Newsletter
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ACAL
Association of Child Abuse Lawyers

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President's Report

By Peter Garsden President, ACAL

Firstly apologies if this piece is a little shorter than usual, but I am rushing to finish it before my holiday. The deadline passes whilst I am away on my 25th Wedding Anniversary Cruise to see the Northern Lights off the northern coast of Norway. If, next time you see me, I look grumpy, you will know that they didn't make their presence known to my wife and I.

"HARP" or "HALF"

I will also miss the latest meeting on 21st February of "HARP" or "HALF" (standing for Historic Abuse Lawyer's Forum) between Lawyers for Defendants, and Claimants, under the stewardship of Master Victoria McCloud from the Royal Courts of Justice. For those of you not involved, this is an initiative of the Master who wants to establish a protocol for abuse cases. Her initiative comes from being asked to deal with these types of cases as a Master. Her enthusiasm for the subject matter, which comes with a good deal of genuine concern for the welfare of the Claimants going through the process, is most heartening, and helpful.
It is now 20 years since I started dealing with abuse cases for Claimants, and I can remember at 2 occasions when I and others have tried to agree a form of protocol for how these very difficult cases are handled, without reaching a conclusion. It has taken the initiative of a Master, and, I hesitate to suggest, the Independent Inquiry into Child Sexual Abuse ("IICSA"), to provoke a meaningful dialogue, which, I am confident, will result in something agreed between the parties, and a change in the Rules.
The steps taken so far are

1. Meetings of Claimant and Defendant lawyers separately to consult upon what the issues are, and how to solve them.
2. A Draft Protocol and Directions drafted by Malcolm Johnson of BL Claims, who, I am sure you know, is a past Chairman and Executive Officer of ACAL (Association of Child Abuse Lawyers) and one of its founder members back in 1998.
3. A number of round table forum meetings between Claimant and Defendant representatives on the various subject areas such as:-
   Anonymity orders
   Disclosure
   Protective issue of claims
   ADR
   Reducing delay

Vulnerable witnesses and parties
Costs and Proportionality
Experts and professional witnesses

4. Claimant and Defendant separate meetings to discuss revisions to the protocols, and finally their submissions to each other
5. The Meeting between Claimant and Defence Representatives, on 21st February, to debate a jointly agreed protocol for abuse cases, and maybe agreed directions with, for the first time, Master McCloud.

IISCA and the Reparations and Accountability Module

In the last module I set out that we, as an Association, were proposing to put in a paper to IICSA on proposed reforms to the Civil Justice module, which held its first live broadcast meeting in November 2016 down in London. We did send the paper to all members, but if you haven't seen it, then it is in both the public and member's section of the ACAL (Association of Child Abuse Lawyers) website here –

http://www.childabuselawyers.com/core/wp-content/uploads/2016/09/ACAL-Response-to-Accounts-and-Reparations-Module-of-IICSA.pdf The paper summarised the joint views of all the executive officers who met in the summer to discuss the issues set out by IICSA. Helpfully, before the 2 day seminar, the Inquiry produced a summary of the views expressed by contributors here
- https://www.iicsa.org.uk/key-documents/916/view/InquirySeminarUpdateReport-AccountabilityandReparations.pdf

The 2 day seminar was very vibrant, convivial, collaborative, and intellectually exhausting. The most surprising point made by Defendant Insurers and Solicitors was that they very rarely challenge Limitation in cases. It was at this point that all the Claimant solicitors looked at each other in abject astonishment, in agreement that this did not represent the Claimant's view of reality. There was undoubtedly a case of putting on a show for the Inquiry and pretending that there was much more conviviality than was real.

There was another seminar for the Criminal Injuries Compensation Scheme listed for 21st February 2017. APIL under the stewardship of Neil Sugarman have put in a paper which we have seen and endorsed.

IICSA are very much aware of, and interested in HALF, and its conclusions, when finally agreed between the parties.

NA v Nottinghamshire County Council – this case has featured in Newsletters before. It is of fundamental importance to abuse by foster carers. It followed the Supreme Court Woodlands decision on non-delegable duty of care in the context of independent contractors looking after children. In this case, a child in foster care was abused, but in the High Court it was found that the local authority were not negligent. It was argued on the basis of vicarious liability, and non-delegable duty. The Claimants lost in both the High Court and Court of Appeal. Very recently in February, the House of Lords heard the Appeal, and the Judgement is awaited. If favourable to the Claimants it could make a huge difference to the law in this area.

As my wife and I are foster parents, I know that, whereas public liability insurance is issued to all present day foster parents, the same privilege was not afforded many years ago. I think that the Courts should extend the principle of vicarious liability rather than wrestle with the vagaries of non-delegable duty. In reality, the arrangement is in every way that of employer/employee in the sense that:-

1. The vetting process takes about 6 months which is actually much more rigorous than

an employment recruitment process.

2. Vetting and References are closely scrutinised together with a CRB check.
3. The Foster Carer is paid by the local authority. If they foster constantly they are salaried rather than paid daily.
4. The Foster Carer is monitored, advised, appraised, and closely supervised by a Social Worker.
5. Initial and follow up training is not only provided but expected by the Local Authority.
6. The scope of activity is the care and supervision of children, so it satisfies the “close connection” test.
7. The Local Authority puts the foster carer at risk by expecting them to engage in activities such as bathing, bedding, and, in some cases with disabled children, toileting.
8. The Foster Carer is expected to behave like a professional child care worker, and is given all the usual risk avoidance training expected of residential social workers.
9. Public Liability Insurance is taken out for all foster carers en bloc.

So I fail to see what the difference there is between a residential care worker and a foster carer other than the nature of the contractual relationship between them. Frankly I doubt very much whether the House of Lords will find that there is a vicarious relationship, but we will just have to wait and see.

So until next time, take care, and don’t work too hard.
Peter Garsden, Simpson Millar solicitors, President
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Joint article between the Victoria Climbié Foundation and Irwin Mitchell

For some years now, Irwin Mitchell has been a supporter of the Victoria Climbié Foundation. Here Natasha Fairs, Associate Solicitor in the abuse team in Irwin Mitchell's London office interviews Stephanie Yorath, VCF's Programme Director to find out more about the work of VCF, their vision and current projects.

Q1: Tell us about how and why the Victoria Climbie Foundation was set up?

VCF – The Victoria Climbié Foundation UK was established by Mr and Mrs Climbié (Victoria's parents) and current director Mor Dioum, following the Victoria Climbié Inquiry led by Lord Laming in 2003, government response and Every Child Matters policy. The organisation was set up to campaign for improvements in child protection policies and practices, and to ensure effective coordination and links between statutory agencies, care services and the community.

VCF has long been at the forefront of political debate, and our campaign for improvements continues in 2017, which started with a roundtable event and formal launch of a joint Advisory Group with the University of East London Centre for Social Work Research, for the safeguarding of BME and Migrant Children, supported by parliamentary host Sir Keir Starmer QC, Shadow 'Brexit' Minister and MP for Holborn & St. Pancras.

Q2: What services do you provide?

VCF offers an independent advocacy service providing advice and assistance, and legally-based casework support for families involved with children's services, particularly children's social care. For many families, we help them to navigate the child protection system and its processes, as many lack an understanding of statutory roles and functions, or even the legal framework in this country, in the context of their culture or faith. For young people, we offer one-to-one active listening sessions for victims of crime or circumstance to address immediate concerns, and to determine other support or therapeutic needs.

More broadly, VCF advocacy work has played a key role in supporting victims and witnesses involved in criminal investigations, children and parents in care proceedings, or other child protection processes, and in public interest cases to assist family interaction with the media and related legal obligations.

Q3: How do you receive referrals?

For the most part and in the early years of the organisation's existence, families found us through word of mouth within the community, and self referred to our service. In recent times, we increasingly receive referrals from local authorities for advocacy support for parents and/or young people, or court-directed assessments. Several law firms have also contacted VCF for specialist advice in cases involving aspects of culture or faith likely to cause concern for statutory partners.

Q4: Do you work in partnership with other organisations?

Yes, VCF works with a number of organisations or individuals seeking to improve outcomes for children and families, across a range of safeguarding priorities, including aspects of culture or faith. Key stakeholders for this work include various child safeguarding bodies, Inspectorates,

Local Safeguarding Children Boards (LSCBs) and Local Authority children's services.

Key partners include the Department for Education (DfE) with whom we share the secretariat for the National Working Group on Child Abuse linked to Faith or Belief, a multi-agency policy group under VCF leadership comprising representatives from statutory, voluntary, community and faith organisations, as well as individuals with experience or specialist knowledge.

Protecting Children across Culture and Faith is the protocol that VCF uses to address such themes as FGM, Witchcraft & Spirit Possession and Radicalism, to ensure that these themes are appropriately considered within child protection policies and guidance, in addition to parental and child mental health, disabilities, and domestic abuse, with language and linguistic heritage particularly key for the BME and migrant communities with whom we work.

We are assisted in this work by the Centre for Social Work Research (CSWR), Mothertongue, HCL Social Care, Churches Child Protection Advisory Service (CCPAS), Advocacy Advice after Fatal Domestic Abuse (AAFDA), Chanon Consulting, One Step Forward Consultancy, Unity in Vision and members of the National Working Group on Child Abuse linked to Faith or Belief.

Q5: Tell us about the recent initiative in Dorset.

Dorset is part of a wider Community Leadership Initiative to address the emerging crisis both nationally and internationally for BME and Migrant children. VCF is proactively advancing political engagement and community partnerships to position the organisation to meets its vision and objectives for 2016-2020; to establish a global presence to monitor and respond to government policies by providing an independent environment to learn, research, share and develop best practice for the rights, care and protection of children, while still providing legal advice, advocacy and training.

In March 2016, VCF formalised its work with local community partner, Unity in Vision, through a Memorandum of Cooperation, to deliver family engagement services across Dorset, and to pilot VCF 'community engagement' and 'parallel communities' models, to enhance the life chances for every child within a world-class child protection system.

Q6: Can you give an example of your advocacy work

Let me share a recent case summary from our Achieving for Children and Families series:

A grandmother supported by VCF has successfully managed to secure a brighter future for her grand-daughter, by increasing consistency in [court-ordered] contact for her son, the girl's biological father, who is successfully managing his past mental health issues – in addition to the fortnightly weekend contact she currently enjoys. Ms Y represented herself at court, as did the other parties; the maternal grandmother with whom the child resides, and the biological mother whose involvement in her daughter's life has been limited to-date. This led to ongoing conflict between the parties and a lack of effective communication at court. With VCF support, Ms Y was able to present a well-considered statement to the court outlining her concerns and wishes for her grand-daughter, and whilst she did not achieve everything she wanted, was happy that she had been listened to, and that the Judge had been largely supportive of her views. Ms Y now accepts that by adjusting her approach and focus, in her determination to safeguard her grand-daughter, the ongoing contact that she has secured with this child may yet prove to be the greatest gift of all.

Clearly, there are complexities in this case, and affordability issues, yet the determination of this

grandmother despite advice to abandon the case led to a more than satisfactory outcome and a feeling that she had achieved all she could for this child. This is a woman who had cared for this child from birth and gave her back to the biological mother when requested to do so, who promptly left the child with her maternal grandmother.

Q7: Have you been involved in research at all?

VCF has a wealth of anecdotal evidence from its work with children and families, and has contributed to numerous research papers directly, or to facilitate service user involvement. VCF now offers an independent environment, and together with the Centre for Social Work Research, we provide research to influence policies and practice for the benefit of practitioners.

Since 2014, VCF has delivered research in collaboration with HCL Social Care (Voices from the Frontline; supporting social workers in the delivery of quality services to children), Mothertongue (My Languages Matter; the multilingual outlook for children in care), University of East London Centre for Social Work Research (Engaging children and families; the role of advocacy within child protection) and the Manchester Metropolitan University (An Exploration of Child Abuse linked to Faith or Belief), and an academic article for the Journal of Health Visiting.

Q8: How can ACAL support you in your work?

VCF has always benefitted from the goodwill of our legal partners, and we are proud to say that a number of ACAL lawyers are already supporting and sharing information about our work, with one or two offering specialist advice which has helped to keep us updated on changes to the public law outline and other family justice reforms to be able to gauge the impact on families, or even social care.

VCF offers opportunities to lawyers to share aspects of the legal process with multi-agency audiences, and Irwin Mitchell has been particularly supportive in promoting the foundation's work as well as sponsoring events.

At a practical level, we have previously responded to requests for informal internships for trainee solicitors, which we would happily offer through a more formally-supported structure, to offer pro bono support for some litigant in person clients. We can also be contacted for independent specialist assessments and endeavour to be as flexible as possible to meet the required, and often short notice, timelines for the child around safeguarding concerns linked to FGM, Witchcraft/Spirit Possession or Radicalism.

But above all, we ask ACAL lawyers to remember why we do the work we do and to sometimes go the extra mile to advocate for families involved in care proceedings in circumstances that could have been prevented; to challenge more thoroughly where and whenever injustice occurs, and not to accept so readily, information provided on paper, if we are not to see a complete breakdown within a society delivering increasingly poor outcomes for children and families.

Q9: Working within the child protection setting can expose people to secondary trauma. How does the VCF support its people working within it to stay healthy?

At VCF, we are often asked this question and we have identified that individuals within the VCF team adopt various coping strategies. Regular supervision is the formal mechanism to identify issues and/or concerns, and a positive working environment is equally as important for a workforce focused on supporting, often chaotic, children and families within child protection processes. Team members are well supported, including by their peers, and do not work in isolation or for consistently long hours in our quest to keep cases moving forward. Together,

with our structured approach, our trustees, partners and specialist advisors offer an added layer of support to our management, staff and volunteers.

VCF is not a critical frontline service, albeit an extremely important and trusted service for the children, families and communities we support.

Stephanie Yorath, VCF - www.vcf-uk.org

Natasha Fairs, Irwin Mitchell

Mor Dioum and Stephanie Yorath of VCF

The Historic Abuse Litigation Forum, Malcolm Johnson, BL Claims

The first meeting of the Historic Abuse Litigation Forum took place on the 2nd December 2016. The Forum was set up by Master Victoria McCloud to try and improve the experience of litigation for survivors of historic child abuse. Since its inception a number of Claimant and Defendant firms have joined the forum, as well as barristers and there are now around 80 members.

I have taken on the task of co-ordinating the Claimant Group. The Forum is not formally linked to the Inquiry into Institutional Child Sexual Abuse, but members of that Inquiry are members of the Forum.

Master McCloud is responsible with her colleagues in the High Court for managing litigation cases that are proceeding to trial through the courts. She is uniquely qualified to observe what goes wrong in litigation, and with that in mind, she wants to try and change things for the better. For instance those litigants who are making claims arising out of the disease, asbestosis, have their own particular procedure in the courts, which is designed to smooth over the way and speed things up.

The Master was concerned with a number of issues, which she categorised into groups for discussion.

Group A: Anonymity Orders
Group B : Disclosure
Group C : Protective Issue of Claims
Group D : Alternative Dispute Resolution
Group E : Reducing delay
Group F : Vulnerable witnesses and parties
Group G : Costs and proportionality
Group H : Experts and Professional Witnesses

One of the key aims of HALF is to produce a "Pre Action Protocol" for these claims, and standard directions to be given out once proceedings are issued. The Master also put forward her ideas for the resolution of claims by means of a procedure entitled the " Historical Abuse Resolution Procedure" or HARP.

Meetings of these Groups took place last December 2016 and January 2017. A series of notes were prepared from these meetings. They were prepared as a record of the discussion between those present on a without prejudice basis. All attendees spoke openly and contributed fully on the understanding that the matters discussed were not binding on their clients or colleagues.

Very briefly, these are some of the points that have emerged from the meetings:-

- **Anonymity** is generally something that causes little difficulty in these claims, although there is a standard order from the courts (PF10) which should be used by practitioners. However the Defendants pointed out that sometimes, witnesses (such as social workers) require anonymity as well.
- **Disclosure** of records is a particular problem for Defendants, where those records (typically social services records) contain details of people other than the Claimants. What is suggested is a draft undertaking within the protocol, which will limit the types of people who can see these sensitive records.
- **Protective proceedings** are sometimes inevitable when limitation is close, but the parties should enter in a limitation moratorium, so as to avoid the expense of issuing proceedings.
- **Costs and proportionality** have long been a problem in these cases. The Defendants suggested that some cases were capable of settlement without recourse to expert medical evidence or the use of barristers. Claimants disagree.
- **Uninsured Defendants** – there needs to be a list of solicitors who can handle the representation of this type of Defendant.

Following the meetings, the Claimants' Group met to draft a Pre Action Protocol for the conduct of claims prior to the issue of proceedings. We already have a series of protocols for personal injury and clinical negligence claims. All of these protocols are reported to work well in practice. Above all, they avoid parties rushing off to issue proceedings thus avoiding extra costs.

I am grateful to all those in the Claimants' Group who gave up their valuable time to attend the meetings of the sub groups and who helped produce this Protocol. The new "Abuse Litigation Protocol" runs into about 30 pages and is too long to reproduce here. However, this is what the structure looks like.

DRAFT ABUSE PRE-ACTION PROTOCOL

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3. Enforcement of the Protocol and Sanctions
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Annexes
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Annex B: Illustrative flow chart
Annex C: Undertaking as to records
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Annex E: Letter of claim against individual and claim based on vicarious liability
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The following summarises very briefly how the new Protocol would work.

- As stated above, one of the main aims of the Protocol is to prevent parties from issuing proceedings. The Protocol does this by encouraging parties to enter into **limitation moratoriums** and an example can be found in the Annexes. If proceedings are unavoidable then parties are encouraged to "stop the clock".

- **Litigants in person** – a particular feature of this type of litigation is the presence of uninsured Defendants. The protocol seeks to set up a system whereby they can find legal representation, and enter into discussions with other Defendants.

- Claimants begin the process with an **Initial Letter of Notification** sufficient to allow the Defendant to investigate the claim, which must be answered within 21 days of service. Thereafter the Claimant can send a **Letter of Claim**, which must be answered within 3 months of service. The parties are encouraged to negotiate a settlement if at all possible.

- **Pre Medical Report offers** – The Claimants propose that no offer of settlement should be allowed before the Claimant has had the opportunity to produce an expert medical report.

- **Disclosure** is recognised as being a sensitive process. The protocol provides an undertaken to be given by Claimants to Defendants so that Defendant can release as much as possible by way of disclosure without have to redact too much of that information.

The last meeting of the forum next steps

A meeting of the Forum took place on the 21st February 2017 and was chaired by Master McCloud. Shortly before that meeting, the Defendant Group put forward their own Protocol, which dealt with vicarious liability claims only.

A short report was given by each Group. The Master said that she was trying to set up a meeting between the Forum and the Royal College of Psychiatrists as well as the BACP, for the purposes of looking at introducing more psychiatrist/psychologist experts as well as social care experts into this area, and examining the thorny issue of their fees. It was also agreed that I would write to the Law Society to see if they could set up a list of solicitors for uninsured Defendants.

What came out of that meeting was the formation of a committee to agree and prepare a Pre Action Protocol for Historic Abuse Litigation claims. The Claimants' side of the committee is made up of myself, Justin Levinson of 1 Crown Office Row, David Greenwood of Switalski's and David McClenaghan of Bolt Burdon Kemp. The Defendants' side is made up of Sarah Erwin-Jones of Browne Jacobson, Adam Weitzman QC of 7 Bedford Row, a representative of the Association of British Insurers and a representative of the National Forum for Risk Management in the Public Sector (ALARM).

The meeting will take place in either April or May of this year. Master McCloud is aiming to present a final Pre Action Protocol to the APIL Conference in June 2017. The Claimants' side of the committee is meeting shortly to discuss their approach.

Further details about the Forum and the Pre Action Protocol can be found on my Linked In page at:-

https://www.linkedin.com/pulse/latest-news-historic-abuse-litigation-forum-malcolm-johnson

Malcolm Johnson is a Senior Associate at BL Claims, London
https://www.blclaims.co.uk/our-people/malcolm-johnson/

Campaign pushes for end of child poverty and abuse

A campaign group have published a hard-hitting short film to highlight the link between child poverty and abuse, in the hope that it raises awareness and brings an end to the correlation between these factors in our communities.

The short film, Gaslighting, is based on true events and follows a young girl, Brooke, who has been part of 'the system' – social services, youth offending institutes, and care – since the age of eight.

Being brought up in a precarious environment resulted in Brooke being groomed and abused by a family member, who has psychological control over her, and is grooming a number of other vulnerable children in the local area.

The campaign is being supported by the Association of Child Abuse Lawyers (ACAL), for whom our Peter Garsden is President, and is a stark look at how a disproportionate amount of youth offenders come from low income areas.

Harrowing Awareness Campaign

The short film shows a cycle of abuse that leaves a young girl angry and volatile, which leads to her acting out, being expelled from school, and eventually being in trouble with the law.

While harrowing and difficult to watch, the film highlights the clear links between abusive relationships amongst legal guardians – in this case Brooke's mother and boyfriend – poverty, child abuse, and criminality.

The campaign organisers hope that the short film highlights that some children act out and offend because of poverty and sexual abuse.

Gaslighting was produced by a team of people that have worked with abused teenagers and young offenders, which enables the short film to possess a stark realism.

In a statement on the campaign website, the film's writer and director Elaine Wickham explains:

"I have run film production and screenwriting programmes for young offenders and have taught over 100 students deemed 'unteachable'."

"Most of my students were in care, from broken homes and abusive backgrounds, most had attempted suicide and self- harmed, many were institutionalised, apathetic, distrusting and violent, few could read or write."

"Most importantly, all, and I mean all, had a story to tell, a moment when the offending started and the violence began, when that first adult broke their trust and stole their childhood."

Challenging Underlying Issues

The objective of the campaign is to challenge the underlying issues that surround youth offenders and make the public consider the causes of youth crime, instead of focusing on the crime itself.

Against a backdrop of negative public perception against youth offenders the campaign film hopes to promote tolerance and empathy towards youth offenders that have been victims of poverty and abuse.

The campaign is looking to alter the public perception on youth offenders by highlighting that there are a range of factors that can contribute to criminality.

Discussing the campaign, Peter said:

"This is such an important campaign that seeks to make the wider public aware of the underlying factors that can result in youth offending."

"There is a direct link between poverty, child abuse, and youth offending, with some of the child abuse cases we deal with at Simpson Millar involving clients who have broken the law in anger and retaliation to their earlier abuse."

"Sadly there seems to be a lack of understanding of the psychological effects of child abuse amongst the wider public; but survivors of abuse never forget what happened to them at a young age."

"As is human nature, when people struggle to deal with emotional and psychological pressures they often act out, which can result in them being reprimanded by the law – this point is surmised perfectly by the hard-hitting Gaslighting campaign film as the main character is sentenced for acting out after being caught in a cycle of abuse."

"Ultimately, the law is rigid in its implementation, which means that underlying factors and circumstances that can contribute to offences can be difficult to put to a judge."

Peter Garsden

President of ACAL, Head of the Abuse Department at Simpson Millar Solicitors

*To view the film follow this link https://www.impartplayer.com/products/gaslighting

Why the Child Abuse Inquiry is right to extend its Truth Project to prisons

In a move that has been widely derided, the Independent Inquiry into Child Sexual Abuse (IICSA) has taken its truth project to prisons in a hope to take reports from inmates who were allegedly abused as children.

The move will see inquiry staff enter prisons and talk to inmates who were allegedly abused as children, in the hope that they gain a better understanding of how the institutions that should have protected them as children failed in their duty of care.

Some commentators have claimed that this will encourage false allegations, especially amongst inmates who they immediately dismiss as distrustful.

Responding to this commentary, Peter Garsden – Head of Abuse Law at Simpson Millar LLP – explains how the inquiry's truth project seems to have been misunderstood and underlines the

fact that abuse survivors are disproportionally represented in prisons, highlighting the relevance of the IICSA listening to the experience of inmates.

Misunderstanding the Truth Project

The IICSA's truth project gives abuse survivors the opportunity to share their experiences with a member of the inquiry staff unchallenged.

Inquiry staff will not question or challenge the survivor's account of events and will simply listen and record their story.

A record of the conversation can then be passed on to the police if requested, who will investigate with the usual due process and will interview the survivor and gather evidence as in any other criminal case.

The crucial aspect of the truth project is that it gives abuse survivors a safe and confidential environment to share harrowing experiences without being quizzed, questioned, or challenged as they have likely been for decades prior when they have tried to report abuse.

The truth project is a significant part of the IICSA for abuse survivors who have been ignored and dismissed for decades, for them it is a chance to finally speak out and share their experience.

Once they have made their initial submission, the police will investigate using due process and survivors' accounts will be questioned and quizzed, it is only the initial submission to the inquiry staff that is recorded unchallenged as a way of encouraging those who were previously ignored to come forward and speak out.

Critics of the IICSA that say that seeking out abuse survivors in prison will allow them to make false allegations without challenge, however with most instances of claiming that reports of abuse are false these critics fail to realise that if these survivors wish to pursue their abuser and criminal charges or a civil claim is brought then usual investigations and evidence gathering is required and will take place.

Essentially, giving false information to the truth project will not be of benefit to those trying to cheat any sort of system, while for those genuine abuse survivors this branch of the IICSA is an unprecedented chance to speak freely about how they were failed as children, a chance that they have not had in the past.

Significant Effect of Abuse

The IICSA would not have taken the consideration of entering prisons lightly and it is likely that they considered the implications and value of entering jails extensively before extending the truth project to the prison system.

A high proportion of prisoners were abused in care, a fact that justifies IISCA conducting interviews in prisons.

In most instances, inmates will be incarcerated for entirely different matters to those being investigated by the IICSA, but it is important to note that in many cases of child abuse survivors do struggle to cope with their experience and can act out as a result – this is especially prevalent if the abuse was reported but ignored in the past.

Discussing the truth project visiting prisons, Peter said:

“To vilify complainants without justification is entirely wrong and slanderous to the many thousands of complainants of abuse.”

“To pre-judge the veracity of allegations in general terms is tantamount to silencing victims in the same way as abusers behaved at the time of the abuse, which thus compounds the abuse which has already taken place.”

“Most victims of abuse remain silent for many years, and do not disclose abuse out of shame. It is very important that they have the trust of those to whom they are making their complaints.”

“Just because the victims are in prison, does not make the allegations any less truthful.”

“Prisoners are an easy target for those who campaign on the false allegations campaign because of their criminal record, which sometimes include offences of dishonesty.”

Peter Garsden

President of ACAL, Head of the Abuse Department at Simpson Millar Solicitors

Mandatory Reporting – Child Abuse

The government consultation on mandatory reporting of child abuse and neglect has coincided with the recent influx of allegations of abuse in football and the FA’s announcement that it will be conducting a thorough inquiry into the recent allegations of child sexual abuse within the sport. Whilst the government consultation document predominantly focuses on childrens' care and welfare services and the professionals working within those services, it is very likely that the current disclosures by high profile ex-players and the surrounding media frenzy will take the focus of the consultation in the direction of an area abuse that was originally envisaged as an ‘add on’.

The consultation document invited views on whether mandatory reporting and/or a duty to act should be introduced and whether any such duty if introduced should be extended to other areas providing services to or working with children, such as sports and other recreational activities.

What is Mandatory Reporting?

Mandatory reporting laws are laws that would be passed by parliament requiring organisations and/or individuals to report cases of known or suspected child abuse or neglect to the relevant agency. In England this would be to childrens social services. Compliance would not be optional and failure to report could result in a whole range of sanctions, including criminal sanctions.

Many cases of child abuse and neglect happen in private and it is widely accepted that those suffering abuse often do not disclose or report the abuse until many years later and sometimes never at all. The principal motivation for the introduction of mandatory reporting is to bring cases of abuse and neglect to the attention of the relevant child protection agencies and to improve outcomes for children.

Several countries including Australia, USA and Canada already have mandatory reporting laws.

The current legal obligations

Under the current legal framework in the UK individuals and organisations with responsibility for child welfare and protection or who provide services to or work with children, are subject to a whole range of legal requirements and regulations, policies and guidance. There is however no general legal requirement on practitioners and organisations working with children to report either known or suspected child abuse and neglect

Sports clubs and associations currently have to follow statutory guidance (Working together to Safeguard Children 2015) which has broad application, providing best practice guidance to all those who work with children in any capacity. It applies to those involved directly in childrens welfare services such as local authorities, social workers, the police and healthcare professionals but also to organisations that provide other services, such as sports and other recreational activities. The guidance provides that those who work with children in any capacity should make an immediate referral to the local authority children social care services if they believe a child has suffered harm or is likely to do so. Whilst this is not a mandatory obligation, the guidance must be taken into account and if departed from agencies or organisations must have clear reasons for doing so.

The FA and other sporting associations all have their own safeguarding policies and procedures in respect of which affiliated clubs and organisations are required to adhere as a condition of membership. The NSPCC works closely with such associations and clubs and has a designated Child Protection in Sport Unit (CPSU)

The Government Consultation

The child protection system in the UK has been under scrutiny for many years following high profile cases such as the tragic cases of Baby P and Daniel Pelka. Whilst a number of changes have been introduced the system remains under review and the government have recognised that, despite the best efforts of practitioners working with children and families, some abuse and neglect still goes undetected. The government are working on a whole number of system reforms focusing on; people and leadership; practice and systems; governance and accountability and tackling child sexual exploitation.

The issue of mandatory reporting is just one possible new measure that the government are considering. It has been a topic of debate for many years with a whole range of supporters putting pressure on the government to give serious consideration to its introduction. More recently the allegations of abuse by Jimmy Saville and the emergence of the problem of child sexual exploitation in Rotheram, Rochdale and other local authority areas have added momentum to the debate. Along with the more recent allegations within football, attention in now focused heavily on situations where children are exposed to abuse in more closed organisations / institutions or by those in positions of authority or power and in situations where those who may know or suspect abuse is occurring are deterred from speaking out through fear, concerns for their own positions or perhaps loyalty to or the preservation of their organisations.

The current consultation (Reporting and acting on child abuse and neglect 2016) focuses on England, but the Welsh government will be looking closely at the outcome. The consultation seeks views on the possible introduction a new of mandatory reporting law and also, in addition to or in the alternative, the introduction of a new positive duty to act.

Whilst Mandatory reporting would require individuals and organisations to report cases of known or suspected abuse and neglect following which the matter would then be dealt with by the appropriate authority or agency, a duty to act would be wider. The suggested duty to act would impose an obligation to take 'appropriate action' when a child is suffering from or is at risk of abuse or neglect. Exactly what that appropriate action would involve would depend on the particular circumstances. Appropriate action could include, but would not be limited to, reporting.

What, When and Who

The consultation looks specifically at the scope of any new requirement. If introduced t is likely to include all forms of abuse and neglect and will include online abuse and grooming. It will include suspected as well as known abuse. It would only apply to current and future abuse. It would not apply retrospectively so there would be no obligation in respect of past or historical abuse. The obligation would arise as soon as the individual/organisation has reasonable cause to suspect that a child is being abused or neglected.

If a new duty is introduced one significant aspect will be who the duty will apply to. The consultation envisages that it could apply to all "practitioners or organisations who undertake activities which bring them into close and frequent contact with children". This would place the duty on both individuals and organisations. The potential scope of its application is very wide.

The starting point is that it should apply as a minimum to individuals and/or organisations undertaking child welfare services including local authorities, schools, child care providers, police forces, health agencies, the national probation services and other community rehabilitation companies. Views are invited and consideration will be given as to whether the scope of any new requirement should be broader to take in local political figures, recreational, sporting or other similar activities such as guides and scouts, religious organisations, military services and even those involved in the provision of IT who may encounter online abuse in the course of their work.

If any new duty is introduced and its application includes sporting clubs and associations, the range of individuals who could find themselves within the scope of the duty is vast. It would not only apply to the coaches, trainers and those individuals in direct contact with children, but would also apply to senior and other staff within the organisation who may oversee or manage those services or activities. It could very well extend to those whose role in the organisation is purely supportive or administrative, for example caretakers, secretaries and cleaners.

Sanctions

Sanctions for breach of any new duty could include current professional and organisational sanctions, including employer sanctions and professional regulatory sanctions. Referral to the Disclosure and Barring Service (DBS) could lead to an individual being placed on a list held by the DBS of those who are in breach. Criminal sanctions could apply to both individuals and organisations and could range from fines to imprisonment. Remedial Orders could be made requiring organisations to put right the failings. A publicity Order could be made requiring an organisation to publish a notice stating that is had been found in breach of the new duty.

Any sanctions for a duty to act would most likely be broader than mandatory reporting sanctions as it would focus on cases where there we reckless reasons for failure to act or because practitioners and/or organisations were indifferent to the harm or potential harm. In many cases failure of a duty to act would not be deliberate or even reckless and may be down to professional failures and organisational dysfunction.

Responses to the consultation

The period for submitting responses to the consultation closed in October. The responses will now be considered by the government in deciding whether or not to introduce mandatory reporting and/or the duty to act. A number of individual and organisational responses have been submitted and are freely available. The support for the introduction of a new duty varies amongst supporters in terms of the scope and application of the duty. NAPAC for example supports the introduction of a mandatory reporting duty but only for certain specified categories of individuals and organisations. They do not support the introduction of the duty to act as they feel the open ended nature is confusing.

The NSPCC has always supported the introduction of mandatory reporting but only to a limited category and specifically in relation to closed institutions, where there is are greater risks that the interests of the institution might be placed above the safety of children. Sporting clubs and organisations would arguably come within this type of institution. The NSPCC have concerns about the risk of counter productive consequences of a full form of mandatory reporting however and for this reason they are attracted to the alternative proposal of the duty to act.

The Healthcare and Professionals Council support the introduction of either a mandatory reporting law or the duty to act in principle but have reservations about the imposition of criminal sanctions and are reluctant to support the criminalisation of a one off professional failing.

Police and Crime Commissioner for Northumberland, Vera Baird, supports neither proposal and does not feel that the introduction of either will directly improve outcomes for children. Likewise, the Association of Directors and Childrens Services and the Local Government Association oppose the introduction of any new mandatory requirement and believing that we already have an effective system in place to work with and that mandatory reporting was introduced in other countries in response to significant levels of undisclosed abuse and rely on research which shows that the UK already has a greater percentage of disclosure and reporting than those other countries.

Many of those who oppose the idea of mandatory reporting are concerned that it will cause an influx of reports that will stretch an already overburdened system and divert resources away from other childrens services. They are concerned about spurious claims adding to this overburdening. It is also argued that it will not increase disclosure by children and in many instances will prevent children from speaking out for fear that their disclosure will not remain confidential. The Labour Party, who actively campaign for mandatory reporting, feel strongly that it is introduced provision will need to be made for the additional resources that will be needed for an inevitable spike in reporting and suggest that any new requirement should be rolled out in stages as to not to overburden services. They also highlight the importance of training for those affected.

What now for the FA and other sporting organisations

The introduction of mandatory reporting will not take away the need for sporting clubs and organisations to have well considered and effective child protection policies and procedures. Mandatory reporting will not replace existing duties, obligations and responsibilities but will add to them. What it can do is take away the responsibility of assessing whether a referral should be made instead placing the decision of whether further action should be taken in the hands of

those who are specifically trained to deal with such issues. It will offer protection for individual reporters from repercussions within their clubs and will place a responsibility on the organisation to support an individual reporter through the process.

Irrespective of whether the consultation ultimately leads to the introduction of a new mandatory reporting duty or other duty to act, the way that the FA and other sporting organisations make provision for child safeguarding and effectively adhere to internal and external child protection requirements in the future are going to be subject to ongoing scrutiny.

The government also has a responsibility to assist individuals and organisations in understanding their child protection obligations and itself recognises in the consultation document that “children are best protected when professionals are clear about what is required of them individually and how they need to work together” and It would be hoped that any changes will be accompanied by clear guidance and access to the necessary training.

Only a few weeks ago the House of Lords further debated the issue of child sexual abuse in football clubs. The Government was pressed for answers regarding the action they will be taking in response to the multiple allegations of child sexual abuse within the sport. Long standing mandatory reporting campaigner, Baroness Walmsley, reiterated her view on the overdue need for a mandatory reporting law and argued that “if we had a legal duty to report 20 years ago things would have been different”. The FA review will be specifically looking at what information the FA was aware of at the relevant time and what action was and should have been taken. It is highly likely that this review will highlight a number of situations where a mandatory reporting duty would have compelled an individual to report to a relevant agency outside the FA.

As lawyers acting for victims of abuse we have already seen an increase in the number of new claims for abuse in sport and it is likely that this is an area that will expand for practitioners in the foreseeable future. We expect to see these claims increasing across other types of sports.

Christine Sands, Partner and Head of Child Abuse Team
Jordans Solicitors, Dewsbury

CASE REPORTS

JE & Others –v- LB of A (1) LB of B (2) & LB of C (3)

Osbornes were instructed to act on behalf of 6 adult siblings in relation to complicated historic neglect cases against three local authorities. The claims dated from 1965 -1980 and all of the complainants had psychological injuries as a consequence of the alleged negligence.

By way of background information, Mr & Mrs E married in 1964 and had 6 children between 1965-1978. It was a violent, abusive alcohol fuelled marriage and in 1965 JE was born and when he was 5 months old he was sent overseas to live with an aunt. Prior to his birth Mrs E sought no antenatal care or treatment from her GP or local hospital.

In 1967 HE was born and by December 1967 the NSPCC had visited the family home and Mrs E had suffered two miscarriages between 1965 – 1967.

In 1968 JE was still living with an aunt and was admitted to hospital with two fractured arms and a fractured nose. He was discharged home from hospital into his aunt's care. In 1969 the police reported that Mr & Mrs E were not to be prosecuted in respect of JE's injuries but a referral was made by the police to social services. The London Borough of A (LB of A) did not carry out any further assessment of the situation.

At the end of January 1969 Mrs E attended the police station threatening to harm her children. In February 1969 JE was found to have further old and new injuries and these were thought to be non accidental. JE was taken into a care home by LB of A. In April 1969, CE is born and in July 1969 Mrs E is noted to have a fractured wrist and had been beaten up by her husband. They plan to separate.

In November 1969, HE and CE are diagnosed with salmonella and dysentery. Mr E is still reported to be beating his wife. She is seen with a black eye and by 1970 family to be at risk because of Mr E's violence.

In March 1970 HE attends the police station with physical injuries and HE and CE are placed into a children's home until early April 1970. No social work visits took place between January – June 1970. Police involved and contacted LB of A with concerns regarding Mr E's violence.

April 1970 CE noted to have a fractured arm. No child protection investigation in place. Mrs E is failing to collect the children from pre-school. June 1970 police attend family home and HE has facial injuries. HE And CE placed in care again in July 1970 when Mrs E is admitted to hospital and suffers a miscarriage.

In July 1970 RE is born. In August 1970, HE has nits and HE and CE return to the care of Mrs E.

The violence towards the children by Mrs E and towards Mrs E by Mr E continues. In October 1970, HE sustains another physical injury and no action was taken by LB of A. Instead JE was being integrated back into the family home even though he had not seen his parents for two years.

There are no social services visits between August 1971 – November 1971 and by 1972 to social services file is passed to LB of B. By August 1972 LB of B close the file and the matter is transferred back to LB of A. The violence continues within the family home and LB of B contact LB of A to discuss developments in the case, to no avail.

In 1973 the family move into a GLC property. Mrs E is attended pre-school to collect her children intoxicated. The violence escalates and Mrs E takes the children to Ireland in October 1973. Mrs E is in court on two occasions relating to violent behaviour.

LB of B open and then close the case again. There is no social work involvement from December 1973-October 1976.

In August 1975 SE was born. The family had fled to a women's refuge for safety.

In October 1976 all of the children were placed in care as Mrs E in hospital and suffered a miscarriage. All children retuned to Mrs E's care following her discharge home. Between May 1977 – July 1977 the family lived in Ireland and on their return there was a near drowning incident involving SE when Mrs E was intoxicated. The family were now living in another part of London and came under the care of LB of C.

In August 1978, Mrs E was sentenced to two years' probation. In December 1978 WE is born. The violence between Mr & Mrs E continues to escalate and Mrs E was sentenced to another 3 year's probation Order in March 1979. The children are neglected by Mr & Mrs E they are living in a squat. The children are in the family home in June 1979 Mrs E's two brothers murder another squatter in the home while the children are present. The children hear the fighting between their uncles and the squatter yet they remain living in the family home.

By September 1979 the family have moved back into the LB of A, the violence continues. LB of C had failed to carry out any assessments of the family while living in their borough.

In November 1979 the case is formally transferred back to LB of A by LB of C who close their files.

Mrs E continues to be intoxicated most of the day and the children are neglected and are living in an unhygienic home with very little food. The family home is unsuitable and the violence in the home is most of the time and in March 1980 she takes the children to Ireland. In April 1980, WE is placed I the "At Risk Register" he was admitted to hospital with a severe case of the measles but discharged back into the care of Mrs E.

In late April 1980, RE and HE were taken into care. In May 1980 CE sustains a fractured arm and no clear explanation for this injury is provided by Mr & Mrs E.

All 5 children were eventually taken into care by LB of A in May 1980 only to be Furness to their parents care in July 1980. JE remained in care as he refuses to return home. In November 1980 WE's name is removed from the "At Risk Register".

In May 1982, the 5 younger children are placed in care but are returned home thereafter. In January 1983 Mrs E put all the children in a taxi and sent them to Mr E's home in LB of C. LB of C advised Mr E to return the children to their mother's care and the file was closed.

Mrs E continues to drink and is intoxicated when collecting the children from school. In March 1983, case conference by LB of A, Mrs E only wants two of her children back. All children placed in care in April 1983. It is thought that SE was sexually assaulted while in care. In July 1983 the children are returned to Mrs E despite her heavy drinking.

In summer 1985 Mrs E takes the children on holiday and is drunk all of the time and SE fell off the seaside pier while in her care. Mrs E passed out on the beach as she was intoxicated and an ambulance was called to treat her.

After further abusive years living with Mr and or Mrs E the children the children gradually all left home and each have suffered significant psychological difficulties over the years.

Once the social services records had been received read and collated Letters of Claim were sent to LB of A, LB of B and LB of C. All claims were out of time by at least 28 years and the limitation dates had expired between April 1986 – December 1999. Expert evidence on breach of duty was obtained from Maria Ruegger social work expert. This report was supportive.

Letters of Claim were served in March 2015. A joint Letter of Response from all Defendants was received and negotiations commenced of settlement without the need for issue of proceedings.

Psychiatric evidence was obtained in the form of causation and condition & prognosis reports by Dr Rachel Gibbons, consultant psychiatrist and further documentary evidence was collated in relation to any other special damages being claimed.

Unfortunately the claimants' psychiatric expert evidence was not agreed by the defendant and the proposed that each claimant be examined by their expert psychiatrist.

In the interim negotiations took place all of the cases settled for 5 figure sums with liability for payment being split between LB of A and LB of C. General Damages and past losses in each case were estimated in the region of £20,000. The remaining damages being made up of future treatment and travel costs and loss of earnings.

Solicitor for all 6 Claimants Stephanie Prior Partner Osbornes

Counsel for Claimant's Christopher Gibson QC Outer Temple Chambers

Solicitor for Defendants Laura Broadhead Browne Jacobson

QFN v (1) Emmanuel Baptist Church & (2) London Borough of Bexley

The notable features of this case were the interesting circumstances which brought the claim about and that a civil claim succeeded where criminal proceedings were unable to proceed.

Background

Bolt Burdon Kemp were contacted by QFN in July 2015. In 2014 QFN reported non-recent abuse to the NSPCC and Metropolitan Police. Whilst the police investigated the case and believed that there was substance to QFN's allegations for reasons which will become clear the CPS decided not to press charges against QFN's abuser. The police advised QFN that in the circumstances they were unable to proceed with his case however he could consider bringing a civil claim for compensation.

QFN reported that in around 1972 he was sexually abused by K who lived in a flat above Emmanuel Baptist Church in Thamesmead, South London. QFN attended a youth club which K organised which took place in the church hall. Incidents of abuse took place in the church hall and in K's flat above the church after the youth club. Further incidents of abuse took place during a camping trip to Wales. QFN reported that K was a pastor at the church and also recalled him coming to his school, Parkway Primary School in Thamesmead to teach cycling.

In around 1973 QFN moved to Milton Keynes with his father. QFN was not aware that shortly after he left Thamesmead K was investigated for sexual offences against children. K was charged with offences against 7 children. In October 2973 QFN entered into a plea bargain of sorts where he pleaded guilty to offences against 3 children and the charges against the other 4 complainants were dropped. QFN was not a complainant in these proceedings and the abuse which he was subjected to went un-investigated by police at this time.

As QFN entered his adolescent years he began to experience mental health issues. He had difficulties dealing with authority and began to truant from school. He also started to drink alcohol and got in trouble with the law for offences including theft and criminal damage. As a teenager QFN developed Alcohol Dependence Syndrome which continued to affect him throughout his adult life and impacted on his social and familial relationships and his employability.

QFN continued to drink heavily until he was 47 years old. In 2007 QFN underwent a detox and successfully gave up alcohol. Unfortunately, upon giving up alcohol QFN developed further mental health issues and began to experience severe depression and suicidal ideation which were previously masked by his use of alcohol.

In 2013 QFN was admitted as an inpatient to a psychiatric ward following a period of serious sustained suicidal ideation. During his time on the psychiatric ward QFN disclosed his history of childhood sexual abuse for the first time. Thereafter QFN reported the abuse he was subjected to by K to the NSPCC and Metropolitan Police.

Proceedings

A letter of claim was sent to Emmanuel Baptist Church (EBC) on the basis that they were responsible for the abuse perpetrated by K as he was employed by them as a pastor and he organised youth activities on behalf of the church which took place on church property. EBC and their insurers subsequently instructed BLM to defend the claim.

EBC initially denied liability and stated that they had no record of K having ever been employed by them and no information about the youth activities which he organised or his convictions for offences against children. It became clear that the key issues in the claim were likely to be the nature of the abuser's relationship with the Defendant and the circumstances which gave rise to his convictions in 1973.

Despite the issues being clear it proved very difficult to carry out further investigations at this stage. The Claimant needed to obtain further details of the 1973 convictions however he was not entitled to crucial documents such as the 1973 indictment or the K's evidence from the 2014 criminal investigation under the terms of the Data Protection Act or via Subject Access provisions. Ultimately QFN took the bold step of issuing proceedings so that an application could be made for Third Party Disclosure from the Metropolitan Police and CPS. EBC supported this step and whilst they did not attend the hearing of the QFN's application they did provide a letter to place before the court voicing their support for the application.

QFN's application for Third Party Disclosure was successful. The resulting documents which were received from the Metropolitan Police and CPS included a copy of the 1973 certificate of conviction and indictment which showed that K had pleaded guilty to offences which were strikingly similar to those reported by QFN. The offences K pleaded guilty to occurred during the same time period and in identical locations to those reported by QFN. A transcript of K's statement to police was even more telling. The abuser recalled the offences he was convicted of in 1973 and advised that these occurred whilst he was a teacher at Parkway Primary School. He also stated that the camping trip to Wales where incidents of abuse took place was organised through the school rather than the church.

The documents provided by the police and CPS suggested that QFN may have been incorrect about the abuser's employment with Emmanuel Baptist Church. QFN took prompt action to add the London Borough of Bexley (LBB) to the claim as an additional Defendant on the basis that they owned and operated the school at the time of the abuse and the abuser was employed by them as a teacher.

Whilst LBB initially denied liability for the claim on the basis that they had no record of QFN attending their school or the abuser being employed by them, the Claimant carried out archival research in Bexley Archives and was able to obtain minutes of a governors' meeting in which the 1973 convictions were discussed. The governors noted that K had run afterschool clubs for the school and had organised and attended camping trips where incidents of abuse took place.

After QFN disclosed copies of these documents LBB promptly put forward an offer to settle QFN's claim. Brief negotiations ensued and LBB agreed to pay QFN a figure which was acceptable to him in full and final settlement of his claim. The claim against EBC was discontinued after they agreed that they would not seek any contribution to their costs from the Claimant. LBB also agreed not to pursue EBC for a contribution or indemnity. In essence LBB accepted that it was fully responsible for the abuse QFN was subjected to by K and settle the claim on this basis.

Conclusion

The outcome to the claim was extremely positive for QFN.

QFN had previously been denied justice on numerous occasions by the criminal justice system. QFN was failed in 1973 when the police did not take a statement from him as part of their investigations into K. He was failed again when prosecutors allowed K to enter into a plea bargain which allowed K to walk free without receiving a custodial sentence. QFN was let down a third time in 2014 when the CPS decided not to charge K with further offences against QFN.

Through a civil claim for compensation however QFN finally obtained justice and recognition of what he was subjected to in childhood. QFN was pleased that K's former employers accepted responsibility for their employee's actions.

This case also shows the importance of applications for Third Party Disclosure. Not only did QFN's application uncover documents which proved that incidents of abuse had taken place, it also uncovered new leads which helped the Claimant to carry out further investigations and revealed potential further defendants who ultimately settled the claim.

Marlon Ellis – Solicitor
Bolt Burdon Kemp

CICA Judicial Review of decision by First Tier Tribunal to reopen a case decided in 1997

The Queen On the Application of Criminal Injuries Compensation Authority v First Tier Tribunal (Criminal Injuries Compensation) and MB (interested party) [2016] EWHC 2745 (Admin)

https://www.farleys.com/wp-content/uploads/2016/11/R-CICA-v-FTT-kerr-j-approved-judgment.pdf

Background

M.B. was born in 1978. He was sexually abused between the ages of 10 and 14 by Andrew Fairley.

On 31 May 1996 Fairley was convicted of indecent assault charges relating to M.B.

In 2010 M.B. instructed Jonathan Bridge of Farleys to make a compensation claim in relation to the abuse. In the intervening period M.B. had suffered significant mental health problems including paranoid schizophrenia, depression, suicide attempts, drug and alcohol use.

On 16 August 2010 the CICA rejected this application on the basis that it was a duplicate of an application that had already been rejected without appeal in 1996.

It transpired that the Applicant's father had submitted an application on M.B.'s behalf in 1996 which had been rejected by the CICB on 27 June 1997 on the ground of non co-operation with the police.

This was a surprising decision given the conviction of the offender.

On 6 December 2011 an application was therefore submitted to reopen the 1996 application.

On 31 January 2014 a decision letter dated October 2013 was sent refusing to reopen M.B.'s case. An appeal was submitted on behalf of M.B. supported by medical evidence.

On 28 April 2015 Tribunal Judge Storey ruled in favour of M.B. In allowing the appeal it was found that M.B. probably authorised his father to make the original application in 1996 but that he is a vulnerable individual and there was no evidence he was notified of the outcome of that 1996 application.

On 2 July 2015 the CICA applied to Judicially Review Judge Storey's decision. Permission was granted on 6 August 2015 and the matter heard by Mr Justice Kerr on 1 November 2016.

CICA Grounds for Judicial Review

The CICA sought to challenge Judge Storey's decision on various grounds including:

1. Whether the Judge had failed to weigh the effect of the delay adequately.
2. Whether the Judge had sufficient regard to the difficulties the CICA would now face in attempting to investigate what happened in 1997 and the "administrative prejudice" to the CICA in dealing with such old cases.

3. The need for certainty and finality in decision making by a public body such as the CICA.
4. A failure to give weight to the extensive enquiries that the CICA would now need to make.
5. A failure to address delay by M.B. from 2010
6. An inadequacy of reasoning such that the CICA did not know why the original decision was made.
7. Resurrecting the case would cause the CICA to engage in a complex exercise to assess quantum involving consideration of medical evidence.

Decision

Mr Justice Kerr ruled in favour of M.B. He found that Judge Storey reached a properly reasoned conclusion that was open to her and was not "Wednesbury unreasonable". The factors weighing for and against reviving the case were properly balanced. In his judgment he states

"She was plainly aware that this was a case of historic sexual abuse and Charles J and his colleagues in the MG case had made specific reference to such cases and noted that mere lapse of time without more was not a reason to refuse an extension of time".

Relevance

Each case arising from historic child sex abuse is subjective. In each case the Court or Tribunal will need to balance the Defendant/Tribunal's prejudice in dealing with matters that happened decades ago with the evidence the Claimant presents to explain the delay and the cogency of the evidence to prove the claim such as criminal convictions of the offender.

The claim of M.B. shows that it is possible to challenge decisions by the CICB and CICA made decades earlier where there is strong evidence that such decision was wrong and good reasons why the challenge was not made sooner. Ultimately a balance on a fact sensitive basis will need to be struck and any challenge by way of Judicial Review will need to show an earlier decision as Wednesbury unreasonable.

M.B. Represented by E.A. Gumbel QC
1 Crown Office Row

J Bridge
Farleys LLP

CICA represented by B Collins QC

Case Submitted by Jonathan Bridge, Partner, Farleys LLP

DIARY DATE

Please note the following:

14th June 2017: The APIL/ACAL Abuse conference.
To be held at One Whitehall Place at the Royal Horseguards Hotel, London.
Further details:

https://www.apil.org.uk/files/Training/PDFs/Courses/2654Flyer.pdf

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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