acting staff has been great, and I feel really comforted in how the situation is being handled". She had "attached a copy of my account exactly how I explained it" to that email. She said she would be ringing the school counsellor, whose number she had been given. She also replied to Mr Weir with a suggested time for the proposed meeting.

106. Ms McCamish's emailed note of her report stated:

> "WEDNESDAY
> Got into Cardiff with my Mom.
>
> FRIDAY

[The male student] moved in, and I met his parents. That night we had a beer in the living room and a chat and became friends.

SATURDAY
The first night out. Walked to Welsh Club with [the male student] and our other flatmate Maddie and met the majority of our class there. [the male student] and I then broke off and went to a bar and then separate club on our own. He basically carried me home and put me in his bed (my Mom staying in my room two doors down) and made me a cup of tea. I had a couple of sips and then blacked out. I woke up (being on the inside of the bed) after about 5 or 10 minutes to him intensely staring at me and masturbating. He told me to take my shirt off. He finished and then went to the bathroom to clean himself off, and then we went to sleep.

SUNDAY
Woke up Sunday morning and went to act normal to my Mom. At around noon I went to his room and said "I feel guilty" and "I don't feel good about that" and other variations repeatedly. I had a boyfriend at the time and he was/is dating a girl named […]. He said, "We didn't do anything technically wrong" and "We can just be each others' substitute boyfriend and girlfriend when they aren't here." That evening he made a point of saying by to my Mom before she flew back to the States.

MONDAY
1st day of school. I was in the kitchen in the evening and he came in and told me to come to his room. He pushed me and held me again the wall and pushed my leg up, and then "went down" on me over my pants. He then got up and pushed my head down and masturbated in front of my face.

TUESDAY
He saw me in the kitchen again and told me to go in his room. He then told me to get naked and lie on the bed, and then he got on top of me and masturbated over me and put his other hand over my throat. Afterwards, he laid down in bed with me and asked how my boyfriend was. I then asked how his girlfriend was and he put his upper arm over my throat/chest and say "nobody gets between me and my [girlfriend]." I might have slept there that night but I can't remember.

WEDNESDAY
I avoided the kitchen and stayed in my room.

THURSDAY
My boyfriend and I broke up via FaceTime. I went in the kitchen to get food and started crying and my girl flatmates took me back to my room and sat in bed with me. 5 minutes later, [the male student] came in with a cup of tea.

FRIDAY
I had talked to my newly ex-boyfriend after school on the phone and had just hung up and was crying curled up on the inside of then bed. [the male student] came in and laid down and started stroking my back and comforting me. Then he got handsy and was touching me and got physically more strong and I was saying "no" and "stop" a lot and crying more. Then my other flatmate Grace came in without knocking and he jumped up, said hello, and then ran out of the room. We never said a word about the situation again. There was never any kissing involved. I would

> occasionally knock on his door to see what he was doing but not for sexual reasons, which he may have misinterpreted.
>
> Nothing ever penetrated me".

107. Ms McCamish said more about these events and their profound impact in her statement and oral evidence. She described her struggle to remain conscious when she arrived back at the flat before the first incident took place and her horror when she woke. She had been "paralysed with fear" when the male student told her to shut up and lift her shirt. She had turned to face the bedroom wall. When the male student returned from the bathroom, she had remained turned away from him, crying. She had firmly told him the next day that his actions were not okay. She thought it was a misunderstanding and would not be repeated. She would avoid him in the flat. When he had cornered her on the Monday, she was terrified of what would happen if she did not comply with his demands. During that and the Tuesday incident he had forcefully pressed his forearm against her throat. He would threaten her, telling her if she "told anyone about what he was doing, things would get worse." She felt "shame, guilt, confusion, embarrassment, anger, fear."

108. As I mentioned in the introduction to this judgment, Mr Weetman avoided these matters in his cross examination. I make no findings in them for the reasons given there, but it is right that they are recorded here.

109. Mr Weetman did, however, robustly question Ms McCamish about other events during the start of term and the nature of her relationship with the male student at that time. She was pressed on whether she was doing all she could to avoid the male student in the first two weeks. She said that was hard to do because it was a new, small group of people endeavouring to be a "happy family". She accepted they had nicknames used with one another. She had been wished well by the male student's parents. When she spoke with him in the flat, she was hoping the incidents would not reoccur. There were pictures of the flat mates together, as a group, on social media which Mr Weetman took her through. He was in her circle of friends, she said, and there was no way to escape him. One message from her to the male student had said "knock on my door when you get back". She could not recall why that had been suggested, but victims of sexual assault coped in different ways including by befriending perpetrators in the hope that might deter them from further abuse. She had to protect herself in the flat. Mr Weetman took her to affectionate messages she had sent, such as in January 2017 stating "love ya and miss ya" and another one suggesting they "grab lunch" in February 2017. The lunch had been with a group, she said, and she had resolved to befriend the male student to keep herself safe. There was not a lot she could do to avoid him.

110. I accept Ms McCamish's explanation for her actions and it does not undermine her credibility. Her answers to Mr Weetman's questions were internally consistent and with her witness statement that said she had "nowhere to go that he couldn't." The messages and photographs spanned a much longer period than the weeks Ms McCamish was discussing when she said she was withdrawn, kept to herself and stayed in her room. Further, Mr Allin's evidence was that, when he later came to investigate, he had noted sexual abuse victims do not necessarily respond in ways that might be expected. In her report Ms MacArthur Kline discusses and cross references the CPS document 'Rape and Sexual Offences – The Code for Public Prosecutors Annex A: Challenging Rape Myths and Stereotypes October 2020'. I note that it makes similar points in detail.

111. Later during the evening of 13 June, Mr Weir wrote to Ms McCamish stating:

> "I think it would be good if we could meet confidentially so that I can give you some impartial advice about options available and what I think we should do. Central to

> this is, of course, making sure you are aware of the support available regarding not only what happened last September but also the impact that is having on you now. We want to help - I genuinely think we can and I want you to know we are ready to do so. As a first step I'd like to talk to you about possible sources of professional support."

112. The email concluded with an offer of a meeting that week. When cross examined, Ms McCamish accepted this email was not from a member of staff who is being dismissive. It was proactive, offering help, to tell her about a process and options.

113. Ms McCamish's first meeting with Mr Weir took place on 16 June. There is no record, but Mr Weir emailed afterwards stating:

> "As promised, have a look at the link below, which gives a summary of the support available at the SARC.
>
> http://www.cardiffandvaleuhb.wales.nhs.uk/ynys-saff-sarc
>
> Also, our counselling service can be emailed via counselling@rwcmd.ac.uk
>
> Have a think over the weekend about our chat earlier and let me know where you reach on Monday. We are ready to help in any way we can. I am free at 1:00 on Monday, or Tuesday in the afternoon."

114. Ms McCamish's evidence about this meeting was that she told Mr Weir she did not want to go to the police. It would be her word against the male student's and she did not want her time at university to be taken over by a police investigation. She had said she was fearful of her safety, that the male student was violent and had threatened her. She was scared he would find out she had come forward and was still living in the shared flat with him. No help with this was offered. The essence of Mr Weir's advice had been to get over what happened or go to the police. There was no explanation about what the school could do to help her. She also told Mr Weir she wanted to speak to a therapist, which he said he could arrange. Mr Weir made no arrangements for her to see one. After contacting the College counsellor direct later on, Ms McCamish discovered that her practice was 30 minutes away and would not offer appointments after class times. Ms McCamish saw her for a session and she offered to make her notes available to the College. Ms McCamish told the College they could access them but, as far as she knew, they never did.

115. When cross examined, Ms McCamish said she could not remember when she saw the College counsellor. She accepted she had been listened to by someone with a sympathetic ear in the 16 June meeting, the options of the SARC and contacting the police and the College counsellor had been presented. Mr Weetman suggested it was explained that there could only be an internal investigation after the police have been contacted because the College had been told not to commence its investigations before their involvement. Ms McCamish denied this. When she eventually spoke to Officer Russell, she said, he had told her it was unnecessary for there to be a police investigation prior to a College one and recommended that the College handle the matter internally. She did not recall whether she had discussed making a formal complaint to the College during the 16 June meeting. She accepted she had not raised EMDR therapy during this meeting (i.e. Eye Movement Desensitization and Reprocessing, which is used to treat trauma). Mr Weetman asked whether she had sought help with moving from the flat she shared with the male student. She could not recall asking specifically but observed that she was a student "in need and afraid".

116. Mr Weir also gave evidence about the 13 and 16 June emails and the 16 June meeting. He had wanted to ensure Ms McCamish was aware of possible sources of professional help. He recalled telling her about the functions of the SARC. He did not want to push her to decide the way forward and did not suggest that her report was an "official complaint". He had explained to her the College "could not start an internal investigation until the matter was resolved by the police" and the police had said so. Doing so could forewarn perpetrators of an offence. The College would not pursue an investigation without her permission. When cross examined, Mr Weir said his follow up email was "an accurate record" of the conversation. His practise was to email students about their options after speaking with them. Re-examined by Mr Weetman on this point he confirmed Ms McCamish did not have a view on whether she wanted to make a student misconduct allegation at the time. He had not been aware of her request to be in separate groups until later, in September.

117. There are two conflicts between Ms McCamish's account and that of Mr Weir. The first is about whether Ms McCamish said she did not want to go to the police. Mr Weir says she was undecided. Ms McCamish's evidence was she repeatedly said she did not. She repeated this in cross examination. Mr Weetman drew her attention to an email of 22 June. When prompted by Mr Weir for an update, Ms McCamish wrote "[s]orry about the delay. Been trying to find time to give it some thought! Thinking SACR is probably the best option, but can I come in tomorrow or after the weekend for a chat?" Mr Weetman suggested in cross examination she was unsure whether she wanted there to be a formal complaint or the police involved. She responded that she had not been told about a formal complaint, only going to the police, SARC or counselling. She did not dispute she was considering the options presented. This conversation took place six years ago and there are no contemporaneous records other than the emails sent afterwards. Ms McCamish and Mrs Weir's recollections are different. I accept that after the meeting Ms McCamish was considering what to do, even though her position in the meeting had been that she did not want to go to the police. The contemporaneous correspondence cannot be interpreted otherwise.

118. The second conflict concerns what was said about the College's internal disciplinary procedure, i.e. the 2016 Conduct Policy, if anything. In my view, it is unlikely there was any significant discussion about it, even if it was mentioned at all. I make this finding first because of Mr Weir's own description his 16 June email as a record of the discussion. It said nothing about the disciplinary investigation or action being an option. I also remind myself about his evidence that the College's procedure was not "relevant" while Ms Wischhusen's report was being considered by the police. There is also an email from Mr Weir to Ms McCamish dated 16 December in which he says the procedure will be explained to her by Mr Henson. That does not make sense if Mr Weir had already explained it. Further, in an 11 September 2017 email summarising her discussions with Ms McCamish, Ms Le Conte did not mention that option. Mr Coster also recalled conversations they had with Ms McCamish at the time. Mr Coster was cross examined about this and said that the option of an internal investigation was not raised until the next term. This evidence was consistent with what Ms McCamish said. I accept it, but give it relatively little weight in circumstances where he was not present at a number of key meetings. I accept that the two main options presented to Ms McCamish were to pursue matters with the police, directly or through the SARC after seeking guidance there, and to seek counselling. I also accept she was listened to sympathetically by Mr Weir and that the two options were presented to her in that spirit.

119. I now turn to Mr Weir's evidence about the Universities UK Guidance, safeguarding and risk assessment.

120. When discussing the June 2017 meeting, Mr Weir's evidence was that the College would be "duty bound" to notify the police of a complaint that included an allegation of criminal conduct.

I asked him what he meant. He said the College's policy at the time was to "give the student making the allegation the control over what next steps are being taken". That was "all in line with the guidance". The College's form, once completed by the student, made it possible for the College to speak to the police. That was also in line with "the guidance", Mr Weir said. It became clear he was discussing the Universities UK Guidance.

121. Ms Witherington took Mr Weir through the options to be discussed at the point of a report being made in section 9 of that guidance:

> "universities should assist the reporting student to understand the various options available to him/her and provide the student with support in making a decision about the way forward. The key options for the reporting student will usually be as follows:
> • make a report to the police
> • take some time to consider the options (in this situation, where appropriate, universities should provide advice about how attendance at the nearest sexual assault referral centre can enable forensic evidence to be collected whilst a decision is being made about whether or not to make a report to the police)
> • not report the matter to the police but request that the university consider the case under its Disciplinary Regulations (or other internal process)
> • take no further action."

122. She put it to Mr Weir that it was not the case that the police must be informed in every situation. Students could opt just to follow the disciplinary procedure of the College. He replied "[m]y reading of our guidelines in 2016 was that if we received a criminal allegation we should report that the police", adding "it doesn't stop the student making the allegation internally i.e. completing the form". He also said "it also doesn't enforce the students then to be in dialogue with the police about their application they can also refuse to do that to the police too". Ms Witherington suggested "if Alyse didn't want to report it to the police… you're saying is that you couldn't investigate her complaint." Mr Weir's response was "we would notify the police, she would reserve the right not to proceed with the police… we have carried out our responsibility in our view of notifying the police we have become aware of a criminal allegation".

123. I invited Mr Weir to comment on section 10 of the guidance which begins:

> "As set out above, we recommend that if the reporting student decides not to make a report to the police (or the police decide not to investigate or the prosecutor decides not to prosecute), where the accused is a student of the university, the reporting student should have the option of requesting that the university deal with the matter under its internal disciplinary process and, in such circumstances, the university should follow its Disciplinary Regulations when determining what action should be taken(note that a university should also ensure that its Disciplinary Regulations provide that it has the ability to take disciplinary action against the accused student of its own volition if the reporting student does not wish to make a formal complaint).
>
> If a university refused to take disciplinary action simply because an alleged act of misconduct could constitute a serious criminal offence (including a serious sexual offence) that could lead to a perverse situation where a reporting student receives greater protection from their university if he/she makes an allegation about a less serious act than if he/she makes an allegation about a very serious act. Note that we are not advocating that all matters should be progressed through the disciplinary process as that may not be appropriate (for example, due to lack of evidence), but

> the matters should not be excluded from consideration simply because the alleged act could constitute a serious criminal offence."

124. I also drew his attention to case study 1 at Appendix 2, "[t]he reporting student states that he/she does not want to report the incident to the police."

125. Mr Weir confirmed twice that he had been mindful of this guidance at the time. He added:

> "… in the June 2017 meeting with Alyse, the reason we suggested she speaks to the sexual assault referral centre is because that's not a place to speak to the police. It is a place to get professional support and guidance about what options available to be able to do so and the second I was explaining that to Alyse because I felt that these allegations were sufficiently serious enough that they should be reported to the police. I'd also explained to Alyse if you put an allegation of criminal accusation into one of our student conduct forms we have to notify the police. At no point between June 2017 and the receipt of the form does Alyse tell me she does not want to go to the police."

126. He then said, somewhat contradictorily:

> "If a student says they don't want to go to the police, then you shouldn't go to the police against their wishes. That would be logical but I don't actually have that instruction given to me to from Alyse anytime between June 2017 and the form being received and the conversations I've had with Alyse states that if we get a form with a criminal allegation we'll have to tell the police. Now if Alyse had come back and said I don't want the police involved then we would have taken a view on that. But she didn't".

127. When the College took such a view it would need to consider its safeguarding "duty of care", he added.

128. Mr Weir also said he did not think there was a difference between the College's policy and the guidance, but there "could have been clarity about there also being the option for Alyse deciding she didn't want to go to the police. That may not have been explicit. The conversation I had with Alyse was what would happen if there was an allegation of criminality."

129. What I take from this is that Ms McCamish was not told at this time about the option discussed in sections 9 and 10 of the 2016 Universities UK Guidance where there would be no police report, but the College would investigate. Mr Weir believed that she was considering her options after the 16 June 2017 meeting. I find this option could not have been considered by Ms McCamish then because she had not been told about it. I accept that, between the meeting and the complaint form being received, Ms McCamish had not come back to Mr Weir to repeat what she had already said about not wanting to involve the police. I have already found she was considering whether to involve them during this period.

130. I now turn to Mr Weir's evidence about safeguarding and risk.

131. Mr Weir's witness statement mentions Mr Bond referring Ms McCamish to him under the "safeguarding student conduct policy". The first reference to a risk assessment in Mr Weir's evidence relates to a meeting much later, on 4 January 2018. Cross examining him, Ms Witherington suggested that he had not complied with the College Safeguarding Policy by making a written record of the concerns raised. He said that was his 16 June 2017 email. Asked about consideration to contact with the alleged abuser, Mr Weir said that had been done but not

documented. He added had assessed the safeguarding risk at that point. Separation of classes would have been a possibility, but Ms McCamish had not wanted that then. Moving Ms McCamish in classes at that time would also have made the male student aware of "something going on." He had been aware that she was moving into Ms Coster's flat so there was no need to consider anything at the halls of residence. A formal complaint was not necessary for safeguarding, however. Ms Witherington put to him that there had been no preparation or planning until the 2017 Autumn term. He agreed. That was when the new term and timetable began. The request to change classes was not brought to his attention until September.

132. I have considered this part of Mr Weir's evidence carefully and have real concerns about its reliability. First, there was a contradiction in Mr Weir's oral evidence. Earlier on he said he had not known about any request for separate classes from the male student until September. When the discussion shifted to safeguarding, he said she had not requested separation, suggesting a discussion in June or at least awareness of the 13 June meeting. His silence in his witness statement about safeguarding and risk issues being considered this time is telling. Also troubling is the lack of any mention of these considerations in the 13 or 16 June emails. Most strikingly, Mr Weir does not say they were discussed with Ms McCamish. If he had safeguarding considerations at the forefront of his mind at this time, it is very odd he should not discuss them with her. Ms McCamish had reported, on her account, someone who was coercive and violent at times, who might also use intoxicants not limited to alcohol to make her especially vulnerable and subject her to non-consensual sexual acts. The first reported act began when she was unconscious so, on her account, incapable of consenting. At the time of the meeting, she was living in the same flat as that person. There is no suggestion help was offered with an eye to the risks of her remaining where she was before the planned move to Mr Coster's house. In my view safeguarding and risk issues were not considered in any meaningful way at this time and Mr Weir's evidence that they were was not accurate.

133. I have already mentioned the 22 June email from Ms McCamish. Mr Weir suggested a meeting the following week. It seems there was no meeting then, however.

134. Asked by Mr Weetman if she wanted a formal investigation at that stage, Ms McCamish said she did not want the male student to be made aware. Ms McCamish added that the male student had threatened her and she was afraid. She had not asked for him to be suspended in June 2017. She could see he would have needed to be told the reasons for a suspension. Asked her about September 2017, she said she was still in classes with the male student. Echoing this in his evidence, Mr Coster said that she had not wanted anyone giving details of her allegation to the male student in June 2017, or in September either, unless safety measures were in place. Mr Weetman took Ms McCamish to the 2016 Conduct Policy and asked her whether her report was talking about criminal offences in her view. She said they were serious, but she had not gone to the College to seek a police investigation. She had wanted their help.

July 2017

135. On 4 July 2017 Mr Weir suggested a "catch up about where we are before the end of the academic year." Ms McCamish wrote back on 11 July that she had stopped by his office but was not there but would try again later. They did not meet, however.

September 2017

136. The second year of Ms McCamish's course began in September 2017, and she soon realised that she had been timetabled for morning classes with the male student. Her evidence was that she wondered "if they had heard a thing I said, or if they just didn't believe me, or if they just didn't care." Her mother brought the issue to the attention of Ms Le Conte who emailed an

administrator, Sian Jones, stating "in some she is grouped with [the male student], which we had assured them wouldn't happen. Is it possible to make changes please to sort out this problem?". Some timetable changes were proposed and later made, but Ms McCamish and the male student remained together in afternoon classes.

137. Ms Newman was copied into this email exchange and asked for more information. In cross examination she said she had met with Mr Bond who gave her something to read, possibly his June 2017 meeting note. In cross examination, she said her immediate reaction was that she didn't want to take sides, it was "terrible for these people". She agreed that she hadn't needed to know that level of detail. Her job was to look after the whole year. Her understanding at this point was Ms McCamish didn't want to make it formal as she didn't want anyone to know. She had only been given basic training on disciplinary issues and its focus was listening skills and signposting. Ms Witherington directed her to paragraph 36 of her statement in which she mentioned discussions between staff. She could not recall any at that time. Last, Ms Newman said that she began to keep a regularly updated note, sometimes using text pasted from emails. This was exhibited to her statement. There was no real challenge to this part of Ms Newman's evidence which was given straightforwardly, even when some of what Ms Newman said was unhelpful to the College, and I accept it.

138. The next day Mr Bond emailed Ms Le Conte:

> "This is only a short term fix. I can't remember exactly what we promised Alyse re groups, but I suspect it was an agreement to keep them apart while the matter was being investigated. I think now that it appears that Alyse does not wish to pursue the matter – and that it occurred a year ago - we can't give an undertaking that they can be kept in separate groups from here on in. There is also the third year to think about."

139. A number of emails followed the same day with increasing numbers of staff copied in. Ms Le Conte told Mr Bond "Alyse is very concerned about being in a group with him" and that she had not heard about any meeting in which Ms McCamish declined to pursue the matter. Mr Weir replied "I met with her twice and gave advice on where Alyse would be able to access confidential and professional advice. She was to let me know her intentions to pursue or otherwise the issue – we arranged to meet 3 times but always with a DNA" (i.e. 'did not attend'). Ms Logue said Ms McCamish had asked to remain in the group after the June meeting, adding "it isn't a problem, it's easily fixed with regard to groupings. However if Alyse and her mother are complaining that she requested different groups - she actually didn't." In her evidence, Ms McCamish confirmed this was correct as far as the end of the summer term was concerned, but she had been promised she would be separated in morning classes once the new term began.

140. Mr Bond replied:

> "Specifically on Alyse. She didn't want to pursue the matter and as Brian has stated, didn't attend meetings. And of course, we have never had the other student's account. Obviously we are going to be careful here, but the discussion will be about to what degree? My guess is we will keep them apart in Year 2, but offer no guarantee in Year 3."

141. Ms Le Conte's response to that was:

> "I think I felt frustrated by not ever knowing what Brian said. I've hardly spoken to Alyse since then but I do know that she felt a bit let down by his response because the two options (as she said briefly to me) seemed to be 'get over it' or 'call the

> police' which appalled her and I can see why: not because the story wasn't true but because it would have had a potentially major effect or her life, his life and the group dynamic. No 18 year old a long way from home wants to make herself that unpopular. I don't know, but I suspect her not going to Brian was more symptomatic of confusion and unhappiness with the outcome than a lack of cooperation. She tried to see me several times then but I was always unavailable, not sure what I was doing. I also don't believe those two options are ideal, they're over polarised, but I didn't realise you hadn't spoken to [the male student]. We (ie YOU) probably OUGHT to speak to him, for obvious reasons, but also because he has a right to defend himself. He probably doesn't need telling to back off, he MUST surely know she made a complaint, but backing off and perhaps apologising might just make everything go away.
>
> I agree about year two and year three but I also think that, unresolved as it is, to any degree, it's going to make for unhappiness and tension, especially since some other people DO know and will be watching carefully to see what kicks off."

142. These words were prophetic.

143. On 11 September, Ms McCamish emailed Ms Le Conte and Ms Logue stating:

> "I didn't want to draw attention by switching out of classes with [the male student] towards the end of last term, but I would like to be taken out of classes with him this year and in the future. It was all very jumbled and rushed before the end of school, so sorry about that lack of clarification or confusion.
>
> Just to update you, since I didn't have time to go to consoling before flying home, I've been in EMDR therapy throughout the summer and it's been very beneficial. I'll continue to do some of the same type of consoling [sic] throughout the school year and will be going through the SACR program Brian told me about. Thank you both (and Claire and Dave) for your support and guidance at the end of last year; I'm more grateful than you can know. But overall, I'm very excited to get back to school and get to work!"

144. The next day Ms Newman emailed Mr Weir and Mr Bond to say she had a rough idea of the situation and would endeavour to keep them in separate groups that term. She then emailed Ms Jones stating, "let's keep [the male student] and Alyse apart as long as we can".

145. On 24 September, Ms McCamish emailed Mr Weir seeking a meeting. He proposed a date and time in reply.

146. Meanwhile, Ms McCamish had concerns about what was happening in that term. She and the male student remained in the afternoon classes together. He was given a part time job in the library and cast in a third year show which were privileges. They were also grouped together for a specific project that ran until November. In cross examination, Ms McCamish said that she could not recall raising this as a problem but had started to give up hope the College was taking her allegations seriously. She had said she was afraid of him. She was developing unbearable, frequent migraines that meant she was missing classes every couple of weeks.

147. She also accepted that she had still not wanted the male student to be told about her report at this time. Asked about her fearfulness, she said reactions to sexual assault had different phases. Initially she had frozen. She had then befriended the male student, suppressing what had

occurred. Now, in classes, she was fearful of him. She was fragile and would sometimes react to his acting and come home shattered.

148. In cross examination, Ms McCamish also said that she recalled it was around this time that Ms Newman had said she could not have time away from classes to attend counselling. However, she could not be more specific about when. It had not been said in a vindictive way, rather that time should not be taken off unless absolutely necessary and attendance was necessary for her career. Ms Newman was cross examined about this and said that, if Ms McCamish had asked, she would have said 'please let us know in advance', but she did not ask. Ms McCamish would not say why she was not in, but she had lots of problems with her back and treatment with a physio.

149. On this issue, recollections differ. I prefer Ms McCamish's evidence. There are two reasons why I consider her account is more likely to be accurate. First, there are the general difficulties Ms Newman had in remembering events discussed at paragraph 177 to 178 below and her candid remark that she had not wanted to remember. Secondly, Ms Newman mentioned she was not told the reasons when Ms McCamish took time off. That is not borne out by the email correspondence between them on 12 June and 1 November 2017. However, I find that Ms McCamish was told she could not have time off unless absolutely necessary and attendance was necessary for her career. That was not an outright refusal.

October 2017

150. Ms McCamish's evidence describes a day in October when she came home and Mr Coster found her in a distraught state. She told him she had reached her limit. He took her to a hotel for the night so they could have a break. This evidence was not challenged.

November 2017

151. On 22 November 2017, Ms Newman emailed Ms Jones to say that Ms McCamish and the male student had inadvertently been grouped together on a production by another staff member. Ms McCamish's evidence characterises this is another instance of the College not keeping to its commitments. She also says that she had heard at this time she was being described as a troublemaker by staff.

152. On 25 November 2017, Ms McCamish asked Mr Bond if she could leave the College early that term as she had gone "through this term absolutely drained, really struggling", adding "[t]his term has left me very fragile and I feel like the sooner I can be home, the better." Mr Bond told her to get in touch with Ms Newman, I said it was "good to know where you are in the greater scheme of things."

153. Ms McCamish's evidence is that, initially, Ms Newman was only willing to let her go two days early but she agreed to the full request after meeting her on 27 November. Ms Newman's evidence was that Ms McCamish was "really struggling". Her updated note records:

> "Alyse spoke to me explaining how difficult it has been for her this term - she said she was scared of [the male student]. Also accidently ended up being in the same group as [the male student] for TV project. She said she didn't want to make a fuss - I apologised and said she could have informed. us/me and must do so in the future if it happens again."

154. In cross examination, Ms Newman said she was very concerned so went straight down to see Mr Weir. Later on the 27 November Ms Newman emailed Ms McCamish soon afterwards confirming she could leave early. She added:

> "it seems clear from our conversation this afternoon that the incident with [the male student] is still affecting you and your course experience. I hope you don't mind but I had a chat with Brian Weir about my concerns for you and the stress you have felt this term. He suggested that there are now possible ways forward and we could initiate internal college procedures on your behalf. You would need to speak to Brian or one of the female college counsellors who could advise you and support you for a future way forward. I'd be happy to join you for either of these sessions if you feel that would help you.
>
> I would like to assure you that we have your interests at heart and are doing our best wherever possible to make things as easy as possible for you. In future please don't hesitate to flag up any concerns you might have. Do come and see me if you need to chat again."

155. Ms Witherington pressed Ms Newman on the significance of the words "are now possible ways forward". Ms Newman said she did not know. She was just repeating what Mr Weir had told her to say. Ms Witherington put it to Ms Newman that this was the first Ms McCamish had heard of the disciplinary process. Ms Newman said that was untrue. Mr Weir or Mr Bond would have said that she needed to put something in writing. She recalled that, in November and December they were trying to get her to write something formally. What had been the basis for the decision to allow Ms McCamish to leave early, Ms Newman was asked. She replied that Ms McCamish needed to go away to get out of College, she wanted to go home and that was the right thing to do. Re-examined by Mr Weetman, Ms Newman added that Ms McCamish had said she was "really scared" of the male student on 27 November and mentioned that he had a black belt in a martial art.

156. This part of Ms Newman's evidence was credible and there was no real challenge to it save in relation to Ms McCamish's knowledge of the disciplinary process. On that issue, I conclude that Ms Newman was not well placed to comment on what Ms McCamish knew and when.

157. Mr Weir was also asked about Ms McCamish's evidence that the first time she was told about internal College procedures being initiated was 27 November. He said "I heard that in evidence, yes" and did not dispute what she had said.

158. Meanwhile, Ms Feder was involved in rehearsals a third year production of a play entitled The Agony and The Style, as was the male student. The events she reported occurred on 27 November, during one of the rehearsals. She told the College about them on 17 January 2018. I discuss what she said below.

December 2017

159. Shortly afterwards, on 5 December 2017, Ms McCamish spoke with Simon Reeves, Head of Voice at the College. He emailed Mr Weir about the discussion stating he wanted to "stay out of it" but to keep Mr Weir appraised. His email added:

> "She expressed, without being vociferous, that she felt she had been let down by us (not a direct quote, I can't remember the phrasing) as she had been placed in a TV group with him this term and she had been led to believe she wouldn't have to work with him again. She expressed disbelief that he had been cast in a third year show

> and that we had taken no further action. She also expressed a fear of not taking her complaints forward but also of doing so, expressing physical fear of [the male student] and mentioning that he had a black belt in some kind of martial art…"

160. Ms McCamish also spoke with Mr Bond the same day. He summarised the meeting for colleagues in this way:

> "I said it was imperative that she meets with BW as a matter of urgency - that my understanding was that she had failed to attend several meetings arranged by BW to discuss the issue of whether to proceed with a formal complaint against [the male student]. She agreed that she had failed to attend and said she was conflicted about what action she should take. She said she would again consult her parents."

161. I have mentioned the note Ms Newman was keeping and updating periodically. A 5 December entry mentions Ms Newman urging Ms McCamish to meet with Mr Weir urgently to discuss a formal complaint and that Ms McCamish had failed to attend several meetings he had arranged, Ms McCamish saying she was "conflicted what action she should take" and would speak with her parents. Ms McCamish gave evidence that:

> "It was only much, much later – I can't be exact, sometime in November or December 2017 – that I was told that the school felt that they couldn't do anything until I made a formal complaint in writing. I had been told that if the school were to launch this "formal investigation," they would have to make [the male student] aware of the accusation. Considering they'd continued to schedule me in classes with [the male student], I didn't have any faith they'd be able to provide the most basic safeguarding procedures and was truly scared of any retaliation from [the male student]. It should be said that I wasn't sure what to do, but it was clear at this point that something had to happen."

162. Ms McCamish recalled meeting Mr Weir around this time. She was puzzled to be told she would need to fill in a form having given her account at the June 2017 meetings. She added "[t]heir policy at the time stated I had, by definition made a formal complaint." She thought the 2016/17 Complaints Regulations were significant as they talked about putting concerns in writing. She was shown paragraph 9.3 by Mr Weetman. She could not recall having thought about it.

163. Meanwhile, several other students had been discussing the male student's conduct towards them. Ms McCamish's evidence was that she had told a small number of friends in confidence but over time others became aware. On 12 December, Ms Wanebo gave Mr Bond a note signed by 15 students who were all but one of the women in the BA 2 group. Ms McCamish was a signatory but not Ms Feder (she was in a different year group). It simply said "[w]e feel unsafe and uncomfortable with [the male student] at the school".

164. Mr Bond brought this to Mr Weir's attention the same day in an email, noting he had told Ms Wanebo:

> "there is likely to be an expectation that all the individual women concerned will be required to provide specific detail at some point. It is, of course, related to the women having knowledge of the allegations made by Alyse McCamish regarding [the male student]. My understanding is that several of the woman will point towards other incidents and/or behaviour related to [him]."

165. Mr Weir replied "[i]n a sense bringing this to a head in this way means that any decision from Alyse is removed and that may be a positive in allowing us to look at the issues." He asked if

any of the incidents were criminal in nature, in which case a police report would be considered, adding "[o]utside of that, I would suggest that it will warrant an investigation under our Student Conduct procedure."

166. Mr Henson emailed Ms Wanebo on 14 December, stating that he had read her note, discussed it with Mr Weir, that the 2016 Conduct Procedure contained a formal process for raising concerns about student behaviour. He asked her to complete a form to initiate it. He added "College takes these things extremely seriously, and anything which you bring to attention will be treated with full confidentiality." When this was forwarded to Mr Bond he responded "[i]t isn't my call, of course, but my instinct is to begin an investigation into the specific allegations made by Alyse."

167. Mr Henson responded the next day "Dave, purely from a procedural point of view, we need to have *something* in writing on the report form from either Alyse or Alex. In lieu of this, a written summary of verbal conversations, agreed to be accurate by Alyse, would probably do the trick."

168. Mr Bond replied alerting Mr Henson to his 'Elayce Ismail' note, adding Ms McCamish had not verified it. He did not mention the note she had sent to him. Mr Henson thanked him adding, "[i]t may be that this is enough to get us started, though I would still prefer one of the two students to make that 'formal allegation'; Alex seems prepared to do so."

169. In parallel with these exchanges, Mr Bond emailed Mr Weir and Mr Newman on 14 December stating he had looked over the 2016 Conduct Policy and considered that the male student:

> "has a case to answer in respect of the following clauses, specifically: 2.4 Students must not whilst on campus, in college and/or University premises off campus (a) commit physical assault, serious threatening behaviour or verbal or written abuse to other students... (g) engage in any activity or behaviour which contravenes the College's Equal Opportunities or Harassment policies… There is also a possibility that a criminal offence has taken place…"

170. The email added:

> "I think we have reached the point where we should act, regardless of Alyse's position on this. Although we know - following several meetings with her - that she has not reached a decision on whether to make an official complaint, the effect on other students (and this includes [the male student]) would seems to provide sufficient cause to proceed. If that is the advice of Iestyn and Scott, then our next concern is to ensure that Alyse does not feel unsafe as a result of becoming known as the complainant. On the basis of information provided by Alex Wannebo (which needs to be verified), this concern should extend to other women in the Year Group.
>
> In all events it is going to be a difficult start to the term and will provide a real challenge for the lecturers who teach the BA 2 cohort. It seems that Alyse has made the circumstances of her complaint known to all the women in her year group except one (the current girlfriend of [the male student]) - and at least two of the men. I think this in itself brings the incident fully into the college domain and suggests that we should now investigate the matter as soon as practicable."

171. Ms McCamish said in her evidence that she was "livid" when she saw Mr Bond's email as a result of the disclosure process. The College "could and should have acted as Dave suggested in that email when I made my initial disclosure to him in June." Mr Weetman questioned her about this. She confirmed she did not want the male student informed when she first made her reports, nor the wider cohort. She was still in the same flat as the male student.

172. On 15 December, Mr Weir emailed Mr Henson with an update:

> "Just to confirm that the conversations I have had with Alyse back at the end of last term, and subsequently, have been based on whether she wishes to report these incidents to the Police (which we would assist with via our Community Liaison Officer) and then, following that decision, whether she subsequently wanted to report the issues formally to the College through the Student Conduct procedure. My most recent conversation with her personally, as recently as last week, was still trying to ascertain her intentions with regards to this. I again advised her that we would be ready to support her through whichever decision she makes but that we would need to formally be made aware of that before being able to instigate any investigation. Alyse asked for the vacation period to consider this but was mindful of the time it is taking to make a decision."

173. On 16 December, Ms McCamish emailed Mr Weir as follows:

> "I've just got a message from Alex Wanebo updating me on the week and what's been going on, which has been a little shocking. Obviously we're at a point where things have to move forward, and I am absolutely ready for that. I just want you to know that I never intended for things to get around like this as I only told a few people close to me in confidence, and it begun to get around as they felt uncomfortable in the class with [the male student] and wanted the other girls to be careful and safe as well, which is understandable but makes the situation a bit more difficult. I think some people have reacted with lots of anger, so I'm going to have some talks with the girls and make sure it's handled between you, me, and the school first. If you would send me whatever paperwork or whatever I need to do to get ready for next term on all this, that'd be great. I'd also like to request that Fran is as uninvolved as possible as she has made several comments to people coming to her with concerns on the issue that have been inappropriate and made other students and myself feel uncomfortable. And the last request, if you could send me the number of the school counsellor and the link to the SACR [sic] website again, I'd like to have some kind of appointment in place before coming back to school and facing this all head on."

174. Mr Weir replied thanking her and copying in Mr Henson, adding:

> "He will explain to you the process should you wish to start an investigation under the Student Conduct procedure, which is where I think we are and what you are intimating. It is the process I explained to you when we met and, with Alex speaking to Dave, things do seem to be coming to a head."

175. Mr Henson wrote to Ms McCamish on 18 December offering assistance and enclosing the Student Misconduct Complaint form. There was some discussion at trial about whether there were difficulties of with accessing it, but they were resolved.

176. Ms McCamish's evidence is that her mental health deteriorated at this time and she was put on the antidepressant, Nortriptyline. Ms McCamish then flew back to the US early, as agreed with Ms Newman. Abby Hern, another student, contacted her on arrival about a conversation in which Ms Newman had made a comment, "poor [male student]". According to Ms Hern, Ms Newman had also said that Ms McCamish did not know what she was doing or its seriousness for him. Ms Hern's statement confirmed this.

177. In cross examination, Ms Newman could not remember making the comment to Ms Hern. However, when she confirmed her witness statement as her evidence in chief, she asked to modify it to record that she had spoken to two other people about what was happening between two students in the College, who she said she did not name. One of these conversations was with Francesca Henry, a student, and another with Bianca Stephens, an ex student. Ms Newman said that she knew what she had done was wrong and that there had been a need for confidentiality. It had been a very stressful time.

178. This part of Ms Newman's evidence was problematic. In her original witness statement, she had flatly denied ever discussing Ms McCamish's report with other students. This absolute position shifted to one in which there had been brief discussions with two people. Further, her updated note mentions conversations with three more students on 18 and 19 January: see paragraph 247 below. She also said that staff had been warned not to speak with students about Ms McCamish's report and some staff had done so. I have reached the conclusion that her recollection of these matters is not reliable and she was speaking to several students by this time despite knowing that the investigation was supposed to be confidential. This begs the questions of what she told them and whether she made the "poor [male student]" comment to Ms Hern. After giving this issue some thought, I have concluded Ms Newman is unlikely to have imparted any significant confidential information to students and Ms Stephens. She was adamant that she did not in cross examination and there is nothing from the other parties to these conversations. Ms Hern gave evidence through her statement, but this could not be tested because she was not called. I consider that her recollection is more likely to be right than Ms Newman's on this point because of all the difficulties with what Ms Newman said. Ms Newman was not asked at trial whether she added, as Ms Hern recalls, that Ms McCamish did not know what she was doing or its seriousness for the male student, so it is not appropriate to make a finding on that.

179. Mr Coster was cross examined about Ms McCamish's thinking at this point and over the Christmas break. Wasn't it the case that she we're still not sure what she wanted to do? Mr Coster's response was that she was not made aware that she had yet to make a formal complaint until November. She had been under the common sense, logical impression that a complaint had been raised. He had thought the college was investigating between September and December 2017, that things were happening. It was put to him in cross examination that he was advocating for her and his evidence was likely to be shaped by recent discussions. He rejected these propositions as do I.

January 2018

180. On 1 January 2018, Ms McCamish submitted the completed form to Mr Henson who thanked her the next day and offered a meeting. The form gave only brief details ("…allegations: sexual assault, non-consensual sexual acts") but was considered sufficient by the College. In cross examination, Ms McCamish said she still did not want the police involved, but, confirmed that she knew they would have to be contacted once her form had been completed.

181. It is absolutely clear that Ms McCamish was not offered the option of the College 'taking a view' and pressing on with a disciplinary investigation without contacting the police. There is no evidence this was ever considered by any member of College staff at this or any other time.

182. On 4 January, Mr Henson wrote to Ms McCamish informing her that Mr Allin had been appointed as investigating officer. In cross examination Mr Allin said that he had known then there was an incident being "managed by academic members of staff" before then, but there had been no formal complaint. She had been encouraged to make one, but his understanding had been she hadn't wanted to. Where there was direct or external evidence, such as a witnessed incident of one student striking another, the College could take action, but previously Ms

McCamish's case had just involved an "informal conversation". He had not known it was about sexual assault until the complaint process began. He had been trained on investigations when at Cardiff University where he had worked until 2013, but not at the College. I accept this evidence.

183. Mr Henson's 4 January email went on to say that as Ms McCamish's report was of an incident that "may involve a serious criminal offence… no College disciplinary action will be taken until a decision is taken whether to pursue (or not) a criminal prosecution." Mr Allin had decided to report the matter to the police in the light of this. Mr Henson added that she should:

> "...be assured of College's support in this matter and of our continued commitment to both your welfare and your education. Whilst this matter will not be straightforward or easy for the parties concerned, we will do everything possible to support you, to give advice and help as the need arises. All of this will be treated with the highest regard for confidentiality, for all parties concerned."

184. Asked in cross examination what had changed between June 2017 and January 2018 to make a police report appropriate, Mr Henson said, firstly, Ms McCamish had not wanted a referral to the police between those dates. The 2016 Universities UK Guidance said the student remains in control of the process. Secondly, once her allegation had been made formally, the 2016 Conduct Policy obliged the College to inform the police given its seriousness.

185. Mr Henson's 4 January email concluded by stating that the College had unsuccessfully attempted to contact her that day by phone and social media. The College contacted the police 32 minutes later, passing on the details of what Ms McCamish had said in her report.

186. Ms McCamish heard that the police had turned up at her house on 4 January, but she was not there having yet to travel back from the US. Her evidence is that she contacted them and arranged to speak with someone at home on the 7th. He was Officer Russell

187. Another internal 4 January email from Mr Allin outlined the action plan he had formulated. It included reporting the matter to the police regardless of whether or not Ms McCamish had been spoken with. It also set out a decision Mr Allin had made on suspension:

> "…the Student Conduct procedure notes that the Vice Principal can only approve suspension 'in exceptional circumstances where it is deemed necessary to protect members of the College'. In this case it is not necessary to suspend the student to protect other students. The student is not deemed a threat to other students and the issue has been informally known about for some time and the academic process managed internally through splitting cohorts. Therefore the student who is the alleged perpetrator should
> not be suspended at this time."

and these related follow up actions, depending on action taken by the police:

> "g) SA/BW – to speak to DB on Monday morning regarding continued management of the cohort and also possibly speaking to the alleged perpetrator regarding voluntarily removing themselves from the course for a period while the allegations are investigated.
> h) Disciplinary Committee convened after the decision over a police prosecution has been made."

188. Ms McCamish met Officer Russell on 7 January with Mr Coster who corroborated the gist of her account in his evidence. She had explained to Officer Russell that she knew it was her word

against the male student's and had not wanted the police involved. Ms McCamish asked him to come to the College and explain that and he agreed to do so.

189. Mr Weetman asked Ms McCamish why she asked the College to investigate. Its staff were not uncaring individuals as she chose to entrust them with the investigation. She said she remained concerned about the narrative in play, involving a "relationship gone wrong". Why not leave the investigation to the experts, the police, he asked. She said there was a low conviction rate for sexual offences. The investigation could be really traumatising. She wanted to focus on healing to get back to learning. I accept this evidence.

190. Mr Coster's evidence was that Officer Russell had recommended this, expressing frustration at a problem of men, who local officers had nicknamed 'seagulls' praying on female students at the start of each term. Officer Russell's recommendation had been accepted at face value as the best one. There is no reason to doubt Mr Coster's evidence on this point and I accept it.

191. On 8 January, Mr Weir emailed his colleagues quoting a text he had from McCamish "he (the Policeman) was very reassuring and everything is on record, but I don't think I'll be going to court since I have no hard evidence" and adding he had spoken to them himself and been told it "would be a difficult case to prove with limited evidence". Later that day, Mr Weir and Ms McCamish met with Officer Russell at the College. Mr Weir's evidence was that they were told the Ms McCamish could press charges, but the CPS might not accept the case, Ms McCamish confirmed she did not want to press on and Officer Russell said the College could resume its investigation.

192. The male student was told about the report the next day in an email from Mr Henson:

> "…an Allegation of Student Misconduct against you has been received by College, which will be investigated and considered under the procedures for Student Conduct, a copy of which is attached to this email. The allegation relates to inappropriate [sexual] behaviour with a fellow student which has also caused or is causing concerns for safety within the teaching environment."

193. The male student replied expressing shock and concern. Mr Henson's response was "[p]lease be assured that College has a duty and care [sic] to support its students throughout these processes. College too wishes to sort this out as soon as is practical."

194. In cross examination Mr Henson said the College was then dealing with "two students. One making the allegation, the other who has had the allegation made against him and our duty in care is to support both parties as students and customers of College." What did that mean in respect of Ms McCamish at that time, Ms Witherington asked. His reply is important. He said:

> "I would have expected it to include people to whom Alyse could turn to for support and advice. I would expect it to include measures, measures which were already in place, to ensure contact in the classroom was minimal. I would expect it to include having no prejudice and no bias in respect of looking at the allegations for both students, from both perspectives."

195. He agreed it "would also include carrying out a fair and proper investigation into Ms McCamish's allegations" and "coming to a reasoned conclusion".

196. A series of evidence-gathering meetings then took place. First, Mr Allin and Mr Henson met with Ms McCamish and Mr Coster on 10 January. The notes of that meeting record that Mr Allin:

> "…provided the following common definition of the terms of the allegation and indicated that the conversation would focus initially on the issue of consent:
>
> - Sexual assault is an act in which a person sexually touches another person without that person's consent, or coerces or physically forces a person to engage in a sexual act against their will.
> - Generally, sexual assault is defined as unwanted sexual contact. - as 'unwanted sexual contact that stops short of rape or attempted rape. This includes sexual touching and fondling.'
> - Consent must take place between two adults who are not incapacitated and can change during any time during the sexual act."

197. This was not the definition used in the College's Dignity at Work policy, nor any of the university policies. It is the Claimant's case it was taken from Wikipedia. In cross examination Mr Allin could not remember where it came from, but it had been online. He said it did not trouble him that sexual misconduct was not defined.

198. The 10 January meeting notes record Ms McCamish confirming "prosecution and conviction would be unlikely, due to the lack of evidence". She said her June 2017 note was accurate, adding in respect of the first incident that she had passed out and there was no way of knowing the extent of intoxication or whether any other drug had been involved, she had challenged the male student over the appropriateness of his conduct, had felt guilty and that Grace Quigley had come into her room, interrupting one of the assaults. Since September 2016, she had remained extremely nervous around [the male student], particularly on rare occasions when they are alone together." She was aware of Ms Wanebo's note. Mr Coster mentioned Ms Feder. The notes conclude with Mr Allin explaining "following other meetings and investigations, it would be likely that AM would be invited back for a further meeting, either to clarify matters or for the result of the investigation to be shared." Ms McCamish was sent the notes for comment and accepted they were broadly accurate.

199. Ms McCamish's evidence was that Mr Allin opened the meeting by apologising, stating "we are not trained in this" and that he was a tax accountant by background. There were several questions about how much she drank before the first incident, but not about her well-being or mental state. She asked them to contact the College therapist and access her notes. She told them about Tom Forrister, a friend at the time, suggesting he be interviewed.

200. In cross examination, Mr Weetman asked what further Ms McCamish had wanted to give to the investigation. She said there were points she would have wanted to go over, such as a photograph of the male student and herself on the night of the first assault, and other material and context she had wanted to give about their texts. She didn't think the meeting would have been her only opportunity to speak. She had conversations with Mr Weir and Mr Allin about having the opportunity to give evidence and "say her piece" to the Disciplinary Committee. Mr Weir definitely said she would be able to speak at the hearing. So had Mr Allin. That did not happen and the next time she spoke with him, the Disciplinary Committee had already met. She had no opportunity to say anything again.

201. Ms McCamish went on to say that she had texts and emails that she wanted to hand over herself. Mr Weetman asked her where these were now. She said that this case was not about proving whether she had been assaulted by the male student, but in any event she no longer had access to her university emails nor the Facebook posts made at the time, six years ago. Asked what had stopped her from emailing the material at the time, she said it was the conversations she had had with Mr Weir and Mr Allin. Mr Weetman suggested the reason she had not emailed saying she had texts and emails was because they weren't any. She disagreed. Mr Weetman drew her

attention to an email exchange with Mr Weir on the evening of 15 February (which was the day of the disciplinary hearing). It mentioned they had met earlier. She asked Mr Weir if a decision had been made. He said it had yet to be formally communicated to the male student. Mr Weetman put it to her that she had not raised concerns about further evidence or not being present at the hearing. Ms McCamish said she had, at the meeting with Mr Weir. She had told him about wanting to give evidence, or to write a statement and telling Mr Allin this. Mr Weetman revisited this issue later on in cross examination asking whether she understood that, as there was no finding of misconduct, her views on punishment were not needed. Her response was to say she had no chance to respond to anything he had said, nor to submit evidence.

202. I accept Ms McCamish's evidence on these matters. Mr Allin and Mr Henson had anticipated her being called to give evidence at the Disciplinary Hearing: see paragraphs 287 and 293 below. It is unsurprising she would have been told that by Mr Weir and Mr Allin. I also accept her evidence that, had she been asked to submit anything else she wanted to rely upon at the time, including material that put the photographs and messages the male student relied upon in context, she would have submitted some material. Reinforcing this, there are also references to material she would have wanted to submit in the transcripts of later meetings. Her explanation as to why it was no longer accessible or directly relevant to the College's actions was credible.

203. In cross examination, Mr Allin was asked about consideration of support for Ms McCamish. His attention was directed to section 6 of the 2016 Universities UK Guidance which states:

> "… universities should consider academic, housing, finance, health and well-being issues and, where appropriate, assist students to access specialist sexual violence support services provided by external agencies. For example, a university could assist the reporting student and the accused student to submit mitigating circumstances (although any such adjustments will be subject to the academic requirements of the course). Importantly, care should be taken to ensure that students who have disabilities or other health issues (particularly relating to their mental health) are provided with reasonable adjustments in relation to the disciplinary process."

204. Mr Allin could not remember what was offered. He thought there might have been a referral to the SARC. Mr Allin was also asked about any written assessment of risk at this point in terms of Ms McCamish's safety and wellbeing. He thought there were "documents assessing the risk to the College of the individual remaining at the College. My recollection is we tried to support that was available out there both for Ms McCamish and for [the male student] as well…" Pressed on whether he had made a written assessment of the risks and threats to Ms McCamish at that time Mr Allin said "[a] formal assessment from that point of view… we did it in various documents I think but not as a formal risk assessment in a health and safety type way."

205. Asked about the Safeguarding Policy, he confirmed it was engaged in January 2018 and considered by himself as Safeguarding Lead, Mr Weir and Mr Henson. There had been a conversation about whether the male student was a risk to Ms McCamish and the College. He continued "in Alyse's own words I think, nothing had been an issue since that first week of Freshers which was about 18 months ago." Shown paragraph 13.2 of the Safeguarding Policy and asked if he went through the listed issues when appointed investigating officer, Mr Allin said he did not recall. Asked if any other parts were engaged and complied with, and actions taken he said "I would have thought we would have complied with it, yes. It was part of the processes of the College". He would not have done anything without speaking to Mr Weir and Mr Henson. They had asked themselves "was [the male student] a threat in that period of time? The answer was 'no'".

206. Ms Witherington put it to Mr Allin that Ms McCamish had told Ms Newman in December 2017 that she was scared of the male student. She had spoken to Brian Weir. Was that relayed to him? Mr Allin's response was:

> "I don't remember that. But I also have in the evidence case a number of people saying she would throw her arms around [the male student], there appeared to be no fear of him but I disregarded both of those for the purpose of the evidence because the evidence shows that sexually assaulted people react in different ways".

207. I will come to the evidence of Ms McCamish embracing the male student at paragraph 249 below.

208. On this point, I prefer Mr Henson's evidence that there was no direct consideration of safeguarding at this time: see paragraph 68 above. It was much clearer than Mr Allin's evidence, the documents Mr Allin thought existed were not produced save for his 4 January email and it does not mention safeguarding. I accept risk was considered as part of the decisions on suspension discussed below.

209. Mr Allin, Mr Henson and Mr Weir met with the male student later the same day. In cross examination Mr Weir confirmed that he attended this and all subsequent meetings as the male student's support person under paragraph 13.3 of the 2016 Conduct Policy. Cross examined on this, he rejected Ms Witherington's suggestion this was wholly inappropriate, even though he was the Safeguarding Officer Ms McCamish was liaising with. It was a small institution and several hats had to be worn. There was a safeguarding issue for the male student in that his family were worried about his welfare, he added.

210. The notes of the meeting with the male student record the definition quoted at paragraph 196 above being repeated, but with the second bullet point omitted. Ms McCamish's note was handed over. The male student's recorded response was that "at no time had he engaged in sexual acts without consent… any physical contact or discussions with sexual themes or contexts were consensual." Ms McCamish had passed out on the first occasion he had mentioned, but "nothing inappropriate occurred". There had been "physical contact" on other occasions, "he had assumed all of this to be consensual". On the last occasion, there had been "sexual banter' and Ms McCamish had begun to undress. Shortly afterwards, their "brief 'mini-relationship'… had come to an end". He was unaware of and surprised about concerns raised by other students. Further investigatory steps were outlined. The male student was told to seek Mr Weir's support. The notes of his interview were sent to him for comment and on 13 January. He emailed with some additional points including that "I believed it was something we both enjoyed because she said it to me during a coffee we shared."

211. On 15 January, Mr Allin met with Ms Quigley. The meeting notes record her being invited into a bedroom in the flat. Ms McCamish and the male student were there, in bed. The male student discussed sexual matters and the atmosphere was awkward. On another occasion, he had been "incredibly aggressive and threatening" towards her, "banging on her door" whilst "shouting at her in rage" because she had spoken with his then girlfriend about his behaviour. She had been afraid. In classes an "exceptionally uncomfortable atmosphere" had developed because of the male student frequently initiating physical contact such as unsolicited massaging and hair stroking. She had asked herself if she could remain and was unable to eat or sleep properly.

212. Mr Allin and Mr Henson met Mr Garven the same day to ask him about the BA 2 group dynamic and their feelings. By this point they had Ms Wanebo's list. The meeting notes record Mr Garven stating "unless College was to take action, the potential existed for the damage to the cohort to be not only educational, but also emotional and psychological." Mr Garven was asked to complete a complaint form and did so on the 16th, noting the group were uncomfortable with

the male student's presence, the situation was "difficult and dangerous" and the only practical solution was to remove him.

213. Mr Allin's evidence was that he reconsidered risk at this point. He was taken to Ms Wanebo's list by Ms Witherington. He said two on the list had told him afterwards they felt they had to sign the list, an "over the top" reaction to something. However, when he spoke with Mr Garven "the balance changed", he said. This was not because of a heightened risk but because the cohort had fallen apart and the education of 22 students was being jeopardised by the one, so "the one had to go at that point". Pressed on whether the threshold for suspension of the male student was met then, his response was "in terms of safeguarding, I still stick with what we originally decided but in terms of the operation of the college suspension was right way to go". As regards the male student, there "was a duty of care to him as well. We had his father down in the College worrying about his suicide risk. There was a real balancing… trying to look after every student, Alyse, [the male student], plus the cohort as well as staff within the College. We made difficult decisions. Not optimal sometimes." There was "a duty of care to all students." However, Mr Weir then had a discussion with the male student to tell him that he was likely to be suspended and it would be appropriate for him to withdraw which he did. This was voluntary, "a compromise". "Safeguarding wasn't an issue for us, still". The education of the cohort could continue. I asked Mr Allin whether, in his view, there was no difference in risk between the point at which he had been considering Ms McCamish's report which he described as "historical" and point in time when he had the allegation from a further 15 students that they felt unsafe in the male student's presence. He confirmed he considered there was no difference in terms of "safeguarding any individual". The male student "was not a threat to any of those 15 students as an individual". He added "they felt uncomfortable/unsafe in his presence which I took to be the academic environment". This was an "educational context".

214. Mr Weir shared his perspective in cross examination. He, Mr Allin and Mr Henson had wanted to get to a point where the male student would withdraw from teaching and they could proceed with the investigation without formally having to suspend him. The "teaching of the course was being most impacted at this point". He spoke to the male student. If his response had been hostile or aggressive, Mr Allin had taken the decision that he would probably suspend him, Mr Weir said. They wanted to ensure "the teaching could carry on without that impact… there is a balance required here to make sure that everyone is involved in these processes is feeling as if we have a duty of care to them."

215. The male student began his voluntary leave of absence on 16 January. The BA 2 group were notified of this in an email which added there was no suspension.

216. On 17 January, there was a meeting with four students in the BA 2 group including Ms Wanebo. The meeting notes record them being asked to give examples of behaviour which they considered inappropriate, and which had led them to concern about safety. They reported "habitual unsolicited contact, which included unrequested massage of shoulders or head/scalp… frequently strong to the point of pain." Requests to desist were ignored. This behaviour was not targeted exclusively at female students. Ms Wanebo currently shared a house with the male student. He had played with her hair aggressively despite her protesting and had to be stopped by his girlfriend. He seemed keen to encourage semi-nudity. Aggression and sexual comments about women were reported by another student present. Another said he had held her head and forced a kiss on her lips. The atmosphere in class had deteriorated and they were unable to work with him. Dismay was expressed that the male student had not yet been suspended. In an email on 19 January to Mr Henson following up on their meeting Ms Wanebo stated:

> "Everything seems accurate to me; however there is one passage I feel is slightly misrepresented. When it says in the notes that one of the incidents involved [the

> male student] being shirtless in the house I think it is vital to note that both times of note involved him forcing physical contact. Once he was holding me so hard I couldn't get out of his grasp and then began to take off his shirt against me despite me saying no. He only let me go when a male housemate told him to. The second time he was shirtless on a couch and pulled me down onto him despite me being resistant. Other than that everything seems to be accurate. Thank you!"

217. Mr Henson amended the note.

218. In cross examination, Mr Allin was asked whether these were physical assaults. He said they were not, adding:

> "If there had been physical assaults we would have taken action. These were activities felt uncomfortable with as a group but each individual activity or each individual incident by itself meant nothing but we brought them all together and that's why the investigation was extended….
>
> These were all things that happened in colleges and universities and were, I won't say acceptable, but individually they would have not caused a significant issue. If there'd been a complaint we might have asked people to apologise for them. None of these incidents added to the evidence from Alyse about sexual assault which was the main thrust of the report".

219. Asked about the seriousness of Ms Wanebo's allegations, Mr Allin said that "students take their tops off". If there was a pattern of behaviours action might be taken and had been. The incidents were inappropriate, but that did not warrant going to the police individually or collectively. This evidence was concerning, but it was unchallenged and I accept Mr Allin was describing matters as he saw them.

220. Mr Allin and Mr Henson also met with Ms Feder on 17 January which was when she made her report to the College of being assaulted on 27 November the previous year by the male student. A note of that meeting was prepared and sent to her for comment by Mr Henson who, told the Court that it was his practice to make handwritten notes and then send a typed precis. She was not asked to complete a Student Misconduct Allegation form. Asked by Ms Witherington whether what Ms Feder reported could have independently could have formed the basis of a complaint, Mr Henson said "it just simply forms another piece of evidence to support or to give context to the primary allegation… received on the 1st of January". Pressed on why he did not send a form and ask her if she wanted it investigated separately, he said:

> "Sydney gave her evidence - and remembering that there were no other witnesses to that event - Sydney gave her evidence in full after meeting with Scott Allin. Yes of course it is possible for any student or indeed any member of staff to make a separate allegation of misconduct but I don't think we felt it necessary to invite that from Sydney or indeed from any of the other students we met, or staff".

221. Mr Allin's evidence on this issue was:

> "If Sydney's allegation had been one of sexual assault we might have then asked Sydney to make a formal allegation. We didn't do that because while we felt it was an unusual thing to do, we didn't think by itself it was something we were overly worried about. If Sydney had come forward with just that, and we knew nothing about everything else, we would have asked him to say sorry or something, probably.

> It was quite low-level. He did not know she had a muscular issue. I am not aware that anybody did know."

222. However, Mr Allin said in cross examination that he thought he would have told Ms Feder she could complain separately. Given the inconsistency, the fact neither she nor Mr Henson recall this and the lack of contemporaneous evidence, I find that she was not told she could.

223. In cross examination Ms Feder said she had not wanted to be pedantic about Mr Henson's note, so had proposed a single addition, explaining "I didn't say "stop," but I did cry out in pain. He then acknowledged my pain and instead of stopping, said something along the lines of 'yeah I know but I just like to find the root of the problem and really get in there' and then proceded [sic] to rub harder."

224. The edited notes describe what happened in the changing room in this way:

> "o That during the Tech rehearsal*, SF was alone in the changing room, working, whilst all other members of the cast were in the theatre. [The male student] knocked on the door, and was invited in, to pick up shoes at the request of a fellow cast member. [The male student] left with the shoes.
> o A few minutes later, [the male student] again knocked at the door, and entered at SF's invitation. Following a brief conversation, [the male student] had 'kind of lunged' at SF, pushed her down on the table where she was seated, and aggressively started to massage her shoulders.
> o Despite SF crying out in pain, [the male student] had continued for some time saying words along the lines of "yeah, I know, but I just like to find the root of the problem and really get in there", before rubbing even harder. Eventually, [the male student] had stopped, the brief conversation carried on, and then [the male student] left.
> o SF reported that she had felt extremely uncomfortable and unsafe in the situation, notwithstanding the pain. SF considered that a 'personal boundary' had been crossed, and that in a secluded area.
> o SF, in trying to rationalise this, had mentioned the incident to fellow students Roxy and Foxey (both BA Acting Year 3), but noted also that as it had been an isolated incident, she did not think to report it to College officially.
>
> Further thoughts
>
> SF indicated that she had shared this incident with Alyse McCamish at the end of the Autumn Term, and that, on reflection, it has been a concern. SF expressed the view that she was not alone amongst the final year cohort in being wary of [the male student]. However, as the incident had occurred without warning, so too had there been no further episode."

225. Under "[n]ext steps" that notes state Mr Allin "thanked SF for her willingness to contribute to the process, and informed her that a report of the meeting, approved as accurate, would be added to the file of evidence." No form of support is mentioned.

226. Miss Feder elaborated on Mr Henson's note of her report in her evidence. She had never spoken to the male student before the assault beyond brief chats about the play and rehearsals. When he collected the shoes, he had asked her whether there were any male students in the changing room next door and she had replied "no", that she was on her own. He was a big guy and when he returned, he lunged toward her and pressed her onto the table, face down. She was overpowered and pinned down. She had been scared and did not know what he wanted or what he would do.

She was conscious of them being alone. She has a medical condition, Ehlers-Dandos Syndrome, of which one of the symptoms is joint hypermobility. What the male student was doing hurt so much that she felt she was in shock due to the pain. When he was rubbing even harder after her cries, she was terrified because that had been his reaction to her pain. He had stopped suddenly, stepped away and continued talking to her as if nothing had happened. She didn't know what was going on or what might happen. When he left, she immediately locked the door behind him. She felt "freaked out" by what had happened and messaged her partner. When the girls from the cast came back, she unlocked the door but felt too unsettled to tell them what had occurred other than something "weird" with the male student. One of them, Roxy Swart, said she wasn't surprised and should talk to Ms McCamish without giving reasons. Ms McCamish was contacted by Ms Swart. They met and Ms Feder said she would be willing to tell the College but did not make contact herself because of her past experiences. She gave Ms McCamish permission to pass on her details, however, and was later asked to come to the meeting with Mr Allin and Mr Henson.

227. Before cross examining Ms Feder, Mr Weetman confirmed he would not ask her about the events of 27 November 2017. As with Ms McCamish's report, I make no findings on them for the reasons given in the introduction of this judgment. Again, it is right that Ms Feder's account of those events is recorded.

228. Ms Feder's evidence about the 17 January meeting was that it was strange and awkward. She was really annoyed because Mr Henson had asked if she might have led the male student on as she was topless when he came into the room. This was wrong. She had been fully clothed throughout. They asked what she thought of the male student. She said he was dangerous. He had assaulted multiple people and had made sure the coast was clear before he had assaulted her. He was someone who shouldn't be around. She was not told anything about the process including anything further that might have been needed to make a formal complaint. She thought more at the time making a report to the Head of Academic Services and the Vice Principal was what was needed to make a formal complaint, that it would be investigated, and she would be told the outcome.

229. Ms Feder was cross examined about this meeting at some length. Asked what specifically the male student would not have been able to do had he been suspended following Ms McCamish's report, she said he might not necessarily have been suspended, but he should have been under investigation and so not in a third year show. That was a special privilege. Mr Weetman asked should she have been told there had been a complaint about him earlier that year? Yes, if they were giving him special opportunities not available to every second year student, she replied. It had been an odd choice to put him in the third year show. She accepted person facing allegations were entitled to privacy and the wishes of the reporting student should be respected, as stressed the Universities UK guidance. If the reporting student said the person who had abused them should not be told, then they should not be, subject to a risk assessment. Mr Weetman asked if Ms McCamish had said the male student should not be told in November 2017, did Ms Feder accept she could not be told herself? She agreed again but reiterated the College should not have promoted him to a third year show. Other students could have been selected. She added that if the reporting student had yet to make up their mind, a certain level of care should be taken to make sure others were not put at risk. Mr Weetman said such steps could not involve telling the accused person that they had been accused. Would it not then be problematic to hold them back from events and productions when they have not been told anything? Ms Feder's response was she honestly could not see why another student could not be picked in those circumstances for the safety and wellbeing of all students.

230. Mr Weetman went on to ask Ms Feder if she sought medical attention for the pain following the events of 27 November 2017. She said she had been living with a chronic pain condition and

was used to taking care of herself. She confirmed what she had said to cast members. She couldn't recall speaking to Ms Wanebo. She was directed to a note, said to have been prepared by Mr Bond. It mentioned Ms Wanebo's list adding the "[male student] entering a production dressing room to find the BA3 student Sydney Feder topless. He proceeded to move to her and give a neck massage without any encouragement." Mr Weetman suggested that this was Mr Bond recording what Ms Wanebo had told him. Ms Feder said it was wrong to say she was topless and this showed she could not have spoken to Ms Wanebo.

231. Mr Weetman said she had been asked about this in the 17 January meeting, no doubt to her considerable surprise. She responded:

> "The question he asked me was not only if I was topless, it was 'because I was topless, he maybe got the wrong impression?' and it felt like I had invited him to do it. He actually didn't ask if I was topless. He asked if I had led him on by being topless and made an assumption that I was topless. I never said in my statement that I was and corrected him immediately."

232. Mr Weetman suggested she was no doubt concerned where the idea of her being topless had come from. She said she was "more concerned with the idea he was trying to blame me. So I felt immediately very uncomfortable." Later in cross examination she said that she had been sobbing by the time she finished recounting the events of 27 November 2017 and Mr Henson's assumption she was topless and suggesting it was her fault meant there was no way she would get back to him in future on anything. She had asked her father to deal with Mr Henson's correspondence about visas for this reason.

233. Mr Weetman pressed Ms Feder further on the toplessness question during cross examination. She confirmed Mr Henson had asked the question, not Mr Allin. She had thought about the comment every day since. He may have commented further. Someone said, "it's through the grapevine". She recalled exactly where he and Mr Allin had been sitting and when it was said. Mr Weetman asked why this particular point had not been made in the particulars of her claim. Was it the case that she did not feel poorly or tactlessly treated when she started her claim? She said it was tactless, a lack of training, she felt very uncomfortable, there was a complete lack of communication about what they would do with her statement, the action they would take. Mr Henson's email had said there was no need to respond if his note of her report was accurate. That was where they had left it and she never heard from them again. She had not known what "added to file" meant. It didn't say whether it would literally just be filed, or would the male student would be told, if it was an allegation under consideration, would it go to the acting staff. It was put to her that Ms McCamish had made serious allegations and had been spoken to by Mr Allin and there was an investigation ongoing. She knew this from rumours, she said, nor from anything concrete.

234. Mr Weetman asked Ms Feder to elaborate on her written evidence about not reporting the incident straight away because she did not trust the teaching staff. It mentioned a past incident in which she had reported something. She said she had thought speaking to a teacher about something was a formal complaint. She gave two specific examples. First, in a circus project in the first year, Firenze, a teacher, had asked all of the girls to come to class wearing only skimpy bras and hot pants and had made them walk around the room to music while the male students observed. Firenze commented that her breasts were "a bit much" and that she should "cover up". She had left in tears. She and a couple of other women then spoke with their singing teacher, who said she heard the same thing every year and did not know what to do. Mr Feder had also spoken to Trish (Patricia Logue) who rolled her eyes and said she didn't know why this was a problem or why the girls were so sensitive, and they just needed to push through. Why not put down in writing to the College what had happened with the male student straight away, Mr

Weetman asked. Ms Feder said she had not wanted to come across as neurotic and a drama queen herself and had been told by Ms Newman and Trish and many others that if they had boundaries, they would not be able to get on in the acting industry. She didn't want them to think she couldn't handle things. At the same time, she felt someone had to be told. McCamish had said things were going to be investigated by non-teaching staff so she thought that was the answer.

235. Re-examined by Ms Witherington, Ms Feder said that Mr Henson made a handwritten note in the meeting and Mr Allin was jotting things down. Mr Henson's sole question had been the one that mentioned toplessness and fault. She thought the staff saw themselves in the male student and felt threatened when his behaviour was being called out. Ms Witherington took her to the transcript of the meeting with the second year cohort. Ms Feder confirmed she had not been invited and didn't know anything about it taking place until afterwards. She had not been invited to any other meeting where the outcome was discussed.

236. Mr Henson was cross examined about whether, at the start of the meeting he said he said words to the effect that had heard on the grapevine that she "might have had her top off and so had invited that contact". He said he didn't, had heard it said in court, "found it shocking", "had no recollection of that". The questions were asked by Mr Allin and he would take the notes only occasionally interjecting, adding he would "not ask questions directly and to be frank that's not within my character or nature either to ask such an inappropriate personal question".

237. It follows that there is much common ground about what was said at the 17 January meeting with Ms Feder but a stark conflict of evidence about the toplessness question which must be confronted. The interview notes do not help either way as they record what Ms Feder said had happened but little more. Below, at paragraph 326, I make more general findings about Ms Feder being credible. Elsewhere I have made a number of findings about Mr Henson's evidence. Cumulatively, they show that he was a generally credible, honest witness. Notwithstanding this, I prefer Ms Feder's evidence about the toplessness question over Mr Henson's. I consider she recalled this accurately and he did not for these reasons.

238. First, Mr Bond's note had been produced five days earlier, on 12 December. It was passed to Mr Weir the following day. Mr Allen's evidence was that he, Mr Henson and Mr Weir were in close contact at this time discussing each step of the investigation. I consider it highly likely that the note was seen or at least discussed between the three of them and that it would have occurred to Mr Allin and Mr Henson to ask Ms Feder about the detail of her being topless which the note mentioned. They had very limited information from Mr Bond and whether she was fully clothed could be relevant because, had she not been, the male student's actions might be considered even worse. It is inherently improbable that nothing would be said about what Mr Bond had noted. Of course, the way this issue was raised with Ms Feder would be, and was, critical.

239. Secondly, this was a hugely significant meeting for Ms Feder. As she explained elsewhere in her evidence, her experience was that academic staff were at best ineffectual in response to complaints and at worst wholly dismissive. However, Ms McCamish had told her the matter was being looked at by non-academic staff and she was aware they were very senior. Her meeting with them was to discuss an incident that had been intensely painful and concerning at the time. She had since learned it was not an isolated issue involving the male student. This strengthened her resolve that someone had to be told and he had to be stopped. By contrast, from Mr Henson's perspective her role was to supply "another piece of evidence to support or to give context to the primary allegation". Given the relative significance to the meeting to Ms Feder and Mr Henson, I consider her recollection is more likely to be accurate than his.

240. Thirdly, Ms Feder's evidence described a specific, practical consequence of the topless and fault question being asked which was her feeling she could not have anything further to do with Mr Henson and so asking her father to liaise with him in future.

241. I also carefully considered what Mr Henson said about the question being completely out of character for him. That may well be right, but sometimes things that are out of character are said, especially in unusual situations such as this one. I also bear in mind that Mr Henson candidly admitted he had no training in investigations. I would have been less inclined to believe that a person with such training would have asked such a question.

242. Mr Henson was also cross examined on whether measures were put in place following the meeting to assist Ms Feder. Mr Henson said no. Asked if there was a risk assessment in respect of her, arising from her allegation, he said there was "nothing specific as I understand it". The note of the meeting had recorded "SF had not spoken to [the male student] since that time, except usually greetings and pleasantries between peers in College. She had not known or spoken to [the male student] before he had been cast, and would not have regarded him as being in her social circle." He thought that might be summarised as "we saw no particular reason to put measures in place." That was him reflecting on it now, he accepted. He was reading it as there being no cause or request for special measures at the time. He agreed the outcome of the investigation was not reported to Ms Feder.

243. Mr Allin's evidence about what had happened to Ms Feder was "[i]t was quite low-level". Ms Witherington put it to Mr Allin that what Ms Feder had described was a criminal offence. "I don't think it was", he replied, "I took that as a massage" but it was "inappropriate". It was an important part of the male student being found guilty of inappropriate touching, "but we didn't take it as an assault because students frequently massage each other, especially drama students".

244. Mr Weir was not there but was asked in cross examination about whether safeguarding action was considered for Ms Feder around this time. He said "I think… I felt I was assured that Sydney knew who she was supported by and that there was no safeguarding concern being raised by any of those people at that time." Asked who those people were, he said "Mr Allin, potentially". He then said, importantly:

> "I have to say also, to protect the confidentiality of the process, to reach out to someone who was alleging sexual assault, I was also evaluating whether it was even possible or appropriate for me to do so".

245. He confirmed the person alleging sexual assault was Ms Feder, adding:

> "I can explain whatever my corporate or college responsibility, my personal sense was, 'is it appropriate for me as another individual to reach out to this student who's already in a place where she's suffering to say 'I now know what's happening, do you want to talk to me about it?' That, that feels like you're opening up another conversation with another person, who she has to tell her story to another time. That didn't feel as if that was something that was appropriate".

246. Ms Witherington asked whether it was him "who was going to reach out to Ms Feder and tell her the outcome of the investigation and check she was OK?" He replied "my understating of the investigation is that witnesses don't get to hear the outcome". What if their allegations could be complaints in themselves, Ms Witherington asked. He replied that normally people who present as witnesses are not notified of the outcome. They needed to "trust the process". This evidence was unchallenged, and I accept Mr Weir was accurately describing his thought process at the time.

247. On 18 and 19 January, Ms Newman's notes record three students coming to see her, Meredith, Ms Quigley and Finn Garbutt, and discussion of issues with the male student. In cross examination she confirmed it was a difficult time for everyone once the "disciplinary was out there". Ms Witherington directed her to an email she had sent on 22nd of January mentioning "I tend to pop in everyday to get an update" from Mr Allin and that he had told her about "a few more incidents dash stroking hair, massage giving etc, nothing too extreme". Ms Newman's response to this was that she couldn't remember that email. She hadn't wanted to remember things about this time. The hair stroking might have been Ms Wanebo. She accepted what Ms Witherington then put to her, which was that the contents of a confidential investigation were being shared by this point. Cross examined on this, Mr Allin said he would not have given Ms Newman details.

248. Emails around this time from Mr Garven mention meetings with the male student and his father, and with Mr Weir and Ms Newman. There are no notes, however. Mr Weir said in re-examination that the 20 January meeting was to discuss the College's duty of care to the male student.

249. On 22 January, Mr Allin had an email from a lecturer, Louisa Clarke. This described Ms McCamish being one of a group whose members had hugged the male student on the first day of spring term in 2018.

250. Around this time there was a meeting between Mr Allin, Mr Henson and a female student who had been a girlfriend of the male student. The notes (dated 10 January, but very likely in error) record that her perspective on events was different. She was unaware of any sexual assault. She recalled Ms McCamish being flirtatious. His tactile behaviour was not inappropriate. Others behaved similarly. The issues raised by the cohort were surprising. However, on 24 January the same female student emailed Mr Henson saying she recalled a conversation with another student who said she and Ms McCamish were scared of the male student because of something that had happened in the first week of term.

251. On 24 January, Ms McCamish's parents sent a long email to Mr Allin setting out their perspective including their concern that the male student had got Ms McCamish drunk or drugged her, that after her report the College had disappointingly not take the initiative to arrange counselling and assurances she would not share classes with the male student had not been fulfilled. Their understanding had been "the school could not do anything without Alyse making an official "sexual assault charge", but that had now happened. After meeting Mr Henson, Ms McCamish had a meeting with the College counsellor who had described the assaults as "rape". They added:

> "If you need more than that, we have three counselors [sic] and two physical therapists who can speak to you about the painful effect this has had on Alyse both mentally and physically. To help process and cope with everything that transpired, last summer Alyse did specialized EMDR therapy. It's used often for PTSD (post-traumatic stress disorder) sufferers and others who have had dramatic events happen."

252. Suggestions were made for dealing with the male student. Assurances were sought that Ms McCamish's report would not lead to her being disadvantaged, that she be allowed to continue with counselling and precautions should be taken to keep her safe. Mr Allin acknowledged the email. He said it would be included in the material he was reviewing.

253. On 24 and 29 January, there were two more meetings between the male student, Mr Allin and Mr Henson. The second included Mr Weir. The notes of the first record Mr Allin explaining "a number of subsidiary accounts and allegations of behaviour had come to light" that "might, of themselves, seem small or insignificant, but that nevertheless they needed to be mentioned". The

note from 15 female students was discussed. The male student said he was shocked and did not understand but wanted to apologise.

254. He was also told it was alleged he "had taken to massaging Sydney Feder (BA Acting Year 3) with some force which had caused pain. It had been alleged that the massaging had been unsolicited." The meeting notes record that he:

> "agreed that the event had occurred, and offered some background, consistent with accounts previously received. [He] understood that SF had been 'feeling down' and had initiated the massage as a standard approach amongst acting students. [He] also agreed with the account that SF had experienced some pain, but stated that as a consequence, he had stopped immediately. [He] stated that this would always be his response when asked to stop something, regardless of context or person involved.
>
> [He] further expressed the view, subsequently repeated during the meeting, that he understood that if rumours of an alleged assault had been circulating, incidents such as this might be viewed in that particular light."

255. On massage more generally, "having trained to black belt level in Jujitsu, and having gained a degree of anatomical knowledge of muscles and their physiology" he considered himself to be "the 'go to' person for massage in the BA year 2 cohort". He was not the most tactile person and "[w]hilst agreeing that he had engaged in such behaviour, [he] refuted categorically that it was in any way intended to be either aggressive or abusive. [He] also refuted claims that he would continue when asked to desist." He recalled banging on Ms Quigley's door, but disagreed about the context.

256. The meeting notes then state the male student was shown a handwritten note from Nina Bloomgarden. It stated (though in block capitals throughout):

> "In the first term the previous year she had an unpleasant experience with [the male student]. He was in this phase where he would massage and then put his hands in your face. I would say stop constantly and he would not. I would laugh out of discomfort. One day before class it was just me, [the male student] and [redacted] was busy on his phone in the corner. And [the male student] was treating me like a toy. He picked me up from my legs. So my head was hanging towards the ground. I kept saying "stop put me down I don't like to be held upside down please stop. Stop! Stop! (I had a head injury before and had been afraid of falling again) and he dropped me on my head. Instead of apologising he laughed and walked away. It was the first time I've ever felt helpless against a male strength, that my words were not enough to stop someone hurting me, the first time I realised if I were ever in a situation where somebody was trying to hurt me or sexually attack me I would not be able to fight back. I feel unsafe around the male student."

257. The male student denied this had happened. As for what was said in the 17 January meeting about him forcing a kiss on the lips on a female student, he characterised this as a sign of affection he would not have intended to express against another's wishes. Mr Allin said it had been reported there was banter following a meeting with male students in December 2017 where comments had been made about fellow students. The male student commented that the cohort was "left wing" and many "considered themselves to be feminists". He would not have intended comments to be derogatory. Mr Allin said the investigation was nearing its conclusion. The male student said the whole process remained a surprise and a shock, but that he wanted to "apologise for the perceived misunderstandings, and for when his actions had been misconstrued." As before, the notes were sent to him for comment.

258. On 18 and 25 January, there was an email exchange between Mr Henson and Mr Forrister. Mr Forrister said he had been aware of four separate occasions in which the male student had sexually assaulted Ms McCamish since September 2016. He gave details, said to have been communicated to him at the time, which are consistent with her account. She had confided in him soon afterwards. He wanted to express disappointment and dissatisfaction with the College's response. The male student was "a danger". Mr Forrister said he should be contacted were anything further needed.

259. Mr Allin emailed Ms McCamish to update her on his investigation on 26 January. He said:

> "we have now spoken to several people as well as having received written and email communication; from these accounts, a final report and recommendations will be drawn. This will, of course, be shared with you once finalised… but we are hoping to draw things together next week."

260. In cross examination Mr Henson agreed he had intended for her to have a copy of the report at the end of January. He did not know why it was never given to her.

261. The notes of the 29 January meeting with Mr Allin, Mr Henson and Mr Weir record the male student raising five issues. The first was presenting evidence, primarily copies of photos, texts and social media messages which he had annotated. He said these "cast serious doubt on both the chronology of events and also the alleged frame of mind of Alyse McCamish" and "demonstrated that several of the accounts could not have happened either on the day alleged or at the implied time of day". Messages and photos showed the relationship was a normal one between peers, he said, not strained because of a sexual assault. He argued the allegations had either snowballed out of control, were motivated by Ms McCamish's jealousy of his then girlfriend, or both. The BA 2 group was not united as had been presented, nor were the issues exclusively or primarily concerned with him. He "recognised accusations of being tactile, of massaging students and doing so sometimes without first seeking permission" but the context was that many others were tactile. The reports about his "had been exaggerations of truth, seen in a particular light, and for a particular purpose." He suggested agreeing an explanation with staff that would be communicated to other students and staff, arranging a meeting with the BA 2 group to "apologise for his part in the breakdown of cohort dynamic and his wish to help restore" and a further meeting in his absence. The male student was invited to, and confirmed, the accuracy of the notes.

262. Ms Le Conte's evidence was that, by this point what was happening "really was a hot topic of conversation." She elaborated, "[t]hroughout the period after Alyse made her disclosure until she left, it seemed like a fair number of staff were unsupportive of Alyse's case or thought she was lying/making a fuss for attention." She identified Mr Garven and Simon Reeves as being:

> "…reluctant to speak or they would speak up for her and staff circles. They seemed genuinely sympathetic and concerned. Other members of staff were more dismissive or impatient with her in the staff room at various points. Staff would often talk about Alyse and her allegations and openly champion the male student is being victimised."

263. It was put to her in cross examination that there was nothing in her diary that supported this generalised statement. She said she had not looked through every page to check. She could not recall much in the way of specifics given the passage of time, but when pressed said that there had been an insistence on the male student remaining working in the library. He continued to do so during his voluntary, self-imposed suspension and after the investigation would hang out in the student bar, cafe and library during the suspension. To her knowledge, he was never reminded

that he wasn't supposed to be there. She could not give specific dates but it was frequent. Asked whether she had reported it, she said everyone could see.

264. Ms Le Conte also stated "the attitude towards her by some staff by members grew more impatient that she wasn't letting the matter drop." She confirmed this when cross examined. Mr Weetman pressed her for details. She could not give a specific time, but it was when "everybody knew". Ms Le Conte named Vivian Care and Ms Logue in particular. Ms Logue's attitude was 'who knows if she's telling the truth' and 'get over it', though she was paraphrasing what she had said. When challenged, her response was that she could not recall exactly what people said but was recounting the impression of what had been said in her presence had made on her.

265. There was force in Mr Weetman's critique of these parts of Ms Le Conte's evidence. Parts were very general and impressionistic, as she accepted. However, I find Ms Le Conte was a credible witness. When she was able to be precise, she was. She was equally candid about what she could not remember. There is no evidence to contradict what she said about staff room discussions happening once news of Ms McCamish's report spread, though Ms Newman described the discussions as being more limited. I also accept Ms Le Conte's evidence about the male student continuing to work in the library and being generally present around campus during both his voluntary leave and imposed suspension. The Claimants also spoke about this. No witness contradicted them. If the male student had been suspended from his part time library job, I would anticipate records of this being available.

266. Last, I should mention that a series of incidents in the past was set out in Ms Le Conte's witness statement which she described as illustrative of the proposition that there was a culture at the College what they considered minor sexual assault was tolerated or at best a blind eye was turned. She was cross examined on these matters by Mr Weetman, albeit not at great length. These exchanges did not impact on my general assessment of her credibility. However, as I said at the outset of this judgment, my focus needs to remain on the pleaded claims of negligence and the facts said to support them rather than broader matters.

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267. On 1 February 2018 the male student sent some further copies of messages to Mr Allin.

268. On 5 February Mr Henson sent him an update observing "[y]ou ask about further interview with Alyse. I would imagine that Scott will want to speak to Alyse again before the whole process has concluded; whether or not he feels it necessary to do so before he publishes his findings, I can't say."

269. On 7 February, Ms Newnan emailed Mr Bond about a meeting that day with Ms McCamish. She appended a note about it, recording Ms McCamish was "angry with me… very shaky and tense". A member of staff had told another student about a staff meeting in which Ms Newman had said the BA 2 group were "unprofessional" in not working with the male student and things had been blown out of proportion. According to the email, Ms Newman reassured her she had not said such things.

270. Ms Newman's witness statement evidence about this conversation was that Ms McCamish would come to see her upset, hysterical and hardly able to speak. The male student had come into the College and she was upset he was there and she had been told about a conversation in a staff meeting when Ms Newman reportedly said "the girls" were "unprofessional". This was not true, Ms Newman told her. During the conversation, Ms McCamish backtracked and apologised. Later that day Ms McCamish emailed to thank Ms Newman for being reassuring, adding she appreciate the emotional support for the rest of the class and seeking to put her mind at ease that the

comments were false and ill informed. Cross examined about this, she said that Mr Garven had been the member of staff. She had not wanted to get him in trouble and so had backtracked in the email.

271. Ms Newman forwarded that email to Mr Bond stating Ms McCamish "had twisted the narrative" and "let the cat out of the bag". Ms Newman's evidence was that she said used these words because Mr Bond believed Ms McCamish had information from the staff meeting, directly or indirectly, but it was inaccurate.

272. Mr Allin completed his investigation report on 8 February and sent it to the College Principal.

273. Before that, an advanced draft was sent to Mr Henson who commented in an email of the same date:

> "I would clarify that your conclusions and recommendations are from the investigation and are thus not necessarily of the case itself (if that's a fair distinction); you do say that the Panel will make the final recommendation to the Principal, but I think the Panel has authority of its own to determine the outcome and, if appropriate, any sanctions or penalties."

274. The reference to "the Panel" was presumably to the Disciplinary Committee. Mr Allin proposed to send a draft to the male student and Ms McCamish under cover of an email that stated "[i]t is likely that you will be called to appear before this [Disciplinary] Panel which will make the final recommendation to the Principal." Ms McCamish's evidence was that Mr Weir told her around this time that she would be called. This was not challenged.

275. Later that day, Mr Allin sent the College Principal, then George Caird, his final investigation report. Mr Henson was cross examined about his role in its authorship and made it clear it had been Mr Allin's report. I accept this.

276. The report begins with a summary, stating "the Allegations" were "Sexual Assault" and "Non-consensual Sexual Acts" adding "[d]uring the course of the investigation, the scope of enquiries widened from the Allegations to include concerns about [the male student] from other members of the cohort." The decision making on suspension was then summarised.

277. The report continued by stating that the College had known about Ms McCamish's allegations since June 2017, adding:

> "Ms McCamish supported during this period (Annex E) and strongly encouraged to make a formal complaint which she chose not to pursue. The academic relationship was managed through AM and [the male student] being placed in different study groups. However, during 2017 rumours of the Allegations were circulating within the BA 2 Acting cohort and in December 2017 AM had decided that she would make a formal complaint (Annex F)."

278. Annex E was a "June 2017 email thread showing College response to informal allegation which follows UUK Guidance allowing victim to decide whether to report to the police (page 7 of UUK Guidance)" and Annex F was the 2016 Conduct Policy complaint form. I will return to that guidance when discussing Mr Allin and Mr Weir's evidence.

279. The report went on to say that the Allegations had been reported to the police who "examined the case but noted that there was no hard evidence. As a result, it was concluded that it would

not be productive to continue with a criminal investigation (Annex H).” Annex H was a January 2018 email thread from College noting the report to police.

280. The report then summarised the issues considered. Firstly, given the conflicting accounts of events in September 2016, could the facts be established of Ms McCamish’s allegations to the “civil standard of proof (balance of probability)”? Secondly, given the oral evidence from other students and facts staff, could facts be established as regards the male student’s conduct more widely and could consideration be given to the specific concerns of students feeling “unsafe and/or uncomfortable”?

281. On the first of these issues, the report noted the male student was adamant all acts were consensual. Ms McCamish’s version was supported by her mother and another student i.e. Tom, but neither could provide direct evidence because they were not present at the time. There was “evidence from lecturing staff that AM behaved in a friendly way to [the male student] during 2017/18”, such as Louisa Clarke’s email about the hug. However, Mr Allin noted “victims of sexual assault may not behave as might be expected and that this is relevant to the weight that should be given to this and other observations concerning the ongoing relationship” between the male student and Ms McCamish. Ms Quigley was the only person said to have witnessed the tail end of one of the assaults, and she had not given evidence of a sexual assault. Her account differed from Ms McCamish’s and both were different to that the male student had given. After quoting from the notes of each of their interviews to illustrate this, Mr Allin’s report concluded “[c]onsequently, on the balance of probability and the evidence reviewed regarding the Allegations against [the male student] are unproven.”

282. The discussion of the second issue began with the conclusion “[o]n the balance of probability, the further allegations of unsolicited physical contact are considered to be more likely than not to have happened.” The notes of what Ms Quigley had said about the male student being tactile and hair stroking were quoted. Mr Allin noted that was admitted by the male student, as was the contact being unsolicited, even though he had belied it was consensual. Ms Bloomgarden’s report was noted as was the male student’s denial. The notes of the incident involving Ms Feder were quoted, followed by the observation that the male student had “confirmed this event took place but believed it was consensual although he admitted it was unsolicited and that he had initiated it.”

283. The report then stated “[t]he view that students have felt unsafe or uncomfortable working with [the male student] is in the view of the investigating officer justified given the strength of the evidence presented by students and staff, it's detail, its clarity and its consistency”. Three quotes were given from the meeting notes about the atmosphere in class. Mr Allin then observed that “the reason why the cohort felt ‘unsafe’ in the presence of [the male student] may have been as a result of the allegations becoming widely known in the cohort, which may in turn have influenced students’ perception of [the male student’s] actions as something more sinister”. That was the view of the male student and his girlfriend, but students may have genuinely felt unsafe. The further individual allegations “had been dealt with” by the male student in his submissions. He had been shocked by the allegations and wanted to apologise if his actions had been misconstrued. Last it was noted that he believed Ms McCamish’s actions could not be reconciled with her allegations, referencing social media messages and group photos. In his report Mr Allin observed it was difficult to decide what weight to give to this material given the range of coping strategies people adopt after experiencing traumatic events.

284. The report's conclusion was that the male student's conduct “may be considered in breach” of the 2016 Conduct policy, specifically:

> “2.1 An act will be regarded as misconduct, and therefore the subject of

> disciplinary action:
> • if it constitutes or is likely to constitute improper interference with the proper functioning and activities of the College, or of those who work or study in the College.
> 2.4 Students must not whilst on campus, in College and/or University premises off campus or engaged in College activities:
> e) act in any way which is likely to cause injury to any other person within the College community, including impairing the safety of premises or equipment and interfering with anything provided in the interests of Health and Safety at Work as detailed in the College's Health and Safety Policy document;
> h) behave in any way which unreasonably interferes with the legitimate freedoms of any other student, member of staff, or visitor, or which disrupts or interferes with activities properly carried out by the College"

285. As to sanctions, expulsion was not justified because the allegations were not proven. A "short suspension would be appropriate" given the mitigating factors outlined by the male student. The time that he had voluntarily removed himself from the cohort could be included in that suspension. To support his reintegration with the cohort, a set of restrictions that kept him and Ms McCamish apart, in academic settings and an apology "would seem to be appropriate". A formal warning should be given, and he should be asked to make a written and, if appropriate, verbal apology to the cohort. It was then recommended that the case be referred to a Disciplinary Committee. Guidance on staff contact with students should be reviewed because a lack of distance had been mentioned by some students during the investigation and the 2016 Conduct Policy should be reviewed to ensure misconduct included sexual misconduct.

286. The copies of messages and social media material the male student had supplied were annexed to the report along with the various meeting notes, those from Ms Wanebo, Ms Bloomgarden and, much of the correspondence between students, Mr Allin and Mr Henson and the email from Ms McCamish's parents. Some messages suggest friendly and affectionate contact between Ms McCamish and the male student at various times. They are also shown together in group photographs. As discussed above, Mr Weetman cross examined Ms McCamish about this material.

287. Mr Allin and Mr Caird discussed the report, agreeing there should be a Disciplinary Committee. The report was also sent to Mr Burrows by Mr Henson whose covering email stated:

> "I'm suggesting also at this stage that the Disciplinary Committee, whilst having the ability to call witnesses, would be going over ground which Scott has covered at length in the reports if it were to do so. I would suggest to [the Disciplinary Committee chair] that calling Scott and the two principal students would be appropriate."

288. However, despite the discussion of sending a draft to the male student and Ms McCamish this never happened. The male student was sent the final version in order that he could prepare for the Disciplinary Committee meeting. It was never sent to Ms McCamish.

289. In cross examination, Mr Allin was asked why he never went back to Ms McCamish before finalising his report to ask her about what the male student had said, the material he had provided and the things others had said like the teacher who had seen her hugging him. He said he hadn't needed to. He had gone through the process on the allegation of sexual assault and "the issue was consent". Ms McCamish had said there was sexual activity without her consent. As to the male student, he was:

> "the key to this. If we'd got him to say yes, or found it was inappropriate in some way, it would have come down on the guilt there. We never could. So his view there was consensual. It was always a consensual vs non consensual discussion, so in terms of balance of probabilities two people with opposing views of whatever happened in those things".

290. He added he could not go back to Ms McCamish and say "[the male student] says there was consent, what do you say? I don't see the logic in that". Re-examined about this, Mr Allin said he wasn't "going to push her on that". He "didn't think it was right to go back to someone who'd made a sexual assault claim and say to them 'is that true?'" It felt inappropriate.

291. In respect of this particular part of Mr Allin's evidence, I have come to the conclusion that he was truthfully describing his reasoning process. That does not necessarily mean his reasoning process was reasonable. I return to this below.

292. Although she had not been invited to comment on the draft report, Ms McCamish was told in an email of 9 February from Mr Allin that:

> "I have been in contact with the College's lawyers to make sure the report is fair and the conclusions and recommendations from the investigation are appropriate. This report has now been submitted to the Principal and a Disciplinary Panel is being convened for next week to hear the evidence. It is likely that you will be called to appear before this Panel which will make the final recommendation to the Principal."

293. In cross examination Mr Henson said he understood the process to be "as the principal allegation-maker in this, it was likely Alyse would be called by the disciplinary panel", adding:

> "In the event, that did not happen. Dr Cranmer, I believe, chaired that panel. I was not involved with it. But for whatever reason he chose, chose not to call any of those who had contributed to the evidence of the case to that particular disciplinary panel meeting."

294. Mr Henson emailed the Disciplinary Committee Chair, Dr Cranmer on 12 February. He advised:

> "against meeting with Alyse McCamish, except as the full Disciplinary Panel. I fully appreciate (and support!) the need to include Alyse in the hearing, and offer a chance to affirm her complaint and her evidence, but I also think it's important to do so within the Panel's business, not without, for the sake of process more than anything."

295. In an email exchange the next day, the male student asked Mr Weir to discuss the invitation to attend the disciplinary hearing with him and to attend with him on the day to support him. Mr Weir said he was happy to do so.

296. On 15 February, a Disciplinary Committee comprising Dr Cranmer, Zoe Smith and Lloyd Pearce, met to discuss it. The male student was present with Mr Weir in his 'support person' role. Mr Allin and Mr Burrows were present too.

297. Ms McCamish was not present. She had not been asked to attend or even told the Committee was meeting, despite the discussions about her being a witness. There is nothing in the contemporaneous documents explaining why she was not called and there has been no explanation of this from any of the College's witnesses. Mr Henson was asked at trial whether

he knew why there had been a change of approach. He said that he did not. Ms Feder was not called either, nor were any of the other women who had made reports about the male student's conduct. Mr Burrows' statement discusses this. He would have been responsible for inviting her in his capacity as secretary. He could not recall who took the decision not to invite Ms McCamish to the Disciplinary Committee, but "the decision around which witnesses to invite is usually taken by the Chair of the Panel."

298. Aside from some notes described a 'template' ('the decision notes'), there was a paucity of contemporaneous or witness statement evidence about what happened at the Disciplinary Committee meeting and its reasoning. The decision notes record the meeting attendees, quote the report's main conclusions, list its appendices then set out a series of "considerations" and a conclusion. The matters listed considerations are that Dr Cranmer had asked Mr Allin to confirm the allegations and the evidence gathered and he had done so. The male student was then invited to "consider and respond to the allegations of inappropriate behaviour including unsolicited physical contact. These allegations had arisen during the course of the investigation and were considered credible." Pausing there, it appears from the decision notes that the male student was not asked to respond to what Ms McCamish had said. That is reinforced by the next sentence in that document: "[the male student] shared a written response with the committee and was given an opportunity to address the year group allegations". I asked Mr Weir about that, and he remembered no discussion of Ms McCamish's allegations with the male student, only those of the larger group.

299. Mr Burrows' statement is consistent. He says there "I recall Scott Allin saying he could not possibly know what happened between [the male student] and Alyse McCamish as there were no witnesses to the events in question. Thereafter the meeting focused on the secondary allegations of inappropriate behaviour and unsolicited physical contact", adding that "during the 'discussion' phase of the meeting (when the Investigating Officer and Accused are out of the room) discussions focused on what the appropriate sanctions should be in relation to the secondary allocations of unsolicited physical contact." He added:

> "I cannot recall whether the panel considered that it needed to reach a decision about the primary allegations of sexual assault but it was certainly the case that the focus of the meeting was the secondary allegations and what sanction should follow. From my recollections, the panel accepted the recommendations of the Investigating Officer in relation to the primary allegations (i.e. that it was not possible to know what had happened between [the male student] and Alyse McCamish and the allegation was not proven). It was therefore unnecessary for the panel to consider whether [the male student] should receive a sanction in relation to the primary allegations."

300. Mr Burrows' evidence is the best available about the committee's deliberations other than the contemporaneous decision notes and letter. I accept its accuracy.

301. The decision notes record the male student making points similar to those he made when interviewed along with some new ones. He had been "completely unaware of any rumours or allegations over this 12 to 14-month period since events of September 2016. On reflection it could be that the girls in the group have been less talkative since December 2016 but [he] thought this due to him not socialising as much with the group." He was "shocked and upset" by the allegations and had been "ostracised". In the group meetings "he hadn't made inappropriate comments about female students". Ms Wanebo was a "good friend" and "although technically physical conduct was unsolicited it appeared to him that it was appreciated". He added that "given the current political climate, male students are afraid of upsetting female students. That students may have signed petitions or given statements in support of others individuals rather

than expressing their own opinions." He did to understand the delay between the allegations and their reporting". Ms McCamish may have made the allegation to back up things she had said in the intervening period. Students should not be put in the situation he had been, he said.

302. The Disciplinary Committees sole conclusion recorded in the decision notes was:

> "given the weight of evidence [the male student] is in breach of the [2016 Conduct Policy] as follows (paragraph 2.4):
> 2.4 Students must not whilst on campus, in College and/or University premises off campus or engaged in College activities:
> act in any way which is likely to cause injury to any other person within the College community behave in any way which unreasonably interferes with the legitimate freedoms of any other student, member of staff, or visitor, or which disrupts or interferes with activities properly carried out by the College"

303. No further reasons were given. The sanctions the committee agreed were a two-week suspension, identification of a "reintegration plan" in consultation with Mr Weir to be "agreed with the Disciplinary Panel [sic]" and a formal written warning. The committee recommended reviews of the guidance on relationships between staff and students and policies relating to safeguarding, professionalism and whistle blowing. No reasons were given for these recommendations either.

304. Mr Allin's oral evidence chimed with what is said in the decision notes. He said he presented his report, the committee then heard from the male student and they then left the committee to its deliberations. I asked Mr Allin to elaborate on his statement as regards what he and Mr Caird had decided under paragraph 3.11 of the 2016 Conduct Policy. It discusses whether there is a case to answer and, if so, whether it should be referred to a Disciplinary Committee. Mr Allin said "[t]his was serious enough, and the evidence was there, to allow it to go to a Disciplinary Committee." Asked if he had turned his mind to whether there was a case to answer on each of the two sets of allegations, he confirmed "that's right, so both of them goes there", adding "the whole report went to the Disciplinary Committee with the two primary and secondary conclusions in and it was for the Disciplinary Committee to decide if that was proven to them or not." I asked Mr Allin to read paragraph 65 of his statement which included "I concluded that Alyse's allegations were not proven. I did not mean that I thought she was wrong or lying. It was that I could not prove what she was saying. There was no direct evidence to support Alyse's allegations. [The male's student] and Alyse gave different accounts of events… I concluded that the allegations made by others of unsolicited physical contact were proven on the balance of probability." What then were the Disciplinary Committee deciding, I asked. Ms Allin's response was "they're deciding the penalty… they're deciding the discipline what happens to the person. And they will look at the evidence to base that as well… if they agree with those conclusions, what is the sanction". Shown the Disciplinary Committee's decision notes and l6 February letter, Mr Allin could not identify where it discussed consideration of Ms McCamish's allegation, but he was sure they had considered the report as a whole. He thought it was possible for the committee to reject a report in the bases there was insufficient evidence, but he could not recall that ever happening.

305. In re-examination, Mr Weetman asked what process had the Disciplinary Committee used, looking at Mr Allin's report, to reach its final assessment that there was indeed insufficient evidence on those allegations? He said it would have read his report, asked questions during the presentation he had given and then "gone away to think about whether that was a reasonable conclusion. Whether there was enough evidence there to carry that forward into this letter", referring to a l6 February letter sent to the male student.

306. The 16 February letter stated there were two findings. The first was "[t]hat there is insufficient evidence to come to a view on the allegation of sexual misconduct". The second simply repeated the text of the committee's conclusion quoted above at paragraph 302. The sanctions were listed as penalties and the right of appeal was explained.

307. The warning was not set out in the letter and was not included in the trial bundle. It is possible it was never issued.

308. As the Disciplinary Committee was the critical decision-making body (a point Mr Henson had made in his 8 February email to Mr Allin, it will be recalled), I made directions requiring production of any further records of its deliberations or, if they were none, for a member of the committee or Mr Burrows to explain matters if possible. I was told any notes made had long since been destroyed. Mr Burrows offered some helpful information in his witness statement which is discussed below, but his role was administrative and the information was limited.

309. The male student decided to appeal and shared two drafts of the appeal submission with Mr Weir for comment. Mr Weir commented in an email of 19 February that the second draft had dealt with concerns he had about the first.

310. The appeal was submitted later the same day. The male student argued one of the students had been inappropriately influenced in what they had said by Ms McCamish, that Ms Feder was biased, that the investigation and hearing were not fairly conducted and that the penalties imposed were excessive, especially given the voluntary leave of absence. "In my heart I feel I have already served heavy punishment for something I haven't done", he added. The appeal was determined on 20 February. The panel reduced the period of suspension to one week. They also indicated in an email the same day that the male student "has already been voluntarily absent from his studies for some weeks and that the two weeks suspension can be considered to have run concurrent with that by one week and will be completed by the end of this week adding "[a]process of re-integration should begin from Monday 26th February", which was the following Monday.

311. A number of senior College staff then emailed each other about next steps. Mr Allin raised the question "do we continue keeping Alyse and [the male student] apart?" The idea of a meeting with the BA 2 group was also canvassed. The staff group was told by Mr Weir and Ms Stout respectively that the male student "was still talking about the opportunity to present his 'defence' and the impact of this process on him to the group" and "[y]es, [the male student] does still want to present his defence to the cohort and to reassure them that they are safe with him. He also wants to meet with Alyse". Mr Allin commented "my view is that as it's a supposedly confidential process then in order to share the results we need both Alyse and [the male student's] permission". Mr Caird added "Scott is right that first we have to inform [the male student] and Alyse and then ask them to agree to a plan that will inform the cohort towards reintegration."

312. On 21 February, Dr Cranmer and Lucy Stout, the College's Director of Development and a member of the appeal panel, met with Ms McCamish on to inform her of the outcome of the process. There is no record of this meeting. She was not given a copy of the investigation report, the decision notes or the 16 February letter to the male student.

313. Ms McCamish's evidence is that she was told that her allegation against the male student had "not been proven on the balance of probabilities". No reasons were given and neither was there an explanation about why she had not been called to give evidence. She was told the "inappropriate touching" allegations had been upheld and that the male student had been suspended for two weeks subsequently reduced to one on appeal. He would now have to be reintegrated. She burst into tears and could remember little else of what was said.

314. An email from Mr Allin alter that day stated that "John Cranmer and Lucy met with Alyse this morning and all permissions to speak to the cohort are in place" and "[f]eedback was that Alyse accepted the review findings but expressed concerns about whether she or the rest of the cohort could work with [the male student] again." Another email from Ms Stout the same day states "given how upset Alyse was at the thought of [the male student] coming back, we did not pass on his request to meet her one-to-one. It would have been completely inappropriate."

315. Ms McCamish was candid about her limited recollection of this meeting. I find it was likely she was asked about the BA 2 group being told the outcome of the investigation and agreed to this happening. I have some reservations about this particular finding, especially where there was no record of the meeting and no evidence from Ms Stout. Ms McCamish was being asked to waive confidentiality in relation to at least some of what was going to be said which was highly sensitive. Given she was being told of the outcome at the same time, the circumstances were far from ideal for her to take that decision.

316. Neither Dr Cranmer, Ms Stout nor any other College representative met with Ms Feder or otherwise communicated the outcome of the disciplinary process to her. Her evidence is that she heard there had been a disciplinary hearing at some point afterwards on the student grapevine, that the male student had been found not guilty of the allegations Ms McCamish had made "but guilty of some other assaults against a number of other female students". She did not know which until this litigation began nor if her own allegation had been upheld or not. In answer to a question I posed, Ms Feder said that the College had never asked her about sharing the outcome of the investigation into her report with other students, or told her that it would do this. However, the 17 January meeting she had expected to hear from the College about support, what was happening and the outcome. There was a process, she had made an allegation in that process.

317. In cross examination Ms Feder was asked whether she had needed to hear the outcome from Mr Allin, as she had heard it from Mr Coster, or from her then boyfriend who knew him. She confirmed she heard the male student had "found guilty" and so assumed he had been told about her report, but she didn't know whether her report had been included as part of the outcome. She genuinely didn't think she had any chance to ask anyone. Mr Weetman suggested Scott Allin was an easy and natural person to ask. She agreed he was an option but was really upset that no one told her anything or included her. There were meetings with others who had been impacted. She was not invited to them. She was finding things out weeks later. She felt she was not wanted in the process and not wanted in general. It was important to note she was really, really shy then, she said. Mr Weetman put it to her that the real reason she did not need to chase up what had happened was that it was widely known the male student had been found to have acted physically inappropriately and had been suspended. She said she had been told that but that very day he was there working in the library. He had admitted to allegations and so shouldn't have been there at all.

318. Cross examined about what had been said to Ms Feder, Mr Allin confirmed she was not told the outcome of the investigation or invited to the second year cohort meeting convened covered to explain the decision that had been reached. Her report was "treated that as a piece of evidence in the final conclusions, but not a complaint that we went back to." It was put to him that she would not know the outcome of the investigation in any formal sense, she would have only heard from others. He replied "there was never an investigation of the Sydney incident. It was a by-product of the review". He repeated this when I sought clarification, adding "it was part of the evidence collection that we made to say that his behaviours were incorrect. So we didn't feel that she's made formal complaint". Asked why she was not told the outcome when the cohort was, he replied "in hindsight that may have been a mistake. I think we knew that she knew the outcome because she was closely involved, close friends with some of the cohort. But the was in the year

above. I probably just forgot about that because it didn't feel… because the incident didn't feel like a significant complaint in there".

319. Ms Feder's unchallenged written evidence was that the male student carried on working in the library throughout this period, checking books in and out near the door. She avoided the library so she wouldn't be seen by him. She also avoided the Student Union. She didn't want to run into him. She could not understand why he was there if he was suspended.

320. Around this time, Ms Feder had overheard Ms Newman expressing the sentiment "poor [male student's name], the girls don't know what they're doing to him" on two occasions when she had come into class in a flustered state. Pressed by Mr Weetman, she maintained this had happened directly in front of her and the whole class. Other teachers were saying similar things. It had a huge impact on her, hearing staff express sympathy for the male student and the anger they had and not knowing whether they knew about her and her details. It was a horrible atmosphere. Responding to Mr Weetman's suggestion that she was exaggerating what had happened based on one or two incidents, she said she was not consciously exaggerating anything. Her memory was imperfect, but she could not express how much she wished it had not happened and had wanted someone at the time to just ask if she was ok, whether everyone was ok.

321. Ms Feder's written evidence was that, instead, she was left ignored and that her complaint had not been properly investigated. For her showcase performance she chose a monologue about not being believed following a sexual assault.

322. Mr Weetman put it to her that she was not treated in a very bad way by the College staff in the way that they handled her allegations, giving examples. She said it was bad, but very different to how they treated Ms McCamish. She was just forgotten. It was very unsettling to have made her first outcry in her life to a person in a position of power and to have just heard echoes. Surely the male student's actions had a greater effect than the College's, Mr Weetman asked. She disagreed. The trauma from an individual person and the trauma from a physical assault was very different to the trauma from an institutional response, she said. Dealing with the anger and behaviour from one person who was an equal was really different to having to deal with an entire institution that you believed was there to protect you, which you are actually paying to educate and protect you, and completely fails you. The institution had a far greater effect on her than the male student had.

323. Mr Weetman said that she had told the psychiatric experts she had not been heard, but by February 2018 she knew that she had been listened to and the male student had been punished. Her response was that she knew he had been punished, but she did not know it was for her complaint. She had no idea what had been done with it. Massaging was discussed with the whole second year cohort. She made a guess that was in reference to her. She had not been named but some people in the room would identify her as the massaged person.

324. Ms Feder went on to say in cross examination that she did not know if she had justice and had no closure or a sense of safety. She was offered no support at all. Mr Weetman put it to her that if she really was traumatised in February to April 2018 from having no sense of closure, she would have spoken to Mr Henson, Mr Allin or another member of supervising staff to ask for an update. She said the staff were not safe people to go to. The support she knew was available through the HUB/HWB wasn't good support. She had seen the school counsellor in the first year to help with issues with lecturers. The counsellor was kind but not effective and she worked far away and she had not been given time off to see her. She was still confused by why no-one offered anything when she made her report.

325. In cross examination she was asked about seeing a psychiatrist for counselling, Dr Abdulghani, in 2019. Was it fair to say she referred to the assault on Campus and that made her feel "angry towards the system and men", but also other sources of anger unconnected to the incident on campus were referenced, Mr Weetman asked. She accepted that. Was counselling something she would have wanted to have anyway regardless of the College incident, was that incident just one of the things she had wanted to discuss? She agreed. Her use of the words "the system" incorporated her being ignored, she said. She didn't know whether she would have wanted to see the psychiatrist had the College responded in the way she had wanted it to. She said she had not gone into it lightly. If she could have avoided having to go into counselling then, she would have. Mr Weetman suggested she was exaggerating the significance of the events with the College, which were a minor part of her life. She disagreed. It completely shattered any trust she had in authority, institutions, education and safeguarding and it made future hardships much worse.

326. The answers Ms Feder gave over several hours of the skilled forensic questioning I have summarised above led me to the conclusion her evidence about the College's response to her report and the impact on her was wholly credible and truthful. Several factors are important. First, there is no contemporaneous evidence whatsoever to contradict what she told the Court. The closest Mr Weetman came to identifying anything of this kind was the 2019 letter from Dr Abdulghani that discussed her anger and its causes in the context of the issues they were exploring. That letter did not discuss any of the details of the College's response and her reaction and many other things were discussed. However, there are obvious limits to what can be extrapolated from such correspondence. It discusses, in very broad terms, what was covered in a preliminary session. Dr Abdulghani was not being asked to explore these issues last still quantify their relative significance in writing. That was the task of the psychiatric experts appointed for this case whose evidence I will come to later. The second factor is that, having confronted the specific differences in recollection between Ms Feder, Ms Newman, Mr Henson and Mr Allin, I have concluded that I prefer Ms Feder's evidence. Those differences do not therefore undermine her general credibility. Thirdly, Ms Feder's evidence was consistent throughout, even when certain events and themes were explored from multiple angles. There was no inconsistency with her pleaded case, and nothing can be read into in fact it did not cover every point she made in evidence. Ms Le Conte's evidence of the male student's presence on campus was also wholly consistent with hers. Fourthly, she was candid about the limits of her own recollection. Last, there was nothing inherently improbable in her account. On the contrary, she was able to articulate just why what was said on 17 January, the subsequent silence from the College and the continuing presence of the male student in the context of everything that happened were so impactful on her. Others might well have reacted differently, but her evidence about her reaction and the reasons for it was believable. I accept it.

327. On 22 February, the male student wrote to Mr Weir about a meeting he had had with Mr Bond and Dean Crowley stating "I pretty much shared everything i've [sic] said with you and that id [sic] like to have a moment to defend myself, write a statement of some sort. They told me to start to write one and keep redrafting it with both you and Dave." He sent a first draft to Mr Weir and Mr Bond the next day and asked for suggestions. This version discussed a series of "alibis" and in the concluding paragraphs said "[s]omething to the boys. Ive [sic] been punished for something we all do. We have to watch out."

328. On 23 February, McCamish and Mr Coster met with Mr Allin and Mr Burrows to discuss an incident on 8 February when they had encountered the male student in the student union bar. Ms McCamish had also mentioned this to Dr Cranmer and Ms Stout. The notes of the later meeting say Ms McCamish explained she had "attended a third year show either on a Friday or a Saturday night a few weeks ago. After the show, she was standing near the bar with talking to a graduate. Then [the male student had] stood behind her close enough to touch her back and 'bumped' her out of the way." The meeting notes mention Mr Coster saying that he was sitting nearby and was

angry, but a friend, Olivia, advised him not to cause a scene and that she would deal with it. He walked over and 'bumped' [the male student] out of the way i.e. created a space between them." Mr Allin said "he would have a look at the CCTV".

329. When cross examined, Ms McCamish explained that she and Mr Coster had been given access to College CCTV footage and eventually found the incident they had described. They had looked at some footage together with Mr Allin. Mr Coster confirmed this under cross examination, recalling two such meetings. Ms McCamish's pleaded case was that the male student had "approached her and stood directly behind her and touched her." Her witness statement said he had "stood behind me, not an inch away". The College's position was that he was in her vicinity. Mr Weetman pressed Ms McCamish on whether the male student had actually touched her. She said they were very close to touching. There was not space for another person to fit between them. Mr Coster's statement said he "stood right next to Alyse" and his oral evidence was that they were "practically touching". Eventually, the CCTV footage was deleted, wrongly in Ms McCamish's view. Mr Weetman suggested she was mischaracterizing the College's actions, and they had been helpful. She disagreed.

330. Ms McCamish's pleaded case differed from both her witness statement and oral evidence on the question of whether the male student had been in physical contact with her in the bar. It is concerning that the pleading was not consistent, but that is more likely to be attributable to poor drafting than untruthfulness because the error was not replicated in the statements Ms McCamish and Mr Coster signed. The difference did not change my assessment that she was a credible witness.

331. Mr Allin's evidence about this was that he viewed the footage of Ms McCamish and the male student in the bar, they were close but maybe a "couple of yards apart" and were not interacting. Somebody pushed past him. Quite how close the male student was is impossible to know without the CCTV footage, but I am prepared to accept he was close. The difference between the three accounts is not significant to the case, as I shall explain.

332. The meeting concluded with Ms McCamish asking for the investigation report. Mr Allin said he would consider this further, but they could have the conclusions. On 13 March he sent an email to Ms McCamish that began:

> "Following your allegation against [the male student] dated 1 January 2018, I agreed to let you have the College' s formal written response in addition to the oral feedback provided when John Cranmer and Lucy Stout spoke to you on 21 February 2018 and when Dave Bond, Sean Crowley and myself met with the BA 2 cohort on 5 March 2018. The formal outcome of the investigation is:-

333. The email then repeated verbatim the 'findings' passage from the letter to the male student quoted at paragraph 302 above, then added

> "[a]s you know the penalty has now been served but following further discussion [the male student] has decided that he will suspend studies with the intention of returning to recommence BA 2 in September 2018. Let me know if you want to discuss further."

334. On 26 February, the male student sent a second draft of his statement to Mr Bond who said in reply that he would help with making it "fit for purpose". The next day, Mr Bond emailed Mr Weir, Mr Caird, Mr Crowley and Mr Allin. His email began "I saw [the male student] this morning to give advice on his statement." A further meeting was arranged for later in the week and a third draft was sent to Mr Bond on 28 February. There was an email debate later that day

between Mr Weir, Mr Caird, Mr Crowley and Mr Allin about whether the statement should be handed out, displayed or read. Mr Allin observed "reading it may indicate endorsement". A fourth draft was sent to Mr Bond that evening.

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335. A fifth draft of the male student's statement was sent to Mr Bond on 2 March under cover of an email which said "here is the latest copy with some corrections. I think that was everything you suggested."

336. Mr Allin and Mr Bond met with the whole BA 2 year group on 5 March 2018. This meeting was lengthy. A recording was made and later transcribed.

337. Mr Allin introduced himself then began "[w]e thought we'd have a meeting today just to go through the allegation, which I know has been rumoured around the college, and we thought we'd take the opportunity to be as transparent and open as possible to go through what the college has done about this". The process had taken some time because of the seriousness of the allegation and the need to be fair. Legal advice has been taken. Mr Bond interjected to say that the application had been reported to the police immediately. Mr Allin added "going back 16, 15, 14 months, they couldn't find any evidence at that point to take this any further and it wouldn't go to criminal action."

338. Ms McCamish interrupted to say that was not true. She had been told the police could move further with it. Mr. Allin affirmed that but said the police had been clear when the case would reach the Crown Prosecution Service they didn't think there was enough evidence for it to be taken forward. Ms McCamish said she had not known that. She had told the police she wanted it to be handled internally, by the College. Mr Allin explained he had produced a report of over 100 pages and spent a week talking to lawyers about it.

339. Mr Allin then told the group:

> "Now the conclusions - the primary allegation, uh which the police didn't take any further because there was a lack of criminal evidence, and that I couldn't prove that either, um that on the basis of the balance of probabilities and beyond reasonable doubt, because it was it was some time ago because there was one word against another in a room with no other evidence, it was impossible to come down on one case or the other. So, therefore, the conclusion on that was there was insufficient evidence to come to view on the allegation of sexual misconduct in that case."

adding:

> "The second, as part of the investigation, out came some secondary allegations, as well, which were about um unsolicited physical contact, which was predominantly about massaging and not being asked about massaging/touching, um, and those came forward and there was also a feeling of the cohort being unsafe and we had a signed document saying that 15 out of the cohort felt unsafe, um, in [the male student's] presence. So, on the balance of probabilities on that second set of allegations, those were proven and those were the bits that we took forward. So the fact that [the male student] had unsolicitedly touched people, which he admitted himself, he thought he had consent but the information that came forward from a group of people was that he didn't. And the fact that the group came forward, um, 15 people were saying that they felt uncomfortable and unsafe and his presence, made that conclusion being proven."

340. Mr Allin concluded his presentation by stating that the male student had "served his suspension from the College. The next steps are that he, in discussion with the college has uh agreed that he doesn't want to re-join this year but will be re-joining the year below."

341. One student, Mr Garbutt, said this was ridiculous. He did not want to remain if the male student was in the College. He got up to leave and Mr Bond urged him to stay.

342. A significant exchange then took place. Mr Wanebo said she had a question about the balance of probabilities. No-one other than her had been questioned about witnessing the things she had reported as happening in her home. However, "those were found to be proven which are issues of sexual misconduct and yet another issue of sexual misconduct, which has the same amount of proof, was found to not be provable". That felt to her "like a measure that was taken because the consequences for that would be much more severe."

343. Mr Allin's response was:

> "If you go back to the original allegation, a serious allegation, was one word against another and I couldn't change that evidence. There was nobody else to back that up. The other, the other allegations, the secondary allegations which were about inappropriate touching and unsolicited touching, were "hands up" from [the male student]. [He] said "yes, that did happen. I thought I had consent." So those were proven on the basis that other people, including [the male student] himself, said that he did that."

344. Ms Wanebo pressed Mr Allin stating "if we're talking about 'probabilities' of things he's done, then we can say we can believe at least five women saying he had sexually harassed—" to which Mr Allin replied "If there were any other allegations of sexual harassment against [the male student], that supported that, that would have been a different case. There weren't. There was one allegation against him on a sexual assault. There were numerous allegations of 'inappropriate touching'--." Ms Wanebo said these allegation were of sexual misconduct. Mr Allin contradicted her. The allegations were "'inappropriate touching', mainly 'massaging' or things like that, which he thought, and he would argue, other people do as part of the course."

345. Ms Wanebo responded:

> "But I know many of things that I raised were not that. They were me being in my house and him holding me against him and taking off his clothes against me and me saying "stop." And only when someone else told him to stop, did he stop. So that's not that's not something anyone on this course would do. So that's not a miscommunication. That's, that's aggression and sexual harassment and misconduct. But then that's my word against his."

346. Mr Allin agreed, stating "it is, yeah". Ms Wanebo commented "Just like the other ones, so I don't see how the 'probabilities" are falling in the sense of finding him innocent." Mr Allin's response was "[t]he 'probabilities" of the second one were supported by other people. Lots of people. There were a number of evidence of 'inappropriately touching people".

347. Ms McCamish interjected to say the police officer she had met with Mr Weir had advised "I believe he'll do it again. You're a private institution and you can do what you want. Me personally, I'd get him out." Mr Allin responded "they didn't push that forward.... If they thought there was a possibility of prosecution, they would have prosecuted." Ms McCamish replied "No, No, No.

I told them not to move further. There was a possibility of prosecution. I told them I wouldn't want to move out further because it's now on his record".

348. The discussion shifted back to the relationship between the two sets of allegations. Ms Quigley asked if the second set had informed the first. Mr Allin said "[t]hey, they have to be kept separate, because they're separate allegations, but they did slightly inform me, but they didn't, they wouldn't push it in a 'guilty' because they were a different nature." Ms Quigley interrupted him to say they were similar.

349. Questioned about whether it was in Mr Allin's power to ask the male student to leave, he said it was, but not without the evidence, but the male student had decided not to rejoin the group. Asked if other years would be told about the allegations, Mr Allin said he would have to think about that. Ms Quigley said she could not be in the same building as the male student for the next year and a half. Ms Bloomgarden added that there was an unfairness during his voluntary suspension. His presence meant Ms McCamish could not go to the places he was. Ms Wanebo said "our safety was not prioritised" during the voluntary suspension. Mr Garbutt agreed. Mr Allin replied that everyone had been treated the same. Several students asserted that the male student had been in the College constantly during his suspension. Mr Allin said he was permitted to come in for certain meetings.

350. Mr Bond then told the group that the male student was preparing a statement to read to them, but that Mr Bond might read that himself. Ms Wanebo commented "[p]ersonally I don't know why school resources are allocated to give him a platform and an audience for what he has to say." Mr Bond responded that the male student's line was this side of the story had not been heard. Mr Garbutt asked about access to the investigation report. Mr Allin said it was confidential. Mr Bond ended the meeting with "Ok, I don't know what else to say really apart from that I'm available to be talked to. Shall I just find a time and date then and then you can make your own decision?"

351. Mr Allin was cross examined about this part of the meeting. Ms Witherington asked if he had come to the conclusion there were other proven allegations of sexual harassment, that would have added support to Ms McCamish's account. Mr Allin agreed, but the other incidents were "inappropriate behaviours you would see in every university and college and pub on a Friday Saturday night. I'm not saying they're correct. I'm saying they're of a different order".

352. Mr Bond updated the male student that evening, telling him that he had not read the statement out yet but had told the cohort he was arranging another meeting when that would happen. The following day, 6 March, they arranged a meeting by email to discuss it. Yet another draft was sent to Mr Bond on 7 March with amendments he had suggested.

353. Mr Bond read the statement out on 8 March. The meeting was recorded. The transcript of that meeting records that before reading it, Mr Bond said there would be no discussion of the statement after he had read it out. He also said stated twice that it was "entirely" the male student's statement. He made no mention of the multiple versions he had reviewed or the meetings to discuss his suggested changes which were then made by the male student.

354. When asked about this statement in cross examination, Mr Allin said "we allowed him to say what he wants to say. The wording is poor but didn't… but we didn't try to go, 'does this makes sense?'".

355. What I take from Mr Allin's evidence in this point, which was unchallenged, is that the College had decided to facilitate the male student in presenting the position he was now publicly taking and did not pause to consider whether that position made sense when compared to what had been said in the investigation, before the Disciplinary Committee or otherwise.

356. The full text Mr Bond read out to the whole BA 2 cohort was as follows:

> "I wanted to speak today as throughout this whole process I haven't had, or been given a chance, to publicly defend myself or respond, respond to all the allegations put to me. Although the other side of the story seems to be public knowledge. I haven't responded in anyway as I had no idea of any rumour or stories about me and after being made aware, I was told to remain confidential.
>
> To begin with, I have not, nor have I ever, sexually assaulted anyone. I cannot understand why any sort of allegation has been made against me. I find it even more confusing when I compare the allegations made against me to my whereabouts of that week. The first week was Freshers Week. I was busy socially at events inside and outside the college. I find it difficult to understand how and when these accusations could have taken place as I wasn't even in the flat when I have apparently done those things.
>
> Just to be clear this is not a case that we have different interpretations on the same event. This is a case that one person is saying something happened and the other saying that it didn't. I don't know how to say the next thing politely or correctly but what I'm being accused of is simply not true.
>
> To anyone and everyone who has felt unsafe and uncomfortable around me, I'd like to greatly apologize. When I was told that so many people felt this way, I couldn't believe it. I felt sick to think I'd made people feel like that. If I had any idea at the time that my actions or even presence was causing this feeling, I would be very embarrassed and done everything possible to fix and remedy this. I like to tell you that I only meant to be kind and generous to everyone in the year group and to the work we were all doing.
>
> Going forward I am promising to all of you that I will never make you or anyone else ever make you feel like that ever again. However, I must admit that looking back in retrospect I struggle to see how my actions have created this feeling. Regardless, I'm going to do everything that I can to make sure that nobody can ever even mistake my actions for something they aren't.
>
> I don't want to turn this into some mud-slinging match. I'm not going to go thru the 15 pages of evidence that I provided. I'm not going to start going through messages that Alyse sent me. I'm not going to go through the things that don't make sense. I'm not going to attack Alyse or anybody else's integrity and character. I understand that people have heard these things about me for possibly the last year and that peoples' minds aren't going to be changed overnight. But I'd like you to consider what I've said today and ask yourself, not as a group, as yourself, why after a six-week investigation by college, uh, had they decided the allegation of sexual misconduct has no grounds.
>
> Please feel free to ask any questions you have. I'm more than happy to answer and share any information I'm allowed to give. I really employ you to ask the questions as the reason we're here today, and the reason this has gone so out of hand, is because no one has spoken to me. I'd also like to remind people that when I'm accused of these things, it doesn't just affect me, it affects the people around me--this includes my parents, family and also Meredith. People may have their thoughts and feelings about me but please just bear in mind and let it stop at me. I'm saddened

> and upset with how my fellow students have dealt with the situation but I'd like to wish you the best of luck for your futures and express my wish to find a way to move forward for all parties."

357. Ms McCamish was present. Her evidence about this is important and bears quoting in full. It was:

> "This was the first time I had heard what [the male student]'s response was to my allegations, as I hadn't been given the opportunity to attend any of the hearings (even though I was told I would be allowed to attend) and I hadn't been given a copy of the report or any evidence.
>
> The first time hearing this, I was surrounded by 20+ of my peers and classmates, being called a liar by my attacker through the head of my course. Knowing that this situation had been approved and enabled by the same members of staff who were the ones running the investigation. The anger, rage, shock, and embarrassment are completely impossible to put into words.
>
> I wasn't upset that [the male student] had lied, I was upset that it was only the day before that they were calling my allegations 'rumours', and yet here they were giving my perpetrator a platform to discredit me. They certainly hadn't given me the same opportunity, just like they hadn't allowed me to give a statement at the disciplinary hearing, and the only possible explanation I can think of for this is that they simply didn't believe me."

358. She quoted the investigation report and then continued by highlighting the contradictions with the statement, adding:

> "The statement that Dave Bond read out loud to my year group, the one in which he called me a liar — was drafted in part by Dave himself and Brian Weir. In what world is it appropriate for Dave and Brain, given their roles in this investigation, my student welfare, and my future career, to help my perpetrator design a statement to publicly discredit me?"

359. In re-examination, Ms McCamish observed the account the male student had given contradicted what he had said during the investigation and she had no opportunity to respond to either version.

360. Ms Witherington raised the contradictions with Mr Allin in cross examination taking him to the section of his investigation report recording the male student's assertion there had been consent and then compared it to the statement later read to the BA 2 group. The second paragraph of that statement gave a totally different account from that the male student had given when first interviewed, she suggested. She highlighted the section beginning "I cannot understand why any sort of allegation has been made against me…" This was different to the account given by the male student during Mr Allin's investigation, she asserted. Mr Allin said account he did not believe there was any difference between this and what had been said at interview by the male student. The male student:

> "…remembers the incident the first incident for example, on the first night, Fresher's night when they went out for drinks. And Alyse wasn't feeling well. Those tallied up until that point. There were other, he was thinking about it wider than this, the wider discussions that were undergoing at the College at the time. I didn't think this was against what we had in the report. There were a lot of rumours in the College at

> the time and I think [the male student] was trying to address that. The basic point of it was, the sexual assault, he denies it."

361. Ms Witherington pressed him, "it really is a different account from what he had told you. He says he wasn't there", she asked Mr Allin responded "he's talking generically about it there were lots of incidents that went on in that first few weeks". Mr Allin was asked to re-read the male student's statement again. He did so and said:

> "So 'I've never sexually assaulted anyone' which confirms what he said. 'I can't understand why any allegations being made' against me again confirms what we had in the original interview. I find it more confusing when I compare the allegations to me against my whereabouts that week… but I think that's set that separate... I think how I read it the first two sentences are the important things which are the investigation. I certainly didn't pick up that third sentence to mean more than 'there's a wide load of things going on and I, some of the times I wasn't there'".

362. This issue was explored further in cross examination with Mr Mr Allin maintaining the male student's position had been consistent throughout.

363. Ms Witherington also asked Mr Allin why no consideration was given to Ms McCamish reading out a statement. He said "she didn't ask for one". The male student "wanted to do his note which was an apology. Alyse was at that meeting". Asked if having such a statement read out was a wholly inappropriate, Mr Allin said "we chewed over that for a long time. What the [male student] wanted to do is to come and speak to the cohort and we thought that that would be more provocative." What had happened was "the best of a bunch of options."

364. Ms Witherington also asked Mr Weir about the plan for the statement to be read out to the whole year group. From a safeguarding perspective, did that not strike him as inappropriate? He replied that the Disciplinary Committee had tasked him with working out how the male student would be reintegrated into the cohort. The statement was an opportunity for him to "speak to the students who are trying to work with again". That was because he "felt they had not heard yet his version of events". That was not about "presentation of evidence or some sort of defence". The statements were "an attempt to reintegrate".

365. In an email of 13 March, Mr Allin told Ms McCamish:

> "The formal outcome of the investigation is:-
> 1. That there is insufficient evidence to come to a view on the allegation of sexual misconduct.
> 2. That given the weight of evidence relating to the allegations of inappropriate behaviour including unsolicited physical contact, [the male student] is in breach of the Policy and Procedures Governing Student Conduct (paragraph 2.4} as follows:
> Students must not whilst on campus, in College and/or University premises off campus or engaged in College activities:
> - act in any way which is likely to cause injury to any other person within the College community
> - behave in any way which unreasonably interferes with the legitimate freedoms of any other student, member of staff, or visitor, or which disrupts or interferes with activities properly carried out by the College;
> As you know the penalty has now been served but following further discussion [the male student] has decided that he will suspend studies with the intention of returning to recommence BA 2 in September 2018. Let me know if you want to discuss further."

366. On 22 March, the male student and his father met with senior college staff to discuss their concerns about the process and his reintegration the following September.

367. On 28 March, Mr Allin met with Ms Wanebo who had been describing what happened to Ms McCamish as rape. Ms Allin asked her to stop doing so.

April 2018

368. Ms McCamish's unchallenged evidence about her state of health around this time was "during Spring break, I went back to Knoxville and suffered serious depression and panic attacks. When Summer Term started, Lewis and I were seriously speaking about me leaving Royal Welsh." She did not answer her phone, "the suicidal thoughts were constant, and to think of the fear I put my parents through that day still upsets me." Ms Le Conte spoke to her, however, and encouraged her to stay.

May 2018

369. In an email of 1 May, the male student asked for a meeting with the first year students to read out another statement. Replying, Mr Allin told him had been a meeting with them and a statement from the male student could be read out at a follow up meeting.

370. On 9 May, there was a staff discussion by email about Ms McCamish's end of year assessment piece which she had failed because the College considered it did not meet the criteria. Its focus had been sexual harassment, rape and sexual assault. Mr Bond later wrote a statement in support an extenuating circumstances application was approved. The 'fail' grade was disregarded. The fresh assessment was postponed until September, but the deadline for its submission was missed. A further opportunity for submission was offered.

371. Meanwhile, the male student produced a draft of his second statement for consideration by Mr Allin and Mr Bond on 21 May. It is unclear whether a final version was ever read out and, if so, when.

372. Ms McCamish's evidence mentions further meetings she had with Mr Weir over the course of this term. She told him she wanted to get into regular therapy and he said that the College had started paying for specialised EMDR trauma therapy for another student and would do the same for her. This was never provided. She also states Mr Weir assured at two meetings her that the male student would not be able to attend her end of year shows. She recalls telling Mr Weir about a dream in which her she and her father had confronted the male student during a show. His response was "well, we certainly don't want that".

373. Mr Weir's evidence about is that he had little contact with Ms McCamish between December 2017 and the Summer term of 2018. He recalls her emailing on 29 June seeking a meeting with him to discuss a housemate's rent arrears and that a date was set. He stated he has no record of the meeting, but the problem was resolved. In cross examination, Mr Weir said Ms McCamish had mentioned she was getting EMDR therapy in the US, his view was it was not good practice to change therapists, that "by 2018" the College has got a name of an EMDR therapist but they had no capacity. He therefore disagreed that he had done nothing,

374. I accept Ms McCamish's evidence there was a discussion with Mr Weir at this time of the College arranging EMDR therapy and that it was not provided. That is because provision through the College was expressly mentioned again in a recorded meeting Mr Weir and Ms McCamish had

on 2 November in which he referred to them discussing it "before the Summer". This and Ms McCamish's evidence is the only explanation for it being under consideration.

375. I also find that she was given assurances about the male student's presence at her shows at one or more meetings around this time. What Mr Weir later said during the 2 November meeting was that he had met with Mr Garbutt who had mentioned Mr Weir giving a guarantee to Ms McCamish that the male student would not be present. "I don't quite remember the conversation that way", Mr Weir said, though it had been at the same time as the EMDR discussion. Ms McCamish said "I thought we had left it on—you were going to speak to [the male student] and, just person to person, I understand the college isn't able to make that mandatory." Mr Weir replied "yeah". He recalled the conversation and Ms McCamish's dream. She added the cohort understood the College could not do anything mandatory, but could "probably just say to him person to person, 'let's not have this happen…. you can stand to miss a show in the season'". In the 2 November meeting Mr Weir said he would need to check. There is no further evidence of the terms of assurances given over the summer. For reasons I will come to, the precise terms of what was said do not matter to the outcome of this case. I should add that the differences between what Ms McCamish recalled in her evidence and in the 2 November meeting do not undermine my assessment of her general credibility. They suggest no more than an imperfect recollection of a point of detail.

376. At this time, Ms Feder was completing her final term at the College. Her evidence about this period was that she was in an all-woman show called 'Collective Rage' directed by an external director. Ms Feder confided in the director about her own experiences. The director told her that her feelings were justified, the industry was not as it had been presented by the College and the environment she had been taught in was wrong. At Ms Feder's graduation she felt angry. She knew those who were responsible for that environment would remain in their positions and that nothing would change.

June 2018

377. On 7 June, the male student asked Mr Weir to write a letter for him stating he had left his studies for "mental health reasons". The College had already prepared such a statement for student finance purposes. It complied with the male student's request.

378. On 8 June, Ms Le Conte made an entry in her diary which read "Very uncomfortable chat with Dave warning me off re Alyse, effectively encourage her to go." In her evidence, Ms Le Conte said this about the conversation:

> "Shortly after that on 8 June 2018, I was called in to speak to Dave Bond. As mentioned above, he was my line manager. He had said on several occasions that he just wanted Alyse to leave but this conversation was notable. He asked me what my relationship was with Alyse's parents and what contact I'd had with them recently. He had never asked me this before. I told him fully (as above) and said I was, seemingly effectively, persuading her to stay. His immediate reaction as to say, "well I want you to stop that, in fact I want you to encourage her to leave, because if she goes, the problem goes with her". I can guarantee this is verbatim because I wrote it down as soon as I left his office. I was taken aback by this. I also noted the nature of the private conversation in my diary, which I have kept since January 1985, without a single omission.

379. After quoting the words above she continued:

> "It was clear that he didn't welcome my thoughts, he just wanted me to obey instructions and his instructions were to speak with Alyse and actively encourage her to leave. My guess is that he didn't want me to do that openly and state that the college's position was that she should leave but wanted me to suggest to her that it was in her own interests that she should. However, it was very clear to me that he had the college's interests and not Alyse's in mind. As Alyse's parents and I had already agreed, we thought it was in her interest to stay and Alyse was coming around to that.
>
> I didn't feel that what Dave Bond had asked me to do was the right thing to do and especially after I had been trying to persuade Alyse to stay. In my mind it was in her best interests to stick it out and she was already starting to think along those lines.
>
> He was now using me (and his authority over me) to actively try to get Alyse to leave in order to remove the problem as he saw it. In the end I didn't try and persuade her to leave. I didn't tell Dave that I wouldn't do it. There was no point."

380. When cross examined, Ms Le Conte said that what was recorded in her witness statement was verbatim what Mr Bond had said. The diary entry had been a concise summary of the conversation. Mr Weetman suggested that she had an impression, but the words quoted were not the ones Mr Bond had actually used. She was emphatic that they were. I have already found Ms Le Conte to be a credible witness and this part of her evidence was not only especially clear but underpinned by a near-contemporaneous note, albeit one that contained the gist over conversation rather than the exact words used. Mr Bond's failure to answer the witness summons means her account is the only one available. I accept her evidence about it.

July 2018

381. On 18 July, Mr Bond circulated a note of ideas for dealing with different problems that might arise with the male student and others the following September. They did not discuss his possible contact with Ms McCamish. Meanwhile, Ms Feder completed her time at the College and then graduated.

August 2018

382. On 21 August, Ms McCamish's parents wrote to Mr Allin and Mr Weir strongly criticising the investigation and the decision to allow the male student to return in September. They said they were appealing the decision and proposed that he be removed from the College. They said Ms McCamish would withdraw if this did not happen. If she remained, she should receive two "specialized therapy sessions" per week to be paid for by the College which they said had been stipulated by Mr Weir during a meeting in July 2018. The remaining tuition fees should be waived. A reply to this email from Mr Allin is mentioned in some meeting notes but was not in the bundle before the Court.

September 2018

383. Ms McCamish decided to return in September. Her evidence was that she hoped to put the past two years behind her and was assured the male student would not be attending the show she was working hard to prepare for.

October 2018

384. On 2 October, a few weeks into the new term, Ms McCamish sent a handwritten note to Mr Bond. Its contents chimes with the optimistic outlook she said she was adopting for the new academic year. It stated:

> "Dear Dave, it has been so wonderful starting this year off with you as my director! I've enjoyed this show and the process so much - it's definitely going to be in my "good book" as well. As you know, I was not in a good place after last year and was terrified of returning and facing the repercussions It would bring this year, so I cannot thank you enough for completely turning that around by building such a positive environment and making me laugh every day. I woke up every morning so happy and excited to be walking into the rehearsal room with you and add delightful cast. Your encouragement and belief in me is something that has left a lasting impression and will stay with me forever. Thank you. Thank you. Thank you. Much love, Alyse McCamish xxx"

385. Mr Weetman questioned Ms McCamish about this note, as it had been sent after the dismissiveness she had described, the disciplinary process had reached its conclusion, and the statement have been read out. Were these not heartfelt sentiments? She said it was before the run of the shows. She was attempting a fresh start. Mr Bond had her career in his hands. She had felt assured the male student would not attend. Her feelings changed when she was forced to perform in front of him. I accept this evidence. The note is consistent with Ms McCamish's upbeat correspondence style throughout.

386. Also on 2 October, Ms Wanebo, Ms Quigley and another student, Paul, met with Mr Bond to request that the male student be excluded from all final year shows. Mr Bond emailed Mr Allin about the request stating that "given the disciplinary process was complete [he] could see no authority or justification for such measures and the college would almost certainly reject such a request." Mr Allin responded stating "I also wonder whether [the male student] wants to attend and while we can't ban him we could suggest he doesn't attend? Just a thought". Mr Henson added "Like Dave, I can see no immediate justification for the request or the measure; short of an injunction, how can any actor prevent any individual attending a public performance?" Mr Bond replied to Mr Allin "I think we would be putting ourselves at risk if we even suggested it. I really can't see how we can modify his student experience." Another member of staff, Sean Crowley, emailed stating "I think it would be unacceptable to ask or expect him not to attend student performances. These are a compulsory requirement for students." Helena Gaunt, who had just been appointed as the College's new Principal, agreed nothing should be said to the male student.

387. Notwithstanding these exchanges, Ms McCamish's evidence is that, in the weeks running up to the opening of her first end of year show, 'All My Sons' in which she had a leading role, Ms Bond and Mr Weir had assured her that they would "speak to the male student and he would not be attending." I have already discussed Mr Weir's assurances. More importantly, however, it was Ms McCamish's evidence that Mr Bond had twice assured her that the male student would not be attending. The witness summary says nothing on this important topic. There is no other evidence to contradict Ms McCamish's recollection and I accept what she says is true. The contemporaneous emails show that senior staff did not want assurances to be given, and that Mr Bond told them it would be inappropriate, but it does not follow that he was taking a consistent line with Ms McCamish.

388. The first 'All My Sons' performance was on the evening of 23 October. Ms McCamish's mother had travelled over from the US to watch it. Ms McCamish learned that the male student had

bought a ticket. Her mother met with Mr Weir and then she and her mother met with Mr Bond. The meetings were recorded and later transcribed, Mrs McCamish encouraged Ms McCamish to press on with her performance. Mr Bond stressed she had done well in rehearsals, should be professional and think about the consequences for others if she did not do so. Mr Bond told them the College had no right to stop the male student coming to the performance, but that he had been spoken with and was deciding what to do. His advice was that Ms McCamish should continue. It was mandatory that students see the end of year shows, but they received no marks for doing so. Ms McCamish's mother said she wanted to ensure Ms McCamish was "not harmed even more. You know? I don't want her being a nervous wreck up on stage."

389. Ms McCamish's evidence was that Mr Bond was asked to come backstage by Mr Garbutt. On arrival, the cast told him collectively they would not perform for the male student. Mr Bond turned to Ms McCamish asking if she was refusing to perform, she said she was not. She would go on, do her best and everything would be fine. But there was a chance that she would see the male student in the audience and have a full-blown mental breakdown, which would be traumatising for her and the audience. This was not said for effect, but was the truth. Mr Bond's response was to tell her to be professional, but the cast maintained their position. He went out and spoke with the male student who decided not to attend in the light of what Mr Bond had said. The performance went ahead. In the post-show feedback session, Mr Bond was angry with the cast telling them that their behaviour had been unacceptable. It had "caused trauma to the front of house staff and stage management team". He had yet to decide what to do about future shows but was hesitant about inviting agents and would consider not directing the London showcase if they did not sort out their behaviour. Elaborating on this in cross examination, Ms McCamish said the important context was the threat to the careers and professions of the whole cohort Mr Bond was making. There were no other witnesses to this discussion and I accept Ms McCamish's evidence of what was said.

390. The next day, Mr Bond emailed Ms Newman explaining "[h]e was intercepted coming in. He agreed not to go in but understandably furious." Ms Gaunt met with senior staff and formed a plan to meet with Ms McCamish to discuss her "current academic progression" with the intention of using the Fitness to Study Process to agree the conditions on which Ms McCamish could progress. There was a wish to know "much further in advance if Alyse feels she is not able to perform and to discuss how we subsequently support her". There would be a meeting with the male student the following week.

391. Pausing there, I note Mr Weir's oral evidence was that the ultimate stage of the Fitness to Study process could be a recommendation that her studies be terminated if the conditions were not fulfilled. He confirmed this in a 24 October email to Ms Gaunt but stressed the supportive aspects of the process and its usefulness in rescuing particularly troubled students through collaborative work.

392. In an email exchange of 28 October, Ms Gaunt and Mr Bond discussed what would happen were a performance not to go ahead because a student in the case could or would not participate. He advised "I would say if a student refused to perform form [sic] they would fail the module as they would not have met the Learning Outcomes. If they were unable to perform (say, as a result of illness a which might include stress induced illnesses) they would be able to submit extenuating circumstances if a fail mark was applied."

November 2018

393. On 1 November, Mr Bond emailed Mr Weir, Ms Gaunt and another colleague, Sean Crowley stating:

> "For clarity, I think we need to establish with students that:
> a. [the male student] is free to attend shows and that no assurances have been given to Alyse to the contrary
> b. That staff are not in a position to counsel [the male student] against attending shows or a particular show
> c. That refusing to perform will result in a fail mark
> With Alyse in particular, I think we should
> a. Clarify (a) above
> b. Ascertain whether she anticipates being able to perform with [the male student] present as an audience member
> c. Ascertain whether she requires specific support in order to perform in the circumstances of (b)
> d. Decide when or whether to implement a fitness to study agreement
> e. Consider creating an understudy for her part (s) in Rage"

394. He had spoken to the male student, he added, who was considering not attending Ms McCamish's shows voluntarily. From the material before the court, it does not appear that Mr Weir mentioned his own commitment to have a conversation with the male student about missing shows.

395. Ms McCamish met with Mr Weir on 2 November with a note taker present. A recording was also made. Ms McCamish said that the BA 2 cohort had been under the impression the male student would be asked not to attend shows and were unsettled he was there. If an audience member were disruptive to a production they would normally be asked to leave. Mr Weir stressed the importance of students' training. Ms McCamish maintained that the majority of the cohort would feel more comfortable if the male student was not in attendance. Mr Weir committed to exploring this possibility, but said that his attendance at end of year shows was required. The note records "Alyse would like reassurance that their Showcase and the process leading up to it, will not be compromised because of recent circumstances. Brian reassured her that their actor training is the priority for the college, and that will not be compromised."

396. Cross examined on this, Mr Weir said that he didn't feel strongly about the male student being present at the shows or not, but the academic staff did. It was part of his training.

397. Therapy was also discussed at this meeting. Mr Weir asked:

> "are we actually giving you as much help as you need? Is there other stuff we can be doing? And I know that we you and I talked previously about the fact that you were having some specialist intervention therapy, you were paying for yourself. And, we, I said that we would look to pay that for you. So, you know, are you still doing that? Is that something it was useful? Do you still want to be doing that? How can we make sure that that's there?"

398. He referred to the past conversation they had about EMDR therapy, adding:

> "It was the EMDR stuff we were talking about. I said we had someone that does that and we would put you in touch with them. And I think I'm trying to remember now, cause it's like where's Alyse got that from, because I don't remember. I wouldn't be in a position to be able to make that guarantee. It's not something I could decide."

399. Towards the end of the meeting, he repeated the same question, "[w]hat about the support that you might need?" She asked to write down the EMDR person's name. Mr Weir said he needed to get it, but there was now someone with EMDR expertise on the College's books. Two people had been referred and, indiscreetly, he named one of them. He said he would email the College

counsellors and ask them to send him the details and then email the EMDR specialist to make the referral himself. Ms McCamish could just go to the appointment and the College would be invoiced separately. Ms McCamish said "[g]reat. That'd be wonderful. That'd be wonderful."

400. On 5 November, Ms Gaunt wrote to the cohort, explained some of the background and stated "[t]here is no sanction in place that alters the expectation that all acting students attend all final year shows… The College will not request any acting student not to attend these shows". However, this email does not indicate that all acting students are expected to attend all performances of end of year shows. There was no evidence to suggest that.

401. Ms McCamish then met with Mr Weir and Mr Bond on 8 November, and they reported to colleagues on 12 November. They had discussed the support "she requires in preparation for the next run of shows, including EMDR therapeutic intervention, and consideration of an under-study. Dave is speaking to the Director and I am arranging the additional counselling. Alyse stated that she again felt better/reassured having met, and requested that we continue to meet regularly". Mr Weir also met with the male student. There was some discussion of seating at shows, but this seems to have been inconclusive. Mr Weir offered to pay for some form of support the male student was paying for. Possibly this was counselling.

402. Arrangements were then made between College staff or another student, Saran, to play a small part in the forthcoming 'Rage' production and also to act as an understudy for Ms McCamish. A plan was made for her to play Ms McCamish's role one evening and for the male student to be invited to that particular performance, though he could not be compelled to do so. This was put to Ms McCamish by Mr Bond and Mr Weir on 15 November. This meeting was recorded and later transcribed. Ms McCamish said in future performances "I'll try my best to go on and I will do it, but again I don't know the outcome of that." Mr Bond said she had though that before the last performance. He said he was "just assuming that there is no further going on. Am I right to assume that?" She said she hoped to perform, adding "you know we've talked about going to therapy and stuff and you know that is definitely going to happen". She was receptive to the idea of an understudy. Mr Bond stressed he wanted to see her perform and that actors sometimes had to perform in front of people with whom they had a history. His follow up email updating colleagues mentioned her willingness to perform even if the male student were present, but he was sceptical about that.

403. On 18 November Mr Bond emailed Ms Gaunt to explain the plan. He mentioned that Ms McCamish was unwilling to give an assurance she could perform were the male student in the audience. However, he believed the understudy arrangements represented a practical solution. "I think the designation of a performance to which [the male student] could be encouraged to attend offers us the best opportunity to work without disruption", he said, even though Ms McCamish might see this as disadvantageous. Ms Gaunt's reply questioned the justification for not triggering the Fitness to Study process in respect of Ms McCamish.

404. On 20 November, Kanoko Tobe, who was working on the production emailed Mr Bond to tell him about a conversation with Mr Coster. Mr Coster had reported that Ms McCamish was having a panic attack and throwing up and so could not attend the day's rehearsals. The email quickly reached Ms Gaunt and Mr Crowley. She said that suggested Ms McCamish was "quite unwell and probably needs further support medically/through student services. One key question I think is that if she is not 'fit to study' at the moment by being in the production, who makes that call? And what are the implications for her study?" Mr Bond emailed Ms McCamish to ask for a meeting.

405. On 22 November, Ms McCamish's mother emailed Ms Le Conte, expressing frustration. She asked why no compromise could be reached as regards the shows, such as the male student being

asked to attend when the understudy took Ms McCamish's part, and "why is it so hard for Brian, the head of student services, to follow up, email and schedule an appointment for Alyse to see the school's therapist? He has said he would do this over and over and over again, to help provide some relief to my daughter?!" Ms Le Conte expressed agreement and sympathy in her reply email, adding that she would speak to Mr Weir and Mr Bond.

406. The same day Mr Weir and Mr Bond met with Ms McCamish. This meeting was recorded and transcribed too. Mr Bond began by confirming there was an understudy in place, but that Ms McCamish pointed out this meant she was unable to perform whereas the male student was enabled to watch. The understudy's presence was a continuous reminder of the reasons these arrangements had to be made. Mr Bond observed that he was entitled to see the show. He went on to say that Ms McCamish had asked about leaving early, but that she probably would not get a degree because she would lack the necessary credits. She would leave with an exit award, a diploma. Mr Weir asked if she was actively considering this step. She confirmed she was. She had considered leaving in the past, and yesterday was "at the wall" metaphorically. Mr Weir responded that the college wanted her to be in the position where she had the ability and support to press on. Mr Bond said "[y]ou know you have to go through so I think my immediate concerns are twofold. One is for your mental health, and the other. Absolutely is for the show… My best my best, um kind of solution was as I say to provide for an understudy."

407. Ms McCamish said that other students were considering 'appealing' the outcome of the disciplinary process and the male student might not be able to attend were he under investigation. She said she had struggled the previous day prompting Mr Coster's message but she could usually calm herself down and do what was needed. She had medication for nausea and vomiting. Mr Bond questioned whether it was in her best interests and the best interests of the show for who is going to need to be in it, given problems she had had the day before. "Are we taking a gamble with you and your health. And the gamble with the show?" he asked. He and Mr Weir would need to talk about it later, including with Ms Gaunt. Mr Weir brought up her counselling request, "the EMDR thing, just to clear up.... Julia Dory, who was the woman that we hope was gonna be we'll see you has replied that she's got no availability. She has now suggested somebody else, who I've emailed and I'm waiting to hear back from so I haven't forgotten about that." Ms McCamish replied "yeah, yeah, yeah, I knew you wouldn't have." Mr Weir responded "[t]hat's quite a specialist thing and there aren't many people around Cardiff who can do it. There is somebody else. I can't remember her name…"

408. Mr Weir was asked in cross examination whether he ever actually arranged any EMDR therapy for Ms McCamish. He said the College's Counselling Service involved students self-referring and that the first time he had met Ms McCamish, he had given her the email address. EMDR wasn't a therapy offered through the Service, but he had asked the Service to identify a specialist. That was Julia Dory. She had no capacity and no-one else was identified before Ms McCamish left. The College Counsellors are off site and more students say they prefer that than those who say they have difficulties accessing them, he added.

409. Mr Weir also raised the Fitness to Study process. Ms McCamish said she would consider it but needed to see some information in writing. Pressed by Mr Bond to explain the frequency of her panic attacks, she said that they were something she was not really used to and she had been fine at home when she had had access to therapy. They discussed whether she might have something like her therapy dog, initially light-heartedly, but Mr Weir said it could be considered as part of a Fitness to Study programme.

410. On 25 November, Mr Weir emailed Ms McCamish with a list of suggestions as to what might be incorporated into a plan for the following term. They were:

> "- agree a protocol for the arrangements of understudy support
> - engage in EMDR therapeutic intervention
> - attend weekly progress meetings
> - agree open communication
> - discuss current reporting of identity issues (arising from the original incident) and look to agree ways of support
>
> Let me know what you think and whether you would like to discuss this or anything else. Happy to meet, perhaps before we meet with the Principal on Thursday?"

411. Ms McCamish was cross examined about this email. Mr Weir was trying to make a difficult situation more manageable, Mr Weetman suggested. Ms McCamish said that the College staff did not have her best interests at heart by this point and that the Fitness to Study procedure identified termination of studies something the College was entitled to do in its fine print. Behind the scenes, the intention had been to kick her out. Ms McCamish drew attention to evidence Ms Le Conte gave in her witness statement about Mr Bond saying "if she goes, the problem goes".

412. Later, in re-examination Ms Witherington returned to Mr Weir's list of suggestions, asking what had been put in place. She said there had been an understudy for her but nothing agreed with the male student. No EMDR had ever been offered or any other form of counselling save for the single session she had organised with the College counsellor herself. She had only been able to make one session because she could not take time off from lessons. There had been no weekly progress meetings. She did not know what Mr Weir meant by "current reporting of identity issues".

413. The same day Ms McCamish wrote to Ms Gaunt and Mr Henson asking for a copy of the investigation report, stating she had been told it would be shared with her but that had never happened. She wanted to see it before taking further steps. Mr Henson said in reply that he would consider the data protection implications of sharing it with her, but she had no right to any review of the outcome. If she had new evidence, she should share it.

414. On 29 November, Ms Gaunt, Mr Weir and Mr Bond met with Ms McCamish and her father, who had flown in from the US so see her second end of year show, 'Rage'. Mr Coster was also present. This meeting was also recorded and transcribed. Mr McCamish said he wanted to understand just how devastating what had happened was for his family, that it had become "a cancer". He and his wife had expected the college to protect their daughter, and for it to be a "safe environment". The male student, "the predator", had been protected and now she was not. He could come and go where he wanted to. An offer had been made to Ms McCamish to finish her course early. That was unacceptable.

415. Mr Bond said that they had investigated because of her wish to leave with a degree and that was possible, but this idea was at first base. Ms McCamish said she had thought about it and was committed to staying and getting the full degree that she had come for. Mr Weir said they had talked about the support to do that, and the idea of her leaving early had only been investigated at her request. Mr McCamish said the idea of a performance to which the male student would be invited and at which Ms McCamish's part would be played by the understudy was a reasonable solution. Mr Bond explained how he had come up with the idea and the challenges presented by what had happened during 'All My Sons'. Mr McCamish expressed the concern that Ms McCamish would be given understudies for diminished roles in future. Mr Bond replied that he had not considered that. The understudy arrangement was in place for now. It was the only option.

416. Mr Coster questioned why the College did not have the power to restrict someone from attending particular events. Ms Gaunt answered him saying that the judgement of the Disciplinary Committee had been made and the College had to stand by it unless further evidence arose or the procedure were challenged.

417. Mr McCamish considered what was happening was a form of control by the male student and harassment. It was part of a pattern by which such people operated, including in the US. He told them about a book on the subject. Mr Coster argued the College's process was defective. There was more discussion on this theme and about what had happened in Ms McCamish's case specifically. Ms Gaunt said the College had not received anything formal and Ms McCamish also had the option of going to the Office of the Independent Adjudicator. Ms McCamish stressed others had complained about sexual assault. They could put their concerns individually, Mr Bond said. Ms Gaunt added "I think we really understand how these issues are extremely complex and emotionally traumatizing for all kinds of people and I think, you know, the whole community has really suffered with this over the last year trying to handle this whole situation. The allegation of sexual assault is a criminal one and in this country, people are proven guilty when they're proven guilty and it is a criminal issue."

418. Mr McCamish asked for the investigation files. Ms Gaunt said the College had taken legal advice and was unable to provide them. They would allow them to sit and read a redacted version, however.

419. Pressed by Mr McCamish on whether there was a way to restrict the male student from Ms McCamish's performances, Mr Bond said he had a right to attend and could not be excluded, adding "[s]o, I'm trying to exert a duty of care to Alyse, as I say, to the other members of a cohort, the industry, the public, everybody else that's involved in those productions. And as I said at the moment my only solution unless somebody comes up with a better one is to run some kind of understudy system…"

420. Ms Gaunt said the meeting needed to be concluded. The College was doing its "very best to support [Ms McCamish], to support [the male student], to support the whole cohort in going forward with their study… we don't have the evidence of him being a sexual assaulter or sexual predator or whatsoever." If the College said it would "bar him from certain shows because in doing that he immediately would have a strong legal case against us in terms of discrimination. We can't do it." The meeting attendees thanked each other. Ms Gaunt said that she was apparent too and understood how things got to parents. Mr McCamish concluded "[w]ell… you don't know how a child is going to handle this and you give them all the counselling and therapy and you hope they can get beyond it. But it's now turned into a cancer and, you know, it's, I don't know what kind of lifelong repercussions this is going to have so I'm going to fight for my child. Thank you all."

421. On 30 November, Mr Weir emailed the male student asking if he needed "any help with seating/tickets for the run of performances. Also, it may be helpful to know that the understudy who's been working with Alyse is performing in next Wednesday's performance of 'Rage', if that would assist? Let me know". That date was 5 December. The male student replied the same day stating that he hadn't booked tickets yet, but did mean to go. He mentioned he hadn't been aware there was an understudy and thanked Mr Weir for telling him.

December 2018

422. Following the meeting, Mr Bond mocked Mr McCamish in a 1 December email to Ms Logue, calling him a "good ol' boy". The same day he reported that Ms Wanebo had been seen filming

the male student outside a show with her mobile phone, which he considered was "clear evidence of harassment".

423. On 3 December, senior staff met to discuss matters. Mr Bond and Mr Weir were with charged with pursuing the fitness to study procedure with her.

424. Ms McCamish's understudy played her part on 5 December, but the male student did not attend.

425. On 7 December, the male student wrote to Mr Weir stating that he would like to go to that evening's performance of 'Rage'. He wanted to check that he would still be able to go even though the understudy was not performing. Mr Weir responded "I'm assuming you didn't attend the understudy performance then? It's obviously a sensitive issue but we are not in a position where we would be able to stop you. Could you let me know what you decide?" He then forwarded the exchange to senior staff. Mr Bond replied "I think we should strongly advise him not to do so. We should be prepared for it to stop or even not get started. Ill judged on his part but presumably deliberate. Available to talk through it at 5." Mr Weir did not act on Mr Bond's concerns. Responding to Mr Weir's email at 17:56, the male student said "I've decided I'm going to go tonight. Could you please reserve two seats for me?". Mr Weir's response was "I'm on my train now but I have spoken to staff at college who will speak to Box Office." Tickets were bought for the male student.

426. Ms McCamish's evidence was that she learned the male student would be there minutes before the show opened when she was told by Mr Bond. He said he was sorry and expressed frustration and disappointment in the male student. She could perform or the understudy could. If she performed, they would make sure the male student was in the back row. Ms McCamish spoke to fellow cast members and told Mr Bond she wanted to go on. He said he was proud of her. She stepped onto the stage to see the male student in the second row directly in front of her. The front row happened to be empty. She pressed on and completed the performance, but the events of the night made it clear the College had no intention of preventing the male student from attending the shows despite knowing the damage it was causing her. This evidence was not challenged and I accept it.

427. On 11 December, Ms McCamish was permitted to read a redacted version of the investigation file, including Mr Allin's report, supervised in a College room. This was the first time she had seen its contents. According to an email from Mr Allin on 14 December, she was told she could not copy anything or make notes. In cross examination he was asked if this was degrading to her rather than give it to her to take away. He said that it was "a difficult one", people had been told what they said would be kept confidential so it was "not right to share it" and they thought it was likely to be published. Ms McCamish could read it as many times as she wanted. He later added it was "not confidential from her" and was surprised it had been such a long time before she saw it.

428. On 14 December, Ms McCamish was told she had successfully completed her end of year assessment module for the previous year. However, earlier that day, before the result was communicated, she wrote to Mr Bond. She had been discussing things with her mental health counsellor and reached the conclusion that continuing to "power through" would be unsustainable and damaging. She considered the best option for everyone would be for her to finish at the College immediately, though she still wanted to participate in the College's showcases. Mr Bond forwarded this to Ms Gaunt recommending agreement. He was concerned she might return, however, in which case they should press ahead with the Fitness to Study procedure. Mr Weir agreed and Ms Gaunt endorsed withdrawal too. Mr Bond wrote to accept her withdrawal, mentioning "I'm not surprised that you have reached the decision that looks to

your greater wellbeing." Mr Henson wrote to her about possible arrangements for a student visa to attend the UK showcase.

429. Ms McCamish submitted her formal withdrawal form on 1 January 2019 and gave as her reason:

> "[e]motional distress/trauma amplified/perpetuated by RWCMD and the student who sexually assaulted me being allowed to interfere with my education".

Subsequent events

Ms McCamish

430. In April 2019, Ms McCamish returned to the UK to perform in the College showcase, as had being agreed. Her unchallenged evidence was that she was stopped on arrival by the Border Patrol officers because the college had notified the Home Office she was an overseas student who had departed before completing her course and so her name had been flagged. No accommodation arrangements were made for her in the group house arranged by the College for other participating students.

431. Mr Weetman questioned Ms McCamish about a letter concerning a gynaecological consultation in December 2016. Her witness statement had mentioned cysts that the gynaecologist had thought might be stress related. Ms McCamish said she had told the doctor about the assaults but not the details, only that there had been no penetration. These matters are not mentioned in the letter. It is fairly short and clearly not intended to be any form of comprehensive medical report. I consider nothing turns on the content.

432. Mr Weetman also began to question Ms McCamish about a website she had launched in 2021 seeking funding for a documentary on the higher education sector 's response to sexual abuse. I was concerned about this because the material about the website and the documentary on which these questions were focussed was not before the Court. This line of questioning was not pursued.

Ms Feder

433. After leaving College in summer 2018, Ms Feder said in her evidence that she moved to London. She became withdrawn and did not go to all the classes, auditions and showcases she otherwise would have as a young, aspiring actor, though she has kept her agents and had some auditions. She sought counselling in 2019, as discussed above.

This litigation

434. This litigation was foreshadowed by pre action letters on behalf of Ms Feder and Ms McCamish sent on 29 January 2020. The Claimants' solicitors proposed ADR in the form of formal mediation in those letters. There were no responses to their proposals in the College's pre action response letters of 5 June 2020. The claims were then issued. The Claimants' solicitors renewed the ADR offers in an email of 16 March 2022. The response from the College's solicitors on 8 April 2022 was that ADR was premature while disclosure and witness statements were still being prepared but would be considered in due course. The Claimants' solicitors reminded them of this on 17 October 2022. There was no response. This may be significant to costs issues in this case, especially bearing in mind the comments of Chamberlain J's costs judgment in *BXB v Watch Tower and Bible Tract Society of Pennsylvannia & Ors* [2020] EWHC 656 (QB).

435. The other point to mention about the litigation is that, as a result of the disclosure that occurred as it progressed, the Claimants inevitably became aware of certain matters that they did not know about whilst at the College including, for example, what appear to be emails from Mr Bond sharing information about the investigation and other matters with third parties and Mr Weir's involvement as a support person for the male student. However, there was no evidence that what the Claimants learned through disclosure itself had caused or exacerbated psychiatric harm. Given this, I have approached the submissions about the legal relevance of this material with some care.

III. DUTY OF CARE

The College's evidence on duty of care

436. The College denied that it owed the Claimants any relevant duty of care. Notwithstanding that, there were several references to the College owing students a "duty of care" both in its contemporaneous correspondence and the evidence from Mr Allin, Mr Henson and Mr Weir: see paragraphs 127, 197, 213 and 248, above. It was never suggested by them that the duty did not apply to the Claimants. In fact, its embrace of all students was repeatedly emphasised: see paragraphs 214 and 419. I asked Mr Weetman about this. His submission was that the words 'duty of care' can be used to describe a legal or moral duty. The College staff were using them in the latter sense, rather than a legal one. They were discussing a need to look after students which did not equate to a duty in law.

437. There are problems with this submission, not least because none of the College witnesses were asked what they meant when they used those words or qualified them in the way Mr Weetman did. However, the existence of a legal duty is a matter of law rather than fact, so even if College witnesses believed they were subject to a duty it does not necessarily follow that they were. That said, such evidence may be relevant to the assumption of a duty and the appropriateness of a court imposing one by applying the principles discussed in *Caparo v Dickman* [1990] 2 AC 605 ('*Caparo*'). As both possibilities were raised by Mr Witherington, I will return to the College's evidence below.

The higher education sector context

438. A further difficulty with the submission is that the College's evidence resonated with material produced to guide higher education institutions including the Universities UK Guidance. That should come as no surprise in circumstances where Mr Allin, Mr Henson and Mr Weir accepted the guidance was relevant and were endeavouring to apply it: see paragraphs 37 and 38 above. It is therefore worth considering what the guidance and readily other available material has to say about a duty of care.

439. The first reference to such a duty appears in paragraph 3 of the Council's 1994 report mentioned at paragraph 36 above. It noted a 'principle' that justified disciplinary jurisdictions in higher education institutions: "[u]niversities are communities whose members work, and often live, together. This requires certain standards of behaviour. It also places obligations on universities which owe a duty of care and responsibility to the members of that community." Similar principles are set out on the HUB/HWB. The 2016 Conduct Policy also reproduces verbatim much of the content of the Zellick guidelines that were in the 1994 report.

440. A decade later, on 29 May 2015, the Association of Managers of Student Services in Higher Education ('AMOSSHE') had what was probably a long breakfast meeting to discuss the issue. AMOSSHE subsequently produced a discussion note which, like the Claimants' particulars, observed "[i]n essence, a university has a general duty of care at common law: to deliver its

educational and pastoral services to the standard of the ordinarily competent institution, and, in carrying out its services and functions, to act reasonably to protect the health, safety and welfare of its students", adding "[i]nstitutions also have a duty under the Health and Safety at Work Act 1974 to do everything reasonably practicable to ensure the health and safety of their students".

441. This formulation was used in a 20 January 2023 Government response to an ePetition calling for a statutorily codified duty of care towards students and later in the Claimants' pleadings. I agree with Mr Weetman that such a response has no legal weight, though a position commonly accepted across an industry after an issue has been closely examined is not so easily brushed aside, as discussed below.

442. The Universities UK Guidance, produced in 2016, goes further still. Section 3 includes this:

> "Importantly, when dealing with allegations that have been made about the conduct of one of its students, universities must have regard to the various duties and obligations that they owe to all of their students including performing contractual obligations, exercising a duty of care, applying the principles of natural justice (i.e. the right to a fair hearing before an impartial decision-maker), complying with equality law duties and upholding human rights.
>
> Cases involving allegations made by one student against another student are very difficult to manage because universities owe the same duties and obligations to both students and will wish to take steps to protect both students from harm and to provide education to both students. This results in universities having to balance the conflicting rights and interests of two students when considering what action to take."

443. The 2016 Changing the Culture report concluded that the Zellick guidelines were no longer fit for purpose because they did not reflect this duty of care, but several other notable points were made about the need for change.

444. First, the report stated that a blanket prohibition on investigating an incident of sexual violence using internal disciplinary procedures unless there was a report to the police could amount to direct or indirect discrimination under the Equality Act 2010 because women are disproportionately the victims but often do not wish to involve the police: see paragraphs 181 to 186.

445. The report also discusses the importance of having an "effective operational response" which "is contingent on universities having a clear process for handling an initial disclosure of sexual violence. The operational response to survivor/victim and alleged perpetrator may also include an internal investigation: see paragraph 180. If the operational response is insufficient, then there is a high probability that it will lead to a breakdown in the provision of appropriate support": see paragraph 167. "The duty of care to victims/survivors should be underpinned by an institutional commitment to take seriously and at face value any disclosure of sexual violence": see paragraph 169. "Effective and holistic support for individuals that have disclosed sexual violence to their university will cover a wide range of considerations – academic, accommodation, finance, support whether or not they decide to go to police, and referrals to external agencies such as the local SARC, ISVAs or other specialist services including local and national charities" see paragraph 170. There should be 'go to people to facilitate access to services: see paragraphs 171. Confidentiality and data sharing agreements are important: see paragraph 172. "Staff taking disclosures should be appropriately trained to ensure they (i) are non-judgemental, (ii) record disclosures verbatim, (iii) focus on recording the facts and avoid offering their own opinion, (iv)

know when to stop and (v) don't try to answer on behalf of the victim/survivor": see paragraph 174.

446. The report goes on to stress that there are parallel obligations to the alleged perpetrator involving management of risk, disciplinary and day-to-day matters: see paragraph 175. "The duty of care to the alleged perpetrator will include making them aware of the allegations made against them, appropriate academic support if suspended and being kept informed of any university investigation: see paragraph 177. This must be underpinned by an "institutional commitment to recognising that an individual is innocent until proven guilty. Nonetheless, any response must risk assess the possibility of harm that an alleged perpetrator may pose to the wider student community or themselves": see paragraph 176.

447. Last, Ms Witherington drew my attention to Office of the Independent Adjudicator for Higher Education ('OIA') guidance published in October 2018 on disciplinary procedures mentions "[p]roviders have a duty of care towards all staff and students."

448. Whilst thinking in the higher education sector has clearly moved on since the Council's report and the Zellick guidelines, they share two features with the AMOSSHE report and the Universities UK and OIA material. All identify a duty of care which is said to manifests itself in various of ways, but none identify its legal source.

The parties' positions on the nature of the duty and how it was breached

449. As I mentioned at the outset of this judgment, the extent to which the existence and scope of a duty of care was a key battleground in this case only became clear during the trial. The pleadings, which were never amended, presented the parties' positions as follows. Both Claimants' Particulars of Claim contended:

> "At all material times, the Defendant was under a duty of care to safeguard the Claimant and to protect her health, safety, and wellbeing whilst at the college. It was also vicariously responsible for its employees. The Defendant had a duty to ensure that any reports or concerns of abuse were dealt with in a reasonable, timely and confidential manner and thoroughly investigated and a reasoned conclusion reached.
>
> … The Defendant's duty was to provide educational and pastoral services to the standard of the ordinarily competent institution, and, in carrying out its services and functions, to act reasonably to protect the health, safety and welfare of its students."

and both Defences responded:

> "It is admitted that the Defendant owed the Claimant a duty of care to provide educational services to the standard of the ordinarily competent institution and, in so doing, to act reasonably to protect the health, safety and welfare of its students. It is averred that the Defendant complied with this duty at all times.
>
> … No admissions are made as to the existence of a duty of care over and above that."

450. There are some similarities between the parties' pleaded positions on the duty, but also differences. The Claimants spoke of a duty that embraced steps "to safeguard", "protect… wellbeing" and to provide "pastoral services to the standard of the ordinarily competent institution". These were not components of the duty the College accepted, though it did accept

it needed to protect students' "health, safety and welfare" when providing educational services, along with protecting their health and safety.

451. The College also denied any duty of care there was had been breached. I will come to that in the next section of this judgment, but it is helpful to set out the pleaded breaches now because they illustrate the features of the duty the Claimants contend they were owed. Given their number, I have divided them into five categories and reordered them. The categories are imperfect in the sense that there is some overlap between them, as will be apparent.

452. The first category is broadly concerned with protection from harm. In respect of Ms McCamish, it was pleaded there was a failure to protect in these ways:

(1) "Failing to have in place any or any adequate processes and or systems and/or policies to safeguard the Claimant. Including but not limited to, the PPGSC is silent as to the definition of Sexual Misconduct and Abusive Behaviour and defines only "Misconduct'".

(2) "Failing to follow the Safeguarding Policy in June 2017 which required a report to be made to the Designated Person (Brian Weir) about the Claimant's disclosure without any delay".

(3) "Failing to treat the Claimant's disclosure of her assaults in June 2017 as an official complaint which engaged the Defendant's Safeguarding Policy…"

(4) "Failing to inform the Claimant that she was required to make a formal written complaint of the allegations when she reported matters orally in June 2017."

(5) "Failing to suspend [the male student] when the complaint was made in June 2017 and again in January 2018 when the written complaint was made."

(6) "Failing to take any or any adequate safeguarding actions for the Claimant, including but not limited to…

a. "Permitting [the male student] on or about second week of June 2017, to be in the same classroom as the Claimant and to remove all of his clothes, as described above."

b. "Failing to provide separate timetables in the autumn term of 2017 and instead providing one with shared classes despite the allegations made."

c. "Again, in November 2017, failing to ensure that the Claimant and [the male student] were not in the same classes despite repeated requests by the Claimant."

d. "Failing to ensure that the Claimant and [the male student] were not in the same classes and performances in 2018."

e. "Failing to exclude [the male student] from attending the production of "All My Sons" in October 2018 and "Rage" in November 2018 which the Claimant was due to take part in her final year productions."

f. "Allowing [the male student] to enter the university campus on many occasions contrary to his suspension, for example to attend fairs, events and to work in the library."

(7) "Failing to help the Claimant find alternative accommodation in June 2017 after she reported the assaults, as she was still residing in the same student accommodation."

(8) "Failing to protect the health, safety and welfare of the Claimant for all of the reasons set out [in the particulars]."

453. Ms Feder's particulars repeat (1), (2), (3), (4) and (5) (though the dates of (4) and (5) are varied to January 2018), (6) (though without the examples in the sub paragraphs save for (5 f.)) and (8), adding "[f]ailing to warn the Claimant about [the male student' behaviour following Miss McCamish's disclosure in June 2017 that she had been sexually assaulted by Mr [the male student] in 2016."

454. The second category is concerned with provision of support, such as advice and counselling. As regards Ms McCamish the pleadings identify:

(1) "Failing to provide counselling and/or EDMR offered to the Claimant…"

(2) "Failing to allow the Claimant to have time off to arrange and attend her own counselling."

455. Ms Feder's particulars do not list 'failure to provide counselling' is a separate item, but I will consider it because her pleadings include the compendious categories of "[f]ailing to ensure that any or any adequate action was taken following notification of the incidents to the Defendant", "[f]ailing to protect the health, safety and welfare of the Claimant for all of the reasons set out [in the particulars]", "[f]ailing to take reasonable care for the safety of the Claimant" and state:

> "Had she received appropriate trauma counselling and emotional support through her university post-disclosure within the time she remained at university, then her hypervigilance, anxiety attacks, lowered mood and avoidance behaviours would have been more likely than not to be resolved to at least their pre-assault level by July 2018."

456. The third category is concerned with meaningful investigation and disciplinary action in response to reported concerns:

(1) "Failing to heed the Claimant's complaint and/or carry out any or any adequate investigation into the Claimant's allegations and/or to consider all relevant evidence when carrying out the investigation" (of which several of the instances below are given as examples).

(2) "Wrongly finding that the Police concluded that it would not be productive to continue with a criminal investigation as "there was no hard evidence". Whereas the Claimant asked the Police not to pursue matter as she was concerned about appearing in the Crown Court where she had been told convictions were difficult."

(3) "Failing to speak with the Claimant's flatmate Maddie Hurleson who had confirmed Mr Collin's aggressive behaviour towards the Claimant in their first year flat and who had been sexually harassed by him."

(4) "Failing to interview and/or investigate either properly or at all the petitioning students who confirmed in December 2017 they were uncomfortable with Mr Collin's behaviour."

(5) "Failing to attach any or any sufficient weight to the evidence of Grace Quigley who had witnessed the fourth assault and/or failing to ask Grace Quigley in any detail about the fourth assault."

(6) "Failing to consider and/or attach any or any sufficient weight to other allegations of sexual harassment made against [the male student] by other women…"

(7) "Miscategorising the secondary allegations against [the male student] as "inappropriate touching" and "massaging" contrary to the Defendant's Dignity At Work Policy and Procedure which gives examples of "Harassment related to Sex and Sexual Harassment" which includes: Getting too close, deliberate body contact or unnecessary touching."

(8) "Failing to find that the Claimant's allegations and those allegations made by other students, set out above, amounted to sexual harassment within the meaning of its own policies. In particular, the Dignity at Work Policy and Procedure gives examples of 'Harassment related to Sex and Sexual Harassment' which includes: 'Getting too close, deliberate body contact or unnecessary touching.'"

(9) "Failing to take account of the evidence of Ms Lex Wanebo that she had been assaulted by [the male student] and/or wrongly categorising her complaint as inappropriate touching rather than sexual harassment."

(10) "Failing to take into account and/or accord sufficient weight to the allegations made by Ms Sydney Feder in autumn 2017 that she had been assaulted by [the male student]."

(11) "Failing to attach any or sufficient weight to the multiple examples of sexual misconduct perpetrated by [the male student] both in the 2016/17 academic year and the 2017/18 academic year and that the misconduct took place in halls of residence, the university premises and at local pubs and clubs."

(12) "Failing to take into account as part of the investigation the Student Conduct Regulations 2017-2018 which applied to all students and to the behaviour of students to other students that they should not engage in misconduct, which included sexual misconduct and which gives the following as an example of misconduct under paragraph 3.3.3 "Abusive Behaviour": Engaging in any activity or behaviour which contravenes the University's Strategic Equality Plan or Dignity at Study/Dignity at Work policies..."

(13) "Failing to apply the correct definition of sexual assault from the Defendant's Student Conduct rules and the Dignity at work policies rather applying a definition found on Wikipedia."

(14) "Failing to consider and/or give any or any sufficient weight to the further incident that occurred with the Claimant on 23 February 2018, described above in the student's union bar. This amounted to getting too close, deliberate body contact and/or unnecessary touching. Further, destroying the CCTV footage the Claimant had obtained of the incident."

(15) "Comprising an inappropriate investigative panel requiring the Claimant to deal with eight men, on many occasions requiring the Claimant to be alone with several men in a room. Further, some of the panel had student complaints against them of sexual harassment. For example, John Cranmer, the Head of Music who delivered the Disciplinary Committee's verdict to the Claimant, had several complaints of sexual harassment against him."

(16) "Failing to properly assess the credibility of [the male student's] evidence, and the fact he changed his account from stating the incidents had occurred, but he had consent for them, to later denying they occurred at all. The denial was made at the latest by the 25 April 2018 in a witness statement read to the second year BA acting course."

(17) "Failing to reach a reasoned conclusion considering the allegations of sexual assault made by the Claimant; the other students referred to in Mr Allin's Report and the allegations made by Sydney Feder of sexual assault made during the Autumn Term 2017."

(18) "Failing to impose an appropriate penalty upon [the male student]. In particular, an expulsion contrary to paragraphs 3.5 and 8.8.2 of the Student Conduct Rules which stated that cases of repeated incidents of misconduct are more serious that a single act of misconduct. The multiple incidents of sexual misconduct ought to have warranted a more severe penalty."

(19) "Failing to reconsider the conclusions of Mr Allin's report in light of the change of position of [the male student] from admitting the incidents, but alleging he had consent, to later denying they occurred in April 2018."

457. Ms Feder's particulars repeat (1), (4), (6), (9), (11), (12), (13), (15), (17), (18) and add "[f]ailing to ask [the male student] about the Claimant's allegations."

458. The fourth category is communication associated with the categories above. In respect of Ms McCamish, it concerns

(1) "Failing to investigate and deal with her complaint confidentially, as set out above."

(2) "Announcing the result of the investigation into the Claimant's complaint to the year group, without her consent or knowledge."

(3) "Offering inappropriate support to [the male student] in that Mr David Bond assisted him in his statement later read to the second-year cohort in April 2018."

459. Ms Feder's particulars state "[a]t no time did anyone communicate the outcome of the investigation into Ms McCamish's complaint to the Claimant." Although this is not one of the listed instances of negligence, I will consider it under Ms Feder's compendious "[f]ailing to take reasonable care for the safety of the Claimant" and "[f]ailing to protect the health, safety and welfare of the Claimant for all of the reasons set out [in the particulars]."

460. My final category takes in the remaining pleaded instances of negligence. As regards Ms McCamish, they are:

(1) "Failing to ensure that any or any adequate action was taken following notification of the incidents to the Defendant either in June 2017 and/or January 2018."

(2) "Failing to take reasonable care for the safety of the Claimant."

(3) "Offering inappropriate assistance to [the male student], including at the disciplinary panel meeting, by allowing Mr Brian Weir, designated person under the safeguarding policy, to accompany [the male student]. This was contrary to Paragraph 4.5.9 of the Student Conduct Rules which confirmed that the student accused of misconduct may be accompanied at a Disciplinary Panel Meeting by a friend or member of the Student Union. Not a staff member."

(4) "Putting pressure on the Claimant to continue to perform in her final year plays (even though it was clear that this was causing harm to her). The director, Dave Bond, threatened the entire Second Year Cohort that he would not direct the forthcoming Showcase and would not invite agents to attend if they did not perform the plays."

461. Ms Feder's particulars repeat (1) and (2).

Siddiqui: a straightforward answer to both claims?

462. Mr Weetman's first answer to all of this was that there was a narrowly confined and settled set of circumstances in which the common law recognises higher education institutions as being subject to a duty of care which was helpfully catalogued by Kerr J in *Siddiqui v University of Oxford* [2016] EWHC 3150 (QB) ('*Siddiqui*'). That case concerned an application to strike out a claim primarily based on alleged poor teaching of one part of a course due to unavailability of sufficient teaching staff. Mr Weetman submitted that the *Siddiqui* categories were what the College had accepted in the paragraphs of its pleaded defence quoted above at paragraph 449. The law was concerned with the provision of educational services and only with the protection of the health, safety and welfare of its students in that narrow sense. This embraced none of the Claimants' pleaded instances of breach of duty which I have listed above.

463. The first *Siddiqui* category is:

> "… a claim which asserts a breach of a duty owed in tort or contract arising in the exercise by the defendant's professional teaching staff of academic judgment. An example would be a decision to award a particular grade to a student sitting an examination. Such a claim is not justiciable as a matter of law, and is therefore liable to be struck out (see e.g. *Clark v. University of Lincolnshire and Humberside* [2000] 1 WLR 1988, CA, per Sedley LJ at paragraphs 12-13)." (see paragraph 42 of *Siddiqui*)

464. Pausing there, I note the rationale Sedley LJ gave for the non-justiciability of such claims at paragraph 12, which was "there are issues of academic or pastoral judgment which the university is equipped to consider in breadth and in depth, but on which any judgment of the courts would be jejune and inappropriate…". The concept of 'pastoral judgment' is not discussed further in *Clark*, which was concerned with a challenge to the grade awarded to a student found to have plagiarised an essay after unfortunately failing to save and losing her work. It is therefore *obiter dicta*. It has not re-emerged in any subsequent case as far as I am aware and so of no real help.

465. The second category is:

> "… claims which allege the use of negligent teaching methods, in the devising of courses or the means of acquainting students with the educational content of the courses that are being taught. Such claims can be actionable in principle; see the appeals heard together in *Phelps v. Hillingdon London Borough Council* [2001] 2 AC 619, per Lord Slynn at 653F-654B. However, because the claimant's attack is on the competence of the defendant's performance in the exercise of skill and care in a profession, the merits of the claim must be assessed by reference to the *Bolam* test."

and such a claim would require expert evidence that the standard was not met, Kerr J observed: see paragraphs 43 and 44. This category has no application to the Claimants' cases.

466. The third category is:

> "… one founded on simple operational negligence in the making of educational provision. Again, hypothetical examples would include administrative error leading to a student sitting the wrong examination paper, containing questions about which the student had received no tuition; or where classes are cancelled due to non-availability of teaching staff; or a case where a teacher was habitually drunk or asleep during classes.
>
> … In such a case if it is proved on the facts, a court does not need expert evidence to accept the proposition that the required standard of professional skill and care has not been met. Mr Milford, for the University, rightly accepted that in the latter example, expert evidence would not be necessary to establish a breach of the duty of skill and care."

467. Kerr J then gave as an example *Winstanley v University of Leeds* [2013] EWHC 4792 (QB), a contract breach and negligence case in which a student's degree supervision arrangements had been found to be unsatisfactory in an internal appeal. HHJ Saffman (sitting as a deputy High Court judge) observed in that case at paragraph 71 "[i]f a university fails to take proper care of a student's career by falling short in the delivery of the processes involved in obtaining the qualification for which the student is studying, why is it not arguable that it is foreseeable that the claimant will suffer some loss or injury as a result?". Process was distinct from academic judgment.

468. I have concluded Mr Weetman's submissions on *Siddiqui* only mark the start of the inquiry into the existence of a relevant duty, rather than its end point, for these reasons.

469. First, there is Kerr J's own caveat at paragraph 41, "I do not begin to attempt a full exposition here. It is sufficient to identify three broad categories of claim, which do not necessarily occupy the entire field."

470. Secondly, even were the second and third *Siddiqui* categories were exhaustive of current legal duties, I would still need to consider whether the College's actions exacerbated matters by the way it handled them or if it became subject to a duty through an assumption of responsibility. Part of that task involves assessing whether the Claimants have particularised their claims sufficiently clearly so the College can meet them bearing in mind CPR 16.4 and the comments of Baker LJ in *HXA v Surrey County Council* [2022] EWCA Civ 1196 ('*HXA*') at paragraph 87:

> "…the claimant should therefore identify the facts which are alleged to amount to an assumption of responsibility and the scope and extent of the alleged duty. Put simply, the claimants must identify clearly and concisely what it is said that the defendant has assumed responsibility for, and what facts are relied upon as establishing that the defendant has assumed that responsibility. In addition, the claimant should identify the dates upon which the alleged duty arose and, if relevant, the period or periods during which the duty was owed."

471. It is convenient to address this point briefly here. Mr Weetman argued the pleadings could not be read in that way, pleaded a duty that existed "at all material times" which was general not assumed, and there was unfairness because College witnesses had no opportunity to address assumption of responsibility in their evidence. Ms Witherington argued that the College had acted in a manner consistent with an assumption of responsibility (if none were imposed by the common law) for considering safeguarding matters and investigating consistently with its policies, taking account of the Universities UK Guidance, from the point in time when Ms

McCamish and Ms Feder made their reports and that this was set out in their pleadings which explained what could be, and was, expected of the College and how it had fallen short.

472. In my view, the Claimants have sufficiently particularised the facts of their case to enable them to advance express and, more importantly, implied assumption of responsibility arguments. CPR Part 16.4 requires concise facts to be pleaded in a proportionate manner. In *N v Poole Borough Council* [2020] AC 780 ('*Poole*') where Lord Reed said "the particulars of claim must provide some basis for the leading of evidence at trial from which their assumption of responsibility could be inferred": see paragraph 82 of his speech. *HXA* may have set the bar a little higher, but Baker LJ's guidance post-dates the pleadings in these claims. There was no request from the College in its defence for clearer details of the duty the Claimants were relying upon, less still an application to require such details. Further, despite the concerns expressed about the *HXA* pleadings, the appeal against strike out succeeded in that case. Nothing turns on Mr Weetman's point about the phrase "all material times" as there could be a general assumed responsibility which only became material when a report was made. What matters more is the duty at that point in time. The assumption of responsibility issue was also flagged at the start of the trial, some time before the first witness for the College was called and there was extensive oral evidence given about what College witnesses considered they were doing, when and why. As I have already mentioned at paragraph 436 above, all three key witnesses for the College said it had a duty of care. This could have been further explored with each, had that been necessary.

473. The last point to make about Mr Weetman's submissions on *Siddiqui*, is that he rightly acknowledged I would have to grapple with the question of whether a common law duty should be imposed bearing in mind the *Caparo* principles if no duty were identified by a different route.

474. It follows that the next step is to consider the guiding principles for an inquiry into the existence of such a duty.

Principles for determining the existence of, or imposing, a common law duty of care: *Robinson*, *Poole* and *Caparo*

Robinson

475. Mr Weetman and Ms Witherington took me first to *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4 ('*Robinson*'). This concerned a frail bystander injured by the police when they were arresting a suspected drugs dealer. The claim was allowed by the Supreme Court because, properly analysed, it concerned a positive act, not an omission, and that act involved a reasonably foreseeable risk of injury to the public. The Supreme Court took the opportunity to clarify the law on assumption of responsibility and the development of the common law, as well as discussing the duties of the police in particular.

476. Lord Reed, with whom Baroness Hale and Lord Hodge agreed, gave the leading speech, beginning with a critique of the approach the Court of Appeal had taken to *Caparo*. At paragraph 21 he said:

> "The proposition that there is a *Caparo* test which applies to all claims in the modern law of negligence, and that in consequence the court will only impose a duty of care where it considers it fair, just and reasonable to do so on the particular facts, is mistaken. As Lord Toulson pointed out in his landmark judgment in *Michael v Chief Constable of South Wales Police (Refuge and others intervening)* [2015] UKSC 2; [2015] AC 1732, para 106, that understanding of the case mistakes the whole point of *Caparo*, which was to repudiate the idea that there is a single test which can be applied in all cases in order to determine whether a duty of care exists, and instead

> to adopt an approach based, in the manner characteristic of the common law, on precedent, and on the development of the law incrementally and by analogy with established authorities."

477. The correct approach is a staged one. A court should ask itself whether the case arises in circumstances "in which it has been clearly established that a duty of care is or is not owed: for example, by motorists to other road users, by manufacturers to consumers, by employers to their employees, and by doctors to their patients": see paragraph 26. There is no need to consider whether a duty is "fair, just and reasonable" in such circumstances as the common law will demand an approach consistent with precedent. Lord Reed added at paragraph 27:

> "It is normally only in a novel type of case, where established principles do not provide an answer, that the courts need to go beyond those principles in order to decide whether a duty of care should be recognised. Following *Caparo*, the characteristic approach of the common law in such situations is to develop incrementally and by analogy with established authority. The drawing of an analogy depends on identifying the legally significant features of the situations with which the earlier authorities were concerned.
>
> … the court is concerned to maintain the coherence of the law and the avoidance of inappropriate distinctions if injustice is to be avoided in other cases. But it is also "engaged in a search for justice, and this demands that the dispute be resolved in a way which is fair and reasonable and accords with ordinary notions of what is fit and proper"."

478. Three established principles were then summarised.

479. First, "public authorities are generally under a duty of care to avoid causing actionable harm in situations where a duty of care would arise under ordinary principles of the law of negligence, unless the law provides otherwise": see paragraph 33.

480. Secondly, "public authorities, like private individuals and bodies, are generally under no duty of care to prevent the occurrence of harm: as Lord Toulson stated in *Michael* v *Chief Constable of South Wales Police* [2015] UKSC 2, 'the common law does not generally impose liability for pure omissions" (para 97)'". However, Lord Reed noted there are exceptions in certain circumstances, as in *Phelps v Hillingdon London Borough Council* [2001] 2 AC 619 ('*Phelps'*) where there had been an assumption of responsibility, but "[i]n the absence of such circumstances, however, public authorities generally owe no duty of care towards individuals to confer a benefit upon them by protecting them from harm, any more than would a private individual or body": see paragraph 34. I will return to *Phelps* below.

481. Thirdly, "public authorities, like private individuals and bodies, generally owe no duty of care towards individuals to prevent them from being harmed by the conduct of a third party". There are exceptions to this general principle too, however. "They include circumstances where the public authority has created a danger of harm which would not otherwise have existed, or has assumed a responsibility for an individual's safety on which the individual has relied": see paragraph 37.

Poole

482. The next important case, *Poole,* concerned an allegedly negligent failure on the part of a local authority to intervene and prevent harassment and abuse of two vulnerable children by their neighbours. It was argued that the manner in which statutory functions were exercised gave rise

to a parallel common law duty of care that reflected those functions. The duty was said to include protecting them from physical and psychiatric damage, monitoring welfare, arranging for the provision of medical treatment as needed, ascertaining wishes and views, assessing risk of harm and intervening if appropriate. The claim was struck out and that decision was upheld by the Supreme Court. Lord Reed surveyed the authorities on omissions, starting with *Dorset Yacht Co Ltd v Home Office* [1970] AC 1004. Properly understood, those cases recognised a:

> "distinction between causing harm (making things worse) and failing to confer a benefit (not making things better), rather than the more traditional distinction between acts and omissions, partly because the former language better conveys the rationale of the distinction drawn in the authorities, and partly because the distinction between acts and omissions seems to be found difficult to apply. As in the case of private individuals, however, a duty to protect from harm, or to confer some other benefit, might arise in particular circumstances, as for example where the public body had created the source of danger or had assumed responsibility to protect the claimant from harm." (see paragraph 28 of the speech).

483. Lord Reed went on to note that certain education cases vividly illustrated assumption of responsibility. Discussing *Christmas v Hampshire County* (part of the *X (Minors) v Bedfordshire* [1995] 2 AC 633 ('*X*') group of cases) at paragraph 45 of *Poole* he said:

> "The position was similar in the second education case (*Christmas v Hampshire County Council*), which was based on vicarious liability for the negligence of a headmaster and an advisory teacher. Lord Browne- Wilkinson concluded that, whether it was operated privately or under statutory powers, a school which accepted a pupil assumed responsibility for his educational needs. The education of the pupil was the very purpose for which the child went to the school. The head teacher, being responsible for the school, came under a duty of care to exercise the reasonable skills of a headmaster in relation to such educational needs. The position was the same where an advisory teacher was brought in to advise on the educational needs of a specific pupil, whether he was consulted privately or was provided by the local authority. If he knew that his advice would be communicated to the pupil's parents, he must foresee that they would rely on such advice. Therefore, in giving that advice, he owed a duty to the child to exercise the skill and care of a reasonable advisory teacher."

484. At paragraph 80 of *Poole*, Lord Reed also drew attention to what Lord Browne-Wilkinson had explained in *X*:

> "a public body which offers a service to the public often assumes a responsibility to those using the service. The assumption of responsibility is an undertaking that reasonable care will be taken, either express or more commonly implied, usually from the reasonable foreseeability of reliance on the exercise of such care. Thus, whether operated privately or under statutory powers, a hospital undertakes to exercise reasonable care in the medical treatment of its patients. The same is true, mutatis mutandis, of an education authority accepting pupils into its schools."

485. It is worth considering the principle Lord Reed was summarising. In *X* at page 766 B-E, Lord Browne-Wilkinson said:

> "In my judgment a school which accepts a pupil assumes responsibility not only for his physical well being but also for his educational needs. The education of the pupil is the very purpose for which the child goes to the school. The head teacher, being

> responsible for the school, himself comes under a duty of care to exercise the reasonable skills of a headmaster in relation to such educational needs. If it comes to the attention of the headmaster that a pupil is under-performing, he does owe a duty to take such steps as a reasonable teacher would consider appropriate to try to deal with such under-performance. To hold that, in such circumstances, the head teacher could properly ignore the matter and make no attempt to deal with it would fly in the face, not only of society's expectations of what a school will provide, but also of the fine traditions of the teaching profession itself. If such head teacher gives advice to the parents, then in my judgment he must exercise the skills and care of a reasonable teacher in giving such advice.
>
> Similarly, in the case of the advisory teacher brought in to advise on the educational needs of a specific pupil, if he knows that his advice will be communicated to the pupil's parents he must foresee that they will rely on such advice. Therefore in giving that advice he owes a duty to the child to exercise the skill and care of a reasonable advisory teacher."

486. At paragraph 67 of *Poole*, Lord Reed explained the concept of assumption of responsibility first came to prominence in *Hedley Byrne and Co Ltd v Heller and Partners* [1964] AC 465 where negligent advice was given outside of a contracting relationship. However, the operation of a statutory scheme did not automatically generate an assumption of responsibility. What mattered was whether the conduct of the public authority pursuant to that scheme met the conventional *Hedley Byrne* test. In *Poole* the very limited steps taken by the council of investigating and monitoring the claimants' position did not involve the provision of a service to them on which they or their mother could be expected to rely. Here the true nature of the complaint was a failure to confer a benefit. From the perspective of the common law the authority's position was no different from a private body. The appeal was refused on this basis.

487. Suppose there is no well-established duty in a particular context based on precedent, matters have not been made worse through a positive act of negligence as in *Dorset Yacht*, and there is no express or implied assumption of responsibility of the kind identified in *Hedley Byrne,* developed in subsequent cases and discussed in *Poole*. A court must then turn to *Caparo.*

Caparo

488. When determining *Caparo,* Lord Bridge emphasised the "inability of any single general principle to provide a practical test which can be applied to every situation to determine whether a duty of care is owed and, if so, what is its scope": see page 617 of the law report. Where novel situations arise there needs to be an incremental approach, based on the use of established authorities:

> "What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of "proximity" or "neighbourhood" and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other. But it is implicit in the passages referred to that the concepts of proximity and fairness embodied in these additional ingredients are not susceptible of any such precise definition as would be necessary to give them utility as practical tests, but amount in effect to little more than convenient labels to attach to the features of different specific situations which, on a detailed examination of all the circumstances, the law recognises pragmatically as giving rise to a duty of care of a

> given scope. Whilst recognising, of course, the importance of the underlying general principles common to the whole field of negligence, I think the law has now moved in the direction of attaching greater significance to the more traditional categorisation of distinct and recognisable situations as guides to the existence, the scope and the limits of the varied duties of care which the law imposes. We must now, I think, recognise the wisdom of the words of Brennan J. in the High Court of Australia in *Sutherland Shire Council v. Heyman* (1985) 60 A.L.R. 1, 43–44, where he said:
>
> > "It is preferable, in my view, that the law should develop novel categories of negligence incrementally and by analogy with established categories, rather than by a massive extension of a prima facie duty of care restrained only by indefinable 'considerations which ought to negative, or to reduce or limit the scope of the duty or the class of person to whom it is owed.'"

489. In *Robinson* at paragraphs 24 and 25, Lord Reed stressed that this incremental approach was what had actually been applied in *Caparo* and the factors identified in pages 617-618 of Lord Bridge's speech had to be understood in that context rather than as a test of the very kind Lord Bridge had rejected.

490. With the principles set out above in mind, it is now necessary to consider whether established case law identifies a duty of the kind that is relevant to the present case.

Educational support services: *Phelps*

491. *Phelps* now needs to be examined more closely. The first claimant had been referred to a school psychological service for assessment and no issues were identified. She later was diagnosed as dyslexic and argued the adverse consequences could have been mitigated had the first assessment not been negligent. The trial judge accepted there had been a failure to exercise the degree of care and skill to be expected of an ordinarily competent member of the psychologist's profession. The case eventually reached the House of Lords where Lord Slynn said this at 653 f.:

> "…it is long and well-established, now elementary, that persons exercising a particular skill or profession may owe a duty of care in the performance to people who it can be foreseen will be injured if due skill and care are not exercised, and if injury or damage can be shown to have been caused by the lack of care. Such duty does not depend on the existence of any contractual relationship between the person causing and the person suffering the damage. A doctor, an accountant and an engineer are plainly such a person. So in my view is an educational psychologist or psychiatrist and a teacher including a teacher in a specialised area, such as a teacher concerned with children having special educational needs."

492. The existence of such a duty did not turn on whether they were statutory duties to perform a function or parallel contractual arrangements. However, he added this at 654 c.-f.:

> "It must still be shown that the educational psychologist is acting in relation to a particular child in a situation where the law recognises a duty of care. A casual remark, an isolated act may occur in a situation where there is no sufficient nexus between the two persons for a duty of care to exist. But where an educational psychologist is specifically called in to advise in relation to the assessment and future provision for a specific child, and it is clear that the parents acting for the child and the teachers will follow that advice, prima facie a duty of care arises. It is

> sometimes said that there has to be an assumption of responsibility by the person concerned. That phrase can be misleading in that it can suggest that the professional person must knowingly and deliberately accept responsibility. It is, however, clear that the test is an objective one: *Henderson v Merrett Syndicates Ltd* [1995] 2 AC 145, 181. The phrase means simply that the law recognises that there is a duty of care. It is not so much that responsibility is assumed as that it is recognised or imposed by the law.
>
> The question is thus whether in the particular circumstances the necessary nexus has been shown.
>
> The result of a failure by an educational psychologist to take care may be that the child suffers emotional or psychological harm, perhaps even physical harm. There can be no doubt that if foreseeability and causation are established, psychological injury may constitute damage for the purpose of the common law. But so in my view can a failure to diagnose a congenital condition and to take appropriate action as a result of which failure a child's level of achievement is reduced, which leads to loss of employment and wages."

493. Here a duty arose because the educational psychologist's "relationship with the child and what she was doing created the necessary nexus and duty": see page 656 a. However, the *Bolam* test applied as the quality of a professional service was under challenge and "the court should not find negligence too readily": see page 655 c.-d.

494. Lord Reed was not a member of the court in *Phelps*, but he discussed its significance in *Poole* at paragraph 50 of his speech:

> "… the psychologist in the *Phelps* case was advising the child through her parents, as well as the local authority, since it was clear that they were going to rely on the advice in question. As in *X (Minors) v Bedfordshire,* the question whether the child (through his or her parents) was the intended recipient of professional advice, or could be expected to rely on advice provided to the local authority, was the key to whether there was an assumption of responsibility giving rise to a duty of care."

495. Unsurprisingly, Ms Witherington placed some weight on the earlier parts Lord Slynn's speech I have quoted whereas Mr Weetman relied on the remarks about the need for judicial caution: see, for example, Lord Slynn at 655 D and Lord Clyde at 672. He also highlighted the remarks of Lord Nicholls at page 667 C to 668 which stressed that the existence of a duty of care owed by teachers to their pupils should not be regarded as furnishing a basis for generalised 'educational malpractice' claims. Mr Weetman submitted "the duty is focussed on, and limited to, the content and quality of the educational services that are provided".

496. I do not read *Phelps* in that narrow way. Assessment of a possible disability is neither of those things, nor is the broader concept of "professional advice". The key points I take from *Phelps* are, first, a duty of care can arise from assumed responsibility for the provision of services that are not in themselves educational in the sense of imparting knowledge or developing skills through teaching but which support the provision of education. In Ms Phelps' appeal those services were assessment and advice, but the services at issue in the second appellant's case concerned speech and language therapy and there are references in their Lordships' speeches to other services provided in the educational context. Secondly, such a duty depends on the relationship between the person or body responsible for the service, an actual or would-be recipient who relied, expressly or impliedly, on the service being provided competently and the harm alleged to have occurred because it was not.

The education harm cases: *Rich*, *Gower*, *Bradford-Smart*, *Newby*, *Shaw*, *Webster* and *Abrahart*

497. While preparing this judgement, I drew the attention of both Counsel to a series of cases I had identified as potentially relevant. They concern protection from and accountability for other forms of harm in the education context. In response, Ms Witherington argued these cases illustrate aspects of the duty the Claimants rely upon in action. Mr Weetman submitted they do not assist the Claimants, partly because they concern a different, narrower conception of duties of care in the educational context, partly because most of them concern children. At trial he relied the recently decided case, *Dr Robert Abrahart (Administrator of the estate of Natasha Abrahart decd) v University of Bristol* Claim No.: G10YX983, unreported ('*Abrahart*') as illustrative of the position of adult students. I now turn to these cases.

Rich

498. A useful starting point for this part of the analysis is an old case, *Rich v London County Council* [1953] 1 WLR 895. This concerned the perennial problem of playground supervision. Unsupervised children began a game which involved throwing pieces of coke at each other which led to which led to one being injured. The local authority which was ultimately responsible for the school was found liable. There was a duty of care found akin to that which parents owe their children.

499. *Rich* was followed by series of cases about schools' responsibility to protect their pupils from harm. None suggest the basic proposition is controversial and in *Phelps* Lord Clyde said as much, commenting at 670 A "[t]here is no question that a teacher owes a duty of care for the physical safety of a child attending school under the charge of that teacher. The teacher has a duty to take reasonable care that the child does not come to harm through any danger which may arise during the course of the child's attendance at the school."

Bradford-Smart and *Gower*

500. *Bradford-Smart v West Sussex County Council* [2002] EWCA Civ 7 ('*Bradford-Smart'*) considered the relationship between the duty, investigations and disciplinary action. This was a claim for damages for psychiatric injury and consequential loss by a former pupil who had been bullied both within school but mainly outside and on her school journeys. At paragraph 38, Judge LJ observed:

> "There is no magic in the term bullying. Any school has to have sensible disciplinary policies and procedures if it is to function properly as a school at all. It will no doubt take reasonable steps to prevent or deal with one-off acts of aggression between pupils and also recognise that persistent targeting of one pupil by others can cause lasting damage to the victim. In seeking to combat this it is always helpful to have working definitions such as those contained in the documentation we have seen. The problem is now well enough recognised for it to be reasonable to expect all schools to have policies and practices in place to meet it; indeed, this school developed just such a policy in 'Working Together'. We agree that such policies are of little value unless they are also put into practice. But in order to hold the school liable towards a particular pupil, the question is always whether the school was in breach of its duty of care towards that pupil and whether that breach caused the particular harm which was suffered."

501. At paragraph 28, he also noted:

> "It was common ground in this case, as it had been in *Van Oppen v Clerk to Bedford Charity Trustees* [1990] 1 WLR 235 , 250, that 'a school is under a duty to take reasonable care for the health and safety of the pupils in its charge'. As Croom−Johnson LJ pointed out at 266, in some respects this goes beyond mere parental duty, because the school may have special knowledge about some matters which the parent does not or cannot have: in that case the unusual dangers in playing certain sports, such as rugby football. But otherwise the school is under no greater duty than the parents: in that case to arrange personal accident insurance for its pupils."

adding at paragraph 34:

> *"R v London Borough of Newham ex parte X* [1995] ELR 303, at 306–7, Brooke J (as he then was) rejected the argument that a head teacher could not use his disciplinary powers against a pupil who had attacked another boy outside school. We agree. We also agree that there may be circumstances in which a failure to exercise those powers would be a breach of the school's duty of care to another pupil. We therefore disagree with the very restricted way in which the judge expressed the relevant duty."

502. The duty was not breached in *Bradford-Smart*, however. On the facts, a responsible body of professional opinion would have agreed that enough had been done: see paragraph 36 of the judgment. Judge LJ emphasised at paragraph 32 that a school:

> "does not have the charge of its pupils all the time and so cannot directly protect them from harm all the time. At a day school that charge will usually end at the school gates, although the school will have a duty to take reasonable steps to ensure that young children who are not old enough to look after themselves do not leave the school premises unattended: see *Lewis v Carmarthenshire County Council* [1953] 1 WLR 1439, CA, at 1443 (the speeches in the House of Lords proceeded on the same assumption: see *Carmarthenshire County Council v Lewis* [1955] AC 549). One can think of circumstances where it might go beyond that, for example if it were reasonable for a teacher to intervene when he saw one pupil attacking another immediately outside the school gates. It will clearly extend further afield if the pupils are on a school trip, educational, recreational or sporting. But the school cannot owe a general duty to its pupils, or anyone else, to police their activities once they have left its charge. That is principally the duty of parents and, where criminal offences are involved, the police."

503. It was also important to remember that the school's duty of care arose "because of its educational duties towards the child": see paragraph 35 of the judgment. The occasions on which a school may be in breach of duty for failing to combat harmful behaviour including outside school will be "few and far between": see paragraph 36.

Shaw

504. *Shaw v Redbridge LBC* [2005] EWHC 150 (QB) ('*Shaw*') concerned an alleged breach of the school's 'pastoral duty of care' in relation to the investigation of an unpleasant playground incident which had not been properly communicated to the child's parents. *Bradford-Smart* was discussed and the existence of a duty acknowledged, but it was not breached on the facts.

Webster

505. *Webster & Ors v Governors of the Ridgeway Foundation School* [2010] EWHC 157 (QB) ('W*ebster*') arose out of a fight in a school's tennis courts after lessons were over. One of the claimants was seriously injured with a claw hammer. His assailant was not a pupil. At paragraph 115 Nicol J observed that the:

> "general nature of a school's duty towards a pupil has been stated many times. As Auld LJ said in *Gower v London Borough of Bromley* (Court of Appeal 29th July 1999) '[a] head teacher and teachers have a duty to take such care of pupils in their charges as a careful parent would have in like circumstances, including a duty to take positive steps to protect their well-being'."

506. After a careful survey at paragraphs 115 to 121 of the authorities including *Bradford-Smart* and *Caparo*, Nicol J concluded "it would be fair, just and reasonable to conclude that to some extent, at least, the school had a duty to take reasonable care to safeguard and protect Henry from attack by outsiders", adding "I am not sure that the duty in this case can be expressed more specifically than to say that the school had a duty to take reasonable care to see that Henry was reasonably safe during school hours and for a reasonable period after the end of the school day while he was still on the school's premises": see paragraphs 118 and 121. However, the duty was held not to have been breached. Sufficient protective steps had been taken.

The loco parentis point

507. Mr Weetman's position at trial had been that no duty arose in cases such as these because they fell outside the *Siddiqui* categories. Bearing in mind the College has children in its charge, I asked him whether it owed any of them any duty of care to protect them from injury from other children and investigate when necessary. He said there was no such duty. However, in his written submissions on the cases above, he took a more nuanced position, arguing that children were owed a duty in circumstances where the school stands in the position of a parent, and it can reasonably be expected to take positive steps to protect their well-being. This duty arose from the particularly close *loco parentis* relationship a school has with its child pupils. He contended, however, that the same principles did not apply to adult students who decide to receive educational services from a higher education provider. Ms Witherington's position was that the cases both demonstrated educational establishments owe a duty of care to students for their physical and mental wellbeing that was precisely what was contended for in the present case. That duty extended to events occurring off-premises.

508. I have concluded that the distinction Mr Weetman seeks to draw between the education harm cases and the Claimants' case has no basis in the case law and is wrong in principle for these reasons.

509. To start with, it is important not to conflate the question of the existence of a duty of care with the separate question of what standard of care that duty demands. When cases like *Rich, Gower* and *Webster* refer to teachers standing in the shoes of parents, they are describing the care a child might expect from their parent. That is a description of standard of care. Putting this another way, the 'nature' of the duty Auld LJ discussed in *Gower* presupposes the duty exists. In none of the cases do the courts say that the origin of the duty itself is *loco parentis.* Further, were Mr Weetman right, Judge LJ's comments at paragraph 28 of *Bradford-Smart* about the duties of the school going beyond those of the parent would make no sense, nor would his comments about the importance of school policies and a sensible disciplinary system.

510. The College would also find itself in a very odd position were Mr Weetman submission right. It would owe a duty of care to the children who attend its weekend and summer holidays courses but if any happened to turn 18, that duty would immediately evaporate. That would happen regardless of the College's own recognition in its policies that it is responsible for safeguarding children and vulnerable adults alike. A mature child capable of looking after themselves would enjoy far greater protection from the common law than an incapacitated adult, including someone like Ms McCamish who reported being sexually assaulted whilst unconscious.

Abrahart

511. The final education harm case in this jurisdiction that I need to consider is *Abrahart*, a Bristol County Court decision by HHJ Ralton. It concerned a physics student required to give interviews after conducting laboratory experiments. During her time at the university, her mental health declined rapidly and the prospect of the interviews in particular was overwhelming for her. In April 2018 she tragically took her own life. In a claim brought by her estate it was argued that the university had failed to discharge its statutory Equality Act 2010 duties to make reasonable adjustments for her and had discriminated directly and indirectly. It was also argued the university had breached a common law duty of care. The 2010 Act arguments succeeded but those based on the common law failed. I understand the case is the subject of an appeal. Unlike the present case, there were a few factual disputes, but the university disputed the extent of its actual and constructive knowledge of Ms Abrahart's mental health problems.

512. The Judge considered the common law argument was novel. Its basis was that the university's provision of ancillary services in the form of learning and welfare support showed the existence of an assumed duty of care whereunder the university would be responsible for the health, well-being and safety of its students in a very broad sense. He observed "[s]uch an argument would mean that whenever A provides B with a service to address an issue, A is assuming a duty of care to protect B from that issue in the first place": see paragraph 145 of the judgment. He went on to summarise the pleaded breaches of duty, characterising them as omissions. He considered *Robinson*. He noted there was nothing inherently unsafe in the manner in which the university taught the physics course. The reality of the case was an argument that the common law obliged the course to be taught in the manner in which Ms Abrahart had chosen and not assessing or marking her in line with the expectations. "In a sense it is the claimant's case that the university owed a duty of care to Natasha to protect her from herself. However, Natasha was not in the care or control of the university beyond its rules in contrast to, for example… a school child in the care of a school": see paragraph 149. He concluded it was not fair, just or reasonable to impose a duty in such circumstances. He discussed a series of assumption of responsibility cases (that do not include any of those discussed immediately above), highlighting in particular *Barrett v Ministry of Defence* [1995] 1 WLR 1217 ('*Barrett*') which concerned a soldier who asphyxiated after excessive drinking. In that case at 1224 E Beldam LJ had identified as a critical factor "reliance expressed or implied in the relationship which the party to whom the duty is owed is entitled to place on the other party to make provision for his safety." Similar principles applied in the relationship between employer and employee and solicitor and client. Although the judge did not say so expressly, his conclusion was that no duty arose when Ms Abrahart became a student or subsequently because the College did not offer to keep her safe holistically and she did not rely on that happening.

513. Mr Weetman submitted the Claimants in the present case were arguing for a very similar duty. Ms Witherington argued both the scope of the duty issue in that case and its facts were fundamentally different.

514. In my view, the decision in *Abrahart* offers little assistance in the context of the Claimants' case. As the judgment suggests, the mere fact that welfare and support services are, or can be, provided

cannot by itself create a duty of care in relation to any issue at which those services are targeted. If that were right, *Poole* would have been decided differently. This begs the question of what an institution is assuming responsibility for when it offers a service or act in a particular way. So, for example, if the university had offered an assessment service to determine whether exceptions should be made to the ordinary arrangements for interview-based examinations, Ms Abrahart had used and relied on it, but the assessment was incompetent, that would fall squarely within the situation Beldam LJ described. *Phelps* was such a case. In the present one, the Claimants do not suggest that the College's provision of protection, support, a mechanism for investigation and disciplinary action, and its communications associated with these things create a duty to protect them from any form of related harm. They say, on the facts of their cases, the College committed itself to providing these services to students such as themselves, was obliged to do so competently and did not.

Education harm cases from other jurisdictions: Regents of University of California and John XXIII College

515. I also invited Ms Witherington and Mr Weetman to comment on two appellate level authorities from other common law jurisdictions.

516. The first is *Regents of University of California v. Superior Court of Los Angeles County and Rosen* Ct. App. 2/7 B259424, a Supreme Court of Canada case decided in 2018. The facts involve a series of tragic events. A UCLA student became progressively mentally unwell, despite some limited attempts of the university to support him. Ultimately, he attacked a fellow student during chemistry lesson with a knife, seriously injuring her. She argued the university had breached a duty of care by failing to take reasonable measures that would have protected her from the attack. The Court of Appeal accepted there was a protective duty of that kind, because of the special relationship between a university and its students, and that it had been breached. It is important to note that California has adopted a statutory code of common law negligence standards, the Restatement Third of Torts, though it did not deal with this particular situation expressly.

517. The Court made several comments which will be important in that jurisdiction. First, it noted at 1.a.:

> "Relationships that have been recognized as "special" share a few common features. Generally, the relationship has an aspect of dependency in which one party relies to some degree on the other for protection. (See *Baldwin v. Zoradi* (1981) 123 Cal.App.3d 275, 283 (Baldwin); *Mann v. State of California* (1977) 70 Cal.App.3d 773, 779-780.) {Page 4 Cal.5th 621} The Restatement authors observed over 50 years ago that the law has been "working slowly toward a recognition of the duty to aid or protect in any relation of dependence or of mutual dependence." (Rest.2d Torts, § 314A, com. b, p. 119.)
>
> The corollary of dependence in a special relationship is control. Whereas one party is dependent, the other has superior control over the means of protection. "[A] typical setting for the recognition of a special relationship is where 'the plaintiff is particularly vulnerable and dependent upon the defendant who, correspondingly, has some control over the plaintiff's welfare.'"

adding:

> "Special relationships also have defined boundaries. They create a duty of care owed to a limited community, not the public at large."

and:

> "although relationships often have advantages for both participants, many special relationships especially benefit the party charged with a duty of care. (Rest.3d Torts, Liability for Physical and Emotional Harm, § 40, com. h, p. 43.) Retail stores or hotels could not successfully operate, for example, without visits from their customers and guests. {Page 4 Cal.5th 622}."

518. The Court also considered a series of older cases from other jurisdictions in the US in which liability had been found to arise because of a *loco parentis* relationship between institutions and adult students. It considered this was an unsatisfactory basis for a modern-day duty. Instead, the close special relationship needed was to be found in the features such institutions have as communities:

> "Considering the unique features of the college environment, we conclude postsecondary schools do have a special relationship with students while they are engaged in activities that are part of the school's curriculum or closely related to its delivery of educational services.
>
> Although comparisons can be made, the college environment is unlike any other. Colleges provide academic courses in exchange for a fee, but a college is far more to its students than a business. Residential colleges provide living spaces, but they are more than mere landlords. Along with educational services, colleges provide students social, athletic, and cultural opportunities. Regardless of the campus layout, colleges provide a discrete community for their students. For many students, college is the first time they have lived away from home. Although college students may no longer be minors under the law, they may still be learning how to navigate the world as adults They are dependent on their college communities to provide structure, guidance, and a safe learning environment. "In the closed environment of a school campus where students pay tuition and other fees in exchange for using the facilities, where they spend a significant portion of their time and may in fact live, they can reasonably expect that the premises will be free from physical defects and that school authorities will also exercise reasonable care to keep the campus free from conditions which increase the risk of crime." (*Peterson*, supra, 36 Cal.3d at p. 813.)
>
> Colleges, in turn, have superior control over the environment and the ability to protect students. Colleges impose a variety of rules and restrictions, both in the classroom and across campus, to maintain a safe and orderly environment. They often employ resident advisers, mental health counselors, and campus police. They can monitor and discipline students when necessary. "While its primary function is to foster intellectual development through an academic curriculum, the institution is involved in all aspects of student life. Through its providing of food, housing, security, and a range of extracurricular activities the modern university provides a setting in which every aspect of student life is, to some degree, university guided." (*Furek v. University of Delaware* (Del. 1991) 594 A.2d 506, 516.) Finally, in a broader sense, college administrators and educators "have the power to influence [students'] values, their consciousness, their relationships, and their behaviors."
>
> The college-student relationship thus fits within the paradigm of a special relationship. Students are comparatively vulnerable and dependent on their colleges for a safe environment. Colleges have a superior ability to provide that safety with respect to activities they sponsor or facilities they control. Moreover, this relationship is bounded by the student's enrolment status. Colleges do not have a

> special relationship with the world at large, but only with their enrolled students. The population is limited, as is the relationship's duration."

519. In written submissions, Ms Witherington argued strong parallels could be drawn with the present case. The College was in a position of special power and authority over both claimants in a unique environment and both were dependant on it to access the educational services they had paid for. Mr Weetman submitted no assistance could be derived from a state level decision of an American court applying codified tests, and the comments about the unique features of the US college environment quoted above had no parallel in the UK higher education context, nor did a guarantee of safety and security enshrined in the Californian constitution from which the court had derived some assistance. There was no parallel case in English law.

520. In *Phelps* at page 667 C, Lord Nichols noted that different legal systems have different answers to questions of negligence in the education sector. There are differences between the US's and our higher education systems. *Regents of University of California* has no precedent value in this jurisdiction. I have approached it with great caution for all these reasons. However, it illustrates a considered approach to the duty question which is based on a recognition of the proximity between a higher education institution as a community with values that include protecting the safety and well-being of students, and some means of achieving such protection. The court's recognition of an unbalanced power relationship despite students being in one sense 'paying customers' of the institution is also noteworthy.

521. The facts of the second overseas jurisdiction case are closer to the present one. This arose in Australia. *John XXIII College v SMA* [2022] ACTCA 32 was a partially successful appeal concerning a female student, SMA, who was sexually assaulted by a fellow male student off campus, in an alleyway behind a bar. Along with other intoxicated students, both had been directed off campus by college staff during an on-campus event. The college accepted it owed a duty of care but not that it applied to an off-campus assault by a fellow student. SMA succeeded at first instance in relation to this aspect of the duty, with the judge concluding the assault would not have occurred but for the college's careless directions and the way it had fostered a dangerous drinking culture. That finding was overturned on appeal for reasons of causation. However, both the first instance judge and appeal court also held the college had breached its duty of care in the manner it investigated the sexual assault once it had been reported. The investigator, a senior member of college staff, had been sceptical about whether the assault could have occurred and dismissive of SMA.

522. The key sections of the judgment begin at paragraph 83:

> "The College had accepted that it owed SMA, a resident of the College, a duty of care (primary judgment at [246]). The duty of care owed by the College was that of a reasonable person in the College's position, who was in possession of all the information that the College either had, or ought reasonably to have had, at the time of the incident out of which the harm arose…"

together with paragraph 84:

> "The content of that duty was to take reasonable precautions against risks of harm that were (a) foreseeable, (b) not insignificant, and (c) are precautions that, in the circumstances, a reasonable person in the same position would have taken."

And paragraph 88:

> "Further, the risk of psychiatric illness following a sexual assault was a risk that might be suffered by a person of normal fortitude. In the circumstances known to the College at the time, that risk was foreseeable, and it was not insignificant."

523. As to investigations, the appeal court approved the following conclusions of the first instance judge at paragraph 280-281:

> "I think the plaintiff's claim arising from the meeting on 12 November 2015 is very strong. The College, in particular after having received the complaint, had a duty to investigate that complaint competently and in doing so, treat the plaintiff in a manner consistent with its obligation to provide pastoral care.
>
> On Mr Johnston [the investigator]'s own evidence he had a lifetime of experience of dealing with students both at a school level and a tertiary level. He had also previously dealt with complaints of sexual assault. It is plainly foreseeable that a person making such a complaint is vulnerable and susceptible to psychological harm should the complaint be improperly dealt with."

524. It added at paragraphs 110, 112 and 113 of its own judgment:

> "There can be little doubt that the College had a duty to investigate complaints by residents against each other competently. That was the effect of SMA's pleading that the policy for the handling of complaints of sexual harassment be adequate and enforced. That duty was what the primary judge accepted at [280] and we do not see that the finding was in error…
>
> The College next argued that there was no duty to address or mitigate the consequences of a third party's acts. The fact that a complaint was made is not sufficient to establish a duty in negligence.
>
> However, neither of those matters are what was alleged by SMA to comprise the College's duty. The context in which a duty to investigate the complaint competently arose was where the College accepted that it had a duty to exercise care for the welfare of its residents, and where it exercised a degree of control over their behaviour through the enforcement of its policies as a condition of the residents becoming part of the College community."

525. A paragraph 129 the appeal court said:

> "It was not the case that SMA's deteriorating mental health, to the point where she developed a recognised psychiatric injury, was a product of the assault itself and her feeling that she had not been believed. As SMA submitted, the sense of injustice felt by SMA included that Mr Johnston's comments indicated he did not believe her, but that was itself a product of the College's mismanagement of the complaint and in any event, what SMA experienced was broader than simply whether or not she was believed. As seen from the extracts of the pleading set out earlier in these reasons, SMA felt she was not taken seriously. It is in that sense that the pleading describes her concerns being "dismissed", namely, treated as unworthy of serious consideration. She felt blamed. She felt unsupported. Her mental state was a direct product of the College's mismanagement of the complaint and there was no error in the primary judge so finding at [283]."

526. Ms Witherington argued there were strong parallels with the present claims. Mr Weetman argued it was unsafe to seek to import a duty of care from *John XXIII College* in circumstances where the negligence at issue had been codified in the Civil Law (Wrongs) Act 2002. The *Caparo* test had not needed to be satisfied. The case was of no assistance.

527. Again, I remind myself that this case is not binding and Mr Weetman's comments about its foundation being a statute that had codified the common law have some force. However, *John XXIII College* illustrates that both the protective steps a higher education institution might take depending on the circumstances and the manner of a disciplinary investigation are not beyond the reach of the common law, at least in Australia. The case also vividly illustrates how foreseeable psychiatric damage can be the result of a mishandled investigation into sexual assault of one student by another.

528. Below I will discuss the extent to which the claimant's pleaded case is supported by the conclusions I have reached about the English cases. First, I need to deal with three further sets of cases which Ms Withington and Mr Weetman submitted were relevant for different reasons.

The employment and quasi-employment cases: *Yapp* and *Waters*

529. Ms Witherington submitted that the proximity in the relationship between the College and its students meant that an analogy could be drawn with the duty of care employers owe their employees. This was especially so in a small institution providing and education that was essentially vocational. The application of a duty in the present context would be a modest step. *Yapp v Foreign and Commonwealth Office* [2014] EWCA Civ 1512 ('*Yapp*') illustrated such a duty in action she said. In that case, a senior civil servant had been the subject of a disciplinary investigation and became ill following his employer taking steps which he believed were unfair and pre-emptive.

530. In *Waters v Commissioner of Police of the Metropolis* [2000] UKHL 50 ('*Water*s') there was a problematic internal investigation of a sexual assault allegedly committed by one police officer against another off duty causing psychiatric harm. Technically, neither were employees at the time, but the House of Lords accepted a duty of care to protect against such harm and investigate competently could arise in a context outside of a conventional employment relationship. Lord Hutton considered there was a weighty public interest in what had occurred being brought to light.

531. Mr Weetman submitted the analogy was unhelpful. An employer/employee relationship such as that in *Yapp* and the force/office-holder relationship in *Waters* were not comparable to the relationship between higher education institution and student. I accept that part of the rationale for the enhanced duty of care in the employment context is the obligation of employees to follow reasonable instructions. The employer must take reasonable steps to ensure that when they do the employee remains safe. There is an imbalance of power but for different reasons from that in the higher education context. In my view, the analogy is tenuous. *Yapp* is helpful on the issue of foreseeability as discussed below, but of no real assistance in establishing if a duty exists.

The religious organisation case: *BXB*

532. Next, Ms Witherington drew an analogy with a religious organisation case when it was considered at first instance by Chamberlain J, *BXB v Watch Tower and Bible Tract Society of Pennsylvannia & Anor)* [2020] EWHC 156 (QB) ('*BXB*'). That case concerned the defendants' responsibility at common law for the rape of a baptised 'publisher' by a religious official. The issues were whether the defendants were vicariously liable for the psychiatric harm caused by the rape (on which Mrs B succeeded at first instance but the decision was ultimately overturned:

see [2023] UKSC 15) and whether the investigation the Defendants had embarked upon was so defective as to have materially contributed to the that harm. The Judge considered the circumstances to be novel and so any duty of care in relation to investigation by such a body would need to be imposed applying *Caparo* principles. The first and second tests were easily satisfied, he held: see paragraphs 178 to 180 of the judgment which I return to at paragraph 562 below. Given his conclusion on vicarious liability, he declined to reach a final conclusion on the third: see paragraphs 181 to 186. *BXB* is helpful on foreseeability as discussed below but the lack of a conclusion on the third *Caparo* test means it is less useful on the duty question.

The police investigation cases: *Robinson*, *Brooks* and *French*

533. I now turn to a series of cases Mr Weetman relied on to advance the point that, if the public authorities primarily entrusted with investigatory functions, i.e. police forces, are only subject to duties of care in narrow circumstances, a body like the College established primarily for education rather than investigation could not be subject to any such duty.

534. First, Mr Weetman submitted *Robinson* was helpful in a further sense because Lord Reed and Lord Hodge both discussed the position of the police in particular, concluding they are subject to liability for causing personal injury in accordance with the general law of tort: see paragraph 45. Importantly, however, "the general duty of the police to enforce the law did not carry with it a private law duty towards individual members of the public", for example to future potential victims of a murderer they are investigating. This was an example of the general principle that the law does not normally impose liability to prevent harm by third parties absent special circumstances such as an assumption of responsibility see paragraph 50. Further, "[o]n ordinary principles, behaviour which is merely insensitive is not normally actionable, even if it results in a psychiatric illness" which included the insensitively conducted police investigation discussed in *Brooks v Commissioner of Police of the Metropolis* [2005] UKHL 24 ('*Brooks*'): see paragraph 60. At paragraph 70, Lord Reed added "the police are not normally under a duty of care to protect individuals from a danger of injury which they have not themselves created, including injury caused by the conduct of third parties, in the absence of special circumstances such as an assumption of responsibility." Lord Hughes added at paragraph 120, "whilst there remains a duty of care imposed on police officers not by positive action to occasion physical harm or damage to property which ought reasonably to be avoided, there is no duty of care towards victims, witnesses or suspects in the manner of the investigation of offences or the prevention of crime. That also means that there is no duty of care to protect individuals from harm caused by the criminal acts of third parties."

535. Secondly, Mr Weetman relied on *French v Chief Constable of Sussex Police* [2006] EWCA Civ 312 ('*French*') a case in which police officers were involved in a fatal shooting said to be attributable to deficient training and then made the subject of criminal disciplinary charges. Their claims for damages for psychiatric injuries were rejected on the basis that they were neither primary nor secondary victims.

536. Ms Witherington also relied on two police cases. She submitted *Welsh v Chief Constable of the Merseyside Police* [1993] 1 All ER 692 and *Swinney v Chief Constable of the Northumbria Police* [1997] QB 464 ('*Swinney*') showed that where the CPS and police had made specific commitments to a suspect and informants respectively, they assumed the responsibility to take reasonable care in the manner in which they were honoured. In *Swinney* the police had inadvertently left a document setting out allegations of serious criminal activity from landlords of a pub in an unattended car which was broken into. The publicans were exposed to risk, had to move and suffered psychiatric injuries. The case was argued both as a breach of confidence and in negligence. The police appealed against a refusal to strike out. The Court of Appeal held the circumstances meant the relationship between the police and publicans was far more proximate

than that with the public at large because the police had given assurances of confidentiality. The case was analogous to *Dorset Yacht*. There was no overriding public policy reason why it should not proceed. The strike out appeal was rejected.

537. There are difficulties in seeking to compare the relationship between the police and the public on the one hand and that between a higher education institution and its students on the other. Most obviously, the first of these relationships is far less proximate than the second. This is underlying rationale of paragraphs 50 and 60 of *Robinson. Swinney* was decided as it was because there had been an assumption of responsibility for the publicans. *Brooks* is not authority from which a great deal can be extrapolated because by the time the case reached the House of Lords, the duty said to have been breached was defined in a way that was specific to that case. Mr Brooks was a friend of Stephen Lawrence and close by when he was murdered, then treated inappropriately. There are also difficulties with Mr Weetman's submission that the scope of the duty contended for by the Claimants was wider than any recognised in respect to the police. Existence and scope are related but different concepts. Depending on the circumstances such as what responsibility had been assumed, a higher education institution's investigation and disciplinary action duty might be as narrow as requiring reasonable steps to those ends taking proper account of, but not bound by, the institution's own policies and documents like the Universities UK Guidance where their relevance is accepted. For these reasons, I did not find the police cases to be a useful guide to the College's responsibilities. As for *French*, the comparison is not apt. The Claimants here argue they are direct victims because of the College's harmful response to reports they made. They are, on their cases, primary victims of that harm despite there being earlier events that caused harm, just as a person injured in a road traffic accident would be if they were taken to hospital and negligently injured by a clinician.

Analysis and conclusions on the duty question

Operational negligence

538. Returning to *Siddiqui*, the first question to answer is whether any or all elements of the duty the Claimants rely on can be accommodated into Kerr J's third category, "simple operational negligence in the making of educational provision". If they can, the application of the first *Robinson* principle means that a duty may be recognised.

539. I asked Mr Weetman about this. He submitted that the third category drew a distinction between 'content' and 'context'. The duty was concerned only with content, such as deficient teaching methods impacting on what students were and were not taught. Here an example would be the adequacy of the acting syllabus. Context concerned the place, means and arrangements for teaching. These were 'pastoral' matters and so forbidden judicial territory. This submission was unpersuasive. Kerr J said none of this in *Siddiqui.* Further, the examples Mr Weetman gave fall squarely into the second category and the examples of third category cases, such as the drunken teacher or the poor supervision in *Winstanley*, have nothing to do with content of taught material.

540. I have concluded that matters such as the organisation of classes and shows in this context, including making special arrangements to accommodate the needs of particular students, and deciding where students should attend at particular times to further their studies, including in this case the male student's attendance at shows, are all operational matters. It follows they are not academic or concerned with negligent teaching methods or course content. Other than the shows, they are part and parcel of the organisation of every educational institution. All are necessary for educational provision to take place, but they are the means and not the end. Sometimes academic staff will be responsible for them but often, as with the College in this case, administrative staff will be involved. It seems to me that this is precisely what Kerr J had in mind when describing the third *Siddiqui* category.

541. A limited number of the instances of negligence listed at paragraphs 452 to 461 can therefore comfortably be categorised as operational. Those concerned with protection are the pleaded failures to provide separate timetables from September 2017 and to ensure Ms McCamish and the male student were not in the same classes and performances after that date, allowing the male student into the College campus when formally suspended (which is also pleaded by Ms Feder), and failing to exclude the male student from performances 'Rage' and 'All My Sons'. On this last instance of pleaded negligence, I can see an argument that whether the male student should have been excluded from those shows altogether is an academic question. Mr Weir explained that the academic staff were insistent that he should see the end of year shows of other students. However, that argument would go nowhere because the College's staff did not require any student to attend all performances of all end of year shows. The male student was simply required to see one performance of each. Mr Bond came up with a practical solution to avoid those performances being ones in which Ms McCamish would appear but that was only put in place after the first show and then was ineffective.

542. This is not enough to establish a duty, however. The Claimants must also show either that there was an assumption of responsibility where the instances of negligence they identify are framed as omissions or failures to confer a benefit coupled with reliance by the Claimants: see *Poole* and *Robinson*. Assumption may be express or implied: see *X* and *Poole.* Reliance may also be express or implied and in *Sherratt v Chief Constable of Manchester* [2018] EWCA 1746 King J suggested at paragraph 82 that the further the facts of a case are from the quasi-contractual paradigm of negligent advice in *Hedley Byrne*, the less importance reliance will be. What matters more is proximity. Alternatively, the Claimants could show there were positive acts done voluntarily that caused harm, making matters worse.

543. In my view, there was an assumption of responsibility for the operational matters I have identified on the facts of this case. Neither Claimant had control over them and both relied on the College. There was not only a general assumption of responsibility for these operational matters that can be easily implied from the College's policies and practices, but specific instances of that responsibility being assumed in relation to several of the pleaded instances of negligence. For instance, in relation to the timetabling of the male student and Ms McCamish in the same classes, the College had undertaken to keep them separate from the September 2017 term onwards, something both Ms Logue and Ms Le Conte considered would be easily accomplished and Mr Bond described this as a 'promise' to Ms McCamish: see paragraphs 136, 138 and 139 above, for example. As regards the suspension, the College decided upon a sanction which students were told was being enforced. Plainly, the College is responsible for enforcing its own disciplinary decisions. Last, as regards the shows, I have found that Ms McCamish was given specific assurances by Mr Weir that the male student would be spoken with to discourage his attendance and by Mr Bond that he would not be attending: see paragraphs 375 and 387. The correspondence shows that those assurances were hugely important to her and her evidence reinforced this. She relied on them and repeatedly told the College how unsafe she felt in the male student's presence: see for instance paragraphs 97, 137 and 251. The assurances were given by senior representatives of the College. For the purposes of the assumption of responsibility, I do not think it matters that internally there were email discussions about the inappropriateness of interventions to prevent the male student's attendance at the shows or of discouraging him. Ms McCamish had no way of knowing any of this was happening until disclosure took place during the litigation. Ms Feder also relied on the process of investigation and disciplinary action, despite her misgivings and assumed she would be supported: see, for example, paragraphs 226, 322 and 324. It was also Mr Weir's evidence that people like Ms Feder, classed as witnesses, needed to trust the process.

544. If I were wrong on assumption of responsibility, the Claimants could have still succeeded in establishing a duty in relation to several of these operational matters because, on the evidence,

some of the positive steps the College took could lead to harm (though the emphasis in the pleadings was on failures rather than such acts). For example, it arranged the morning timetables, continued to employ the male student in the library and pressed Ms McCamish to continue with her performances notwithstanding his presence, and helped him get a ticket so he could attend when she was performing.

545. Before discussing other aspects of the duty, I will deal briefly with "[p]ermitting [the male student] on or about second week of June 2017, to be in the same classroom as the Claimant and to remove all of his clothes, as described above." I have concluded that this cannot be categorised as potential operational negligence, because what is permissible in an acting improvisation class must fall into the first or second *Siddiqui* categories: academic judgement or negligent teaching methods. If it falls into the first, that is fatal. If, as is more likely, it falls into the second category, there would need to be evidence on the *Bolam* test. There is none and I do not consider this particular aspect of the College's actions needs to be tested by reference to *Caparo* because it is not arguable the College could have foreseen the impact on Ms McCamish as she had yet to make her report. This instance of negligence therefore falls away.

546. I have considered whether any other instances of negligence pleaded by the claimants could be characterised as "simple operational negligence in the making of educational provision". It can certainly be argued that many of them were. Ultimately, I have decided that the duty should not be framed in this all-embracing way in this case. For one thing, the third *Siddiqui* category examples are all things closely connected with the primary function of educational institutions which is to educate. It may be impossible to do that in a school setting without disciplinary procedure, but that does not mean disciplinary matters are "educational provision" in themselves. Further, this point was not developed by the Claimants and there may be counter-arguments the College would want to deploy.

Are the education harm and educational support services cases analogous?

547. Having dealt with the third *Siddiqui* category, the next question is whether any other aspects of the duty of care on which the Claimants seek to rely are based on established principles applied in like circumstances: see *Robinson* at paragraph 27. I have already explained why the employment and religious organisation cases offer no real help in identifying the existence of a duty at issue in this case. The education harm and educational support services cases are important, however. How then do they apply in the present context?

548. First, as Judge J recognised in *Bradford-Smart*, the problem of bullying is now well enough recognised for it to be reasonable to expect all schools to have policies and practices in place to meet it. It must be equally reasonable to expect a reasonable higher education institution to have policies and practices, including a disciplinary procedure, in place to help protect students from the harm they might otherwise cause each other and to bring about accountability if harm occurs. This expectation was reflected in the Zellick guidelines three decades ago. The Universities UK Guidance and material produced by higher education institution bodies such as the Office for the Independent Adjudicator continue to recognise this today, though there is far greater awareness of the harm of sexual violence and harassment and the need for support for those who allege it has occurred. It is not necessary for institutions like the College to follow guidance slavishly when deciding what their own policies and practises should be. However, *Bradford-Smart* suggests they could not lawfully abdicate all responsibility for student conduct and the College certainly has not done so. The material produced by the College, including the description of mutual responsibilities and partnership on the HUB/HWB reinforces this, as does the 2016 Conduct Policy.

549. Drawing these threads together, I find that the College's duty of care is not limited to operational matters. It may extend to taking steps to keep students safe from some forms of harm, including through the operation of a disciplinary procedure to investigate and address harm caused by fellow students, when appropriate. I add the caveat 'when appropriate' because not every form of harm between students will necessitate a disciplinary investigation. Some very minor matters may not, and the procedure may not be appropriate in serious cases being handled by the police, or its operation may be suspended. That is recognised in both Changing the Culture and the Universities UK guidance. I return to the scope of the duty in the next section of this judgment.

550. Whether such a duty crystallises in relation to the omissions or failures the Claimants identify in relation to protection from harm, support and investigation and disciplinary action and associated communications depends on there being an assumption of responsibility and reliance by the Claimants. Alternatively, there must be positive acts that made matters worse.

551. Returning to the instances of negligence listed at paragraphs 452 to 460 above, all those in the 'failure to protect' category can be considered as potential failures to take reasonable steps to keep students reasonably safe from harm. That is the way the category is framed. I have dealt with some as operational matters already and repeat that events in the improvisation class do not need to be grappled with. In respect of the remainder in that category, I find that the College assumed the duty to take these steps when it committed to safeguarding and investigatory and disciplinary action, both generally and in relation to the Claimants' reports. This is consistent with the evidence of Mr Allin, Mr Weir and Mr Henson about owing students a duty of care. The College's actions must be considered alongside its 2016 Conduct Policy and the Universities UK Guidance because Mr Allin, Mr Weir and Mr Henson were emphatic both were relevant to what it had committed to do. Mr Allin and Mr Weir had specific safeguarding roles and said the Safeguarding Policy was relevant and considered. The Claimants' engagement with the College and its processes were consistent with what they said in evidence about their expectations of protection. As for the advice Mr Weir gave Ms McCamish about her options in June 2017 and the fact nothing meaningful was said about the College's disciplinary procedure, it seems to me that this is a straightforward instance of a professional's assumption of duty to give competent advice. Ms McCamish relied on the advice. I also find that the College assumed the responsibility to advise Ms Feder of her options when she made her report. Mr Weir came very close to accepting it ought to have done so.

552. There is one exception, however. Even though the Safeguarding Policy provided that accommodation issues should be grappled with and Mr Weir decided to do nothing about Ms McCamish being in the same flat as the male student, there is no evidence that she relied on the College at the time to help her find a safe alternative. I therefore find that the pleaded instance of negligence "[f]ailing to help the Claimant find alternative accommodation in June 2017 after she reported the assaults, as she was still residing in the same student accommodation" falls away even though it may well have been better to properly explore this with her.

553. Next there is provision of support: see paragraphs 454 and 455 above. Provision of support is not discussed in any of the education harm cases save for *Abrahart* where no duty was found. Nonetheless, I have concluded the present case is different. Here there were relevant commitments and, like the educational support services discussed in *Phelps*, the purpose of support h was to facilitate students continuing to be educated, especially when problems arose. The College promoted itself on the basis of providing support: see paragraphs 31 and 72. Support was promised on the HUB/HWB and what was said there was underpinned by the College's policies: see paragraphs 25, 27 and 61 to 67. According to Mr Henson, support and advice were things students could expect when they were involved in an investigation: see paragraphs 183 and 194. These were important commitments and as *Barrett* makes clear, reliance can be implied into a relationship. When considering this part of the Claimants' case, I have also

kept in mind the College's evidence that all students were owed a duty of care, including the male student: see paragraphs 213 and 248. The support he was assured of was expressly linked to a duty of care by Mr Heston: see paragraph 193. Steps were taken to support him at meetings, with drafting his appeal and statement and with the costs of external support: see for example paragraphs 209, 296, 309, 334, 401 and 425. Ms Wischhusen was also supported to some extent, including through arranging counselling: see paragraph 83. All this shows what could be done.

554. Ms McCamish was expressly told the College was "ready to help in any way we can" and that she should be "assured of College's support in this matter and of our continued commitment to both [her] welfare and your education": see paragraphs 113 and 183 above. The Safeguarding Policy was engaged: see paragraphs 68 and 205. Specific commitments were made to Ms McCamish to arrange EMDR: see, for example, paragraphs 372, 374, 399 and 407. All this is consistent with an assumption of responsibility. The College's commitments were certainly relied upon, as Ms McCamish and her parents repeatedly asked for them to be honoured: see, for example, paragraphs 252, 399, 401, 405 and 414.

555. Ms Feder's expectation of support arose from having paid the College to educate and protect her and entrusting non-academic staff to respond appropriately to her report after her negative experiences of raising concerns with tutors. Her evidence was that she could not understand why support was not offered: see for, example, paragraphs 322 and 324.

556. The penultimate category is communication associated with the first two: see paragraph 458 above. It covers three very different matters.

557. The first is the pleading there was a failure to investigate and deal with Ms McCamish's complaint confidentially. Given the 2016 Conduct Policy's insistence on confidentiality and what Mr Allin and Mr Henson said at the time, I accept there was an assumption of responsibility in this sense. I also accept Ms McCamish was entitled to assume the process would be confidential. There are several examples of information about the process being shared with students and others. However, there are no cases in the education context that frame breaches of confidence as negligence. The reason is likely to be that, in parallel with the tort of negligence, the common law has developed a sophisticated tort of breach of confidence which has its own parameters and inbuilt control mechanisms. Ms McCamish's case was not pleaded in that way (or for that matter, as a breach of the Data Protection Act 2018 which creates parallel remedies). However, *Swinney* shows there can be a viable action for negligent disclosure of confidential information where specific assurances of confidentiality have been given, at least in a case where the breach has very serious consequences. Ms McCamish's case potentially can be considered in this way. However, an internal disciplinary investigation in a higher education institution is a very different context from a police investigation. I have therefore concluded this part of Ms McCamish's case depends on the application of *Caparo* which I come to shortly.

558. Then there is "[a]nnouncing the result of the investigation into the Claimant's complaint to the year group, without her consent or knowledge." This was pleaded as a positive act, not an omission. It was potentially harmful and so caught by the duty identified above.

559. Paragraph 458(3), which concerns Ms Bond's assisting the male student to prepare his statement and read to the second-year cohort in April 2018 is similarly a positive act alleged to be harmful.

560. Turning last to the catch all category, save for offering Ms Feder support such as counselling being part of "[f]ailing to take reasonable care for the safety of the Claimant" which I have addressed above, I do not consider these points add a great deal to the Claimants' case. I can see how the assistance Mr Weir repeatedly gave the male student might have shocked the Claimants when they found out about it, presumably during the disclosure process in this litigation.

However, I do not see how the College can be said to owe them a duty not to offer particular forms of assistance to that student save for those that directly harmed them. This part of the pleaded case is outside the duty I have identified and so it too falls away.

Caparo

561. Given my conclusion that established principles answer the question of whether there is a duty of care, *Caparo* is strictly only relevant to the confidentiality pleading because the context is so different to *Swinney*. However, it will also be relevant if I am wrong about the significant instances of negligent omissions or failures to confer a benefit identified by the Claimants being grounded in the well-established law on operational negligence, provision of support services education context and protection from harm. Both parties made submissions about the application of *Caparo* to the whole case. I will summarise them briefly, then make some general observations followed by specific ones on the confidentiality pleading.

562. On foreseeability, Ms Witherington invited me to focus on the knowledge that someone in the College's position would be expected to possess about the potentially harmful consequences of the failures the Claimants had identified in their particulars. She relied heavily on Chamberlain J's decision in *BXB* at paragraph 178. He noted the comments in *Yapp* that it would be exceptional for an employer to foresee that psychiatric injury would be suffered by an employee as a result of disciplinary proceedings. However, he added that:

> "The position of a complainant who claims that she has been raped or subjected to serious sexual assault is, however, unusual. Such a complainant, if she is telling the truth, will already have suffered what is likely to be a traumatic and humiliating violation at the hands of her attacker. Rape and serious sexual assault give rise to psychiatric injury in a significant proportion of cases. Any investigation and hearing conducted to determine whether the assault took place are likely to require the complainant to recall and relive the experience in a semi-public forum. Especially if mismanaged, the process affords opportunities for the humiliation caused by the attack to be repeated and magnified and for any psychiatric injury to be exacerbated. These basic facts are obvious and should have been so by the early 1990s, even bearing in mind that understanding of the effects of sexual assault has advanced in the intervening years."

563. Mr Weetman submitted that these comments were *obiter* as Chamberlain J had found it unnecessary to reach a conclusion on the *Caparo* factors.

564. I will discuss foreseeability further below but at the level of principle, like Chamberlain J, I accept that if an institution embarks on, but mishandles, an investigation of sexual assault it is reasonably foreseeable that is likely to cause or exacerbate the psychiatric harm that often follows such an assault. That is not only widely known as the Judge said, it was acknowledged by both experts in the present case, whose evidence on the point was not challenged, and in the literature to which Ms MacArthur Kline discussed in her report on Ms McCamish including the CPS guidance. It is also discussed in Changing the Culture and was central to *John XXIII College*.

565. I also consider that if there is a significant breach of confidence in the context of an investigation of this nature it is reasonably foreseeable that too will cause psychiatric harm. The need for confidentiality is stressed at footnote 1 of the Universities UK Guidance. Harm to a reporting student is expressly recognised as a consequence of an authorised disclosure to the police in section 7. There must be at least an equal risk if sensitive information is disclosed to others.

566. Ms Witherington contended that the proximity factor was easily established in a relatively small educational institution such as the College, which consider partnership based on responsibilities important, and where the training was vocational and students' performance, including appearing in shows staged by the institution was critical to that career. Mr Weetman argued that *Yapp* and *Piepenbrock v The London School of Economics and Political Science* [2018] EWHC 2572 ('*Piepenbrock*') showed the difficulties a claimant would have in establishing liability in the far more proximate relationship of employer and employee. As I mentioned above, I do not think the analogies or comparisons with employment relationships are determinative. The differences outnumber the similarities and higher education institutions have particular features. Schools are far closer comparators. The proximity of a school to its students is long settled. I consider the relationship sufficiently proximate one for *Caparo* purposes in relation to the duty discussed above based on operational negligence, provision of support services education context and protection from harm. I would have made a specific finding in this had it been necessary to do so.

567. I consider that there is sufficient proximity in relation to the specific breach of confidence pleaded. As in *Swinney*, there were confidentiality assurances given: see paragraphs 48, 111 and 183 above.

568. As to the fairness, justice and reasonableness of the law imposing a duty, Ms Witherington pressed for a common-sense approach that took account of the known vulnerability of students in the Claimants' position and the likelihood of harm. The relationship was proximate. Students are sometimes vulnerable, and the Claimants here were. They relied on the College. Harm was likely. Employers are not deterred from investigating sexual assault and harassment because they owe employees a duty to exercise care when doing so. The courts are well equipped to weed out weak claims. Higher education institutions are well equipped to investigate and are in a unique position to do so as well as taking protective steps. That was particularly true of the College given its size. Mr Henson had pithily described many of the very steps the Claimants argued the College was obliged to take: see paragraphs 194 and 195.

569. Mr Weetman submitted there were seven factors which meant the expansion of the law he submitted the Claimants needed was not only an exceptional course of the kind identified *in Reeman v Department of Transp*ort [1997] P.N.L.R. 618 at page 625A but also undesirable. The first was that it would deter higher education institutions from investigating altogether for fear of psychiatric injury or distress being caused. That would not arise in the present case in my view because the College is obliged by its governance arrangements to operate a disciplinary procedure. It may be that many other higher education institutions are under a similar obligation. I consider that it would be difficult for such institutions to abdicate their responsibilities altogether even if that were legally possible. As with schools, it is hard to see how such institutions could manage without a disciplinary procedure. Secondly, Mr Weetman argued institutions would be incentivised to routinely refer matters to the police regardless of students' wishes. Even if that happened, it is likely that minor matters and those where there was no prospective successful prosecution for some reason would simply be referred back. Next Mr Weetman argued that such a duty would require higher education institutions to operate the equivalent of specialist Rape and Sexual Offences units. I found this point hard to follow. I do not accept such a unit is necessary for an institution to competently and fairly investigate reaching a conclusion on the civil standard. Mr Weetman's next point was that such a duty would prompt a significant volume of litigation by parties. I do not accept that. It is already possible for students to judicially review educational institutions when they are dissatisfied with the outcome of disciplinary decisions, but there have been very few cases. ADR, whether mediation or an OIA complaint, may be appropriate in some cases. Mr Weetman also submitted that the Claimants already have a remedy, which is to bring civil proceedings against the male student. This point is not strong. Practical considerations aside, what the Claimants seek in this case is

damages for the wrongs they say the College is responsible for and their consequences, not for any liability of the male student. They could not claim against him for any consequences of the College's negligence. Sixthly, Mr Weetman pointed to the debate prompted by the ePetition discussed at paragraph 441 above. If Parliament was considering a statutory duty, the courts ought to be wary of imposing one. This conflates two different roles. The courts' role is to determine and apply the law as it is whereas Parliament's is to legislate, if it wishes, for what it should be. I have already dealt with the final point Mr Weetman made, which was about the Claimants being neither primary nor secondary victims: see paragraph 537.

570. Had it been necessary to do so, I would have found it fair, just and reasonable to impose a duty of the kind I have described based on the taking of reasonable steps to avoid operational negligence, competently provide services that support the provision of education, protect from certain forms of harm, investigate and take disciplinary action when harm has, or may have, occurred and associated communication.

571. Seven factors weigh in favour of doing so. First, if I am wrong in concluding that existing case law supports such a duty it would only because of relatively minor distinctions between the circumstances of this case and those where a duty has been found, in particular in schools. The advancement of the law would be incremental, small and based on close analogies not incoherent distinctions that cause injustice: see *Robinson* at paragraph 27. Secondly, many higher education institutions already willingly embrace the responsibilities that would come with a duty as can be seen from the Changing the Culture report and the training material Ms MacArthur Kline cites in her report. It is also significant in this case that senior College staff believed they were subject to a duty that included protective, supportive and investigative steps. Thirdly, such institutions are subject to parallel public law obligations, based on the common law, to act fairly when investigating disciplinary matters, including on matters such as hearing both sides to a dispute about what happened in a sexual assault case where there are no witnesses and, having done so, weighing evidence on credibility properly: see e.g. *AB v University of XYZ* [2020] EWHC 2978 and [2023] EWHC 116. That does not mean that the law of tort should mirror those obligations, but they too are based in the common law so are relevant to what is fair, just and reasonable. Fourthly, I accept resources will be needed to discharge that duty competently, but that is not in itself a reason to withhold a remedy for any incompetence any more than it would be in the employment context. If anything, resource-based arguments support in position of a duty because, as Ms Feder put it, students pay their institutions for education but also to look after them. The College also markets itself that way. Fifthly, the duty may well incentivise competence in investigations. Sixthly, both experts in the case attested to the fact that the personal cost of a failed response to a report of sexual assault can be very great for the individual. It would be unjust were there no remedy. Last, when an institution structures itself as a value-based community, based on reciprocal obligations, the expectations that engenders its members ideally should have some legal underpinning. Like Ms Witherington, I was struck by the common sense of Mr Henson's evidence about what students should expect from the College in terms of reciprocity of obligations, support, care, fairness and a reasoned decision.

572. I consider that pleaded case on breach of confidence should be dealt with in the same way, despite the existence of parallel common law and Data Protection Act 1998 remedies, given *Swinney*. The Court of Appeal concluded such remedies did not debar a negligence claim.

The duty

573. In the education harm cases courts identified a simple and practical formulation of the duty before applying it. For example, "a school is under a duty to take reasonable care for the health and safety of the pupils in its charge" said Judge LJ in *Bradford-Smart* and there was "a duty to take reasonable care to see that Henry was reasonably safe during school hours and for a

reasonable period after the end of the school day while he was still on the school's premises" in *Webster*. I will summarise the duty in this case in similar terms. It was to take reasonable care by taking reasonable protective, supportive, investigatory and, when appropriate, disciplinary action steps and in associated communications, including by honouring confidentiality assurances.

IV. STANDARD OF CARE

574. In the education harm and support service cases, the duty and standard of care were formulated concisely in various ways. The "schoolmaster was bound to take such care of his boys as a careful father would take of his boys" in *Rich* (women and girls go unmentioned). There was "a duty to take such care of pupils in their charges as a careful parent would have in like circumstances, including a duty to take positive steps to protect their well-being" in *Gower*. In *Phelps* Lord Slynn agreed "with what was said by Lord Browne-Wilkinson in the *X (Minors)* case [1995] 2 AC 633, 766 that a head teacher owes 'a duty of care to exercise the reasonable skills of a headmaster in relation to such [a child's] educational needs' and a special advisory teacher brought in to advise on the educational needs of a specific pupil, particularly if he knows that his advice will be communicated to the pupil's parents, 'owes a duty to the child to exercise the skill and care of a reasonable advisory teacher.'"

575. Kerr J expressly contrasted the operational category of negligence identified in *Siddiqui*, with the second category where evidence satisfying Bolam would be needed, noting "[i]n such a case if it is proved on the facts, a court does not need expert evidence to accept the proposition that the required standard of professional skill and care has not been met." This does not suggest the standard in his third category is significantly different.

576. As noted above, I have found in this case that there is a duty to take reasonable care by taking reasonable protective, supportive, investigatory and, when appropriate, disciplinary action steps and in associated communications. Ms Witherington submitted that the standard of care was simply that of the 'reasonable higher education institution'. Mr Weetman submitted the "standard to be expected is that of the reasonable higher education provider when judged in accordance with a responsible body of education providers. It is neither a counsel of perfection nor a test to be applied with the benefit of hindsight." He cautioned against the kind of approach that might be appropriate in the Administrative Court.

577. These two formulations are very close. I accept that the standard is that of a reasonable higher education provider.

578. Mr Weetman's addition of "a responsible body of educational providers" presumably draws on *Bolam* and *Bolitho v City & Hackney Health Authority* [1997] 3 WLR 1151. Those were medical negligence cases and here the context is different, but I accept that if one of a body of reasonable higher education providers would have done what the College did for logical reasons even if some providers would not, the College's actions would be reasonable. Putting this another way, there may be several ways in which a reasonable higher education institution might have responded in the circumstances that arose in this case, some arguably better than others. The College's actions or failures must fall outside that spectrum for a breach of duty to be established. I will not repeat these points through the paragraphs that follow but have kept them in mind throughout and will use the phrase 'the reasonable higher education provider standard' as shorthand.

579. Duties of this nature are qualified in other ways. The specific steps that are reasonable in respect of adult students may be different to those that might need to be taken in respect of children,

given their relative inability to look after themselves, just as what the law demands in terms of the care of a young child is different to that required for a child close to adulthood.

580. Aspects of the duty are context-sensitive, just like any other common law duty. One example I identified during the trial would be a classic health and safety situation. Suppose a student is undertaking a course to become a theatre lighting technician and the instructions he is given by a staff member on how to mount a heavy stage light are negligent, resulting in the light falling and seriously injuring another student during a show. Paradigmatically, this would be caught by the duty of care. Conversely, the more remote the actions of students are from the College's educational provision where its control and responsibilities are maximised, the less the duty may require and eventually there will be a point where there is no duty at all. This principle is clear from all the education harm cases I have discussed including *Bradford-Smart, Webster, Abrahart* (and, for that matter *John XXIII College* and *Regents of University of California*). However, physical proximity to the institution is not determinative in itself. Some actions that take place away from a higher institution may be so closely connected to the provision of education including the interaction of students that the duty will be triggered. Ms McCamish says that is the case here, of course. *Waters* illustrates such a principle in action in a different context.

581. The policies and practices an institution have devised will be relevant to what is reasonable, as will industry guidance and practice. Neither will be determinative of reasonableness. Mr Weetman drew my attention to *Green v Building Scene Limited and another* [1994] P.I.Q.R 259 where Staughton LJ drew a distinction between evidence of current professional opinion set out in building regulations and the relevant British Standard and "what is reasonably safe in all the circumstances of a particular case". A similar point was made in *Poppleton v Trustees of the Portsmouth Youth Activities Committee* [2008] EWCA Civ 646 about HSE guidance. I accept this. Guidance is not law, but it is relevant if produced for an industry by a respected national body. An institution's own policies and practises will also be relevant to what is reasonable in the circumstances because it cannot be right for an institution to adopt very specific policies and practises, promulgate them and then argue they have no legal relevance to student's expectations. As Mr Henson fairly put it, students can expect reciprocity in their relationship with the College: see paragraph 30 above. However, even an institution's own policies and practises will not be determinative of what is reasonable. They might be flawed in some respect or there might be good reason to depart from them.

V. RELEVANCE OF THE HEALTH AND SAFETY AT WORK ACT 1974

582. This issue can be dealt with shortly. Ms Witherington submitted that the 1974 Act it did not form a separate cause of action but informed the standard of care to be expected of a reasonable employer and the scope of the duty of care. Subsections 2(1) and 3(1) are expressed in general terms but oblige the employer to ensure the health and Safety at Work of all his employees, and that persons not in his employment are not exposed to risks to their health and safety, so far as reasonably practicable: see *R v Chargot Ltd (t/a Contract Services)* [2008] UKHL 73. In my view this does not take matters any further. First, *Poole* explains that, the existence of a sophisticated statutory framework of assessment, decision making and support provision, does not create or even inform the content of common duties. Further, historically civil claims based on the 1974 Act were possible, the Parliament chose to take away that statutory tort through the Enterprise and Regulatory Reform Act 2013, subject to narrow exceptions. In these circumstances it would be wrong to attempt to mirror the 1974 Act in the common law duty.

VI. BREACHES OF THE DUTY OF CARE

583. Using the categories at paragraphs 452 to 461 above and applying the standard discussed at paragraphs 574 to 580, I will now determine whether the pleaded instances of breach of duty

occurred save for those that have already been dealt with. As with all my findings of fact in this judgment, I have applied the civil standard. I have also been mindful of the dangers of scrutinising the College's actions with the benefit of hindsight and of applying a standard that exceeds what the law of negligence requires.

Protection

The 2016 Conduct Policy's silence on sexual misconduct

584. I will first discuss whether the College failed to "have in place any or any adequate processes and or systems and/or policies to safeguard the Claimant" because logically that precedes the other alleged failures. The Claimants' case on this point was distilled as the trial progressed and by the time of Ms Witherington's closing submissions it was simply that the College had no policy which it applied defining "sexual misconduct" and that there should have been such a policy. Mr Weetman's submission was that the systems in place were reasonable and proportionate in the context of the College, which included the induction presentation, designated student liaison staff and safeguarding officers, provision of advice and support via an identified point of contact and having the 2016 Conduct Policy in place. That policy silence on sexual misconduct did not render it unfit for purpose or unreasonable. It was clear that misconduct would be the subject of disciplinary action. Mr. Allin had recommended revision of policies in his report.

585. Mr Henson was candid in his evidence that the omission of sexual misconduct was an "error", given its inclusion in the university regulations and what had been said in the letter to The Stage. I accept what he said about the idea that sexual misconduct was not a form of misconduct would be anathema to him and his colleagues. However, one of the functions of documents like the 2016 Conduct Policy, perhaps the most important, is to enable students to understand what conduct is acceptable and regulate themselves. It is also important that everyone understands and applies common standards whatever their role is within an institution such as the College. The omission was serious, especially given the consequences of forms of sexual misconduct such as sexual assault and rape. The experiences of Ms Wischhusen, Ms Eldekvist and the other unnamed student Mr Allin mentioned should have put the College on notice, if notice were needed, that there was a very serious problem it needed to confront in its policies. It said publicly that it had and did so in the staff-facing policy, but Mr Henson's evidence was that this was simply not done in relation to students.

586. In determining whether omitting to mention sexual misconduct in a disciplinary procedure falls below the reasonable higher education provider standard, I have considered the Universities UK Guidance. It says at section 2 that institutions should "publish a code of conduct which (i) sets out the types of behaviours that are unacceptable; (ii) makes it clear that any such behaviour will amount to a breach of discipline… this is particularly important in relation to sexual misconduct as different acts arising from the same type of behaviour will need to be treated very differently." I find that is a strong, albeit not determinative, indicator of what any reasonable higher education institution would do.

587. I have concluded the College failed to exercise the care that could be expected of such an institution when framing the 2016 Conduct Policy. Even had there been no Universities UK Guidance, I would have reached the same conclusion partly because of the disparity of protection between staff and students, partly because of the critical importance of identifying and defining unacceptable sexual misconduct.

Reporting safeguarding concerns

588. The next two pleaded instances of negligence were failure to report what Ms McCamish had said in June 2017 to Mr Weir as Safeguarding Officer without delay and similarly, failure to report what Ms Feder had told Mr Allin and Mr Henson in January 2018. Paragraph 9.3 of the Safeguarding Policy required such a report to be made at the earliest opportunity.

589. As regards Ms McCamish, Mr Weetman submitted there was nothing in this because Mr Bond had confirmed with Mr Weir on 13 June, the same day of the initial meeting with the staff group. However, that was three days after Ms McCamish's meeting with Mr Garven.

590. Ms McCamish told Mr Garven about being sexually assaulted and threatened by someone she was still living with who also shared classes with her. That ought to have been reported to Mr Weir or another safeguarding officer immediately, not three days later. That was what the College's own policy required and it was expressed in mandatory terms. Section 6 of the Universities UK Guidance provides similarly "[t]here should be a clear, simple and accessible method of reporting incidents to ensure that students are referred to these specially trained members of staff as quickly as possible".

591. Taking the College's own mandatory policy into account alongside the guidance it considered was relevant, I have concluded the College should have acted quicker, but this was not an emergency where an immediate intervention would have made a difference. I therefore concluded that it did not fail to exercise the care that could be expected when Ms McCamish first made her report when assessed against the reasonable higher education institution standard. This part of the case falls away.

592. Turning to Ms Feder, Mr Weetman submitted that either Mr Weir or Mr Allin needed to be notified and Mr Allin was promptly. I accept that. Mr Allin had limited information before he met Ms Feder. It is unclear how and when he became aware of her report, but Mr Weir believed she was distressed and victim of and alleged sexual assault when he heard about what she had said, quite possibly from Mr Allin or Mr Henson. For the purposes of this part of her claim, Ms Feder must show that none of the safeguarding officers were notified in a timely way. There is no evidence to show that breach occurred. It follows that this part of her claim falls away.

Treatment of the Claimants' reports when they were first made

593. In this part of their pleaded case, the Claimants contend that their reports ought to have been treated as 'official complaints' which engaged the Defendant's Safeguarding Policy when they were first made in June 2017 by Ms McCamish and January 2018 by Ms Feder. They also say there were failures at those times to tell them they were required to make a "formal written complaint" of their allegations. In other words, they would have been better protected and supported had the College either treated their reports as such complaints for the purposes of its policies or told them at the earliest opportunity that completion of the form was necessary.

594. Mr Weetman submitted there had been a shift in this part of Ms McCamish's case. She had argued in her pleadings that the 2016 Conduct Policy ought to have been activated in June 2017 triggering a decision-making process which would have led to the male student's suspension, but her position in evidence was that she had not wanted him told so there could be no suspension. Ms Witherington's position by the end of trial was that Ms McCamish's report should have been officially considered under the 2017-18 Complaints Regulations, even if it had only been made orally.

595. I accept there has been a shift in this part of Ms McCamish's case. The College had two parallel policies for student concerns, the 2016 Conduct Policy and the 2017-18 Complaints Regulations. There were some drafting problems with the regulations which made it unclear they did not apply to complaints about student misconduct, at least in the preliminary sections which talk about informal resolution. Mr Henson accepted this. Ms McCamish had seen the regulations and, in any event, assumed she had done enough in terms of the way she had reported what happened. More significantly, in my view, she had brought the matter to the attention of senior staff. That was more than enough for it to be treated as a safeguarding matter and I accept Mr Weir's evidence that it was.

596. However, what she reported was not treated as a student misconduct complaint under the 2016 Conduct Policy until January 2018 when the form associated with that policy was completed. This begs the question of whether that policy ought to have been followed in June 2017 even though no form was completed at that time, especially given my finding that Mr Weir did not explain the policy to Ms McCamish until much later in the year, around early December.

597. In my view, it was possible for the College to proceed with a 2016 Conduct Policy investigation without Ms McCamish completing a form at that time for three reasons. First, the College could have completed a form on her behalf, as Ms Newman later suggested at Mr Weir 's request. Secondly, it could have completed the form itself and investigated, as that happened in the case Mr Henson recalled of one student striking another. Thirdly, the requirement for a form could simply have been waived as Mr Henson suggested. However, I am not persuaded that the College's decision not to take any of these steps, or any failure to consider them, was an unreasonable failure and so a breach of duty. Had it done so, it would inevitably have had to notify the male student of what had been reported and Ms McCamish had been very clear she did not want that to happen at that time. Initiating a 2016 Conduct Policy investigation would therefore have overridden her wishes. Throughout the Universities UK Guidance, the importance of respecting the wishes of the reporting student is emphasised, especially in sexual misconduct cases. For these reasons, this part of Ms McCamish's pleaded case is not made out.

598. Where the College's actions fell short of the reasonable higher education institution standard, in my view, was in the failure to give Ms McCamish sufficient information about the 2016 Conduct Policy in June 2017, during and after the meeting with Mr Weir. That failure meant that, until much later, she thought her options were binary and did not include pursuing things internally with the College. What a reasonable higher educational institution would have done can be tested against the Universities UK Guidance quoted at paragraph 121 above. Mr Weir's evidence was that his practise would be to explain all of a student's options to them, underscoring the reasonableness of that step. However, he did not follow his ordinary practise with Ms McCamish at or after that first meeting (nor had he with Ms Wischhusen or Ms Eldekvist). He also said that the College could "take a view" on a student's expressed wishes not to involve the police and proceed with its own investigation, but he did not tell Ms McCamish about that possibility. Had he told Ms McCamish all of this in June 2017, I do not think it is likely Ms McCamish would have completed the form at that time because she did not want the male student to be told.

599. Ms Feder's position is different. She told Ms McCamish what happened to her and the College was informed. Ms Feder was asked to attend the meeting with Mr Allin and Mr Henson and gave her account. Mr Allin thought it was an unwanted massage so "low level", "inappropriate" conduct, but Mr Weir took a markedly different view, categorising it as alleged "sexual assault", noting how distressed she was, and deciding that Ms Feder should not be contacted. Unlike Ms Wanebo, she was given no opportunity to complete a form which would have made her a 'complainant' for the purposes of the 2016 Conduct Policy rather than a 'witness'. Paragraph 9.3 of the 2017-18 Complaints Regulations states that "[t]he student making the initial complaint [under the 2016 Conduct Policy] will be informed of the eventual outcome." Ms Feder's status

would therefore have changed materially had her report being made an 'official complaint' under the policy. As a witness she would not be told the outcome and, from the College's perspective as explained by Mr Weir, should simply trust the process.

600. Notwithstanding the difference in views between Mr Allin and Mr Weir about the seriousness of what Ms Feder had reported, I consider that any reasonable higher education institution would have either treated her report as an 'official complaint' for the purposes of the policy or, at an absolute minimum, offered to do so in circumstances where she had been very distressed by making the report and its practise was to withhold information about the outcome if that step were not taken. The failure to do so fell below the standard and so breached the duty owed to Ms Feder. The status of complainant was significant in these particular circumstances.

Decision-making on suspending the male student

601. Both Claimants' pleadings contended there was a negligent failure to suspend the male student when Ms McCamish's report was made in June 2017 and again in January 2018 when the form was completed. In her closing submissions, Ms Witherington did not press the point that that ought to have been a suspension in June 2017, no doubt because in cross examination both Claimants had acknowledged the difficulties of taking that step at a time when Ms McCamish had maintained she did not want the male student to be told about her report. Mr Weetman understandably emphasised this in his own closing submissions. I accept there could be no suspension without the process in the 2016 Conduct Policy being followed. I conclude above at paragraph 595 that the College was not acting unreasonably in respecting Ms McCamish's wishes in June 2017 that the male student should not be told at that time. That combination of circumstances meant the College was acting reasonably in June 2017 by not proceeding with a suspension. This part of the Claimants' case therefore falls away as there was no breach of duty at that time.

602. One point Ms Feder made in cross examination made me pause for thought. She said that things could have been different if the College had put in place adequate support for Ms McCamish from June 2017 as she then may have felt able to ask for a 2016 Conduct Policy investigation which could have led to the male student's suspension. That is possible, but it involves a series of hypotheticals and I have been unable to conclude it is likely to have happened especially as Ms McCamish did not suggest this in evidence.

603. Turning to January 2018, Ms Witherington argued with more force that a reasonable higher education institution faced with not only Ms McCamish's report but also those of Ms Feder, Ms Wanebo, Ms Bloomgarden and Ms Quigley along with the other signatories to Ms Wanebo's note would have decided the threshold for suspension was comfortably exceeded. Under paragraph 4.1 the 2016 Conduct Policy that was "in exceptional circumstances where it is deemed necessary to protect members of the College." If these were not such circumstances, what were? She also pointed out that the alternative Mr Weir had put to the male student, voluntary leave of absence from classes, meant he was present at campus throughout the weeks that followed and remained a risk. Suspension would have meant he was not on campus at all save for pre-arranged appointments: see paragraph 4.2 of the 2016 Conduct Policy. She was scathing in her criticisms of the risk assessments Mr Allin said he had undertaken in January 2018, especially about his evidence that the male student was "not deemed a threat" to Ms McCamish early that month and that risks he presented were unchanged after evidence had been gathered from other students.

604. Mr Weetman submitted that the decision not to proceed with a suspension was within the scope of the reasonable decisions Mr Allin could make in January, especially as the issue he was

primarily concerned about, disruption in classes, could be dealt with satisfactorily through the voluntary withdrawal.

605. At the start of January 2018, the College received the form it required from Ms McCamish to proceed with a 2016 Conduct Policy investigation, subject to what the police decided to do. It already had a note from her setting out her report which described four sexual assaults, one of which involving her being unconscious when it began possibly as a result of an intoxicant, three involving physical force and threats being made about her telling anyone about what had happened. Mr Allin recorded that "it involves an allegation of a serious criminal offence" and so the police had to be contacted. On 27 November 2017 Ms Newman had told Mr Weir about a conversation with Ms McCamish in which she had expressed her fear of the male student. On 5 December, Mr Reeves had a similar conversation with Ms McCamish which he reported to Mr Weir. Mr Weir spoke to Ms McCamish around this time and although the evidence of that conversation is sparse, it is not suggested that she qualified what she had told Ms Newman and Mr Reeves. All of these factors are undisputed, yet the male student was "not deemed a threat". The only factor Mr Allin mentioned in the contemporaneous documents and in his evidence that weighs against suspension is that there had been no reported repetitions of any form of assault at that time. However, there had been a very significant change which was the act of reporting itself. That meant the male student would be told. If Ms McCamish were telling the truth about the threats (on which I make no finding), he might then retaliate. The College relies on Mr Allin's contemporaneous emails and report as evidence of his reasoning process at this time. His reasoning was deficient because he conspicuously failed to identify the risk factors set out here other than the fact of the report itself and the passage of time since the events reported. As he did not identify other factors, he could not begin to balance them and reach a reasonable decision.

606. However, given the way this point is pleaded, the decision Mr Allin actually reached has to be tested against the reasonable higher education institution standard. On that question, I note that the Universities UK Guidance stresses "[a]ny decision to suspend a student can have serious consequences as it is highly likely to disrupt and/or interrupt the student's course of study. Consequently, such a step should only be taken where the risk level is high and where there are no alternative measures that could be put in place to mitigate that risk." Alternative measures include "imposing conditions on the accused student (for example, requiring the accused student not to contact the reporting student and/or certain witnesses….)… suspending the accused student from his / her studies… prohibiting the accused student from going to certain accommodation blocks…"

607. I have concluded that the evidence I heard and have read does not support a finding that the decision against suspending male student at the start of January 2018 fell below the reasonable higher education institution standard. Another institution might well have suspended him, but other steps or none might have been taken given 15 months had seemingly passed without incident notwithstanding the seriousness of what had been reported.

608. However, events rapidly moved on in January 2018. By the end of that month, Mr Allin had heard from several students and, critically, had the reports of Ms Feder, Ms Wanebo, Ms Bloomgarden and Ms Quigley. They had respectively reported acts of being pushed face down onto a table and massaged aggressively despite crying out with pain, being pushed against the wall and held there while the male student removed his top, being held upside down despite protests and then dropped head down on the floor and being fearful in a student bedroom while the male student repeatedly banged on the door screaming in rage. These were, I stress, only reports at that stage and no determination had been made about them. What primarily had to be weighed was risk, in the light of the information received and the adverse consequences of suspension for the male student. I have no hesitation in finding that a reasonable higher education institution decision-maker in Mr Allin's position, having heard all of this as well as Ms

McCamish's account, would not have acted as he did and simply maintained the voluntary leave from classes. I consider that a decision-maker in any such reasonable institution would probably have suspended the male student. None of the alleged acts had taken place in the classroom environment and so the voluntary withdrawal arrangement would have made no difference to the risk of repetition. It is hard to see what could be done short of suspension to address risk. Mr Allin's evidence was that the risk level was unchanged. I believe that was his view, but it is incomprehensible. It was not a view within the scope of reasonable decisions for anyone in his role to reach and so fell below the reasonable higher education institution standard.

Timetabling and separation in classes

609. The next pleaded instances of negligence concern alleged failures to provide separate timetables in the Autumn term of 2017, instead providing one with shared classes despite Ms McCamish's report, and failure in November 2017 to ensure her and the male student remained separate and failing to ensure they were not in the same classes and performances in 2018.

610. Ms Witherington submitted that the failures to honour the promise made for separate timetables from September 2017 were clear on the contemporaneous documents. Mr Weetman said that it was incorrect to assert the College took no steps to keep the male student and Ms McCamish apart. The size of the BA 2 cohort meant total separation was difficult and impossible in relation to the afternoon group sessions, something Mr Coster had confirmed. When Ms McCamish and the male student were placed in the same TV class in November, Ms McCamish did not raise the issue.

611. On this issue, the contemporaneous evidence is especially helpful. Mr Bond referred to a 'promise' being made to Ms McCamish in the June 2017 meeting that she and the male student would be kept separate save for afternoon group classes. Ms Le Conte's evidence was that this would be simple to achieve. Ms Logue also said it could be done in a contemporaneous email. There was a mistake made when the timetable for the September term was issued, Ms Le Conte was told and intervened decisively to have it corrected. I accept the error was distressing for Ms McCamish, but it was rectified relatively quickly. On the evidence I heard, it was impractical to separate the large afternoon class into two groups. Ms McCamish had not expected that to happen. In these respects, the College's actions did not fall below the reasonable higher education institution standard.

612. However, placing Ms McCamish in the TV class was a mistake that should not have happened just weeks after the first timetabling mistake. Ms McCamish's evidence was that the nature of that class meant she and the male student working closely together and she formed the impression the College were not taking her complaints at all seriously. There was no evidence from the College about how this mistake had occurred. I have concluded that no reasonable higher education institution would have arranged for Ms McCamish to be in the same class as the male student twice in one term given the promise that had been made and the information it had from Ms Le Conte about the importance of honouring it. In this respect, the College's actions fell below the reasonable higher education institution standard and it breached its duty.

613. Turning to 2018, the male student and Ms McCamish were not timetabled for the same morning classes and from mid-January he stopped attending classes altogether. After the disciplinary hearing, he did not return to classes, instead rejoining a different year group the following summer. It follows that there was no unreasonable failure to keep him and Ms McCamish separate in classes over this period.

The shows

614. Turning to the shows, it is said there was a failure to "exclude [the male student] from attending the production of 'All My Sons' in October 2018 and 'Rage' in November 2018 which the Claimant was due to take part in her final year productions." It is convenient to also address here the pleading "[p]utting pressure on the Claimant to continue to perform in her final year plays (even though it was clear that this was causing harm to her)."

615. The evidence is that students were required to attend fellow students' end of year shows but not every performance, that an understudy could be and was found for Ms McCamish and that once those arrangements were put in place for 'Rage'. Mr Bond hoped the male student could be persuaded to attend a specific night when the understudy would perform. Mr Weir assured Ms McCamish that he would speak to the male student about missing her shows. Mr Bond assured her that the male student would not attend her shows. Meanwhile, behind the scenes metaphorically, senior college staff including Mr Bond were debating the inappropriateness of excluding the male student from shows.

616. Ms Witherington submitted that Ms McCamish was under pressure to perform in the shows not only because they were a necessary component of her course but because of their significance for her future career. Arrangements should have been put in place to prevent the male student attending the performances in which she appeared. The assurances ought to have been honoured. The intervention before the 23 October 2018 'All My Sons' performance the male student wished to attend should not have been necessary. When the understudy arrangement was made, the male student's cooperation was not secured. Worse still, the male student chose not to attend the understudy performance, instead making a point of attending one at which Ms McCamish was performing. He told Mr Weir he would be doing so and Mr Weir arranged tickets for him, facilitating his attendance. Mr Bond told Ms McCamish about this just moments before the performance began, making matters worse.

617. Mr Weetman submitted that Mr Bond had worked hard to create a supportive environment for McCamish in the September 2018 term and her October 2018 card showed that. There was no basis in the evidence to conclude she was pressed to perform nor that it was clear it was causing her harm. Action had been taken on 23 October 2018.

618. Pressure to perform in the end of year shows was an inevitability. Some of this would have been self-imposed because Ms McCamish was motivated to complete her course regardless of what had happened. Early on in the September term, Mr Bond encouraged her to perform, despite the possibility the male student might be present. Later, after the 23 October 2018 performance, the tone of the discussions changes with Mr Bond suggesting that the College was 'gambling' on her performing, but that he wanted her to do so. There are contemporaneous emails and records discussed above. My reading of them is that Mr Bond was keen for Ms McCamish to perform provided nothing happened that would disrupt the shows and he wanted certainty. He asked her a number of times if she was able to perform. She said she was. Given this evidence, I have concluded that Ms McCamish was not put under undue pressure to perform. At the after-show feedback meeting in relation to the 23 October 2018 performance Mr Bond's comments about the showcase were no doubt intended to put pressure on the rest of the cast. However, it was them not Ms McCamish who had refused to perform if the male student was present.

619. What the College undoubtedly learned over this period was that Ms McCamish's mental health was continuing to deteriorate and that this was directly related to the prospect of the male student being present when she was performing. Ms McCamish's parents had emailed in August 2018 saying that she needed specialist counselling, and the College should pay for it. Her mother met with Mr Bond and Toni on 23 October and said she was worried about harm to her daughter. Ms McCamish told Mr Bond that there was a risk of her having a breakdown on stage were the male student present. After that performance Ms McCamish repeatedly asked Mr Weir about accessing

EMDR therapy. None was provided, nor was any alternative. Her mother pressed for this again on 22 November after Ms McCamish had a panic attack on 20 November and could not attend that day's rehearsals. The discussions between staff then shifted to placing Ms McCamish on a Fitness to Study plan with the prospect of terminating her studies. Ms McCamish herself raised the possibility of leaving without completing her course. Ms Bond did not press her to stay.

620. This was the backdrop to the College's decision-making on the male student's presence when Ms McCamish was performing in the end of year shows. I have concluded that the College's actions fell below the reasonable higher education institution standard in these respects.

621. First, the contemporaneous emails show that the College concluded it had no right to prevent the male student attending any show, but no real reason was ever given for that. It was suggested that denying him admission would be discriminatory, but no prohibited ground of discrimination was identified. Mr Weetman submitted it would have been impossible to "permanently exclude the male student from all performances" given the findings of the investigation and the nature of the sanction imposed. I agree. To do so would have been a penalty and would have compromised his own education. It does not follow that allowing him to attend particular performances but prohibiting him from attending others would have the same effect. All higher education institutions have the power to decide where students can be at particular times on their premises. There is no absolute right for a student to be anywhere at any time of their choosing. It follows that the understudy arrangement Mr Bond devised could have been enforced, but it was not.

622. Secondly, I have found that Mr Bond assured Ms McCamish that the male student would not be attending her performances even though Mr Weir's assurances did not go that far and the Principal had emailed the year group to say students could not be banned from end of year performances. There is also the contemporaneous note of the 2 November 2018 meeting at which Mr Weir reassured Ms McCamish that actor training was "the priority for the college, and that will not be compromised." The assurances were important to Ms McCamish and when the male student presented himself notwithstanding them the impact was significant. Having given the assurances, the College should have honoured them. Even if that is wrong, there should have been some explanation if they would not be honoured given what the College knew about Ms McCamish's health.

623. Thirdly, even if the College had no power to prevent the male student from attending any particular performance, it could have attempted to persuade him not to do so in advance. Mr Allin suggested this in one email exchange, and this was something Mr Weir had assured Ms McCamish would happen. The male student had been persuaded against attending the 23 October performance by Mr Weir and Mr Bond, albeit on the evening itself, but no-one sought to persuade him of the wisdom of attending the understudy performance of 'Rage', despite the special arrangements that had been made. When he announced he would attend one of Ms McCamish's performances on 7 December, Mr Weir arranged a ticket despite Mr Bond's concerns. Ms McCamish was then told about his presence very shortly before the performance began.

624. This was an unusual set of circumstances and considerable care needs to be taken in deciding what a reasonable higher education providers would have done differently. However, it is helpful to compare the College's own actions at this time with those it took when Ms Wanebo's note was handed in. Back then it took the view that the education of other members of the cohort was being compromised by the male student's presence and that action was needed to stop that happening which took the form of Mr Weir discussing his voluntary withdrawal from classes. In the September 2018 term, despite Ms McCamish's education being compromised, decisive action was not taken to maximise the prospects of Mr Bond's plan succeeding. More could and should have done more to ensure the male student attended the understudy performance. The

College's actions fell below the reasonable higher education institutions standard and so it breached its duty of care by not doing more. The consequences for Ms McCamish were significant. She performed on 7 December notwithstanding his presence, but very shortly afterwards decided to leave the College with her course uncompleted.

The male student's presence on campus during his suspension

625. Next, both Claimants complain that the male student was allowed to remain on campus throughout the suspension imposed by the Disciplinary Committee, including working in the library on a paid basis. Mr Weetman submitted there was no basis to conclude the male student was on campus during his suspension, but the Claimants' and Ms Le Conte's evidence that he was is uncontradicted. It was important for the College to be seen to enforce such sanctions as had been imposed not least because the whole year group had been told about them. On the evidence I heard, the College did not enforce the suspension, for example by warning the male student he was in breach. In this respect, the College's actions fell below the reasonable higher education institution standard.

Warning Ms Feder

626. The last two pleaded instances of negligence in relation to protection are Ms Feder's contention that there was a failure to warn her about the male student's behaviour following Ms McCamish's June 2017 report and a compendious complaint of "[f]ailing to protect the health, safety and welfare" of both Claimants. I will take these briefly in turn.

627. Ms Witherington submitted that if the male student had been properly suspended and investigated in June 2017, he would not have been on campus on 27 November that year with the opportunity to assault Ms Feder. Even if he had been under investigation, his behaviour may have changed. Mr Weetman pointed out the difficulty with this. For an investigation under the 2016 Conduct Policy to occur, the male student would have had to be told which would have involved overriding Ms McCamish's wishes. There could be no suspension without an investigation. For the reasons set out at paragraph 588 above, the College's decision not investigate under the policy at this point was a reasonable one.

628. As for the compendious complaint, it adds nothing to the specific, particularised instances of negligence except in relation to support for Ms Feder which I discuss below.

Support

Support for Ms McCamish

629. There are two instances of negligence pleaded in this category. The first is that there was a failure to provide counselling and/or EMDR to Ms McCamish. As I understand this part of Ms McCamish's case, the submission is not that the College was under an absolute duty to provide or arrange such services, rather that it said it would do so and did not honour that commitment. Ms Witherington submitted this was clear on the facts. Mr Weetman submitted that Ms McCamish had been given the details of the College counsellor in June 2017, could not recall when Ms Newman said time off could not be taken, what was argued for was a positive duty to provide services well outside the scope of educational services and, in any event, Ms McCamish told Mr Bond on 5 December 2017 that she was coping well after having extensive counselling over the summer.

630. I have found that, Ms McCamish believed that Mr Weir would arrange for her to have counselling following the 16 June 2017 meeting. However, she already had been given the

College counsellor's number by Ms Brown and Mr Weir sent Mr McCamish the counselling service email address. Ms McCamish ultimately made arrangements for a session herself, probably in the September 2017 term. There is no evidence that Ms McCamish reverted to Mr Weir that summer and asked him to make the arrangements for her. Mr Weir could have done more on the College's behalf immediately after the June 2017 meeting (as he had for Ms Wischhusen), but in these circumstances I cannot conclude what was done at this stage fell below the reasonable higher education institution standard.

631. By the September 2018 term, the position was different. Ms McCamish and her parents were repeatedly telling the College in emails and meetings that counselling was needed, specifically EMDR and Mr Weir undertook to make the arrangements for Ms McCamish to access it, knowing her mental health was deteriorating. The failure to make those arrangements was significant, especially when engagement with counselling came to be debated as a term of a Fitness to Study plan. It is also striking that, having learned the male student had been paying for some form of support himself, Mr Weir reached out to him and spontaneously offered to pay for it. I find that any reasonable higher education institution would have supported Ms McCamish at this time having made a commitment to do so, either by arranging EMDR counselling or offering to meet the cost if she made counselling arrangements herself. The College's failure to do so breached its duty of care to Ms McCamish.

Support for Ms Feder

632. Turning to Ms Feder, the pleaded case is that there were failures to ensure "adequate action" was taken after her report, "to protect [her] health, safety and welfare" and "to take reasonable care for [her] safety" and that, had she received "appropriate trauma counselling and emotional support" through the College post-disclosure within the time she remained there, her hypervigilance, anxiety attacks, lowered mood and avoidance behaviours would have been more likely than not to be resolved to at least their pre-assault level by July 2018". This could have been drafted with more precision, but the most important point Ms Witherington made is that after Ms Feder made her report, she was offered no support whatsoever. Ms Feder had been sobbing by the time she finished giving her account but was then forgotten. Mr Weetman established in cross examination that Ms Feder knew about the support available through the HUB/HWB. He submitted that the College took her report on board and included it in the matters considered by the Disciplinary Committee.

633. Mr Weir's evidence about decision-making at this time was that he thought those supporting Ms Feder would ask for support for her if it were needed. When pressed he could not identify anyone who was supporting her, save possibly Mr Allin whose only contact with her had been at the interview. However, Mr Henson's evidence was that Mr Allin offered nothing and Mr Allin did not suggest otherwise. Unlike Mr Allin, Mr Weir classed what Ms Feder had reported as alleged "sexual assault", but that combined with her "suffering" weighed against him any offering support in his Safeguarding Officer capacity. Further, her status as a mere witness meant she would not be contacted when the process was over.

634. I have concluded that any Safeguarding Officer in a reasonable higher education institution would not have acted as Mr Allin and Mr Weir did in offering no support whatsoever to Ms Feder at this time. The Safeguarding Policy explains the importance of establishing the needs of vulnerable adults when abusive acts are reported, whether physical or sexual. The Universities UK Guidance states that a reporting student should be provided with "information and support", that "universities should consider academic, housing, finance, health and well-being issues and, where appropriate, assist students to access specialist sexual violence support services provided by external agencies." This might have been done in several ways by Mr Allin, Mr Weir or a colleague. I consider Ms Feder could reasonably expect the College would, at a minimum,

inquire about whether support was necessary in the immediate aftermath of her report, especially as Mr Weir believed she was distressed and had suffered a sexual assault at the time. Such steps are mandatory according to the Safeguarding Policy. The most obvious option would be to ask her how she was, whether she needed support, and explain what the institution could offer, including any counselling services. It makes no difference that Mr Allin also had safeguarding responsibilities and had a different view of the seriousness of Ms Feder's report. What Ms Feder was told about the HUB/HWB two years earlier is not significant either. In doing nothing, the College's response fell below the reasonable higher education institution standard and it breached its duty of care.

Investigation and disciplinary action

635. Mr Weetman submitted that the Claimants' claims in this category "seek to hold the College to a standard of investigation comparable to that of a specialist body such as the police, or of a judicial process." I agree that is not the correct standard against which the College's actions must be tested. Care needs to be taken to test them against the reasonable higher education institution standard, rather than speculate about what a professional investigator or lawyer might have done. However, the College was not unsupported. Mr Allin had been trained in investigations, albeit not recently. He had access to, and took, advice from solicitors on his investigation: see paragraphs 182 and 337 above. That legal advice was not from the College's present solicitors.

Investigation

636. The first pleading under this heading is that there was a failure "to heed the Claimant's complaint and/or carry out any or any adequate investigation into the Claimant's allegations and/or to consider all relevant evidence when carrying out the investigation". Specific examples of the alleged inadequacies of the investigation are then given. It is sensible to focus on those. Ms Witherington did not pursue the point that there had been a failure to carry out any investigation, rightly in my view.

637. The first specific example of the investigation's shortcomings given was a finding in the report that the police had "examined the case but noted that there was no hard evidence. As a result, it was concluded that it would not be productive to continue with a criminal investigation" when in fact Ms McCamish had asked them not to pursue matters. This came to light in the 5 March 2018 meeting Mr Allin had with the BA 2 year group to tell them the investigation had concluded and answer questions. Ms McCamish challenged Mr Allin and he broadly accepted what she said was correct. What matters more is what was said in the report because the Disciplinary Committee was the ultimate decision maker and was dependent on the accuracy of what Mr Allin told them as Ms McCamish was not called. The report was not accurate in its description of the police's decision-making, and implied that the police had made a qualitative assessment of the evidence. However, it appeared to be based on a text from Ms McCamish to Mr Weir "he (the Policeman) was very reassuring and everything is on record, but I don't think I'll be going to court since I have no hard evidence" and was not treated as determinative by Mr Allin who went on to weigh up the evidence he gathered. Given this, I do not think the inaccuracy impacted on the report, at least not significantly. There is no breach of duty in this respect.

638. The next pleaded failure, not speaking to "the Claimant's flatmate Maddie Hurleson who had confirmed Mr Collin's aggressive behaviour towards the Claimant in their first year flat and who had been sexually harassed by him." was not pursued.

639. Failure "to interview and/or investigate either interview and/or investigate either properly or at all the petitioning students who confirmed in December 2017 they were uncomfortable with [the male student's] behaviour" is the next example. There was limited evidence about how Mr Allin

and Mr Henson had identified the students with whom they wished to speak beyond an email Mr Henson sent to the cohort on 16 January 2018 stating that he or Mr Allin believed would be able to provide verbal evidence would be contacted. Ultimately, they spoke to a number in the group, approximately half. Had Mr Henson not made others aware of the investigation, it is possible that important evidence would have been overlooked, but I am satisfied that a student who saw the email and wished to contribute to the investigation could do so. In these circumstances the College cannot be said to have breached his duty. This part of the case falls away.

640. Similarly, it is pleaded that there was a failure to ask the male student about Ms Feder's allegations. I agree with Mr Weetman that this is simply wrong on the facts and this part of Ms Feder's case also falls away.

The investigation report

641. The next pleaded example of inadequacy in the investigation concerns the handling of evidence from Ms Quigley. It is said that she was not asked detailed questions and no or insufficient weight was attached to the evidence she gave. That covered two topics. One was the last of the incidents in Ms McCamish's report, the other her own experience of him banging on her door in rage. Ms Quigley wrote to Mr Henson asking for amendments to be made to the note of her meeting with him and Mr Allin. I do not think any real criticism can be made of Mr Allin's handling of the information Ms Quigley gave him about the final incident Ms McCamish had reported. She gave an account which was fed into the investigation process. He correctly noted that it was different from Ms McCamish's account and the male student's. In my view, this part of the report was not deficient in any material way.

642. Ms Witherington submitted with more force that Ms Quigley's own experience of being fearful of the male student during the incident when he ragefully banged on her door had not received any real consideration at any stage of the process. This she said was illustrated by the sections that discussed some of the BA 2 group feeling unsafe which were characterised as "feeling unsafe working with" the male student. He then offered the opinion that the cohort feeling unsafe may have been the result of Ms McCamish's allegations becoming known by the rest of the group. She made similar criticisms of the approach to Ms Feder, Ms Wanebo, Ms Bloomgarden and the student on whom the male student had forced a kiss. They were interviewed, gave accounts of serious incidents which went far beyond "feeling unsafe/uncomfortable" in the classroom or working with the male student and yet the investigation report did not discuss them in detail. She argued that some or all of these incidents ought to have been classed as sexual misconduct, as Ms Wanebo forcefully pointed out during the BA 2 cohort meeting with Mr Allin.

643. Mr Weetman highlighted the fact that three of these four students were interviewed, their accounts were noted, and in relation to Ms Feder, Mr Allin found her account "the most compelling in supporting [the male student's] inappropriate behaviour". Mr Allin was alive to the overlap between the sexual misconduct and "physical allegations". Male students had also been targeted for physical contact. He had taken concerted steps to gather evidence from several members of the cohort, weighed them in the balance and, Mr Weetman submitted, was entitled to reach a conclusion that there was a difference in the level of seriousness as between the cohort's allegations and those made by Ms McCamish. Ms Wanebo was offered the opportunity to make a complaint under the 2016 Conduct Policy.

644. The difficulty with these submissions is that neither Mr Allin's report nor his evidence suggest a careful weighing of the relative seriousness of what had been reported to him. Both indicate that the exercise was a cruder one. It categorised as serious the matters Ms McCamish had raised and the secondary ones from multiple sources as "inappropriate conduct" of the kind that Mr Allin

thought was commonplace in universities and public places such as pubs. That does not reflect their seriousness, in my view.

645. Compounding that, Mr Allin took the view that these were not reports of sexual misconduct and maintained that position when questioned by Ms Wanebo in the BA 2 meeting. This was a further instance of negligence pleaded by the Claimants. Mr Weetman submitted it does not follow that because bodily contact or touching can be of a sexual nature that it must be categorised as such in each and every circumstance. I accept that, but it begs the question of why the contact with Ms Feder, Ms Wanebo, Ms Bloomgarden and the student upon whom a kiss was forced was not so categorised. Mr Weetman's point that there was unwanted physical contact with men as well as women is of no assistance because sexual harassment can take place between members of the same sex as the College's Dignity at Work Policy appropriately recognised. The same policy listed "[g]etting too close, deliberate bodily contact or unnecessary touching" as examples of harassment related to sex and sexual harassment.

646. Real care needs to be taken in the scrutiny of a document such as Mr Allin's report for the reasons noted at paragraph 635 above. Criticisms about the weight given to particular accounts and the degree of detail with which they are recorded would not normally lead to such a report being so flawed that it would fall below the reasonable higher education institution standard. The report is not perfect but, in some respects, I consider it represented the product of genuine efforts to gather, summarise and grapple with relevant information from multiple sources. For example, Mr Henson's practise of sending witnesses a draft of the notes he had made an asking for their comments then revising them accordingly was commendable.

647. However, there were basic flaws which the pleaded cases were right to target. Mr Allin did not meaningfully define misconduct in a way that enabled distinctions to be made and conclusions drawn about different forms of behaviour. This was the direct result, no doubt, of the omission in the 2016 Conduct Policy of any mention of sexual misconduct, which came about because the College's policies had not been aligned with the University's, as required. It was pleaded that there were failures "to take into account as part of the investigation the Student Conduct Regulations 2017-2018" including the way they defined sexual misconduct and "to find Ms McCamish's allegations and those made by other students amounted to sexual harassment within the College's the Dignity at Work Policy rather than applying a definition found on Wikipedia", but the underlying failure was simply to apply any objective, meaningful definition.

648. That omission mattered. As Mr Weetman said, contact or touching may be of a sexual nature or may not be and the context is important. It may also be perceived very differently by the two people involved. This just underscores the importance of properly framing then asking and answering the question of the nature of what has occurred. Mr Weir's evidence about what had happened to Ms Feder illustrates this point. The Universities UK Guidance makes the same point at Appendix 1 about the need to:

> "define the types of unacceptable behaviour which will amount to a breach of discipline and indicate how seriously different acts will be treated - this is particularly important in relation to sexual misconduct as different acts arising from the same type of behaviour will be treated very differently, for example, in relation to the unacceptable behaviour of kissing without consent, the act of forcefully kissing another on the lips is likely to be regarded as a serious disciplinary offence whereas the act of lightly kissing another on the back of a hand is likely to be regarded as a less serious disciplinary offence."

649. Mr Allin could have remedied the omission as far as this investigation was concerned by setting out standards of conduct in a meaningful way in his report, perhaps simply by adopting the

definitions in the Dignity at Work Policy or the definition from the 2017-18 Regulations, and then applying them when categorising the conduct that had been reported to him. He did neither. Earlier in his investigation, he had quoted a definition which appears likely to have been cut and pasted from Wikipedia, but even that did not feature in the report. The report simply identified allegations of "Sexual Assault" and "Non-consensual Sexual Acts" in relation to Ms McCamish alone.

650. The standard applied to all the other students' reports was "inappropriate behaviour including unsolicited physical contact", which are words that do not feature in the 2016 Conduct Policy. Mr Allin's findings that these things occurred were then shoehorned into paragraphs 2.1 and 2.4 of the 2016 Conduct Policy in the report's conclusion. Mr Allin's oral evidence only reinforced my view that his understanding of the forms sexual harassment can take was limited. Nothing suggested he ever asked himself the question whether Ms Feder, Ms Wanebo, Ms Bloomgarden and the student on whom the male student had forced a kiss might have been sexually assaulted or harassed. By contrast, having heard Ms Feder's account second hand, Mr Weir concluded that she was suffering and had alleged "sexual assault".

651. Ms Witherington made a linked submission about Mr Allin's mischaracterisation of what had happened to Ms Feder and Ms Wanebo "massaging" and "inappropriate touching" and what he told the BA 2 group on 5 March 2018, which was that his decision would have been different had there been other sexual assaults. Ms Wanebo questioned him forcefully about this at the meeting, pointing out that five women had reported being sexually harassed. Mr Allin was insistent that they had not and that there had been allegations of sexual assault from Ms McCamish and other allegations of "inappropriate touching". Ms Wanebo described what had happened to her and its nature, but Mr Allin would not any accept allegations besides Ms McCamish's were sexual in nature.

652. No reasonable higher education institution would have approached an investigation of allegations of the kind Ms McCamish, Ms Feder, Ms Wanebo, Ms Bloomgarden and the student on whom the male student had forced a kiss in the way the College did. Such an institution would have identified sexual misconduct, including sexual harassment, as a specific form of misconduct, defined those concepts and then applied that definition when investigating and determining what had occurred. The College itself would have done so under the Dignity at Work Policy, had the allegations been between staff. Those are the most basic steps in any investigation of whether an individual's conduct has fallen short of an objective standard. In this respect, the College's actions fell below the reasonable higher education institution standard. It is difficult to be certain what would have happened had Mr Allin approached the investigation differently. Depending on the evidence, there could have been a real prospect of a finding that there had been several instances of sexual misconduct, specifically sexual harassment.

653. The next pleaded instance of negligence relates to the incident in the Student Union bar after Ms McCamish was interviewed and before the Disciplinary Committee meeting. It is said there was a failure to consider and give sufficient weight to this and to preserve the CCTV footage. In my view, this issue was considered. Mr Allin had at least two meetings with Ms McCamish and Mr Coster about it and there was internal email discussion with other staff. These steps do not strike me as unhelpful. The footage was viewed and there were different opinions about what it showed which now cannot be resolved now it is gone. Given the College facilitated access to the footage, discussed and considered it and there was no separate conduct complaint made, I have concluded that its actions in this respect did not fall below the reasonable higher education institution standard.

654. Last, there is an important pleading that there was a failure to properly assess the credibility of the male student's evidence. Ms Witherington submitted this occurred both when Mr Allin and

Mr Henson were investigating, later at the Disciplinary Committee stage and once more when the male student's statement was prepared with Mr Bond's assistance and then read out. As regards the investigation stage, Ms Witherington contended that, once the male student had given his own account of events and provided Mr Allin and Mr Henson with a collection of photographs and messages, Ms McCamish should have been given the opportunity to comment on it. The failure to do so was unfair, breached the principles of natural justice and also meant Mr Allin had an incomplete picture when preparing his report. Mr Weetman submitted that there was a danger in applying judicial standards to a non-judicial process. There was no duty to tell Ms McCamish what the male student had said and seek her views and it was hard to see what difference it would make because at the heart of this part of the investigation as Mr Allin saw it were two different views about events and he had heard both.

655. The failure to give Ms McCamish the opportunity to comment on what the male student had said and provided was serious in the circumstances and, in my view, was a further basic flaw in the investigation. Credibility could not be assessed properly unless that was done. Starting with the factual position, Mr Allin's view was that consent was central, "the key". That was understandable because the account the male student had given to him was of a 'mini relationship' with consent to what had occurred. I find it is very likely Ms McCamish would have challenged that account had she known of it at the time of the investigation because when Mr Bond that she in the male student had been in a relationship that had gone wrong at the 13 June 2017 meeting, pointed out that relationships do not start with one person being unconscious. Were her unconsciousness established, there could be no consent to what happened during the start of the first incident she reported. She also gave evidence, which I accept, that she would have had things to say about the photographs and messages and why they were not inconsistent with a person dealing with sexual assault in a particular way. Mr Allin said he disregarded the photographs and messages, but they were included in his report and so might influence the Disciplinary Committee especially as he said it was hard to know what weight should be given to them, which left that question open. I find that Mr Allin failed to assess the male student's credibility properly because he did not balance the male student's account against what Ms McCamish would have said in response. In a case such as this where he thought consent was central, that failure meant a critical part of the investigation fell below the reasonable higher education institution standard. My view on this is strengthened by the 2016 Conduct Regulations which expressly describe themselves as "designed to ensure that in taking disciplinary action against a student the College acts fairly and consistently in relation to all students" and Mr Heston's acknowledgment of the importance of fairness and looking at matters "from both perspectives": see paragraphs 48, 194 and 195 above. It is unfair for a person complained of not to know the allegations against them and to be able to respond, but when credibility matters it is also unfair for their response to be withheld from the complainant, depriving them of the opportunity to comment.

656. Compounding these problems, Mr Allin's intention had been to share the report with Ms McCamish once it was completed and that was also Mr Henson's understanding: see paragraph 260 above. Had that happened, Ms McCamish could at least have commented then, before the Disciplinary Committee was convened. However, she was not shown the report until December 2018. The College was unable to explain that omission.

The disciplinary hearing

657. As discussed above, Mr Allin confirmed in his oral evidence that his report had been referred to the Disciplinary Committee on the basis that there was a case to answer both in respect of Ms McCamish's report and those made by other students.

658. The first pleaded criticism of this stage of the process was that an inappropriate investigative panel had been convened requiring the claimant to deal with eight men including Mr Cranmer who had been the subject of allegations himself. The 'panel' referenced here appears to be a mixture of those involved in the investigation and the committee. There are likely to be many benefits to having a mixture of people involved in a sensitive disciplinary investigation, but neither the College's policies nor the Universities UK Guidance suggest this is mandatory. I do not think the genders of those involved meant that the investigation fell below the standard of a reasonable higher education institution and so this part of the claim falls away.

659. The next criticism was that Ms McCamish ought to have been called as a witness as had been planned. This was significant. Not calling her deprived the Disciplinary Committee of the opportunity to assess the male student's credibility and her own alongside one another, as well as depriving her of the opportunity to respond to his account, compounding the error at the investigatory stage discussed above at paragraphs 654 to 656. None of the College witnesses could explain why Ms McCamish was never called, not even Mr Burrows who had been present throughout the hearing. Ms Witherington and Mr Weetman made similar submissions to those they had made about Mr Allin deciding against seeking Ms McCamish's comments on the male student's account, but at the Committee stage there were three other factors. First, the 2016 Conduct Policy says one of the committee's functions is "[t]o establish, as far as possible, the facts of the case, including the ability to call witnesses." Secondly, Mr Allin, Mr Weir and Mr Burrows all said that the male student was not even asked to respond to the allegations Ms McCamish had made. The focus was on those made by other students. Thirdly, the only reasoning supporting the committee rejection of Ms McCamish's allegations was "[t]hat there is insufficient evidence to come to a view on the allegation of sexual misconduct".

660. The combination of these factors meant the Disciplinary Committee's decision on Ms McCamish's reported allegations fell below the standard of a reasonable higher education institution. It is difficult to imagine how it could have been more deficient because the committee decided against hearing any evidence about those allegations from either of the two people whose accounts mattered and then gave insufficiency of evidence as the sole reason for the decision it made. That conceivably might have been a little easier to understand had Mr Allin applied a meaningful standard to the conduct he was considering, put Ms McCamish's account to the male student and his response to her for comment so that there was a fuller picture before the committee, but the picture remained conspicuously incomplete.

661. The next, closely related, pleaded instance of negligence was that there was no reasoned conclusion on Ms McCamish's allegations. I agree but see this as part of the failure I have described immediately above rather than a free-standing problem. I do not accept that there was no reasoned conclusion on the other students' reports. There was, though the reasoning was sparse and the Disciplinary Committee repeated the same error that Mr Allin made in not considering sexual misconduct or sexual harassment in relation to those are other students.

662. The penultimate criticism of the disciplinary process is that there was a failure to impose "an appropriate penalty" on the male student. The "multiple incidents of sexual misconduct ought to have warranted a more severe penalty" i.e., expulsion under paragraphs 3.5 and 8.8.2 of the 2017-18 Regulations. In her closing submissions, however, Ms Witherington argued that the ought to have been a suspension or expulsion under the 2016 Conduct Policy for behaviour which "unreasonably interferes with the legitimate freedoms of any other student". Mr Weetman pointed out that there had been no finding of multiple incidents of sexual misconduct. Another tribunal might reach a different view, but that did not mean the Disciplinary Committee's decision was out with a range of reasonable views.

663. This part of the Claimant's pleaded case presents several difficulties. The way it was put by Ms Witherington depends on two hypotheticals. The first involves the College having and applying a meaningful definition of sexual misconduct which it wrongly failed to do as discussed above. The second involves the characterization of what was reported as multiple incidents of sexual misconduct based on such a definition. I have found that there could have been a real prospect of a finding that there had been several instances of sexual misconduct, specifically sexual harassment, subject to the critical caveat that such a finding would depend on the evidence. That evidence would include what the male student had to say about the allegations and penalty. Neither Mr Allin nor the Disciplinary Committee presented the case against him in relation to Ms Feder, Ms Wanebo, Ms Bloomgarden or the student on whom he had forced a kiss him as one of sexual misconduct or sexual harassment. This third hypothetical represents an insurmountable obstacle, in my view. A finding that any reasonable higher education institution would inevitably find several instances of sexual misconduct and impose suspension or expulsion regardless of what he had to say is too speculative. There is insufficient evidence to support that finding and this part of the Claimants case cannot succeed for that reason.

664. There is one final instance of negligence pleaded under this heading, that Mr Allin's conclusions ought to have been reconsidered once the male student's statement was prepared and read out in April 2018 because in that document, rather than claiming there had been a consensual 'mini relationship' he claimed the events had never occurred, was elsewhere at the time and could prove that. I note that early versions of this document allude to him having 'alibis'. Ms Witherington argued that the two accounts given by the male student were fundamentally different. Mr Weetman submitted that his arguments about a sufficiently comprehensive investigation still held good.

665. What might be done in an unusual situation like this is not discussed in the 2016 Conduct Policy or the Universities UK Guidance. That said, the College itself told Ms McCamish it could reconsider the outcome of a disciplinary investigation and reopen one if new evidence came to light. The male student's statement was, in very real a sense, new evidence because the account was materially different from the one that had been given during the investigation. In a way, this was a further example of a failure to grapple with evidence about the male student's credibility. I found Mr Allin's insistence that the two accounts were wholly aligned unconvincing. Taking these factors into account cumulatively, I have concluded that any reasonable higher education institution would at least have reconsidered whether the investigation ought to be reopened if it received this statement. I cannot properly go further than that on the evidence, however. It is not appropriate to extrapolate from a reconsideration exercise that never occurred a conclusion that the investigation would have been reopened and reached a different conclusion. However, that does not matter to the outcome of the case because of my finding that the male student's first account was not properly tested. It follows that, again, the College's actions agan fell below the reasonable higher education institution standard.

Communication

The BA 2 group announcement

666. The next pleaded instance of negligence is the announcement of the result of the investigation into the Claimant's complaint to the BA 2 year group, without Ms McCamish's consent or knowledge. Mr Weetman's answer to this was to point to the 21 February 2018 email from Mr Allin which briefly summarised the meeting including that "all permissions" were "in place" to tell the BA 2 group. Notwithstanding my concerns about that meeting, I have found it was likely Ms McCamish was asked about the BA 2 group being told and agreed. She could not remember what occurred so the email is the best available evidence. This part of her case falls away.

Reading out the male student's statement

667. Next it is said the College acted in a positively harmful way by "[o]ffering inappropriate support to [the male student] in that Mr David Bond assisted him in his statement later read to the second-year cohort in April 2018." Ms Witherington characterised this as a flagrant, inappropriate positive act. Mr Weetman submitted the College's actions in its meetings with the BA 2 cohort had to be viewed in the context of that entire year having discussed rumours about the male student for some time. It was not inappropriate for the College to continue to support all students.

668. What was done with the male student's statement was bizarre. To recap, the male student had told Mr Weir that he wished to present his "defence" to the whole BA 2 year cohort, and later said that he wanted to do the same thing with another year. In its original form the document expressly described itself as setting out a series of 'alibis' in respect most of Ms McCamish's report, yet the account he had given to Mr Allin on 10 January 2018 was based on consent for what had occurred. Mr Bond made suggestions for edits to multiple versions of this document. The word alibi was removed but the surrounding text remained. There were many other changes made, yet when he read it out, Mr Bond disavowed any involvement in its authorship. The only possible way in which what was read out could be understood was as an outright challenge to Ms McCamish's credibility. Little contrition was expressed towards the other students who had made reports and what had been said in the earlier versions about "something for the boys" undermines that. Notwithstanding all these factors, and a discussion amongst senior staff about the appropriateness of such a statement, it was read out to the whole year group in Ms McCamish's presence by the most senior member of academic staff responsible for her course, Mr Bond. Those present were told there would be no discussion.

669. If there were a spectrum of actions higher education institutions could take in these circumstances with those of reasonable institutions at one end, in this respect the College's actions would fall close to the opposite extreme. The College cannot begin to justify them through contextualisation, not least because they could so easily be construed as endorsement of the position the statement expressed. In fact, Mr Allin had warned of that very possibility at the time. This was a further breach of the College's duty of care.

Confidentiality

670. Ms McCamish's first pleading I have categorised in this way is "[f]ailing to investigate and deal with her complaint confidentially, as set out above." There are only two pleaded instances of this occurring, paragraphs 12 and 34.

671. The first of these states that "staff, for example Fran Newman, talked about the claimant behind her back and made comments to other students". Ms Witherington gave several examples. Ms Le Conte's evidence was that Ms McCamish had been talked about in staff room meetings, including by Ms Logue who expressed scepticism. Ms Newman's 22 January and 7 February 2018 emails talked about daily updates from Mr Allin and wanting to 'cover herself' after a confrontation with Ms McCamish. Ms Jones was seeking updates. Ms Newman had also spoken to students including Ms Henry and an ex-student, Bianca Williams.

672. Ms Witherington gave further examples. Mr Bond appeared to have emailed two people outside the College, Ms Ishmail and Pippa Reeves. There was an email exchange between Sean Crowley and Brian Weir. These cannot be considered, however as they formed no part of the pleaded case.

673. On confidentiality within the College and with Ms Williams, Mr Weetman submitted Ms McCamish's case was contradictory because she criticised the College for not speaking to enough students and at the same time argued it had spoken to too many. This argument was

unpersuasive. When Ms Newman spoke to students it was not for the purposes of gathering evidence. He then submitted that some information about the allegations had been circulated by Ms McCamish to some in the cohort. She had accepted in evidence that those told in confidence have begun telling others. There was some staff members who did not find out until relatively late on. For example, Mr Reeves only found out in December 2017 and Ms Newman said less than half of the staff were aware. By mid-January 2018, it was inevitable that there would be discussion throughout the College and Ms McCamish had given permission for her account to be shared with the male student and "others" at the 10 January meeting. The notes of Mr Allin and Mr Henson's meetings with other students showed that they were careful not to reveal sensitive details about Ms McCamish's allegations when gathering information.

674. I accept that some information about Ms McCamish's allegations had started to circulate by the end of 2017 for reasons that cannot be attributed to the College breaching confidences. Ms McCamish acknowledged this herself in witness statement, stating "[a]t this point, almost all of the girls in my year knew some semblance of what happened to me. I felt that I had a duty to them as my friends and classmates who would be working with [the male student] to make them aware and keep them safe."

675. Similarly, it was inevitable that the reasons for the male student's voluntary withdrawal from classes in January 2018 would become rapidly known amongst such a small staff group and be discussed if that had not already happened. Ms Le Conte said that Mr Bond had shut down staff room discussions, but they happened nonetheless. She was unable to say whether this was happening in 2017 or only 2018. Ms Newman said that staff had been warned about keeping information confidential, although she could not recall when (it is likely this was late 2018 because she recalled Ms Gaunt raising this and she did not become Principal until September that year). It is unlikely steps like these would have prevented much discussion, however. Much of that discussion may have been uninformed gossip. There is no clear evidence that there were discussions among staff in 2017 where confidences were breached. I do not think that any reasonable higher education institution would have been able to take steps to suppress the staff discussions that took place in 2018 by acting differently so this part of Ms McCamish's case is not made out.

676. However, in one respect the College's actions are harder to justify. Ms Newman's evidence was that she was shown a detailed note of Ms McCamish's report. She expressed shock that this was shared with her. I have concluded this was not negligent sharing of information in itself. Although she was not part of the investigatory team, Ms Newman was in close contact with both students, might have had useful information to contribute and likely needed to know the nature of what was alleged for safeguarding purposes, even if those were not in the forefront of anyone's mind when the note was shared. However, Ms Newman was then indiscreet with other students and an ex-student, as she accepts, and I have also found she expressed an opinion to Ms Hern, "poor [male student]". Ms McCamish's reaction to what she then heard from Ms Hern is unsurprising. These conversations should not have taken place and there would have been a high risk of confidential information being imparted. However, given my conclusions about what was actually said at paragraph 178 above, and bearing in mind what the cohort including Ms Hern already knew by late 2017, I have concluded that confidentiality was not breached in any significant way by Ms Newman.

677. The second pleaded instance of negligence that concerns confidentiality is "Mr Bond then held a separate meeting with the Second Year cohort on 25 April 2018 and read out a statement from [the male student] which denied the Claimant's allegations against him. This meeting was held without the Claimant's knowledge or approval." Ms Witherington argued this was a total flagrant breach of confidentiality but did not identify which particular parts of the statement contained information that remained confidential at that point. I consider this pleading adds nothing

material to the primary arguments about the male student's statement which I have dealt with above.

Communication of the outcome to Ms Feder

678. The last pleaded instance of negligence in this category "at no time did anyone communicate the outcome of the investigation into Ms McCamish's complaint to Ms Feder" which I have treated as part of the broad allegations of lack of care in Ms Feder's list. Ms Witherington explained that this included communication of the conclusions reached about Ms Feder's report because there had been no separate investigation.

679. This is closely linked to the failure discussed at paragraphs 599 and 600. Had they not occurred, it is likely Ms Feder would have been told about the outcome. There is no dispute she was not told. Mr Weetman submitted this did not matter because Ms Feder had learned broadly what had happened after the discussion with the BA 2 group. Ms Witherington said Ms Feder was not invited never knew if her own allegation was in fact proven or otherwise. She was not named in the BA 2 group meeting and had to speculate. Whilst this failure and that the way Ms Feder's report was handled lead to the same outcome, the College's actions fall below the reasonable higher education institution standard. Unless she asked to be told nothing more, any such institution would have told Ms Feder what have been decided about her report, especially in the circumstances of this case when it had shared parts of that information with an entire year group. Mr Allin's reasons for not telling her started with saying that her report had been a piece of the evidence and he thought she would know the outcome. They developed into him saying he probably just forgot "because the incident didn't feel like a significant complaint". Mr Weir's were that she had no right to know as she was "a witness".

680. None of these were good reasons to withhold such important information from someone who had made a report of the kind Ms Feder had, who had left the meeting where she had done so sobbing and was thought by Mr Weir to have alleged "sexual assault". At one point Mr Allin said, "in hindsight, it may have been a mistake". It was. In this respect, the College's failure fell below the reasonable higher education institution standard. This was a further breach of its duty. Any such institution would have told Ms Feder the outcome as part of protecting her welfare and taking reasonable care for her safety especially in circumstances where the male student would still be present around campus for the remainder of her final term.

<u>The remaining pleaded instances of negligence</u>

681. I have already dealt with the complaints about inappropriate assistance for the male student from Mr Weir. The remaining pleaded instances of negligence under this heading are high level in my view and do not add anything to the specific matters discussed above.

<u>Summary of conclusions on breach of duty</u>

682. I have concluded the College breached its duty of care to Ms McCamish in 12 respects:

Protection

(1) omitting to include sexual misconduct in its disciplinary procedure (by not including the definition in the regulations, the Dignity at Work Policy or another meaningful definition);

(2) failing to give Ms McCamish sufficient information about the 2016 Conduct Policy in June 2017;

(3) failing to suspend the male student at the end of January 2018;

(4) failing to keep Ms McCamish in separate morning classes from the male student for a second time in the September 2017 term;

(5) failing to enforce the terms of the suspension imposed by the Disciplinary Committee;

(6) failing to enforce the understudy arrangement, honour the assurances given about it or at least explain why it would not, and not seeking to persuade the male student he should not attend when Ms McCamish was performing;

Support

(7) failing to support Ms McCamish by arranging EMDR counselling or offering to meet the cost if she made arrangements herself;

Disciplinary investigation and action

(8) failing to identify sexual misconduct, including sexual harassment, as a specific form of misconduct, define those concepts and then apply that definition when investigating and determining what had occurred (and so miscategorising the conduct under consideration);

(9) failing to assess the credibility of the male student's evidence at the investigation stage including by giving Ms McCamish an opportunity to comment on his account and the material he supplied and to supply further evidence of her own before assessing the two accounts;

(10) failing to assess the credibility of the male student's evidence at the Disciplinary Committee stage including by failing to call Ms McCamish as a witness and assessing her account against the male student's and then reaching a reasoned conclusion on her allegations;

(11) failing to reconsider whether the investigation ought to have been reopened once the College received the male student's draft statement; and

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(12) supporting the male student in drafting his statement and reading it out to the BA 2 group.

683. (1), (3), (5), and (8) are also relevant to Ms Feder. The College breached its duty of care to her in those respects. There are three further breaches that apply specifically to her:

Protection

(1) failing to treat Ms Feder's report as a complaint under the 2016 Conduct Policy or offering to do so (which meant she would not be told the outcome);

Support

(2) failing to offer any form of support Ms Feder in any way after her report was made, including counselling; and

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(3) failing to communicate the outcome of the investigation to Ms Feder.

VII. FORESEEABILITY

The test

684. The basic test of remoteness in the tort of negligence was summarised by Lord Hodge and Lord Sales in *Meadows v Khan* [2021] UKSC 21 ('*Meadows*') at paragraph 56:

> "The legal test of remoteness focuses on the foreseeability of the harm which eventuated (*Overseas Tankship (UK) Ltd v Miller Steamship Co Pty (The Wagon Mound (No.2))*) or on whether the harm was of a kind that might have resulted from an accident of a foreseeable nature (*Hughes v Lord Advocate*)."

685. Is therefore unnecessary for a defendant foresee the precise manner in which damage subsequently occurs provided it is within the general scope of the foreseeable risk its negligence creates.

686. Ms Witherington submitted *BXB* straightforwardly illustrated the application of the foreseeability test in the context of a defective investigation of a report of sexual assault. Anyone who had been subject to such an experience is likely to have suffered a psychiatric response and any negligent investigation was likely to exacerbate it.

687. Mr Weetman submitted the position was not so straightforward. Nicola Davies J had considered the issue of reasonable foreseeability of psychiatric injury in the context of a university conducting an internal disciplinary investigation of an employee's conduct in *Piepenbrock v The London School of Economics and Political Science* [2018] EWHC 2572 (QB) ('*Piepenbrock*'). In that case there had been a series of delays and difficulties in determining whether a lecturer's conduct had breached the university's policies and he had developed a depressive illness. The Judge observed at paragraph 243 "[t]he issue is whether these failures on the part of the defendant were such as to give rise to a reasonably foreseeable risk of psychiatric injury. As is clear from the authorities, foreseeability of stress is not enough". She held the development of the claimant's depressive illness could not have been reasonably foreseen by the defendant, even though stress and anxiety were. The nature of the breaches of duty were not of themselves sufficient to create a foreseeable risk of psychiatric injury either. Mr Weetman also took me to *Yapp*, where the Court of Appeal considered a number of authorities on remoteness of damage in the context of psychiatric injury suffered by an employee as a result of another allegedly negligent disciplinary procedure. It held at paragraph 104:

> "it is a normal characteristic of the employment relationship that employees may be criticised by the employer and sometimes face disciplinary action or other such procedures. And in an imperfect world it is not uncommon for such criticism or disciplinary process to be flawed to some extent: there will be a spectrum from minor procedural flaws to gross unfairness. The message of *Croft* is that it is not usually foreseeable that even disciplinary action which is quite seriously unfair will lead the employee to develop a psychiatric illness unless there are signs of pre-existing vulnerability…"

688. There was nothing about either Claimant, submitted Mr Weetman, that would have put the College on notice or foreseeable risk of psychiatric injury caused by the investigation process in early 2018 and they faced a further hurdle because their relationship with the College was less proximate than that between employer and employee.

689. *Piepenbrock* should be approached with some care as Nicola Davies J's focus was on whether the particular features of the disciplinary process in that case could give rise to a reasonably foreseeable risk of psychiatric injury. The features of this investigation criticised by the Claimants are very different, as was as their role in the investigation. They were not employees or even those being investigated. The analogy with *Yapp* is imperfect for the same reason. Both cases are helpful as illustrations of the basic rule that psychiatric injury must be a reasonably foreseeable consequence of the negligence which occurred. A lesser consequence such as stress will not suffice.

What the College had notice of and foresaw

690. What was reasonably foreseeable will be informed by what the College knew and actually foresaw. On this, I have already concluded that, at a high level, if an institution mishandles an investigation of sexual assault it is reasonably foreseeable that is likely to cause or exacerbate psychiatric harm: see paragraph 564 above. Sexual assault was how Mr Allin characterised Ms McCamish's allegations. Bearing in mind *Meadows*, I consider the same basic principle applies to a physical assault that could be characterised as a sexual assault depending on the context, which is how Mr Weir characterised what Ms Feder reported. The same principle also applies to matters associated with the investigation of a report, such as protection, support and associated communication. An investigation of a sexual assault may be exemplary, but if a person whose report triggered it is left exposed to harm that arises from making the report or because they are unsupported, that harm is likely to be foreseeable.

691. Turning to what the College knew about Ms McCamish's vulnerability between June 2017 and January 2018 when her report was made and formalised under the 2016 Conduct Policy, the first point is that Ms Le Conte's unchallenged evidence was that many US students were inherently vulnerable. In June 2017 Ms McCamish made her report to several College staff in some detail and sent through a note setting out her report in her own words. She said she was fearful and wanted to be kept separate from the male student. On 11 September, Ms McCamish told Ms Le Conte and Ms Logue that she had been in EMDR therapy all summer and intended to continue. On 25 November she asked to leave College early because she was struggling and fragile. She met with Ms Newman on 27 November who concluded that this was attributable to the incident with the male student. Ms Newman was concerned at the level of stress Ms McCamish was experiencing and suggested speaking to one of the counsellors or Mr Weir. Ms McCamish expressed her fears again on 5 December in the meeting with Mr Reeves. On 10 January 2018, Ms McCamish suggested the College seek information from its counsellor who she had met. Mr Garven gave his views on 15 January. On 24 January, the College received the long email from Ms McCamish's parents explaining that three counsellors and two physiotherapists had been consulted and could offer information about the painful mental and physical effects of what had happened, adding that the EMDR she had received was used for treating PTSD.

692. In my view, the nature of Ms McCamish's report, the nature of the process which the College had explained would be necessary to investigate it and the information it had about her health meant that it was absolutely foreseeable in this case that a defective response could cause or exacerbate psychiatric injury. I reject Mr Weetman's submission that there was nothing to put the College on notice of a foreseeable risk of this kind.

693. Turning to Ms Feder, the College had less information, but it knew that Ms Feder had discussed past concerns with a senior member of staff, Ms Logue. It knew what she had reported potentially could be characterised as sexual assault because that was Mr Weir's view, and it knew the nature of the process that would follow. It also knew that her reported experience might be part of a pattern linked to what it had characterised as a sexual assault allegation by Ms McCamish. When Ms Feder left her interview with Mr Allin and Mr Henson, she was sobbing, something that must

have been reported to Mr Weir because he knew about her distress. Again, I take the view that these factors in combination were enough to make it reasonably foreseeable there was a risk of psychiatric injury to Ms Feder were the College's response to her report defective.

694. Last, I need to be clear about what I mean by defective. In my view, it is hard to disaggregate and individually calibrate significance of the instances of negligence summarised at paragraphs 682 and 683 because the evidence from the Claimants, which I accept, is that each played a cumulative, contributory part in their perception of the College's response. I will return to this when discussing causation. The exception concerns the support the male student had in drafting his statement. That foreseeably cannot be linked to psychiatric injury because Ms McCamish only found out about it thanks to the litigation.

695. I accept a risk of minor procedural flaws in an investigation do not make it foreseeable that psychiatric injury will occur. As the Court of Appeal said in *Yapp*, there is a spectrum. However, it follows that, the more egregious the defects are, the greater the risk of injury and so the more foreseeable it must be, especially where there is awareness of vulnerability either because of the nature of what is alleged, the investigatory process, knowledge of a claimant's vulnerability, or a combination of these things. The Claimants' cases and circumstances are very far from those of Dr Piepenbrock and Mr Yapp in all these respects. Further, had been necessary to show that their cases fell towards the egregious end of the spectrum discussed in *Yapp* I would have unhesitatingly held that they did.

Conclusion on foreseeability

696. Subject to the caveat about Mr Bond's assistance, I conclude that the College's failures and actions made it reasonably foreseeable that the Claimants' reports would result in negative disclosure experiences and, in turn, psychiatric injury.

VIII. CAUSATION

The test

697. Ms Witherington and Mr Weetman agreed that the conventional 'but for' test applied. The College would only be liable for psychiatric injury which would not have occurred but for its negligent omissions or acts.

The parties' positions

698. Ms Witherington submitted the test was straightforwardly met on the evidence, regardless of which expert opinion was preferred. Dr MacArthur Kline's view was that psychiatric injury was caused by the disclosure experience of both Claimants. Mr Weetman argued that the evidential foundation of the expert reports had not been satisfactorily established, and the even if that were wrong, what had been caused was a normative stress reaction, not psychiatric injury. Further, he said, even if there were some causal link between the actions of College staff and Ms McCamish suffering from PTSD between June and December 2017, that was separate from the period of the 'formal complaint' investigation and subsequent events. In the June to December 2017 period Ms McCamish had expressed how comforted she was with the way the situation was handled by staff. He relied on Ms McCamish's 14 June 2017 email as evidence of this.

699. I have already made a series of findings about Ms McCamish's explanation of what she said in the contemporaneous correspondence including that email. In summary, it was credible and did not undermine her account of her reaction to events. However, given the parties' disagreement about the expert evidence, it is necessary to consider it closely.

700. As regards Ms Feder, Mr Weetman again challenged the evidential basis for the experts' opinions, arguing there was no reason to conclude the College did not listen to her account or presented any form of adverse response. It followed that there was no link between any act or omission by the College and an identifiable psychiatric illness. Besides, he said, none had been identified in the expert reports.

Expert evidence about Ms McCamish

Ms MacArthur Kilne's report

701. Ms McCamish was seen by Ms MacArthur Kline three times in October 2020 and by Dr Mallett once in December 2021. Each produced a report setting out their expert opinion. They later met and produced a very helpful joint statement reflecting the conclusions reached during that discussion, including their differences.

702. Ms MacArthur Kilne's report begins by setting out in some detail the events of February 2016 as recounted by Ms McCamish along with the aftermath, the College's response including the investigation, events surrounding the end of course shows and Ms McCamish's ultimate decision to leave before completing her degree. It also discusses what she told Ms MacArthur Kline about her psychological state on returning to the US and in the months that followed.

703. This account is consistent with the evidence Ms McCamish gave the Court save that there are a few additional details, such as discussions of particular nightmares. For that reason, the report reinforced my view that Ms McCamish's evidence was truthful both in general and specifically about the harmful cumulative consequences of the College's omissions and actions. The report continued by discussing the contemporaneous records of Ms McCamish's medical history.

704. The next section of the report set out Ms MacArthur Kline's opinion. This gist is as follows. Ms MacArthur Kline said that Ms McCamish had "made efforts to deny and suppress her suffering because she was confused by the events and was highly motivated and largely able to carry on functioning in her acting training which she had been immensely looking forward to." This was in the aftermath of the February 2016 events. "Before she disclosed the sexual assaults to her teachers Alyse's psychological reactions were consistent with an understandable normative stress reaction and with symptoms of post traumatic stress which were consistent with a mild post traumatic Adjustment Disorder with anxiety according to the DSM V". At that time, those symptoms "did not appear [to] reach the magnitude of the full formal diagnosis of PTSD".

705. The report continues:

> "After disclosing the sexual assaults to RWCMD staff Alyse felt misunderstood, under supported, not empathised with, unsafe. Her psychological reactions worsened, as a result of her negative disclosure experience. She now appears to have suffered a sense of 'secondary victimisation' leading to a wider and more debilitating range of psychological reactions which were consistent with a moderate to moderately severe Adjustment Disorder with Mixed Anxiety and Depression (DSM V)…
>
> This intensified psychological reaction included further significant impairment of her functioning at school, in school performances and in relation to her future as a trained actor.

> It led to loss of considerable class time, a total loss of motivation, an inability to cope with her education and eventually to sacrificing her final two terms at school and an Honours degree in Acting.
>
> The aim of disclosing had been to provide herself with emotional support and protection from the perpetrator for herself and other female students. She had sincerely hoped avoid a 'rape myth' response (see Refs Appendix 6.1), to be taken out of classes with him, to be offered an empathetic, supportive response, provided with a safe counselling arrangement through the school, in which to share and recover from her difficult experiences and most of all to be believed. She aimed to be able to complete her Honours degree in acting at RWCMD feeling protected and supported and to confidently enter the profession she was being trained for, with full qualifications…
>
> This was not the experience that Alyse felt she had as a response to her disclosure about the sexual assaults to her teachers, excepting her tutor Marilyn Le Conte. Instead she felt on the receiving end of 'rape myths' by some teachers in that she was not necessarily believed, eg 'was it a relationship gone wrong?', eg a teacher 'eyerolling' in response to Alyse's verbal report of the events, that she was gossiped about behind her back as a 'troublemaker' and, on some occasions, negatively judged. She felt tarred with names such as 'promiscuous' that she heard about through the school grapevine. She also felt that several of the teachers were "taking [the male student]'s side" and even flirting with him insensitively in front of Alyse. Alyse also felt misled regarding the nature of her complaint and whether or not she had made a formal complaint in June 2017…
>
> Regardless of the aims of the staff who heard her disclosure, it was Alyse's perceived experience that she did not feel supported, heard, believed or empathised with by many of the teaching staff at RWCMD when she disclosed a series of frightening and confusing sexual assaults to them."

706. I note the material referred to at appendix 6.1 included, significantly, CPS guidance on rape myths.

707. The report continues:

> "But for the alleged neglectful response to Alyse's disclosure by her teachers, she would have
>
> likely suffered a relatively mild post traumatic anxious adjustment disorder as a result of her experience of sexual violations in September 2016…
>
> As a result of disclosing the assaults to University staff in June 2017 it is likely that she could have avoided an intensification of her post traumatic anxious adjustment reaction had she experienced a more empathetic, supportive and positive disclosure response from her teachers."

708. Ms MacArthur Kline then discussed key academic literature on adverse disclosure experiences in relation to sexual violence including sexual assault along with recommendations made by the University of Sussex in January 2018 in training for staff handling such disclosure. Key training messages included:

> "a. That rape myths play a key role in preventing disclosure and must be counteracted by those who are disclosed to.
>
> b. That trauma has varying effects and there is no one typical response. Empathy is key and the response from those who are disclosed to in an institution must be centred on the survivor.
>
> c. It is important to create a safe place physically and emotionally for the survivor and allow them time to share.
>
> d. Empowerment is also crucial; survivors are to be seen as the experts of their own experiences and situations and must not have choices taken away from them.
>
> e. It is imperative to know and signpost survivors to the most appropriate support services, whether on campus or off, as appropriate.
>
> f. It is important to consider self-care and maintaining boundaries, particularly for staff who do not take disclosures as a principal part of their role.*"*

709. Ms MacArthur Kline then commented:

> "Had Alyse's experience been that the above kinds of criteria been met by her teachers, upon her disclosure of unwanted sexual violations, then it is more likely than not, in my opinion, that that Alyse McCamish would have had a good chance of recovering from the assaults, regaining her self confidence and her love for acting and completing the full three years of her Honours degree in Acting fully trained and motivated to work as a professional actor in the future…
>
> Instead she suffered from heightened symptoms of post traumatic anxiety and depression with suicidal ideation, leading to a premature abandonment of her RWCMD training and her career, in significant distress."

710. Her conclusions were:

> "(4.1) SUMMARY OF DIAGNOSIS
>
> Miss McCamish's psychological reactions to her sexual violation disclosure experience at RWCMD were consistent with a moderate to moderately severe post traumatic Adjustment Disorder with mixed Anxiety and Depression according to the DSM V 309.28.
>
> (4.2) CAUSATION
>
> It is likely on balance that her psychological reactions were attributable to the index disclosure event in the context of a pre-existing mild, anxious adjustment disorder caused by the sexual violations.
>
> (4.3) PROGNOSIS
>
> Her most significant psychological reactions occurred between June 2017 (Disclosure) and December 2018 (Leaving RWCMD). She suffered continuing, gradually recovering depressive reactions between December 2018 and August 2019.

> Her psychological reactions have subsequently continued to recover with the support of regular psychotherapy. She has residual reactions in the form of impaired trust in interpersonal and potentially romantic relationships
>
> With appropriate further treatment it is likely that she can achieve a full resolution of her residual psychological reactions within 6 months from the start of treatment."

711. I should mention that the report discusses prognosis and treatment options in more detail, as do Ms MacArthur Kline's report on Ms Feder and both of Dr Mallet's reports.

Dr Mallet's report

712. Dr Mallet's report is more concise. Like Ms MacArthur Kline, he sets out Ms McCamish's account of events including the College's response, her perception of it and associated symptoms of illness. Past medical history is summarised in an appendix.

713. The gist of Dr Mallet's opinion is set out in section 4 of his report which begins:

> "4.1 Ms Mccamish is a twenty-four-year-old woman who describes four episodes of sexual assault in close succession in September 2016 shortly after she arrived at the Defendant college from the US. Although these assaults are alleged and considered to be unproven by the college, there is nothing in her account that would lead me to consider that her recall is in any way unreliable. Indeed, the somewhat fragmented nature of her narrative is much more in keeping with genuine events than ones that are deliberately elaborated. She was not physically injured although she describes a period of being physically rundown after these incidents."

and continues:

> "4.2. PSYCHOLOGICAL SYMPTOMS
>
> 4.2.1. Ms Mccamish describes a range of symptoms consistent with the emergence of delayed onset PTSD in or around mid 2017 in relation to the index events. These lasted around six months in fully fledged form. She has been left with some residual phobic anxiety but has worked hard on dealing with the implications of this, including via her therapy and by undertaking a documentary about related matters. Any disabling avoidance seems to have resolved recently as she has been able to return to acting classes although she has been able to work generally and make a documentary since 2020.
>
> 4.2.2. In conjunction with PTSD symptoms, Ms Mccamish also developed a range of symptoms consistent with the development of a depressive disorder. Again, these resolved after
>
> around six months. She has been left with some low-grade symptoms which do not cause her any disability.
>
> 4.3. CAUSATION/ ATTRIBUTABLE LOSS
>
> 4.3.1. The primary cause of the depressive and PTSD symptoms from Ms McCamish's account were her delayed reaction to the assaults but in my opinion, the alleged response of the College authorities, if proven, would have made a material contribution to her depressive symptoms and to her feeling alienated from

> the College to the extent that she could no longer cope with staying there after late 2018. Therefore, any loss the court find accrued because of this decision to leave early would have been materially contributed to by the alleged response of the College at that time. The records summarised below do not appear to support the notion that the College failed to assist her in finding treatment, nor do they imply that she was actively encouraged to leave early. Ultimately, these are findings of fact for the court.
>
> 4.3.2. Ms McCamish's difficulties moving forward with her planned career and general independence were evident in the first few months after she returned to the US. The impact of the index events would have had a significantly deleterious effect on her to a reducing extent over the subsequent year or so and since she started making her documentary and receiving therapy.
>
> 4.3.3. From Ms McCamish's account, there was little or no pre-existing vulnerability and no other important life events that would have contributed to these difficulties.
>
> 4.3.4. Apportionment is clearly problematic in this case given the close relationship between the index events and the alleged response of the College, and the way in which they are said to have reinforced her sense of isolation and impotence as far as doing anything about her problems was concerned. In my view, absent the perceived adverse response of the college authorities, she would still have developed most of her PTSD symptoms and a significant proportion of her depressive symptoms. If she had obtained appropriate treatment around that time, on the balance of probability the duration of her PTSD and depressive symptoms would have been little changed but in the context of a more supportive background environment, she would not have left early and would not, on the balance of probability, have spent the next few months simply living at home with her parents before re-embarking on her career."

714. Whilst the experts did not fully concur on their diagnosis and the significance of Ms McCamish's disclosure experience, the common ground is apparent. I also noted Dr Mallet's comments about the reliability of Ms McCamish's account which reinforced my own view.

The joint statement

715. The joint statement explains the experts' position following their discussion in this way:

> "1. We agree that from her account, Ms McCamish was sexually assaulted several times in September 2016 by a male perpetrator who shared her student flat at RWCMD and that in June 2017 she disclosed these events to her teachers and asked them to manage the situation on her behalf.
>
> 2. We agree that, in immediate reaction to the assaults, she probably developed significant symptoms of a trauma and stressor related disorder, such as a traumatic adjustment disorder or post-traumatic stress disorder, including anxiety, avoidance behaviour when possible, numbing, dissociation and self-doubt, irritability, sleeping difficulties, and depressive symptoms.
>
> 3. We agree that until she disclosed her experience to the college in June 2017, she tried to emotionally numb herself and to suppress her trauma reactions for the sake of her training experience.

4. From around June 2017, post disclosure, Dr Mallett considers that there was a diagnosis of PTSD evident for the following six months or so according to generally accepted diagnostic criteria (DSM V, ICD-10). This was followed by some residual phobic anxiety and adjustment symptoms. Ms MacArthur-Kline does not disagree. In her view, post disclosure, there was a diagnosis of more severe partial PTSD, in the form of a now moderate to moderately severe traumatic adjustment disorder, as a likely result of disclosure, and perhaps full PTSD.

5. We agree that Ms McCamish's psychological reactions were complex because they were firstly in reaction to the assaults and secondly in response to her perceived adverse experience of the assault disclosure to her RWCMD teachers.

6. In MacArthur Kline's understanding, the aim of disclosure to RWCMD staff was to inform and warn staff about the perpetrator's dangerous behaviour, to be believed and feel supported, to have her personal safety professionally managed such as being protected from unnecessary and frightening further exposure to the perpetrator in classes and productions. Also, for RWCMD staff to take responsible action in relation to her perpetrator.

7. We agree that after the act of disclosing the assaults to RWCMD staff, she reported feeling more vulnerable and exposed and in need of an effective, reassuring response from RWCMD staff, both in relation to her ongoing emotional vulnerability and sense of physical safety and also in relation to the perpetrator's presence in her classes and rehearsals.

We do not agree regarding the extent of the impact upon her diagnosis, of the RWCMD response to her Disclosure

8. Ms MacArthur-Kline considers that Ms McCamish's experience of the inadequate and, at times, oppositional response of the RWCMD staff, to her disclosure of the sexual assaults, was probably, on balance, likely to have been the cause of the significant, lasting increase in intensity of her post traumatic distress whilst she remained at college, causing a more severe ongoing level of intensity of her traumatic adjustment disorder or PTSD, until she prematurely left.

9. But for the perceived adverse RWCMD response to her disclosure, and in the case of a perceived reassuring and containing RWCMD response, it is likely, in Ms MacArthur Kline's view, that Ms McCamish would have been more likely than not, to have started to experience a gradual resolution of her traumatic adjustment disorder/PTSD as a result of her disclosure, rather than an ongoing deterioration of it caused by the perceived insensitive lack of supportive responsiveness by her teachers and staff.

10. Dr Mallett considers that the perceived adverse response of the college was important but less significant in relation to the phobic anxiety / PTSD symptoms as Ms McCamish's psychological state according to her account was already deteriorating for some months leading up to mid 2017.

11. We agree that in relation to the perceived ongoing adverse, uninformed response of the college to Ms McCamish's disclosures, (a matter for the court), that Ms McCamish felt she could not tolerate remaining in college and left the college to go home, in late 2018.

> 12. We agree that absent the perceived inadequate, adverse response of the college, she would not have left college in late 2018, at the end of her 1st term in her final year but would have remained at college for the duration of her three year degree course and graduated with an Honours degree.
>
> 13. We agree, from her account, that her employment status as a prospective actor was thereafter functionally impaired/ stagnated , her final two terms of education being replaced by a period of eight months of dysfunctional depression at her parental home.
>
> 14. We agree that a perceived more appropriate, informed and supportive RWCMD response would probably have resulted in Ms McCamish not missing/avoiding so many classes, leaving the degree course 2 terms early, and therefore graduating without an Honours degree.
>
> 15. We also agree that from mid-2019 onwards, after she graduated and returned to USA for good, no significant lasting disability has resulted from either the index incident or the adverse response of the college."

Oral evidence

716. Permission had been granted to call both experts by the case managing Judge and Mr Weetman decided their evidence ought to be heard. They were both very helpful witnesses.

717. When cross examined, Ms MacArthur Kline said Ms McCamish's account had been internally consistent. She had not reviewed contemporaneous emails. Ms McCamish had told her that she had wanted to be separated in classes from the male student when she first complained and that had been agreed for the second year. An offer to someone suffering trauma of prompt counselling services was important. If she had been given counselling, would that have helped, asked Mr Weetman. She agreed. If none had been offered, that would have been "a shame and a disadvantage". Ms McCamish had told her someone had described her as promiscuous and had become socially withdrawn. Taken to paragraph 8 of the joint statement, she was asked whether "oppositional" was important. She said this referred to times Ms McCamish was being accused of something or disbelieved. Mr Weetman put a hypothetical to her: if the Court concluded Ms McCamish had not been victimised by the College, had not been called things such as promiscuous and had been offered counselling, did she accept her assessment of the impact of the College's response would have to be revised? She said, "those points you've brought up were examples of what I've summarised elsewhere as a 'negative disclosure experience' on Mr McCamish's part. If Ms McCamish had experienced a positive disclosure response from the College in a consistent way then I think she would not have suffered from the augmentation and exacerbation of her symptoms as she did". Mr Weetman asked about "normative stress reactions" which she explained as being different to an adjustment disorder. They were not a diagnosis, rather a normal reaction to stress. Mr Weetman asked whether the further the Court moved away from finding an oppositional response, the more likely it was that the effect of the ongoing investigations would be to cause normative stress reactions rather than an adjustment disorder. She said Ms McCamish's perception and experience of decisions and non decisions would also need to change, such as exposure to the male student when she had asked not to be, hearing he had been referred to as "poor [male student]" and other things. She concluded by mentioning she had interviewed Ms McCamish three times and there were no inconsistencies.

718. I asked Ms MacArthur Kline about the offer of counselling. Was the offer significant in itself or would the mitigating effect come from the actual counselling? She replied "I think one without the other would not have been very helpful but if I could just add to that, one of the benefits of

receiving immediate counselling might have been to put this in context where she had the ability to feel fully heard, fully listened to, heard and taken seriously in the act of naming these horrendous experiences that she went through." She added that, prior to disclosing her experiences, Ms McCamish had been coping with the trauma as best she could and to a certain extent succeeding, including by pressing on with her studies. Once she named the traumatic experience in her report, she could no longer put it away on an internal shelf. Once someone does this their "nervous system wakes up" and they "start to experience the trauma in a more active way". "That is what needs to be met by the receivers of the disclosure. That needs to be utterly respected, held, contained, heard, believed, and responded to". She discussed her years of working with clinical patients who had supressed traumas. A "crucial" moment comes when such a response is needed.

719. Dr Mallet was cross examined by Ms Witherington. Had Ms McCamish suppressed what had occurred with the male student, she asked. Dr Mallet agreed, but it was not straightforward. Her account was that she was deteriorating during that period with "some mood disturbance and some physical symptoms" but "it wasn't until mid-2017 when she started to develop more clear cut, post traumatic anxieties". He went over paragraph 2.16 of his report. "Her attempts to compartmentalise and disassociate from the events were only partially successful." He agreed the point of a disclosure, here June 2017, was clinically important. It is common in post traumatic states for there to be a period of emotional shock, with disassociation from the traumatic aspects of the experience. In her case it went on a little longer than is typical. What she described was not an uncommon response to sexual assault, he agreed. Ms Witherington asked if Ms McCamish's experience of disclosure to the College had been positive, it would have given her a feeling of safety and her psychiatric symptoms would not have been as bad as they were. Dr Mallet agreed. This had been explained in the joint statement where he and Ms MacArthur Kline had a "difference of opinion of degree" about the significance of the perceived adverse response of the College relation to the phobic anxiety / PTSD symptoms because of the account he had been given "about there being some deterioration in her psychological state prior to the disclosure". He added "I'm not saying it was unimportant, the perceived reaction by the College, but it was of relatively less importance to the extent that I think she would have, in a natural progression of these symptoms, gone on to develop significant post traumatic anxiety or PTSD symptoms in any event even if they'd responded in a supportive way". Asked if that had been said in the joint statement, Dr Mallet said it was not there, he was trying to elaborate for the Court's benefit. It was implicit in paragraph 10.

720. Asked if it was still his position that the College's actions made a material contribution to the diagnosis of Ms McCamish, he said this was fairly put. It was difficult to quantify and divide the impact of such events. As Ms MacArthur Kline said, others' reaction to an experience of trauma, such as disbelief of victimisation, can be traumatising in itself. He also said that the decision to leave was much more closely linked to the College's response to than to the primary trauma, i.e., the reported assaults. He was then asked about paragraph 4 of the joint statement, from the account she had given it was around June 2017 that "she crossed the threshold into a formal diagnosis of PTSD". Ms Witherington put it to him that the minute Ms McCamish had made a disclosure and lost control of the information about what had happened, her safety and wellbeing was in another's hands. Dr Mallet's response was:

> "Yes. I think that is part and parcel of the traumatization of not being believed. If you are not believed by an authority figure, a bit like a child who discloses abuse and is not believed by a parent, it's a traumatising aspect of the abuse. I'm simply saying there was a trajectory of deterioration beforehand. There was the experience of not being believed which, it could be argued exacerbated the situation, and she's now found herself in the situation she's now in."

721. Pressed, he reiterated that the actions of the College and how they had responded to the disclosure had exacerbated her symptoms.

722. Drawing these threads together, the most significant remaining differences between the experts by the time of the trial were the diagnosis of Ms McCamish prior to her report in June 2017 i.e. her disclosure, the extent to which Ms McCamish would have successfully suppressed her reaction had there been no disclosure, the likely impact of disclosure regardless of the College's response, the post-disclosure symptoms and the extent to which they were impacted by Ms McCamish's experience of the College's response as adverse, both in June 2017 and the period up to her leaving the College. As Dr Mallet said, he and Ms MacArthur Kline had "difference of opinion of degree", the most important element of which was that he considered Ms McCamish would have developed significant post traumatic anxiety or PTSD symptoms even if the College had been supportive, but that did not mean the College's response was unimportant. Its actions had made a material contribution to Ms McCamish's illness after June 2017.

723. Ms Witherington's position was that, even if Mr Mallet were right, his 'material contribution' conclusion was enough for Ms McCamish to establish causation.

724. I have concluded that, on the points where they differ, Ms MacArthur Kline's opinion is more likely to be correct than Dr Mallet's on the balance of probabilities. I have not reached that conclusion lightly. It has nothing to do with either expert's professionalism or the seriousness and care with which they approached their task of assisting the Court, which was exemplary. My reasons are as follows. First, Dr Mallet's experience as a doctor and as a medico-legal expert as set out in his CV is impressive, but one aspect of that is its breadth. Work with "victims of assault" is one of over a dozen examples of general psychiatric experience given. Work with victims of sexual assault and abuse is not specifically mentioned (though he may have experience of this). By contrast, Ms MacArthur Kline's CV explicitly mentions working with those who have suffered abuse leading to PTSD being part of her current practice, and she had not only considered recent academic and research literature on negative disclosure experiences following sexual violence, including sexual assault disclosure experiences for the purposes of her report, but drew on it to reach her conclusions. It also appeared to inform what she said when called and cross examined, which was nuanced and compelling. Secondly, Ms MacArthur Kline saw Ms McCamish on three occasions whereas Dr Mallet saw her once. I consider this would have enabled Ms MacArthur Kline to take a more informed view. Thirdly, Ms MacArthur Kline saw Ms McCamish a year before Dr Mallet did. That may well impact on the level of detail Ms McCamish could give about a series of events which are inherently difficult to talk about and their relationship to one another.

Conclusions on causation in Ms McCamish's case

725. The evidential foundation for the expert reports was reinforced rather than undermined as a result of the scrutiny to which they were subjected. I reject the submission that Ms McCamish's psychiatric injury can be temporally compartmentalised and so kept separate from the 2018 investigation. Ms MacArthur-Kline's opinion, which I have accepted, draws no such distinction between the period of June to December 2017 and subsequent events. Nor was that borne out by the evidence from Ms McCamish which I also accepted. I also reject the submission that the experts concluded Ms McCamish experienced a normative stress reaction rather than psychiatric injury once she made her report to the College. They agree she suffered from PTSD from that point and that the College's response had an exacerbating effect on a pre-existing condition which hitherto had likely been a trauma and stressor related disorder, such as a traumatic adjustment disorder or PTSD. The experts disagree about the extent of the exacerbating effect, but for the reasons I have given, I prefer Ms MacArthur-Kline's opinion which, critically, was that Ms McCamish's experience of the inadequate and, at times, oppositional response of the

College, was likely to have been the cause of "significant, lasting increase in intensity of her post traumatic distress whilst she remained at college, causing a more severe ongoing level of intensity of her traumatic adjustment disorder or PTSD, until she prematurely left." In discussing that response, her report does not list that College's omissions and actions in precisely the way I have, but explains the significance of what happened in the June 2017 meetings, the fact Mr Weir arranged no counselling, the issues with having time off, the timetabling problems, Ms Newman's comment about the male student to Ms Hern, the male student's presence on campus including during his suspension, the investigation's outcome, Ms McCamish feeling feel misunderstood, invalidated and judged by College staff and the events surrounding the shows.

726. Taking this into account along with Ms McCamish's evidence, I conclude that though all the instances of negligence summarised at paragraphs 682 contributed to some extent to her reaction, those summarised at subparagraphs 682(4), (5), (6), (7), (8), (9), (10) and (12) are the most important causally. The negligence summarised in those subparagraphs exacerbated, and made a material contribution to, Ms McCamish's psychiatric injuries. But for that negligence, those consequences would not have occurred.

Expert evidence about Ms Feder

Ms MacArthur-KIine's report

727. Ms Feder was interviewed by Ms MacArthur-Kiine on 20 October 2020 and Dr Mallet on 30 November 2021. Both had access to her past medical records and produced reports for the purposes of this litigation. A joint statement was produced in October 2022 following a discussion that month.

728. Ms MacArthur-Kiine's report records Ms Feder's account of the events of 27 November 2017. There are no significant differences between the report Mr Henson drafted following the 17 January 2018 meeting and the additional information Ms Feder gave the Court. The account of the meeting and its aftermath are also consistent with Ms Feder's evidence, though Ms MacArthur-Kiine's report contains a few more details, such as wariness about being massaged, struggling to fall asleep and nightmares and the features of her anxiety attacks.

729. My view of Ms Feder's credibility was reinforced by the content of the report. The records of treatment after leaving the College from medical professionals, including Dr Abdelghani, are discussed in detail.

730. Ms MacArthur-Kiine's own views are that Ms Feder had significant psychological vulnerability before the events of 2017 and 2018, given which "it would have been particularly important for her disclosure of a violation by a male fellow student in November 2017 to have been taken particularly seriously… she might have been offered a sense of being heard and understood, asked whether she had any pre-existing mental health or assault vulnerability and whether she might need particular support or protection". She added "[s]he might then have had an experience of empathy, support and containment, rather than experience of being unheard and potentially judged." Citing relevant studies, Ms MacArthur-Kiine contrasted acts of disclosure of assault which cause further damage and trauma with those which are a positive, healing experience, depending upon the reaction of the person to whom disclosure is made.

731. The report concludes:

> "The stresses at RWCMD seemed to have led to an exacerbation for a pre-existing mental health vulnerability, together with new elements of a mixed anxiety and depression with aspects of mild traumatic stress reactions…

> Her disclosure related psychological reactions are likely to have been at their most marked from January 2018 when she disclosed until July 2018 when she left RWCMD. Had she received appropriate trauma counselling and emotional support through her university post-disclosure within the time she remained at university, then her hyper vigilance, anxiety attacks, lowered mood and avoidance behaviours would have been more likely than not to be resolved at least to the pre assault level by July 2018…
>
> During this period of six months it is likely that her psychological reactions were consistent with a mild adjustment order with mixed anxiety and depression.
>
> After leaving RWCMD it is likely that her further, ongoing distress which more significantly contributed to by unrelated psychological stressors."

adding:

> "(4.1) SUMMARY OF DIAGNOSIS
>
> Miss Feder's psychological reactions to disclosure were consistent with a mild Adjustment Disorder with mixed anxiety and depression, according to the DSM V.
>
> (4.2) CAUSATION
>
> It is more likely than not, on balance, that her psychological reactions were attributable to the index disclosure event in the context of significant pre-existing emotional vulnerability.
>
> (4.3) PROGNOSIS
>
> Her psychological reactions occurred during the 6 months between disclosure in January 2018 and leaving RWCMD in July 2018. Her disclosure specific psychological reactions subsequently reduced in intensity and frequency once she was out of the environment which was likely to have caused and then maintained them..."

Dr Mallet's report

732. Dr Mallet's report follows a similar structure, discussing Ms Feder's history, symptoms and past treatment. He met Mr Feder in November 2012. His opinion was:

> 4.2.1. Ms Feder describes a range of symptoms consistent with the development of a phobic anxiety state with some post-traumatic features in relation to the specific incident. Although it is difficult to disentangle the index incident from other assaults and traumatic
>
> situations that she has been involved in, it would be reasonable to assume that it has made a material contribution to any anxiety given the circumstances of it.
>
> 4.2.2. Of more importance to Ms Feder, according to her account, was the reaction of the Defendant institution to her difficulties in that having decided to speak out about what happened, she felt that she received no support and that her problems were not taken seriously. This was compounded by what she had already perceived as an ongoing abusive and misogynist culture.

> 4.2.3. The impact of these experiences on Ms Feder have been two-fold. On the one hand it has caused her distress and concern (not in my view amounting to a significant psychiatric disorder except perhaps contributing to her adjustment symptoms) but on the other hand it has also provided her with a focus for her future work which from her account has benefitted to her self-esteem. The assault itself was one of a number of adverse experiences that she has had and therefore it's specific impact would have been of relatively minor, but still material, importance.
>
> 4.2.4. Absent the index incident, Ms Feder told me she would have been pursuing an acting career full-time and she would not have become involved in her activist work as detailed below. From the records however, she continued to pursue acting roles and therefore the effects of the index incident do not appear to have been particularly disabling. Her involvement in the activist work indicates that there is little residual phobic anxiety.
>
> 4.2.5. The detailed mental health records indicate Ms Feder's wide ranging pre-existing psychological vulnerability and other adverse life events. These are summarised in the chronology below. Given her previous history of more serious psychological problems, it is unlikely that the index events and the Defendant's alleged negligent response have made more than a relatively minor (although still material) difference to this. To put it another way, absent these issues, she would still have developed significant generalised psychological/ adjustment problems in any event.
>
> 4.2.6. From Ms Feder's account however, it would seem reasonable to link her activist work and any disinclination to continue her career as an actor with what she perceives to be the negligent institutional response of the Defendant, rather than something that has arisen as a direct result of the incident itself and her other experiences. To what extent she has, in reality, decided not to pursue her career as an actor would be a matter of fact for the court. There are some indications that her activist work is having a positive impact psychologically."

The joint statement

733. Ms MacArthur-Kiine and Dr Mallet then met and the result of what had was obviously a constructive discussion was a joint statement that summarised their agreements and remaining differences. They said:

> "1. We agree that following the index assault incident, Ms Feder developed anxiety symptoms. Dr Mallett considers these to meet criteria for a phobic anxiety state. Ms MacArthur Kline considers she probably developed an acute stress disorder immediately after the assault.
>
> 2. We also agree that following her disclosure to RWCMD staff about her experience of being assaulted, she perceived an adverse response of the college authorities to her disclosure, and that this led to her developing anxious adjustment symptoms whilst she remained at college.
>
> 3. Ms MacArthur-Kline considered she probably met criteria for a mild adjustment disorder post disclosure, with significant impairment in her capacity to be fully present and emotionally available in her acting classes and performances, with hypervigilance and social withdrawal for the remainder of her time at RWCMD.

> 4. We agree that but for the adverse disclosure experience, Ms Feder's initial stress reactions to the assault would have been likely to resolve over the next 1-6 months.
>
> 5. We agree that Ms Feder's psychological symptoms probably did not result in significant disability except insofar as she claims they led her to reduced sense of safety and motivation in relation to pursuing her planned acting career.
>
> 6. We note however, in this latter respect, that she has been noted to be looking for acting work at times when assessed, in spite of her self-reported reduced sense of safety and motivation.
>
> 7. We agree that absent the perceived adverse response of the RWCMD authorities, Ms Feder's adjustment symptoms would have likely been relatively less serious.
>
> 8. However, we agree her other wide-ranging vulnerabilities, adverse life events, the abusive relationship she was in and what she perceived as a problematic background culture at RWCMD, may have been likely to have been contributions to her significant adjustment symptoms in addition to her phobic anxiety/acute stress in reaction to the index event.
>
> 9. We agree that, if the court find that she has curtailed her acting career, then this decision might have been less likely (but not to the extent that this could be quantified,) if the college authorities had acted more constructively in relation to her disclosure of the assault."

Oral evidence

734. Cross examined by Mr Weetman about her own report, Ms MacArthur Kline agreed that the lack of being heard and understood was really important in Ms Feder's case. Mr Weetman put a hypothetical to her. If I were to find Ms Feder's complaint was "taken on board", she was heard and understood and her allegation was "found to be established" by those who were investigating, would that impact on Ms MacArthur Kline's assessment of the impact on Ms Feder? "It would have been very helpful for her", she replied, but as she understood it, there was no investigation on Ms Feder's behalf.

735. I asked Ms MacArthur Kline to explain whether by 'being heard' she meant literally heard, in the sense of someone listening to an account of events and making a note, or something else. She said, "I meant it in a fuller sense, of being taken seriously, being emotionally heard, and having her experience taken seriously for how she was presenting it, rather than having it questioned in such terms like 'did you have a bra on' which immediately seeds a sense of doubt in her account".

736. Drawing these threads together, there remains a disagreement over the immediate psychological consequences of the events of the 27 November 2017. There were anxiety symptoms, which Dr Mallet considers were a phobic anxiety state and Ms MacArthur Kline considers were an acute stress disorder. This dispute would have been significant had I found the College owed Ms Feder a duty which was breached in a way that led to those events occurring, for example that it should have warned her, of suspended expelled or at least have been actively investigating the male student by that date. Given my findings, the diagnoses for the period immediately following 27 November are less important, especially as both experts agree that the symptoms would have resolved within one to six months had Ms Feder's experience of the College's reaction to her disclosure been positive, rather than adverse. They also agree that experience led to her developing anxious adjustment symptoms while she remained the College. Ms MacArthur

Kline's opinion is that the exacerbating effect of that experience was sufficiently severe for her to conclude it was likely the diagnostic criteria for a mild adjustment disorder were met post disclosure. Dr Mallet's opinion is that the experience did not lead to a significant psychiatric disorder, except perhaps contributing to Ms Feder's adjustment symptoms. He thought it unlikely that the events of 27 November and the College's alleged negligent response made more than a relatively minor difference to her phobic anxiety, given other life events including psychological problems with other causes, though the difference was material. This difference in opinion does matter because, to claim damages for psychiatric harm, Ms Feder must show that the College breached a duty in a way that caused or materially contributed to such harm. Dr Mallet is also of the opinion that Ms Feder's activist work around her experiences has helped her come to terms with them psychologically.

737. I have considered both experts' opinions carefully in the light of my findings about Ms Feder's evidence generally and about the impact of the College's omissions and actions in particular which, as I have said, was credible. I have concluded Ms MacArthur Kline's opinion is more likely to be accurate than Dr Mallet's on the matters on which they differ. As with Ms McCamish, my primary reason is that I consider Ms MacArthur-Kline's more relevant experience and its application in this case means it is more likely she is right. The second reason is that Dr Mallet's reasoning was unclear in one respect. In the joint statement, he agreed that, but for the College's response, Ms Feder's "initial stress reactions to the assault would have been likely to resolve over the next 1-6 months". However, in his report he took the view that "it is unlikely that the index events and the Defendant's alleged negligent response have made more than a relatively minor (although still material) difference" because pre-existing psychological vulnerability and other adverse life events made it likely she would still have developed significant generalised psychological/ adjustment problems in any event. It seems to me that 'resolution' is more than a relatively minor material difference even if considered in the context of other problems. By contrast, Ms MacArthur Kline's view on the consequences of the adverse disclosure experience was clear. Last, though this is a relatively minor factor, Ms MacArthur Kline saw Ms Feder a year earlier than Dr Mallet did. That may have made it a little easier for Ms MacArthur Kline to disentangle the consequences of the events of 27 November 2017 and the College's response to Ms Feder's disclose and disentangle them from the consequences of later events.

Conclusions on causation in Ms Feder's case

738. I have already explained why I consider Ms Feder's evidence about the College's response and its impact on her to be credible. It makes no difference to the legal analysis that not everyone making such a report would have reacted in precisely the way she did to the College's response. As with Ms McCamish, the expert evidence further underpinned what Ms Feder said.

739. Both experts agree that, but for Ms Feder's perception of the College's response, her psychological reaction to the events of 27 November 2017 would have been different. I have found that response had a number of negligent features: see paragraphs 682 and 683 above. I have considered these together with Ms Feder's evidence, and the expert opinions, noting the relative importance of her misgivings about trusting the College, distress during the 17 January 2018 meeting, the toplessness and fault question being asked, her feeling unheard and her hopes that she would be asked how she could be supported, helped to feel safe and protected and offered counselling. I also note her feeling more vulnerable, unheard and unsafe after her report, hearing limited information about the investigation's outcome second hand and seeing the male student on campus throughout, including in the library. I have concluded that the instances of negligence summarised at subparagraphs 682(5) and 683 (1), (2) and (3) are more important causally than those summarised at subparagraphs 682(1), (3) and (8). Although I consider all had some causative effect, I have concluded that, but for the negligence summarised at subparagraphs 682(5) and 683 (1), (2) and (3), Ms Feder would not have suffered the mild adjustment disorder

(recognised as a psychiatric illness under Adjustment Disorders DSM V - Code 309) that Dr MacArthur Kline diagnosed post-disclosure which was a deterioration from the acute stress disorder Ms Feder had before disclosure.

740. It follows that I find the College's negligence materially contributed to the exacerbation of Ms Feder's pre-existing symptoms in that they caused that adjustment disorder to occur.

IX. DAMAGE AND LOSS

General damages for personal injury

The Judicial College's guidance

741. To help with what it acknowledges to be one of a civil judge's most difficult tasks, the Judicial College has produced the Guidelines for the Assessment of General Damages in Personal Injury Cases. Ms Witherington and Mr Weetman agreed there were no cases comparable to the present ones, but the guidelines should be applied. The guidelines take the form of several brackets and lists of factors to be taken into account in respect of psychiatric damage generally: the ability to cope with life, education, and work; the effect on relationships with family, friends, and those whom she comes into contact with; the extent to which treatment would be successful; future vulnerability; prognosis; and whether medical help has been sought. The moderate bracket applies where there have been problems associated with these factors but there has been marked improvement by trial and the prognosis is good.

Ms McCamish

742. Ms Witherington submitted that Ms McCamish's case fell into the moderate band for PTSD, which is a range from £8180 to £23,150. The specific guidelines for that bracket explain "[i]n these cases the injured person will have largely recovered and any continuing effects will not be grossly disabling". Mr Weetman submitted that, if I were to reach the conclusion that "some aspect of additional psychiatric illness had been caused", general damages should fall somewhere between that band and the less severe bracket depending upon the extent of causation. Less severe for the purposes of the PTSD brackets means "a virtually full recovery will have been made within one to two years and only minor symptoms will persist over any longer period."

743. The expert opinion I have accepted is that Ms McCamish suffered from PTSD from June 2017 through to the time when she left the College in December 2018, and that she made a recovery progressively over the months and years that followed, "gradually recovering depressive reactions", as Dr MacArthur Kline put it in her report. In my view, it is likely that the effects of the College's response were very significant over the 18-month post-disclosure period during which Ms McCamish remained at the College and significant for around a further six months. It is difficult to be precise, but this is based on her own description of her recovery, reflected in the report. During the period when the effects were very significant, her ability to cope with life and education and the impact on relationships varied to some extent. She was far more positive and optimistic on returning to College in the September 2018 term, but that is likely to have been directly connected to the treatment she had received in the US over the summer and the lack of contact with the male student between March and September 2018. What made her mental health deteriorate rapidly again was the prospect of contact with him in shows that were of critical importance academically and professionally. I note both experts' agreement that, but for her perception of the College's response, she would not have taken the drastic step of terminating her course part way through. Neither suggests that there was a virtually full recovery within one to two years.

744. Taking all these factors into account, and having reread both reports and the joint statement, I have concluded that the moderate bracket is the appropriate one and that the level of damages should be £14,000. I do not think it is possible on the evidence I have considered to disaggregate the PTSD attributable to the College's response from that attributable to Ms McCamish's reaction to what happened in September 2016, except by discounting PTSD prior to June 2017 for the purposes of deciding which bracket applies and where the injury falls within the bracket, which is what I have sought to do. In other words, I consider that PTSD post September 2016 and June 2017 is indivisible in the sense discussed in *Bailey v Ministry of Defence* [2008] EWCA Civ 883.

Ms Feder

745. Ms Witherington submitted Ms Feder had suffered from psychiatric damage generally in the moderate bracket, where "there may have been the sort of problems associated with [the] factors… above there will have been marked improvement by trial and the prognosis will be good. Cases of work-related stress may fall within this category if symptoms are not prolonged." The appropriate figure was £10,000. Mr Weetman submitted that the less severe bracket should also be considered, which is for an award which "will take into consideration the length of the period of disability and the extent to which daily activities and sleep are affected."

746. The expert opinion I have accepted is that Ms Feder suffered from a mild adjustment disorder following and as a consequence of her disclosure, and that symptoms persisted at the same level of intensity until July 2018 when she left the College, after which the intensity and frequency reduced. There is no specific date given for when they were resolved because there remained residual psychological reactions to other matters. I consider the less severe bracket is appropriate for Ms Feder's damages taking into account that the period of the most significant impact lasted around six months and the symptoms and effects were at the less impactful end of the scale represented by the brackets. However, the impact of the College's reaction was profound and so I consider an award at the upper end of the less severe bracket is appropriate at £5000. As in Ms McCamish's case, I find that the impact of the College's January 2018 response is not divisible from that of the events of 27 November 2017 given the expert opinion. Again I have avoided taking into account the period between that date and Ms Feder's report for the purposes of determining which bracket is relevant and where damages should fall within it.

Special damages

The evidence of Ms McCamish's losses

747. Ms McCamish filed a schedule of losses with her claim said to be attributable to the College's negligence. These covered flights for her parents to the UK to care for her, money not returned for spring term tuition fees for 2019 and for rent for the spring and summer terms of 2019, and the fees of physical and psychological therapists including EMDR therapists. The College disputed all of this, putting her to strict proof of both the spending and the relationship between these sums and what was said to have occurred. Very little was said about these losses in evidence and ultimately, a series of invoices were submitted appended to a written submission made part way through trial. Mr Weetman made trenchant criticisms of the way this evidence had been adduced, arguing that Ms McCamish had been on notice since the College's defence that she needed to prove her losses properly, with evidence filed in the conventional way. Ms Witherington submitted that these sums of money had indisputably been spent and it was a matter for the Court to decide whether to award special damages on the basis of them.

748. There is a very real possibility that Ms McCamish incurred some of the losses she claims as special damages as a direct result of the College's negligence. However, more needed to be done

to prove that. For example, there would need to be evidence linking treatment received from therapists at specific times to the College's omissions or acts and the invoices substantiating the schedule ought to have been produced as part of that evidence long before trial. I do not know why that did not happen and no application was made to file and rely on the evidence properly. It is inappropriate to circumvent the procedural discipline demanded by the CPR and arrive at figure based on material not filed as evidence that the College could not test. I award no special damages.

The evidence of Ms Feder's losses

749. Mr Weetman made the same point about Ms Feder's schedule, adding that, on her own evidence, she had seen Dr Abdelghani in connection with several issues only some of which concerned the College. Again, some of the losses may be attributable to the College's omissions and actions but the evidence was not submitted in a timely and appropriate way to enable it to be tested. I agree and so award no special damages to Ms Feder.

X. CONCLUSION

750. For these reasons, the Claimants succeed in their claims against the College.

751. I conclude by expressing my thanks to Ms Witherington and Mr Weetman and their respective instructing solicitors for their assistance and to the parties for their patience in awaiting this judgment.