ASSOCIATION OF CHILD ABUSE LAWYERS

OUR NEXT MEETING WILL BE HELD ON

WEDNESDAY 27TH OCTOBER 2010 AT 2.00 P.M

AT THE OFFICES OF IRWIN MITCHELL IN LONDON

FROM THE CO-ORDINATOR MALCOLM JOHNSON

2010 has been another good year, membership numbers have once again remained steady along with the number of referrals and telephone enquiries.

In May we organised our second successful workshop in conjunction with APIL on 'Child Abuse Claims Conference—the Changing Landscapte'. This was held in London and as well as being highly informative with excellent speakers it was a great opportunity for members to network.

A new part time administrator, Sue Monteath, joined ACAL in late February. Sue has been following up on some of the objectives we set ourselves at the March Executive meeting including:

* The production of a new quarterly newsletter. The first edition was circulated in July by email to over 4,000 personal injury lawyers. Out of this we have developed a new circulation list of potential ACAL members.

* Survivor Organisations have been contacted with a view to developing closer cooperation. We've received a number of positive responses and have been able to discuss website links, ACAL articles for their websites and the offer of speakers for conferences and workshops. We aim to keep in regular contact with these organisations through the quarterly newsletter.

* Those of you who attended the May workshop will have seen the new ACAL promotional material. Membership recruitment continues to be a priority.

Our key marketing tool remains our website and currently this is being upgraded. We expect to launch the new site later in the year and look forward to receiving your feedback at that time.

Our thanks go to Alan Collins and David Lane who, after kindly volunteering their services, were recently welcomed as new members of the Committee.

Our next meeting will the Annual General Meeting at the offices of Irwin Mitchell in London on Wednesday 27th October at 2.00 p.m.

ACAL website: www.childabuselawyers.com

ASSOCIATION OF CHILD ABUSE LAWYERS

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Can parents claim for the abuse of their children?
By Malcolm Johnson

A recent case **Merthyr Tydfil v C [2010] EWHC 62 (QB)** raises the thorny question of a parent's claim for damages, when it is discovered that their own child has been abused as a result of the negligence on the part of social services.

A Claimant in this situation faces a number of hurdles in bringing a compensation claim. Firstly there must be some established psychiatric injury that which is foreseeable. (**Page v Smith [1996] AC 155).** Secondly a Claimant who suffers psychiatric injury because the negligence of a Defendant is generally barred from recovering compensation unless he or she was a primary victim. The House of Lords decision in **McLoughlin v. O'Brien** [1983] 1 AC 410 extended the class of secondary victims, who might be permitted to make a claim to include those were in the immediate aftermath of an accident but that does not necessarily help the Claimant in a case of this nature. Thirdly a duty of care needs to overcome the exclusionary rule in **D v East Berkshire [2003] EWCA Civ 1151.**In this case, parents brought actions in negligence against a social services department and various healthcare professionals claiming damages for psychiatric harm. Their children had been taken into care as a result of erroneous allegations that the parents had been abusing the children. The Court of Appeal and later the House of Lords (**[2005] UKHL 23)** held that whilst there was a duty of care owed to the children, there was no duty to the parents. It would not be just and fair to impose such a duty in circumstances where there are suspicions of abuse, because of the conflict between the interests of parent and child.

In **Merthyr,** the Claimant was a mother with two children (A and B) who in August 2002 became aware that they had been the subject of sexually inappropriate behaviour by a neighbour's child (D). She initially reported the abuse to the NSPCC who in turn passed on the complaint to the council. The council advised her to keep her children indoors, and in time the mother decided it was safe to let her children play outside again. However in August 2004, her children were again abused by D, following which the mother reported the incident to the council. This time the council refused to accept that the matter had ever been reported to them in 2002.

The Claimant was diagnosed with a panic disorder. It appeared from her psychiatrist's report that a major component of her symptoms was the refusal by social services, when she met with them in August 2004, to acknowledge her report in 2002. Moreover the issue of forseeability was conceded by the Defendant. The main issue before the court was whether it was just and fair to impose a duty of care after the judgments in **D v East Berkshire**.

The council made an application to strike out the claim under CPR 24.2 on the grounds that it had no real prospect of success, which was refused by the trial judge. On appeal, the case came before Mr Justice Hickinbottom in the High Court, who said at paragraph 27 of his judgment:-

*"What **D v East Berkshire** held was that the usual consonancy of interests between parents and children is displaced, as a matter of law, where the parent is suspected of abusing the child. It does not hold that, whenever there is any bare potential for some future conflict of interest between a child and his/her parents, then an authority is immune from owing any duty of care to the parents and from any negligence suit at the hands of the parents. The duty of care owed by an authority to a child is not "paramount" in that sense."*

Hickinbottom J referred to an earlier case, **A v Essex County Council 2003] EWCA Civ 1848** where the Court of Appeal said that they had no difficulty in finding a duty of care in circumstances where an adoption agency (prior to the adoption taking place) had failed to communicate information to prospective adopters about a particularly troubled child, in breach of its own policy. In **Merthyr,** the duty of care asserted by the mother against the council was not merely parasitic upon the duty owed by the council to her children, but entirely distinct. See also **W v Essex County Council [2001] 2 AC** on this point.

Therefore we are left with the exclusionary rule in **D v East Berkshire** and a series of cases where the rule has been held not to apply. There is also the possibility of a human rights claim. In **TP and KM V United Kingdom [2001] ECHR 28945/95** TP alleged that her daughter, KM had been unjustifiably taken into care. One of her key allegations was that during the care proceedings, video evidence of an interview with her child cast doubt on the allegations of abuse. That evidence was not provided to the mother and her legal representatives until a year after the initial care order was

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made.

The mother issued proceedings against the local authority for breach of statutory duty and negligence. The proceedings were struck out at first instance and on appeal. The majority in the Court of Appeal held that there could be no claim for breach of statutory duty in respect of sections 1 and 18 of the Child Care Act 1980. The case then came to the House of Lords as one of the **X and Others v Bedfordshire [1995] 3 All ER 353** group of cases, where the decision of the Court of Appeal was upheld. The Applicants applied to the European Court of Human Rights (ECHR) alleging a breach of Articles 8, 6 and 13 of the Convention.

In relation to Article 8 (right to respect for family life), the ECHR found that the actual decision to take out a place of safety order was supported by relevant and sufficient reasons. They were not persuaded that the mistakes made by social workers in misinterpreting what KM was saying deprived that decision of legitimacy. On the other hand, it was essential that a parent be placed in a position where he or she might obtain access to information which was relied upon by the authorities in taking measures of protective care. That right was not absolute, but in this case there was a violation of Article 8 of the Convention.

In relation to Article 6 (right to a fair trial), the ECHR said that the Applicants' claims were properly and fairly examined in light of the applicable domestic legal principles concerning the tort of negligence. Therefore there was no violation of Article 6 of the Convention.

Finally in relation to Article 13 (right to an effective remedy before the courts), there was held to be a violation. The ECHR considered that, where an arguable breach of one or more of the rights under the Convention was in issue, there should be available to the victim a mechanism for establishing any liability of State officials or bodies for that breach. There had already been a finding of a violation of Article 8, in relation to the non-disclosure of the video interview of KM. In these circumstances, the exercise of the court's powers to return KM almost a year after the first emergency place of safety order, was not an effective remedy. It did not provide redress for the psychological damage allegedly flowing from the separation over this period.

In **RK and Another v United Kingdom [2009] 1 FLR 274 (ECHR)** the Applicants were the parents of one of the children in the **D v East Berkshire** case. Their daughter was admitted to hospital following a fracture of her femur and a diagnosis of non-accidental injury was made. She was taken into care, but was later diagnosed with brittle bone disease.

The ECHR identified the conflict between the protection of the child and the right of the parent to respect of his or her family life. Public confidence in the child protection system could only be maintained if a proper balance was struck. The starting point was that the doctors had referred the case to the proper statutory authorities. That was entirely correct and the English Court of Appeal had reached the right conclusion on the issue. Interference with family life did not justify according a suspected parent a higher level of protection than other suspected perpetrators and the deciding factor was "conflict of interest". The doctor was charged with the protection of the child not the protection of the parent. There was accordingly no violation of Article 8.

However in relation to Article 13, there was a violation. It was common ground between the parties that the Applicants' complaints about the interference with their family life through the care measures were arguable. The Court considered that the Applicants should have had available to them a means of claiming that the local authority's handling of the procedure was responsible for any damage which they suffered and obtaining compensation for that damage. Such redress was not available to them at the relevant time, because at that time (before the introduction of the Human Rights Act 1998), the tort of negligence was the only remedy in national law capable of determining the substance of the Convention complaints.

In **AD & OD V United Kingdom [2010] ECHR 340** (another pre Human Rights Acts 1998 case) the Applicants were mother and child. They claimed damages arising out of alleged negligence by the local authority in the context of care proceedings. OD was brought into hospital with rib fractures and placed on the child protection register. Care proceedings followed shortly thereafter. The family court made an interim care order and OD and his parents resided at a family resource centre in Bristol, so that a risk assessment could be carried

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and there was a period a separation between parents and child. Eventually the local authority received advice from the NSPCC that the child should be rehabilitated with his parents. It was also discovered that OH suffered from brittle bone disease.

AD claimed that she had suffered psychological shock and upset. The Court of Appeal dismissed her claim against the local authority in **AD & OH v Bury Metropolitan Council [2006] EWCA Civ 1**, relying on the judgement in **D v East Berkshire.**

The ECHR considered AD's claim that there had been a breach of Article 8 of the Convention. It was accepted (after **RK and AK v United Kingdom**) that mistaken judgements or assessment by professionals did not of themselves render childcare measures incompatible with Article 8 of the Convention. However this case was different from **RK** insofar as the mistakes made by the authorities were far starker. There was a very real chance that had a proper risk assessment been carried out whilst the Applicants were at the centre in Bristol, OD might never have been placed in foster care. Furthermore the Court was not persuaded that less intrusive measures were not available, such as conducting the assessment whilst the whole family stayed at an assessment centre or placing OD with relatives. The local authority had dismissed this option too quickly without giving it proper consideration. Finally the time taken to return OD to his parents' care was not reasonable in the circumstances.

Therefore whilst there were relevant and sufficient reasons for the authorities to take protective measures initially, the subsequent failing of the local authority both extended and exacerbated the interference with the Applicants' right to respect for their family and were not proportionate to the legitimate aim of protecting OD from harm. Consequently there was a violation of Article 8 in respect of the interference with the Applicants' right to respect for their family life.

In relation to Article 13, AD was in an analogous position to the Applicants in **RK and AK** and therefore there had been a violation of her rights under Article 13 of the Convention. Conversely OD (the child) was in a different position. It was quite reasonable for the domestic court to reject his claim on the grounds that he could not show any damage. Therefore there was no violation of OH's rights under Article 13 of the Convention.

The application of human rights law by the ECHR in **AD** is difficult to reconcile with the law of negligence as explained in **D v East Berkshire.** The ECHR appear on the one hand to approve the exclusionary rule against parents, based as it is on a perceived conflict between parent and child. On the other hand, they then found a violation of Article 8 in relation to the decision to keep the child in care.

The decision in **D v East Berkshire** has been much criticised by commentators. One counter argument is that there is only a conflict of interest between parent and child where the diagnosis of abuse is wrong. Lord Bingham (dissenting in the House of Lords) said that far from presuming a conflict between the interest of child and parent, the law generally presumed that they were consonant with each other, or at any rate, if not consonant, not so dissonant that healthcare professionals should proceed without fully informing and consulting the parents. The writer thinks that the exclusionary rule in **D v East Berkshire** will be subject to further erosion, which is what ultimately happened to the judgment in **X v Bedfordshire.** On the other hand, there is a clear message coming from the ECHR that domestic courts are entitled to exclude liability in this difficult social care cases. The question is – how far can they go?

Malcolm Johnson is the principal of Malcolm Johnson & Co. a firm specialising in cases involving the taking into care of children

AGGRAVATED AND EXEMPLARY (PUNITIVE) DAMAGES FOR ABUSE VICTIMS ?

by Peter Garsden & Rosalind Coe QC

Has the change in the common law orchestrated by the case of **A v Hoare & Others** [2008] UKHL 6 opened the door to the possibility of claiming aggravated and/or exemplary damages in the field of abuse compensation cases? After the Manchester Children's Home Group action No.1 settled for over £2M, I was quoted as saying that the levels of compensation in these types of case were inordinately low, in that the average award in the Group (£15,000), spread over a lifelong suffering of the victim, was equivalent to the cost per day of a nice cup of coffee at Starbucks. The question is, will the change in the law enable the Courts to award higher damages to this category of claimant?

Systemic negligence

When I started dealing with these types of cases, and until recently, they were fought on the basis of systemic negligence. In other words inept management standards in institutional children's homes had led to the infiltration of paedophiles, and consequent child abuse due to, for example, inadequate checking of references etc. It was not possible to sue in trespass to the person because the relevant limitation period was an unextendable 6 year period under s.2 Limitation Act 1980 following the decision in **Stubbings v Webb** [1993] AC 498. Further in **K R v Bryn Alyn Community (Holdings) Limited** [2003] 3 W.L.R. 107 the Court of Appeal held that there was no power to extend the limitation period pursuant to s.33 Limitation Act 1980 in circumstances where a defendant is vicariously liable for non-negligent torts. Inevitably, all our cases were outside the statutory limitation time limits, in that they had taken place in the 1960's, 70's and 80's, well beyond the unextendable 6 year period. Thus, aggravated and/or exemplary damages could not be pursued where these claims, although based on assaults, were pursued in negligence. Aggravated damages are limited to intentional torts. **Rookes v Barnard** [1964] AC 1129 limited the three categories of case where exemplary or punitive damages could be awarded to cases of: oppressive, arbitrary or unconstitutional actions by servants of the Government; cases in which the Defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the Claimant; and finally where there is a statutory provision.

The narrowing of the issues

In **A v Hoare** the House of Lords acknowledged the artificiality of limiting these claims to claims in negligence and further acknowledged the anomalies created. They took the unusual course therefore, of over-ruling one of their previous decisions - **Stubbings v Webb**. They recognised that the survivors of abuse often cannot bring themselves to take proceedings against their assailants until many years later for reasons closely connected with the circumstances of the original abusive act(s). Thus they enabled claimants to pursue the claims in trespass to the person, narrowing the issues considerably. Claimants now have to prove that the abuse has taken place rather than having to show systemic negligence. The effect, of course, of this development is that these claims can now be pleaded in assault. As set out in the 3rd Supplement of the 19th Edition of Clerk & Lindsell on Torts at para. 33-39:

*"In **A v Hoare** … **Stubbings v Webb** … was at last overruled … . Claims for trespass to the person (which in these conjoined cases comprised sexual abuse of children (or an attempted rape) therefore fall within s.11 and s.33 of the Limitation Act 1980 and not within s.2 of that Act. This means that the limitation period is 3 years from the date of knowledge and that the Courts have a discretion to exercise under s.33 rather than the case being statute-barred 6 years after the relevant trespass".*

Trespass and damages

Any trespass to the person, however slight, gives the right of action to recover at any rate nominal damages. Even where there has been no physical injury, substantial damages may be awarded for indignity, discomfort or inconvenience. The time, place and manner of the trespass and the conduct of the Defendant may be taken into account and the Court may award aggravated damages on these grounds. In **W v Meah** [1986] 1 All ER 935 an award of aggravated damages was made to a victim of a rape and sexual assault.

AGGRAVATED AND EXEMPLARY (PUNITIVE) DAMAGES FOR ABUSE VICTIMS FOR ABUSE VICTIMS … continued

Awards of exemplary damages have been made in many cases involving assaults/false imprisonment by the police where the conduct of the constable was "unconstitutional".

The meaning of aggravated and exemplary (punitive) damages

At paragraph 29-137 of Clerk & Lindsell on Torts (19th Ed) the distinction between exemplary and aggravated damages is set out. Aggravated damages are awarded where the commission of the tort was such as to cause injury to the Claimant's proper feelings of dignity and pride. They are common in defamation cases. The intention is to compensate the Claimant for injury to his feelings rather than to punish the Defendant. Exemplary or punitive damages are awarded to teach the Defendant that *"tort does not pay"*. In referring to the decision in **Rookes v Barnard**, it is set out that *"servants of the Government"* should be broadly construed and may include for example actions of a local government official. A claimant can be awarded both exemplary and aggravated damages. Interestingly, the Law Commission Report No. 247 (1997) on aggravated, exemplary and restitutionary damages considered that the use of exemplary damages was too restrictive.

Precedent

The factors to be taken into account in considering awards of both aggravated and exemplary damages and the issue of vicarious liability were considered in the Court of Appeal decision of **Rowlands and The Chief Constable of Merseyside Police** [2007] 1 WLR 1065. In that case the Claimant brought a claim against the police for damages for the injury, pain and suffering she had suffered in the course of her arrest. She claimed aggravated damages in respect of the affront to her dignity and exemplary damages in respect of what she alleged were the arbitrary, oppressive and unconstitutional actions of the police. At first instance the jury found that: the police did not think that the Claimant was likely to have caused a breach of the peace: the police were unreasonable in using handcuffs to restrain the Claimant; the Claimant was dragged backwards by a police officer using the handcuffs; a police officer yanked the handcuffs in the back of the car to cause the Claimant pain; and the account of the matter given to the Magistrates Court by the police officer was deliberately false. An award of £3,000 for pain, suffering and loss of amenity in respect of the personal injury was agreed (£1,000 for the injury to the wrist and £2,000 for psychiatric harm). In addition she claimed damages for the false imprisonment and malicious prosecution.

The Court of Appeal considered it was right to identify the danger of double recovery in cases where an award of aggravated damages is made in favour of the Claimant who is also claiming damages for psychiatric harm. However the fact of an award for compensation for psychiatric harm does not preclude an award of aggravated damages.

The Court of Appeal went on to consider that the question that had to be decided was whether or not the evidence was capable of supporting a finding that the constable's behaviour amounted to oppressive, arbitrary and unconstitutional action. The issue was not whether or not the case was exceptional, but whether or not the misconduct was serious enough to justify an award of exemplary damages.

The Court of Appeal further considered the argument that an award of exemplary damages should not be made against the employer of the tortfeasor. Despite previous such awards having been made by juries against Chief Constables, reliance was placed upon the speech of Lord Scott in **Kuddus v Chief Constable of Leicestershire Constabulary** [2002] 2 AC 122. However the Court of Appeal decided that the issue in that case was whether exemplary damages could be awarded for misfeasance in a public office and Lord Scott's comments did not address an issue that had been fully argued. Referring to the Law Commission Report and matters of principle, the Court of Appeal considered that, since awards of exemplary damages and the principle of vicarious liability are both matters of public policy, the Court ought to be able to make an award of exemplary damages against those who are vicariously liable for the conduct of their subordinates without being constrained by the financial means of those who committed the wrongful acts in question. At paragraph 48 Lord Justice Moore-Bick found in favour of holding that a substantial award of exemplary damages could be made against a Chief Officer of Police and that this had been the understanding for over 40 years. Ultimately the Court awarded exemplary damages of £7,500 and aggravated damages of £6,000.

AGGRAVATED AND EXEMPLARY (PUNITIVE) DAMAGES FOR ABUSE VICTIMS FOR ABUSE VICTIMS … continued

Aggravated damages are awarded to reflect the gross nature of the wrong done or the effect the wrong has had on the feelings or reputation of the claimant. As previously mentioned they are limited to intentional torts and cannot be recovered in a claim for negligence. The test seems to be one of "exceptional conduct". In **Appleton v Garrett** [1997] 8 Med Law Report 76 an award of aggravated damages was made in favour of Claimants who had received gross over-treatment by a dental surgeon in circumstances where trespass to the person was made out.

Conclusion

There would seem to be no reason why claimants should not be awarded aggravated and exemplary damages in abuse cases. The following pertinent features exist:-

The cases involve exceptional conduct;

The impact on the feelings of the claimant is massive resulting in lifelong harm;

The abuse in most cases was planned, premeditated and involved the aggravating feature of taking advantage of a position of trust;

Where the abusers are employees of a Local Authority or other Government body the acts are at least arguably "oppressive, arbitrary or unconstitutional actions by the servants of the Government".

Of course many of the abusers have been convicted and sentenced in the criminal courts.

It will be interesting to see what attitude the defendants take to our applications, but if successful, it will give the Courts the opportunity to award additional compensation for acts of abuse which cause lifelong psychological harm to an individual. Particularly in cases where causation arguments reduce compensation in favour of the defendants, aggravated and/or exemplary damages could redress the balance in favour of the Claimant. The daily value of compensation could go up from the cost of a nice cup of coffee to a large brandy.

Finally can I thank Rosalind Coe QC for her help and invaluable contribution to this article.

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Rosalind Coe QC of 7 Bedford Row chambers in London is well-known as a leading practitioner in group actions arising from allegations of historic abuse in institutional care. Her experience in dealing with historic abuse claims has led to her instruction as Claimant Counsel in many of the leading cases such as A v Hoare and 4 others, Lister v Hesley Hall Limited as well as the Manchester City Council, Nugent Care and Cambridge Council Group Actions. She is also instructed in "failure to remove" cases. Rosalind writes and lectures on her areas of expertise. Rosalind can be contacted by email at rcoe@7br.co.uk

Book Review of "Nicholas Dane" by Melvin Burgess

Author of Review: Peter Garsden

I first encountered the book "Nicholas Dane", when the author Melvin Burgess contacted me in 2007, following the successful conclusion of the first child abuse Group Action into Manchester Children's Homes, which compensated the victims of abuse at children's homes owned by Manchester City Council. Most of the claims I had been involved with concerned a home called Rosehill in Wythenshawe between the 1960's to the late 1980's. Melvin explained that he wanted my help with a fictional book he wanted to write on the subject. I spent a very pleasant evening with him, during which I tried to paint as many pictures as I could of the scenes and characters, from the cases I had dealt with. 2 years later I eagerly anticipated the publication of the book.

When I am asked to review a book on child abuse, I usually approach it on the basis that it is something I have to do for work. The big difference here was that this was no catharsis of emotion as part of the healing process of a survivor, but rather a work of fiction designed to entertain. First to read it was my 15 year old foster daughter, who devoured it with a passion exclaiming it to be "well good", not the best English but telling considering it runs to 400 pages in hardback. So I approached the read with some scepticism thinking that it would be like reading a file at work. I quickly became completely immersed in the story, and could not put it down.

As the blurb says, it tells the sad story of Nick who loses his mother and is put into the care of a children's home called Meadow Hill where he is brutally abused by the arch paedophile Tony Creal. Using his wits he escapes with another victim aptly named Oliver and Davey (for which read Artful Dodger.) To avoid capture and return to the abusively cruel environment of Meadow Hill, Nick falls into the underground Mancunian world of Shiner, for which read Fagin and his brutal sidekick Ben Jones (Bill Sykes), the orchestrator of most crime in Manchester. Not surprisingly Jones has a sweet girl whom he beats up on a regular basis. Jones is also the victim of the care system. Nick gets all tangled up in crime. I won't give away the ending but it is non too pleasant and very gripping in a Dickensian sort of a way.

The publicity is right when it says it is "a page turning blockbuster of Dickensian scale which will have you furiously turning the pages and longing to rescue the young hero, Nick from his abusers."

What of the unashamed parallels with Dickens? Is it believable or too contrived? It is very significant that our social care system in this country is derived from the moralising charitable acts of the Victorian well to do, who felt guilty about their exploitation of children set to work in poor conditions as a by-product of the industrial revolution. Thus the parallel, which at first blush looks trite, is in fact completely appropriate. Indeed the conditions and standards of care in some ways, have not moved on very much since the turn of the century. Children continued to be used for cheap labour right up to the 70's and 80's. Thus a book about the worst aspects of our social care system neatly links the past with the present.

The other aspect of the Dickens connection of most importance is that it neatly lightens what would otherwise be a deeply dark and foreboding work of fiction. From talking to Melvin in the early stages, I know that he was anxious to entertain not depress the reader. A book about the horrid exploitation and abuse of children could easily descend into an abyss too dark for a work of fiction. Thus the Dickensian parallels neatly remind the reader that, although the story is chillingly accurate, it is after all just a work of fiction to be enjoyed for its own sake. This works very well for me.

How accurate is the book? How close is it to historical fact? Since I was a contributor, as were some of my clients, you would expect me to say that the book is close to actual fact. The truth is that I recognise the character sketches of a number of real life abusers. Their grooming techniques and behaviour are frighteningly accurate. The atmosphere within the home Meadow Hill is very similar to what I understand it was like in the home it is based on.

So how successful is the book? I found it completely absorbing and gripping. I felt as though I was right there with our anti-hero all the time, even though the things that were happening were very similar to our real life files at work. All my children have read it and think it is brilliant. All the solicitors at work have also

Book Review of "Nicholas Dane" by Melvin Burgess
Author of Review: Peter Garsden … continued

enjoyed it. And we are in the business. It is a great book to enlighten the naive adolescent and educate them about the dark side of life that hopefully will never knock at their door. For my clients and the victims of historical abuse, it is not necessarily something they want to read, but rather a story which recognises the reality of what they went through, and desperately needs to be told.

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Peter is the senior partner of a firm of solicitors who have the only dedicated child abuse compensation department in the country. They run several group actions, and have a legal aid franchise. Peter has extensive media experience of Radio, Television, has written articles for many newspapers and other publishers. Peter also lectures on the subject of child abuse for ACAL (Association of Child Abuse Lawyers) and other organisations..

Foster Care Abuse

By David Greenwood

I preface this article by saying that the vast majority of foster carers do an excellent job in providing good calm parenting for children who need a stable environment when things go wrong in their family.

The current position

I have been frustrated over the years when clients who have suffered abuse in foster care ask me whether they have a case to claim compensation from the council who placed them with abusive foster parents. The law at the moment works in a way that means children placed in local authority (council) run homes who suffered abuse can claim against the council directly but if the child had been placed in foster care he or she would have no claim. I have even had a situation where two brothers were separated. One went in to a council run home – the other in to foster care. Both suffered abuse but only the one in the council run home received compensation. This is obviously wrong. It is also in my view wrong to allow local authorities to escape responsibility for abuse suffered by children whom they have a statutory duty to protect.

Changing the law

At present the law suggests a local authority will not be vicariously liable for the assaults or negligence of foster carers (see S v Walsall Metropolitan Borough Council [1985] WLR 1150). It is probable that if this point were taken to the higher courts then it would be reconsidered, post the decision of the House of Lords in Lister v Helsey Hall [2002] 1 AC 215, on the basis that the foster parents act as agents of the local authority fulfilling their duties towards the children in their care. A Canadian case of Bazley v Curry (1999) 174 DLR (4th) 45 Sup Ct (Can) acknowledged that local authorities are in loco parentis in their relationships with children and this should in my view be reflected in UK law. The case of Lister v Hesley Hall signalled a shift in the attitude of the courts to assessing duties owed to children. The courts now assess duties as as being more commensurate with the relationship involved.

Emerging duties

I am involved with a case which has yet to be decided in the Court of Appeal regarding the duty owed by a Catholic religious organisation by it's members to children in it's care. With all these situations there is a 3 way circle of power running between a supervising organisation, the person looking after the child and the child. We argued that the duty of care owed by an organisation should be as extensive as the position of responsibility and control it has in the relationship. I very much hope that the case will provide a further stepping stone towards recognition by the courts that councils should be vicariously (directly) liable for abuse by foster carers.

If you have any comments or know of any emerging cases which could help please let me know.

David Greenwood,
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Letter from a Claimant to Archbishop Vincent Nichols

By David Greenwood

I have permission from the writer to publish a letter recently written to Archbishop Vincent Nichols. For me it sums up the frustration caused by the Roman Catholic Church's failure to respond constructively to those brave enough to complain of abuse from priests. It is compelling reading and raises exactly the questions that thousands of people in this country want the Pope himself to answer.
David Greenwood
27th July 2010

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Letter to Archbishop Vincent Nichols and the Catholic Church in England and Worldwide.
April 2010

Dear Sir,

I am sure you won't remember me, but I was dealing with the CPO ("Child Protection Officer") in Birmingham just prior to your move to Westminster. You very kindly wrote to me with your thoughts and prayers ,after presumably learning some of the details of the serious sexual abuse I suffered at the hands of a Catholic priest, when I was a child. It transpired that this rapist, who is now dead, had belonged to the Sacred Heart order and so they are now dealing with my complaint. However, the fact remains that this rapist was part of the larger church, despite everyone preferring to transfer responsibility. As an abused child, I knew nothing of "orders" or "dioceses" or anything hierarchical, all that I knew was that a priest, of the kind who I had been brought up to revere, seriously sexually abused me when I was ten years old, on the eve of my confirmation, and then raped me when I was thirteen, in my own bedroom in my own home. He then hid behind his office, and the fact that my Mother, who had caught him in the act, was too "Priest obsessed" to protect me or seek justice on my behalf. It ruined my life. It left me with the legacy of Alcoholism, addiction, serious self harming, eating disorder, fear , shame, guilt, unworthiness, inability to form relationships, trust anyone, feel anything more than an outcast, and on occasions be suicidal. It took away anything in my life that could have been Good, or wholesome, or Spiritual, and it destroyed most of my prime years, my teens and twenties, which I can never replace. It left me with impediments that I have had to work hard on for my entire life, and even now, aged 62 it has the ability to bring me to my knees with sadness, and make me wake in the night with terror. Despite any of my successes.

The point of my letter is by way of a "PRIMAL SCREAM" I am so sick and tired of being patronised, anonymised and disregarded by the Church. And the recent obsequious apologies that have come from your offices are doing nothing to help people like me, they are simply making matters worse. None of the announcements pay any regard to the people like me, the VICTIMS , of these greedy, criminals who have often been hidden and protected, and have destroyed so much. The emphasis as ever is on "healing" and "forgiveness' but that for the Church, not for me. How can it be when you have no idea what I need! I have been clean and sober now for over thirty years, I have become a respected professional in the field of addiction treatment, and in fact received a "Lifetimes achievement award" at the Royal Society of Medicine last month for my contribution into the field of addiction. The work that I do has no doubt been fuelled by my imperfect past , it has indeed given me a unique ability to help others. When I first got sober, it was with the help if the twelve step programme of Alcoholics Anonymous, and it, and other addicts in recovery saved my miserable life.

Since then I have been privileged to help others in the same way. Part of the programme that we feel very strongly about is the steps which tell us we should "make amends" to all the persons we have harmed. We take that part of our programme very seriously, and as newly sober self pitying snivelling wretches that we often are at that stage, we are told very quickly that ":making amends" does NOT just mean saying "SORRY"! that is easy! Making amends means trying to put things right! trying to put things back to where they would have been before we damaged them! If we are serious about recovery, we are told to be painstaking about this part of it, not to presume what would help our long suffering families, but to humble ourselves and ask THEM. And then to do everything in our power to make these amends, with no thought about our own selfish needs.

Letter from a Claimant to Archbishop Vincent Nichols

So perhaps you should now consider the REAL spirituality of the recovering addict, often shunned by society, but who have discovered the capacity to be honest. MAKE AMENDS-!! stop praying for us, thinking of us, asking God for forgiveness, that is exactly the the self pitying ,self ingratiating lip service that drives us mad.

Stop trying to find any legal loophole to wriggle out of. TAKE RESPONSIBILITY. Make financial recompense where it is requested, certainly, for me, the Church has nothing else I want. And be seen to be doing it! Show that somewhere you have a real desire to put things right. You say that the priests in question are a “minority” so presumably you would consider that there are only a minority of victims too? so why are you not bending over backwards to help us? Why are you not asking me what I need? Why are you not seeking us out and making those amends? Read my story, listen and absorb every ghastly detail, and THEN tell me what you are prepared to do. Do not anonymise me I do not want to be hidden away any longer! Recognise me personally, and publicly and allow me to show my wounds. In addiction recovery we don’t believe in hopeless cases, so perhaps I should believe that now the “Church has a real chance of recovery”, but only if you are as painstaking as I had to be when it came to putting things right.

I will continue to strive to have a voice, and use my relatively high profile professional position to help give others a voice, either with your help or without it. But I can hardly believe that the Church is so stupid that it cannot see that there is a real opportunity here to show some of the compassion and humility that it preaches so fervently.

The sorrow you say you feel about the criminal acts should be extended to the sorrow you should be feeling for the way it is all being handled. Work with us and FOR us! Stop talking the talk, and WALK THE WALK. I will await some response. Sue Cox Bsc,.Lic.Ac.M,B.,Ac.C

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