In this Edition

- Malcolm Johnson reports on the St Leonard Group Action which settled in October 2003.
- Lee Moore gives guidance on initial considerations for solicitor's first meeting with clients.
- Nicola Harney discusses the issues in light of the settlement in the Longcare Group Litigation.
- Tracey Storey comments on the media backlash against abuse claims and how to deal with this.

NOTE
The views of the contributors to this Newsletter do not necessarily represent the view of ACAL

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The winds of change are blowing through ACAL. Amanda has left us. She has moved on to a new and more challenging position as an Educational Social Worker. We wish her well. For three years Amanda was an enormous asset to ACAL. She has been replaced by Cheryl Kneller who has experience of children who have been fostered and has worked as a teacher for the learning disabled. Cheryl has a bright sunny disposition and kindly offered to work gratis for ACAL in December while she was “being trained to run the office” by Amanda, who kindly extended her notice period to ensure a smooth transition, what a saint!

Cheryl will be challenged as the new membership fees and structure replace the old fee box. Should there be any hiccoughs we ask that you be patient with your queries. For more details on the new membership fee structure please see page 11.

Services Commission. A member’s meeting with David Keegan has been arranged for the 17th May 2004 in the hopes of promoting a greater understanding of the work of ACAL members and to facilitate a more harmonious and effective working partnership with the LSC members in child abuse cases. For details of this meeting see page 11.

At the risk of being boring, I am ending this letter with a prayer and plea for you to support ACAL. Continue your membership and attend the training. Our precarious existence is wholly dependent on these sources of income together with the enormous resources and time which is given by the members of your Executive Committee, who if they were not born saints, they are now.

My best wishes for the New Year.
The St Leonard’s Cottage Homes Litigation
by Malcolm Johnson

Malcolm Johnson from Malcolm Johnson & Co

I was asked by the Association to write an article about the St Leonard’s group litigation which settled in October 2003.

I had in fact written a letter to all the individual solicitors in the group asking them to keep the details of the case confidential. Whilst there is no confidentiality clause attached to individual settlements, I would not want the matter reported in the wider media. The reason for this is threefold.

Firstly the St Leonard’s case received a great deal of media coverage at the time of the criminal trials. Media coverage is important at such a time, since it serves to publicise the possibility of making a claim. However in the St Leonard’s litigation, I believe that other factors were important in persuading people to come forward and make claims. The police were very careful in the advice which they gave to witnesses before the criminal trials were over, but it appears that afterwards, they did help refer people to lawyers. The Association of Child Abuse Lawyers played a valuable role, quickly referring many victims to lawyers on their database. This avoided the situation where potential Claimants approached the wrong sort of solicitor, i.e. a criminal or mental health specialist or a solicitor who was not prepared to advance the matter.

Secondly many clients do not wish to see further details of the case in their local paper, regardless of the fact that they are not named. My experience is that media exposure damages many clients, and puts into the spotlight those who have been abused but who do not want to claim. A person who had been at St Leonard’s Cottage Homes from 1968 to 1978 would have great difficulty concealing the fact from those who knew him/her, particularly their family. Every media report increases the risk of exposure.

Thirdly an unfavourable impression is conveyed to those who pay these claims, who might be less willing to negotiate if they know that the case is going to be turned in a long running media circus. Insurance companies are staffed by human beings and a difficult business decision is not made any easier by a media frenzy. On the other hand, insurance companies and local authorities have to be prepared for these matters to be properly publicised.

The History of the St Leonard’s Action

St Leonard’s Cottage Homes was a children’s home in Hornchurch, Essex. It was owned by the London Borough of Tower Hamlets from the late sixties and closed in the early eighties.

The home followed the Barnados model of children’s homes, a series of “family” cottages into which children from the same families were placed. Each cottage was run by a housefather and mother together with other members of staff. The grounds were spacious and had facilities on site. Children attended local schools and to all intents and purposes, the home appeared the perfect place for children taken into care.

Children who passed into St
Leonard’s tended to stay there for the majority of their childhood. There had been allegations of child abuse as early as the seventies involving children from St Leonard’s Cottage Home. In the early seventies, a social worker was convicted of taking indecent photographs of children, some of whom came from St Leonard’s. Another member of staff at St Leonard’s was convicted for possession of indecent photographs in the early eighties. It is thought that there were further allegations against care staff made by children, but it was not until 1996 that the police investigated the case in an operation called “Operation Mahoot”.

The police only interviewed a few witnesses, and the decision was taken by the Crown Prosecution Services not to take any further action.

However, later, a new police operation, “Operation Mapperton” began and this time a concerted effort was made to locate and interview all the former residents of St Leonard’s Cottage Homes. This culminated in the prosecution of two former care workers, Alan Prescott and William Starling. Alan Prescott had for a time, actually run St Leonard’s Cottage Homes as its “President”. In 2001, Alan Prescott and William Starling were convicted of offences against children. Alan Prescott was convicted on his own confession and sentenced to 6 months imprisonment. William Starling was tried on the 1st March 2001 and convicted. He received 14 years imprisonment on the 6th April 2001.

My involvement in the case began when I was an assistant solicitor at Steel and Sharnas. Following an approach by a former resident of Tower Hamlets and his brother, I submitted in July 2000 a letter before action to the London Borough of Tower Hamlets. This met with a denial of liability by their insurers, Municipal Mutual Insurance.

The claim was handled by Zurich Municipal initially who sometimes act as claims handlers for Municipal Mutual. When Browne Jacobson act for Municipal Mutual, their reference number reflects that this is their client rather than Zurich Municipal.

By that time I was also in touch with Lynne McKay of the Metropolitan Police who was involved in Operation Mapperton.

It began to become clear in 2000 that there were other Claimants from St. Leonard’s. In the circumstances I began to correspond with Frank Barnshaw at the Legal Services Commission to ask if there was a possibility of setting up a group action.

I drafted and submitted a case plan on the 19th March 2001 which was submitted to the Legal Services Commission in Manchester, and as a result of which, a generic certificate was granted to Steel and Sharnas. At that stage, I was aware of seven Claimants and I was in correspondence with Browne Jacobson, solicitors for Municipal Mutual Insurance.

An initial advice was taken from Elizabeth Ann Gambel QC. Protective proceedings were issued on behalf of five Claimants on the 31st October 2001, and these were served just before the end of February 2002.

On the 4th March 2002, the Defendant’s solicitors, Browne Jacobson made an application for a Group Litigation Order. Initially this was opposed by the
Claimants because it was felt that the allegations made by the group (which was now some 27 Claimants) were a great deal wider than abuse at St Leonard’s. Nonetheless at the hearing in April 2002, an order was made by the court for a Group Litigation Order and a cut-off date set for the 23rd July 2002.

At the same hearing, trial was set for the 10th November 2003.

I left Steel and Shamash and set up my new firm on the 1st May 2002.

At the time of the cut-off date, there were fifty-six Claimants.

There was a further case management conference on the 30th July 2002 which provided (inter alia) for the production of a generic particulars of claim which was served on the 27th September 2002. Claimants were also directed to serve individual Schedules detailing their allegations.

Further directions were made in December 2002 for production of a generic Defence and disclosure of social services notes by the Defendant’s solicitors by 31st January 2003.

The attitude of Brough Jacobson was important in the conduct of the litigation. They intimated early on that whilst all issues were in dispute, these were cases where there was a real possibility of settlement. This made a huge difference to the costs situation, because it avoided an investigation into generic issues such as evidence and limitation. The only expert evidence produced in the case related to quantum.

In the initial period after June 2003, a number of cases did settle. Once the Defendant’s solicitors had sight of the Claimant’s individual schedule, they would make an offer often without seeing any medical evidence.

The Claimants’ solicitors numbered some eight firms acting for 62 Claimants. Most instructed one psychiatrist, Dr Trevor Friedman. Dr Friedman was not agreed as a joint expert by the Defendant’s solicitors. Towards the end of the action, one joint expert, Professor Anthony Maden was instructed in relation to a few remaining cases.

A generic Defence was filed on the 31st March 2003 which admitted breach of a common law duty of care in relation to employees of Tower Hamlets but maintained the limitation defence.

By this time, the Defendant’s solicitors were having difficulties in reducing the social services notes which they were due to disclose. On the 16th March 2003 I made an unless application against the Defendant’s solicitors to try and speed up the process of disclosure. The Defendant made an application at the same time to vary the timetable. An agreement for directions was agreed between the parties at the subsequent hearing and there was no unless order made.

At the subsequent hearing, the court ordered that there be a round table meeting between the solicitors in May 2003. At that stage, both sides had disposed of twenty-nine claims since July 2002. The round table meeting led to the disposal of a further twenty-nine claims.

Both sides were ready to select 8 lead cases, but this was made difficult by the fact that most of the major claims had settled.

By late December 2002, two late Claimants had applied to join the action. A further late Claimant
also joined in January 2003 who was joined by three further late Claimants in July 2003.

Generic disclosure was made by the Defendant’s solicitors in July 2003. This was limited to personnel files following the admissions made in the Defence. Consequently the Defendant’s solicitors did not consider there was any need to locate any other types of records.

By this stage the court had made a further order in relation to the three late Claimants who all settled in September 2003. Trial was shortened to two weeks from five weeks.

Application was made by both sides to vacate the trial set for November 2003. The group action therefore ended at the very end of September 2003, just six weeks before trial.

The Group Litigation Order sealed on the 12th June 2002 was expressed to be in respect of abuse which occurred at St Leonard’s Cottage Homes between 1961 and 1984.

In total 62 Claimants brought claims against the London Borough of Tower Hamlets in respect of abuse which they had suffered in their care. 3 Claimants brought actions in respect of a children’s home in Basildon, 24 The Greenstead.

A number of the Claimants were not legally aided. At least eight Claimants out of the sixty one had conditional fee agreements with their solicitors, and furthermore we are not aware that any had the benefit of legal expenses insurance. Steel and Shamash tried to obtain legal expenses insurance for one of their clients but without success.

Some of the Claimants had claims in respect of other homes. In certain cases, the Defendant insisted on a settlement which included all claims against Tower Hamlets. In other cases, the claims against Tower Hamlets are ongoing outside the Group Litigation.

In some cases, the Defendant allowed settlement to be in respect of a particular episode of abuse, which permitted the Claimant to bring a separate CICA in respect of another episode or avoid having to pay back to the CICA any monies received in respect of that other episode.

I do not know what individual costs were for each solicitors, but I have estimated the average individual costs at £10,000. Browne Jacobson tell me that they have been achieving a reduction of up to 30% on bills submitted to them.

Since I first wrote this article, Browne Jacobson have supplied me with the following information on Claimants’ bills which went to detailed assessment. I should stress that this is their view of decisions taken by Supreme Court Costs Officers:

a) Supreme Court Costs Office guideline rates are appropriate (available on their website - www.courtservice.gov.uk/3561.htm)

b) Proportionality was considered in the detailed assessment of two Claimants. The Costs Officer indicated that the proportionality issue would be relaxed given the nature of the cases, but he was reluctant to award costs which far exceeded damages. By way of example it might be difficult to justify costs of £20,000 in a £5000 claim. Whilst the test in Loundes versus Home Office (2002) EWCA Civ 365 was not applied the Costs Officer did hesitate and indicated that there would be borderline cases.

c) Where Dr Friedman or
the solicitors charged for travel or accommodation costs these were only allowed where there was a reason why the Claimant could not travel.

The guideline rates awarded in the child abuse cases were £220 an hour for a Grade A solicitor in Central London, and £175 an hour for a Grade A solicitor outside of London. These rates may not be appropriate throughout the country. As can be seen above, the principle of proportionality appears to have been relaxed for these claims. Some firms used witness statement takers, Lee Moore of Lee Moore & Co and Emmi Johnson of Scott Moncrieff Harbour Sinclair. As I understand the position, their costs and expenses were allowed substantially by the Supreme Court Costs Office.

By way of further example, on one of my cases, I recovered £16,950 all inclusive for a claim which was one of the first which I handled. In contrast I recovered £7500 all inclusive for a claim which came to me in early 2002. Damages in both cases greatly exceeded costs.

I would estimate total average individual costs at a figure in the region of £10,000 per claim, i.e. £620,000. There were a number of factors operating in this litigation which allowed reasonably speedy settlement.

1) The willingness of the Defendant’s solicitors and their insurers to compromise and their ability to adopt a practical approach to these cases. The matter was handled by Sarah Erwin (now a partner at Browne Jacobson) and Louise Curme, Counsel for the Defendant was Kate Thirlwall QC and Brendan Roche. All are highly experienced in this type of work. Only one “unless” application on the part of the Claimants was required and this was made partly to persuade the Defendant’s solicitors into a round table meeting. The generic solicitor and barristers were on first name terms with the other side’s legal representatives. Certain clients might regard this as a betrayal of their interests. My own view is that it was one of the factors which obtained a result for the client and a compromise acceptable to both sides, i.e. a cheque for compensation. Negotiations at the round table meeting were conducted in a professional and businesslike fashion between the two parties. Had the matter proceeded to trial, with communication between the two sides restricted to correspondence and with no attempt to settle, the generic and individual costs might have been two or three times their current level. A solicitor, Chris Webb Jenkins from Browne Jacobson who attended a previous meeting of the Association of Child Abuse Lawyers made their approach quite clear. There are certain cases, where a decision is made to settle at which point offers will be made which put the Claimants’ solicitors on risk. However other cases will be fought to trial if necessary.

2) Our counsel, Elizabeth Ann Gunibell QC, Henry Witcomb and Farrah Mailadud of 199 Strand adopted a purposive approach to the litigation. All the Claimants were seen to conference with their solicitors. The conference would typically begin with an explanation as to the state of the law, and why the level of damages for these traumatic cases was so low. This was done in a manner which clients could understand. A photograph was taken of each client and placed on the file so as to allow counsel to remind themselves swiftly of the case.

3) Both sides were looking at the same case, i.e the Bryn Alyn case when it came to
the issue of quantum and this made it very much easier to come to a realistic figure on quantum. I would not describe the Defendant’s solicitors as generous in their assessment of quantum. They viewed certain cases with extreme suspicion, particularly where the injuries were apparently light or there were perceived problems with the evidence, and would only make "economic" offers. Obviously that was an area of disagreement between the parties.

4) The amounts recovered in these cases do not compare with those found in reports of say moderate to serious brain injury. The situation was that even with a limited generic admission of liability, there was still the issue of limitation to be decided. That issue alone could have ended every one of our claims with no recovery whatsoever. We also had the outcome of the case of Various Claimants versus Bryn Alyn Community Homes Ltd. While the judgment is unsatisfactory, it might have been a great deal worse from our clients' point of view. Finally there are sometimes problems relating to causation. The reported case law indicates that courts look very carefully at child abuse cases where there are large claims for loss of earnings and care. In relation to certain cases, it was doubtful as to whether a great deal of work would improve the recovery of the client on quantum.

5) With regard to case management, it was always the advice of Elizabeth Ann Gumbel QC and Mr. Wicomb that matters must be moved on i.e. issue of proceedings, service of proceedings, and the immediate procurement of a trial date at case management conference. It is the writer's view that a final trial date is the best means of putting pressure on the Defendant's solicitors even when they are ready to settle. To be fair to Browne Jacobson, they are instructed to represent their client's interests and as far as I am aware, they are not under any specific duty to tell us to advance our cases.

6) The approach of individual solicitors was a major factor in ending the litigation early. Most of the solicitors in the group were members of the Association of Child Abuse Lawyers, and all were experienced personal injury practitioners who were prepared to set aside the time needed to bring these difficult cases to a conclusion. They also realised the consequences of not preparing their clients' cases within the time limits. There was no need for anything more than brief guidance from the generic solicitor on how to run a child abuse claim. There is guidance in the existing textbooks on the subject and ACAL lectures. This meant that costs were reduced considerably and the lead solicitor could get on with the task of progressing the main action. However it was important to be able to update individual solicitors in connection with the running of the generic action, and be on hand to answer their queries.

This approach also meant that the Claimants could be brought into the action and their cases settled in a matter of weeks. The value of a quick settlement cannot be underestimated in these cases.

There are residual concerns about this case.

Many potential Claimants who could have claimed, did not come forward at this time. The police did what they could to refer Claimants to a suitable solicitor and produced a list of solicitors for the lead solicitors. Both APIL and ACAL have details of the action and the cut off date, which were passed onto those who enquired. There was also a huge amount of publicity.
in the East End about Operation Mapperton in 2001. However many persons who suffered abuse at St Leonard’s will simply not wish to make a compensation claim.

There is also the concern about what has happened to the compensation paid out to various Claimants. I can report that in four of my six cases, the money was either put in a personal injury trust, or used to start or invest in a business. The remaining two only received small amounts of compensation. I would be interested to hear from members of the group what happened with their own clients.

I am in a position to give an indication of solicitors’ costs:-

**Steel and Shamash solicitors**

- 25 hours @ £300 per hour = £7500 plus VAT £1312.50
- Issue fee = £500
- Transcript fees = £1035

**Malcolm Johnson & Co.**

- 160 hours @ £300 per hour = £48,000 plus VAT £8400
- 10 untimed letters out @ £30 per letter = £300 plus VAT £52.50
- Set down fee = £400

Travel fares = £52.90
Application fee = £50

**Total = £67,602.90**

Counsel’s fees in respect of generic work did not increase the total generic costs by very much, which was exceptional given the difficult nature of the generic work which was actually carried out by them. There was also a small agency fee for solicitors to attend a case management conference in place of the generic solicitors.

Initially the hourly rate employed for solicitors’ costs was £350 per hour. On advice from our costs draftsman, Annette Livingstone of Annette Livingstone & Co., this has been reduced to £300 per hour. Some costs have already been paid on account by the Defendant’s solicitors in order to reduce their client’s liability for any interest claim.

The Defendant’s solicitors have made certain comments regarding the level of generic costs, and doubtless these comments will be found in their Points of Dispute, when the generic bill is served.
Case News

St George's/Clarence House Litigation, situated in Formby, Southport, Lancashire – Paul Durkin, of Abney Gardsen McDonald reports

"An application has been made to the court for the approval of a Group Litigation order. The Senior Master has approved the GLO in its present form. We had agreed with the Defendants that the cut off date should be the 30th January 2004. As the order has not been made as anticipated the cut off date for joining the group will have to be put off. It is hoped that the Court will deal with the Order quickly and that a cut date is made at the earliest opportunity. We will publicise the cut off date to ensure that all possible Claimants are aware of the litigation and give them sufficient time to come forward. There are currently 35 Claimants that we are aware of and it is anticipated that the size of the group will at least double once all the Claimants come forward. Any solicitors with Claimants for St George's/Clarence house should contact: Paul Durkin co-ordinating solicitor at Abney Gardsen McDonald 37 Station Road Chaddle Hulme Cheshire telephone 0161 482 8822 email pauld@abneys.co.uk".

Manchester Children's Home Litigation (any children's home managed or controlled by Manchester City Council) - Peter Gardsen of Abney Gardsen McDonald reports

"The Court imposed a cut off date of 14th November 2003 by which time any Claimant within or now to the group had to issue a claim form at Manchester County Court, Crown Square, Manchester. Greater Manchester Police refused to notify any of the Claimants they were aware of their rights, thus, by agreement with the Court, extensive local and national advertising took place in the summer and autumn of last year. This resulted in the group tripling in size from 40 to over 120 Claimants. Owing to delays caused by the transfer of responsibility for Public Funding from the Manchester Area Office to the Special Cases Unit in Brighton, the Defendants, Manchester City Council Legal Department, kindly consented to be flexible about any late joiners who were unable to organise funding before the cut off date. Any late joining Claimant whom we were aware of before the cut off date is thus obliged to issue and serve a claim form on or before 31st March 2004. Any other Claimant who wishes to join late must make a special application to the court giving reasons for any delay.

For further information please contact: Peter Gardsen co-ordinating solicitor at Abney Gardsen McDonald 37 Station Road Chaddle Hulme Cheshire. Telephone 0161 482 8822 email peter@abneys.co.uk. Full details also appear on the firm's Web site at http://www.abneys.co.uk/manchesterchildrenshomepage.htm. Any person wishing to view the secure part of the site can apply for details of the password".

Wessington Court School, Hereford - Peter Gardsen of Abney Gardsen McDonald reports

"This home was managed by a private limited company which went into liquidation in 1985. After much searching we managed to locate their insurers, who now deny that they are liable to indemnify the school for various reasons. The same insurance point and company as the North Wales cases - Royal & Sun Alliance - are joined as a Defendant to the action. The Court has ordered the question of insurance to be tried as a preliminary issue. We are hoping to run in parallel with the Bryn Alyn case, which has obviously been taken all the way to the House of Lords without the Claimants being paid anything by way of damages due to insurance problems."
Because of insurance difficulties various Defendants have been joined into the Wessington Case including the transmitting authorities, the inspecting authority—the Secretary of State for Education, and the Managing Director in charge of the home who has been convicted of abuse. In the Wessington Group case the Court has ordered a cut-off date of 8th December by which time all new Claimants had to register with us.

The group is now closed at 21. We are hopeful of trying the insurance issue in the summer of this year, dependent upon how we decide to liaise with the North Wales group. We are still waiting for a case managing judge to be appointed. For further information please contact Peter Garsden co-ordinating solicitor at Abney Garsden McDonald 37 Station Road Cheadle Hulme Cheshire.

Categories of Membership

Student Member
Cost: £40
Benefits: Website, AGM & workshop, Newsletter

Non-practising Member, eg Experts
Cost: £85
Benefits: Website, AGM & workshop, Newsletter

Registered Member
Cost: £85
Benefits: Website, AGM & workshop, Newsletter, Database, Experts Register

 Sole Practitioner Member
Cost: £100
Benefits: Website, AGM & workshop (3 CPD hours), Newsletter, Database, Experts Register

Small Firm (5 partners or under) Practitioner Member
Cost: £120
Benefits: Website, AGM & workshop (3 CPD hours), Newsletter, Database, Experts Register

Other Practitioner Member
Cost: £150
Benefits: Website, AGM & workshop (3 CPD hours), Newsletter, Database, Experts Register

For further information on joining ACAL please contact our co-ordinator Cheryl Koeller at info@childabaselawyers.com for a membership form or visit our website at www.childabaselawyers.com

Telephone 0161 482 8822 email peter@abneys.co.uk. Full details also appear on the firm’s Web Site at http://www.abneys.co.uk/wessington-courth.htm. Any person wishing to view the secure part of the site can apply for details of the password.
ACAL TRAINING DATES

Introductory Course: Part 1
14th May 2004 at Stewarts Solicitors, 63 Lincoln’s Inn Fields, London WC2A 3LW
This course covers: The Nature of Child Sexual Abuse; The Impact of Child Sexual Abuse; Causes of Action; Damages; CICA; Case Study; Evaluations.

Introductory Course: Part 2
6th February 2004 at Stewarts Solicitors, 63 Lincoln’s Inn Fields, London WC2A 3LW
This course covers: Limitation; Disclosure & Boundaries; Public Funding & Evidence; Statement Taking; Statutory Framework; Experts; Case Study; Evaluations.

Practitioner’s Workshop
24th September 2004 at Pannone & Partners, 123 Deansgate, Manchester M3 2BU
8th October 2004 at Stewarts Solicitors, 63 Lincoln’s Inn Fields, London WC2A 3LW
This course is for the more experienced practitioner and covers: Courses and Courses of action; Designing Client Care Plans; evidence and how to obtain it; Competency questionnaires and Exercises; Funding; Expert; secondary trauma and designing a self-care plan.

Secondary Trauma
15th March 2004 at Pannone & Partners, 123 Deansgate, Manchester M3 2BU
11th June 2004 at Stewarts Solicitors, 63 Lincoln’s Inn Fields, London WC2A 3LW
This course includes understanding burnout and secondary trauma, practical exercises, aspects of self-care and developing a self-care programme.

To book a place please contact Cheryl Koeller on 01923 286 888 or email info@childabuselawyers.com

VOLUNTEERS NEEDED

Volunteers are urgently required by ACAL to help with funding applications. If you can spare a couple of hours please help us to secure some much needed funds. Contact Cheryl Koeller 01923 286 888

REFERRALS

Do you wish to work with ACAL to generate more referrals in your area? If so, please call Cheryl Koeller on 01923 286 888
“Careless Love” by John Turley
Reviewed by Richard Giles

A key theme of the play is the nature of the professional relationship; the existence of boundaries between professional and client and the consequences when boundaries are crossed.

The play unfolds as we see the events that take place in Darren’s cell first through the eyes of the professional and then through the eyes of the client. The form of the play (two monologues, the characters never appear together) enables the audience to view what takes place from the quite distinct perspectives of Helen and Darren; the same events experienced by people from different worlds, having differing priorities and expectations. Ultimately the consequences of what happens (without wishing to give too much away) are different for each of them. As the programme succinctly puts it “there are professionals and there are clients. Crossing the line will only result in pain.”

Both Francesca Rogers and Alex Ratcliffe put in compelling performances. The tone of the play, whilst dealing with serious issues is often humorous and never less than human — what is in issue is, after all, a relationship. You can’t get much more human than that.

John Turley has had his plays produced on Radio 4, Contact Theatre, Manchester, The Old Red Lion (Islington) and the Edinburgh fringe. He brings particular insight into the subject matter of Careless Love from his background in child care social work.

The play’s director, Alice Douglas, has previously directed Knock-Back, a film for Channel 4 about prisoners and the crisis in the parole system. At Blandestone Prison she ran a writing group that wrote a TV drama The Love That Dare Not Speak Its Name, scenes from which were subsequently used in a BBC documentary about Oscar Wilde.

This performance was staged as the final event of National Care Leavers’ Week. Organised by the Bryn Mellyn Group Foundation, the aim of the week is to raise awareness of the issues facing care leavers.

Careless Love is a thought provoking and absorbing play in its own right. For any professional in contact with people living on the margins of the system, it will have particular resonance.
Advice: Some Initial Considerations for the First Client Meeting

by Lee Moore

INITIAL CONSIDERATIONS AND FIRST MEETING

What are the personal and professional considerations for the first meeting with a client?

Personal

Check your own health and well-being. Perform a self-diagnosis for secondary stress. To ensure that you have enough time with the client and that you will not be disturbed. Ensure room is light, comfortable and private, preferably with a window. Many clients have been locked in cupboards and/or cellars.

Need to enquire as to whether client is having any therapy/counselling.

Client is an angry man, consider the need to take precautions for your own safety, in case he "kicks off".

To be punctual

To be patient

To be mindful of your boundaries

To ensure and reassure about confidentiality

State your qualifications

Explain what you need to know from the client and what you can do

Let the client know how much time you have available

Do not force a disclosure at first meeting

Have some tissues available

Find out what has caused client to come to you now and disclose

Ascertain if client has disclosed before and to whom and what the response was, to enable you to understand whether the disclosure is purposeful or accidental and gauge the degree of damage to client and possible triggers. If the response was negative, client will expect to be let down again.

Ascertain if the client is competent to give instructions. E.g. does the client have a problem with drink or drugs.

Maintain eye contact and boundaries.

Know when to stop the interview if client becomes uncomfortable.

Does client wish to have supporters present?
What are the client’s expectations?
Plan future meetings with client

Professional
Tell client your qualifications and experience
Build up trust
Has client instructed other solicitors in this matter, if so, how many and what happened?
Warn the client about the stresses of litigation
Explain what you can and cannot do
Build confidence in you and your firm

Limitation
What has triggered the disclosure?
Has client had any treatment?
How old is the client?

Life History
Try and get as much general information as possible
Are there any conflicts of interest?
Has client filed a CICA claim?

Liability
Look for pointers
Were any complaints made to the police?
Are there, or have there been any criminal proceedings against abuser?
If so, was there a conviction?
Is there anything further known about the abuser[s]?
Any witnesses?
Advice: Some Initial Considerations for the First Client Meeting (continued) by Lee Moore

Name of Local Authority

Injury

What is client’s loss?

Causation

More details required about life before care
Details about client’s siblings
Assets. Do potential defendants have any assets?

Funding

Ask client what his expectations are
Consider what are the best methods for funding any action

Risks

Tell client what the risks are of litigation and ensure that he understands

Next Steps

Explain these to client and follow up with a letter.
Dealing with the Media Backlash

by Tracey Storey

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Recently there seems to have been a change in the media focus of cases involving child abuse. The media (perhaps in a frenzy regarding the so called compensation culture) seems less likely to look favorably on child abuse claims and indeed there have been a number of recent high profile overturning of convictions. Successful lobbying by groups such as Falsely Accused Carers and Teachers (FACT) seems to have tipped the balance of reporting away from the innocent victims of child abuse. A number of untruths and wild assumptions are creeping into the debate.

So is there a significant problem with innocent men in jail? As lawyers representing survivors of abuse, we must always remember that all the research and evidence suggests that the majority of people who do disclose abuse do not lie. There is ample research, for example by the NSPCC, which shows that the majority of allegations are true. Additionally, we should remember that a significant number of people who are charged do go on to plead guilty. The Home Office’s Reply to the Select Committee Report (available on the ACAL website) concluded that there was no evidence of a widespread problem of miscarriages of justice in this area. Miscarriages of justice do occur in the criminal justice system but miscarriages of justice are not unique to these type of offences. We often hear of men being freed on appeal, proclaiming their innocence. Convictions can be found to be unsafe for a number of reasons, often legal, technical or procedural reasons and not necessarily because of a false allegation. It is, of course, wrong to say that every unsafe conviction has been caused by a false allegation, nor should it be implied that any other convictions are unsafe. The worry is, that the allegations are true and that no one has been punished.

There has been a lot of criticism of police trawling evidence leading to false allegations. It should be remembered that trawling is a misnomer suggesting a lack of discrimination with a pre-determined outcome in mind. This is not the police approach to these serious criminal investigations. We have all come across many instances of people reporting childhood sexual abuse many years ago, but the offender going unpunished. This is clearly unacceptable and police methods had to change to ensure that offenders were successfully prosecuted. The police are aware that their methods of investigation will be closely scrutinised in court, which is why there are guidelines and protocols in place. Methods such as dip sampling, cold calling and witness networking are not by their nature flawed, nor have these methods been discredited. These are all important ways of trying to establish the truth. The police will often hear from different generations of children, who do not know their co-accusers, describing the same pattern of abuse.

Some press reporting has highlighted changes in the criminal law of corroborations, leading to the imprisonment of innocent people. In 1991 the criminal law changed
eliminating the need for "striking similarity" when trying similar crimes before the same court. There still have to be some common features to the crimes and a significant connection. If the law went back to its pre-1991 state, juries would be denied a range of potentially highly relevant evidence. The criminal courts still have to weigh up whether to allow the evidence in and whether it will prevent a fair trial for the Defendant. As compensation lawyers, we know that multiple accusations against a particular Defendant are significant. It is unlikely that a person will be independently falsely accused of offences of a like nature, whether or not the offences are strikingly similar or not. In the criminal courts, however, multiple accusations do not lead to a prosecution by themselves. Evidence has to be weighed up, but where an innocent explanation may be plausible or credible on one occasion, it will be less so in respect of repeated incidents. There are many safeguards in a criminal court for a Defendant to ensure a fair trial. This is not the case for victims of these crimes who have no legal representation and who have to face hostile cross examination.

The so-called compensation culture is a favourite media hobbyhorse at the moment. Questions are now being asked whether false allegations arise because of compensation. In my experience, survivors of child abuse are not motivated by money. They are looking for justice and want to speak their truth. When being advised about pursuing a civil claim, many people are horrified to learn that damages are the only remedy available in the civil courts. My clients, like many others, want people who disbelieved them in the past to be held to account and people who had the responsibility of protecting them, but didn't, to lose their jobs or at least to say sorry for having let them down. We should also remember that as a child, money or awards may have been given in return for silence and so any damages awarded can seem tainted. In any event, no amount of money can ever make up for a lost childhood or the personal damage caused. Above all, survivors want to make sure that no other child has to go through what they have endured. There is no evidence that civil claims are driven by false allegations.

There has been some talk of additional safeguards being in place for Defendants. However, as we know there are many safeguards in place for Defendants facing criminal charges. It should not be forgotten that these are very serious crimes and that justice for the survivors is vital. Some have called for Defendant anonymity. The reasons why victims are anonymous encourages others to come forward and encourages cooperation with the Prosecution. Neither of these considerations apply to Defendants.

It has been suggested that there is now a climate of hysteria with juries too ready to convict suspected child abusers. Such views should always be countered with recognition of the great courage it takes for a survivor of childhood abuse to come forward. Society does not generally want to face up to the extent of child sexual abuse. We owe those people who disclose and who give evidence in court a great debt. Their bravery helps us to ensure that career paedophiles and child abusers are punished for their awful crimes. As lawyers, we must take every opportunity to speak up for survivors of childhood abuse. When people are considering coming forward, they should feel that the criminal justice system and the legal system generally will take their complaints seriously and that they will receive a sympathetic hearing.
In a breakthrough which has been long awaited, former residents of a care home have succeeded in their claim against a local authority for failing to prevent the abuse they suffered in a landmark case listed for a week long trial before Mrs Justice Hallett in the Royal Courts of Justice in London which was due to commence on 13 October 2003.

Buckinghamshire County Council agreed to settle this case on the basis that they will pay compensation in respect of physical, sexual, emotional abuse and neglect suffered by each Claimant as a result of residing at the Longcare Homes. The level of compensation has not yet been agreed but it is expected to be in excess of £1 million.

Their claim against Buckinghamshire County Council referred to its alleged failure as a Registration and Inspection Authority to prevent and halt a regime of abuse at two Longcare Homes in Stoke Poges, near Slough. The claim was on behalf of fifty-four males and females with severe learning disabilities, many of whom were only in their teens when they were first placed there. Gordon Rowe whose personal motive was to exploit and abuse ran the Homes. Whilst resident at these Homes the Claimants alleged they had suffered systematic and serious abuse, were subjected to an unsuitable regime, were administered excessive medication, suffered neglect and were treated in a general inhuman and inappropriate manner. The Claimants were resident at these Homes from 1983 for a period of approximately ten years. Prior to registration, Gordon Rowe had been employed at another care home in Somerset and had been accused of abusing a resident at the former care home.

In March 1996 Gordon Rowe killed himself the day before he was due to be arrested by police for various offences of sexual, physical and emotional abuse, ill-treatment and neglect. In 1997 Gordon Rowe’s wife and two other employees, Desmond Tully and Lorraine Field were convicted by a jury. Mrs Rowe was found guilty of two counts of ill treatment and two of wilful neglect. Mr Tully was found guilty of one count of ill treatment and Mrs Field three counts of ill treatment. Mrs Rowe and Mrs Field were sentenced to imprisonment.

In 1997 the Under Secretary of State for Health asked Buckinghamshire County Council to commission an independent inquiry into the circumstances surrounding the re-registration of the homes in 1993. The Longcare Inquiry made specific findings in respect of the failings of Buckinghamshire County Council, and the circumstances in which these Claimants were left to suffer neglect and injury despite the circumstances being brought to the local authority’s notice.

When the Defendants first suggested that they did not want to proceed with the trial and that they would offer to settle the case out of Court I had mixed feelings – having represented the former Longcare residents for many years I was absolutely appalled that it took the Defendants so long to recognise their failings, as to my mind the case should have been settled many years ago. However, I was ultimately pleased that at last there would be an end in sight for the families concerned.

This case highlights the very vulnerable state of people with learning disabilities who are placed in residential care. They are unable frequently to protect themselves or to report that they have been abused. The facts in this case and the severe damage caused to the fifty-four Claimants demonstrates the need for registration and inspection of care homes to be carried out competently by local authorities responsible for this task. It is clearly foreseeable that allowing care homes for the severely
disabled to be run by an individual who was already under investigation for complaints of sexual and physical abuse put residents or prospective residents in those homes at risk. Each resident who was placed in either home was at immediate risk from the activities of Gordon Rowe and his staff. The need for local authorities, who are given the role of registering and inspecting homes of this type, to protect such vulnerable individuals, is crucial.

This is a landmark legal case and its victory should have a wide-ranging impact on the care system. It sends out a message for inspectorial authorities to be mindful of the importance of ensuring that proper checks are carried out. It is in effect a wake-up call to all regulatory bodies - highlighting that they cannot escape responsibility for failing to check the safety of homes for vulnerable people. The case shows that regulators can be held accountable for their actions and inactions as far as the registration and inspection of care homes and the vetting of staff who run them is concerned.

The implications of the outcome of this case will be applied to the National Care Standards Commission who have taken over the regulation of care settings in England and it will also apply to the Commission for Social Care Inspection who will replace the NCSC next April.

Accordingly, the message for any other abuse survivors either with or without a learning disability is to speak out if you too have suffered abuse as justice will prevail in the end.

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