

THE HIGH COURT

[2008 No. 8738 P.]

BETWEEN

L.C.

PLAINTIFF

AND

D.C

DEFENDANT

JUDGMENT of Ms. Justice O'Hanlon delivered on the 25th day of July, 2018**The pleadings**

1. The plaintiff seeks damages for personal injuries, loss, and damage suffered by reason of a number of sexual and physical assaults, batteries, and trespasses upon her person by the defendant.
2. The PIAB authorisation issued on 13th March, 2008. A defence was delivered on 21st April, 2009, and on 16th January, 2012, relief was refused by order of the High Court where the defendant had sought to consolidate the within proceedings and proceedings under High Court Record No. 2009/6398P. In February, 2017, the plaintiff was served with a personal injuries counterclaim, and it was only on 15th June, 2017, that the defendant made application to amend the defence to include a counterclaim. The Court refused this on the basis that the pleadings had been closed years before.
3. The plaintiff's date of birth is 21st April, 1988. She traced the various stages of her education. The court notes that she qualified as a teacher, teaching Mathematics, Applied Mathematics and Biology. Part of her case is that if she had not suffered the alleged abuse, her first choice was to have become either a doctor or a physiotherapist, but that she achieved 470 points where she had hoped to do better. She described herself as a perfectionist and she presented her evidence in very clear, concise terms: giving cogent evidence in a very intelligent manner. This witness gave evidence of beginning university and taking Bio-Medical Science as her course, then transferring to a Mathematics and Applied Mathematics degree and then taking her postgraduate diploma and master's degree.
4. This witness described the first incident of alleged abuse as occurring when she was six years of age, staying at a sleepover in the defendant's house at that time, in the area of T, Dublin. She described the sleeping bag as having been pulled over her, but not closed and when she woke it had been pulled back across her and she said she had a nightdress on and underwear and her underwear was at her calves and that the defendant had moved, who was on top of her, he had moved down. She said her legs were open and that he and kneeling between her legs and that he had forced his hands inside her vagina and that she did not say anything but she just remembered feeling pain and crying. Her evidence was that he then moved his legs further up on her more up to the tops of her legs leaning his legs over either side of hers and she could feel him moving back and taking out his penis which he forced inside her and she could just remember sharp pain shooting up inside her and said "Ouch" and nothing else. She did not remember then and thinks that she may have passed out. The next morning, she woke up in the room and her cousin, B, was there in the sleeping bag beside her and that she didn't remember anything else from that point until the following morning. This witness gave a detailed account of the television room she and her cousin had slept in and could describe in detail the nightdress worn by her cousin on the night in question and further that the defendant brought herself and her cousin to hospital the following morning on the basis that her cousin had been very ill during the night.
5. She confirmed that she did not talk to anyone in the aftermath of the incident and that she was terrified.
6. The second alleged incident of abuse is alleged to have taken place in April, 2002, when she was thirteen years of age. She described herself, her sister and her younger brother going down to stay in the defendant's house in Co. K where the defendant had moved to live by that stage. She said that they arrived on a Friday and remained there until Sunday evening. She gave details of watching television and hanging around the house on the Friday evening and described on the Saturday how they went for a walk around the village, the graveyard, the church, the place where the defendant's second wife worked and they went to look at a motor vehicle, a blue Impreza for sale in a garage. Thereafter, they went to assist with the building of a pond in the back garden of the house in which they were staying.
7. On the Sunday, the three children and the defendant went to the local shop and got sweets and on the way back, this witness said there was a little dog who followed them back to the house and herself and her sister brought him back to the shop and that they returned and had dinner at about 2 o'clock, and that she had bad pains in the stomach and decided to go up and lie down so she just said to the defendant's wife that she was going to have a lie down upstairs. She stayed in her clothes and got into bed and lay on the bed and pulled the covers over her legs and turned over on her side and closed her eyes. She described that the top of the stairs in that house her room was the first to the right and that there was a double bed and that her sister and younger brother were in two single beds in the next room and that the room after that was used as an office and that then there was a bathroom and on the other side of the hall where the defendant and his wife had a bedroom.
8. This witness then described how the defendant came into that room, closed the door behind him, walked to the end of the bed, took off his trousers and crawled up the bed towards her. She described him as leaning his shins on her upper arms, pressing her down so that she couldn't move and that she was just pinned there and that he had his boxers on but his trousers were off. She could see his erect penis in his underwear. He was kneeling down his weight on top of her. He pulled his underwear down and took his penis out and forced it into her mouth. She said she couldn't breathe and he was forcing it into her throat and she could not catch her breath. She thinks she fainted or passed out and woke and he was gone from the room and his clothes were gone. She said she was really hot and clammy as if she was going to be sick and around her mouth was sticky. She didn't know what it was, but now she knows it was semen. The plaintiff's waited till she could hear voices. When she heard the voices of her sister and brother, S and C, she went to the bathroom and tried to cool herself down and washed her face and hands and just splashed water on herself and then went down to join S and C in the sitting room and sat with them.
9. Regarding the first incident when she was six years of age, the plaintiff told the court that it was a very terrifying experience, as one has no comprehension of what is going on. She described it as having happened and then that she did not remember it. She said she was anxious, very worried, suffering with pains in her tummy, not wanting to go to school in the morning or wanting to be close

to her Mam and Dad, being quiet, shy and nervous and that prior to that she described herself as having been a quite a happy child, very, very happy, but that she became more anxious and more nervous.

10. In relation to the way in which the incident at thirteen affected her, she said it did so very differently; she never forgot it. She described it as being in her head all the time. She felt she had done something wrong, that she was damaged and that she was very, very anxious in relation to boys. She suffered from problems from palpitations and with problems of her hair falling out for a time and her having to get treatment for alopecia.

11. This witnesses said she was inhibited, not wishing to change her clothing in front of others. She was too afraid in terms of boyfriends: she didn't go there, she didn't trust, and felt that she should have done something to stop what had happened. She had concerns because she had shooting pains up inside her and worried that damage had been done.

12. She described having a relationship with her present husband for eleven years.

13. Being checked/examined during labour with the birth of her child was traumatic for her and she said that she was getting flashes of all that during all that time and was concerned about what was going to happen. This witness complained that the matter had been delayed and dragged out in the courts for ten years. In her third year in university she had palpitations, kidney infections, stress and anxiety, mood swings and inability to sleep caused her to really, really struggle. She took a year out of college in October, 2008, returning to college the following September.

14. This witness described telling her parents in April, 2007 about the incident which she says occurred when she was thirteen years of age and she made a report to An Garda Síochána about that incident at B Garda Station, the day after she finished her first year examinations in college.

15. This witnesses said that in January, 2008 she remembered the first incident properly, she told her mother about it in February, 2008, and told An Garda Síochána about it in November, 2008, at T Garda Station.

16. This witness described significant symptoms when she dropped out of college of being very, very stressed and anxious: of being overwhelmed, suffering from lack of sleep, loss of weight, anxiety, and irritable bowel syndrome.

17. In addition, her wedding day caused her fear that the defendant would be outside the church and she felt that she could not attend her grandmother's funeral for fear of being in the same room as the defendant. She worried about the daughters of the defendant. This witness confirmed that she had told her mother about the incident when she was six years of age on 25th February, 2008. She confirmed further that she remembered the incident herself, before that date, but that it was very traumatic and she had blocked it from her memory and that she was not able i.e. had not the energy to go to the gardaí before the point at which she dropped out of college for a year in relation to her making a statement to them about that event. This witness, under cross-examination, repeated her description of the weekend of 7th April, 2002. Photographs were put to her which would have been on social media and this witness explained that one photograph showed her graduation from secondary school, then her Debutants Ball at the end of Sixth Year, and other nights showed college nights out or family holidays. Her explanation for attending the defendant's wedding to his second wife on the 19th December, 2005, was that she was trying not to cause any problems, to keep things quiet, and had she refused to go she would have had to give a reason and that she merely followed protocol or etiquette on that day. The plaintiff confirmed attending therapy, but stressed that at no time did she engage in a memory recovery process with the therapist. She confirmed that her parents never asked or questioned her about sexual abuse of any nature, prior to her disclosure to them.

The Evidence of C.C., Brother of the Plaintiff

18. This witness confirmed that he is the brother of the plaintiff and was born, himself, on 15th November, 1993, and that he was now 23 years of age and still living at home.

19. This witness was asked did he recall spending a weekend with his uncle and aunt in Co. K and he said that for the most part they just watched television, they went for a walk to the shop, the post office, they went to look at a car in a garage and that was pretty much it. He helped out in the garden in the pond and that they didn't do a lot, but that he played video games as well upstairs in the office. He was asked about the Sunday of that weekend and he said he was upstairs in the office playing computer games and he did not recall the meal, but he did remember leaving the office some time during the afternoon. He said that he did notice throughout that the plaintiff was feeling ill and he knew that during that day she had gone upstairs, so he thought he would just knock in and see how she was and he said he opened the door and he saw his uncle, D, kneeling on top of his sister and putting his penis into his sister's mouth.

20. He said he stayed for a few seconds and then he had to go downstairs. He did not know what was going on, and he went down to his sister, S, who was in the sitting room and joined her there. He said that he went to the kitchen to get a drink and that D came in and came up close to him and told him not to mention what he had seen and he punched him in the stomach. He was eight years old at the time and said that he did not speak to anyone about it directly after the event but when he was fourteen years of age and having trouble in school and had missed quite a lot of the start of the school year with stomach pains and could not attend school, he told his parents what he had seen and he said that they went and got advice and told him not to go ahead and say anything. He said that would have been in 2008. He thinks he probably told his mother first and then his dad. He thinks they would have had a discussion about it. He said that he did not have anything other than medical problems at that age and that he did not get psychological help. This witness explained, under cross-examination, that he was bullied in Fifth Class, and yes, that he was having trouble in school and he denied that his parents put it to him that he was suppressing something. He was asked why did not take an assault case against the defendant: because he did not feel that was necessary, that his family did not want to go any further with it. He said he was only eight years of age at the time and a couple of years after that ties between him and the defendant were cut. He did recall that the Subaru WRX was a nice car but did not recall asking the defendant on a number of occasions to take him for a spin in it nor in a Saab 9000 CD. This witness denies that he was making this story up and he said what he saw was what he saw and he would never make that up.

Evidence of Dr Paul McQuaid

21. This witness gave evidence of his extensive qualifications to the court and confirmed that he had been in practice as a private practitioner for 50 years as well as holding the position of clinical director in the Child Guidance Clinic in the Mater Hospital and on having been on the staff of the Children's Hospital, Temple Street. He confirmed that he specialises in child psychiatry and works with adults and that he is on the specialist register of the Medical Council in child and adolescent psychiatry.

22. He confirmed that whether he met the person on their own or with their parents or other people, he said it depended on the age of the person and one had to take account of the developmental age of an individual and he said that obviously the care and

protection of a child is of paramount importance so that, initially, it is customary to interview the child in the presence of one or both parents or a parent surrogate but once the child has passed the legal age of majority it is usually important and necessary to examine the individual alone. This witness confirmed that at the first assessment and report this child was attended with both parents and was seen initially with them and that she had made allegations against two different men. His first examination occurred in September, 2007, when she was about nine years of age and he felt that he would not only dispense with her parents' presence with the agreement of the individual child. This witness identified a list seventeen specific items at the top of the third page of his first report. These included nervousness, feelings of panic going to school, sore throats, becoming clingy, palpitations, social withdrawal, self-consciousness, not wishing to damage relationships within the family, persistent tiredness and irritability, avoidance of males, and flashbacks relating to the defendant. At the doctor's request, the court amended the second report to include the aforesaid list under the portion "damages". This witness described how the plaintiff had cited two specific events in relation to her allegation of assault against the defendant. This witness described the mental status examination of the plaintiff as positive.

23. He later saw the plaintiff in 2007 when she was nineteen years of age. He found her to have insight into the need for therapy in her case and that she was seeing Imelda McCarthy, a therapist. He noted that the plaintiff found herself to be going through a kind of grieving experience with difficulty trusting and had a difficulty, particularly, with intimate relationships and that her Leaving Certificate results were affected by what had occurred and were not good enough.

24. This witness dealt with psychosomatic symptoms and explained regarding sore throats and that it was likely that there was a physical reason or a psychosomatic reason and he said where oral rape may be accompanied by infection, viral infection of the throat and the upper gastrointestinal tract, and that HIV infection can transmit in that way. He said, depending on the trauma experienced, the quality of the event, whether accompanied by violence, or emotional or psychological violence, these were factors and that abdominal discomfort, pain, and related symptoms are well known to be part of anxiety events, anxiety related memories, recall. He described psychic defence mechanisms as occurring where the mind defends against anxiety and stress, bad experiences, painful experiences, terrifying experiences and, generally-speaking, within the context of something very unusual, which may be traumatic and may be painful with the younger the child the, more likely the feeling of denial and repression.

25. His finding confirmed that the plaintiff had been affected by what she stated had happened and that the events were of an abusive nature. There were moderate levels of anxiety and also a mild level of what is called mood disorder or depression and he considered her presentation represented a characteristic profile of a victim of child sexual abuse. He described "adjustment disorder" as a characteristic long-standing and chronic condition arising out of earlier traumatic experiences. In terms of her mental state examination on the second interview, he found no evidence of any thought disorder and that she was emotionally and affectively more relaxed and more emotionally appropriate, quite mature and generally more stable.

26. During this interview he noted that the plaintiff was more angry now and was worn down and fed up, that she had been up and down, had taken a year off college, had changed her degree course, and spent time trying to build herself up. She felt that she was damaged goods. Her relationship with her then boyfriend (who is now her husband) had been broken off by his choice. She developed alopecia and did not want to socialise. She was terrified of the defendant finding her and she felt that there was a threat that he was going to kill her and that she was in his company quite a lot.

27. This witness, under cross-examination, said that he himself is a trained forensic psychiatrist and that he would always start with the idea firmly in his head that perhaps what is alleged is a fabrication. He took the plaintiff at her word after the two examinations: lengthy interviews and that her subjective view of reality was the truth.

28. Page 6 of his report confirmed that the plaintiff continues to be affected by her abuse and a moderate level of anxiety with significant features of mild mood disorder using the Beck Anxiety Inventory Test. Flashbacks, he indicated, were well-known symptoms of Post-Traumatic Stress and Social Disorder and extreme self-consciousness and her always covering up her clothing were features. He mentioned "family secrets" and made reference of the use of the phrase "not surprisingly, other members of both families have been victims of sexual abuse by family members". His response or explanation for this was that, in the experience of practitioners working with families of incestuous events and victims, the literature is strong on accounts of extended family having members who have been affected by such events and he said it was a background enquiry. He clarified that Post-Traumatic Stress Disorder would have been part of her presentation and that her overall presentation, represented, to him, a characteristic profile of a child sexual abuse victim. He felt that she presented with "adjustment problems". He accepted the point made by Professor Kennedy that "Ms. C describes the pattern of absent memory, followed by the acquisition of a belief and that he agreed that this was not in keeping with the pattern of memory for real incidents, including traumatic events and it is a pattern described in a particular form of false memory known as recovered memory". It was put to this witness that his own diagnosis of the plaintiff's personality, function, behaviour in childhood and teenage years as characteristic of child sexual abuse that Professor Kennedy said "there is no scientific epidemiological or other evidence of any sort for any characteristic link between experience of sexual abuse in childhood and any particular part of developmental disturbance, personality functioning, or behaviour in childhood and teenage years". Dr McQuaid says that there are many reports in literature and the accepted professional peer-reviewed literature, of the characteristic developmental profiles of young people who are subject to sexual abuse confirmed, where their pattern of later teenage and adult development is particularised, contextualised, and identified and he asserted that Professor Kennedy was not correct in his view on this point, in his opinion. This witnesses did not accept Professor Kennedy's view that the plaintiff had no characteristic evidence of chronic Post-Traumatic Stress Disorder presently and that the causal inference regarding her being a product of incestuous child sexual abuse appeared to be unsupported. He agreed that depression and anxiety are usually associated with a positive family history across several generations of same. This witness held the view that the plaintiff did not currently meet the diagnostic criteria for Post-Traumatic Stress Disorder. This witness referred to the debate emerging in literature in this area with regard to whether recovered memory is true or false and he distinguishes it, from his own opinion, from his own experience as a trained and consulting child and adolescence psychiatrist and based on his experience, essentially. This witness says that whatever happened, something happened, and that it was an abusive experience of some nature while he says he did not know if it were true or not, but in his opinion, something happened. That something happened of an adverse and abusive nature.

29. Dr. McQuaid commented regarding Professor Kennedy's view of aided recall, that his is a restatement of the position of those who strongly reject the so-called recovered memory phenomenon. They both agreed that to create an emotional investment into a narrative about history is not evidence of accuracy.

30. Under re-examination, he confirmed that he did not accept Professor Kennedy's opinion in relation to the debate between the parties as to whether there is recovered memory is false memory or not. This witness said that science in this area was evolving with new imagining techniques which would be on the frontier of science relating to the brain and mind. This witness said that the plaintiff's problems with depression, anxiety, post-traumatic stress, or any flashbacks, are something which were spontaneous and did not have a cause, or were part of a family pattern. He said it is a very relevant point and said that it would perhaps point to the vulnerability of the plaintiff as a young girl and that there can be family vulnerabilities. This doctor was of the view that he would say

it could be spontaneous, it might suddenly occur and suddenly a person can become aware of problems.

31. In relation to the issue of whether the plaintiff's memories were recovered, or otherwise, are true or false, he said the literature can be of assistance that there are reports of true and false reports, and that there are symptoms, presentations that apply to both states. He referred to delayed disclosure as often being regarded as a primary aspect of a true event, something that comes out late in the day and perhaps it is not necessarily coached or rehearsed or prompted but that there could be such in evidence. He said it could well be false, rehearsed, coached or prompted.

32. The Court asked this witness then on the balance of probabilities whether the plaintiff suffered sexual abuse as described by her, and his response was that something happened, and that it was an abusive experience of some nature and it has been configured in the way that the Court had been advised by way of reports received. He said he did not know if it were true or not but, in his opinion, something happened of an adverse and abusive nature. The Court asked the doctor on the balance of probabilities, did the young lady suffer sexual abuse as described her and his response was that something happened.

Evidence of D.C., Brother of the Defendant

33. This witness gave evidence that the parents of the plaintiff wanted to meet him and on 24th or 25th February: went to visit them and he was told by them that the plaintiff had been sexually abused by the defendant. They begged him not to speak to his brother about this. His evidence was that the plaintiff's parents wished to get money from his brother, who had sold a business.

34. The plaintiff then came into the room and went straight up to him and he gave her a hug, and told her that he loved her. The following May, the plaintiff's parents came to his house and they did not wish him or his family to attend the wedding of his niece, daughter of the defendant. They felt that it was likely that he would put his children in danger were they to attend and that it was likely that his children had been abused as well. This witness agreed that his younger sister was quite upset and that he had no reason to doubt his sister, her husband or his niece and that he was very much at the edge of the family, although they did meet on the odd occasion.

Evidence of A.C., Daughter of the Defendant

35. This witness described a close relationship between the plaintiff's family and her own when they were all younger. Her parents separated. This witness gave evidence that her father is the best man she knows and that he did not abuse her or her sister and she did not believe the plaintiff or anyone else and that it was completely fabricated.

36. She agreed that there was a good relationship between herself and the plaintiff's mother, but beyond a certain point, did not feel that the plaintiff's mother was genuinely concerned for her well-being and she concluded that in or about October, 2006. She, herself, suffered from anxiety and bouts of depression. She agreed that, up until 2006, her aunt was there for her.

Evidence of C.C., Sister of the Defendant

37. This witness described having a good relationship with the plaintiff and the plaintiff's family in the past and having gone on holidays with them. She is a sister of the plaintiff's mother. This witness alleged that the plaintiff's mother told her that the defendant had raped her at a very early age. This was said in or about April 2007. This witness said that she told the plaintiff on the telephone that she loved her and that she was there for her. She gave evidence that the plaintiff's mother told her that the plaintiff was having flashbacks a lot of the time and she had to work with the plaintiff, trying to help her along and trying to find out what was wrong with the plaintiff and to help her find out what it was she was suffering from. She said that was in relation to the incident which allegedly occurred in Co. K. This witness thought that allegation ought to have centred on a different time of year i.e. autumn.

38. This witness conceded that she never had a chat with the plaintiff about what happened. This witness said that the family breakdown in relationships had occurred in May, 2012, and that it was in April, 2009, when she was first told about the allegation against the defendant: on 23rd April, 2009.

39. This witness told the court that her relationship with the plaintiff's family i.e. her sister, the mother of the plaintiff, broke down following an accusation by the plaintiff's mother concerning her own family of origin.

Evidence of S.C., Current Spouse of the Defendant

40. This witness gave evidence to what occurred at M. when the children stayed with her in April, 2002. She said the children arrived on the Friday evening and she showed each of them a separate room and that she assumed that they would want separate rooms but they said not they were too frightened and the two younger children, that is S. and C., were happy to share a room which had two twin beds in it and they wanted to sleep there, so she showed the plaintiff then into the guest bedroom.

41. The plaintiff's mother had told her that the plaintiff was having a period at the time and that she was a bit embarrassed about where to put her sanitary items. This witness had reassured her that there was bin in the en suite for her use only and that she would deal with that.

42. Essentially, save for the specifics of the particular allegation of abuse, this witness confirmed the plaintiff's evidence and that of her brother in that she said that they helped scoop out algae from a pool and she and the plaintiff and that the other two children spent a lot of time playing on the computer upstairs in the office or watching television downstairs. She further described how they went for a walk past the local garage where the children saw a blue Subaru on sale and which her husband did buy a few days later on and that he took the children for a ride in it a couple of weeks later.

43. This witness's account differs from that of the plaintiff in that, with regard to 4pm on the Sunday afternoon, she did not remember the plaintiff telling her that she felt unwell or that she wanted to lie down. This witness told the Court that she would not have left the plaintiff alone for an hour without checking on her had she been unwell. This witness confirmed that the plaintiff's parents made two telephone calls to her; firstly, to say that they had checked out of the hotel early and that they would be arriving early and then a second time to say they were nearly there. It was about 5pm at that stage. This witness said she did not notice the plaintiff being exceptionally quiet. This witness confirmed that, three weeks later, they were invited to a Holy Communion and that they had a barbeque during the summer in the back garden with the plaintiff and her family.

44. This witness confirmed that she was in Las Vegas with her husband when they received a telephone message from her stepdaughter informing her of the allegation of the defendant having assaulted the plaintiff, and that she and her husband were in total disbelief. She gave further evidence of the arrest and questioning of her husband and that the DPP ruled in their favour that there was no case. In relation to the second allegation, this witness said that their house has wooden floorboards, is noisy, and creaky. She said one can see the bedroom from the first floor and that the plaintiff could have used the en suite in the room she was in, but chose to go down to the bathroom and that it is impossible to walk around the house without making a noise. This witness

denied that the plaintiff's brother was ever punched by the defendant as he alleged. She accepted that the only evidence she could give about the alleged incident was that she was in the house on the date in question and her view was that if anything had happened she would have heard.

45. She confirmed, under cross-examination, that the plaintiff was in the first room at the top of the stairs on the right hand side which had a double bed, while the two younger children were in a room with twin beds. This witness agreed that the computer was to the back of the house. It was a bedroom but not used as such and it was used as a study and had computer games. The children played computer games on the computer in that room and that all those things the children say about that are correct. She agreed that the children had been shown the school where she had worked and they also visited a graveyard and that on the way back they looked in a garage showroom, at a car which her husband subsequently bought.

46. This witness could not recall either going to the shop to buy some sweets and that a dog followed the children back or that the two girls brought the dog back down to the shop nor did she remember the dinner in the middle of the day but she said they probably did have something to eat.

47. This witness agreed that she was aware because she had been told by the plaintiff's mother that the plaintiff was having a period and that she was not feeling great. She said she had no proof and only took their word for it. She did not remember the plaintiff going up to the bedroom but agreed that it would not be that unusual if she did have cramps from period pains at her age. This witness did agree the fact that the plaintiff's brother was upstairs in the computer room would mean that there was noise coming from upstairs. She accepted that she could not be with two children if they were in a separate places and that she could not have been with the three children if the plaintiff was also in the bed.

48. The court noted that it was unchallenged that the plaintiff's brother was upstairs on the computer. L. was in her bedroom and S. was downstairs since that is where her brother went to join her. This is uncontroverted evidence. This witness was of view that they children were not telling the truth about where they were. She confirmed that it was 4th May, 2007, when she received the telephone call in Las Vegas alleging what had occurred.

Evidence of B.K., Younger Daughter of the Defendant

49. This witness confirmed she had some issues when she was younger and still does, that she is anxious, suffering from depression and panic attacks, and that the plaintiff's mother had told there had to be a cause for them and that she wanted to see a hypnotist and told her they would be able to find out what happened when she was younger. She said she had no recollection of the first incident alleged to have occurred in 1994 and no recollection of the plaintiff staying over in the house with her on a sleepover and that there was such a gap in their ages, nor did she believe that there was a sleepover on the sitting room floor of her house.

Evidence of M.C., Former Spouse of the Defendant

50. This witness described herself as a homemaker. That she lives at a different address to the former family home. She was married for 25 years to the defendant but separated in 1996 and divorced in 2005. She knew the plaintiff's mother, who is said was a flower girl at their wedding. She said she had no recollection, herself, at all, of the plaintiff having stayed at their house in 1994 on a sleepover.

Evidence of Professor Harry Kennedy

51. Professor Kennedy is a Consultant Forensic Psychiatrist and Executive Clinical Director at the National Forensic Mental Health Service and Clinical Professor of Forensic Psychiatry in Trinity College, Dublin, since 2000.

52. While called on behalf of the defence, he described himself as a neutral witness for the Court. He interviewed the plaintiff on 9th September, 2010, when she was 22 years of age. She gave a valid consent to the interview. This witness confirmed that she told him she did not disclose her allegations of abuse against the defendant until she told her mother in April 2007. He noted she was assessed by Dr Paul McQuaid, Consultant Psychiatrist, on 19th September, 2007; 6th November, 2007; 18th December, 2007; and 6th July, 2016. In addition, the plaintiff indicated to this doctor that she was a victim of sexual assault by an uncle on her father's side and that had occurred in 1996 when she alleges that she was digitally penetrated.

53. This witness referred to her reply to notice for particulars dated 23rd March, 2009.

54. Paragraph 2C reads "the plaintiff has always remembered the assault". This witness disputed that this was in accordance with her account to him. He was highly critical of Dr McQuaid's report and conclusions. In relation to the list of Dr McQuaid's recorded symptoms which the plaintiff had, there are seventeen in all and he said some are non-specific behavioural symptoms with no obvious relevance and none of them can be taken as evidence of anything other than depression and anxiety. He took the view that social withdrawal and male avoidance could all be deemed normal in adolescence or could arise in association with depression and anxiety. He said the following were of no psychiatric significance: sore throats as a teenager; concern not to damage the relationship of the defendant with her mother, his sister and family; renal infections; stultified professional ambition to be physiotherapist.

55. This witness criticises Dr McQuaid, noting the plaintiff developing abdominal pains in and around the alleged first sexual abuse but he says no age or date at which these symptoms appear was given, nor did Dr McQuaid have any independent source of information. As to whether this was new onset or a recurrence of childhood colic for example and that Dr McQuaid relied only on the history given by the plaintiff and her mother. This witness felt there should have been independent contemporaneous sources, for example, such as general practice records or school records. He criticises Dr McQuaid for, as he saw, heavily relying on inference and assumption without giving a basis for his assumptions or inferences. It is highly critical of the methodology of Dr McQuaid who used the general health questionnaire, the Beck Anxiety Inventory and Beck Depression Inventory. He said these are all self-report questionnaires, influenced by subjectivity, and were not intended to be used as diagnostic instruments. He disputed that these tests could confirm that the plaintiff continues to be affected by her abuse experiences.

56. This witness doubted Dr McQuaid was correct and felt he had made errors of inference by concluding that the plaintiff had a characteristic profile of a child sexual abuse victim. He said there was no such characteristic profile, nor was there any specific link between any specific mental illness and sexual abuse in childhood, notwithstanding that it was traumatic and harmful. He listed a number of defence mechanisms, but he said they were Freudian artefacts and they might be vague, interpretative and essentially metaphorical rather than causal associations.

57. This witness agreed with Dr McQuaid that the plaintiff had an anxiety disorder but disagreed that there was any characteristic evidence of chronic Post-Traumatic Stress Disorder and the causal influence was unsupported as to her being a product of incestuous child sexual abuse.

58. This witness based his opinion on the belief that the plaintiff's evidence that she was abused by the defendant is a recovered memory. He took it to be contradictory when the plaintiff had said "I always remembered" the incident and the words "up until then I had blocked him being there". It was put to him that this does not mean that it is contradictory or that she had forgotten it, but he took it to be contradictory.

59. It was put to this witness that her answer to 3C in the replies to particulars was what she had told him earlier, that she always remembered that incident and he disagreed with that.

60. This witness is highly critical of Dr McQuaid's belief in repressed memories and endorsed by him and he said it is a belief which is held in unconventionally-trained therapists. Both of them are fellows of the Royal College of Psychiatrists and it is strongly advised against by that college, in the view of this witness.

61. It was put to this witness that he always remembered that those words are the same as what is said in the answer at para. 3C, p. 33 saying she had "always remembered it" and he said, "yes it is". Then he was asked about the words "I've always remembered that" and it is said in two different places and if that is not the same thing. His response was that because it is in the same passage, there is a contradictory statement and it was put to this witness that there was nothing to suggest in the passage that it is a recovered memory that came either by way of a recovered memory as suggested in the latter part of p. 9 of his report, when he is referring to the 1994 and 1996 incidents that there is a huge difference between what he had written down in relation to the three incidents, one in 2002, one in 1994, and one in 1996. He did not agree with that and he said he was suggesting that they were the same.

62. This witness freely admitted that he disagrees with Dr McQuaid in relation to his psychodynamic theory. This witness answered in the affirmative to the question of would he accept if the plaintiff experienced penetration digitally, penetration by the penis, and then oral rape, they would qualify as a traumatic event as far as a diagnosis of Post-Traumatic Stress Disorder was concerned. He added that there was another traumatic event known to him which was excluded in that question. This witness took the view that current involuntary and intrusive distressing memories of the traumatic events were not present. Recurrent distressing dreams of which the content and/or the effect of the dreams related to the traumatic events were not present, nor did he feel that flashbacks in which the individual feels or acts as if the traumatic events were occurring were present, nor did he believe that intensive or prolonged psychological distress that exposure to internal or external queues does symbolise or resemble an aspect of the traumatic events was present nor did he believe there was a marked physiological reaction to internal or external queues symbolising or resembling an aspect of the traumatic events were present. He said he could find no evidence of these.

63. Significantly, however, this witness did accept that a person can suffer from Post-Traumatic Stress Disorder for a certain amount of time, and then some of these things go. Therefore, it is no longer Post-Traumatic Stress Disorder and he agreed that that was correct and that it was important in preparing a medico-legal opinion to have access to as much contemporaneous records, particularly clinical records, as possible. He did agree, however, that there was evidence in medical notes provided to him following symptoms of anxiety and panic which can sometimes be confused with some of these symptoms. He did not think there was a dissociative reaction and he felt that for there to be psychological distress of exposure to internal or external queues, it would have to be more severe.

64. This witness accepted he was neither present for the plaintiff's evidence nor did he see her reaction. He said he did have the advantage of interviewing her. It was put to this witness that Dr McQuaid did diagnose the plaintiff as having Post-Traumatic Stress Disorder, but not currently and his response was on the basis of the history he took, his examination and review of the information available to him that neither he nor any other psychiatrist could diagnose Post Traumatic Stress Disorder. This witness felt she did not fulfil the textbook definition for Post-Traumatic Stress Disorder in terms of "C. Persistent of avoidance of stimuli associated with the traumatic event as occurred, being evidenced by one or both of the following:-

(i) avoidance of or efforts to avoid distressing memories, thoughts or feelings about her closely associated with the traumatic events; and

(ii) avoidance of or efforts to avoid external reminders, people, places, conversation, activity, objects, situations that arose, distressing memories, thoughts or feelings about or closely associated with the traumatic events."

65. He said there was not avoidance, and he based this on the fact that she had a boyfriend sustained over a period of time who had difficulties, but that this was understandable and normal. He said that subjective feelings, subjectively interpreted, are not evidence of causation.

66. Dr McQuaid had indicated in his diagnosis that at a period of time in her life after these things happened the plaintiff had Post-Traumatic Stress Disorder. He said that flashbacks are vivid memories and re-experiencing and he said the flashes the plaintiff described, he saw as anxiety attacks. He agreed nonetheless that in Dr McQuaid's first report, p. 2, that of 21st January, 2008, the plaintiff told Dr McQuaid she did have flashbacks. It was his view and he said he asked her what she meant by flashbacks and what she said to him did not describe to him what flashbacks are. Dr Kennedy thought that the content of the flashes did not include full memory, therefore they could not have been flashbacks. She had used the words "told her mother about the flashes she was having" and "a couple of days later when I felt safe I let myself remember fully the memory".

67. Going through Professor Kennedy's report and the criteria for Post-Traumatic Stress Disorder regarding the issue of avoidance, "Category C", he said the fact that he believed her to have had a subsequent normal relationship with a boyfriend would diminish the evidence for that.

68. He felt that it wasn't enough to meet the diagnostic criteria if the person was having a functioning life and it was put to this witness that he was suggesting that if somebody had Post-Traumatic Stress Disorder they could not live a normal life. He said in psychiatry that simply words are never enough in a diagnosis and there must be functional impairment. He felt that to reach the threshold for the diagnosis regarding No. 2 that regarding avoidance or difficulties with men, trust issues and he said people with Post-Traumatic Stress Disorder have much more severe problems.

69. His response to Dr McQuaid's reference to the guilt feature was that it is also a feature of depression and anxiety particularly associated with depression, although he agreed that it can be one of the things associated with post-traumatic stress. This witness accepted that it was possible that anxiety and panic attacks and depressive illness which the plaintiff may have may have been exacerbated by the sexual abuse, if it took place, and he agreed that it was possible and that they could have been caused by it.

70. This witness felt that the plaintiff did not meet a criterion for a required minimum duration for criteria B, C, D, E to qualify as

having Post-Traumatic Stress Disorder at the time he saw her. He accepted that items 4, 5, 6 and 7 were all about the recovering of memories and that he is called here to give evidence about reliability insofar as matters are psychiatric, but he said in relation to false and recovered memories, they are matters of reliability and he can give evidence on them. His view is that all the plaintiff described to him were so-called recovered memories but he did accept and does accept that she had an anxiety disorder and does have an anxiety disorder.

71. This witness was asked if we accept the evidence of causation is weak, the next question is that of exacerbation, but the Court asked this witness was it only weak if one were arguing that they alleged offence when she was six years old did not occur that it appeared to be all premised on that, but that if she had had such an event at aged six and she was described as nervous as a child at the age of seven that it would not be that surprising and this witness agreed that the question of causation turned on that. He mentioned a fire which was a traumatic experience for the plaintiff in 1993. He said her description of symptoms subsequent to that are all features in keeping with that.

Evidence of the Defendant

72. This witness confirmed, in many respects, the version of events of the weekend in 2002 as reported by the plaintiff and her brother, save for the actual allegation of alleged abuse. He did not recall a dog following them home and he says he thought they had dinner between 2pm and 3pm. This witness said that when the parents of the children returned they spent at least an hour together discussing the events of the weekend and that all three children were happy and cheerful saying that they wanted to go back again. This witness said that three weeks later he was driving his new Subaru with the children in it on the day of C.'s communion and that they shouting and saying "faster, faster, faster". This witness said that the DPP decided not to prosecute and that ruling was made in January, 2008. He said that three weeks after that he was arrested and brought to T. Garda Station and he realised from the pleadings that there was a second allegation against himself and a separate case against D.C. for alleged assault i.e. the plaintiff's uncle on her father's side.

73. This witness denied that he touched, harmed or did anything to the child. This witness denied the plaintiff's version where regarding the earlier incident when she was aged six although, under cross-examination, the defendant admitted that he brought his daughter, B., and the plaintiff to hospital the following day and he denies that she ever stayed in his house at T. at that time. The Court disallowed certain of the evidence on the basis that certain items had not been put to the plaintiff and the defendant was prevented to give a different reason as to why the brother of the plaintiff would be in an office was not in the office or playing in the office as alleged. These were matters which were not put.

Under Cross-Examination

74. Under cross-examination, this witness said that part of his belief was that the plaintiff was prevailed upon by her mother and father to tell a false story about him. This witness agreed that his sister had given evidence to the effect that the alleged incident occurred in the autumn regarding the second incident. This witness did not agree that it the allegation centred on April, 2002. This witness agreed that his sister, the plaintiff's mother, had called him in March in respect of whether the children would be staying with him and he said it was a couple of weeks later that they actually stayed with him in 2002. He agreed that Counsel was correct in saying that the plaintiff never stayed with him in the autumn and that the Court could discount any suggestion that they did so in the autumn.

75. This witness accepted that the plaintiff stayed on the Friday and Saturday night that she was in the sitting room and kitchen and would have gone upstairs and gone in and out of her own bedroom and would have been aware of where her brother and sister were sleeping beside her. His response was that she made twelve further visits to his house this was with regard to whether or not she had an accurate recall of the layout of the house.

76. This witness said that his wife would have checked up on the children if she understood one of them to be ill and he said she did voluntary work in a school of 30 children and he didn't doubt but that she would have checked on a sick child several times.

77. This witness said that he paid €150,000 to a solicitor and still owed €40,000 in respect of this case and he said that his solicitors had come off record five years previously. He was granted legal aid in 2013/2014 but it was rescinded because he couldn't get the release of his file and he didn't go to the Law Society about that.

78. He agreed that the delay from 2012 to 2014 was because of him trying to get legal aid.

79. It was put to this witness that he complained about Dr McQuaid to the Medical Council for he ought to have known that there was a similar procedure to complain about his solicitor who wouldn't give him his file. He had also agreed that he wrote a letter of complaint to the junior counsel acting on behalf of the plaintiff who represented Dr McQuaid at some of the court hearings and he said that his complaint was that, in court, he was referred to as someone who had committed a sexual offence at a call-over and that a colleague of his was present in that court and turned his back to the wall and he said his complaint was a polite letter to the barrister concerned, saying that he would prefer that, whatever happened in court, he did not want to be put in a place and to be referred to in such a manner and he said it was polite and firm letter.

80. This witness agreed that he wrote a letter of complaint during 2015 in relation to a solicitor who had written him a letter dated 5th March, 2008, seeking her apology and he said in this letter he was being referred to as depraved and he objected to that. He later produced a letter showing that he couldn't comply with the legal aid obligations. It was put to this witness that it could equally have been anxiety, stress, depression, caused by virtue of the fact that he had been caught out what he had done just as equally as an explanation but he denied this. This witness categorically denied this alleged assault to the plaintiff and to her brother regarding the 2002 alleged incident even though it was put to him that she had a very clear memory of everything else which had happened that same weekend.

81. In relation to the type of house he had in 2002 and its construction on his own evidence, given those factors, it meant that noise could be heard in the house and it was put to him, therefore, that his wife wouldn't be surprised if she heard noise and he responded that there was a difference between someone moving around and someone gagging for ten minutes and that if someone was being attacked in that house upstairs that would have been audible throughout the house.

82. It was put to this witness that what happened was very quiet, very silent, and wouldn't have been heard by anyone and that in her description the plaintiff hadn't described any threatening behaviour to her with a fist. She didn't say that he had said anything to her nor had she given the impression of a violent struggle between them. This witness then admitted that he didn't hear the word attacked. Again, he denied orally raping or attacking the plaintiff.

83. This witness appeared convinced that it was the parents of the plaintiff who had put these stories into her and had forgotten

that the room she occupied had an en suite on the occasion. It was put to this witness that on a number of occasions he told the court that it had never happened and now he was telling the Court that he didn't remember it happening and he was saying that he didn't remember it absolutely because he couldn't remember if the plaintiff was in the pond at 2 o'clock, although she was at some stage. The plaintiff refused to withdraw statements when he had said in his evidence that the children were downstairs eating sweets on the Sunday afternoon on the basis that he didn't actually remember that and that the plaintiff didn't go upstairs, was never upstairs because the plaintiff didn't remember whether it happened or not but he refused to withdraw these items. He told the Court that they were never upstairs on the Sunday and he agreed that that was the case. Inconsistencies were put to this witness in relation to his own evidence as follows:

- i.) It was put to him that he told the court first of all that the children were downstairs eating sweets. He says this is a memory because his wife and he discussed it, that they went to the shops and had sweets and had lunch between 2pm and 3pm.
- ii.) It is put to him that the children he has said were never upstairs and he is asked is that a memory or a situation where you don't know or you don't know whether they were or they weren't and his response was that the plaintiff's brother was never upstairs except to sleep and he is asked to accept that it was never put to him when it was suggested and he didn't respond to this.
- iii.) This witness said that he never suggested to the plaintiff's brother that the plaintiff's brother wasn't at that computer or was never in his study and he said that he was very shocked could hardly speak when that evidence was notified to him on the second day at hearing. It was put to him that he never suggested to the plaintiff's brother was he ever in the computer room and he said he didn't put that to him and he asked him what computer and what game because he knew he hadn't any games.

85. This witness reiterated that he and his wife had no recollection of the plaintiff going upstairs to lie down and he said he can't say definitively that she did, he said he was happy with his decision to say definitively that she didn't go upstairs.

84. It was put to him that his wife's evidence was that the child did have a period that weekend and that she went upstairs in the afternoon because of cramps and he agreed that his wife had said that.

Recall of the Brother of the Plaintiff: C.

86. It was put to the witness that he couldn't say how he got access to the computer and that there were two passwords and there no games on the computer that it was an office one and he denied this and he said he remembered playing "Lara Croft Tomb Raider". There was an objection raised to further re-examination of this witness on the basis that both sides had this witness's name on their schedule and while the defendant didn't choose to call him or to issue a subpoena, that he was on his schedule.

87. He didn't know what he was going to say so he cannot now say he was surprised by him giving evidence and there was an objection to further evidence being given at this stage by this witness.

Submissions on Behalf of the Plaintiff

88. A number of points are made in the submissions on behalf of the plaintiff and it is not necessary to reiterate the evidence of both incidents concerned at this point. The court notes that the point is made that the plaintiff, under oath, told the Court that at the end of February, 2008, she told her mother about the 1994 incident and that until late 2007/early 2008 she must have blocked the horrific occurrence of the first incident of abuse from her memory for many years. She gave evidence of having had flashbacks which had made her feel physically ill and she had been unable to attend college or work regularly and in late February, 2008, she explained to her mother what had happened in 2004. The fear of causing a breakdown in family relations it was submitted was a large part of her being prevented from disclosing the alleged abuse prior to that. She was motivated by concern that if she did not disclose the alleged abuse and the same thing happened subsequently to other children she would feel to blame. She stressed that her parents never questioned her about sexual abuse of any nature prior to her disclosure to them.

89. Her evidence had been that, after the incident in 2002, her reason for travelling to the bathroom landing was that she got comfort from hearing her sister and her brother downstairs and she used the landing bathroom as opposed to the en suite. It is submitted that she felt a sense of security knowing her siblings were within earshot of that bathroom.

90. Her physical and mental issues as a result of the alleged abuse in her view are well-recounted and referred to in the medical evidence, as well as in her own evidence.

91. Regarding the 7th April, 2002, her brother said that he found the defendant kneeling on top of his sister, putting his penis into her mouth, and that he froze for a moment at the bedroom door before going downstairs to the kitchen and then joining his other sister in the television room. He gave evidence of being followed downstairs when the defendant realised that he had seen what had taken place. He described the defendant as following him into the kitchen, coming up very close to his face and telling him not to mention what he had seen to anyone before punching him in the stomach. This witness was visibly upset in court giving his evidence and began to cry. When he was fourteen years of age, he told his mother about this incident and later his father. He said he would feel unwell when he thought of this abuse and it was best to tell someone. He insisted that he knew what he saw and that he would never make something like that up. At the request of the defendant, this witness had been recalled to be allowed ask him how he gained access to the computer and he said he did not recall how. It was put to him that there were two passwords on same and he said nonetheless he had been playing on the computer on the date in question and this was a new allegation being put to him. The defendant's wife had accepted in cross-examination that he was indeed playing on the computer on the date in question. At no stage was there a suggestion of a password preventing him accessing the computer.

92. It was submitted that the evidence of Dr Paul McQuaid was based on four separate mental health evaluations between 2007 and 2016, and his opinion was that the plaintiff suffered chronic Post-Traumatic Stress Disorder as a product of incestuous child abuse in addition to an associated anxiety disorder.

93. The first report was 27th June, 2017 and second, 20th September, 2017.

94. Professor Kennedy, Consultant Forensic Psychiatrist, gave a report dated 13th October, 2010. It is submitted that all the evidence would suggest that the human mind certainly buries isolated stand-alone events of high emotional stress that if such experiences are reported then they ought to remain within the grasp of our memories.

95. While Dr McQuaid concludes that there is no debate about whether or not she was sexually abused as a teenager in 2002, he

says that the second alleged event would have significance of triggering the memory of what happened some seven or more years previously. He believes that could have triggered the memory of the earlier abuse and resulted in the earlier abuse coming back to the plaintiff in flashbacks so as described by her.

96. Reference is made to *Hickey v. McGowan & Ors.* [2014] IEHC 19 discussing the issue of recovered memory in historical child sexual abuse cases. O'Neill J. referred to what he saw as "spontaneous recalling, without any therapeutic or other process, of memories which had been suppressed or blocked out by the plaintiff, by this time, for about thirty years." And he concluded "that the plaintiff, as a result of this sexual abuse, suffered a severe Post-Traumatic Stress Disorder characterised, initially by extreme avoidance to the point that for almost thirty years, he totally blocked out any memory of these events. Having elicited these memories late in 1999, for a number of years thereafter, he suffered the more typical symptoms of Post-Traumatic Stress Disorder."

97. The plaintiff gave clear evidence that although she did attend therapy sessions, at no time did she engage in a memory recovery process with the therapist. It is submitted, therefore, that the plaintiff has suffered for more than ten years with many of the same profound effects suffered by the plaintiff in the above case which the judge was satisfied were a direct result of the sexual abuse he had suffered.

98. It was submitted that the second incident of alleged abuse never had, as part of it, an issue of recovered memory but triggered the memory of the first incident of alleged abuse causing the memory of the first incident to come back to the plaintiff gradually in flashbacks. It is submitted, therefore, that the issue of memory recovery does not arise in relation to the second incident of alleged abuse; the plaintiff always remembered the second abuse allegation incident but thinks she suffered alone and in silence for more than five years.

Submissions of the Defendant

99. The defendant sees these allegations as a continuum of a pattern of defamatory and malicious falsehoods in an effort to do him harm and extract money from him. The standard of proof is to be applied with a degree of flexibility and where serious allegations are made they will be required to be clearly proved in evidence: (O'Flaherty J. in *O'Laoire v. Medical Council* (unreported Supreme Court, 25th July, 1997) "the common law paranoia this time gives the impression that there is but one standard of proof in civil cases though, of necessity, it is a flexible one and this flexibility will ensure that that the graver the allegation, the higher will be the degree of probability that is required to bring home the case against the person whose conduct is impugned". The defence do not limit their contentions but they do say that the Court should have significant regard to a number of factors including the delay in reporting of the allegations, the difference between her direct evidence and previous statements, in assessing both her credibility and reliability: the fact that her brother gave evidence although his position as witness allegedly was not brought to the attention of the Gardaí by the plaintiff in November, 2008, when reporting the alleged 1994 assault, and it is submitted that this is completely improbable and incredible.

100. It is stressed that the brother is not mentioned in any of the medical reports relied upon by the plaintiff and reference is made to unsubstantiated allegations referred to by Dr Paul McQuaid in the description of the assaults to him by the plaintiff's mother.

101. No reference is made to the plaintiff's brother in the pleadings in relation to the 2002 assault and the first time the defendant became aware of such evidence was in the opening of the case.

102. No evidence is given of discussion of this assault as between the plaintiff and her brother. The fact that the plaintiff's parents were not called is also seen as significant by the defendant.

103. Highlighted inconsistencies include that the Court was told by the plaintiff that she was at a sleepover with one of the defendant's daughters whereas the statement of claim refers to two daughters.

104. The first alleged assault does not appear to have been contained in any application to PIAP and the Court is urged not to limit its assessment to the oral evidence but to look at the inconsistent statements or inconsistencies in reporting matters to the experts. The Court is asked in fact to consider the exigencies of s. 26 of the Civil Liability and Court Act, 2004 in assessing as to whether the plaintiff's evidence is credible on the one hand or is false or misleading on the other hand.

105. The plaintiff's brother was approximately seven years of age at the time of the 2002 alleged assault and prior to the opening of the case, it was never suggested that he had witnessed the incident either in the statement of claim or arising out of replies to particulars nor was her brother's evidence or recollection reported to An Garda Síochána or to Dr McQuaid by the plaintiff or her mother, or to Professor Kennedy. The brother's allegation against his uncle in terms of the alleged punch to the stomach are neither pleaded, disclosed, nor reported. The Court is asked to consider this.

106. The defence were not happy with the plaintiff's explanation when she made a statement to the Gardaí on 29th May, 2007, where she said that the alleged assault occurred in autumn 2001 when she was thirteen years of age, and she accepted that the statement was taken on 29th May, 2007, was accurate, but then offered a reason for incorrectly identifying the date. She explained this and changed the date to April, 2002, by reference to going back and looking at visa records and she said that she was conscious she started to have her period and that occurred in the autumn.

107. The defendant submits that on 16th June, 2005, when the plaintiff complained to Garda Geraldine Ennis that she had been sexually assaulted by her father's brother in September, 1996, (transcript, 20th June, 2017, p. 34, paras. 27-29) and at that time she failed to report the alleged assault by the defendant her response was "I didn't say anything because I wasn't ready or able or had the strength to disclose about somebody new and somebody like I said that we had had a much closer relationship". Transcript 20th June, 2017, p. 39, paras. 3-5 the defendant submits that this lacks credibility as an explanation. The Court is asked to consider that it was only after the DPP had decided not to bring charges against the defendant that the plaintiff made an allegation that there had been a previous sexual assault in 1994. The plaintiff also agreed that she did not recall her brother coming in during the second alleged assault on 7th April, 2002, and that she passed out. This is deemed to be significant in the context of her never having discussed or given any evidence of having discussed the second allegation with her brother. The various social gatherings attended by the plaintiff were also noted the court is asked to have regard to the contradiction between the plaintiff's activities shortly after the alleged assault and that it appeared she informed Imelda McCarthy in assessing the plaintiff's credibility and reliability as a historian of facts pertaining to her. The significant main anomalies in the view of the defendant, evident upon the plaintiff's cross-examination are:

- (i) The fact of the plaintiff being abused by a third party and her ability to report this abuse but not the abuse allegedly perpetrated by the defendant.

- (ii) The delay in the plaintiff reporting either and both incidents (i.e. 1994 and 2002) to her mother and other parties.
- (iii) The timing of the indication of no prosecution by the DPP and the making of the complaint vis-à-vis the 1994 incident.
- (iv) Whether the second incident took place in the autumn of 2001 or April, 2002.
- (v) The lack of documentary evidence to back up the plaintiff's assertion of April, 2002.
- (vi) The ability of the plaintiff to provide significant detail to the Gardaí in November, 2008, in respect of an incident of which she had no recall prior to that time.
- (vii) The fact that the plaintiff's father's input into the November, 2008, statement to the Gardaí.
- (viii) The failure of the plaintiff to use the en suite bathroom when she had been informed that it was available to her to use.
- (ix) The discrepancies between the plaintiff's contact with the defendant and the history given to Imelda McCarthy.
- (x) The plaintiff's lack of recall of having attended Anne O'Loughlin.

Dr McQuaid's Evidence

108. The defendant has a number of issues with and/or arising out of Dr McQuaid's evidence as follows:

- (i) That he relied upon history provided by the plaintiff's mother in expressing his opinion.
- (ii) That diagnostic tests were not carried out by him.
- (iii) He made a number of concessions in cross-examination that undermine his position as an expert.
- (iv) The plaintiff's presentation with an affective disorder could be attributed to a familial history.

The Plaintiff's Brother's Evidence (C.C. on the Transcript)

109. The defence's contention is that the court may take cognisance of the fact that there is no reference in the statement of claim, replies to particulars or any other document (including Garda statements or the medical records) which identified the plaintiff's brother's evidence or the nature of his evidence nor did he make any statement to the Gardaí in respect of what he allegedly saw. Furthermore, no explanation is offered as to why he didn't report his evidence to An Garda Síochána when the plaintiff was making her statement and allegations to the Gardaí.

110. Significantly the Court is urged to note that the plaintiff's mother who was not called to give evidence according to the plaintiff's brother was made aware of this evidence in 2008 but did not advise Dr McQuaid about this potentially relevant fact. This is deemed not to be credible in the view of the defendants.

Evidence of the Defendant's Brother (D.C. on the Transcript)

111. He met with the plaintiff's parents either the 24th or 25th February, 2007, in the plaintiff's house. His evidence was that he told that the defendant "had sold your business for millions and that they were going to get the money off you". Transcript of 21st June, 2017, p. 24, paras. 27-28: his evidence was that the both allegations regarding B.P.R. and M. were mentioned this was despite the fact that the plaintiff's evidence was that she only told her mother of the 1994 incident in 2008 and the 2002 incident on 16th April, 2007. It is alleged that there is a direct contradiction by the plaintiff that she blocked out memories of the 1994 incident until February, 2008, and the court should be mindful of the use by the plaintiff of the concept or theory of recovered memories to excuse or explain why –

1. she never reported the alleged assault which took place in 1994 at the time or until February, 2008 and/or
2. why she did not mention the earlier assault when she made a complaint to the Gardaí in November, 2007 and/or
3. she made the further allegation after she was made aware that the DPP would not be prosecuting her complaint in respect of the 2002 allegation.

The Defendant's Daughter's Evidence (A.C. on the Transcript)

112. The evidence given, it is asserted, was suggestive of the plaintiff's mother being obsessive about the issue of sexual abuse in that the defendant's daughter's evidence was that the plaintiff's mother suggested that she might have been abused by her childminder as a child and a suggestion that her grandmother might have done something to her. This evidence was uncontroverted and the court should have significant regard to this evidence regarding the involvement and insinuation of the plaintiff's mother in the bringing of this claim in particular the describing the alleged incidents to Dr McQuaid despite the fact that the plaintiff was aged nineteen at the time of the review.

The Defendant's Sister's Evidence (C.C. on the Transcript)

113. This witness told the court that in April, 2007, she was informed by the plaintiff's parents in their home that the defendant had raped or abuse the plaintiff. This witness and the plaintiff both referred to autumn 2001 and the plaintiff's explanation was "Yes at that time I started to have my period and in my head then was I thought that was in fact autumn. When we went back and looked the visa record said April, 2002."

The Defendant's Wife's Evidence (S.C. on the Transcript)

114. The defendant's wife had informed her that the plaintiff was having her period and was a bit embarrassed as to where to put sanitary items and the plaintiff was informed of the bin in the en suite. It appeared that the plaintiff did not recall the en suite and

when questioned she said the door of it was closed. Her evidence was that they arrived and everyone was having a good laugh, this was when the parents of the plaintiff arrived back. The defence say this is highly relevant evidence with regard to what was just alleged to have occurred. His wife also said the children were pleading to come back as soon as possible. This witness said she did not believe the plaintiff was in the house in 1994 and that if ever they used to camp it would be in her own bedroom not the TV room. There is an indirect contradiction of the plaintiff's evidence that the incident of a sleepover took place downstairs in the TV room.

The Defendant's Former Wife (M.C. on the Transcript)

115. This witness had no recollection that the plaintiff stayed in their house in 1994 at a sleepover. The evidence was not contested that their daughters had large bedrooms and that the house had a spare bedroom.

Professor Kennedy

116. He confirmed that he interviewed the plaintiff on 9th September, 2010, when she was 22 years of age. The main thrust of his evidence on p. 9 of his report was that patterns of absent memory followed by acquisition of a belief were not in keeping with the pattern of memory for real incidents including traumatic incidents. It is pattern described in a particular form of false memory known as recovered memory. He was critical of the idea of using a hypnotist as entirely unreliable, without any scientific basis and a recognised risk factor for false memories and this was echoed in his oral evidence. He was critical of what he called false memory including so called recovered memories of abuse. The Court noted that the plaintiff had denied seeing a hypnotist under cross-examination and the Court would have to determine the likelihood of the plaintiff's recollection being correct having regard to this evidence and the discovery documentation of the plaintiff and Professor Kennedy repeated this observation in evidence.

117. Professor Kennedy observed that reply to Particular 3C, dated 23rd March, 2009, in respect of the alleged abuse dated 7th April, 2002, did not accord with the plaintiff's account to him. This witness said that psychic defence mechanisms is psychodynamic terminology with no special status or significance and that the terms "functional and repressed" have no scientific medical or psychiatric meaning; they are jargon terms from psychodynamic theory which is not accepted now as part of conventional or scientific psychiatry and he says this in criticising the use of that term by Dr McQuaid.

118. Dr McQuaid set out seventeen symptoms and Professor Kennedy says that in respect of one, three, four, six, eight, twelve, fourteen, fifteen and seventeen as set out by Dr McQuaid that none of these can be taken as evidence of anything other than depression or anxiety. He says they can effectively, in respect of five, nine and eleven, be summarised as social problems and he says they are of doubtful significance or relevance. He felt that independent supportive evidence was required regarding dates before a causal inference of any sort maybe made and he was critical of Dr McQuaid for relying on inference and assumptions without giving a basis in fact for his assumptions or inferences and he felt that dysfunction is something which can have alternative reasons to explain it other than sexual abuse and is critical of Dr McQuaid's report in that regard.

119. Professor Kennedy was highly critical of Dr McQuaid's conclusion that the plaintiff presents a characteristic profile of a child sexual abuse victim and he said there is no scientific evidence of any sort for a characteristic profile or any other specific link between any specific mental illness and sexual abuse in childhood. He was further critical that Dr. McQuaid appeared not to be aware that allegations against other members of this lady's family and allegations of victims in both families have not been established in that he appears to have fully accepted that what were no more than suggestions put to him by L.C. and her mother.

120. Professor Kennedy hung much on the view that the plaintiff had told him that she had always remembered it but then said "up to then I had blocked him being there" in relation to the allegation in April, 2002, and he felt that she was contradictory she said she always remembered it. She refuted the idea that the alleged assault in 2002 was of type that could be described as a recovered memory.

121. Reference is made to Charleton J. in *James Elliot Construction Limited v. Irish Asphalt Limited* voted with approval a passage from the judgment of Stewart-Smyth L.J. in *Loveday v. Renton* [1989] 1 MED LR 117 as follows:

"The court has to evaluate on the soundness of his opinion. Most importantly this involves an examination of the reasons given for his opinions and the extent to which they are supported by the evidence. The judge also has to decide what weight to attach to a witness's opinion by examining the internal consistency and logic of his evidence, the care with which he has considered the subject and presented his evidence; his precision and accuracy of thought as demonstrated by his answers; how he responds to searching and informed cross-examination and in particular the extent to which a witness faces up to and accepts the logic of a proposition put in cross-examination or is prepared to concede points that are seen to be correct ..."

122. The reference to the court deciding between conflicting experts drawing on its own common sense and experience was seen in *Cassidy v. Wellman International Limited* (unreported Supreme Court, 13th October, 2001). Keane C.J. refused to fault the trial judge "for preferring the evidence of one expert engineer over another where he finds the evidence of one engineer more closely acceding with the facts of human experience as he saw it." On the criminal side reference is made to the (*The People*) *Director of Public Prosecutions v. McKenna* in the Court of Criminal Appeal which appeared to be open to the proposition that a cautionary instruction in respect of such evidence might be appropriate with regard to covered memory. The Court should distinguish the recovery of a memory through a therapeutic process as alleged in this case as being distinct from a spontaneous recovery of memory as seen in *Hickey v. McGowan* [2004] IEHC 19. The Court is asked to note that the defendant is not in a position to procure additional information or submissions or evidence from Professor Kennedy and that the case is closed and that the Court has to have regard to the evidence presented during the trial. He did not have any regard to any new matters which might be introduced by either parties at this juncture and that any new matters are not in a position to be tried and tested by way of cross-examination in the usual manner and should not be accepted by the court at this juncture.

Findings of Facts and Conclusions

123. This Court accepts the plaintiff's version of events and understands her evidence that the fear of causing a breakdown in family relations was a large part of her being prevented from disclosing the alleged abuse prior to the dates on which she disclosed the two incidents separately. Her motivation for doing so was that she was afraid that if she did not disclose the abuse and the same thing happened subsequently to other children she would feel to blame.

124. This Court found her evidence convincing both in relation to the internal inconsistency of her description of the two events one in 1994 and the other in 2002 both in her direct examination and under cross-examination. The plaintiff explained clearly that while she did attend therapy she did not undergo any therapy in relation to the aspect of recovering memory nor did her parents ever question her about sexual abuse of any nature prior to her disclosure to them.

125. This Court understands, as logical, her reason for explaining that after the 2002 incident she travelled to a bathroom on the

landing of the house when she heard her sister and her brother downstairs rather than using an *en suite* in the room she was in. It is reasonable for the court to accept that she did so because of a sense of security when she heard siblings within earshot of that bathroom.

126. The evidence of her brother is convincing. He corroborates the second incident in 2008 and he was eight years old at that time. He says he was assaulted by a punch to the stomach by the defendant after that incident and told not to tell anyone and it is easy to understand how it only came to light when he was fourteen years of age and having school difficulties and was sitting his junior certificate examination. He decided to tell his parents at that point. This Court accepts his evidence in full.

127. In relation to the evidence of the defendant certain inconsistencies were put to him. Certain items of evidence were ruled out because he had never put certain matters in cross-examination to the plaintiff and to her brother. For example, he never put to her brother that the brother only went upstairs to sleep in that house regarding the 2002 incident. He had no response to that. It was also put to him that his evidence that he was surprised by the brother giving evidence was countered by the suggestion to him that he couldn't have been surprised that the brother was on both witness's schedules.

128. In relation to the defendant's evidence that the plaintiff didn't go upstairs on the afternoon of the Sunday in 2002 at his house, it was put to him that his own wife agreed that she did go upstairs and the reason for that.

129. The plaintiff's brother was able to give evidence about the name of the particular computer game which he played on the occasion of that Sunday 2002 and clearly elate attempt by the defendant to say that there were specific work passwords to the computer is not accepted by this Court.

130. It was clear to this Court that in the wider family on both sides there is allegation and counter allegation in relation to allegations of sexual abuse. In that regard the plaintiff's mother was offered as a witness of the Court if the Court required her to give evidence. It was the view of this Court that the Court must concentrate on the actual dispute as between the plaintiff and defendant and not be side tracked into other allegations which were not before this Court.

131. Dr Paul McQuaid gave evidence of his experience both as a forensic psychiatrist and as a child/adolescent psychiatrist with extensive experience and qualifications and he based his assessment on four separate mental health evaluations which took place over a nine-year period, between 2007 and 2016. His expert opinion was that the plaintiff suffered chronic Post-Traumatic Stress Disorder as a product of incestuous child abuse in addition to an associated anxiety disorder. Two of his reports are considered as evidence one on 27th June, 2017 and the second 27th September, 2017. This Court accepts the conclusions in these first two reports of Dr. McQuaid and his admission under cross-examination that currently the plaintiff does not suffer from symptoms of post-traumatic stress disorder. He says there is no debate about whether she was sexually abused as a teenager in 2002 and he also goes on to say in his evidence that the second alleged event would have significance of triggering a memory of what happened some seven or more years prior to that. He believed that it could have triggered the memory of earlier abuse and resulted in the earlier abuse coming back to the plaintiff in flashbacks as described by her. His conclusion was that this was in the mild to moderate range.

132. This Court notes the comments of Professor Kennedy Consultant Forensic Psychiatrist and noted that by contrast that he carried out one assessment and one report dated 13th October, 2010. This witness laid great stress on the accepted fact that there had been an incident concerning a fire in 1993 which he felt could have great significance in terms of the sequelae the plaintiff described. He approached this as a forensic psychiatrist and felt she didn't have the quality essentially of symptoms to bring her within the post-traumatic stress disorder range.

133. The Court is mindful of the strong view of Professor Kennedy with regard to this case in that he felt there wasn't enough background correlation in terms of material or other items to assist and essentially didn't feel that the difficulties this plaintiff had were necessarily attributed to the events she described. This brought the court to ask a particular question which was, was there a middle way in terms of differing views on the theories of recovered memory. Given that the defendant was not in a position to furnish a further report from Professor Kennedy, the court decided not to consider the third report/addendum of Dr McQuaid so as to ensure fairness. It seems to this court however that the court has to accept that there can be a divergence of opinion between psychiatrists as to when they would or would not allow a diagnosis of Post-Traumatic Stress Disorder. It appears to be a question of degree in terms of symptomology. This Court preferred the evidence of Dr McQuaid very much based on his life's work as a child and adolescent psychologist and his extensive interviews over a nine-year period with the plaintiff.

134. This Court had difficulty believing the defendant did not know that he could make a complaint for example to the Law Society to obtain his file from his private solicitor given that there was evidence that he had complained about Dr McQuaid in relation to this case to the medial council and had even written a letter to the junior counsel who acted for Dr McQuaid in that case who happened to be the same junior counsel who acted in the present case for the plaintiff. He had a legal aid certificate it was at the advice on proof stage where there was a junior and senior counsel engaged and yet he did not take the step of going to the Law Society to get his file. The plaintiff complained bitterly about the extraordinary delay in this case, it was extreme pressure and extra pressure for her. Great deal of the delay entirely lies at the foot of the defendant in the view of this Court. He agreed that from 2012 to 2014 he was seeking legal aid.

135. This Court accepts the particular nature of the particular assaults perpetrated on the plaintiff were of a quiet nature, the plaintiff was not physically beaten up as it were during either of these incidents. There was no noise to talk off.

136. There is no basis for the contention that the plaintiff lacks credibility or is unreliable in the view of this Court. She has not given false or misleading evidence to this Court. There is an internal consistency in her evidence and the evidence given by her brother.

137. This Court looks at this case from two angles in terms of quantum and notes the fact that *Hickey v. McGowan & Ors.* [2014] IEHC 19 is a case where the award itself was significantly reduced in the Supreme Court a 50% loading for reasons not at issue in this particular case. This Court takes the view that the trespass to the person of a child aged six by digital penetration and rape and the further assault on her when she was thirteen years in terms of an oral rape has to be viewed as a horrific experience for her. Her sequelae that she expressed, as accepted by the Court, is understandable in the light of such an experience. The fact that she experienced this on top of the situation where she was a nervous child in any event and had a significant fright in 1993 explains the range of difficulties she had subsequently which overhung her life for many years. She had to drop out of university for a year to get herself together and she felt that career wise she had a loss of opportunity significant for her.

138. This Court believes that its task is described not to establish the truth, necessarily, but to determine as best it can in the face of honestly yet conflicting evidence on the balance of probabilities what did occur.

139. A clear choice must be made as between the validity of the testimony one side or the other and the weight to be attached as between conflicting opinions, to any which seem to be correct. Reference is made to *Best v. Wellcome Foundation Limited* [1993] 3 I.R. 421, at 462, Finlay C.J.:-

"I am satisfied that it is not possible either for a judge of trial or for an appellate court to take upon itself the role of a determining scientific authority resolving disputes between distinguished scientists in any particular line of technical expertise. The function which a court can and must perform in the trial of a case in order to achieve a just result is to apply common sense and a careful understanding of the logic and likelihood of events to conflicting opinions and conflicting theories concerning a matter of this kind."

And later in reference made to Charleton J. in *James Elliot Construction Limited v. Irish Asphalt Limited* voted with approval a passage from the judgment of Stewart-Smyth L.J. in *Loveday v. Renton* [1989] 1 MED LR 117 as follows:-

"The court has to evaluate on the soundness of his opinion. Most importantly this involves an examination of the reasons given for his opinions and the extent to which they are supported by the evidence. The judge also has to decide what weight to attach to a witness's opinion by examining the internal consistency and logic of his evidence, the care with which he has considered the subject and presented his evidence; his precision and accuracy of thought as demonstrated by his answers; how he responds to searching and informed cross-examination and in particular the extent to which an witness faces up to and accepts the logic of a proposition put in cross-examination or is prepared to concede points that are seen to be correct and the extent to which a witness has conceived an opinion and is reluctant to examine it in the light of other evidence, or demonstrates a flexibility of mind which may involve changing or modifying opinions previously held; whether or not a witness is biased or lacks independence... there is one further aspect of a witness's evidence that is often important; that is his demeanor in the witness box."

And further on p. 6 of this judgment:-

"The burden applicable in a civil case was described by Denning J. in this way:- 'That degree is well settled. It must carry a reasonable degree of probability, not so high as is required in a criminal case. If the evidence is such that the tribunal can say: 'we think it more probable than not', the burden is discharged, but if the probabilities are equal it is not"

140. This Court has considered the authority of *Hickey v. McGowan & Ors.* [2014] IEHC 19, at para. 10, p. 5 of this judgment O'Neill J. sets out that a striking feature of the case to which much attention was given was the plaintiff's memory of sexual abuse perpetrated upon him by the second named defendant. The judge in that case was quite satisfied that the plaintiff had no memory of the abuse perpetrated upon him and a Gardaí investigation commenced many, many years after the events and he was also satisfied that he was not given any introductory materials such as the statements of other witnesses nor any résumé or account of that evidence or the state of the Gardaí investigation which might have informed him or prompted him in any way. When he was asked to describe daily life in the class room of the particular school in question where the alleged abuse had occurred, the plaintiff spontaneously began to remember what had happened to him over a three-year period and he was able to recount that abuse in the statement he then gave to the Gardaí at the time. This was a "spontaneous recalling, without any therapeutic or other process, of memories which had been suppressed or blocked out by the plaintiff, by this time, for about thirty years." Even during counselling not a glimmer of this memory had occurred, eventually after recovering his memory he described it as "misty", but in that case as time went on it solidified as he gained confidence in his memory. In that particular case there was corroboration of his memory from other sources, namely his fellow students. In that case O'Neill J. (as he then was) concluded:-

"that the plaintiff, as a result of this sexual abuse, suffered a severe Post-Traumatic Stress Disorder characterised, initially by extreme avoidance to the point that for almost thirty years, he totally blocked out any memory of these events. Having elicited these memories late in 1999, for a number of years thereafter, he suffered the more typical symptoms of Post-Traumatic Stress Disorder."

141. The judge felt that for thirty years almost the plaintiff had entirely blocked this out of his memory and he felt that the illustrated that how deeply that abuse was for him. He was also satisfied that at a subconscious level these matters did affect him and impact on his life. This Court notes that the Supreme Court reduced the award in this case and made findings on another aspect of the case, not relevant to this case.

142. In the instant case reference is made that the plaintiff's battle physically and mentally within an array of issues which she alleges stemmed from the alleged abuse including but not limited to:

Stress,
Anxiety,
Panic Attacks,
Irritability,
Persistent tiredness,
Flashbacks,
Migraines,
Throat infections,
Kidney infections,
Dyspareunia,
Abdominal pains,
Stomach problems,

Bowel problems,
Heart palpitations,
Suicidal thoughts,
Self-harm.

143. This Court finds that there is no doubt in the mind of the court that the second allegations by the plaintiff in relation to one event, which she says happened in 2002, did in fact occur. Her brother gave evidence and corroborated the plaintiff's evidence with reference to what he saw at the time of this event. Both doctors agree that the plaintiff suffered from anxiety and depression, they disagreed on whether she ever suffered from Post-Traumatic Stress Disorder or not.

144. The Court is left therefore with two exceptionally strong views: conflicting theories between two very eminent psychiatrists in relation to this case. Before the court embarks on attempting to resolve the significant disagreement between the psychiatrists the following is worthy of notes: the court has considered the decision of Peart J. in *Clayton v. Cashman* [2006] IEHC 360. P. 30 of that judgment shows how the Court has approached the task deciding on the balance of probabilities what happened or did not happen. The court's task is described as not to establish the truth, but to determine as best it can in the face of honestly, yet conflicting evidence on the balance of probabilities, what occurred.

145. This Court finds that there is no doubt in the mind of the Court that the second allegations by the plaintiff in relation to one event, which she says happened in 2002, did in fact occur. Her brother gave evidence and corroborated the plaintiff's evidence with reference to what he saw at the time of this event. Both doctors agree that the plaintiff suffered from anxiety and depression, they disagreed on whether she ever suffered from post-traumatic stress disorder or not. This Court accepts that the plaintiff had recovered memory, triggered by the events in 2002 re the 1994 events which this Court finds did occur.

146. The defendant's present wife described a series of events save of course for the actual allegation concerned, of the pattern of the weekend in 2002. She did not agree with everything that the plaintiff has said but the pattern was there and was consistent. The said witness agreed that the details of the 2002 weekend, although denying abuse or assault.

147. This Court observed, carefully, the plaintiff gave the impression over the course of the trial of being really afraid of coming into direct proximity in the court room or contact with the defendant. She appeared heightened, tearful and frightened and it appeared to this Court to be an extraordinary ordeal for the plaintiff to give her evidence. Her brother likewise was quite frightened at giving his evidence and at one stage began to cry.

148. Dr McQuaid in his second report dated 12th July, 2016, concluded that this witness suffered from chronic post-traumatic stress disorder as a product of incestuous child sexual abuse and associated anxiety disorder which was ameliorating and in his evidence he then clarified this by saying that presently she does not suffer from chronic Post-Traumatic Stress Disorder as described. It is a similar diagnosis to that made by him in 2008, in the conclusion portion of his first report. Even if Dr McQuaid, is not correct, it is quite clear from the evidence that the plaintiff suffered increased pressure during her childhood and adolescence as a result of the events in question having occurred. She was at the age of seven and a half found to be nervous child. Professor Kennedy says this could well have been attributable to a fear of fires, in relation to a traumatic event in 1993. In trying to assess this further this Court observed carefully the demeanour of this witness over many days of trial. One thing is certain, that while she is an organised and logical person, she gave the impression of being really afraid of coming into contact or direct proximity in the courtroom with the defendant. She appeared heightened, tearful and frightened and I do not doubt that it was an extraordinary ordeal for her to give this evidence. Her brother was quite frightened in giving his evidence, and at one stage began to cry.

149. On the basis of the foregoing, this Court finds that, on the balance of probabilities, the plaintiff suffered an incident of sexual assault in the form of oral rape in 2002 and had a recovered memory triggered by flashes of an earlier incident in 1994, which involved digital penetration and rape by the defendant who is found to lack credibility and as a result of these two incidents, perpetrated by the defendant, the plaintiff suffered severe personal injuries loss and damage as alleged. These were extremely serious and had horrific consequences for her, overhanging her life, and posing real difficulties for her attempts to live and achieve a normal life. The plaintiff explained her difficulty in disclosing the earlier abuse even though she disclosed as a separate incident against a separate individual which occurred in 1996 on the basis that she was closer to the defendant than she was to the other relative and that made it even harder. This Court accepts her evidence on this point also. This Court awards €200,000 to the plaintiff as against the defendant in respect of these.