Newsletter
March 2016
Issue No. 16

ACAL
Association of Child Abuse Lawyers

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President's Report

By Peter Garsden President, ACAL

President's Piece (March 2016)

The last 6 months seems to have been full of media stories about various famous individuals with some negative publicity generated by those who are in public life and believe they have been falsely accused by victims, or unfairly treated by the police. The likes of Harvey Proctor, Paul Gambocini, Lord Bramhall, and the supporters of Leon Brittain, have voiced their concerns about the over enthusiastic behaviour of Operation Midland and the Metropolitan Police.

When you have been around as long as I have, you will have come to expect, fear, and anticipate the backlash following much pro Claimant media attention. The last time was around 2000 – 2003 after years of abuse revelations for the first time. In those days police methods were less sophisticated, and emotions ran much higher than they do these days, in that abuse stories are much more mainstream than previously.

Abuse victims are much more willing to come forward, and the Police forces much better trained and equipped. Indeed it is top of the list of crimes for investigation in most force areas. Nonetheless, I have become alarmed at the biased way the media treats allegations of abuse. Rather than take the middle course, and leave judgment of an accused to the Courts, presenters, understandably, become emotionally involved taking one side or the other, so emotive is the subject matter. I suppose it makes better radio or TV. I seem to have been on the end of more cross examination when I am asked to give media interviews in support of the victims.

The June APIL/ACAL Conference

Thanks once again must go to the organising committee of ACAL members, and in particular Tracey Storey and Jonathan Wheeler (also President of APIL 2015/16), who have put on yet another interesting and diverse conference in partnership with APIL at the Bloomsbury Hotel in London on 7th June 2016. The popularity of this event year on year seems to grow as abuse cases become more popular amongst Personal Injury Lawyers.

Keynote speaker will be Sue Berlowitz, former deputy Children's Commissioner who is an inspirational and passionate speaker. In the afternoon there will be a panel debate with voting from the audience. The theme will be "Should the law of Limitation be removed for allegations of sexual child sexual abuse". I am proposing the motion with Graham Garrett, an ACAL member from Digby Brown in Scotland, where such a proposal is being mooted. Against us will be Gary Dover from BLM and Adam Weitzman of & Bedford Row, who many of you will have opposed. I am looking forward to it already.

Giving a lecture on updates to the Law will be ACAL member David McLenaghan. Richard Scorer will cover some less mainstream abuse subjects. I won't ruin the surprise. Subjects such as "The Defendant's View", "Child Trafficking and exploitation", "Media Representation of adult male sexual violence", and "Cyber crime" will also be covered. Sounds like a must not miss event to me.

For more detail go the Events page of our website http://www.childabuselawyers.com/events/apil-adult-and-child-abuse-conference-2016-with-acal , or the APIL conference page.

Legal Update

NA v Nottingham County Council – as some of you already know, the Court of Appeal found against the Claimant and confirmed the High Court's decision not to make a finding that the Local Authority were liable on the grounds of non-delegable duty of care following the Woodlands decision for the abuse by foster parents of the Claimant. A full summary can be viewed in the member's area of the website by following the link http://www.childabuselawyers.com/legal-cases/na-v-nottinghamshire-county-council-court-of-appeal-failure-to-care-woodlands . There is also a link to the judgement.
I understand from Bilhar Uppal, who acts for the Claimant, that an appeal is intended to the Supreme Court.

A v The Trustees Of The Watchtower Bible And Tract Society – Vicarious Liability of Jehovah's Witnesses **[2015] EWHC 1722 (QB)** – an interesting case involving yet another different type of unincorporated association where vicarious liability was disputed. Finding in favour of the claimant, the Court found that the high level of control over all aspects of the life of a Jehovah's Witness by the judicial committee was at least akin to a relationship between employer and employee. A ministerial servant assisted and deputised for the elders and played an integral role in the organisation. Therefore, the relationship between elders and ministerial servants on the one hand, and the Jehovah's Witnesses on the other, was sufficiently close in character to an employment relationship that it was just and fair to impose vicarious liability. Again this case is on the website.

The Goddard Enquiry

The Goddard Inquiry is now in full swing with a timetable of investigations, according to the website to consider namely:-

- Lambeth Council
- Lord Greville Janner
- Nottinghamshire Councils
- Residential Schools
- The Anglican Church
- The Internet
- The Roman Catholic Church
- Westminster

The website has invited individuals and firms of lawyers to apply on behalf of their clients for "Core Participant Status", which has no bearing on whether a client can give evidence, but entitles him, or his lawyer, or indeed an organisation to participate in hearings through Counsel or an advocate, receive disclosure of documents, cross examine witnesses, suggest lines of questioning, make opening and closing statements, and if granted apply for the payment of legal fees.

By the time this newsletter is published preliminary hearings could already have taken place at which various directions will be given. First in line is Lord Janner in view of the halted criminal trial, followed by Rochdale Council and Knowle View.

Victims can instead participate in the "Truth Project", which is a private and confidential system of giving testimony in complete exclusion from questioning and the open nature of the Tribunal format.
The Enquiry will undoubtedly help any civil claim in view of its powers to compel evidence from witnesses and documents, in that it is statutory in nature. How long it takes to report, and how thorough the investigation is remains to be seen.

Access to Care Records Campaign

The campaign has moved forward again with a meeting held at the offices of Bolt Burden. It was attended by several ACAL Members and a representative from Ofsted. The purpose of the meeting was to discuss a report compiled by various members of the committee with thoughts arising from the Round Table Meetings. Various suggestions were put forward as to how the law and practise could change in order to benefit care leavers obtain their unredacted records.

It was decided that a further meeting at the House of Lords, to which government ministers such as Edward Timpson, the former Minister for Children would be invited. A maximum of 80 invited guests are permitted due to security passes etc, so it cannot be an open invite to all members. It will take place in the River Room.

Website

Finally a plea to put your cases on the ACAL Website by going to the Care Homes Database page, the URL for which is http://www.childabuselawyers.com/care-homes-database . If you need corroborative evidence to support your case, do a search, and contribute your own case. It has helped us numerous times find witnesses. It makes the membership fee seem very inexpensive when judged against this benefit. Also, do look at our long list of decided cases with summaries and judgments. There are many unreported decisions on quantum which are invaluable.

Hearty congratulations must also go out to David Greenwood for winning Solicitor of the Year at the Eclipse Proclaim Personal Injury awards at the end of 2015 for the 3rd time. It helps considerably to raise the profile of our very worthwhile work to a wider audience of lawyers. Also apologies to any award winners whom I have not mentioned. We are always looking for stories for the website, so please let me know, and I will gladly publish news.

If you would like to have your Twitter feeds published on our site, let Sue at headquarters know and we can add them to our link. She will need your Twitter handle, and password.
Until next time, take care, and don't work too hard.
29th February 2016
Peter Garsden – peter@abneys.co.uk, www.abuselaw.co.uk

Sexting – can victims claim damages in a civil court?

In the past few years, there has been a huge increase in cases of sexting. Wikipedia defines sexting as "sending and receiving sexually explicit messages, primarily between mobile phones".

I think I was about 16 years old when I got my first mobile phone. Back then, mobile phones were generally used to make calls or send the occasional text message. I never imagined that a few years later, you would be able to access the internet, play music and take photos - all on your mobile phone. I imagine the majority of people would say that this technology is a wonderful addition to our lives. However, mobile phones are now also being used in a sinister way that often causes serious harm to the victim.

Sexting can be harmless, such as the exchange of explicit messages and photographs between two consenting individuals who trust each other and who keep such sexts confidential. However, we are increasingly seeing situations, where paedophiles and sexual predators are using sexting. Often the perpetrators are in a position of trust and they prey upon the vulnerable.

As a senior solicitor in the abuse team at Bolt Burdon Kemp, I have seen a real rise in paedophiles and sexual predators using text messages as a way to groom and/or sexually harass their victims. Often they will also take explicit photographs of their victims on their mobile phones and/or they will encourage their victims to take explicit photographs of themselves and send them by text message, which the paedophile / sexual predator then uses to satisfy their sexual desires.

Only last month I saw it reported in the media that policeman turned lecturer Martin Kay was convicted of the sexual harassment of a female student after he bombarded her with sexts. Media reports confirm that Kay befriended the student after she became ill and then made sexually abusive calls and sent sexually abusive texts to her for a period of around 6 months, which caused her such distress she was hospitalised for a period of 2 weeks. The student is reported as saying "he put me through a living nightmare. I felt trapped and scared. I was fearful that if I rejected him my grades would suffer". District judge Jeff Brailsford quite rightly said: "It is difficult to imagine a greater and grosser abuse of trust." This incident sadly demonstrates that receiving unwanted sexts can have dire consequences for the recipient.

Bolt Burdon Kemp recently acted for the Claimant in the landmark case of *ABC v West Heath 2000 Limited and William Whillock* [2015] EWHC 2687 (QB) where damages were awarded to the Claimant, not only for the harm she suffered as a result of sexual assaults, but also specifically for the harm she suffered as a result of sexting.

In this case, our client claimed compensation from her school and her teacher William Whillock. She alleged that Whillock had groomed her and encouraged her to send indecent images of herself to him and exchange

text messages of a sexual content, which eventually led to him seriously sexually assaulting her.

As Whillock denied sexually assaulting our client but could not deny the existence of the sexts (as they had been recovered from our client's and Whillock's mobile phones) we put forward two arguments. The first argument was that our client was sexually assaulted by Whillock and should be awarded damages for those assaults. However, in the alternative, we also argued that if the court were to find that Whillock did not sexually assault our client and that the abuse was limited to texts and indecent images, then she should be entitled to damages for the harm caused by those texts and indecent images, using the principles set out in the case of *Wilkinson v Downton* [1897] EWHC 1 (QB) which were re-formulated by the Supreme Court in the case of *Rhodes v OPO* [2015] UK SC32.

The cause of action for the "sexting" allegation was the tort of "*intentionally causing physical or psychological harm*". This stems from the the case of *Wilkinson v Downton* where Mr Downton decided, that as a practical joke, he would tell a woman that her husband had been involved in an accident, even though this was not the case. The woman went into "nervous shock" as a result, and she later successfully sued Mr Downton.

Last year, in the case of *Rhodes v OPO*, the Supreme Court held that the tort under *Wilkinson v Downton* consists of three elements: The first element is conduct, which requires "words or conduct directed towards the claimant for which there is no justification or reasonable excuse". The second element is mental, which requires an "intention to cause physical harm or severe mental or emotional distress". The third element is consequence, which requires "evidence of physical harm or recognised psychiatric illness".

In the ABC judgment, the Judge, Sir Robert Nelson, found that there were occasions when Whillock had sexually abused our client and that she should be compensated accordingly for those assaults. He then considered whether our client should be awarded damages for the sexting as a distinct award. Sir Nelson found that each of the 3 elements set out in *Rhodes* had been established. He said "*Mr Whillock acted unjustifiably towards the Claimant by emotionally manipulating her and encouraging her to send indecent images of herself to him and engaging in sexual banter in the texts. … The mental element requires the Claimant to establish that Mr Whillock intended to cause severe mental or emotional distress to her. … It was obvious that the illicit relationship would in the end cause nothing but harm to the vulnerable Claimant some 39 years younger than her groomer and those consequences must have been entirely clear and obvious to Mr Whillock. The consequence element is also established. … she suffered from an adjustment disorder after the disclosure in January 2010 with an acute exacerbation of her mental health problems when the abuse became public*".

What makes this case so important is that the judge awarded damages for the assaults and the sexting at £35,000, but said that had this been a case where there had been no sexual assaults and was limited to sexting, he would have assessed damages at £25,000.

In a world where sexting is on the increase, this case is crucial in that it sets a precedent where victims of sexting, such as the female student harassed by Martin Kay, may now be able to successfully claim compensation in a civil court.

Abbie Hickson, Senior Solicitor at Bolt Burdon Kemp

19 January 2016

Article by Darren Coyne, The Care Leavers' Association

Restrictive Access

Care Leavers above a certain age are a collective and largely invisible group who's rights are not afforded to them as a group and whom suffer greatly from discriminations in society and legislatively.

Upon leaving care an individual is clearly more vulnerable than their peers and can remain so throughout the

life course. Indeed, we work with very many care leavers for whom the residual issues of their care experience and transition to independence; often negative and unsupported follows them into their 30s, 40s, 50s, and 60s and beyond.

Often a care leaver will arrive at a stage in life when they become reflective and it is at this stage and before that their fundamental human right to access their social care files should be recognised and fully supported. This is fundamental to their emotional well-being as understanding ones past is important in the transition to accepting ones past and moving on with ones future.

Emotional well-being is the one constant that crosses the lifespan of all of us and something which does not change across generations, whilst also being an aspect of the care experience that policy and practice has failed to understand and offer any real meaningful intervention in.

With these thoughts in mind the CLA campaigns on the issue of Access to Records, with a campaign title of

'It's our History, It's Our right; Reclaiming Our Past'.

Through this campaign we seek to:

- Promote awareness of care leavers' rights to access their files
- Promote awareness of the importance of these personal records to care leavers
- Promote best practice on accessing these vital documents amongst professionals working in this area.

The Care Leavers' Association, alongside its campaign work on these issues assists very many care leavers wishing to access their social care files.

There are very many issues and dilemmas we seek to address in reference to care leavers accessing their social care files, all of which are directly relevant to the Data Protection Act (DPA) 1998. These range from how care leavers access their files, discriminations in the legislative framework for accessing files, retention of files, bureaucracy, ineffective management of access to files requests by local authorities, time limits and the 40 day mark, 'redaction' or should we say censorship, judgement as to what 'harm' the contents of a file may do to the 'subject' (care leaver) and who makes the judgement, access to the files of deceased relatives, the reasons why care leavers wish to access their files and the lack of support offered to care leavers who wish to access their files.

These issues and dilemmas are coupled with and compounded by the very fact that within local authorities there is no responsibility given to either children or adult services for this work. The service user is bounced from end to end with a heavily redacted file being posted to the care leaver and very little opportunity for the care leaver to challenge neither the contents of the file nor what has been redacted, let alone understand the language used in the file.

The DPA 1998 is to be interpreted as a positive framework for access to personal information pertaining to the subject; however, it is perversely used by local authorities as a way to restrict access to information.

The file is a record of time in care, therefore belonging in its entirety to the care leaver yet the local authority determines access to it and the contents of it, whilst also claiming the 'subject' (care leaver) is not able to determine their own relationship with its contents. This is of course very similar to the relationship the care leaver will have experienced as a ward of the state and the local authority in **loco parentis.**

The emotional well-being of the care leaver is not being considered here, nor are the rights of the care leaver, which runs counter to the principles inherent within the DPA 1998, which are there to make access to and control over one's personal information easier.
Growing up in care for some is an experience covering their whole childhood with some people living between care placements and their own family, whilst others spend time in care for a specific period. In all these cases there are questions to be answered and it is often once one reaches adulthood, has a family of one's own and life is somewhat settled that one begins to reflect on the past.

Curiosity; fragmented memories; photos to show your own children; reminiscing; making sense of difficult memories and life events; seeking answers about why one went into care as families often have disparate explanations; trying to trace family (redaction impedes this) and seeking medical information in reference to hereditary illness/disease are all reasons why care leaver want to access their files.

Discrimination (The legislative let down).

A small number of those taken into care each year are adopted, leaving the majority with the identity of 'care leaver', yet the law does not recognize this identity, often denying the care leaver the right to make full sense of their time in care as they begin to reflect and seek answers. Adoption legislation does both of these things for those who have been adopted. As such the process for accessing adoption papers and tracing one's roots is taken as a strand of work in its own right by local authorities and voluntary organizations.

Not only will one get greater access to and less redacted files from adoption agencies and local authorities in terms of adoption papers, if one is applying for a social care file from a voluntary agency as well as the local authority the file from the voluntary agency will be less redacted than the file for the local authority and whilst similar they will be different. The local authority social care file will be heavily redacted as they will apply the DPA `98 to it, whilst the voluntary sector organisation will not do so.

What we have here are discriminations that are bound in law:

If you're adopted you can apply for your birth certificate, but there will also be a file that you can access, whether that be with a local authority or a voluntary sector organisation and there is no legislation to cover this, however access is granted with third party considerations taken into account, although nowhere near the extent as would be the case were one applying for a social care file as a care leaver.

If you're adopted you can also apply for a social care file (should one exist) from the time before you were adopted if you were in care. The local authority will apply the DPA `98 to this file, however should you have been in the care of a voluntary organisation, you will also have a social care file that sits with them and they will grant access to it, but will not apply the DPA `98 and a such what you get will be significantly less redacted than that which you get from the local authority as a care leaver.

The same rights afforded to adoptees should be recognised for care leavers also and our identity should be recognised in legislation.

Time limits (the 40 day mark).

The DPA requires the process of gaining acces to personal information to be completed within 40 calendar days upon receipt of the application. This requirement is not a particularly useful part of the legislation as most local authorities do not meet the 40 day mark due to the need to read through files and redact (see below) and I have not met a care leaver yet who demands the 40 day requirement be met, let alone even know about it. I have however met many care leavers who seek support and wish to understand the contents of their file, but whom are denied access to even the offer of support.

The CLA views it as more important that a relationship is established early on between the local authority and the care leaver so that full support is given to the care leaver throughout the entire process and should the file not be located then a good relationship between the care leaver and the local authority is essential.

Retention (salt in the wounds).

Often, it is the case that councils are unable to locate records as a great deal of time may well have passed since the care leaver was in care. The homes are often closed down and the present local authority officers unaware of the homes or any details appertaining to them; care leavers' records are often lost along with information about the homes themselves. It is often the case that local authorities are unable to explain whether the files have not been located due to a policy of destruction or if it is simply the case that 'poor filing systems' in the past mean the file(s) could be anywhere.

Compounding this disappointment is the lack of support offered to a care leaver upon hearing from a council that the file(s) has not been located because it 'may' have been destroyed or 'may' have been filed badly at

the time. That's not to mention the lack of support offered to care leavers up on receiving their file(s) with requests to access social care files seen as a bureaucratic exercise for many local authorities and the need to see it as a discrete piece of work in need of more than a bureaucratic response is a need we seek to present to local authorities as part of our Access to Records campaign.

Councils should be clear as to why files cannot be located, making clear to care leavers any policy of destruction that existed in the local authority before the implementiaon of the DPA 1998.

'Redaction'

Redaction is the process by which the local authority will read through the entire file and pull out any third party information. This should be done by a suitably qualified practitioner. However this is not always the case which leads to a different approach to redaction across the UK. This is an issue for the care leaver as, often, an unnecessarily 'blanket' approach to third party information is taken so as to 'err' on the side of caution. It is not always necessary to redact information that states the name of a relative or another who might have come to a children's home, social services department or foster placement to take a child to the local park or spend a couple of hours with the child. Nor is it necessary to redact information that states a said relative or another came to a review meeting. The information which should be redacted in reference to named individuals is any information which states any biographical details which are personal to the said individual. Furthermore, the process of redaction is very rarely explained to the care leaver and as such they are left with more questions than they had before making the SAR.

Redaction should be a more transparent process and consideration should be given to the principles of the DPA 1998 which is a positive framework for access to personal information pertaining to the subject, as opposed to its current perverse interpretations by local authorities as a way to restrict access to information.

Do harm? (Statutory Instrument 2000/415).

This is a clause within the DPA 1998 that allows local authorities to refuse to allow the care leaver access to their file if the information in it is likely to cause "serious harm to the physical or mental health or condition" of either his or herself or someone else. There is a conflict with regards to 'Harm' as the social worker is not able to assess this from simply reading the file as they do not know the care leaver in most cases (unless it is an open file), yet nor is the Access to Records Officer in a position to make this decision. Thus, who decides what is to be defined as harm and who it may be harmful to? This, again, is very different across the UK with the care leaver, as a service user never being consulted in this process.

What is needed is some kind of objective criteria, such as a mental health diagnosis, otherwise it is all far too subjective.

We would like to re-iterate, accessing one's social care file is a fundamental human right under the European Convention on Human Rights, Article 8; Right to Respect for Private and Family Life.

Key recommendations

An effective response to meet the needs of children currently looked after and care leavers regardless of their age or when they were in care, who wish to exercise their right to access their social care files, will require a comprehensive revision of legislation and associated guidance. These recommendations and associated actions should not be taken to apply only to the rights or entitlements of those who are currently defined as looked after or who qualify as care leavers under the Children Act 1989 and the Children (Leaving Care) Act 2000.

This report acknowledges there is increasing attention on the needs and rights of care leavers at a central policy level. In October 2013, the government produced a Cross Departmental Strategy for care leavers, updated in October 2014, which accepts "central and local government have a unique relationship with children in care and care leavers as their 'corporate parents. This strategy makes clear the government's responsibilities as the 'corporate parent' to establish a joined up approach ensuring that government departments across Whitehall work closely to develop a more coherent approach to how looked after children and care leavers are supported. There also needs to be recognition of the needs of care leavers across the life course. We call upon the government to take note of the evidence which shows that older care leavers seek

access to records across the life course in search of their history.

In summary we present 6 key recommendations:

- Develop effective processes for gaining permission from third parties, both family members and professionals, to share information with care leavers at the time of engagement with them, whilst understanding that third party consent is not determinative of a decision by the Data Controller to share information with the care leaver.

- Work more effectively across local authority departments to share the knowledge and expertise of data governance officers and social work or leaving care staff in making decisions about access to records. Any government guidance about access to care records should be addressed to both Data Controllers and Directors of Children's Services.

- Offer support to all care leavers of any age across their life-span through the access to records process, and keep open communication with them throughout.

- Avoid redaction wherever possible, keeping a clear record of any redaction decisions made and giving an explanation to the care leaver of the reasons.

- Provide detailed guidance for data governance officers in relation to access to care records

- There needs to be a new legal framework that addresses the particular rights and information needs of care leavers to access care records and the necessary support available to them to do so. The Data Protection Act 1998 was not designed to deal with requests for family history and information and decisions relating to a person's time in care and amendments are needed.

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CASE SUMMARY

BDA v Domenico Quirino [2015] All ER (D) 25 (Nov)

When the claimant was 14 years old she joined a karate club run by the defendant who was some twenty years older than her. After attending for a year, the defendant offered the claimant private tuition and told her that he would make her a karate champion. By this time she was attending lessons up to four times a week with him. To begin with the claimant felt flattered that the defendant was showing her so much attention. This soon changed however as text messages that he would send her became more and more frequent. He also began to talk to her on instant messaging sites. The content of the messages began to change from discussing karate to the defendant asking the claimant about her sexual history. The claimant began to feel trapped, harassed and uncomfortable. When she was still 15 years old, during a karate lesson, the defendant pinned the claimant against a wall by her arms and told her that he would not release her until she kissed him and she was forced to do so. The defendant continued to harass the claimant with messages and began to drive her home from lessons. It was during these car journeys that the abuse began to escalate. Whilst she was in his car the defendant forced himself on the claimant by kissing her and touching her body under her clothes. After

she turned 16, he then began to rape her. This occurred on at least six occasions until she was 18 years old.

In 2011 when the claimant was at university she approached a counsellor for help with difficulties she was experiencing in intimate relationships. Through counselling the claimant came to realise that the defendant had abused her and she reported him to the police. The defendant maintained throughout that it was a consensual relationship as she was over the age of consent when they had sex. The defendant was charged with a number of counts of indecent assault and was convicted of one count. In 2012 the defendant attempted to appeal his conviction but was unsuccessful.

At the age of 25 years old the claimant instructed me to bring a claim against the defendant who, after initially responding to the letter before claim, proceeded to bury his head in the sand and ignore all further correspondence. Proceedings were issued at court against him and just before service it became apparent that he had sold his property that he jointly owned with this wife and bought a new property with his wife and daughter. With the help of a detective the defendant was tracked down and proceedings were served on him at the new property. Again however he failed to respond and judgment was ordered against him which included the allegations of rape for which he had not been criminally convicted. At this stage the defendant finally instructed solicitors who applied to set judgment aside. This application was refused however by Master McCloud. A successful application for an interim payment of damages and costs was made at the same hearing. When this was not complied with, charges were immediately registered against the defendant's property.

Medical evidence and quantum

Medical evidence obtained from Dr Rozewicz, consultant psychiatrist, concluded that as a result of the abuse, the claimant had developed post traumatic stress disorder of moderate severity and depression for two years after the criminal trial which included a stay in a psychiatric hospital for a short period of time. His prognosis for the depression was that it would re-occur every five years for the remainder of her life. It was also concluded that the abuse had seriously affected the claimant's ability to have intimate relationships.

In terms of her education, the medical evidence concluded that whilst the claimant excelled in her GCSE's, as the abuse took hold she was unable to concentrate and left school during her A Levels. She later enrolled at college to study the International Baccalaureate but by this time she was a year behind her peers. She continued to university where she obtained a first class degree in Biomedical Science and then a Masters. At the time of reporting to the police the claimant had just begun her PhD in toxicology but as a result of the stress of the police investigation and the criminal trial she took an overdose and was forced to take extended periods of absence from her studies. When the defendant unsuccessfully attempted to appeal his criminal conviction this caused further delays to the claimant's PhD. It was the claimant's case therefore that in total she had suffered a four year delay to the commencement of her career in the pharmaceutical industry. A period of cognitive behavioural therapy was recommended in addition to specific therapy to help the claimant with her relationship and intimacy difficulties.

Damages Assessment Hearing

As the defendant failed to enter negotiations, the claimant was forced to attend a damages assessment hearing. In anticipation of his attendance, a successful application was made for special measures so that the claimant could give her evidence from behind a screen. The defendant did in fact attend the hearing and with the assistance of a McKenzie friend he attempted to put questions to her through His Honour Judge Wood QC as an intermediary. The majority of his questions however focused on issues of liability and were not allowed. The

defendant failed to file any witness or medical evidence and so the Judge relied upon that of the claimant's.

Judgment was handed down a few days later and the claimant was awarded general damages of £46,000 which was broken down by the Judge specifically to £30,000 for pain, suffering and loss of amenity and £16,000 for mental distress and injury to feelings. In addition the claimant was awarded £9,000 for aggravated damages because of the defendant's conduct in attempting to appeal his conviction and for causing the claimant to attend the hearing and give evidence again adding to her distress. In respect of her claim for loss of earnings the claimant was awarded a significant lump sum of £105,000 in addition to the sums requested for past and future treatment as well as interest. In total the claimant was awarded £173,786.70 in addition to an interim payment for her legal costs.

To date the defendant has failed to comply with the Order of the court and enforcement proceedings are now being pursued.

Case submitted by Rebecca Sheriff, Senior Solicitor at Bolt Burdon Kemp

FKB v Derek Lampitt 2015 EWHC 3368 (QB)

Between the ages of 10-14 years old the claimant was seriously sexually abused by her mother's partner in her home and his. The abuse consisted of touching under clothing and digital penetration on a regular basis. At 14 years old she disclosed the abuse to her mother and it was reported to the police. For some unknown reason, the investigation was shelved for a number of years until further victims came forward. At this time the police approached the claimant and re-interviewed her. The defendant was finally charged with a number of counts of indecent assault in relation to the claimant and the two other victims. He was convicted in 2008 and sentenced to eight years imprisonment.

At the age of 21 the claimant decided to bring a claim against the defendant. Following receipt of a positive asset report, a letter before claim was sent to the defendant. This was ignored however, along with all following correspondence to him for the entire litigation process. Proceedings were therefore issued against the defendant and served upon him at his home. After he failed to file a defence judgment was entered against him and a successful application for interim payments for the claimant's damages and legal costs was made. Interim and then final charging orders were registered against his property.

Damages Assessment Hearing

The damages assessment hearing was held before His Honour Judge Peter Hughes QC on 20 October 2015. An application for special measures was made for the claimant to give her evidence from behind a screen although the defendant failed to attend. In his judgment handed down that day the Judge accepted the claimant's medical evidence of Dr De Taranto, consultant psychiatrist. The claimant was diagnosed with post traumatic stress disorder as well as an exacerbation of pre-existing traits of anhedonia and dysthmia as a result of the abuse. It was also the claimant's case that her education was disrupted due to the criminal trial which took place during her GCSE examinations. As a result, it was argued, she left school with poor grades and was unable to follow her chosen career as a probation officer which required five A-C grades at GCSE level.

The Judge found the claimant's evidence compelling in relation to the effect that the abuse had upon her relationship with her mother, in that she felt guilty for the end of her relationship with the defendant as well as the relationship with her young son due to her over protective nature, an example of which was that she enrolled him in a nursery with CCTV which she could access

from her mobile phone at any time. The claimant also told the court how she was torn in her feelings towards her half brother, the defendant's son, who was a constant reminder of the defendant and what he had done to her yet part of her family and only a young boy.

In his judgment the Judge stated that the cases of *GLB* v *TH* and *BJM* v *Eyre & Others* were most helpful to him and awarded the claimant significant general damages of £65,000. In addition he awarded her £15,000 for aggravated damages. It was also accepted that the abuse caused significant disruption to her education and the claimant was awarded the full cost of re-taking her GCSE's at a private paying college in the sum of £17,895. Whilst the Judge accepted that the claimant's career would in turn be delayed as a result, he was not convinced by a calculated approach to her loss of earnings based on a career as a probation officer due to a pre-existing family history of mental health issues. Instead the claimant was awarded a lump sum of £63,500 for loss of earnings in addition to an award of £20,000 for disadvantage on the labour market. Taking into account other sums for future treatment and travel, the claimant was awarded compensation of £184,580. With interest and taking into account that the claimant had beaten her own part 36 offer that was made before the hearing, the total award was £205,965.51.

Case submitted by Rebecca Sheriff, Senior Solicitor at Bolt Burdon Kemp

LXC ~v~ DXA

Out of court settlement January 2016.

L the Claimant received £300,000 in relation to a claim arising from sexual abuse inflicted on her as a child by a family friend LXF (deceased).

Background

L was born in 1963 and first met LXF when she was a child. She met him when she was around or about 8 years of age. LXF was 27 years of age. L spent a lot of time with LXF particularly in his workshop and shed where he kept his motorbike and pottered around.
L was sexually assaulted by LXF from the age of 8 years and this continued until she was 15 ½ years of age. She did not understand what was going on she thought that LXF was a friend and she was very confused.

Many unpleasant incidences took place and this led to L becoming very depressed at or about the age of 16 when LXF no longer wanted to spend time with her.

L then got married at the age of 24 but she was divorced at or about the age of 29 due to psychological difficulties and over a period of time her behaviour and mental health became very erratic. In 2010 she contacted the police to report the abuse that LXF inflicted on her and LXF was charged several months later. He was tried at Isleworth Crown Court in 2011 and was found guilty of all twelve counts against him and pleaded guilty to two but was found guilty of the remaining ten charges by the jury. He was sentenced to 22 months in prison and was released from prison in February 2013 to his home address which is local to L. He was then recalled to prison on two occasions and remained in prison where he was due to be released in November 2014. Unfortunately LXF died on 2 August 2014.

Proceedings were stayed. LXF prior to his death had only decided to instruct solicitors.
Prior to that proceedings were issued and served on LXF in prison he did not file a defence and L via her solicitors applied for default judgment and the application was successful.
Proceedings were stayed until such time that a relative of LXF, DA was substituted as Defendant.

There were other difficulties encountered at this time due to the fact that the deceased had bequeathed the majority of his estate to a well-known charity who disclaimed the inheritance under the estate.

The grant of probate was received in February 2015 where DA was appointed as executor of LXF's estate.

During the course of the litigation L's mental health deteriorated and she also suffered several strokes and latterly developed renal failure. She was placed on the waiting list for a kidney transplant and was referred to hospital for dialysis. The case was further complicated by virtue of the fact that L had other psychiatric difficulties which were unrelated to the abuse.

Proceedings
Proceedings were issued in April 2013 and served in August 2013 on the deceased who at the time was incarcerated and serving his prison sentence at HMP Brixton.

As stated above a defence was not filed and judgment was entered on L's behalf. Various orders were made during the life of the case. Directions were thereafter in place and a trial date was fixed for 1 – 3 February 2016. Both parties complied with the directions save that the Defendant's solicitor did not serve witness evidence.

Expert discussions took place in December 2015.

Negotiations commenced and L served her Schedule of Loss and Damage on the Defendants in January 2016. The Defendant made a Part 36 offer on 18 December 2015 in the sum of £150,000 in full and final settlement of L's whole claim. Thereafter L made a counter offer in the sum of £483,500 and this was rejected by the Defendant who put forward a further offer of £275,000 and this was rejected by L and a counteroffer of £300,000 was put forward on L's behalf. This was accepted by the Defendant.

An approval hearing took place on 2 February 2016 and damages were approved and an interim payment of costs was also agreed and paid to the Claimant's solicitor by 3 February 2016.

The case settled on 27 January 2106, five days before trial.

The offer was global but can be broken down approximately as follows:-

General damages	£80,000
Aggravated damages	£10,000
Past special damages	£80,000
Past care	£35,000
Interest	£20,000
Future losses	£50,000
Interest on generals and aggravated damages	£ 5,000
Interest on past losses	£20,000
Total	**£300,000**

Payable within fourteen days of the date of the court order.

Stephanie Prior
Partner
Osbornes Solicitors LLP for the Claimant

Dan Clarke, Counsel for the Claimant
Outer Temple Chambers

Chun Wong
Partner
Hodge Jones & Allen for the Defendant

Sydney Chawatama, Counsel for the Defendant
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Who Done It, Actually? Dissociative Identity Disorder for the Criminologist

Dr Adah Sachs,
Clinic for Dissociative Studies and The Bowlby Centre, United Kingdom
To Paula, with gratitude

Abstract
Dissociative Identity Disorder (DID) (American Psychiatric Association 2013) is examined in this paper from the perspective of its relevance to the criminologist. As this psychiatric condition is linked to severe and prolonged childhood abuse, accounts of DID patients inevitably involve reports of serious crimes, in which the person was the victim, perpetrator or witness. These reports can thus contain crucial information for criminal investigations by the police or for court proceedings. However, due to the person's dissociation, such reports are often very confusing, hard to follow, hard to believe and difficult to obtain. They also frequently state that the person had 'no choice', a thorny notion for the criminologist (as well as for the clinician). Through the analysis of clinical examples, the paper explores how decisions are made by a person with DID, the notions of choice and 'competent reasoning', and the practical and ethical ways for interviewing a person with DID.

Keywords
Dissociative Identity Disorder (DID); childhood abuse; crime; identity; 'competent reasoning'; human rights.

FULL ARTICLE ATTACHED

SECONDARY TRAUMATIC STRESS : Time to talk about it!

Lee Moore, founder and past President of Association of Child Abuse Lawyers [ACAL] opens a much needed discussion for criminal, personal injury and family practitioners with the support of Felicity Gerry QC[1].

Lee Moore

The letter had begun, "*Dear Lee Moore, my grandmother used to sew my clothes into my skin with yellow cotton…"* These words, written in black biro, on narrow, lined paper torn from a notebook, plus the intrusive imagery which accompanied them, prevented me from sleeping. I went downstairs at three in the morning, ate some hot-buttered toast; tried watching TV, then reading, but the imagery and words would not leave me. I could not concentrate. Self-medication was not a successful antidote. Abandoning my resolve not to bring work home or into my marriage, I woke my husband and asked him to talk to me. It proved a temporary solution for neutralising, what I was shortly to discover, is a symptom of Secondary Traumatic Stress [STS.] This is the natural stress that can happen to professionals exposed to traumatic

[1] Taken in part from toolkits 17 and 18 produced by The Advocate's Gateway and various papers already published or forthcoming by Felicity.

material and/or people who suffer on a regular basis. STS strikes suddenly and without warning. It is an event, unlike burnout, which is a slow process.

I had been the first coordinator of ACAL. In that capacity, I took disclosures of sexual, physical, emotional abuse from men and woman on a daily basis, via phone-calls, emails and letters. Concurrent to my work with ACAL, I also accepted instructions to take statements from individuals who had been abused. My specialism was extreme abuse, formerly known as ritual or satanic abuse. I also presented at national and international conferences on issues concerning sexual abuse.

It never occurred to me to put boundaries around my work and exposure to wounded people with traumatic life stories. Ignorance, due to a lack of education regarding the psychological, physical and professional impact of working with trauma rendered me vulnerable as did a not fully resolved, traumatic history of my own. I did not think I needed or even knew I needed help or training.

I was in denial about the adverse impact of my work on me, case handling and others. It was held in place by a work addiction, which I rationalised as enthusiasm and professionalism. A passion to raise awareness about the extent of child sexual abuse in the UK and help insulate and protect people, who had experienced sexual trauma, from being re-traumatised by our adversarial system, motivated me.

I did not know that other people's traumas could traumatise me, until I read the letter about clothes being sown onto a five year old child, poignantly, disclosed some fifty years later. It acted as a catalyst for change for I was also comfort eating. My unconscious solutions for dealing with the impact of cases were becoming problems. I needed to find out how I could continue my work in the field of sexual abuse and violence whilst maintaining my professionalism, well-being and marriage.

My Damascene moment came when I read a book by psychologist, Charles Figley, called "Compassion Fatigue : Coping with Secondary Traumatic Stress Disorder in Those Who Treat the Traumatised." Compassion Fatigue is another term for STS which, if allowed to develop, has the same symptoms as Post Traumatic Stress Disorder. I identified with what was written. I had Secondary Traumatic Stress Disorder.

I immediately took a long holiday with my husband. It was important to deal with the symptoms of overworking, over-eating, appetite changes, sleep disturbance, catching viruses frequently, headaches and more. I put together a self-care plan which I follow to this day. I completed my personal healing. My health and well-being are now a conscious priority. I meditate daily, which allows me to maintain my equilibrium, whatever the provocation...most of the time! I maintain boundaries about the work that I expose myself too. I eat, drink, exercise and sleep well. We moved out to the country. I now live in beautiful surroundings. My office has lovely views, a buffer to some work I still do occasionally, regarding extreme abuse. I have hobbies, take time out and I'm no longer a stranger to 'having fun.'

In 1998, I worked with Sue Richardson, author, psychotherapist and expert witness. We pioneered, designed and presented courses on recognising and dealing with Secondary Traumatic Stress for lawyers. The first course ran beyond the allotted time. People identified and were relieved to have implicit permission to speak about their feelings and be given the opportunity to talk about the impact of the cases upon them. Talking broke the isolation most felt. Having feelings is not unprofessional not talking about them is, when cases affect you. Speaking to an enlightened witness is a great de-stressor. I went on to deliver these courses to doctors, paediatricians; health and social care workers too.

There is more to the law than the practise of law, it is learning about how cases and clients can impact you and taking responsibility for your health and well-being for failure to do so, may well mean that the stressed and traumatised are representing the stressed and traumatised, especially in cases concerning sexual abuse and trauma.

My work now is focused on well-being in court for all. I present training and talks, that support professionals, further protect the vulnerable and facilitate a trauma informed approach to justice.

Felicity Gerry QC
As Lee's account shows all those working with traumatised people should be aware of secondary traumatic stress disorder and how trauma can be transmitted to advocates and practitioners and impact them.

Charles Figley (1995) defines secondary traumatic stress as "the natural consequent behaviours resulting from knowledge about a traumatizing event experienced by a significant other. It is the stress resulting from wanting to help a traumatized or suffering person." People who work with or help traumatised people are indirectly or secondarily at risk of developing the same symptoms as persons directly affected by the trauma. Clinicians and advocates who listen to their clients describe the trauma are known to be at risk. Secondary traumatic stress is sometimes confused with burnout. Unlike secondary traumatic stress, burnout can be described as emotional exhaustion, depersonalization and a reduced feeling of personal accomplishment, which begins gradually and becomes progressively worse. Secondary Trauma conversely can occur following the exposure to a single traumatic event. Training will enable practitioners to understand who is more vulnerable to secondary traumatic stress and why, perform a self-diagnosis for symptoms, create and maintain a self-care plan and know how to manage the impact of secondary traumatic stress.

In 2015 I chaired the working party on behalf of The Advocate's Gateway which produced a toolkit for advocacy with vulnerable people in civil proceedings in England and Wales. Lee Moore was part of our group. We did not have the resources of the Northern Ireland Law Commission Report which produced a report on Vulnerable Witnesses in Civil Proceedings in 2011 but we were assisted by the recent comprehensive Law Society guidance on meeting the needs of vulnerable clients which is also an openly available resource[1].

In representing some litigants, particularly in civil compensation claims, often clients have already undergone a bruising experience in the criminal courts. Asylum seekers, vulnerable employees, those who have suffered illness or injury and many others will come to the civil justice system as damaged individuals with long-standing psychological problems. This is not confined to personal injury law. For some, the process itself will trigger vulnerability. In the civil justice system anecdotal evidence is that there are clients who have taken a lower offer than advised in order to avoid the trauma of a final hearing. Some suggest, findings of incapacity may be being made when all a person really seems to need is assistance to communicate. Whether these views are accurate is not the purpose of this article. What our working party was able to do was to identify where the relevant guidance already sits and how the civil justice system can be improved for vulnerable people.

On a practical level, the use of intermediaries and of pre-recorded oral evidence, for example, can enable vulnerable witnesses to participate in a hearing in a manner that best meets their needs by ensuring that the evidence they give is the best evidence achievable. Inconsistencies can be agreed on paper without the need to cross examine at all and advocates need not put an obvious case theory to a vulnerable witness at all. It should already be obvious. Training in this area, of judges, advocates and representatives is vital. If everyone does their job properly, judges need not intervene at all. Several of us at The Advocate's Gateway have pioneered the sensitive approach to be taken, particularly in cases involving sexual offending. A well prepared

representative can take a complainant's account sensitively and a well prepared advocate can effectively challenge the evidence of a witness and show it to be wrong without the witness having to be bullied or humiliated by the experience. It can all be done with dignity and respect, whether the witness is the alleged victim or the accused.

The approach to such cases needs to be balanced and collaborative. It is not a lawyer bashing exercise. It does not require an intermediary in every case nor is it an opportunity for judges to become autocratic or enter the arena. It really is time to recognise that people with vulnerabilities and disabilities can be assisted to fully participate in the civil process whether the matter settles or goes to trial.

The old fashioned adversarial approach is based on historic rules of competence: Calling evidence from women and children and other vulnerable witnesses was believed to be inherently dangerous[2] . Corroboration was required and judges routinely warned that such testimony was unreliable. The modern approach recognises that, given the right assistance, witnesses can be questioned and cross questioned without unnecessary trauma in a balanced way that allows for a fair hearing for all concerned.

This has been recognised and is being applied in criminal and family cases and the civil courts will have to follow suit. Recognition of vulnerabilities, including advocates, practitioners and judiciary at an early stage is vital to ensure that vulnerable witnesses and parties are identified and enabled to effectively participate, largely by facilitating communication. It follows that attention should also be paid to the potential for triggers to vulnerability, for parties, witnesses and professionals too throughout proceedings. As set out above, civil litigation can cover a wide range of civil and commercial disputes, immigration, employment, housing and public law and so on. The toolkit we produced may also be a useful guide for formal Inquiries such as the forthcoming *Goddard* Inquiry into institutional responses to child sexual abuse.

Lee and I also assisted in the production of toolkit 18 which specifically addresses working with traumatised people in justice systems. Trauma can significantly affect a person's ability to give their best evidence or to follow proceedings. Trauma affects the ability to understand language, to communicate answers, to process and think logically and to cooperate with court procedures. Attention should be paid to the potential for triggers to vulnerability throughout proceedings. The understanding of trauma and the underlying mechanisms is an evolving field and advances in neuroscience and psychology (including somatic psychology) are being made continuously. This toolkit aims to raise awareness and further understanding of trauma and its effect on witnesses/defendants. However it can only provide an overview. Everyone involved in communicating with witnesses, defendants or parties should have a basic understanding of how trauma affects the brain, so that they may facilitate best evidence and avoid the legal process re-traumatising witnesses, defendants, and indeed themselves!

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[2] *R v Brasier* (1779) 1 Leach 199; 169 ER 202

DIARY DATE

Please note the following:

Tuesday 7th June 2016: The APIL/ACAL Abuse conference.
To be held at the Bloomsbury Hotel, London.
Further details from:
http://www.childabuselawyers.com/events/apil-adult-and-child-abuse-conference-2016-with-acal
Or email Training@apil.org.uk

THE ASSOCIATION OF CHILD ABUSE LAWYERS

The Association of Child Abuse Lawyers (ACAL) provides practical support for survivors and professionals working in the field of abuse. Formed 14 years ago, ACAL maintains a telephone help line and web site presence to sign-post survivors of abuse to lawyers who have the expertise and experience to assist them in obtaining the redress to which they are entitled. ACAL also campaigns in this area, and provides training, a mentoring service for members, access to data bases and an information exchange to members to assist them in their work. ACAL's membership is made up of solicitors, barristers, psychiatrists and social work experts who are all specialists in this field.

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