Newsletter
March 2015
Issue No. 14

ACAL
Association of Child Abuse Lawyers

Key Articles:

President's Report

By Peter Garsden
President, ACAL

When I was searching for something to write about for this newsletter I came across a blog which posed the question "Do you expect there to be 'carnage' in the PI market?" One of the respondents replied:-

"They predicted carnage with the Woolf Reforms.
They predicted carnage again with the predictable costs regime.
They predicted carnage with the claims portal.
They predicted carnage with portal extension.

Firms that can innovate will always survive. Some firms will exit the market, some with thrive, some will diversify.

Until the next prediction of carnage that is!"

It reminded me of previous pieces I have written about the changes that Jackson brought to the PI market, and what impact it has had on the world of abuse. It seems that not a day goes by without some mention of child abuse. As I write, David Cameron is describing child sexual exploitation as a "National Threat"

Because the fees for fast track portal work has taken such a hammering, a lot of firms have turned to other areas of PI as an alternative income stream. Whereas at one time abuse cases would have been referred to specialist firms, now, solicitors may be tempted to have a go themselves. This change has brought about an increase in membership, and reminded me of the reason ACAL was formed many years ago in 1998.

A group of us, including our former chairman and co-ordinator, Malcolm Johnson, and non-practising barrister Lee Moore, met in London in order to provide solicitors, who for the first time were receiving instructions in abuse cases, with a network of help, particularly because, in those days, there was little or no precedent law to rely upon. There were no text books on the subject, and we were involved in inventing new law and practise.

The focus was on providing the client with an experience was would not trigger them into further symptomology, and help them to reveal, as easily as possible, what happened to them in the past. Counsel, experts, and lawyers were all involved in creating new areas of law and practice. It was a very exciting time.

Over the years our members have helped create many legal precedents in the appellate Courts which have contributed to the relatively fixed state of the law, as we now find it. Some of us have written text books, most recently the APIL Guide to Child Abuse Compensation Claims by Gumbel, Johnson, Levinson, and Scorer.

We should be proud of what we have achieved.

It has reminded me that in the past we used to provide training on the different aspects of the law, as well as client care training. We found that the job of promoting the training to a small group of experts, was not something which a small organisation could do properly or profitably, which led us to form a partnership with APIL, and the result was the highly successful Abuse Conference, which once again this year is listed for 2nd June 2015.

Tickets usually go very quickly, so if you want to book a ticket, then the details are on the ACAL and APIL website - http://www.apil.org.uk/event-details.aspx?ID=2468

Whether or not we will be able to re-introduce the more formal subject training for members remains to be seen. There is probably a need for some new entrants, in the same way as there used to be in the early days of ACAL.

Case Law

In the last Newsletter I referred to the case of **JB & BB v Leicestershire County Council (2014)** which decided that the case of Woodlands v Essex County Council, and its principle of the non-delegable duty of care applied to Local Authorities in the area of Foster Care. It was applicable to the type of failure to care cases with which we are familiar. Although the case failed on Limitation, the principle was established. This would mean that if a foster carer abused a child, the supervising local authority would be automatically liable, not under the principle of vicarious liability, but because of the non-delegable duty of care of the corporate parent. This would, of course be handy if one could not establish negligence.

In the subsequent case of **NA v. Nottinghamshire County Council [2014] EWHC 4005 (Fam)** the reverse of the previous case happened. It was another failure to care case where a child had been left with abusive foster parents, but where the Claimant, due to being let down at Court by her Social Care Expert, lost on negligence, but succeeded on Limitation. Thus the case could only succeed if the non-delegable duty of care argument succeeded. After reviewing some adverse Canadian cases, and agreeing with all the factors cited in Woodlands other than the vital one of discretion, the Judge found against the Claimant. He decided that it would be wrong in principle to extend Woodlands to abuse allegations in foster care involving abuse. He did, however, give both parties leave to appeal. I understand from Bilhar Singh Uppal, that they are certainly intended to proceed with the appeal as far as possible, so watch this space.

In the meantime, we are still pursuing such cases, but not having them tried until the position is clarified.

Campaigns

Access to Care Records Campaign – I won't repeat detail from previous newsletters. Some members attended the House of Lords launch when we announced that there would be round table meetings around the country to which would be invited Data Protection Officers and other local authority officials tasked with record redaction.

The launch will take place at Leigh Day some time in June – dates to be announced. There will then follow further meetings in various cities. Big thank you to all solicitors who have volunteered rooms free of charge including Bolt Burden, Irwin Mitchell, Slater & Gordon, & Switalzkis

Mandatory Reporting

I won't repeat the recent press coverage on this subject, particularly relating to the Jimmy Savile Stoke

Mandeville report. Both Labour and Liberal have put it in their Manifestos. More and more mention of it appears to be made.

The Child Abuse Conference in June will have a panel session to which various experts will contribute including myself, so book your ticket now!

I am doing a head to head debate on the subject at the BASCPAN conference in Edinburgh on 13th April. I will let you know who wins.

There seems to be a ground swell of support for such a change in the law.

So, that's enough from me. Keep well, work hard, and win all your cases.

March 4th 2015

Peter Garsden, President, QualitySolicitors Abney Garsden, Cheadle. Email: peter@abneys.co.uk

Child Abuse Inquiry Update February 2015
By David Greenwood

The Home Secretary, Theresa May announced on the 7 February 2014 that she was setting up an independent into child sexual abuse to examine how the country's institution had failed in their duty of care to protect children from sexual abuse.

ACAL was a key part of the campaign for an enquiry into church abuse and ACAL members lobbied hard to persuade the government to announce this type of enquiry via the Stop Church Child Abuse Campaign. It is an understatement to say that the announcement of the enquiry is a breakthrough in promoting children's rights. The enquiry promises to be a monumental turning point in the way in which all institutions and our culture treats children.

Institutions to be included

The enquiry is to look into institutional failings and will examine care homes, churches, the police, the prison service, young offenders institutions, hospitals, social services, the armed forces, sports institutions, national youth groups such as the scouts, guides and brownies, local government, other armed forces, national crime agencies, secret services, the criminal justice services, the Crown prosecution Service, DPP, the judiciary, both Houses of Parliament and the civil service.

There is undoubtedly a lot of work to be done and with the knowledge of solicitors who are members of ACAL feeding into the process; we can help to ensure that the enquiry has an accurate view of the past and the present. We all have a responsibility to help in this process.

It is fair to say that the enquiry has had a turbulent past few months with the resignations of Baroness Butler's loss and Fiona Woolf, the appointment of Mrs Justice Lowell Goddard, the dissolution of the panel and anticipated appointment of two new panels. These steps have been taken in an effort to provide transparency to the inquiry and to ensure that it has firm foundations which can command the trust of the vast majority of survivors whose hopes for a better future depend on the enquiry being a success. We all know how painful a process disclosure can be for our clients and how suspicious they can be of authority. They have good reason to be suspicious. Individuals in positions of power have harmed them irreparably.

Terms of Reference

Mrs Justice Goddard is currently consulting on the terms of reference for the enquiry and I would encourage you to send in your views to the email address at the bottom of this article. I myself consider that the Australian terms of reference should be the starting point for the UK inquiry and that any terms of reference should ensure that the nature, extent and prevalence of child abuse perpetrated by officers or employees of any of the above institutions is examined, and the causes of failures by institutions to respond appropriately is examined by examining the structures and power relationships between those employed or controlled by institutions and children to whom they owed duties of care.

The inquiry should identify those persons responsible for abuse of children, aiding and abetting, covering up the abuse of children and perverting the course of justice and the denial of access to justice for victims of abuse and to refer any such individuals to a designated police task force for criminal investigations.

I would also like the inquiry to look into the cultural, institutional and social dynamics which have influenced the responses of officers and employees of the above institutions and for the inquiry to make recommendations as to how specific institutions and cultures can be changed for the better.

Expected Recommendations

I expect the inquiry to make recommendations on the following:-

- changes to safeguarding legislation to make it more effective in light of the findings of the Inquiry (including *de minimus* Mandatory Reporting for those in Regulated Activities, which acknowledges the power dynamics that often stop appropriate responses). An early recommendation on M.R. issue should be considered.
- changes to criminal justice system to empower complainants and achieve a more realistic conviction rate.
- changes to police and CPS procedures and to establish a sufficient body of dedicated staff to deal with complaints of child abuse and to rebuild confidence in the police service
- changes to criminal law to provide an effective redress for wrongs suffered by child abuse, reflecting the abuse of power that is at the heart of these offences and the harm caused to the victims
- changes to social services and police services procedures that understand the power dynamics that distort the responses to child abuse cases. A review body to dedicated to inspecting and advising LA and police responses to child abuse should be considered
- an overall rebalancing of the justice system to address the shockingly low conviction rate. The grievous harm done to many survivors, their prospects and quality of life has not been reflected by a robust approach to investigation of crimes or procedures to provide appropriate redress
- fully funded support by trained professionals to enable survivors to receive life saving independent advice through their chosen platform (internet, phone writing or face to face) that also provides an advocacy service when addressing the institution that harmed them.

Parallel Truth Enquiry

The chair and panel should determine whether a “parallel truth commission” is to be established to hear testimony from all victims of child abuse perpetrated within or beyond the above institutions. We know that many survivors of child abuse have lost faith and confidence in statutory bodies. The “parallel truth” armed to the enquiry will enable survivors to have their complaints recorded by a body other than existing statutory agencies. This arm of the enquiry would be able to gather information confidentially and would assist the enquiry with high quality evidence. More importantly, it would give survivors who

have little faith in the existing systems a voice and input in changing the system for the better. If handled well, this could address the huge expectation that the enquiry will listen directly to large numbers of survivors. Consideration needs to be given as to how this testimony is treated.

An independent child abuse body to be established.

We have seen a lot of confidence in statutory and charitable agencies on the issue of child abuse. Survivors do not trust the police or social services to treat complaints with sufficient gravity. Conviction rates are low yet we know that less than 1.5% of allegations reaching the police are false. Many cases of course do not even reach the police with reported rates also being very low.

The time has come for an independent body to be established to receive and investigate complaints of child abuse. The independence of this body will enable and empower more survivors to talk about their experiences and be assisted in regaining control of their lives.

This body would operate on line, with a help line and would have a physical presence in all major towns and cities. Staff would provide support and sign posting to various agencies. Advice would be given on options open to the survivor. Complaints could be taken and investigated by dedicated specialists. Decisions would be made on allegations on the balance of probability and where appropriate referrals would be made to the police and other appropriate agencies.

Redress system of compensation

Linked to the investigation body would be a redress system of compensation. "No fault" system would recognise the fact that there are so few false allegations in the sphere of child abuse. This system has many attractions. Legal cost savings are achieved. More importantly the claimant is not forced a civil and visceral system which in many instances causes exacerbation of psychological harm.

Your input is needed

If you have experience of an institution which has displayed systematic safeguarding failures which has led to child abuse and consider that the institution should be looked at in detail by the enquiry, please make contact with them via their website which is at www.childsexualabuseenquiry.independent.gov.uk. The contact page provides a contact form.

I will provide regular updates through the ACAL newsletters and on any significant news on the enquiries progress.

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JXL and SXC v Winston Britton [2014] EWHC 2571 (QB)

Child abuse: quantum

Trial in the High Court, London on 7 July 2014 before Mr Andrew Edis QC sitting as a High Court Judge

Judgement on 10 July 2014

Iain O'Donnell of 1 Crown Office Row instructed by Peter Lorence of Irwin Mitchell LLP, London for the claimant.

Case report submitted by Peter Lorence of Irwin Mitchell LLP, London.

The claimants are sisters, who were in their thirties at the date of commencement of proceedings and at trial, brought claims for damages against Winston Britton, for personal injuries resulting from rape and sexual assault inflict on them in 1989/1990, when "JXL" was about 10 years old and "SXC" was about 7 years old.

In or around 1989/1990, SXC attended the Defendant's flat to see his daughter and niece. Neither were at home, but the Defendant tempted SXC into his flat, offering her some mango, which she had never eaten before. The Defendant then took SXC into his bedroom, undressed her and then raped her, ejaculating on her stomach.

On a second occasion in or around 1989/1990, JXL and SXC attended the Defendant's flat to see his daughter and niece again. Again, the Defendant's daughter and niece were not at home, but the Defendant turned on his television and invited both girls in to wait for them.

Whilst JXL watched television, the Defendant took SXC into his bedroom, whereupon he raped her for a second time. JXL went to look for SXC and found her and the Defendant putting their clothes back on in his bedroom. SXC left the room the room and as JXL went to follow her, the Defendant grabbed her arm and restrained her. The Defendant forced JXL down on to his bed, pulled her knickers down, forced her to touch his penis and then raped her.

On one further occasion, JXL had attended the Defendant's flat to see his daughter and niece again, the Defendant attempted to hug her and touch her breasts.

SXC told her mother about the Defendant assaulting and raping them. She reported it to the police, but there was no investigation until October 2010, as a result of another of the Defendant's victims reporting a sexual assault to the police. The Defendant was charged with 21 counts of child rape and indecent assaults on children. The Defendant pleaded not guilty.

The Claimants gave evidence of the facts that gave rise to this child abuse claim. The jury convicted the Defendant of 18 of the 21 allegations and was sentenced on 13 April 2012 to a total of 22 years custody.

The Defendant was initially represented by his criminal defence solicitors, but they were not instructed to accept service of proceedings. Proceedings were issued and therefore served upon the Defendant in prison. Judgment was secured in default, as a consequence of the Defendant failing to acknowledge service of proceedings. The Defendant failed to engage in the litigation at all until the day of the trial, when he elected to attend the tribunal via video link as a litigant in person. The Defendant asserted that he was innocent and claimed poverty, but Mr Andrew Edis QC sitting as a High Court Judge did not consider there to be merits for setting aside the judgment in default and highlighted that the Defendant's means to satisfy any judgment were not of relevance for the purposes of assessing quantum. It is noted that the Defendant's conduct during the litigation and presence at the trial may have enhanced the awards given.

Quantum

Judgment for JXL was given in the sum of:- £137,639.38
Judgment for SXC was given in the sum of:- £243,722.24

The Claimants relied on reports from Dr Jane O'Neill, consultant psychiatrist, which detailed the Claimants' family life, personal life, employment history, medical history and allegations of the abuse.

JXL:- General Damages - £32,500
SXC:- General Damages - £40,000

JXL contended that the General Damages award was to be assessed on the basis of her being subjected to vaginal rape and subsequent sexual assault, which caused permanent Post-Traumatic Stress Disorder ("PTSD"), with symptoms of flashbacks, hypervigilence, and psychosexual aversion/poor libido. The PTSD had begun 24 years ago and the symptoms had continued to date. Whilst therapy is expected to reduce her symptoms, JXL will always have some permanent symptoms of PTSD. It was advanced by JXL that the award should compensate for the assaults themselves, and aggravated damages, as well as their consequences, with her age, the fact that she was a virgin at the time, the police's failures to believe her allegations, being forced to give evidence at the criminal trial and the fact that the Defendant was acting *in loco parentsis* as being aggravating factors.

SXC submitted that the General Damages award was to be assessed on the basis of her being subjected to vaginal rape twice, which caused PTSD, Emotionally Unstable Personality Disorder ("EUPD") and Substance Dependency Disorder. The PTSD and EUPD both began 24 years ago and the symptoms have continued to date. Whilst 18 months of therapy is expected to reduce her symptoms, she will always have some permanent symptoms of both. SXC also contended that the award should compensate for the assaults themselves, and aggravated damages, as well as their consequences, with her age, the fact that she was a virgin at the time, the police's failures to believe her allegations, being forced to give evidence at the criminal trial and the Defendant was acting *in loco parentsis* as being aggravating factors.

The Court found that both Claimants were significantly affected by what had happened to them, but rejected the Claimants' approach for awards to be made for the assaults themselves, separate from damages for their psychiatric consequences. The Court did, however, accept that an award for aggravated damages was justified in a case of this kind.

The Court noted that the impact on SXC had been substantially more severe than it had on JXL, noting that JXL had been able to survive more successful than SXC, qualifying as a nurse and securing work in that role, whilst SXC had not been able to secure paid employment with any regularity. It was noted that the Claimants had lost their childhoods and youth. JXL's marriage was noted to have been damaged by the offences. The Court noted that JXL may benefit from treatment, but this cannot be assumed. SXC was noted not to not be expected to ever recover from the damage to her life. Both cases were held as being in the moderately severe bracket for psychiatric damage in the JC Guidelines.

JXL:- Aggravated Damages – £15,000
SXC:- Aggravated Damages - £25,000

The Court noted that both Claimants gave evidence during the criminal trial, during which it was suggested to them that they were not telling the truth. The awards also compensate the Claimants for the distress and humiliation which occurred at the time of the offences and with which they have had to live ever since. The difference in awards reflects the differences between the two cases. The fact that SXC failed to protect JXL by reporting the first rape and so failing to prevent JXL from the second incident was also born in mind, noting that the impact of such a thought on the mind on a very young child must have been very substantial.

JXL:- Loss of earnings - £82,224
SXC:- Loss of earnings:- £158,000

A claim for loss of earnings at the minimum age to date was advanced, due to the combination of the psychiatric illnesses that the Claimant suffers preventing her from being able to work. SXC was awarded the sum claimed in her Schedule of Loss.

As a result of the abuse, JXL was delayed in qualifying as a nurse for 8 years, because of the education disruption caused by her psychiatric condition. JXL was awarded the sum claimed in her Schedule of Loss.

JXL:- Future treatment - £1,300 for CBT and £650 for travelling costs
SXC:- Future treatment - £7,800 for CBT and £1,560 for travelling costs

JXL's psychiatric evidence recommended that she undergo 13 sessions of CBT. The court awarded this, together with travelling costs.

SXC's psychiatric evidence recommended that she undergo 78 sessions of CBT. The court awarded this, together with travelling costs.

JXL interest:- £5,965.38
SXC interest:- £11,362.24

Interest on general and aggravated damages, as well as interest on special damages were calculated and awarded in the normal way.

JXL and SXC -v- Winston Britton

JXL

General Damages:-	£32,500
Aggravated Damages:-	£15,000
Special Damages:-	£84,174
Interest on the above damages:-	£5,965.38
TOTAL:-	£137,639.38

SXC

General Damages:-	£40,000
Aggravated Damages:-	£25,000
Special Damages:-	£167,360
Interest on the above damages:-	£11,362.24
TOTAL:-	£243,722.24

NMA v Cambridgeshire County Council

The Claimant was born in 1975. Between 1987 and 1992, when she was aged 12 to 16, she attended Sir Harry Smith Community College (SHSCC) which was under the authority of Cambridgeshire County Council. In early 1991 NMA began to have one to one flute lessons with her music teacher TP after school in anticipation of a grading examination. Some months later, while she was still 15 years old, TP forced her to perform oral sex upon him in the classroom after one of these lessons. He then told her that that was what people who were in love with each other did. He also told her that if she were to tell anyone what had happened he would go to prison and if that were to happen, he would kill himself. As a result NMA was petrified that she would be responsible for his death if she were to tell anyone and so she did not. As he had said they were in love, she also believed that from that day that they were in a relationship. The sexual and emotional abuse then continued a number of times a week in her one to one lessons. In around September 1991, before NMA turned16 years old, TP raped her in a locked storeroom after her lesson at the school and this too continued on a regular basis.

In July 1992 NMA left the school to study A-Levels elsewhere but continued to return to SHSCC a number of times a week for flute lessons, albeit with another music teacher, and TP would use these opportunities to continue to rape her in the storeroom or lighting room attached to the music classroom.
At some point, either when she was 15 or 16 years old, TP also took NMA to his home at the weekends. He would make her hide under the car seat while he drove her and once inside the house he would keep all the windows shut and curtains closed. He would keep her in the house all weekend during which he would rape her. While she was in the house he would often tie her up while she was naked as well as chain her to a radiator and refer to her as 'Benjy' after a dog that he once had. TP also anally raped her at his home on at least one occasion. This continued for a period of four years.

The 'relationship' ended in 1995, when NMA was 19 years old, when TP told her that he was in love with another pupil of his at SHSCC who was 15 years old.

In around 1997 NMA met her husband who helped her to see that what TP had done to her was not a relationship as he had convinced her for so many years that it was, but abuse. NMA then bravely made the decision to report him to the police in 1998 having discovered that TP had moved onto a school in London where other children may have been at risk from him.

For reasons that were not understood, TP was released without charge but placed on List 99 by the Metropolitan Police who investigated him at the school in London. TP is now believed to be living abroad. As part of the police investigation NMA was informed that TP had previously been charged with serious sexual offences against two other young girls at another school in Cambridge where he was a teacher prior to moving to SHSCC. After the jury was unable to reach a decision at the first trial it then went to a re-trial in 1989 where TP was found not guilty. He then became employed at SHSCC by the Defendant shortly after in full knowledge of his past because it was also responsible for this first school.

Proceedings
A letter before claim was sent to the Defendant in April 2013 and Browne Jacobson was instructed. The Defendant denied liability and stated that no records existed in relation to NMA's allegations. Shortly after, the Defendant made offers of £5000, £15,000 and then £25,000 all of which were rejected.

Proceedings were issued in the High Court on 7 October 2013. In its Defence the Defendant raised the issue of limitation and put NMA to proof of the abuse. It stated that by NMA's own account she considered herself to be in a relationship with TP and on that basis, after she turned 16, the alleged sexual acts ceased to be assaults and were consensual. The Defendant admitted that the alleged assaults before she was 16 and consensual acts after she turned 16 were in breach of TP's professional duties but that this duty ceased when he ceased to be her teacher. Finally the Defendant admitted that it was vicariously liable for the actions of TP whilst he was employed by them and that this extended to both deliberate assaults and sexual acts with NMA which breached his professional duties to her as a teacher and to those which took place on school premises and on trips. It was denied that sexual acts between NMA and TP that took place at his home were sufficiently closely connected for vicarious liability to attach.

A CCMC was held in July 2014. During the conference Master Leslie interestingly commented to the Defendant that its argument that NMA could not consent to sexual acts the day before she turned 16 but was able to consent the next day on her 16th birthday was not a very well founded one. Master Leslie allowed permission for NMA to rely upon the evidence of an employment consultant and costs budgets were decided upon. Trial was listed for 5 days in April 2015.

Expert Evidence
NMA relied upon expert evidence of Dr Leon Rozewicz, Consultant Psychiatrist. There was a vast amount of medical records in this case given that NMA suffered a breakdown shortly after reporting the abuse to the police at the age of 23 and has been under the care of psychiatric services ever since. GP records from the time showed that NMA was diagnosed with anorexia within a few months of the abuse commencing and was referred to psychiatric services at the age of 16. Her weight decreased to six and a half stone at its lowest. The records also showed that there was no evidence of an eating disorder before the crucial date of the first incident of abuse in 1991.

Dr Rozewicz confirmed that before the age of 16 NMA was incapable of consenting to the abuse by TP but in his opinion, even after she turned 16, she was coerced into the 'relationship' with him and at no point did she ever consent.

Currently NMA suffers from obesity, weighing some 17 stone. Dr Rozewicz also diagnosed her as suffering from chronic post traumatic stress disorder as well as a severe depressive disorder. Since her disclosure to the police NMA has had at least 15 hospital admissions associated with multiple forms of self harm such as cutting, setting fire to her arms and head banging as well as numerous attempts at suicide through overdosing. She has also suffered from delusions and hearing voices telling her to harm and kill herself which developed the very first time TP raped her at school. In Dr Rozewicz's opinion both the post traumatic stress disorder and depression were caused by the abuse of TP. He also diagnosed her with a harmful use of alcohol which is unlikely to improve in the future. Dr Rozewicz also concluded that as a result of the abuse NMA is unable to have a sexual relationship and as such is not able to have children with her husband. Given that NMA has undergone extensive treatment in the past Dr Rozewicz was unable to prescribe any other treatment in the future for her aside from continuing with her community psychiatric team under the NHS for life as he did not believe that she will improve.

With regards to her education, it was concluded that NMA was unable to complete her nursing degree at university as this required providing personal care to patients and in particular, washing male patients. As a result NMA changed her studies in her final year despite always wanting to be a nurse so that she was able to complete a degree. After completing her degree she reported to police and her mental health declined significantly with the result that she has been unable to maintain continuous employment for more than a few months at a time ever since. It was Dr Rozewicz's opinion that but for the abuse she suffered NMA would have enjoyed a successful career in nursing and could have progressed into a management and policy role within the NHS.

Keith Carter, Employment Consultant, was then instructed to prepare a report on the Claimant's career progression and earnings in the scenarios of a nurse in practice and promotion to a management and policy position. Mr Carter agreed with Dr Rozewicz that NMA would be unable to earn more than a minimal amount each year in the future, if at all, as a result of her mental health and her past employment history. By contrast she could have earned over £50,000 a year in a policy/management role as well as receiving an NHS annual pension and lump sum upon retirement.

The Defendant relied upon expert evidence from Dr Trevor Friedman, Consultant Psychiatrist. Dr Friedman was of the opinion that the passage of time and the amount of therapy that NMA had undergone was responsible for the way that she felt about the relationship with TP now. He stated that the abuse was responsible for a significant amount of the issues she now faces but that she would have experienced problems in adult life regardless. He was also of the opinion that NMA had some risk factors for the development of an eating disorder in any event because she was a high performer and an athlete. His prognosis was that once the court case had concluded NMA would be able to return to work on a full time basis within 12-18 months.

Disclosure

An application for non-party disclosure was made against Cambridgeshire Police and the Metropolitan Police shortly after proceedings were issued. Disclosure from the former revealed a letter from the headmaster which stated that he was made aware of the charges against TP from his first school but was advised by the Defendant not to consider them in relation to employing him at SHSCC. The disclosure also contained further detail of the allegations against TP at his first school and a report from a social worker who had attended the first trial and re-trial of TP and set out the differences in the evidence he gave. She concluded the report by stating that the Defendant should consider this evidence carefully before employing him elsewhere. This was dated before TP joined SHSCC.

Despite being told from the outset that there were no records to be disclosed, Dr Friedman in his report mentioned that he had seen a personnel file of TP. This was requested immediately and it revealed that the Defendant had not taken any action against TP after the two trials at the first school before offering him a job unsupervised at SCSCC, despite concerns about his behaviour. Internal memorandums written after NMA reported TP to the police in 1998 also showed the Defendant's concerns that they might be at fault for not taking any action against TP after the two trials.

Settlement

In October 2014 the Defendant made a Part 36 offer of £300,000 which was rejected. Witness evidence was exchanged and the employment expert's report was served on the Defendant.

A joint settlement meeting was arranged for 9 January 2015. An updated schedule was served upon the Defendant on behalf of NMA shortly before which totalled approximately £1.2 million.

Richard Davison of 12 Kings Bench Walk represented NMA at the joint settlement meeting with Adam Weitzman of 7 Bedford Row for the Defendant. During negotiations the Defendant offered £50,000 for general damages which was later to increase to £80,000. The claim settled for a total sum of £550,000.

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

RC v JW

The claimant was born in August 1979 and left home at 14 after being a victim of violence from his stepfather. He was in the care of foster carers and in a care home. He met the defendant at a bus station. The defendant was a middle-aged who gave him sweets and money. The defendant took the claimant to his flat. Masturbation and fellatio occurred. There were numerous occasions of masturbation, oral sex and digital penetration over a two year period. The defendant made the claimant watch pornographic pictures and introduced him to other people who abused him by masturbation. The abuse occurred countless times. After abusing him the defendant would leave him in the street.

The local authorities ceased to accommodate the claimant and he then had a chaotic life in and out of prison. He did do some work as a salesman between the ages of 25 and 28. Since the age of 28 the claimant had been in prison.

The defendant was convicted of nine offences of indecent assault in relation to the claimant in 2010 and sentenced to 12 years. The claimant first reported the abuse in 2009 to the police. .
Proceedings were issued in July 2013 and were served on the defendant, who was in prison and a litigant in person, in October 2013. The claimant made a Part 36 offer of £60,000 in November 2013. The defence was served in November 2013 and struck out in May 2014. Judgement for the claimant was ordered in June 2014.

Expert evidence was obtained from Professor Jane Ireland (Consultant Forensic Psychologist). The defendant did not obtain evidence. Professor Ireland diagnosed PTSD, social and general anxiety and depressive symptomology. The claimant had a history of difficulties with substance use.

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The defendant chose not to attend the assessment of damages hearing.

The claimant sought conventional and aggravated damages.

The abuse was characterised by sustained exploitation. The defendant identified the claimant as young, lonely and without support. He abused him for a sustained period of time for over two years. The claimant was vulnerable without family or support save for basic local authority accommodation. General damages were awarded in the sum of £40,000.00. Aggravated damages awarded in the sum of £15,000.00 to reflect the conduct of the defendant in relentlessly exploiting a young, lonely and vulnerable person. The sum of £15,000.00 was awarded for disadvantage on the labour market, £7,000.00 for therapy, interest plus Part 36 interest, and a Part 36 uplift of £7,700.00.

Final award £90,268.20.
Counsel was Craig Carr of 7 Bedford Row
Case submitted by Deborah Corcoran, QS Abney Garsden Solicitors.

Working Effectively With Clients
Who Have Been Sexually Abused in Childhood
Back to Basics Quiz
By

Lee Teresa Moore : Founder & Former President of ACAL

***Note**: Do not look up answers on Google / consult a colleague before answering.*

1. Name the 4 core dynamics of trauma that affect clients who have been sexually abused in childhood.

2. Three of the trauma dynamics you identified in 1 above are often replicated in the legal process, which ones are they?

   In this context the legal process for the client can be from the moment of first contacting solicitors until case closure.

3. In the context of clients who have been sexually abused in childhood what is a trigger?

4. Using the 3 trauma dynamics you identified in Question 2 above give an example of how each one of them can be replicated during the legal process.

   [a]

   [b]

   [c]

5. Are the 4 trauma dynamics triggers? Y/N

6. Give 3 cross-examination techniques that mirror each of the 3 trauma dynamics of childhood sexual abuse you identified in question 2 above.

7. Name 3 specific triggers and 3 non-specific triggers for clients generally.

8. How can triggers adversely impact:-

   [a] clients
   [b] the provision of their evidence
   [c] case handling?

   Give an example of each.

9. What are boundaries and why are they essential when working with clients abused in childhood?

10. What is the potential adverse impact upon the provision of evidence by clients / case handling, if your professional boundaries are too rigid?

11. How do your boundaries need to be to facilitate the best disclosure / provision of evidence from clients when taking statements and why?

12. For lawyers and the staff who work with them, who would be more vulnerable to Secondary Traumatic Stress and why?

13. What is the main difference between Burnout and Secondary Traumatic Stress?

14. Name 3 factors in client's disclosures that can exacerbate the adverse impact of client's traumatic information upon lawyers?

15. Name 5 symptoms Secondary Traumatic Stress which can adversely impact professionals personally.

16. Name 3 symptoms of Secondary Traumatic Stress which impair professionalism

17. Give 3 examples of how each of the symptoms you identified in 16 above can adversely impact case handling.

18. Give 3 examples of how a lawyer experiencing each of the 3 symptoms you identified in 16 above can adversely impact clients.

19. Name 5 more symptoms a colleague or member of staff would be exhibiting personally or professionally if they were experiencing Secondary Traumatic Stress. *Your answers need to be different to those given in questions 15 and 16 above.*

20. What do you most want from your client to facilitate case handling? *The answer is not to guarantee payment of all your fees and expenses in advance by the way!*

No answers are provided for this Quiz as they should not be necessary. In the event that answers are required then a bespoke training day would be beneficial.

To discuss any of the above please contact me via email lee@leemooreco.com or call
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Why don't we have mandatory reporting?

By Jonathan West
Mandate Now (mandatenow.org.uk)

The case for placing a legal obligation on staff within Regulated Activities (schools, hospitals etc) to report reasonable suspicions of child abuse is now overwhelming. This obligation, commonly known as "mandatory reporting" exists across most of Europe, in Australia and Canada, most states in the US and has recently been introduced in the Republic of Ireland. It has even existed in Northern Ireland since 2005 when, following the Cabin Hill School abuse scandal, use was made of the Northern Ireland Criminal Law Act (1967) which makes it an offence to fail to report an arrestable offence. Most crimes against children fall into this category.

Even before Jimmy Savile's abuses so sensationally hit the headlines in late 2012, there had been a long series of criminal cases involving teachers abusing children. A common feature of almost all these cases was that the school's management knew or at least had reason to strongly suspect that abuse had happened.

In January 2012, Richard White (also known as Father Nicholas White), a monk at Downside Abbey and former teacher at the attached school, pleaded guilty to abusing two pupils. The offences were committed in the early 1990s but not reported to police at the time, even though White admitted the abuses to the headmaster and the abbot. He was permitted to continue teaching after the first time he was caught and then sent to Fort Augustus Abbey in Scotland after the second occasion. In neither case were the authorities informed. The school even went to the trouble of obtaining legal advice and was told they were not required to tell the police what happened.

In legal terms, the advice the school received was entirely correct. White was sentenced to 5 years. The headmaster and abbot of the time were not prosecuted as they had broken no law.
There are many other recent convictions predating the Savile revelations: Stephen Skelton, John Maestri and Father David Pearce all at St Benedict's School Ealing; Bruce Roth at Kings School Rochester and Wellington College, Nigel Leat at Hillside First School to name but a few.
Nigel Leat's abuses were particularly horrifying and the failure to catch him especially culpable. When a Serious Case Review was conducted, it was discovered that on about 30 occasions staff members had noticed suspicious behaviour by Leat. Of those, eleven resulted in a report to the head teacher. None was passed on to the Local Authority as ‘guidance’ suggests.

It is not just child sexual abuse where reporting doesn't happen, and it is also not just abuse that occurs within schools which failed to be acted on. On 3 March 2012 Daniel Pelka, a 4 year old boy living in Coventry, was murdered by his mother and her partner. The subsequent Serious Case Review highlighted numerous failings across multiple agencies, but perhaps the most critical failure occurred at the school he attended in the last six months of his life. His emaciation, his constant hunger and stealing food from other children's lunchboxes, and unexplained bruises including what appeared to be strangulation marks on his neck were all noticed, but because of the inadequacy of the schools safeguarding procedures, none of these concerns was passed on to Children’s Services at the Local Authority. I subsequently reviewed the child protection policies of almost all Coventry's schools, against 10 basic criteria derived from statutory guidance. The mean score was a disgraceful 5/10 and only 2% of schools scored the full 10/10. Ofsted didn't have a bad word to say about safeguarding at any of the schools. It is not just the places which have had a scandal which have

poor safeguarding arrangements. There are plenty of others which either haven't been found out yet or which have just been lucky enough not to have had somebody take advantage of their shortcomings.

But these cases pale into insignificance when we are faced with the industrial scale of Jimmy Savile's abuses. Hundreds of victims have been identified of abuses where Savile won positions of trust at schools, hospitals and the BBC. This is what clever people do when they are inclined to abuse children. They work themselves into a position of trust where they can supervise children, and then they use that position both to gain access to victims and to deflect suspicion if and when it arises. The context will depend on the abuser's other perfectly legitimate skills and interests. Potentially vulnerable institutions include schools, hospitals, sports clubs, youth groups, scouts and similar organisations, children's homes and youth detention centres. Savile's abuses are incredible in their scale and in the range of institutions he exploited, but his *modus operandi* is very familiar to anybody with experience of the subject.

Until the revelations about Savile hit the news, most people found it very hard to understand how a person could be a pillar of the community and also be a sex offender. The two didn't go together in the popular imagination. And so time and again when people noticed evidence that a respected person was abusing children, they would disbelieve the evidence of their own eyes. It just "did not compute" and so they would persuade themselves that there had to be an innocent explanation for what they had seen.

Even if an individual overcame those doubts to report it, for the report to get to the authorities he or she would then have to overcome a sceptical management. Management would have the disadvantage of not having witnessed what the staff member saw, and also have a conflict of interest in that they have the reputation of the institution to protect. An abuse scandal is terribly bad for business. And so management might disbelieve the report and order the staff member not to discuss it again, or might try to handle the matter "in house".

In handling a case "in house" management might in all good faith believe that they are protecting both the children and the reputation of the institution. In practice, the only person they protect is the offender. If and when s/he abuses again, the managers are compromised, they dare not report the new incident lest their earlier bad decision come to light. Because most institutions are hotbeds of gossip, the word gets around and so anybody else who might want to abuse realises he won't get reported even if he's caught. Management might as well put a "Paedophiles welcome" sign above the main entrance. So when the abuse finally comes to light, sometimes decades later, it is often discovered that several abusers have been operating there.

In one important respect, sexual abusers are just like other criminals. They don't want to get caught. They are deterred from offending if they think it unreasonably likely they will get found out. So there is a simple and effective counter which would catch abusers early and deter abusers from offending in the first place. This is a culture of awareness within institutions combined with an absolute determination to ensure the authorities are informed of any suspicious incident. But with the present state of the law, the temptation to protect the institution can be very great. In this conflict of interest between reporting and reputation, what we need is a measure that will decisively tip the balance in favour of reporting. This is what mandatory reporting is intended to achieve.

Consider this scenario: A junior teacher sees in the distance a senior colleague and a female pupil sitting on a bench in a remote corner of the school grounds. They appear to be holding hands and being intimate. As the teacher approaches, they notice him and hurriedly separate, walking off in different directions. The teacher reports the incident to the head, who says he must have been mistaken, and firmly tells the junior teacher to mention this to nobody so as not to damage an innocent man's reputation.

You are that junior teacher. You have a very reasonable suspicion that an inappropriate relationship exists between the senior teacher and the girl, and that the girl is therefore at risk, but you have not seen any crime committed. What do you do? Do you turn whistleblower and phone children's services yourself, or do you obey your headteacher and shut up about it? Most teachers understandably will do the latter, having a mortgage to pay and a family to support. It was by ignoring signs like this that Bishop Bell School failed to take action before Jeremy Forrest fled to France with a pupil he was having an affair with. The policy in use at Bishop Bell at the time scored 5/10 against the 10 criteria used in the Coventry survey mentioned above.

If the teacher is a hero and decides to call children's services off his own bat, and they call the school asking to investigate, then it will take the head teacher about 3 seconds to work out who called them. The junior teacher will probably not last long in his job. Whistleblowers are usually sacked for the sin of showing management up, unless management has actually done something criminally wrong.

Now take the same scenario, but where there is a law on mandatory reporting of reasonable suspicions which applies to schools and other institutions caring for children.
The head teacher would now be far less likely to try and squelch the report. Few people are willing to risk jail in order to cover up somebody else's suspected abuse. So in all probability the report will get forwarded to the authorities, which is what we want to achieve.

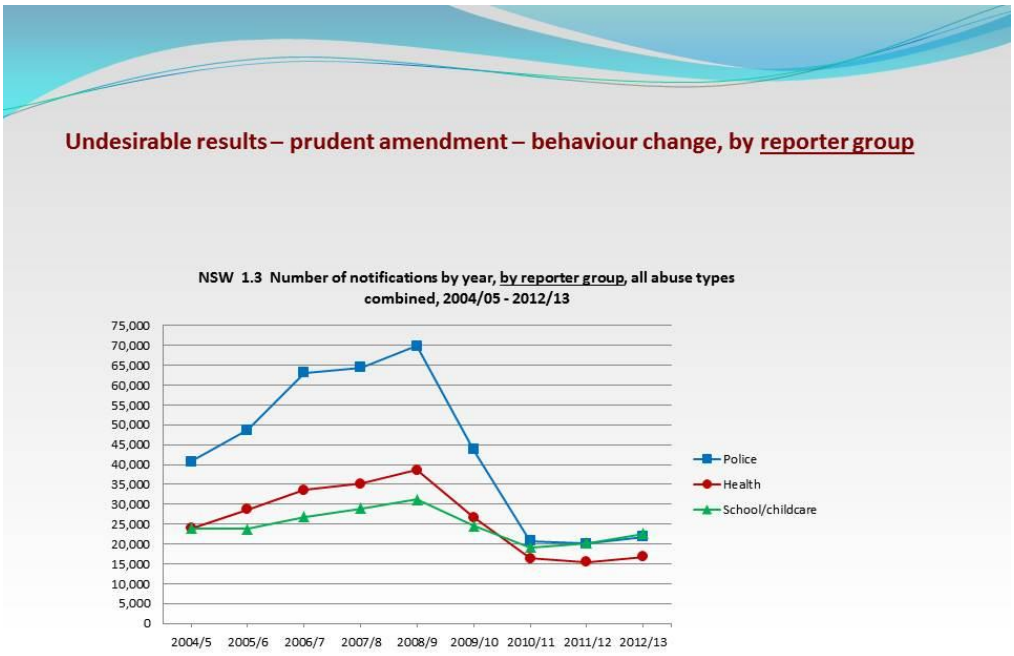
In the unlikely event that the head is extremely reckless and still tells the junior teacher to tell nobody, the junior teacher is in a much stronger position. If he now phones children's services, he has two incidents to report: the original child protection concern and the criminal action of the headteacher in not passing on a reasonable suspicion. The junior teacher is much less likely to be sacked since he was fulfilling a legal obligation in making the report.

On publication of the report about Savile's abuses at Stoke Mandeville, Health Secretary Jeremy Hunt made a statement to the Commons. He was subsequently asked by MPs about the need for mandatory reporting of abuse. His opposition to its introduction seemed to be based solely on a concern about possible unspecified "unintended consequences" if mandatory reporting were to be introduced. It is as if the government has carefully avoided obtaining any knowledge of how mandatory reporting works in other countries and even in a part of the United Kingdom itself.
Of course, no government can be seen to oppose the protection of children merely on grounds of cost, but since the "unintended consequences" argument won't stand up in the light of evidence from abroad as to the efficacy of mandatory reporting, we have to look at cost as a possible disincentive to action.

In the short term, the costs may be substantial. We have a 30 year backlog of unreported and unprosecuted cases where adult survivors of abuse are increasingly willing to come forward to report the abuse they suffered in childhood. We have no means of knowing how many more people will come forward over the next year or two, but it is inevitably going to increase the strain on police and the criminal justice system.

Then, even without mandatory reporting, the recent increase in awareness has been reflected in increased reports to children's services concerning abuse happening today. This is difficult in a climate where government is looking to find cost savings. For instance Newcastle has recently seen an increase in reports of 40% while its government funding for child protection in the same period has been cut by 30%. In effect, each case is having to be managed on half the resources previously available. It is not hard to imagine a government hesitating to take a measure that might result in a great increase in the demand on children's services (without equivalent increases in resources) if the government might then take the blame when they collapse under the strain.

These and other cost increases may well be having an effect on government thinking. But while the costs are undoubtedly real, they will also be short-term. If mandatory reporting has the desired and expected effect, then there will of course be a spike in cost as long-term abusers are finally reported and prosecuted. But the longer term effect will be that abusers are on average caught earlier than before, and that many are deterred from abusing in the first place. So the number of reports will gradually reduce to something similar to present level, but reflecting a much lower underlying crime rate. This is what appears to have happened in Australia, as the graphic below indicates.



Source: Dr Ben Mathews, Associate Professor, School of Law, Queensland University of Technology

More importantly, both in human terms and in cost terms, the early detection and deterrent effect of mandatory reporting means that there will be far fewer future victims. The psychological effects of child sex abuse can be lifelong and devastating, and in many cases prevent the survivor from taking a full and productive role in society. The cost to the state of supporting survivors is unknown because nobody has done the research to categorise it. But it must be immense if you take into account the cost of the NHS mental health services provided to survivors and also the lost tax revenue from survivors being unable to work as fully or productively as they otherwise would have been able to. The government appears to be unwilling to shoulder the short-term cost of preventing child abuse, and instead has to shoulder the much greater and long-term cost of ameliorating the effects on its victims.

Whenever I tell any friend who is a parent of school age children that their school has no legal obligation to report abuse against pupils, even by staff, their first reaction is one of utter disbelief. Their second reaction is one of anger at the situation. The failed arrangement of discretionary reporting was only sustainable as long as nobody really noticed. People are beginning to notice now.

Jonathan West
Mandate Now (mandatenow.org.uk)

Upper Tribunal Decision Will Ensure Justice For Victims

By David Greenwood, Switalskis Solicitors

A judicial review pursued by David Greenwood of Switalskis will help thousands of victims of childhood sexual abuse to recover compensation through the CICA Scheme. The court has now told the CICA that the two-year time limit should rarely be imposed in child sexual abuse cases.

One of the most frustrating aspects of working with Criminal Injuries Compensation Authority (CICA) cases is how inflexible the Authority itself is when it comes to rules. At times it can feel like you're making futile arguments against an organisation determined to withhold compensation on purely technical grounds. Whilst the civil law has made great steps in developing the law in the area of child abuse, the CICA had, up to 2012, been left with its feet encased in concrete as time had gone on.

The CICA serves a purpose: that of compensating blameless victims of violent crime. Under most circumstances, it serves that purpose admirably. If a victim finds himself being attacked on a night out and sustains injuries, imposing a two-year time limit for making a claim, as with a civil limitation period, is not unreasonable. Traumatic though an experience might be, in the vast majority of physical assaults against adults it will not be so incapacitating that they cannot go to the police and make an application to the CICA.

The same cannot be said of cases involving child abuse. Silence is one of the major features of child abuse – an advantage to the perpetrator, a debilitating and degrading torment to the victim. Expecting an abused child to comply with time limits when the psychological affects of abuse more often than not involve a constricting silence is unreasonable and unfair. If a time limit for compensation were to be enforced strictly – an application must be brought within two years of the incident, no exceptions – a survivor who has the strength to come forward and give evidence against their abuser fifteen years into adulthood would be time-barred from making an application.

CICA Schemes have never been quite so strict as to deal in this kind of absolute. Paragraph 18 of the 2008 Scheme stated that a CICA claims officer may waive the two-year time limit where (a) it is practicable for the application to be considered and (b) in the particular circumstances of the case, it would not have been reasonable to expect the applicant to have made the application within the two-year period. It is for the applicant to make out their case with regards to waiving the time limit (paragraph 19).

That there is a mechanism for waiving the time limit, however, does not tally with the practical reality that the CICA has not, in the past, exercised that discretion. I know I will speak for many people who have handled child abuse cases with the CICA when I say the CICA have traditionally held the time limit to be absolute – claims officers seldom waived the limit even in the worst cases of abuse. It was, more often than not, necessary to go before the First-tier Tribunal to stand any kind of chance of success. Even then there were no guarantees that the First-tier Tribunal would agree to a waiver of the time limit.

R(MJ) v First-tier Tribunal and CICA (CIC) [2014] UKUT 0279 (AAC) has changed this. Although the Upper Tribunal declined to rule that where conditions (a) and (b) of paragraph 18 were met the time limit must be waived, it did direct that where they were met a claims officer would have to have good reasons to justify not exercising the discretion in the applicant's favour.

The panel of three judges stated that it was not enough simply to take a stance of ruling an application to be irredeemably out of time because it was made 20 years after the last of the incidents in question. 'To take such a stance would ignore the very real reasons such an individual will have for not disclosing either the abuse itself or the full extent of such

abuse in the first place and the time that it takes to come to terms with such traumatic experiences.' The fact that there has been a lengthy delay in making an application does not of itself mean that a case for waiver cannot be made out, especially in cases of historic child abuse.

Although this ruling only applies directly to the 2008 Scheme, it's another positive step made in relation to the approach the CICA will have to take in relation to historic child abuse cases. The 2012 Scheme took a number of steps as part of a vast overhaul, including introducing new rules regarding reporting to the police and a revision to the two-year time limit which should make it easier for those who have only recently come forward to bring successful applications.

Then there are those who disclosed abuse as children and who only recently made an application to the CICA. This ruling, although not binding, should at least be some assistance to those individuals. Despite the overhaul of the Scheme, a claims officer still has a discretion to extend the time limit in exceptional circumstances where the applicant could not have applied earlier.

I anticipate that this ruling will be of great assistance to those who wish to apply to the CICA for compensation for the abuse they suffered as children. After years of the CICA being able to almost arbitrarily dismiss any application made out of time, discriminating without thinking against victims of child abuse, the Upper Tribunal has forced the CICA into serious consideration of every individual case, and that can only be a good thing. The days of strict unthinking adherence to the restrictive rules are hopefully gone.

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APIL/ACAL Child Abuse Conference: 2nd June 2015, London

Following the sell-out success at last year's child abuse conference, APIL is delighted to bring you details of their 2015 event, which is being held in conjunction with ACAL.

We have a fantastic line-up of speakers, covering the following topics:

- government inquiries
- legal update
- abuse claims and the medical profession
- vulnerable witnessess in child disputes
- Rochdale and Rotherham
- working with clients who have suffered abuse
- mandatory reporting - a panel debate

CPD hours
APIL: 5.5
Please note that the number of CPD hours may be subject to change

Cost (Ex. VAT)
Corporate accredited firms: £200.00, APIL members: £235.00, non-members: £340.00

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
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Non-practicing member, e.g. Experts

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

Other Practitioner Members

- Cost: £150.00
- Benefits: Website, AGM, Workshop (3 CPA Hours), Newsletter, Database, Experts Register
-

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Consequential loss shall be deemed to include, but is not limited to, any loss of profits or anticipated profits, damage to reputation, or goodwill, loss of business or anticipated business, damages, costs, expenses incurred or payable to any third party or any other indirect or consequential losses.