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ACAL
Association of Child Abuse Lawyers

Lambeth Redress Scheme Update and the Independent Inquiry into Child Sexual Abuse

Malcolm Johnson, Hudgell Solicitors

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My last article on the Lambeth Redress Scheme was published in April of this year. In that article I described the way in which various issues under the Scheme had been tackled. The article can be found on my Linked In page at:-

https://www.linkedin.com/pulse/lambeth-childrens-home-redress-scheme-update-malcolm-johnson/

In that article, I reported on a meeting at Lambeth Council that took place on the 18th September 2019. It was reported as at the end of June 2019, that a total of 1,250 applications had been received since the Scheme was introduced. A total of £20,447,060 had been paid out of the scheme (including £3,333,040 in legal fees). 534 claims had been "finalised" of which 47 claims had been rejected. The total forecast for the whole Scheme at that time was £49,580,102. In an earlier Lambeth Cabinet Meeting of the 18th December 2017, some 3000 claims had been forecast at a total cost to the Scheme of £100 million.

Updates have been published at 6 monthly intervals. A year later, we now have an update, kindly circulated to the group of solicitors handling Lambeth Redress claims by Amy Clowrey of Switalskis. There is a Cabinet Report published by the Council entitled "Lambeth Children's Home Redress Scheme Update" which describes the situation as at 30.06.20.

According to this latest Cabinet Report, a total of 1617 applications have been received since the Scheme opened on the 2nd January 2018, of which 61% have been processed to a conclusion. This suggests that Lambeth's decision to keep the Scheme open for a further two years from the 1st January 2020 was the right one. As stated above, Lambeth initially forecast 3000 claims in 2017 but this was revised down to 2,100 at the end of the first year of the Scheme and that remains the current estimate. The slowing pace of new applications (138 applications received since January 2020) suggests that we may not reach 2,100. I would urge Lambeth to keep the Scheme open for a further two years the 1st January 2022, when it currently closes. Each application represents the experience of a former child in their care. No-one should be left behind.

The largest proportion of applicants (39%) were in care pre-1965 and the percentage drops as the decades follow with just under 5% from the 1990's. This reflects the national move to get children in care out of homes into foster care,

Opening Article – Lambeth Redress Scheme Update and the Independent Inquiry into Child Sexual Abuse – continued 1

although Lambeth appears to have been slower than other authorities to make that transition. The last Lambeth homes closed in around 1994.

Total Scheme expenditure is running at approximately £66.1 million, and the estimate for the final total is £100-125 million. The report goes on to consider the timescales for settlement. The average time for final payment of both the Harms Way Payment and the Individual Redress Payment is around 15 months.

The Cabinet Report contains the statement:-

"The Scheme provides compensation up to a maximum of £125,000, however some complex cases where special damages for aspects such as loss of earnings result in higher awards of compensation require a more detailed analysis of expert information. These cases over £125,000 are handled in the spirit of the Scheme but naturally take much longer to process."

This confirms the point that I made in my last article. It is perfectly possible to achieve a figure over £125,000 where the special damages claim is complex. According to the Cabinet Report, 68 claims have exceeded the £125,000 limit. As I pointed out in my last article, claims for care and psychiatric/psychological treatment together with the aggravated damages award do not appear to be caught by the £125,000 limit. However in my own experience, Lambeth's position on loss of earnings has been confusing when dealing with individual claims. In addition, the appeal panel may be resistant to the idea that a complex loss of earnings claim can take a claim over £125,000. In one case of mine where a large schedule of loss of earnings was presented, Lambeth awarded £15,000 in "additional losses" on top of the £25,000 award for Band 4 losses (which incorporate loss of earnings). That case was settled, but there was then a dispute about the level of our costs which we took to appeal. The appeal panel said that although we had formulated a convention schedule of loss, the Scheme was designed to compensate "Loss of educational opportunity - Impairment of earning capacity - Significant handicap on the labour market including periods of unemployment."

Conversely, one welcome feature of the operation of the Scheme has been the minimal impact of the Covid epidemic. The Scheme appears to have operated much the same as it did beforehand. Lambeth and their solicitors, Kennedys are perfectly amenable to agree to virtual meetings between Applicants and psychiatrists, as indeed seems to be the case in wider personal injury litigation. One client of mine simply used a facility on her mobile phone to meet with the psychiatrist.

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Another positive feature of the Scheme and the way that it has been operated by Lambeth's solicitors, Kennedys is their flexibility when it comes to the presentation of evidence or new heads of claim at a late stage. There has also been a practical approach in general to increasing offers. For the most part, the trench warfare mindset seen in civil litigation is absent. In one case identified by a document accompanying the Cabinet Report, "Executive summary of Audit report on the Administration of the Lambeth Children's Homes Redress Scheme", an applicant who had accepted an Individual Redress Payment without seeing a psychiatrist was allowed to resile from that settlement. In another case, the applicant had no recollection whatsoever of sexual abuse due to amnesia, but his award was increased when a different applicant named him as the victim of a known Shirley Oaks abuser. The Executive Summary repays reading, and by and large, I think it is a fair representation of the way in which the Scheme is now working.

The Cabinet Report contains detail as to how many awards have been under the four different bands. It also addresses the issue of costs. The total paid to applicants' solicitors has been an average 18% of the total Individual Redress Payment. A table has been produced in the report showing how much each solicitor's firm is charging as an average. This ranges from 11% to 24%. There is also a table showing the average settlements across each firm. On the appeal side, as at the 30th June 2020, 55 appeals had been received by the Appeals Panel, with nearly half of these relating to costs.

The Cabinet Report also details the efforts that Lambeth has been making to advertise the Scheme. This has included media outlets in Nigeria and Jamaica, as well as approaches to Commonwealth consulates.

The report also considers the impact of the Independent Inquiry into Child Sexual Abuse (IICSA). At the time of writing, we await the report of Professor Alexis Jay in the Lambeth strand of that inquiry. The hearings in that strand came to an end in July 2020.

Hudgells was one of the firms representing various former children in care. I think it's fair to say that the picture presented of children's experiences in Lambeth's care was a horrifying one of ineptitude and corruption. There were thousands of documents disclosed, but I was struck by one set of meeting minutes produced around 1986, which described the discussions held between social workers engaged with children in the homes. The talk was mainly about overtime, faulty equipment and the need to cut down on social workers "moonlighting" between homes. There was no attempt or desire to confront the massive scale of the abuse and neglect taking place in those same homes. The Inquiry did well to identify those Lambeth social workers who were convicted of abusers, but the statements submitted to the Inquiry and indeed those emanating from the Redress Scheme show that many more social workers escaped prosecution or disciplinary action.

One senior social worker, when interviewed by the Inquiry said that his social workers had done their best. It was plain that he did not accept the scale of the catastrophe that had taken place under his watch, something that the scale of the Redress Scheme compensation forces into the light. A client of mine who participated in the Inquiry, put it mildly when she said that social workers were more interested in paying their mortgages than protecting children. Once again, it appears to be the interests of the adults who administered and had oversight of these homes, which took priority. The children were simply grist to a mill that left them abandoned and unsupported as they themselves became adults. The documentation produced by Lambeth is full of declarations of good intentions and forward thinking policy, but this was simply a corporate shop front, masking the reality of a truly appalling situation.

The Inquiry identified a recurrent theme, whereby Lambeth would address any serious child abuse warnings by producing a report at considerable time and expense and then ignoring its recommendations. Other child abuse warnings that the council regarded as less serious, it simply ignored or found ways to bury. The classic example of this theme in action were the multiple investigations and reports on two homes for the disabled, Ivy House and Monkton Street in around 1986, which the Inquiry considered in some detail. Children in these homes are automatically awarded a Harms Way Payment under the Scheme, which must reflect Lambeth's acceptance of their basic failure to protect this particularly vulnerable category.

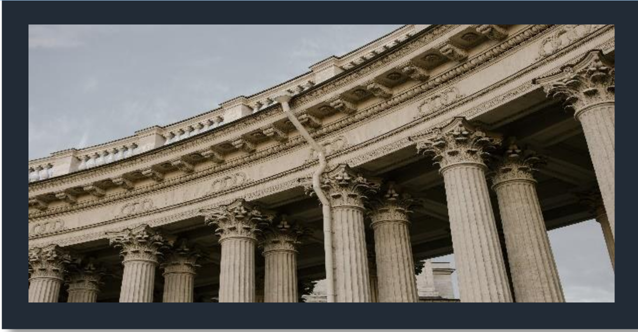
It was always frustrating to hear one social worker after another, say that they did not personally know an abuser who had been hired to look after children, or that they were not personally responsible for these homes or quite simply that they could not remember how things had played out at a particular time. There were a few councillors who were prepared to apologise for what had happened, but again what emerged from their evidence is that these elected representatives seemed to have little if any influence over anything that happened in the council. Above all, there was the sense that Lambeth was a borough that fought a long and vicious war against change. Councillors, employees and union representatives bear responsibility for what happened. Central government also bears responsibility, because evidence from the Inquiry showed that although it had the power to intervene, it took action too late.

It is not surprising that many survivors believe that there was a massive paedophile conspiracy afoot in Lambeth. They were there, and they have repeatedly given evidence of abuse that happened in plain sight, children who were being drugged or children being taken out of the homes to be abused by groups of men.

It should be said that Lambeth was not the only local authority investigated by IICSA. Nottinghamshire County Council and Nottingham City Council was also the subject of the Inquiry, and having read the transcript of those proceedings, there was the same sense of social workers who were there on the ground at the time, stating that they had no idea whatsoever of the abuse taking place on their watch, even when they were working closely with prolific abusers.

We await Professor Jay's report with great anticipation.

Malcolm Johnson heads the Child Abuse Compensation Claims department at Hudgell Solicitors – mj@hudgellsolicitors.co.uk



Mental Health inpatient admissions for adolescents: A place of safety or cause of further trauma?

By: Lindsey Connett,

Enable Law

Growing up in the UK, you are taught to believe that a hospital is a place of safety. A place you can feel cared for, protected and valued. But is that the case if you are an adolescent away from home for the first time? And your first time away from home is a locked secure mental health ward? And you have been admitted because you are having mental health difficulties as a consequence of sexual abuse as a child or young teenager?

What if a period of time as an inpatient actually makes you worse than before you were admitted?

I act for a number of young people who were admitted to either private or NHS CAHMS or low secure units following childhood abuse and consequently suffered further abuse whilst there. These cases anecdotally show that there is little to no trauma-based therapy provided to deal with the root cause of a young person's trauma and reason for admission. Focus is instead centred upon their 'poor behaviour', 'manipulative tendencies' and inability to live in the 'normal' community. The are subjected to a regime of inappropriate and excessive restraint, regular use of intramuscular medication, seclusion and isolation.

T was a young lady who wanted to be a teacher. She attended a high performing school and was in the top set for all subjects. She was also an avid sports player and had been selected to represent her County.

T was admitted to the hospital at the age of 14. She had experienced sexual abuse at the age of 12. The perpetrator of the abuse came from outside the family and had groomed T over a significant period of time in the community. T disclosed the abuse but the CPS did not bring charges. T's behaviour began to deteriorate. She stopped playing sport and became introverted and isolated form her friends. She began to hear voices and respond to visual hallucinations. Her parents sought the advice of the local CAHMS community team and T was diagnosed with trauma-based psychosis.

T began to self-harm and made a number of overdose attempts. She was admitted to a low secure CAHMS unit. Within 2 days of admission, she had been detained under Section 3 of the Mental Health Act and her diagnosis was changed to Emotionally Unstable Personality Disorder. There was no therapy put in place. During the first 4 months of her admission, T was physically restrained by up to 5 staff on no less than 104 occasions, some for periods in excess of an hour. There were 24 incidents of the use of rapid tranquilisation medication. She was not granted bathroom privacy and she was not allowed to leave the unit. There was no education provided.

Mental Health inpatient admissions for adolescents: A place of safety or cause of further trauma?- continued 1

After 4 months, T was allowed section 17 leave in the grounds of the hospital. She attempted to run away and return home. The hospital team placed her in isolation, where she remained for the next 2 months. She was fed through a hatch in the doorway and slept on a mattress on the floor. She was then returned to the ward for the remainder of her admission.

T's parents challenged her detention under the Mental Health Act and it was agreed by the Tribunal Panel that being in the locked unit was not the right placement for her. She had deteriorated rather than improved. The Panel were especially critical of the lack of therapy provided and the use of isolation. T was discharged from her section at the age of 16 and moved to a supportive living placement where she received bespoke trauma therapy.

The supportive living placement did not use physical restraint. Over time, and with a trusting relationship with her staff team, T was able to be weaned off her anti-psychotic medication. She began to engage more in daily living and asked to go back to school. However, she was left with a lasting legacy of her time at the inpatient unit. As a result of an incorrect intramuscular injection into her bottom, she was left with permanent nerve damage to the nerves running down her left leg. She suffered with pin and needles and had difficulty walking when she was tired. She suffered nightmares and reacted badly to the sound of alarm bells. She was fearful of new people and her staff team had to be entirely female. She was diagnosed with post-traumatic stress disorder and required further therapy to deal specifically with the lasting effects of her experiences.

Abuse such as described above can give rise to a claim for personal injury where there are identifiable physical injuries, a psychiatric injury (such as PTSD) or identified sexual assaults. I would argue that we should also be including claims for living in 'a climate of fear'; in an environment where you are either witnessing daily abuse or being the victim of the abuse yourself, and are having to live in an isolated enclosed unit that you cannot leave, where you are completely in the control of others and where you do not know if you will be the next 'target' or not. Imagine being terrified for your own safety for 24 hours a day and knowing that you cannot escape. The health implications of living in that constant state of long-term fear are immense.

There are also claims for breaches of human rights under Articles 3, 5 and 8. Restraint can be unlawful if used excessively and not as a last resort. Seclusion and isolation may also amount to false imprisonment.

Mental Health inpatient admissions for adolescents: A place of safety or cause of further trauma?- continued 2

In the above case I was able to secure damages of £45,000 for T which allowed the family to pay for T's extensive future therapy needs and for any additional assistance she required as a result of her nerve injury. When I last spoke with T, she proudly told me she was back at college and working towards her qualifications. She still has high hopes for what she wants to do with her life.

Lindsey Connett is an Associate Solicitor at Enable Law.

She has been working with survivors of abuse in hospitals and supported living units for over 10 years. She is also a PhD student at the University of Exeter, where her research focuses on the legal and social policy implications of scandal in healthcare.

What Happened at Aston Hall?

By: Dianne Collins, Nelsons Solicitors, Derby

In March 2016 I received a telephone call from a lady who claimed that when she was ten years old in the 1960s, she was admitted to a mental institution in Aston-on-Trent near Derby. She told me that it was a 'horrible' place with bars on the windows and heavy doors which clanged shut and were locked. The windows did not open more than a few inches and she and the other girls on her ward were not allowed outside without escorts. Many of the nurses were unkind and she and the other girls were made to clean the parquet floors using 'bumpers'. Her 'crime' was that she had been physically abused at home, had regularly run away and truanted from school. She came under the care of social services/probation and had been admitted to Aston Hall for 'treatment'.

She told me that whilst she was there she was taken by a nurse on a regular basis, to a room which she described as a cell. It was a small room with high windows with shutters over them which blocked out most of the light. There was a mattress on the floor and nothing else in the room. She was told to undress completely and then given a heavy gown to wear which she described as a straitjacket. She was then told to wait.

She was left in the room alone and terrified until the Superintendent of the hospital, Dr Kenneth Milner, entered the room. There was nobody else present. He lay down on the floor next to her and injected her in her arm. The injection made her woozy and the room spin. He then asked her probing questions, regressing her to her very early childhood and insisted that a family member had sexually abused her. She knew that this was not true but Dr Milner was relentless in his questioning until she said whatever he wanted to hear to make him stop. He then put a gauze mask on her face and dripped ether onto it and this lady remembered no more until she woke up alone and terrified. She never told anyone – who would believe her?

Quite a story! I immediately googled Aston Hall and realised that the Derby Telegraph had broken this story a few weeks earlier.

https://www.derbytelegraph.co.uk/news/local-news/how-revealed-horrific-allegations-child-1816314

Aston Hall was being demolished to make way for a housing estate and a video had been put online by someone who had gained access to the building. This had prompted comments online from people who had been admitted there as children who started to tell the horrific stories of abuse that they had suffered there.

Nelsons accepted this lady's claim on a 'no-win no-fee' basis and over the following days, more and more survivors of Aston Hall came forward, all with similar allegations. We accepted all of their claims. They were all relieved that finally, someone believed them. They felt validated after years of silence.

Some remembered Dr Milner sexually and physically abusing them whilst they were drugged. Others only remembered the terror they felt in that room. It became clear that Dr Milner had been abusing 'problem' children in this way under the auspices of a treatment known as 'narco-analysis'. This treatment is a recognized psychiatric treatment and was used on shell-shocked soldiers in an effort to get them back to the Front quickly in World War 1. The drug that was routinely given during this treatment was a strong barbiturate called Sodium Amytal as well as Ether. There was no anaesthetist in the room nor was there any resuscitation equipment had anything gone wrong.

We successfully argued that it was not a treatment which should be used on children and certainly not in the terrifying and unsafe circumstances which Dr Milner was administering it. We obtained a liability report from a Child Psychiatrist who was practising as a Consultant in the 1960s (no mean feat!) who confirmed that even by the standards of the times, this was not an acceptable treatment for children, nor was it being administered in a clinically acceptable setting.

We also obtained a report from another expert who had experience of administering narco-analysis treatment to adults. His conclusion was that administering this treatment to children and in these circumstances, was wholly unacceptable by the standards of the time and he admitted to feeling "shocked and distressed" when reading the accounts of the whole regime at Aston Hall. His opinion was that the care regime amounted to treatment that, even by the standards of the time, was "inhumane and degrading".

Some survivors made allegations of physical abuse by the staff at Aston Hall.

The physical and sexual abuse which many Claimants alleged was harder to prove taking into account the risk of the Court not allowing the claims to go ahead because of the amount of time which had elapsed since the alleged abuse. In most cases the alleged abuse took place around fifty years ago and the chances of the Defendant showing that they would be prejudiced in defending those claims was high.

It was extremely fortunate that the records from Aston Hall had survived for over fifty years and were being held by Derbyshire Healthcare NHS Foundation Trust. The records documented that this 'treatment' had been given to these children, the youngest of whom was five years old. Fast forward to August 2019 and after three and a half years of frustrating negotiations with solicitors acting for The Secretary of State for Health and Social Care, we agreed a Settlement Scheme, whereby Claimants would be compensated on a sliding scale for the number of narco-analysis 'treatments' they had endured.

What Happened at Aston Hall?- continued 2

The Claimants have, without exception, been left traumatised by the abuse received at Aston Hall and have carried this trauma with them throughout their adults lives, only finding the courage to come forward when they realised that they were not alone. They wanted answers to their questions and accountability for the decisions made by the Authorities when they were children.

The Claimants have been promised a letter of apology from Matt Hancock. It is now twelve months since the Settlement Scheme was signed. Sadly, some survivors have passed away without having received the apology that they deserve. We hope to receive these letters very shortly.

Derbyshire Police investigated the survivors' claims under Operation Thalia and in July 2019, they published their report after a four year investigation. They concluded that had Dr Milner been alive today there was sufficient evidence for him to have been questioned under caution about the allegations. Unfortunately, Dr Milner died in 1975 and the police were unable to trace any other members of staff against whom there may have been sufficient evidence to prosecute.

http://archive.derbyshire.police.uk/Documents/News-and-Appeals/Forcewide/Op-Thalia-Aston-Hall-Report.pdf

Nelsons acted for 84 Claimants. In total there were over 150 Claimants who brought successful claims under the Scheme. I suspect that many more had already passed away taking the awful secret of their abuse with them.

It is important to note that it is not too late for survivors of Aston Hall to bring a claim under the Scheme. If they received 'narco-analysis treatment' whilst a patient at Aston Hall and the records exist that document those treatments, they will be entitled to compensation under the Scheme.

Dianne Collins, Senior Associate and Solicitor at Nelsons Solicitors, Derby

Dianne Collins, tel: 07940 260113.

Extension of the Compensation Scheme for Former Detainees of the Medomsley Detention Centre

By: Jane Matthews,

Watson Woodhouse

Jordans and Watson Woodhouse Solicitors, together with a number of other Solicitors firms, have been working together to offer justice for victims that suffered physical abuse whilst detained at Medomsley Detention Centre.

Medomsley Detention Centre was a youth centre in Consett, County Durham. It was open between 1961 and 1987. The brutal regime wrongly attributed to the “short, sharp, shock” policy that was implemented by the Conservative Government of 1979.

Former Officers were investigated as part of Operation Seabrook, and last year five former officers were convicted of physically abusing detainees over the course of three separate Crown Court hearings. The longest sentence being 8 ½ years given to Christopher Onslow, the gym instructor. Two further Officers are facing trial in November 2021; Ian Nicholson and Alexander Flavell.

Following extensive negotiations, in March of this year, the Ministry of Justice introduced a compensation scheme for former detainees who had suffered physical assaults by the convicted Officers. This initial scheme restricted compensation to detainees who alleged abuse against the convicted Officers, namely: Christopher Onslow; John McGee; Brian Greenwell; Kevin Blakely and Alan Bramley.

Whilst the scheme has provided a means by which former detainees can be compensated in circumstances where damages may be denied under the existing civil law, the requirement that the alleged abuse needed to relate to a convicted offender, still left a significant number of individuals without redress. In addition to the five convicted officers, numerous detainees had named many other former Officers and ex-employees of Medomsley.

On 26th August 2020, following our further discussions with the Ministry of Justice, the expansion of the scheme was announced.

The scheme has now been extended, to enable former detainees who have made allegations against an Officer who has not been convicted, to receive compensation under the scheme. Therefore, more detainees will now be eligible for compensation without going through complex legal proceedings.

The compensation awarded under the extended scheme remains the same as the original scheme. The provision for a higher award if a person had suffered a lasting physical and/or psychological injury is still available. Fixed legal costs are also paid under the scheme.

Extension of the Compensation Scheme for Former Detainees of the Medomsley Detention Centre – continued 1

The categories and the awards are as follows:

Category 1 - You were detained at Medomsley for a period of 3 months or less and receive £1750.00

Category 2 - You were detained at Medomsley for a period of more than 3 months and receive £2500.00

Category 3 - You have provided medical evidence to show that you have suffered a lasting physical and/or psychological injury as a direct result of your treatment at Medomsley and receive £3,000 to £5,000.

Category 3 can be evidenced by the Claimants medical records. In relation to proving the psychological injuries, review of GP records, hospital records and if appropriate counselling records is recommended. Any references to disclosure of the abuse suffered at Medomsley to medical professionals is helpful. Similarly, any medical treatment received or reference to injuries or psychological symptoms that can be linked to the injuries suffered as a direct result of the abuse that the Claimant suffered should be highlighted in support of the claim.

An example of a lasting physical injury maybe a scarring injury resulting from an assault which can be evidenced by photographic evidence. There may be treatment records for counselling or a referral to mental health services where the abuse is discussed. The scheme does also allow for the instruction of a medical expert and there is a facility under the scheme for the cost of the report to be agreed with the Ministry of Justice.

The period of the Claimants' detention is usually established by reference to their PNC records. If the abuser has been named by the Claimant, the records must show that they were there at the same time as the abuser. There is no further criteria for the victims to prove that they suffered abuse.

We have encountered an issue with Claimants who were sentenced to a period of detention at Medomsley for the non-payment of a fines, as these offences will not be evidenced on their PNC. We are in discussions with the Ministry of Justice to try and resolve this, as we consider that every detainee who suffered abuse at Medomsley should be entitled to recover compensation under the scheme.

The Scheme was formally introduced earlier this year, just before the start of the first COVID 19 lockdown in March. Despite the disruption this has had across businesses and delays that this has caused to the court services, the scheme has in fact run very smoothly. The average time for a claim, from initial notification to receiving an award of compensation has been approximately 3 months. Payment of damages and fixed costs have been dealt with in a timely manner by the Ministry of Justice.

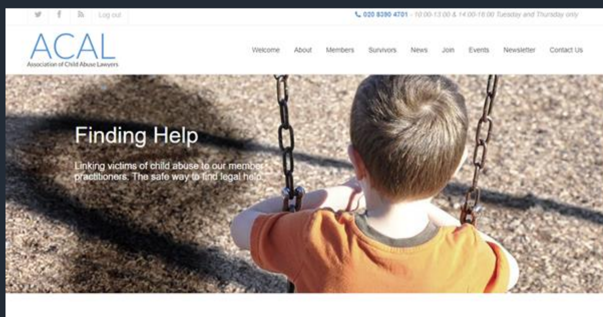
The response from our clients has always invariably, been positive. Clients have been pleased with the speed and ease of securing compensation under the scheme. The scheme is much less complex than the civil litigation process, with no possibility of having to attend court.

Extension of the Compensation Scheme for Former Detainees of the Medomsley Detention Centre – continued 2

To date, approximately 220 ex detainees of Medomsley have received compensation for physical abuse under the scheme. The scheme relates to physical abuse only, and both Jordans and Watson Woodhouse continue to represent survivors of sexual abuse at Medomsley through the usual civil litigation process.

Both firms are also actively supporting the campaign for a Public Inquiry regarding the abuse that took place at Medomsley, and how that could have occurred for over 25 years without discovery.

If anyone would like any further information regarding the scheme or the public enquiry please contact **Jane Matthews** at Jordans or **Alistair Smith** at Watson Woodhouse.



ACAL Website – it's really rather helpful so why not use it more often?

By: Peter Garsden,

Simpson Millar

The purpose of this article is to remind members what benefits there are in the ACAL website, and how much use can be made of it in every day work at the office. Our administrator, Rebecca, commented at the AGM that very few people actually log in to use it. Historically it has always been a first port of call when one needs background information to assist with a case. One tends to go straight to Google and search whereas the website, once you know what is there, would sometimes be a better resource.

I first designed the website with Microsoft Word in 1998, then migrated to Frontpage, and finally a much used programme in the past called Dreamweaver with a connected Access Database to house the much prized "Homes Database", which contained details of any children's home where allegations had been made against an alleged abuser with contact details for the solicitor concerned and other statistics where available. It was, and remains to this day, vitally important to obtain corroborative evidence from other complainants of abuse by either a certain individual or at a given "institution", as it is now entitled.

The world of abuse cases has obviously changed a lot since 1998 when it used to rely heavily on large scale Police Investigations into specific children's homes, whereas now, although the police do investigate, the multi-claimant children's home group action is a much rarer beast. Claims against individual abusers are more common, and the type of home is now much more varied, hence the need to change the title of the database. One might come across schools, church establishments, unincorporated bodies such as the Scouts, and the like.

Thus the need to populate the database with information is much more important. At Simpson Millar, the content management system automatically reminds you to do a search of the ACAL Database in each case. Despite this, there have been no new entries onto the database in recent times, something which I would like to change.

To add an institution to the database, simply fill in a form online here - https://www.childabuselawyers.com/institution-submission . As you can see below, some fields are compulsory.

ACAL Website – it's really rather helpful so why not use it more often? - continued 1

Institution Submission

Institution Information

INFORMATION	ADDRESS
Institution Name - Required	Building name/no
Institution Owner	Address Line 1
Duration of abuse	Address Line 2
Website	Town
Email	County
Phone	Postcode

ABOUT THE INCIDENT OR CASE

About

The Public ACAL Website

About 10 years ago we migrated the website onto a Content Management platform to make it easier to update, and also to make it easier to find on the Web. All existing content was retained. As one might expect there are the following sections :-

- Our History as an organisation including our Code of Practise which we all have to abide by
- News Items of interest to users.
- Events - details of any up and coming events such as the ACAL Conference (13th November this year)
- A list of Executive Officers with responsibilities and contact details.
- Campaigns we have/are waging eg better access to Care Records and the effect of CN & GN v Poole.
- A Survivor's page with help on what to do before going to a lawyer, what to expect, and links to
  - Find a Lawyer page – here the survivor can find any child abuse lawyer who is on the panel spilt into areas (for details about the rules for the panel and how to apply see https://www.childabuselawyers.com/join/solicitors-referral-scheme

ACAL Website – it's really rather helpful so why not use it more often? - continued 2

Find A Lawyer

We receive many requests for help from survivors of abuse. We are in a position, therefore to make referrals to Lawyers, who are members on the Panel (see below) Application details are on the Membership Details Page.

Cases will only be referred to solicitor members on our Panel. Solicitors on the Panel will have attended a satisfactory level of training.

Enquirers will be given a list of those solicitors who qualify for referral under our selection criteria, so that they can select a solicitor of their choice. Our members are not held out as "experts" in the field. A Personal Injury Panel is in existence.

ACAL cannot be held liable for the selection, recommendation, or performance of any member referred through the system.

SELECT LOCATION

- London (5)
- North East (3)
- South East (3)
- North West (2)
- Midlands (1)
- Scotland (1)
- South West (1)

Lawyer	Firm	Location	Link
David Greenwood	Switalskis Solicitors LLP	North East	more
Natalie Marrison	Ramsdens Solicitors	North East	more
Michael Hartley	Goodlaw Solicitors	South East	more

- Useful links and a training video created by one of the Survivor Groups

Member Benefits

I always thought that in return for a membership fee, one ought to be able to obtain access to certain "products", which non-members could not see. So, ever since the database was created members have always had exclusive access to certain useful resources.

Obviously, this material is hidden behind a login screen which can be accessed from either the menu at the bottom of each page of the top of the home page. If you try to access members material without logging in, you will be directed to the Join Page with a login button. Due to many hacking attempts at security, and in order to keep this part safe, we have added a security message which will send to your registered email address a numeric code to add into the login screen.

- The Institutions Database (1287 Entries) (it can be sorted by name, town, or county)

Institutions Database

Below is our most current list of Institutions, If you know of a institutions not listed please contribute to the database. To sort the list of Institutions please click 'sort' below and select the method you would like to sort the list by. To view the institution in details click the 'more' link to the right of that institution.

Search:

Organise Institutions by: Sort by

Current total: 1287

If you know of a institution not listed please contribute to the database.

ADD AN INSTITUTION

ACAL Website – it's really rather helpful so why not use it more often? – continued 3

-

Care Home	Owner	Town	County	Link
Church Farm Care Home				more
Durdan's Children's Home				more
Harris Homes				more

In order to add a new institution simply fill in the form detailed above.

- A list of recommended Counsel and Experts of all types with their contact details and a summary where the particular expert/counsel have requested details to be added (for a small fee)
- Legal Cases Database. This is a really useful resource and one which I have used on a regular basis. This has details of the case name, a summary, and a link to the judgment as one might expect. It contains details of every child abuse case since the beginning as I personally have kept it up to date. It includes judgments not freely available and case summaries submitted and published in the ACAL Newsletters over the years. The search facilities are extremely good in that the cases can be searched/sorted as follows:-
    - By case type ie you can have listed all the cases on, for example, Limitation, Liability, Quantum, Causation, Miscellaneous, and Costs.
    - Type of Court ie all the House of Lords, Supreme Court, Court of Appeal etc cases
    - By Year, so you can select "all the Limitation Cases heard in 2018, which produces this list

Legal Case
Catholic Child Welfare Society (Diocese of Middlesbrough) and Others v CD – Limitation
Murray v Devenish & Ors (Sons of the Sacred Heart of Jesus) [2018] – Limitation

By name in the conventional way from not only the title but also the summary so you could search for "Hoare", which actually produces this list

ACAL Website – it's really rather helpful so why not use it more often? – continued 4

Legal Case
A v Hoare – Limitation & Rape (outside 6 year limit)
A v. Hoare & 5 Others – Leading case on Liability, Limitation
A v Hoare (2008) – Limitation in assault – Discretion exercised
EB v John Haughton – Limitation post Hoare viz change of law, and Aggravated Damages
A v Hoare & 3 Others (2006) – Limitation; & Stubbins v Webb
Young v Catholic Care & Others – Limitation – S.14 Objective, S.33 extended to allow for Claimant feelings
X & Y v London Borough of Wandsworth – Liability, Limitation
C v. Middlesborough CC – Liability – succeeded on vicarious liability for assault, though lost on negligence
Albonetti v. Wirral MBC – Limitation – S.33 Discretion referred back to trial judge
J (2) K (3) P v (1) Archbishop of Birmingham (2) Trustees of the Birmingham Archdiocese of The Roman Catholic Church [2008]

- Legal Articles – this is a comprehensive list of many academic articles on various subject, often grafted from ACAL Newsletters but sometimes published elsewhere with the consent of the author. For instance one can find our response the Fixed Costs Consultation, the Civil Justice System (IICSA), Richard Scorers view on the abolition of Limitation in England and Wales, and my views on Redaction of Records following Durham v Dunn (2012).
- Members Directory – contact details for all members with a contact form for each one. Often useful.
- Resources – if one hovers one's mouse over the menu a sub-menu appears which includes
  - A Case Help Pack – something I devised for beginners to Child Abuse Work which can be purchased for £100. It is, however worth mentioning that various executive members have now published 2 books, the second of which is more up to date called "Guide to Child Abuse Compensation Claims" by Liz Gumbal QC, Malcolm Johnson, Justin Levinson, and Richard Scorer, which is available on Amazon here. It is up to date as at 2011.
  - Links to Useful Websites
  - Legal Papers – here there are links to various legal resources such as all the Multi Party Action Notices, the Waterhouse Report following the North Wales Tribunal Inquiry, IICSA (Independent Inquiry into Child Sexual Abuse) etc.
  - ACAL Brand Guidelines – if you want to use the ACAL Logo on any type of publication, there are guidelines which we have published.
- Newsletters – all the ACAL Newsletters some of which contain some very useful articles which I have quoted on more than one occasion in arguments before the Courts are produced in pdf form for download going back to 1999.

ACAL Website – it's really rather helpful so why not use it more often? – continued 5

- Social Media – we have both a Twitter, and Facebook Page which are accessible from the Front Page of the website. Any content published on the site gets copied to Twitter. Also, if you update your profile using the updating form then any tweets you produce get published in a sidebar on various page of the site eg the About us page

User Profile

Please note that updating you details here will only update your profile within the members directory, for the Find a Lawyer, Executive and Counsel profiles please email the office with changes, thank you.

First Name	Last Name
Peter	Garsden
E-mail *	Website
petergarsden@gmail.com	http://www.abuselaw.co.uk
Password *	Repeat Password *

Biographical Information

The above is a description of what you can find on the website. If you want to contribute, or find a newsworthy story/document of interest, I am always interested in publishing new content. Not only do we need content for the newsletter, which comes out in the Autumn and Spring, but also News Content and Articles of Interest. If you Tweet, by all means share the content with ACAL, so it will appear on our Twitter Page. Please do upload your institutions to the database we can continue to collaborate, and work together, which is the very essence of ACAL, and one of the reasons it was set up in 1998. Such is longevity that some of us are still members!

November 2020

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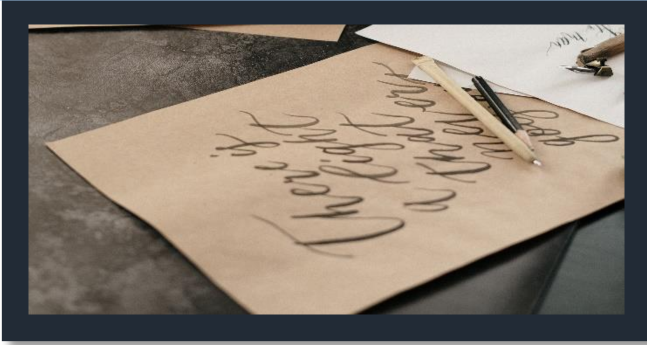


Local Authority failings of children post removal can prove costly

By: Jonathan Bridge, Farleys

A & S v Lancashire County Council

1. Background

I was approached some time ago to write an article about the case of A & S v LCC [2012] EWHC 1689. I acted for the Claimants in the case which resulted in a damages award of £9.6 million. This eclipsed the previous highest award in a claim of this nature and there were many interesting lessons to be learned from the case.

It is particularly apt that I write this in the same week as the Children's Commissioner delivers her damning verdict on care provision for children in this country.

2. Thousands of children in care are still being failed by the State

This was the conclusion of Children's Commissioner Anne Longfield in a report published this week. The report, entitled "The Children who no one knows what to do with" was prepared on the basis of research over a three year period. A full copy of the report can be found at www.childrenscommissioner.gov.uk and is worth a read for anybody working in this area.

Key points from the report include:

- Children are being "systematically let down" by the care system
- There is a "deep rooted institutional ambivalence" to the plight of children in care
- Private carers are making substantial profits while children's needs are not being met.
- There is a lack of stability with one in four children moving at least twice in a two year period.

Local Authority failings of children post removal can prove costly - continued 1

- The Government needs to move quickly to improve capacity, stability, quality and costs in residential care.

The reaction of Iryna Pona, policy manager at the Children's Society particularly resonated with my own experience of representing clients like A and S.

"Being moved from placement to placement not only makes it more likely children will feel lonely, confused and isolated, it will also leave them increasingly vulnerable to sexual and criminal exploitation especially if they are placed out of their home area."

I have represented many victims of paedophile gangs in Rochdale and elsewhere. Iryna's comment is absolutely right. Children are often exploited as soon as they arrive into the care system. Sometimes they are introduced to gangs by an older child where they are living. Sometimes they are exploited because they are at their most vulnerable. The gangs know that a child in a care home is far easier to exploit than a child in a stable home environment.

It was, however, the reference by both Anne Longfield and Iryna Pona to the damaging effect of repeated placement moves that was particularly pertinent to the A and S case.

3. A and S v LCC 21 June 2012 High Court of Justice Family Division

The case of A and S v LCC actually began life with Antonia Love who heads our Family Department. On 21 June 2012 Mr Justice Jackson delivered a Judgment in the case of two brothers who had been terribly let down by the Local Authority. He pulled no punches in his criticism of Lancashire County Council.

A and S had been removed from the care of their parents as infants by the Local Authority. They were freed for adoption in 2001. They remained under the Freeing Orders for 11 years. They passed through multiple placements in that time. A was moved on 77 occasions. S moved 96 times. Mr Justice Jackson described them as "statutory orphans".

The boys described to me how when they arrived in a new home they would not even unpack their bags because of the certainty that they would be moving on soon.

Local Authority failings of children post removal can prove costly - continued 2

At paragraph 106 of the Judgment in the Family Court the Guardian is quoted as follows:

"S and A are profoundly damaged by their particular childhood journey through the care system symbolised in their Freeing Order status remaining in place all of ten years later."

Mr Justice Jackson went on to make declarations that the Local Authority had acted incompatibly with the Rights of A and S as guaranteed by Articles 8, 6 and 3 of the European Convention on Human Rights in 10 respects. The claims were transferred to the Queens Bench Division to be heard alongside claims for breach of statutory duty and negligence. https://www.familylawweek.co.uk/site.aspx?i=ed98855

I have acted for children who have suffered horrific sexual abuse sometimes at the hands of their own parents. I have acted for the victims of grooming gangs and children subjected to prolonged physical and emotional abuse. What I learned from A and S is that a lack of stability can be even more damaging than the more obvious types of abuse.

The evidence of the Child and Adolescent Psychiatrist in the Family Court had already hinted at the terrible damage done to these brothers. In A's case the frequent moves and experiences of rejection caused emotional regulation problems – a feeling of being unwanted and an outsider belonging nowhere. S was described as having huge relationship problems again with very poor emotional regulation.

4. A and S v LCC 10 December 2018 High Court of Justice Queens Bench Division

Following transfer to the Queens Bench Division there followed six years of litigation before a negotiated settlement was approved in the sum of £9.6 million. This was on the day before a five day Trial had been due to commence. Many interesting points arose from the litigation.

Impact of a lack of stability in childhood

A and S, like many other children, were removed from the care of their birth family and were left incredibly vulnerable. What they needed was good reparative parenting. What they received were multiple placement moves and a lack of any stability. They never experienced family life nor felt "wanted".

Local Authority failings of children post removal can prove costly - continued 3

As a result they failed to learn the most basic of skills necessary to survive on their own. They are never likely to live independently and will always need some degree of care. They never learned basic social skills. The repeated moves had an inevitable impact on their education and development.

The case highlighted the profound effect a lack of stability can have on a child already vulnerable entering the care system.

Approach to litigation – experts

Unsurprisingly given the findings of the Family Court the Defendants initially adopted a reasonable and collaborative approach to the litigation. Experts in Child and Adolescent Psychiatry and care were instructed on a joint basis. The parties retained their own Educational Psychologist and Court of Protection experts. There were four separate Joint Settlement Meetings and the Queens Bench Division complemented the parties on the collaborative approach to litigation and settlement negotiations.

As the potential value of the claim became clearer however the Defendants attitude to the litigation changed. Unilateral desktop reports were obtained by the Defendants from Professor Declan Murphy (Psychiatrist) and Mark Willis of WPCM Services (Care/Rehab). The Claimants objected to their involvement and Her Honour Judge Beech refused an eleventh hour attempt by the Defendants to introduce this new evidence.

Approach to Litigation – liability

Whilst the Defendants were unable to undermine the Family Division's findings in relation to HRA breach they did seek to challenge the negligence/breach of duty position.

The case was particularly interesting because of when it was decided. The Court of Appeal had already made their decision in CN and GN v Poole Borough Council and the case had progressed to the Supreme Court. The Supreme Court hearing had taken place but Judgment was awaited.

Local Authority failings of children post removal can prove costly - continued 4

I do not propose to rehearse the facts of CN here – suffice to say that it deals with pre removal failings on the part of a Local Authority and the extent to which a duty of care exists. The leading players in CN were also involved in A and S v LCC – Lizanne Gumbel QC for the Claimants and Lord Faulks for LCC.

It is interesting to note that the Defendant attempted to argue in A and S that CN may have relevance not only to pre removal failings but also to failings when a child is in care.

An attempt was made to delay the Trial in A and S until the Judgment was handed down in CN.

In an application to vacate the Trial the Defendants argued;

"In summary the precise extent of duties owed by Local Authorities and in particular their Social Services Department to children "on their radar or within their care" is to be the subject to careful reconsideration in the Supreme Court in the very near future".

This attempt to suggest that CN may impact on the duty owed by Local Authorities post removal was unsuccessful. Lord Reed's Judgment subsequently makes it clear that Barrett v LBC remains the accepted position – a duty of care is owed by a Local Authority as to how the Authority manages a child in its care.

Damages level

Unprecedented damages awards were agreed for A and S because of the lifelong impact of the Defendants failings. In addition to significant awards for Pain, Suffering and Loss of Amenity and Past and Future Loss of Earnings the main damages were in relation to future care costs and the costs involved in managing the funds as both A and S lack capacity. A Case Manager was employed to coordinate care. The lack of care during childhood meant a need for significant care throughout adulthood.

Local Authority failings of children post removal can prove costly - continued 5

5. Conclusions

A and S v LCC is an extreme example of many similar cases where a Local Authority has failed children removed from birth families.

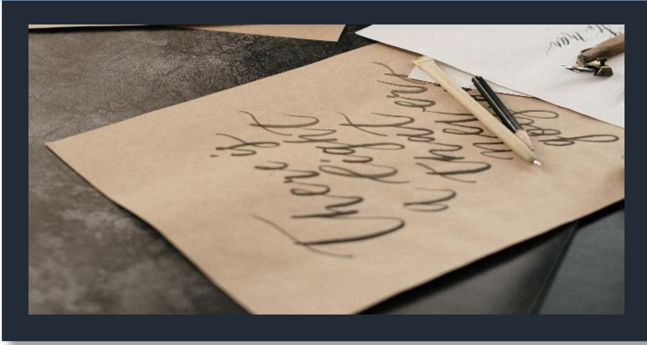
A typical case involves a lack of a care planning and repeated moves.

Anne Longfield highlights in her report how we are continuing to fail children in care with a lack of stability and multiple placements.

A and S v LCC demonstrates the potential impact of these failings from a damages perspective.

Local Authorities are well advised to ensure that appropriate funding is available to give these children the stability they need. If they fail to learn the lessons from A and S the financial consequences will be significant.

Jonathan Bridge, Farleys



A Race to the Court of Appeal on Assumption of Responsibility ?

By: David Greenwood, Switalskis Solicitors

The law as currently interpreted by those advising council social work departments does not promote good standards of social work and accountability. It appears the less a social worker does to help a child the more its employer will avoid criticism.

The case of Poole Borough Council v GN [2019] UKSC 25 has left many of us scratching our heads. The Supreme Court ummarised the legal battleground this way :

“Public authorities do not owe a duty of care at common law merely because they have statutory powers or duties, even if, by exercising their statutory functions, they could prevent a person from suffering harm. However, they can come under a common law duty to protect someone from harm in circumstances where the principles applicable to private individuals or bodies would also impose such a duty, as for example where the authority has created the source of danger or assumed a responsibility to protect the claimant from harm, unless the imposition of such a duty would be inconsistent with the relevant legislation.”

In relation to assumption of responsibility, it is usually necessary to show reliance by the claimant on the undertaking, express or implied, that reasonable care would be taken. This comes from the case cited in the Supreme Court Hedley Byrne v Heller (When a party seeking information or advice from another – possessing a special skill – and trusts him to exercise due care, and that party knew or ought to have known that the first party was relying on his skill and judgment, then a duty of care will be implied).

How are we to square this with the fact that children have no say in reliance on the expertise on social workers ? Some children don’t even know what social workers are, their responsibilities, their aims and powers.

Given the restrictive interpretation of reliance and assumption of responsibility used by council advisers my practical experience is that until the Court of Appeal clarifies

A Race to the Court of Appeal on Assumption of Responsibility ? - continued 1

Assumption of Responsibility in this context we are left with reasonable cases only where children are neglected under section 20 or ful care Orders. The remainder of my cases (which include many appalling breaches of statutory duty that would have previously been considered negligent) are currently on hold and considered only “maybe” cases dependent on a clearer and more explicit interpretation of the Poole case.

Until one or a series of cases reach the Court of Appeal on the issue we are left with a couple of cases that will interest ACAL members (and hopefully worry local authority advisers).

Champion v Surrey

26th June 2020

Central London County Court

Case number C41YM553

A strike out application made by the Defendant. Reliance was placed on the dicta in Poole v GN and CN.

The claimant had been subjected to abusive treatment and assaults from Mother and Step Father for an extended period of time during which social workers had taken various steps to safeguard him, each falling short of removal. Various examinations, reports and meetings took place and it was argued that these amounted to an assumption of responsibility thus satisfying the gateway to establishing negligence as per the Poole test.

The Defendants summarised their position thus:

A Race to the Court of Appeal on Assumption of Responsibility ? - continued 2

As a matter of law, for an assumption of responsibility giving rise to a duty of care on the part of D to exist, there must be:

1) A clear promise or representation made or
2) Undertaking given, by words or conduct, that D would take reasonable steps to protect C from TP's acts or omissions; and reliance by C on D's promise, representation or undertaking
3) In relation to the requirement of reliance, the law of England and Wales recognises no concept of 'general reliance', whereby C is presumed to rely on D's discharge of statutory duties or powers, thus giving rise to a common law duty to take reasonable care to exercise those duties or powers so as to protect C. England and Wales recognises no concept of 'general reliance', whereby C is presumed to rely on D's discharge of statutory duties or powers, thus giving rise to a common law duty to take reasonable care to exercise those duties or powers so as to protect C.
4) However, the mere fact that the Defendant's social workers had expertise and experience in their field is insufficient, of itself, to generate a duty of care, whether by way of assumption of responsibility.

The judge gave his decision on the strike out application as follows :-

"The short point is that in my judgment, the case is not bound to fail. I say that for the following reasons:

1) The case must be looked at in the context that the law of tort in relation to the assumption of responsibility is still developing and emerging.
2) The Supreme Court was at pains to point out in *Poole Borough Council* that each case turns on its own facts.

3) An assumption of responsibility can arise where a claimant entrusts a defendant with the conduct of his affairs in general or particular. Such situations can arise where the defendant undertakes the performance of some task, or the provision of some service for the claimant, with an undertaking that reasonable care will be taken. Such an undertaking is commonly implied by reason of the foreseeability of reliance by the claimant on the exercise of such care.
4) The existence of an assumption of responsibility can be highly dependent on the facts of a particular case, and where there appears to be a real possibility that such a case might be made out, a court will not decide otherwise on a strike out application (para. 89 of *Poole*).
5) The Claimant has set out in detail numerous positive acts, which the Defendant undertook for the assistance of the Claimant. The Claimant was reliant upon the Defendant's Social Services Department and the positive acts taken by the Defendant are sufficient to give rise to an arguable assumption of responsibility.
6) For the purposes of this case, it is common ground that it must be accepted that the Defendant was negligent and the Claimant has suffered sexual, physical and psychological injuries.
7) I was taken by both parties to a number of first instance decisions, some of which had been upheld on appeal. In my judgment they provide very limited assistance because in some of them the facts are obscure and in others the facts are distinguishable or very different."

X & Y v Derbyshire County Council

22nd September 2020

HHJ Godsmark QC

<u>A Race to the Court of Appeal on Assumption of Responsibility ?</u> - continued 4

The case is the first fully reasoned judgment in a public authority liability case where Lord Reed's controversial analysis of the conferral of benefit / assumption of responsibility / making matters worse concepts <u>CN / GN v Poole</u> has been applied at 1st instance.

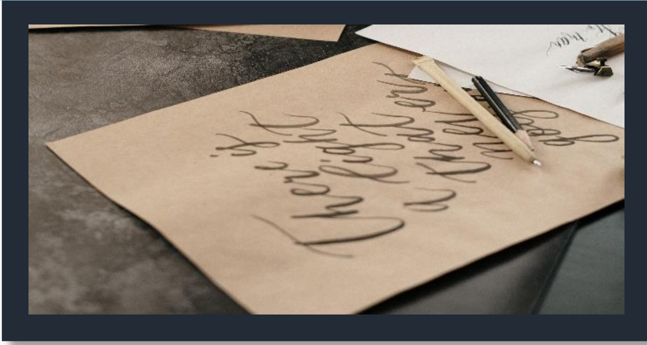
The council applied to strike out claims in negligence, misfeasance and human rights by a father and his 15-year-old daughter (X). Over an 8-year period the father, unsuccessfully, tried to convince social workers and management that his daughter was physically and emotionally abused by her mother. Following assessments under section 17 Children Act 1989 the council concluded that his allegations were malicious and he was excluded from the statutory child protection process.

The judge accepted X's submissions that the pleaded facts did disclose an arguable case to establish a duty of care to protect her as (1) this was a "causing harm" / "making matters worse" case rather than a "failure to confer a benefit" case given the council took positive action more akin to an adviser to the mother; alternatively (2) if the facts construed by reference to Lord Reed's judgment in Poole v GN / CN amounted to a failure to confer a benefit case, meaning that the omissions principle applied, the council's conduct meant that there was an arguable assumption of responsibility meaning that a duty of care arguably arose as an exception to the no duty principle as recognised in the Supreme Court decisions in Robinson v West Yorkshire Police [2018] and Michael v Chief Constables of South Wales & Gwent Police [2015].

These are of course only two strike out applications. It seems strong cases will be bought off by Defendants and we will have to be patient in our wait for a case to be interpreted by the Court of Appeal. On the basis of these cases there is reason for optimism on standards of social work and accountability.

David Greenwood is Head of the Child Abuse department at Switalskis Solicitors.

He can be contacted at david.greenwood@switalskis.com



Positions of trust

By: Alan Collins, Hugh James

Earlier this year the Lord Chancellor announced on "Twitter" that the Ministry of Justice was examining the question whether the existing sexual offences laws need to be amended to afford greater protection to young people, that is children aged 16 and 17, who have been or are at risk of being sexually abused by those in a position of trust?

This is in the wake of evidence given by the MOJ to IICSA. One could be forgiven for forming the impression rightly or wrongly that it was considered that reforming the law in this area was difficult [sic].

The need for reform has of course been examined at great length by the *Royal Commission into Institutional Responses to Child Sexual Abuse* and its *Criminal Justice Report* is worth reading. It came to the unreserved conclusion that faith leaders, youth workers and the like are in positions of trust, and fall within that category of person such as a teacher. If teachers are meant not to have sexual "relationships" with young people then it begs the question why should faith leaders should not either?

It could be said with justification the *Royal Commission* has done the work for the MOJ, and an examination at the work of the Australian states demonstrates what could be achieved on the legislative front in the UK.

With the exception of Queensland, Tasmania and the Commonwealth, every Australian jurisdiction has legislation in place prohibiting sexual acts involving a child who, at the time of the offence, was over the age of consent and a person who at the time of the offence (or generally) was responsible for their care or supervision or was in a position of authority relative to them. Individuals who are responsible for the care and supervision of a young person who is still classified in law a child (being under the age of 18), or are in a position of authority relative to them, include (but are not limited to):

- the child's teacher;
- the child's guardian or foster carer;
- a religious official with pastoral responsibility for the child;
- the child's employer;
- the child's youth/social worker;
- an individual who has an established relationship with the child in connection with the provision of instruction to them (eg sport's coach, music teacher);

- the child's psychologist/counsellor/doctor;
- a police officer acting in the course of their duty in respect to the child; and
- a custodial officer of an institution of which the child is an inmate (eg remand centre, youth residential centre etc)

Set out in a schedule below are the relevant statutes in Western Australia and Victoria by way of examples explaining how "positions of trust" are captured in the criminal law context.

S.21 (3) to (5) SOA 2003 could be amended to capture the individuals and situations listed above.

The concern was expressed that changing the law to capture youth leaders, and the like, is that young people would be criminalised, for example, where the age gap was perceived to be de minimis. Should the law interfere when the 19 year old youth leader has a relationship with a 17 year old who is in his care?

The answer is that the youth leader has a choice: if he/she wants the relationship he/she waits until the young person turns 18, or ceases in his role. That is not criminalising. To say otherwise would undermine the rationale for the age of consent.

Practitioners are only too familiar with the arguments raised by defendants on the issue of consent. A change in the criminal law would not in itself end some of the arguments deployed, but may help change attitudes for the better in the medium to long term.

Alan Collins,

Partner

Hugh James

SCHEDULE

Criminal Code Act Compilation Act 1913 (Western Australia)

S. 322. Child of or over 16, sexual offences against by person in authority etc.

(1) In this section child means a child of or over the age of 16 years.

(2) A person who sexually penetrates a child who is under his or her care, supervision, or authority is guilty of a crime and is liable to imprisonment for 10 years.

(3) A person who procures, incites, or encourages a child who is under his or her care, supervision, or authority to engage in sexual behaviour is guilty of a crime and is liable to imprisonment for 10 years.

(4) A person who indecently deals with a child who is under his or her care, supervision, or

authority is guilty of a crime and is liable to imprisonment for 5 years

(5) A person who procures, incites, or encourages a child who is under his or her care, supervision, or authority to do an indecent act is guilty of a crime and is liable to imprisonment for 5 years.

(6) A person who indecently records a child who is under his or her care, supervision, or authority is guilty of a crime and is liable to imprisonment for 5 years.

(7) It is no defence to a charge under this section to prove the accused believed on reasonable grounds that the child was of or over the age of 18 years.

(8) It is a defence to a charge under this section to prove the accused person was lawfully married to the child

CRIMES ACT 1958 - SECT 49E (Victoria)

Sexual assault of a child aged 16 or 17 under care, supervision or authority

(1) A person (A) commits an offence if—

(a) A intentionally—

(i) touches another person (B); or

(ii) causes or allows B to touch A; or

(iii) causes B—

(A) to touch, or to continue to touch, themselves; or

(B) to touch, or to continue to touch, another person (C); or

(C) to be touched, or to continue to be touched, by C; and

(b) B is—

(i) a child aged 16 or 17 years; and

(ii) under A's care, supervision or authority; and

(c) the touching is—

(i) sexual; and

(ii) contrary to community standards of acceptable conduct.

(2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).

Whether or not the touching is contrary to community standards of acceptable conduct depends on the circumstances.

(4) For the purposes of subsection (3)—

(a) the circumstances include—

(i) the purpose of the touching; and

(ii) whether A seeks or gets sexual arousal or sexual gratification from the touching;

(b) the circumstances do not include—

(i) whether B consents to the touching; or

(ii) whether A believes that B consents to the touching.

CRIMES ACT 1958 - SECT 37

Care, supervision or authority

(1) Without limiting the circumstances in which a child is under the care, supervision or authority of a person, a person (A) has a child (B) under their care, supervision or authority if A is—

(a) B's parent or step-parent; or

(b) B's teacher; or

(c) B's employer; or

(d) B's youth worker; or

(e) B's sports coach; or

(f) B's counsellor; or

(g) B's health professional; or

(h) a person who has parental responsibility (within the meaning of the Children, Youth and Families Act 2005) for B; or

(i) a religious or spiritual guide, or a leader or official (including a lay member) of a church or religious body, however any such guide, leader, official, church or body is described, who provides care, advice or instruction to B or has authority over B; or

(j) an out of home carer (within the meaning given by section 74 of the Children, Youth and Families Act 2005) of B; or

a police officer acting in the course of their duty in respect of B; or

(l) employed in, or providing services in, a remand centre, youth residential centre, youth justice centre or prison and is acting in the course of their duty in respect of B.

(2) In this section—

"parent" includes

(a) a parent by operation of the Adoption Act 1984 ; and

(b) a parent by operation of the Status of Children Act 1974 ;

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.

Student Member

- Cost: £40.00
- Benefits: Website, AGM, Workshop, Newsletter

Non-practicing member, e.g. Experts

- Cost: £85.00
- Benefits: Website, AGM, Workshop, Newsletter

Barrister Member

- Cost: £85.00
- Benefits: Website, AGM, Workshop, Newsletter, Database, Experts Register

Sole Practitioner Member

- Cost: £85.00
- Benefits: Website, AGM, Workshop (3 CPA Hours), Newsletter, Database, Experts Register

Small Firm (5 partners or under) Practitioner Member

- Cost: £100.00
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