Neutral Citation Number: [2026] EWHC 949 (KB)

Case No: KB-2025-000062

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand
WC2A 2LL

Date: 24/04/2026

Before:

David O'Mahony, sitting as a Deputy Judge of the High Court

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Between:

WILLIAM WALTER HOWELL	**Claimant**
- and -	
(1) PILE CONSTRUCTION (SOUTHERN) LIMITED (formerly CWL Pile Ltd)	**Defendants**
(2) ZURICH INSURANCE COMPANY LIMITED	

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Mr Matthew Phillips KC (instructed by **Amicus Law LLP**) for the **Claimant**
Mr Patrick Limb KC (instructed by instructed by **DWF (Birmingham) LLP**) for the **Defendants**

Hearing dates: Thursday 26 March 2026
Friday 27 March 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on Friday 24 April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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David O'Mahony, sitting as a Deputy Judge of the High Court

Introduction:

1. This is a claim for damages arising after a diagnosis of epithelioid malignant mesothelioma.

The parties

2. The claimant is 71 years of age. Since leaving polytechnic he has worked as a computer programmer or software developer. Between leaving school and leaving polytechnic the claimant had a number of part-time jobs. Four of these involved labouring type work. He was diagnosed with epithelioid malignant mesothelioma on 20th February 2024 at the age of 69.

3. One of the claimant's part-time labouring jobs was with the first defendant. HMRC records state that this was in the 1972 tax year. The claimant's case is that this was his first summer job on leaving school. The first defendant was dissolved on 5th August 1986. The second defendant accepts that it is the relevant insurer for the purposes of section 1 (2) *Third Parties (Rights Against Insurers) Act 2010*. It accepts that it is unnecessary to restore the first defendant to the register of companies.

The issues:

4. The issue in this case is whether the claimant has established that he was exposed to asbestos while employed by the first defendant, in the circumstances he pleads in his Particulars of Claim.

5. It is conceded that if the claimant has established that factual case, then the first defendant was in breach of duty and the claimant is entitled to recover damages for his injury from the second defendant. The parties have agreed the quantum of those damages, subject to the resolution of the above factual issue.

A preliminary point:

6. The claimant's case is that he was exposed to asbestos dust while working in and around a school hall at a local school. The case has been investigated on the basis that the school was Great Ballard School in the village of Eartham in West Sussex. No evidence of asbestos has been found in the Great Ballard School hall. Two days before the hearing, Mr Phillips KC served the claimant's skeleton argument. In it he said for the first time that as a result of evidence that I will describe below, it was "less likely" that Great Ballard School was the relevant school. Mr Phillips KC said, however, that it was not necessary to identify the precise location of the relevant work for the claimant to succeed, provided the claimant established the rest of his factual case. At the hearing, Mr Phillips KC's position on this aspect was that Great Ballard was "unlikely" to be the relevant school. He said that what he meant by that was that I could not be satisfied on the balance of probabilities that it was.

7. Mr Limb KC took a preliminary point on this evolution of the claimant's case. He said that I am required to decide the case on the basis on which it has been investigated.

Although Mr Limb KC did not accept that the evidence does necessarily make it unlikely that the relevant school was Great Ballard School, he said that if it is now the claimant's case that it was not, the claim must fail. He argued that there would be real unfairness to his client were the case to proceed on the basis now advanced because his client has not had the opportunity to make alternative investigations. Mr Limb KC relied on the following passage from the judgment of Dyson LJ (as he then was) in *Al-Medenni v. Mars UK Limited* [2005] EWCA Civ 1041 at paragraph 21:

"In my view the judge was not entitled to find for the claimant on the basis of the third man theory. It is fundamental to our adversarial system of justice that the parties should clearly identify the issues that arise in the litigation, so that each has the opportunity of responding to the points made by the other. The function of the judge is to adjudicate on those issues alone. The parties may have their own reasons for limiting the issues or presenting them in a certain way. The judge can invite, and even encourage, the parties to recast or modify the issues. But if they refuse to do so, the judge must respect that decision. One consequence of this may be that the judge is compelled to reject a claim on the basis on which it is advanced, although he or she is of the opinion that it would have succeeded if it had been advanced on a different basis. Such an outcome may be unattractive, but any other approach leads to uncertainty and potentially real unfairness."

8. The manner in which this evolution of the claimant's case came about is relevant to my decision as to whether he has proved his case. I set out the ways in which I have taken it into account in the discussion and conclusions section of this judgment, below. However, I am not satisfied that this case falls within the principles enunciated in the above passage from *Al-Medenni*. I refuse Mr Limb KC's invitation to dismiss the claim on this basis.

9. The facts of *Al-Medenni* were these. The claimant was injured when a reel of wrapping paper fell on her at work. Her pleaded case was that the reel had been placed on the machine above her by a specific employee. The defendant's case was that it was the claimant herself who had placed the reel on the machine. Witness statements were exchanged on the basis that this was the relevant dispute between the parties. Cross-examination was conducted on the same basis. During the trial, the judge suggested that what had happened may have been different. He suggested that a "third man" might have placed the reel on the machine. This suggestion was adopted by the claimant's counsel in her closing submissions as an alternative way the claimant could succeed. The judge found for the claimant on the basis of the third man theory. The Court of Appeal held that he was not entitled to do so.

10. Dyson LJ said at paragraph 22 that "*the starting point must always be the pleadings*". He pointed out that the Particulars of Claim were clear that the claimant in that case was alleging that it was the specific other employee who put the reel on the machine.

11. The relevant parts of the Re-Amended Particulars of Claim in this case are not so specific. The relevant paragraphs are paragraphs 6 and 7. They read:

"6. After leaving school in 1972 the Claimant got a six week summer job working for the First Defendant as a labourer. He was employed by the First Defendant during this period.

7. During this time, he worked at a school that he believes to have been Great Ballard School in the village of Eartham, for around 4-5 weeks…"

(emphasis added)

12. The second defendant has always accepted that what the claimant was saying in paragraph 7 of the Particulars of Claim was not that the school was Great Ballard School, but that he believed it was Great Ballard School. The claimant's evidence for the trial was taken on Commission prior to the trial, due to his state of health. The Commission hearing was held on 13th February 2025. This was after the Particulars of Claim but before the Defence was filed. Part of Mr Limb KC's cross-examination of the claimant reads as follows:

"Q. At paragraph 4 [this is a reference to the relevant paragraph number in the unamended Particulars of Claim] *it's put in this careful way:*

"During this time, he worked at a school that he believes to have been Great Ballard School in the village of Eartham ..."
...
Q. So even then, with people asking you more and more questions and memory developing, as at January of this year, what you were able to sign up to was a belief that it's that school?

A. Yes.

Q. But you're not saying that it was that school but rather you're saying you believe it was that school. Do you see the difference?

A. Oh yeah, I see the difference, but I don't know, so what else can I say. That's what I believe."

13. Mr Limb KC also cross-examined the claimant about photographs of Great Ballard School hall and an email in which the claimant's solicitors set out the claimant's response to those photographs. The email concludes with the sentence:

"Therefore, whilst he cannot be certain, he does think that Great Ballard was the school he is referring to in his claim."

14. That this was the defendant's understanding of the pleaded case is confirmed by the Defence. Paragraph 6 of which reads:

"…Whereas it is admitted that the Claimant has confirmed his belief [emphasised] *to be that he worked at Great Ballard School, Eartham, he has previously recalled Slindon College…"*

15. In these circumstances it does not seem to me that the claimant is precluded by the pleadings or the defendant's understanding of the way in which the case was being put, from advancing the case he sought to present at trial.

The pleaded case:

16. The claimant's pleaded case continues in the following terms:

"7....His working hours were around 08:30 – 16:00 each day.

8. The work was building work, and asbestos sheets were used as fireproofing in the school buildings. The Claimant's recollection is that one building he worked on had a stage at one end of it, leading him to conclude that it was a theatre or a school hall.

9. The sheets were 6 by 4 foot asbestos sheets, and it was known by the First Defendant and the Claimant's colleagues that they were made from asbestos. There were lots of dusty asbestos sheets piled up inside, ready to be used. They were very dusty, crackable, and not in any polythene wrapping.

10. The Claimant was handling the sheets throughout the day. As the sheets were large, the Claimant held them close to his body. He got dust on his hands and clothing as a result. He carried them from the large pile over to the carpenters work bench, and then helped carry the cut boards to where they had to be fixed up with nails and screws.

11. Some of the workmen were cutting the sheets on a small cutting bench inside the building. Lots of sheets were cut up during the works, and there was a lot of dust in the air from the cutting.

12. The Claimant also did a lot of dry sweeping up (indoors). He swept up with a large broom, and put the asbestos dust and smaller left over bits from the cutting into a bin, with larger pieces added to a scrap pile ready to go into a skip. The sweeping kicked up clouds of dust that the Claimant breathed in.

13. There was a lot of dust in the air and on the floor, and the Claimant and other employees were all walking through in and breathing it in throughout their time on the site.

14. After work the Claimant would be driven home in the company van. This would contain a group of around six workmen, with dusty work clothes on. The interior of the van was dusty.

15. The Claimant was not warned about the dangers of handling asbestos, or of breathing in asbestos dust. He was not given gloves to wear or a mask. There was no enforcement of the wearing of work overalls. The Claimant wore a navy cotton boiler suit that he purchased. As he only had one, he would re-use it day after day.

16. Save as is described above, the Claimant has not been exposed to significant levels of asbestos dust/fibres in either an occupational or domestic setting."

The evidence:

17. There are no contemporaneous documents and there is no evidence from any witnesses who can give contemporaneous evidence to assist in resolving the central factual

dispute. The evidence that there is can be divided into three categories: (i) the claimant's recollections; (ii) the results of investigations and enquiries at Great Ballard School; and (iii) expert evidence as to the inherent likelihood of the claimant's account being accurate.

(i) The claimant's recollections

18. Given the importance to this case of the claimant's memory of events, I will set out the relevant parts of his evidence in a little detail.

19. A week or so after the claimant's diagnosis, he was seen by his oncologist. The resulting letter from the claimant's oncologist to his General Practitioner is dated 29th February 2024. The oncologist recorded the following:

"….He has retired from work in IT. He recalls being exposed to asbestos many decades ago when he worked as a labourer for a summer job."

20. Shortly afterwards, the claimant instructed his first solicitors. It appears that he discovered them as a result of searching for information about his illness on the internet. On 15th April 2024, those solicitors made an application on his behalf under the Diffuse Mesothelioma Payment Scheme. Part of the form required him to list his previous employments and to fill in a column headed "Give details of how you were exposed to asbestos" for each one. The completed form lists six employers. The only one of the labouring type jobs that is listed is the one with the first defendant (described as "CJ Pile Limited" with the dates "summer of 1972 or 1973 approximately"). This is also the only listed employment for which the asbestos exposure column has been completed. It reads:

"Handling asbestos sheets and in close proximity to this material when it was being cut to size by tradesman in unprotected conditions. Also exposed when sweeping up the asbestos dust and debris left behind by this work."

21. The form is signed by the claimant's solicitor on his behalf. In the part of the form that asks why the form is not being signed by the applicant himself, the solicitor has written:

"the Applicant has given authority for solicitors to deal with this application on his behalf.".

22. At around this time, the claimant changed solicitors. On Friday 26th April 2024 the claimant signed a Department of Work and Pensions "Mesothelioma and other lung diseases" form. It is the first document in this case signed by him. The sections of the form that are required to be completed for an application under the *Pneumoconiosis etc (Workers' Compensation) Act 1979* are filled in by the claimant's new solicitors.

23. The form makes clear (see question 32) that the claimant is also applying for Industrial Injuries Disablement Benefit (IIDB).

24. Eight employers are listed on this first DWP form. None of them is the first defendant or involve labouring work. For the first two employers the form originally said that the work was labouring and there was asbestos exposure. These parts were then changed

by hand to read that the work was as a clerk and there had been no exposure to asbestos. For the other employments for which the relevant part of the form contains information the question for exposure to asbestos is answered in manuscript "not known". The claimant's explanation for the manner in which this form was completed was that the relevant scheme only applied to actual employments and he was not sure whether his summer job with the first defendant would qualify. Although the claimant's previous solicitors had received the claimant's HMRC record by this time. It had not yet released it to his new solicitors.

25. The claimant's IIDB form is signed by him and dated the next business day (29th April 2024). It is the first document in this case that is both signed by the claimant and describes when he was exposed to asbestos.

26. Under the heading: *"What type of work or training do you think caused your disease?"* the claimant's new solicitor has written:

    "

    - *Labouring summer job cutting asbestos sheets for the school theatre*
    - *Sweeping up the asbestos dust + debris*
    - *Working nearby during demolition of an asbestos roof on an old Blg"*

27. The name of the employer section is left blank. Under the heading "Employer's or training provider's address" is written "Slindon College Arundel BN18 ORH". Under the heading "When did you work there?" is written from 1973 to 1973.

28. It appears that the new solicitors received the papers from the old solicitors on 1st May 2024. The claimant's HMRC employment history showed that in the tax year 1972/72 the claimant worked for CWL Pile Ltd (the first defendant). However it also listed three other employments that the claimant accepts involve labouring type work. They were: Framptons Nurseries Ltd in 1973/74; FW Brackett and Co Ltd in 1976/77; and Francis Concrete Ltd in 1977/78.

29. The new solicitors sent a Letter of Claim on 8th May 2024. The details of exposure section of the letter reads:

    "<u>Details of Exposure</u>

    The Claimant remembers working for your company as a labourer in a summer job.

    He remembers using asbestos sheets to line a stage and other areas in the school, particularly the school theatre. He remembers handling a large stack of loose and dusty asbestos sheets. He stood near to the carpenters who were cutting these sheets with handsaws, inside the theatre area and he held the sheets and then helped carry them over to where they were being fixed up.

    He was exposed whilst helping to hold and carry the asbestos sheets, standing nearby during the cutting and then sweeping up using a brush and dustpan and brush. This job lasted around 3 weeks as he then did some other work around the school. He remembers lots of white dust in the air of the theatre and this dust was not enclosed or cordoned off and so ended up in the other outside areas in the corridors.

The Claimant shared the company transport, and, in the van, he sat with other workers, around 4 other men, who were dusty and had not changed out of their work clothing. He remembers having asbestos dust on his clothing and in his hair that he then took back into his house.

Employment History

The HMRC schedule is attached."

30. By this stage there had been no identification of the relevant school as being Great Ballard School and no explanation as to why the claimant believed that the material being used contained asbestos.

31. The next account that the claimant gave was in his first signed witness statement for these proceedings. It is dated 12th September 2024. That statement both first identified Great Ballard School and first explained why he thought that the material being used contained asbestos. The claimant gave four reasons why he thought he was handling asbestos: (i) one of the workman told him it was asbestos; (ii) it was being used for fire-proofing; (iii) broken pieces were being used as a food heating plate; and (iv) the dust had a distinctive smell. The statement includes the following:

*"**Handling asbestos sheets at Great Ballard School; 1972 for 4-5 weeks***

19… I clearly remember an occasion where I worked with asbestos sheets for building works when new school facilities were being provided…
…
21… I clearly remember working at the Great Ballard School…

22. I also remember that in the company van, on the way to the school we had to pick up and drop off another young lad in nearby Boxgrove Village…

23. My younger sister, Gillian… was also living at home with me at that time and she has also been able to remember the labouring work at the Great Ballard School in Eartham.
…
Handling asbestos sheets
…
26… I clearly remember handling asbestos sheets. One of the workmen told me that the sheets were asbestos and would be incorporated for fire proofing.

27. These were they 6x4 asbestos sheets and it was well known that they were asbestos sheets as some of the men were messing around and testing them by using a broken piece of asbestos sheet over a flame as a food heating plate. It was easy to experiment in this way as some pieces of broken asbestos sheet were left as litter on the grass.

28. They were using asbestos sheets for an area in the school that I believe the company was building from scratch. It was to make the area fire retardant…

29. I remember a lot of dusty asbestos sheets all piled up inside, ready for our use. The

asbestos sheets were very dusty and not in any polythene wrapping. They were like a grey board and crackable...

30. I was handling these asbestos sheets throughout the day and got asbestos dust on my hands and clothing. I found that the asbestos dust on my hands had a distinctive smell…"

32. The claimant then described the work being done. He said that workmen were cutting lots of asbestos sheets inside on a small cutting bench (although he could not remember whether this was being done by hand or power tools). He said that there was a lot of dust in the air from the cutting. He described carrying the sheets from the pile to the carpenters' work bench and then helping to carry the cut boards to where they were to be fixed. He remembered the sheets being very dusty when cut. The claimant described there being a lot of dust in the air, him sweeping up, him having dusty work clothes and the interior of the van also being dusty.

33. The claimant's statement also deals with the other labouring jobs. He said that the work at Framptons Nurseries did not involve asbestos exposure. He said that he does not recall the work at Francis Concrete as being dusty. As regards the work at FW Brackett, the claimant said that he worked at a substantial site, but that he has not been able to identify it using Google maps. As to asbestos, the claimant said:

"47. I worked cleaning the toilets and fetching, carrying and sweeping in the main fabrication shed… Most employees were engaged in product fabrication or maintenance."

…

49. Whilst working there, I remember that a large asbestos out building was being demolished. I was asked to help pull it down and I remember having a discussion with the managers and saying that I needed a protective face mask to do this in view of the asbestos, and I was told that I did not need a mask as it was not blue asbestos. By this date, I had read articles in Private Eye about the dangers of asbestos and how workers exposures had to be minimised and how employers were not taking it seriously enough.

50. I cannot remember clearly for what happened after this and I think I absented myself for the following week when they got on with ripping it all down. When I returned it was gone."

34. On 29th November 2024, the claimant made a supplementary witness statement. Its main purposes were to deal with the location of the work as being Great Ballard School and to expand on his evidence about his work for FW Brackett.

35. The claimant changed his evidence as to the location being Great Ballard School. His evidence now read:

"8…I clearly remember working at a school in the area which to the best of my knowledge after research and discussions with my sister, would most likely to have been Great Ballard…

9. I was driven to, whichever school it was, in a van. I do not recall that we could see much of the outside world until the doors opened on site.

10. I visited the school this summer, it has its name on a large sign at the entrance. If the van doors only opened after the van passed the entrance, I wouldn't have seen the name board.

…

13. As per my DWP application form, I thought this work was at Slindon College (which is a private school), however, as stated above, I did not physically see the school sign at the entrance and no one mentioned the name of the school. I did wonder about this and felt a little uncertain.

14. I therefore decided to contact this school after the DWP application had been submitted to make some inquiries. I was informed that they did not have any building works completed in the early 1970s and it was definitely not the school.

15. I therefore thought harder about this and looked online at other nearby private schools, to see if I could recognise them from their grounds and surroundings. I remember working at a local school in a grassy setting with an outdoor swimming pool. I assumed from its setting and the quality of the facilities that it was a private school. I don't recall ever being told or seeing the school name.

16. I also spoke with my sister, as we grew up closely together and know a lot about each other's lives and work. Therefore, after further thoughts, research and inquiries, as far as I am aware, the correct school is as confirmed in my signed statement- the Great Ballard School at Eartham. Eartham and Slindon villages are just 3 miles apart. …"

36. The claimant's sister's evidence was that she was 13 in 1972. She described the conversation in her witness statement. She said that she was discussing the matter with the claimant in early 2024. He was struggling to remember the name of the site and thought it was a school. The claimant remembered a swimming pool and that sounded familiar to her. She said that the claimant had initially thought it was Slindon College but she suggested Great Ballard School as this was a nearby school. She said: "*After I'd suggested Great Ballard School, I did look online as William mentioned an outdoor pool and this seemed to fit"*.

37. As regards the work with FW Brackett, the claimant's supplementary statement said:

"58. This work is mentioned on my DWP application form as this was the only other place I could remember where there was some involvement with asbestos, and so the potential for me to have been exposed to asbestos dust and fibres.

59. At the time I was struggling to remember whether or not I had been involved in the start of the actual demolition.

60. I was working nearby before and after the demolition. When initially creating a record of potential asbestos exposure in the DWP application, I couldn't remember if I started on the demolition before taking time off or not.

61. My recollection after thinking about it for a while, is that the demolition request happened on a Friday. Since I had stirred things up by asking for a mask, the foreman

decided to let things settle over the weekend and start work the following week, when I didn't go in.

62. I was always working on the site near to the demolition area, however, due to the tensions I had created with the managers in relation to the nature of the asbestos and no face masks, I believe that I was absent at the time of the actual demolition…

63. I am pretty sure that I took a week off when the demolition happened. I was surprised that I could take a week off and continue my employment."

38. On the morning of the Commission hearing, the claimant served another witness statement. In it he gave further details of the circumstances in which he came to have and smell what he said was asbestos dust on his hands. He said:

"3. On the second day someone told me that I was to go with him and he showed me where the asbestos boards were stored. There was a large stack of them in the room. I was told to pick up a board and follow. He took me to a building where some carpenters were working and told me to leave the board in there and go to fetch a few more. When carrying the first board I noticed that I would get powder on my hands and clothes. The dust on my hands had a distinctive asbestos smell."

39. The evidence that the claimant gave while being cross-examined at the Commission hearing included the following:

(a) In relation to the IIDB application form he accepted that his statement that he had been cutting asbestos was incorrect and said that the work described in the third bullet point was the work he has described with FW Brackett;

(b) In relation to the identity of the school he said that the work was in a school theatre. He described the conversation with his sister by saying *"when she said "Eartham", I thought, oh yeah, Eartham definitely rings a bell. And Great Ballard is the only school in Eartham."*. The claimant also gave the following evidence:

"Q. And you were asked [about the photographs of Great Ballard School hall].. *an email response from your solicitor saying this…:*

"... Mr. Howell has looked at the photographs you sent and has replied below. You will see that he says the stage looks right, along with the inside of the building. The outside looks less substantial to how he remembers it, but he notes that it may have been modified or may have aged. His recollection is set out in detail in his amended witness statement. Given that Great Ballard is a country school with an outside swimming pool, and that it has a hall with a wall to wall stage with one end, it fits with his recollection pretty well."

So it is said:

"Therefore, whilst he cannot be certain, he does think that Great Ballard was the school he is referring to in his claim."

A. Yes.

Q. And do you recall that being, in essence, the information –
A. Yes.
Q. -- that you gave?
A. Yes. …";

(c) In relation to the reason why the claimant thought the material he was handling contained asbestos. The claimant accepted that the reason he gave in his statement was not only what asbestos looks like, but what it smells like. However the claimant explained his evidence in this respect further. He accepted that this was his first job and that he was not saying he had worked with sheets such as the ones he worked with on any other occasion in his working life. He accepted that he didn't know what asbestos smelled like or even if it had a smell. He said that what he was doing was smelling what he had been told beforehand was asbestos. He said this:

"A. No. No. It's probably after the event. So in this work I handled the asbestos sheets. I was told I think very early that the job was installing asbestos sheeting. When I handled the asbestos I got dust on my hand and I had a sniff to see what it smelt like and that is where the "smells like asbestos" comes from."

The claimant's evidence on this point continued:

"Q. Very well. Now nowhere have you suggested, and let's get this confirmed, that you saw on any packaging material "contains asbestos". There was nothing of that sort?
A. There wasn't any packaging material on it.
Q. Rather what you're saying is that at some stage –
A. Yes.
Q. -- someone –
A. Yes.
Q. -- told you –
A. Uh-huh.
Q. -- you say that these sheets contained asbestos?
A. Yes.
Q. And that's it?
A. Yes.
Q. Right. And it's that which then influenced and informed your references to the distinctive smell?
A. Correct, yes.
…
Q. So this one unnamed individual –
A. Yes.
Q. -- on one occasion –
A. Yes.
Q. -- told you these sheets contain asbestos is your evidence?
A. Yes, that's right.
Q. All right. And absent that, the only other understanding that you had as to the use to which these sheets were being put was for fire boarding?
A. Correct, yes.
…

Q. So if it turns out that the school theatre at Great Ballard does not contain asbestos –
A. Yes.
Q. -- would you accept that what you must have you were told, you say, must have been wrong?
A. So I would say if there was a white board, white-ish greyish board in the school theatre stage that wasn't asbestos then I would say I was wrong, yes. Yes. "

(d) The claimant's evidence about his work with FW Brackett included:

"*A. Okay. So the basic problem is that I couldn't remember exactly what happened. I know I was asked to demolish it. I know that it disappeared. I couldn't remember how much I had to do with the demolition.*
...
Q. -- you've come up with the recollection that the conversation happened on a Friday, the weekend went by, and then the next you know the building is down?

A. Correct, yes.

Q. So why on earth didn't you say any of this when presenting this statement?

A. Because I didn't recall. I recalled that I was asked to take it down. I recall that it wasn't there. And I was struggling to remember anything else so, yeah, so that's…"

(ii) The results of the enquiries at Great Ballard School

40. The second defendant made enquiries of Great Ballard School. It asked for: any documents relating to work done by the first defendant in 1972; any documents that referred to asbestos in connection with the school hall; any asbestos survey; and any documentation relating to asbestos being removed from the school hall. As a result of those enquiries, Mr Law, a director of the school, made two witness statements. He produced a 2004-2005 asbestos survey that had found no asbestos materials in the hall. He said that he had not found any documentation to suggest that asbestos had ever been removed from the hall. He said that he had not found any records relating to any work done by the first defendant at the school.

41. Mr Law also provided the defendant with photographs of the school hall. These were considered by the claimant's expert, Mr Wallis, who is a forensic scientist specialising in asbestos related work. Mr Wallis reported on 2nd October 2025. Mr Wallis did not inspect the building in person. From the photographs, he thought that the hall had been altered because of: differences in the flooring at the front of the hall; a step change in the wall at the same point; different heating systems in that part of the hall; and what he said were relatively new fire-doors.

42. The defendant's expert, Ms Tierney, who is a biochemist specialising in various aspects of asbestos related work, including surveys, reported on 14th October 2025. She was asked to give her view as to whether there were any obvious signs of refurbishment in the building. Unlike Mr Wallis, she visited the school. She did not report the changes that Mr Wallis noted but she said this:

"3.10.5 If there had been previous asbestos removal work, often it is possible, in my experience, to find remnants indicative that such work has taken place, such as adhesive tape (or spray adhesive) from enclosure construction, expanding foam used to seal gaps, pieces of polythene sheeting, staples, screw or nails left behind, residue/debris of the asbestos materials that had been removed in the screw/nail holes. I found nothing to suggest this was the case.

3.10.6 If there had been a fire protective board lining the building, it would make sense that the timber roof was also lined. Visually, the building did not appear as though any over-boarding had been removed from the internal roof. Furthermore, if the building had been fire protected, then it seems unlikely that the fire protection would then have been removed, at a later date, leaving it unprotected in the case of a fire."

43. Sometime before the joint meeting on 12th November 2025, Mr Wallis went onto the District Council website. He found some planning documents from 2007 which showed that the hall had been extended sometime in the 1990s. The first time that the second defendant became aware of these documents was when Mr Wallis disclosed them to Ms Tierney on the morning of the joint meeting.

44. Following the joint meeting the second defendant made further enquiries of the school. These resulted in a witness statement from the owner of the school, Ms Jay and the builder who had done the extension in the 1990s, Mr Stevens. Both statements were served under Civil Evidence Act notices. Given the importance of these statements, I extract relevant parts of them here. Ms Jay said:

"11. Due to the School's financial difficulties, it required investment. We needed to expand the number of children it could admit to make it more financially viable. As part of our investment programme, we decided to extend the School Hall. This was in the 1990s.

12. I walked around the School Hall on 22nd January 2026 with Mr Burt to point out to him what work had been carried out. In a nutshell, a simple extension was added to the School Hall. I advised him that the area in which the stage is positioned is in the extension that was added to the building. The demarcation between the original building and the extension can be seen when one looks at the change in the floor of the School hall.

13. I can categorically confirm that the original School Hall building was not refurbished during the extension work. All we did was add an extension to the original building. Thereafter, the builder did his best to match the interior decoration in the extension to the decoration of the original building.

14. I can confirm that the interior of the School Hall as it is today is the same as it was back in the late 1980s and early 1990s before the extension work took place. No boarding or sheeting was stripped out of the original building when it was extended. All that has happened since then is that the interior of the building has been painted from time to time."

Mr Stevens said:

"7. In simple terms, I extended the School Hall in the 1990s. I see from Susan's statement that she has explained where the extension was located. I can confirm she is correct in what she has said. The stage is positioned in the area in which the extension is built.

8. I confirm that I did not refurbish the original School Hall as part of the extension work. No boarding or sheeting was stripped out of the original building at all and we did not come across anything that looked as though it comprised asbestos during the work. I simply extended the original building and then matched the interior of the extension to the interior of the original building.

...

10. I can further confirm that the interior of the original building as seen in the photographs in Susan's statement is the same as it was back in the 1990s when I was undertaking the extension work. As I have said, that interior was not touched. The interior walls were covered by what is, essentially, plyboard which had been painted. The cladding on the exterior of the original building is also the same today as it was when I undertook the extension work."

(iii) The inherent likelihood of the claimant's account being correct

45. In his written report, Mr Wallis set out a range of primary materials that describe the uses to which Asbestos Insulation Board ('AIB') was put in the period up to the early 1970s. These materials also describe the gradual transition away from asbestos containing boards from the mid-1970s onwards. Mr Wallis' opinion was that if the claimant was handling insulating boards being used for the purposes of fire-proofing they would have been asbestos containing. He said that if the boards were not AIB, he was unable to identify what boards would have been suitable for fire-proofing purposes at the time.

46. Mr Wallis also set out a range of primary materials dealing with the dust produced by working with AIB. These state that sawing and drilling AIB causes a substantial amount of dust. They also say that sweeping up asbestos dust was a dusty operation with a high risk to health. Mr Wallis set out materials showing that work of this kind would lead to a substantial quantity of dust accumulating on a workman's clothing.

47. In her report, Ms Tierney also set out primary materials showing the widespread use of AIB for uses including fire-proofing and acoustic insulation at the material time. However she said that plasterboard (or gypsum) was a fire-resistant mineral board that had been available for decades prior to 1972. She produced a video she had found on TikTok showing it being used. She said that plasterboard was cheaper, easier to install and more lightweight (she cast doubt on the claimant's account that he could carry AIB boards by himself).

48. As regards the specific building at Great Ballard School, Ms Tierney's view was that AIB could lower the rate of spread of a fire but that it was unlikely that it could prevent spread to the wooden structure. That would simply burn down. Furthermore, she said that the main part of the hall had large areas of exposed timbers and wooden roofing,

which suggested that fire protection was not an issue that had ever been considered.

49. Ms Tierney's opinion was that the relatively small size of the building (and the fact that it was single story with doors at either end), meant that there would be no real need to fire proof it. Her view was that if fire-proofing were to be needed, it would make more sense to use plasterboard, given its cost. She said that the building was not one in which there was much risk of fire.

50. When being cross-examined, Mr Wallis was taken to the 1979 report of the Health and Safety Executive Advisory Committee on Asbestos. That report stated that plasterboard was a possible alternative to AIB but that it would have to be used in greater thickness or with additional insulation to provide the same standard of fire protection. Mr Wallis then accepted that plasterboard was fire-resistant if used in a suitable thickness and that it had been available for decades prior to 1972. He accepted that it was easier to cut, because you generally score and snap it rather than saw it. He was not able to give an opinion as to the comparative cost at the material time.

51. Mr Wallis said that the reason that there would need to be fire-proofing in a stage area was that at the time stage lights had large bulbs and there would be both heat and electricity.

52. When being cross-examined Ms Tierney said that she could not say for certain whether plasterboard was as fire resistant as AIB. She accepted that the 1979 report was good evidence that pound for pound and width for width AIB was more fire-resistant than plasterboard. When she was pressed on whether if the purpose was fire-proofing in a school theatre the material was more likely to be AIB than plasterboard, she said "*I think I would say yes"*. However she maintained her stance that this building would not necessarily be fire-proofed. She said that she would not expect the same fire resistance as a West End Theatre; this, she said, was a hall and gym and "*kids can run faster than a fire*".

53. Ms Tierney did not accept that plasterboard would be more likely to be scored and snapped than hand sawed. However the TikTok video she produced suggested that that was more likely. She accepted that the claimant's description of the dustiness associated with the sawing was consistent with the material being AIB. She says that sweeping the work area and the associated dustiness was a common description of what went on on building sites in the 1970s. However she pointed out that on the claimant's account there was wood being used as well.

54. Finally, Mr Wallis accepted that the following passage by Ms Tierney from the joint statement was accurate:

    "…the Claimant describes the material as having a "distinctive smell" and also being used as a "food heating hotplate" neither of which would describe asbestos insulating board."

The law:

55. Mr Limb KC took me to two cases that set out a series of fact finding propositions, by reference to specific parts of other authorities. The cases are: *Briggs v. Drylined Homes Limited* [2023] EWHC 382 (KB) at paragraph 14 (per Dexter Dias KC sitting as a deputy judge of the High Court) and *Evans v. Secretary of State for Health and Social Care* [2024] EWHC 496 (KB) at paragraph 37 (per Andrew Kinnier KC sitting as a deputy judge of the High Court). I have found those paragraphs helpful in identifying the relevant cases.

56. The starting point is that the claimant bears the burden of establishing his factual case on the balance of probabilities. That is to say that he must satisfy me that his pleaded case more probably occurred than not. If he fails to discharge that burden his case must fail: *In re B* [2009] 1 AC 11 at paragraphs 2 and 13, per Lord Hoffman. In the mesothelioma case of *Sienkiewicz v. Greif (UK) Ltd* [2011] 2 AC 229 at paragraph 166, Lord Roger said:

"…It is important that judges should bear in mind that the Fairchild exception itself represents what the House of Lords considered to be the proper balance between the interests of claimants and defendants in these cases. Especially having regard to the harrowing nature of the illness, judges, both at first instance and on appeal, must resist any temptation to give the claimant's case an additional boost by taking a lax approach to the proof of the essential elements…"

At paragraph 193, Lord Mance said:

"193. In other cases, there will be continuing good sense in the House of Lords' reminder to fact-finders in Rhesa Shipping Co SA v Edmunds (The "Popi M") [1985] 1 WLR 948 *that it is not their duty to reach conclusions of fact, one way or the other, in every case. There are cases where, as a matter of justice and policy, a court should say that the evidence adduced (whatever its type) is too weak to prove anything to an appropriate standard, so that the claim should fail."*

57. Where the evidence depends to a large extent on a witness' memory of events that occurred some time ago, the courts have given the following guidance. In *Gestmin SGPS SA v. Credit Suisse (UK) Ltd & Anor* [2020] 1 CLC 428, Leggatt J (as he then was) said:

"Evidence based on recollection

15. An obvious difficulty which affects allegations and oral evidence based on recollection of events which occurred several years ago is the unreliability of human memory.

16. While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1)

that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.

17. Underlying both these errors is a faulty model of memory as a mental record which it fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called 'flashbulb' memories, that is memories of experiencing or learning of a particularly shocking or traumatic event. (The very description 'flashbulb' memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.) External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory).

18. … Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time.

19. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events…

21. It is not uncommon (and the present case was no exception) for witnesses to be asked in cross-examination if they understand the difference between recollection and reconstruction or whether their evidence is a genuine recollection or a reconstruction of events. Such questions are misguided in at least two ways. First, they erroneously presuppose that there is a clear distinction between recollection and reconstruction, when all remembering of distant events involves reconstructive processes. Second, such questions disregard the fact that such processes are largely unconscious and that the strength, vividness and apparent authenticity of memories is not a reliable measure of their truth.

22….. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

58. This passage has been relied on in a number of mesothelioma cases, see for example: *Prescott v. University of St Andrews* [2016] CSOH 3 at paragraph 42. Legatt J's last point was emphasised by the Court of Appeal in *Merthyr Tydfil Car Auction Limited v. Thomas* [2013] EWCA Civ 815 at paragraph 36, where it said that there is a distinction between a truthful witness and an accurate witness.

59. Leggatt J stressed the importance of having regard to contemporaneous documents. Where there are no contemporaneous documents, the court must have regard to the inherent plausibility or implausibility of the accounts: *Jafari-Fini v. Skillglass Ltd and Ors* [2007] EWCA Civ 261 at paragraph 80. In *Natwest Markets PLC and Anor v. Bilta*

(UK) Ltd [2021] EWCA Civ 680 at paragraph 51 (after citing *Gestmin*), the Court of Appeal said:

"Faced with documentary lacunae of this nature, the judge has little choice but to fall back on considerations such as the overall plausibility of the evidence; the consistency or inconsistency of the behaviour of the witness and other individuals with the witness's version of events; supporting or adverse inferences to be drawn from other documents; and the judge's assessment of the witness's credibility, including his or her impression of how they performed in the witness box, especially when their version of events was challenged in cross-examination. Provided that the judge is alive to the dangers of honest but mistaken reconstruction of events, and factors in the passage of time when making his or her assessment of a witness by reference to those matters, in a case of that nature it will rarely be appropriate for an appellate court to second-guess that assessment."

60. In *Martin v. Kogan* [2020] FSR 3 at paragraph 88, Floyd LJ said the following about the above passage from *Gestmin*:

"…Gestmin is not to be taken as laying down any general principle for the assessment of evidence. It is one of a line of distinguished judicial observations that emphasise the fallibility of human memory and the need to assess witness evidence in its proper place alongside contemporaneous documentary evidence and evidence upon which undoubted or probable reliance can be placed. Earlier statements of this kind are discussed by Lord Bingham in his well-known essay "The Judge as Juror: The Judicial Determination of Factual Issues" (from The Business of Judging (Oxford, 2000)). But a proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon all of the evidence. Heuristics or mental short cuts are no substitute for this essential judicial function. In particular, where a party's sworn evidence is disbelieved, the court must say why that is; it cannot simply ignore the evidence."

Discussion and conclusions:

61. It does not seem to me that the claimant has satisfied the burden on him of establishing the factual case set out in the Particulars of Claim, even on the alternative basis advanced by Mr Phillips KC at trial.

62. I begin with a part of the claimant's recollection that has been consistent. From the first time that he gave his reasons for concluding that the material he was handling in the summer of 1972 contained asbestos, he has said that what he said was asbestos dust had a distinctive smell. The experts agree that asbestos does not have a distinctive smell. Neither party suggested that a particular asbestos containing material had a distinctive smell. It follows that the dust that the claimant says he was smelling was not asbestos dust, nor, on the evidence led at the trial, can I be satisfied that it was dust from an asbestos containing material. In re-examination, Mr Wallis said that it is possible that if AIB boards were sawed they would get hot and that there would be a distinctive smell from the boards in those circumstances. However, that cannot be an explanation for the claimant's evidence in this respect. In his witness statement served on the morning of the Commission hearing, the claimant said he was asked to carry the boards from the place where they were stored to a building where the carpenters were working. His

evidence on the question of smell was: *"When carrying the first board I noticed that I would get powder on my hands and clothes. The dust on my hands had a distinctive asbestos smell."*.

63. I next turn to an aspect of the way in which the claimant said the relevant material was being dealt with. In his first witness statement, the claimant said that other workmen were messing around and testing the material by using it *"over a flame as a food heating plate*". In his original report, Mr Wallis interpreted this part of the claimant's witness statement as describing people holding boards over a heat source to prove their fire-proofing properties. Mr Limb KC put to the claimant that he had said that he had seen someone demonstrating what happened when flames were applied to the material (a statement that the claimant did not immediately recognise). However, the claimant's witness statement is clear about what he says was happening. After cross-examination both experts agreed that material used as a food heating plate would not be asbestos insulating board.

64. Having got this far, it is necessary to examine such independent evidence as there is. As I said when dealing with the defendant's preliminary point, the claimant's case has always been only that he believed that the relevant school was Great Ballard School. However, that belief was expressed in quite firm terms. The identification of the school was made: after much thought; with knowledge of the area; after doing internet searches on other nearby private schools; in discussions with his sister; and after making enquiries of the only other school that the claimant considered to be a possible location for the relevant work. The claimant considered specific features of Great Ballard School when coming to his decision. These included its location in Eartham and the fact that it was a private school with an outdoor swimming pool in a grassy setting. When being cross-examined, the claimant accepted that if there was a white-ish greyish board in the theatre stage at that school that wasn't asbestos he would say that he was wrong about the material he worked with containing that substance. The claimant did not suggest any other possible location for the work he was describing.

65. There is no evidence that would support the existence of asbestos insulating board in the school hall at Great Ballard School. The asbestos survey in 2004-2005 identified such boards in other parts of the school but not in the hall. Ms Tierney was the only one of the two experts to inspect the hall in person. She found none of the evidence that she would have expected to see if asbestos removal work had been done. I accept that Ms Tierney did not apparently consider the modifications of the hall which are now agreed to have taken place. However, I have no reason not to accept her evidence that there was no evidence of the type which she was concerned to find. Mr Stevens' evidence is that he did not strip out any boards when he worked on the hall in the 1990s or come across anything that looked like asbestos. Mr Law's evidence is that there are no further relevant records at the school. There is no evidential basis for a finding that asbestos was installed in 1972 and was removed at some stage before the currently available records began.

66. If the claimant's case was that the school hall he worked on was Great Ballard School hall, this independent evidence would be fatal to his case. It is therefore necessary to examine the evidence on which Mr Phillips KC relies for the claimant's new position that it is more likely than not that the claimant's account is correct, but that he was working at another school.

67. As I have said, the change of position came in Mr Phillips KC's skeleton argument filed two days before the trial. The relevant section reads:

"The defendant recently disclosed the witness statements of Susan Jay and Ronald Stevens that indicate there was no stage in the school hall at Great Ballard School in 1972 and that it was added as an extension in the 1990s. If this new evidence is correct it makes it less likely that Great Ballard School was the work site as WH has always recalled a stage at one end of the building he was based in."

68. The question at this stage is therefore whether the evidence of Ms Jay and Mr Stevens establishes that it is more likely than not that there was no stage in the Great Ballard School hall prior to its extension in the 1990s. I agree with Mr Limb KC's submission that the evidence does not do so. Neither Ms Jay nor Mr Stevens say in terms whether there was such a stage or not. Neither witness appears to have been asked that question directly at the time of preparing their witness statements.

69. I have read both statements carefully. It does not seem to me that either of them is capable of supporting a finding one way or the other as to whether there was a stage before the extension.

70. On the one hand Ms Jay said that *"…the area in which the stage is positioned is in the extension that was added to the building.*". On the other she described the work as *"a simple extension was added to the School Hall…I can categorically confirm that the original School Hall building was not refurbished during the extension work. All we did was add an extension to the original building…I can confirm that the interior of the School Hall as it is today is the same as it was back in the late 1980s and early 1990s before the extension work took place…".* It seems to me that adding a theatre type stage of the kind shown in the photographs to a hall that did not have one would be a significant modification of a building. It would not seem naturally to fall within the description "a simple extension".

71. Similar comments can be made about Mr Stevens' statement. On the one hand he said that *"The stage is positioned in the area in which the extension is built"*. On the other hand he said "*In simple terms, I extended the School Hall in the 1990s…I confirm that I did not refurbish the original School Hall as part of the extension work….I simply extended the original building and then matched the interior of the extension to the interior of the original building…I can confirm that the interior of the original building as seen in the photographs in Susan's statement is the same as it was back in the 1990s when I was undertaking the extension work. As I have said, that interior was not touched…".*

72. It seems to me that in the circumstances of this case, where Great Ballard School has been examined and no evidence of asbestos found, if Mr Phillips KC wished to pursue his case on the alternative basis that the work with asbestos occurred, but at a different school, he was required to clarify the evidence of Ms Jay and Mr Stevens. I understand from Mr Limb KC that despite Mr Stevens potentially being available to give evidence at the trial, the claimant's solicitors said that he was not needed and his statement could be read.

73. Mr Phillips KC complained about the late service of Ms Jay and Mr Stevens' statements. I do not think that that is a sufficient answer to this point. The need for the statements appears to have arisen from the planning evidence produced by Mr Wallis. For reasons that were never fully explained, this was provided to the defence for the first time on the morning of the joint meeting (12th November 2025). The statement of Ms Jay is dated 24th January 2026 and that of Mr Stevens 31st January 2026. The Civil Evidence Act notices are dated 18th February 2026. I do not have the precise date on which the statements were disclosed. Mr Phillips KC said the claimant had them in February 2026. His skeleton argument is dated 24th March 2026. Given the simple nature of the question that needed to be asked and its importance to the case, it seems to me that even if neither Ms Jay nor Mr Stevens attended the trial, the claimant had sufficient time to seek to find the answer.

74. It is of course also the case that if the claimant wished to change his case in this respect, I would have expected at least some attempt to establish that there were other similar local schools at which the work might have been done. Although as Mr Limb KC says, if any such evidence had been available, I would have needed to be alive to the possibility that enquiries at any new school might lead to the same results as the enquiries at Great Ballard School.

75. In conclusion on this aspect, there is no evidence of asbestos being in the school hall in which the claimant quite firmly believed he had worked. The claimant has not established a basis on which I can be satisfied that the relevant hall is more likely than not to have been somewhere else.

76. I turn next to Mr Phillips KC's submission that the claimant's account has been sufficiently consistent that I can rely on it to support the case advanced at trial, notwithstanding the flaws I have identified. I accept that the claimant has been consistent in some of his evidence. However, I do not think that his evidence overall is sufficiently consistent to support that submission. Mr Phillips KC placed significant weight on the account that the claimant gave his oncologist: *He recalls being exposed to asbestos many decades ago when he worked as a labourer for a summer job"*. However, it does not seem to me that this is sufficiently specific for Mr Phillips KC's purposes. The fact is that the claimant identified two potential such exposures in his IIDB form shortly afterwards.

77. The IIDB form seems to me to be an important document when assessing the consistency of the claimant's recollections. As I have said, this was the claimant's first signed account of his asbestos exposure. His evidence was that he was pretty sure that it was completed in a face to face meeting with his solicitor. It seems to me to be a good guide to the claimant's recollection before the litigation began. In that form the claimant says that he was exposed to asbestos in the summer of 1973 when he worked cutting asbestos sheets for a school theatre (which he identified as at Slindon College), sweeping up asbestos dust and working nearby during the demolition of an asbestos roof on an old building. The claimant's later evidence was to the effect that this recollection was inaccurate in a number of respects. They were: (i) he was not himself cutting asbestos sheets; (ii) the school theatre was not at Slindon College; (iii) the work in the school theatre was in 1972 but the asbestos roof was with a different employer four years later in 1976; and (iv) he was not at work during the actual demolition of the roof. I deal with the development of the claimant's case in relation to the 1976

employment further, below. However, as can be seen, at this stage, the claimant's recollection has developed over the course of this case. I cannot therefore simply rely on him having been consistent. I must make my decision by examining the whole of the evidence.

78. Turning to the work for FW Brackett. At paragraph 16 of the Re-Amended Particulars of Claim, it is pleaded that the claimant had not been exposed to significant levels of asbestos in other settings. There are circumstances in which a claimant can seek to support a finding that he was exposed to asbestos at a particular time, by establishing that the relevant occasion was the only one on which he could have been so exposed, see generally: Sedley LJ in *Brett v. University of Reading* [2007] EWCA Civ 88 at paragraph 11. However, I do not think that the evidence establishes that this is one of those cases. Of course, in order to recover from the second defendant, the claimant is not required to establish that he was *only* exposed to asbestos while working for the first defendant (*Sienkiewicz*, above, at paragraph 1).

79. It seems to me that I cannot be satisfied that the claimant was not exposed to asbestos while working for FW Brackett in 1976. The Claimant clearly thought that the work being done whilst working for that employer was an occasion of potential exposure when he signed the IIDB form. His subsequent evidence that he was wrong about that does not seem to me to be strong enough to support a finding that he must have been wrong on that form. A significant feature of the claimant's subsequent evidence about his work with FW Brackett was his repeated statements about the unreliability of his memory of the details of what happened. Those statements included: "*I cannot remember clearly what happened"* ; *"at that time I was struggling to remember"*; *"I couldn't remember if I started on the demolition before taking time off or not"*; *"My recollection after thinking about it for a while, is…"* ; and "*…so the basic problem is that I couldn't remember exactly what happened…"*. In any event, even his final position on that employment does not negate the suggestion that he was working in circumstances of potential asbestos exposure. He said: *"I was working nearby both before and after the demolition"* and *"I was always working on the site near to the demolition area"*.

80. Finally I turn to the expert evidence. Mr Phillips KC's submission was that the expert evidence supports the claimant's case because it demonstrates that the account he set out in his Particulars of Claim is inherently probable. Again, however, I do not agree. The key fact on which the relevant parts of the expert evidence are predicated is that the material the claimant says he was handling was being used for fire-proofing. Therefore, in order to succeed in this submission, the claimant would need to establish that the work that he describes would more likely than not involve the use of fire-proofing materials. I do not think that the claimant has established that work on a school theatre is more likely than not to involve the use of such material. The evidence is that in the only school theatre that has been investigated, no such material exists. In addition, as Ms Tierney says, the wooden construction and bare wooden beams in the Great Ballard School hall, suggest that fire resistance was not a primary consideration in its construction. Ms Tierney gives a number of reasons why a small school theatre would not be fire-proofed. Mr Wallis' evidence to the contrary depended on the assertion that there would be powerful theatre lights in the stage area. However, there is no evidence that such lights would necessarily exist in a school theatre. There is no evidence of such lights at Great Ballard School (the photographs appear to show lighting outside the

stage area). Ms Tierney said that there was a difference between a school and a West End theatre.

Conclusion:

81. I have genuine sympathy for the claimant and his family following his diagnosis. However, I must examine the evidence and decide whether it establishes his case to the relevant standard. Unfortunately, having reviewed the evidence in detail, I cannot be satisfied that he was exposed to asbestos dust whilst working for the first defendant in the summer of 1972.