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ACAL LAW REVIEW

Association of Child Abuse Lawyers

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Articles

Legal Update

In my last article written for the ACAL Newsletter, I considered how the UK Supreme Court's decision in **Poole Borough Council v GN and Another, [2019] UKSC 25** had thus far resisted all attempts to qualify its effect.

Two such decisions were **HXA and SXA v Surrey County Council [2021] EWHC 250 (15th February 2021)** and **YXA v Wolverhampton CC [2021] EWHC 1444** which went to appeal in **HXA v Surrey County Council and YXA v Wolverhampton City Council [2021] EWHC 2974 (QB).** Mrs Justice Stacey dismissed the Claimants appeals, following the judgment of Mrs Justice Lambeth in **DFX and Ors v Coventry City Council [2021] EWHC 1382 (QB)**.

Only the assumption of responsibility route to the establishment of a duty was applicable in these cases. The council's investigating and monitoring the Claimants' position did not involve the provision of a service to them on which they could be expected to rely. In short, the nature of the statutory functions relied on in the particulars of claim did not in itself entail that the council assumed or undertook a responsibility towards the Claimants to perform those functions with reasonable care. Moreover, the particulars of claim did not provide a basis for leading evidence about any particular behaviour by the council towards the Claimants, besides the performance of its statutory functions, from which an assumption of responsibility might be inferred.

Stacey J then considered the provisions of CPR 3.4(2)(a) under which the court could strike out a statement of case if it appeared to the court that the statement of case disclosed no reasonable grounds for bringing or defending the claim. There were two questions - were there no reasonable grounds and if not, should the court exercise its discretion to strike out? An application to strike out should not be granted unless the court was certain that the claim was bound to fail. It was not suitable for striking out if it raised a serious live issue of fact which could only be properly determined by hearing oral evidence. A claim should also not be struck out if it concerned a developing area of law.

Stacey J said that the essence of the claims was an allegation of a failure to take care proceedings timeously and not making things better. Acts, which were really on analysis, omissions could not be brought wholesale within the parameters of a duty of care, or to put it colloquially, to fail to see the wood for the trees. It was beyond doubt that a local authority "investigating and monitoring" a child's position and by "taking on a task" or exercising its general duty under Section 17 of the Children Act 1989, or placing a child on the child protection register, or investigating under Section 47 did not involve the provision of a service to the child on which that child could be expected to rely.

As for the human rights claims, the Master and the Deputy Master in the courts below had been entitled to strike out the common law negligence claims, leaving the human rights claims to go forward.

Finally, post **N v Poole** and **DFX**, the question of assumption of responsibility by a local authority so as to give rise to a duty of care to remove children from their families in child protection proceedings was not a developing, but a settled area of law.

This decision further cements the decision in **N v Poole.** Making any kind of claim for "failure into care" is going to be very difficult indeed if not impossible.

Nonetheless, there is one case **Champion v Surrey CC [2020] unreported, June 26th** which awaits appeal in the High Court but which may be transferred to the Court of Appeal. There are also strike out applications awaiting hearing for two other cases.[1]

We also have two cases this year on vicarious liability and limitation. The first earlier in the year, is **AB v Chethams School of Music [2021] EWHC 1419 (QB).** This is a lengthy judgment of Mr Justice Fordham and concerns the sexual abuse of a pupil at a music school by her teacher and guardian. The Crown Prosecution had declined to prosecute the teacher and limitation had expired over 15 years after the Claimant's 21st birthday. The issues were a) limitation b) whether the alleged assaults took place and c) whether the Defendant was vicariously liable for the teacher.

Fordham J found for the Claimant on the issue of limitation. He commented that until the Claimant was well into her adult years, she saw the teacher's sexual conduct towards her as his having "taken advantage of her". and although she did not "forget" it, she did "push it to the back of her mind'. When in early 2013 (aged 31) she did report what had happened to her, the catalyst for doing so was that she had learned that there was an investigation into allegations of sexual abuse at the school. After that, she placed her trust in the criminal process. Whilst the passage of time could damage the evidence, the issues in the trial were narrow. The Court had to decide the factual questions of whether the essential allegations of sexual acts took place and to what extent, if those acts did take place, the school was vicariously liable. There was no issue of consent. Quantum was also agreed.

In relation to the factual allegations of abuse, Fordham J found for the Claimant. Both she and the teacher had been cross examined at length, and ultimately the judge did not find his evidence convincing.

In relation to vicarious liability, the issue here was that the teacher had also been the Claimant's guardian and the Defendant sought to argue that role did not make the school vicariously liable for his abuse. Fordham J pointed to **Haringey LBC v FZO [2020] EWCA Civ 180 (Court of Appeal, 18.2.20** where the Court of Appeal had upheld the judgment of **Cutts J at [2018] EWHC 3584 (QB)) (FZO).** The Defendant, Haringey was found to be vicariously liable for all of the sexual assaults perpetrated by a teacher on a pupil, in all places and during all periods. In the Claimant's case, there had been a "pastoral relationship between teacher and pupil", which had then been "abused by the perpetration of regular sexual assaults on a pupil/former pupil"

The Defendant's counsel submitted that if the teacher had been employed a guardianship agency to look after the Claimant, then vicarious liability would have fallen on that agency. In reply, Fordham J said such an example could give rise to "dual" vicarious liability on both the school and the agency. However, in this case the guardianship was something that was enabled by the Defendant school.

By contrast, the decision in **DSN v Blackpool Football Club [2021] EWCA Civ 1352** went against the Claimant. The Claimant was abused by one Frank Roper, a football scout in June 1987, whilst on a footballing tour for young boys to New Zealand, for which he was later convicted. The proceedings were issued some thirty years after the event. The trial judge disapplied limitation and held that Blackpool FC was vicariously liable for the acts of Mr Roper when he abused the Claimant.

Lord Justice Stuart-Smith giving the joint decision of the Court of Appeal found that there was no vicarious liability. Frank Roper clearly played a key role in the recruitment of players for Blackpool FC. However, the football trip on which the Claimant went, was not authorised by Blackpool FC, although they had made a small contribution to the cost. Stuart-Smith LJ reached the conclusion that the evidence as identified and found by the Judge did not justify a finding that the relationship between Blackpool FC and Mr Roper was one that could properly be treated as akin to employment. Whilst what Mr Roper did as a scout conferred important benefits upon Blackpool FC in the conduct of its business and that he was afforded deference and welcome by the club in recognition of his having produced good players in the past and in hope that he would continue to do so, none of the normal incidents of a relationship of employment were otherwise present. There was no evidence of any control or direction of what he should do.

In relation to limitation, Stuart-Smith LJ upheld the trial judge's decision. This was despite the fact that Frank Roper had died. In relation to Mr Roper's absence from the trial, Stuart-Smith LJ did not share Blackpool FC's confidence that he would have taken an active part or would have given evidence even if he had been alive. Blackpool FC identified particular points where it was said that missing documentary or witness evidence might have provided clarity. Stuart-Smith LJ did not find the peripheral examples cited by Blackpool FC to be persuasive. The Judge had the inestimable advantage of having heard the numerous witnesses who did give evidence. He was therefore best placed to assess the potency of that evidence and whether contrary evidence from witnesses or documents could have led to the partial or wholesale rejection of the evidence he had heard. A similar approach should be adopted to the loss of documentation.

A decision from the UK Supreme Court deals with the issue of whether a holiday company is responsible for a sexual assault on a customer. In **X v Kuoni Travel Limited [2021] UKSC 34 -** the Claimant entered into a contract with Kuoni under which Kuoni agreed to provide a package holiday in Sri Lanka. She was raped by an electrician employed by the hotel in which she was staying. She claimed damages against Kuoni for breach of contract and/or under the Package Travel, Package Holidays and Package Tours Regulations 1992, which implemented in the United Kingdom Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ("the Directive"). Ultimately the Supreme Court accepted that the rape and assault of Mrs X constituted improper performance of the obligations of Kuoni under the package travel contract. The purpose of the agreement, namely to confer an enjoyable experience, encouraged a broad, not a narrow, interpretation of the holiday services contracted for. That would include the service of looking after and serving holidaymakers courteously in matters relating to their holiday experience. The fact that N's conduct was so grossly egregious did not alter the fact that this was a breach of the package travel contract between Mr and Mrs X and Kuoni. In view of the objective of ensuring a high level of consumer protection, the obligations arising from a package travel contract could not be interpreted restrictively and the holiday company could not use Article 5(2) of Directive 90/314 to exempt themselves from liability. Kuoni was liable to Mrs X both under the 1992 Regulations and for breach of contract.

Finally in **A and B v CICA [2021] UKSC 27,** the UK Supreme Court considered the case of two Lithuanian brothers who were trafficked to the UK and subjected to labour exploitation and abuse. Their claim to the Criminal Injuries Compensation Scheme was refused because they had previous unspent convictions from Lithuania. They claimed that Paragraph 26 and Annex D unjustifiably discriminated against them, in breach of article 14 taken with article 4 of the European Convention on Human Rights ("ECHR").

The UK Supreme Court disagreed that there was discrimination. The aim of the legislation underpinning the CICA was legitimate. The Scheme was a taxpayer-funded expression of public sympathy and it was reasonable that there should be strict criteria around who was deemed 'blameless' for the purpose of determining who should receive a share of its limited funds. Moreover, the exclusionary rules were entirely proportionate. Courts should be slow to criticise legislation in the area of social benefits which depended necessarily on lines drawn broadly between situations which could be distinguished relatively easily and objectively. The rules adopted in Annex D were nuanced rules reflecting in various ways both the seriousness and the age of a claimant's previous conviction.

Malcolm Johnson

Lime Solicitors

London Borough of Islington announces Support Payment Scheme for survivors of abuse, but what does it mean for the individual survivors?

By Andrew Lord, Associate Solicitor at Leigh Day

Islington Council has announced a Support Payment Scheme which will see a flat payment of £10,000 paid to each eligible survivor of abuse. It is not intended to be compensation and civil claims may still be brought.

Leigh Day has been representing Islington Survivors Network ("ISN") in their quest to seek redress for survivors for a number of years, and a brief synopsis of the new Support Payment Scheme and what it may mean for survivors is set out below.

Background

The Islington Child Abuse Scandal was widely reported during the 1990s and various enquires followed, culminating at that time in the White Inquiry Report 1995. It was said that "the report was deeply critical of the council and led to profound changes in the council's management of childrens' services." [Leader of Islington Council; 2017]

Fast-forward to 2016 and Dr Liz Davies, a former Islington social worker and whistle blower, started ISN. This grew into an organisation campaigning for justice for survivors of child abuse in Islington children's homes and foster placements, with a number of objectives including establishing support and seeking redress for survivors, working alongside authorities to investigate allegations of abuse, and researching and publishing the history of Islington's child abuse scandal.

At an executive meeting in September 2017, Councillor Richard Watts [then Leader of Islington Council] publicly acknowledged that Islington Council had systemically failed people who suffered abuse suffered in care. He admitted culpability, stating that now was the time to put right the mistakes of the past and to address failings.

There followed some back and forth with the council with regards to widespread financial redress for survivors, and finally in March of this year Islington Council announced that they were setting up a support payment scheme for eligible survivors alleging abuse. The scheme is due to open in Spring 2022 and it is envisaged that it shall initially run for two years.

The Support Payment Scheme

A period of consultation followed the announcement in March of this year. ISN sought the views of their members before submitting their consultation response, with 84 survivors eventually feeding into their detailed response.

London Borough of Islington announces Support Payment Scheme for survivors of abuse, but what does it mean for the individual survivors? – Continued 1

The Support Payment Scheme was amended and approved by the Executive Committee in October. The approved Scheme is open for eligible survivors who:

1) were placed by Islington council in an Islington run children's home;
2) were placed there between 1966 and 1995; and
3) suffered sexual, physical, emotional abuse or neglect whilst in that placement.

It is also worthwhile noting that survivors linked to "extreme criminality, such as a terrorist organisation, organised crime, or sexual crimes" may have their application for a support payment declined.

Within their consultation response ISN called for a number of changes, some of which were implemented. The pay award was increased to £10,000, up from the £8,000 initially suggested, and it was made clear that qualifying abuse included peer-on-peer abuse and neglect.

There were some additional points made which were not implemented. No payments shall be made to the families of deceased survivors for example, and the Scheme still excludes abuse in foster care, or anyone subjected to abuse outside of the 1966 and 1995 date range.

Councillor Kaya Comer-Schwartz, Leader of Islington Council, said at the meeting that a principle of the scheme was that: "Payments will be made through a process that is straightforward and quick to access, and that minimises the need to re-live past trauma, or the risk of further trauma or harm".

Mechanics of the Scheme

As mentioned above, the Scheme is not yet operational and so not all information is known at this time. A draft application form has not been provided, for example.

It is worthwhile noting that survivors may nominate an "applicant's assistant", such as another person or survivor group or similar organisation, but that no legal / assistant fees are payable.

To receive a payment there only needs to be credible information and / or material satisfying the eligibility criteria. Whilst we are yet to see how this will work in practice, the proposals for the scheme say that they wish to facilitate support payments through a non-adversarial process, and it is recognised that child abuse can be 'hidden' and that very rarely there are contemporaneous records of the abuse. The Scheme shall be being administered by an "independent service provider which has the necessary professional and other expertise", but we are not yet aware who this shall be.

The Scheme also states that any application which is rejected shall automatically be sent to an independent appeal panel, which shall consist of "barristers/judges, senior or expert social workers and individuals from relevant charitable organisations with appropriate expertise". The applicant or their 'assistant' may make written representations or may be asked for further information by the panel, and we query what support shall be in place for survivors or their 'assistants' given legal fees will not be paid for advice.

Finally, the Department for Work and Pensions has recently confirmed that payments made under the Support Payment Scheme shall be disregarded for the purposes of assessing each recipient's benefits entitlement.

Parallel compensation claims

Survivors may still bring civil claims as the support payment is not intended to replace compensation. The Scheme does make clear that the payment will not impact upon the council's ability to defend any individual civil claim.

It is worthwhile noting that should a survivor receive the £10,000 payment under the Scheme and then proceed with a civil claim against the council, this will be treated as a payment on account and will be deducted from any final compensation award. This will be another factor to consider at the outset of a civil claim; however, the amount of the support payment is such that it is likely to only impact on the minority of cases where prospects are good, but damages are likely to be low.

Support available to survivors

The Support Payment Scheme sits alongside other support which is already available to survivors of abuse in Islington's children's homes in co-production with ISN.

ISN has successfully negotiated the establishment of a survivor support team within Islington council, who can assist with practical matters such housing and welfare benefits. The Islington Survivors Trauma Service has also been established, which provides psychological support for anyone affected by abuse in Islington Children's Homes between 1960 and 1995. The Trauma Service can offer remote video meetings, and referrals can be made direct from individual survivors or by others.

London Borough of Islington announces Support Payment Scheme for survivors of abuse, but what does it mean for the individual survivors? – Continued 3

ISN have received many positive comments from their members who have used the above services. For any clients who may be eligible, further details of survivor support team can be found here, and further details of the Islington Survivors Trauma Service here.

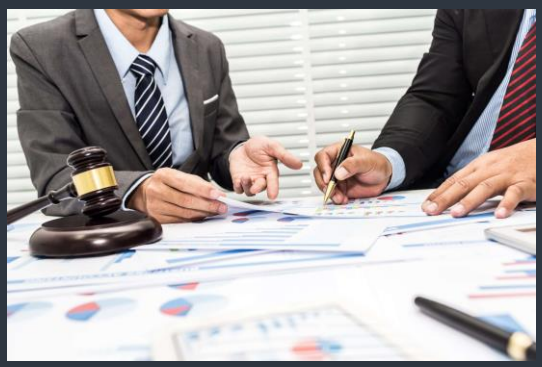
Moving forwards

Exact numbers are difficult to predict, but ISN now list, on their website, 42 Islington's children's homes which ran between 1960 and 1990. They have seen their membership grow steadily since the Scheme was announced, and one news article suggested that Islington council expects as many as 2,000 victims to come forward and that they will pay out £16 million.

Whilst further details need to be panned out, ISN is cautiously welcoming the scheme and intend to provide advocacy once the scheme is open. To our mind the advantage of the widespread nature of this scheme is that many of those individuals who have uncertain prospects of success in a civil claim will hopefully now receive some form of payment from the council.

More about the work of Islington Survivors Network, and contact details for any survivors who may wish to reach out to them, can be found on their website: https://islingtonsurvivors.co.uk/.

Andrew Lord, Associate Solicitor at Leigh Day



Civil and Criminal Injuries Case Summary

By Nathalie Swanwick, Solicitor at Simpson Millar

One of the key considerations for us all is whether the Court are likely to exercise their discretion to allow our clients' cases out of time under Section 33 of the Limitation Act 1980. This can be difficult where documents are no longer in existence, there is no conviction relating to the client and abusers and witnesses have passed away.

We all recognise that the Criminal Injuries Compensation Scheme does not offer sufficient compensation to victims of abuse and can often be unfair. I wanted to provide a case study that showed the benefits of the Criminal Injuries Scheme in a positive light where the current law/precedent relating to limitation has not worked in our clients favour.

Mr R

I was instructed on behalf of Mr R to represent him in bringing a civil claim against a Local Authority that owned and managed the schools he attended. Mr R initially contacted us over 25 years after the primary limitation period had expired in 2018 and the police shortly afterwards. We acted under a public funding certificate for Mr R.

School A

Mr R was physically abused at school A in the 1970's. He was physically abused by the headmaster and 2 other staff members. The abuse included being made to bathe in cold water and stand in a corner as punishment. He would also be flung across the floor, forced to hang from wall bars by his legs and being hit with a medicine ball without warning.

School B

Mr R was sexually abused in the 1980's by a house parent at the school. The abuse included the most serious sexual abuse including rape and being made to perform oral sex.

The house parent had been convicted in respect of 8 counts of buggery in the 1980's relating to different boys (not Mr R) and was sentenced to 10 years in prison. He was again later convicted and given a suspended sentence in relation to further sexual assaults committed at the school.

When Mr R reported it to the police when the house parent was 83 years old and unable to remember anything. The police did not continue with the case.

Medical Evidence

We obtained medical evidence from a Consultant Psychiatrist. Mr R receives prolonged support from secondary care mental health services and had an established diagnosis of Schizoaffective Disorder. This had features of both schizophrenia and delusions and significant symptoms of mood disorder either in terms of elation or depression. Mr R had persisting symptoms of voices, beliefs that the government are following him and perhaps conspiring against him and persistent feelings of depression. There was no history of drug or alcohol misuse.

The opinion of our expert was that on the balance of probabilities, Mr R had a genetic predisposition towards major mental illness but the alleged abuse had also been a significant contributor to his long-term problems with significant mental health issues. The expert estimated 50% of the disorder was caused by a genetic predisposition and 50% by the abuse. Our expert broke down causation further and estimated that of the symptoms cause by the abuse 90% resulted from abuse at school B and 10% resulted from abuse at school A.

The expert was of the opinion that as Mr R had not worked for 12 years he was unlikely to be able to return to work.

Defendant

The Defendant instructed solicitors to act on their behalf as they were responsible for both schools. Their position was that our Mr R's case would fail on the basis of the following:

- They were unable to locate any documents proving Mr R attended either school and there were no education records.
- The personnel files of the alleged abusers were no longer available. As a result they were unable to identify precise dates of employment of 2 of the abusers. They were unable to locate if one of the abusers ever worked at the school.
- One of the abusers had died and they were unable to trace 2 others.
- They were unable to put Mr R's allegations to witnesses due to the substantial delay in bringing the claim.
- The delay had impaired their ability to recover any money direct from the abusers.
- Their client had suffered a substantial financial prejudice as an insurer had become insolvent and they were liable for 25% of their share.
- Mr R had not secured a conviction against any of his abusers.
- As a result they did not believe a fair trial was possible.

The Defendant Solicitor made a part 36 offer of £30,000.

Counsel's Advice

Advice was sought from Counsel in this matter and a conference was held with Mr R to consider the merits of his case in more detail.

Following the Defendant's full response, Counsel advised that the Defendant had done enough to show evidential prejudice such that a fair trial is not likely to be possible, such that the Court would not exercise its discretion under Section 33 of the Limitation Act 1980 in my client's favour. Regard was given to Catholic Child Welfare Society (Diocese of Middlesbrough) v. CD [2018[EWCA Civ 2342 and Haringey London Borough Council v. FZO [2020] EWCA Civ 180.

Outcome

Following the advice of Counsel, Mr R accepted £30,000 in full and final settlement of his claim as there were not sufficient prospects to continue and we would be unable to continue under the public funding certificate.

Criminal Injuries Compensation

Whilst the civil claim was ongoing I made 2 separate applications to the Criminal Injuries Compensation Authority (CICA) one for each school within the 2 year time limit of the police report.

The matters were put on hold pending the outcome of the civil case. Following the conclusion of the civil case I asked the CICA to make a reduced payment under paragraph 85(2) of the Scheme which allow the CICA to make an award even if another payment has been received providing there is no double recovery.

The CICA have made an award in respect of the abuse at school B of £157,133. The CICA deducted £27,000 which was made up of 90% of the civil claim award based on the opinion of the Psychiatrist. This meant Mr R was awarded £130,133.

The decision was based on Mr R receiving the highest award for psychiatric injury payable under the CICA scheme. They also awarded for past loss of earnings from when Mr R stopped working until his retirement age of 67.

The CICA awarded on the basis that the abuse was responsible for the entirety of his symptoms despite 50% being due to a genetic pre-disposition.

The claim relating to the school A remains ongoing and I have reviewed the decision on the basis that the award should be for severe physical abuse resulting in multiple moderate injuries.

Conclusion

This demonstrates the importance of considering the Criminal Injuries Scheme where the litigation risk often means that lower amounts have to be accepted by clients. The CICA scheme can supplement awards to allow clients to receive more significant amounts of compensation.

Mr R has been awarded £160,133 in compensation to date. This is a fantastic result for Mr R who now has his award in a personal injury trust and security for his family and children.

Nathalie Swanwick, Solicitor at Simpson Millar

Present and Upcoming Redress Schemes in Northern Ireland

By ACAL member Marianna Higgins BA, LLM, Paralegal at McAteer & Co. Solicitors, Belfast

As our firm has worked closely with victims of historical institutional abuse in Northern Ireland for well over a decade, it was no surprise that “Redress” has been somewhat of the office buzzword for these last 24 months.

For some context, Historical Institutional abuse in Northern Ireland was as prevalent as it had been in the rest of Ireland, and many people will recall the media revelations in the 1990’s pertaining to the unfathomable human rights abuses against children in institutional homes during the 20th Century in Ireland. Sinead O’Connor tore a photo of Pope John Paul II live on SNL in 1992 and photos of a dishevelled and handcuffed Fr Brendan Smyth were plastered on the front of every Irish newspaper in 1994 after being arrested for his sexual crimes against children. However, Ireland was a country that had, to say the least, various socio-political issues that kept its government and citizens both north and south of the border occupied until at least the mid 1990’s.

The Republic of Ireland’s Ryan Commission/CICA came in 2000, largely prompted by the aforementioned media wave - many Irish people will recall the somewhat watershed “States of Fear” documentary on RTE in 1999 that detailed historical abuses suffered by children in institutions in Ireland and a series of legal proceedings issued by survivors following same. It was not surprising that many Northern Irish children throughout the 20th century were subject to similar experiences in institutions run by Catholic Orders, Church and State-run institutions, but these abuses would not be fully investigated in Northern Ireland until 2014, when the NI Historical Institutional Abuse (HIA) inquiry was launched.

The inquiry was to be independent from the government and had two main components. The first was an acknowledgment forum, a truth-seeking mechanism which aimed to listen to all experiences from victims who were resident in an institutional home in Northern Ireland between 1922 and 1995 on a strictly confidential basis. The second was a Statutory Inquiry, which called on select survivors from a range of 22 institutions to give testimony at a public hearing which ran between January 2014 and July 2016.

If the HIA inquiry intended to be victim centric and non-adversarial then this very quickly changed. ACAL and our firm director CMJ McAteer recalls how the last days of the HIA inquiry resembled something similar to a High Court Contest with QCs for the inquiry cross-examining witnesses about their oral testimonies of abuse and details of their personal lives after leaving institutional care. Unlike the institutions, victims were not permitted to instruct legal representation but lawyers acting for institutional interest were furnished with victim statements in advance and allowed to forward their questions to counsel for the inquiry for them to cross examine a victim on the day. Many victims found participation in the inquiry retraumatising and stressful.

Present and Upcoming Redress Schemes in Northern Ireland – Continued 1

On 6 th January 2017, HIA inquiry chair Sir Anthony Hart submitted his report following the inquiry to the Northern Ireland First and Deputy First Minister. Hart made a series of recommendations in his report, one of those being the establishment of a long-awaited Redress Scheme that "should be set up by the Northern Ireland Executive." However, the Northern Assembly collapsed on 9th January 2017 following political instability over the Renewable Heat Incentive Scheme, leaving no functioning executive to establish a redress scheme. A HIA Redress Board was eventually launched in March 2020, but the 3-year long vacuum left many victims feeling overlooked, stressed and upset.

Like the inquiry, the Redress Board has not been without difficulty in practice. As of April 2021, no oral hearings have been granted despite at the request of some applicants and provision being made for oral hearings within the Redress Board's secondary legislation. Specialised victim support was not established until several months after the initial launch of the scheme. The maximum award that can be received by the Redress Board is only £80,000 (£20,000 is given to those sent from Northern Ireland to Australia in the child migrant programme, meaning some applicants could potentially be eligible for £100,000) which many victims consider to be devastatingly low when compared to awards received by victims in the Ryan/CICA redress scheme just across the border, where some applicants received 6 figure settlement figures for similar experiences of abuse. One fundamental difference between these two schemes to date are that the religious orders and institutions named in the Ryan/CICA contributed over 190 million euro to its redress scheme (even this contribution has considered to be grossly undervalued by many given that the total cost was more than 1.5 billion euro) and at the time of writing, there has been no financial contribution by any religious order or institution to the Northern Ireland HIA Redress Scheme.

The professional fee to solicitors representing applicants through the NI HIA scheme are also outrageously low given the complexity of some applications and the preparation required prior to their submission. For example, where an applicant is awarded £10,000 (the minimum award value in this scheme) their solicitor will receive a fee of just £298.00.

It should be highlighted that this scheme is working with the very limited resources allocated to them by the NI executive and that most of our own clients have been satisfied with the outcome of their application - many of whom would not likely be fit to partake in full civil litigation due to several mitigating factors. Therefore, the redress scheme despite its challenges have offered a suitable alternative and that have allowed victims to have some degree of closure in a very difficult chapter of their lives.

Present and Upcoming Redress Schemes in Northern Ireland – Continued 2

The redress board is open to accept applications until 2025 but redress schemes in Northern Ireland will not conclude here. As of 15th November 2021, the Northern Ireland executive have agreed to set up a public inquiry and into Mother & Baby Institutions, Magdalene Laundries and Workhouses in Northern Ireland which affected thousands of women, girls, and their children in Northern Ireland throughout the 20th Century. This comes per the recommendations of a report published by a government appointed Truth Recovery and Design Panel - 'Truth Acknowledgement and Accountability (October 2021)' which investigated these institutions after a long campaign by victims' groups.

The Truth Acknowledgement and Accountability report was co-designed by survivors and their families, and it highlighted the horrendous conditions that women were subject to in these institutions. Women and girls were admitted by their families, usually in situations where they had become pregnant out of wedlock. In Northern Ireland, Mother and Baby homes operated under both the Catholic and Protestant denominations and residents would be expected to carry out manual labour under harsh and often abusive conditions until their child was born. When women and girls eventually gave birth to their babies, they were frequently removed from their care and placed up for adoption and many women have reported that this was done either by way of coercion from religious and state authorities or that the adoption was carried out forcibly and unlawfully, without their prior knowledge or consent. One of our client's has explained how when she was placed in a mother and baby home in Northern Ireland at just age 17, she and the other residents spent their evenings knitting baby clothes and crocheting teddy bears, as they were fully under the impression they would be allowed to keep their babies once they had been born.

Not all women resident in these institutions would have been expectant mothers. Some girls would have made a transition from a children's institutions to a Magdalene Laundry as they felt they had no other options. This was the experience of one client of ours who had spent the majority of her childhood in a Catholic ran institution. By the time she turned 16, she had very little education and no family or support system. She entered a Laundry to prepare herself for a life of domestic servitude and eventually was offered a job as a housekeeper at the local parochial house, earning her an extremely modest wage. Other reasons for a woman or girl's referral to these institutions would be due to having learning difficulties or disabilities, being prone to alcohol/substance abuse, girls who were deemed to be deterrent or delinquent or to protect girls and women from neglect or danger. Unfortunately, the latter category of residents had in some cases been victims of sexual crime, incest or domestic abuse and the culture of these institutions meant they did not receive adequate support and often left even more traumatised and alienated than they had been initially.

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Present and Upcoming Redress Schemes in Northern Ireland – Continued 3

The Truth Acknowledgement and Accountability report has called for a full human rights-based investigation into these institutions with a transitional justice approach to all aspects of redress and reparation. As of November 2021, the NI Executive have agreed to establish a full public inquiry together with a non-statutory independent panel and arrange immediate compensation payments to the survivors of these institutions. There has been no confirmation to the amounts of compensation that will be paid to survivors, but the report has called for the payments to be "in proportion to the gravity of the human rights violation suffered." Some other measures of redress that has been recommended by the report include access to specialised health and wellbeing services, both immediate and long term, government funding for voluntary DNA testing and family reunification in cases where a child has been adopted, maintenance of gravestones and memorialisation services, free access to legal representation, granting of citizenship to those who cannot claim same due to their removal from NI as a child and a formal apology for all wrongdoings.

The multi-disciplinary pool of experts, together with input from survivors and their families will not need me to comment on just how thoroughly researched the report is. If the recommendations of this report are to be taken onboard in full by the NI executive, it would be an idealistic transitional justice process that will undoubtedly be used as a shining example for future generations and a model example of how a country should address its past human rights abuses. Unfortunately, when looking back at the HIA process I am not confidence that the NI executive have the resources, the finances or even the political will to implement the recommendations of this report in full. This is notwithstanding the current problems facing the Executive and what impact that may have in the forming of an inquiry and redress. For example, the impact of COVID-19, the massive underfunding of public services, a housing crisis, our underfunded and understaffed health service is facing another incredibly difficult winter, political tensions are worsening regarding Brexit and the Northern Ireland Protocol and the first NI Assembly Election in over five years will take place in May 2022.

There is also concern of how the recommendations of this report can be resourced by the Northern Ireland Executive. For example, establishing bespoke mental health services for survivors is easier said than done when Northern Ireland already significantly struggles with high levels of mental illnesses within its communities. Between 2000 – 2019, more people in NI had committed suicide than those who had died during The Troubles and mental health services are currently stretched to their absolute limit. Moreover, it may be a challenge to assess how much monetary compensation will be available to survivors of Mother and Baby, Magdalene Laundry and workhouse institutions when there already is a scale in place for the HIA Redress Scheme.

A significantly higher scale of compensation in the Mother and Baby homes redress scheme could risk creating a hierarchy of victimhood amongst survivors who have suffered abuse in all institutions, and those participants in the HIA redress scheme may feel that their experience of abuse was not worth as much. However, there should be some degree of consideration for women and girls who were admitted into these homes in often extremely vulnerable circumstances and leaving no better off. In many cases, women and girls were denied the fundamental right to motherhood and a family life with their infants who were removed from their care and placed for adoption by way of coercion or deceit and many women were never able to track down their children, and children their mothers. The current HIA redress scheme scale would simply not suffice in cases such as this and would not be aligned with the recommendations of the Truth, Acknowledgement and Accountability report.

Ultimately, these difficulties will be up to the Northern Ireland Executive to navigate, and it appears that they are steadfast and united in their approach to the implementation of the report's recommendations. The question that now remains is how much resources and funding the Executive will make available for the Mother and Baby, Magdalene Laundry and Workhouse inquiry and redress scheme – only time will tell.

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THE ASSOCIATION OF CHILD ABUSE LAWYERS

The Association of Child Abuse Lawyers (ACAL) provides practical support for survivors and professionals working in the field of abuse. Formed 14 years ago, ACAL maintains a telephone help line and web site presence to sign-post survivors of abuse to lawyers who have the expertise and experience to assist them in obtaining the redress to which they are entitled. ACAL also campaigns in this area, and provides training, a mentoring service for members, access to data bases and an information exchange to members to assist them in their work. ACAL's membership is made up of solicitors, barristers, psychiatrists and social work experts who are all specialists in this field.

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