The Newsletter of the British False Memory Society
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Serving People and Professionals
in Contested Accusations of Abuse

Dear Reader,

In February the BFMS welcomed author and scholar, Mark Pendergrast to England. He came to carry out some research and to work with us for two months. His visit exposed him to some shocks about the *status quo* here – he was appalled to see how much the British are resembling the North Americans by becoming a 'therapeutic society' with its assumptions that everyone is a victim and needs therapy. He found too, that people in the media and counselling professions tended to regard the repressed memory epidemic of the last decade as an historical blip. Finding that these beliefs were not unusual he reiterated the need to educate future psychotherapists and psychologists in the latest scientific evidence on how memory and human suggestibility actually work. In his address to members at the Annual General Meeting in London, last April, his call was to "educate and agitate". This is something to which we can all respond – see our call for help on page 24.

Whilst on the subject of education, anyone concerned professionally or personally with understanding "traumatic memory" should read the comprehensive analysis of the clinical and scientific evidence available to-date on this stimulating topic in Dr Richard McNally's new book, "Remembering Trauma", see review on page 23. Having considered the evidence, one of his first conclusions is, "People remember horrific experiences all too well. Victims are seldom incapable of remembering their trauma."

The recovered memory movement's so-called bible, *The Courage to Heal*, is again in the limelight, this time with reference to the legacy it has created. During the recent House of Commons debate on the Government's response to the Home Affairs Committee Report on investigations into past cases of abuse in children's homes, Claire Curtis-Thomas, Labour M.P. for Crosby and Formby, reminded the Government of the dangerous part the book has played in the self-help discovery of "repressed memories" of childhood sexual abuse. The debate went on to highlight the Government's failure to acknowledge the seriousness and weight of the evidence presented to the Committee, warning of the extent of miscarriages of justice in these cases. See the report of the debate on page two.

In this issue we have a focus on practice looking at the need for accountability within the child protection system plus the concluding part of the background to the Shieldfield libel case that explains how flaws in official guidelines promoted injustice over the past decade.

Finally, many BFMS contacts have made an excellent contribution to our cause by ploughing through the demanding but important questionnaire for the updated family survey which is currently being processed under the auspices of Professor Gisli Gudjonsson at the Institute of Psychiatry. Our thanks go to

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everyone who responded to this onerous task. Patience will be required now, for although we are informed that the data entry is almost complete, it will take some time to assess the responses, to write up the research and subject it to peer-review prior to publication of the article.

With good wishes for an relaxing summer.

Madeline Greenhalgh

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NEWS FEATURES

Commons debate attack on "recovered memory"

The justifiability of the Government's response to the Home Affairs Committee Report (HACR) on police "trawling" was severely punctured in a House of Commons debate when the Government was exposed as relying on unreliable witnesses and endorsing the dangerous assumptions of the discredited "recovered memory" movement.

The attack was launched by Claire Curtis-Thomas, MP for Crosby and Formby and Chair of the All Party Parliamentary Group on abuse investigations. In a wide-ranging rebuttal, Mrs Curtis-Thomas aimed her most telling criticism at the Government's endorsement of a Merseyside complainants' group.

Mrs Curtis-Thomas revealed that the group, Fire in Ice, promoted notorious "recovered memory" literature such as *The Courage to Heal*. "Many responsible psychiatrists and therapists regard it as one of the most dangerous self-help books ever written," Mrs Curtis-Thomas told the House.

"Its authors encourage readers to search their memories for dark and shameful episodes of sexual abuse which, they are told, may have been completely hidden by repression. Bass and Davis write 'If you think you were abused and your life shows the symptoms, then you were'.

"Reputable psychologists in Britain,, America and elsewhere have again and again reached conclusion that in most, if not all, cases, those 'recovered memories' are false," Mrs Curtis-Thomas said.

She warned the Minister that the Government should show caution "before they leap to the conclusion that an organisation that clearly believes in the phenomenon of 'recovered memory' should be treated as a trusted and reliable source".

She went on to probe the reliability of the anonymous "survivor" allegations in the group's submission to the Committee's inquiry. One claimed to have been abused by a former Merseyside football player and coach, after being police "trawled". He said he was preparing to give evidence at trial before he was "bullied by other inmates", sympathetic to the accused, at the prison where he was contacted by the police. Mrs Curtis-Thomas pointed out that the former care worker accused by the anonymous complainant could be immediately identifiable as David Jones, the former Southampton and now Wolverhampton Manager, whose high profile trial collapsed shortly after its outset.

Reminding Home Office Minister Hazel Blears that the trial judge, in delivering a not guilty verdict, had explicitly told Mr Jones that he left the court as he entered it "an innocent man", she said that the Government's response to the HACR lacked due respect and sensitivity in this matter and appeared to "unthinkingly endorse the veracity of a wholly unsubstantiated allegation of sexual abuse" and "more importantly still, without the benefit of any investigation or any evidence, the Government has endorsed the credibility of the organisation that brings forward that allegation".

She continued: "In doing so, I submit that the Government has made a very serious error of judgment."

Delving deeper into the credibility of Fire in Ice, Mrs Curtis-Thomas stated that this organisation was not a charity but a private company. One of its directors, David Harold Walsh, was a man who had made demonstrable false allegations in a "trawl" case.

"It is not the sincerity of the members – or in this case, one of the directors of Fire in Ice that I am seeking to question," she stressed. "It is their accuracy and reliability."

The debate held on 19 June 2003 followed the Government's written response to the HACR where it had rejected the major part of the

HACR's searing criticisms of current safeguards against miscarriages of justice in institutional care home cases. The Committee had stated it was confident that miscarriages of justice had occurred through tainted evidence, poor police procedure, and the current rules of evidence allowing one person's unreliable evidence to be bolstered by others.

While acknowledging the seriousness and difficulties that arose in child abuse allegations, speakers from all sides of the House condemned the complacency of the Government's response.

Liberal Democrat Tim Boswell, Deputy Chair of the All Party Parliamentary Group, said that the Government's response that it found no reason to believe that miscarriages of justice were "widespread" implied that "a few are all right".

He warned that the Government's complacency and rejection of the main Report findings would give the green light to a fresh round of allegations – and not just in care homes.

Former Liberal Democrat Deputy Leader, Alan Beith, referred to the Government's response as "extraordinary" in appearing to reverse the burden of proof.

Dominic Grieve, Opposition Spokesman on Home Affairs, said that in failing to recognise the dangers the Committee had exposed, the Government was in danger of bringing justice into disrepute. He pointed out that the Criminal Justice Act before parliament would further erode safeguards through lowered "similar fact" requirements in evidence. While this would "almost certainly see more guilty people being convicted, it is also absolutely certain that there will be more miscarriages of justice and innocent people will be wrongly convicted".

Replying to the debate, the recently appointed Minister of State for Crime Reduction, Policing and Community Safety, Ms Blears, said that she would look again at the Report's recommendations but noted that justice was crucial for victims as well as for defendants as they may have suffered decades-long effects of abuse and had a blighted existence.

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Abuse investigations research to be revealed at conference

New research findings on the reliability of sexual abuse allegations reported to the police will be presented at the third annual conference of the United Campaign Against False Allegations of Abuse (UCAFAA) on Saturday 27 September 2003.

The research has been carried out by Detective Inspector Andrew Parker of the Metropolitan Police Child Protection Unit under supervision by Professor Gisli Gudjonnson, a leading expert on false confessions and false memory.

DI Parker has published research into the reliability of adult rape allegations based on witness statement analysis and his findings are expected to improve the sifting of abuse claims by police.

The Chair of the All Party Parliamentary Group on Abuse Investigations, Claire Curtis-Thomas MP, will give the keynote address of the conference whose theme is "False Allegations of Abuse: Righting the Wrongs". Mrs Curtis-Thomas has led the parliamentary questioning of police investigations in care home "trawl" operations which resulted in the Select Committee Inquiry last year. Following on the outstanding address of the Group Deputy Chair, Earl Howe, to the conference last year, Mrs Curtis-Thomas has pledged the group to examine family and individual "one on one" investigation procedures in addition to the institutional cases.

With more progressive judgments in the Court of Appeal and an increased recognition of wrongful prosecution and conviction, Ivan Geffen will address the potential for compensation for the falsely accused. Now retired, Mr Geffen was a solicitor specialising in miscarriages of justice, including that of the Birmingham Six.

Claire Fox, leading media commentator and Director of the Institute of Ideas, will provide the broader cultural and political context of false allegations. Ms Fox is well known for her incisive, stimulating and down-to-earth assaults on the sacred cows of the therapeutic state and political correctness. She is a regular contributor to BBC Radio 4's *Moral Maze* and a wide range of periodicals and newspapers including *The Times.* As the Director of the Institute of Ideas

she has advanced the freedom of intelligent, principled debate across the political spectrum. Her command of topics ranges from the right to smoke, through education, to why atheists should defend the Catholic Church. Admitting to once being a mental health Social Worker, Ms Fox is able to offer an inside and outside view of the epidemic of false allegations.

As a justice campaign network of groups representing abuse allegations of non-existent crimes, the UCAFAA conference is a unique forum for both people affected and professionals to discuss the issues raised across family and institutional cases and to forge solutions.

Conference Organiser Gail Saunders says: "In a short time, the UCAFAA annual conference has built up a reputation for presenting an authoritative perspective on the real world of sexual abuse investigations. Despite the continuing immensity of the problem of false allegations, the theme this year is positive. It is taking the lead in resolving one of the most pressing issues of our time: sifting the truth for the sake of the welfare of children and adults, genuine victims, false accusers and the falsely accused."

The conference will be held on Saturday 27 September 2003 at the Conway Hall, Red Lion Sq, London WC1, 10.30am - 4.30pm. Tickets £10. Cheques and POs payable to UCAFAA, available from The Oaklands, Stroat, Chepstow, NP16 7LR. Tel: 01594 529237
Email: joy-iangower@stroat.fsnet.co.uk.

Remember when you thought you were the only one?

Despite the information about false memory and false allegations we still receive lots of calls from people who are only just learning – often from the agony and loneliness of being wrongly accused.

BFMS makes a difference – to policy, practice and, most importantly, the people accused who come to understand what is happening and why – and that they are not alone.

The problem has been identified – but it won't end in the foreseeable future because of the vast quantity of mistakes endemic in our system of mental health and criminal justice.

So if you want to keep the fire of justice burning, please think about making a legacy to the BFMS. To find out more contact BFMS or a probate solicitor .

SPECIAL FOCUS

This is the second of two articles on the background to the Shieldfield libel case. The first article examined the ideological battleground after Cleveland. Here, the way ideology shaped Government guidelines is analysed.

The Road to Shieldfield (Part 2)

by Margaret Jervis

The criminal trial of Christopher Lillie and Dawn Reed was scheduled to begin in July 1994. It was to be the first case of its kind in the UK. The alleged victims were pre-school children and their evidence was planned to be their police interviews on video-tape in accordance with the measures introduced through the Criminal Justice Act 1991[i]. The children were to be cross-examined through live video link and it was no longer necessary for children's unsworn evidence to be corroborated[ii].

But before these arguments could be marshalled, the prosecution stalled. The quality of the evidence on the tapes was so poor, ruled trial judge Mr Justice Holland, that it could not be allowed into trial. He could have left it at that and the trial would have collapsed without any comment on the innocence of the accused. They were formally acquitted. However, he went on to stress the lack of evidence against Dawn and Chris who were still standing in the dock.

Enraged, groups of parents surged forward, grabbing hold of Chris and Dawn. After the trial concluded, the parents and their supporters marched to the city hall with banners proclaiming "WE BELIEVE THE KIDS" and with compensation solicitor Claire Routledge at the helm, the parents demanded a public inquiry.

Throughout, the image portrayed in the media was of abused children let down by the courts – and by implication the presumption that two dangerous child molesters had "got off". Council officials and politicians, while seeking to exonerate themselves from blame, eagerly joined the fray in condemning the perceived injustice to the children.

Dr Lazaro, the paediatrician who had played a leading role in the prosecution case, also spoke out. Children, she said, had a right to "tell their story" and be heard in the courts in the same way as adults, and this would be the message replayed in the media over the ensuing decade. Despite the relaxed measures allowing children to give evidence, their evidence of abuse was still not being heard, was the rehearsed mantra. That meant that thousands of paedophiles were getting away with child abuse with impunity. The collapse of the Shieldfield trial was seen as particularly grim because paedophiles who might have assaulted older children might now "target the under-fives".

"Six years earlier, in neighbouring Cleveland, politicians and the media had led a storm of public outrage over the desecration of family life by the child abuse zealots ….But the climate had changed – and the means by which mistakes could be made."

Critical scrutiny of the case in the media was absent. Six years earlier, in neighbouring Cleveland, politicians and the media had led a storm of public outrage over the desecration of family life by the child abuse zealots. There had been no criminal prosecutions and the majority of the children who were claimed to have been abused, eventually returned home. In this sense, in Shieldfield, the tables were turned with professionals accused of abuse. They were not "abuse professionals", but their position as public service child carers anaesthetised popular sympathy. Even so, the similarity of this case to the well-publicised McMartin and Kelly Michaels cases in the United States, already exposed as fake, ought to have alerted more concern both in professional and media circles. The critical research on suggestibility by Stephen Ceci and Maggie Bruck had also been published[iii] and publicised at this time, and the satanic ritual abuse fears had also been officially laid to rest[iv].

But the climate had changed – and the means by which mistakes could be made. It started with the Cleveland inquiry which reported in 1988[v]. While identifying key problems, the inquiry did not resolve the professional issues of accurate diagnosis. It was highly critical of play therapy methods to detect abuse and the presumptive use of the term "disclosure" in investigation. But the breakdown in the working relationship between the Police and the Social Services was to be settled by joint working and training.

Key to this was the setting up of Area Child Protection Committees. These were interagency bodies responsible for child protection investigation and training. The panels interpreted Government guidelines and produced their own[vi]. The committees were coordinated by Social Services with members nominated by individual agencies which included the Police and medical services. In practice, members were chosen because of their interest in the field – which might include an ideological bias. Where the lead taken by Social Services was backed up by a powerful professional figure, such as paediatrician Dr Lazaro in Newcastle, there was a danger of creating an unaccountable, monolithic approach to training and practice.

Nor had the Government guidelines ensured safeguards against injustice with adequate checks and balances. Rather, it is arguable that they systematically fostered injustice which continues to this day.

Guidelines foster injustice

The guidelines, called *Working Together,* were issued by the Department of Health and the Home Office together with a Home Office Circular – thus reflecting the cross over between welfare, diagnosis and crime. The first set, published in 1988, addressed procedures in domestic child abuse allegations – the kind of problems that had littered Cleveland. When the 1989 Children Act was implemented in 1991, they were revised, and addressed the emergence of new types of cases – organised and "ritualised" abuse.

The introduction of these guidelines had two major flaws. Firstly, their purpose was hybrid because on the one hand they were driven by the

Children Act which was concerned with protecting the welfare of children, and on the other, the criminal prosecution of serious crime. There was, therefore, an inbuilt bias towards regarding a child as a victim of abuse once any suspicion was raised and it followed that there was a presumption of guilt regarding the accused.

Secondly, they depended on a tainted knowledge base, ripe with rumour and misinformation. The public and social workers had contradictory perceptions as to what the measures were intended to achieve. Popular opinion at the time, horrified by the train of events in Cleveland, Rochdale and Orkney, was distrustful of social workers and the political message was that the measures were a kerb to protect innocent families.

But many social workers, on the other hand, still held an obdurate belief in the existence of widespread ritual abuse paedophile rings. They believed these shadowy organisations had been in their reach but failed their grasp through the negative publicity engendered by the "dawn raids" which had put pressure on the courts to return the children back home short of any criminal prosecutions.

"The general message was that the networks were so powerful, that the investigating agencies had to organise and operate with stealth to break their hold on the silenced victims. ……it needed a conspiracy to break a presumed conspiracy."

Thus they saw the guidelines as a means of trapping the "rings" through a protracted harvesting of evidence and interagency planning. At an early stage, the Crown Prosecution Service (CPS) was party to the meetings. So instead of the Police and the Crown providing a check on the speculative enthusiasms of the social workers, they became party to the execution of a crusade.

Influential in creating this approach had been the Department of Health Committee on Child Abuse Networks (COCAN). Formed at the height of the satanic network scares, Nottingham's Judith Dawson Jones was a member. COCAN ran a series of training workshops for Area Child Protection Committees between 1991 and 1992[vii]. The general message was that the networks were so powerful, that the investigating agencies had to organise and operate with stealth to break their hold on the silenced victims.[viii] In other words, it needed a conspiracy to break a presumed conspiracy.

The blurring of roles was further compromised by the introduction of video-taped interviews with children. Because the recordings were intended to become the child's courtroom evidence-in-chief, the junior police and social workers conducting the interviews assumed the role of crown court prosecutors

The ritual ghosts of Pembroke

Graphic evidence of the false sense of security engendered by the guidelines emerged in the Pembroke ritual abuse case which was tried in the eight months prior to the Shieldfield case in 1993 and 1994. The skeleton of the case going to trial was virtually a parody of the mythology built up around the "satanic cults" and was strongly influenced by the COCAN counter-conspiracy strategy. There were thirteen defendants – eleven men and two women[ix]. This was supposed to represent the make-up of a coven. Although the picture built up through the preparation for the trial included alleged ritual orgies littered with snake pits and a panoply of gruesome special effects and costumes, together with the obligatory camcorder, none of these objects were ever discovered in the barns, farms and beaches where the abuse was alleged to have occurred. However, they did bear a close resemblance to the teachings of the self-styled satanic abuse "experts", around at the time, who similarly could provide no concrete evidence[x].

Instead, starting with a disturbed boy who was put into voluntary care, social workers mined what they assumed to be the hidden "memories" of abuse in a range of children and mothers. They then cross-matched the results by passing information from case workers to foster parents, children and adults implicated. The resultant "story" would prove to be a roughly-sewn patchwork full of holes. But, as with the naked emperor, it looked like a finely woven tapestry of truth to the investigators as they prepared to take the case to trial.

Indeed, at this stage in the summer of 1993, Dyfed Social Services were already trumpeting success in the social work magazine *Community Care*. Commending themselves on their procedural correctness following the new interagency guides they confidently asserted: "Our credibility was checked and double-checked. You have to believe the child. If you do, it has results."

The euphoria was short lived. Children and adults were shown to have been coerced into making untrue claims fed to them by the social worker interrogators. As the trial began to collapse the more extravagant prosecution claims were trimmed back and eventually only five of the thirteen were convicted. One of the convictions was overturned on appeal and the others are still widely regarded as a gross miscarriage of justice.

Moreover, when the child care cases were heard in the Family Court later in 1994, the presiding High Court judge, Mr Justice Connell, made stringent criticisms of the social workers' methods. "The children were praised when they confirmed a 'disclosure' or made a fresh one. It is very difficult for an adult to whom such information had been confided by a child to stand back and view it objectively. The understandable reaction of such an adult is invariably to believe what he or she has been told, so that when on a further occasion the child does not confirm what has been alleged earlier, the child is described as 'returning to denial' or as 'blocking'. An alternative solution, rarely considered, unhappily, is that the allegation may have been untrue or significantly exaggerated in the first place…the impression left with the court is that those involved on behalf of the local authority were too ready to accept what the various children had to say, even some time after therapy had begun, without really testing its reliability or attempting to challenge or disconfirm it."[xi]

"The euphoria was short lived. Children and adults were shown to have been coerced into making untrue claims fed to them by the social worker interrogators."

Mr Justice Connell's observations echoed those of the Nottingham Joint Enquiry Team[xii] (JET) whose 1990 analysis of the way in which satanic abuse allegations had been woven had been suppressed by the social workers involved. The Social Work Team Leader, Judith Dawson Jones, also a member of the COCAN working party that had shaped and implemented the guidelines, as mentioned previously, would go on to be a member of the ill-fated Shieldfield Review Team.

Misinformation about the Nottingham case caused by the suppression of the JET report had therefore a direct effect on skewing the guidelines and the code for video interviewing, called the Memorandum[xiii]. When employed by determined ideologues, these defective instruments accommodated the systematic prosecution of the tainted cases of Pembroke and Shieldfield among others.

The warring neighbours of Salem

Then in January 1995 a further episode of this cracked legacy occurred in Bishop Auckland, a short distance away from Newcastle in County Durham. In a bizarre inflation of a dispute between neighbours where a teenage boy admitted to abusing a child, the interagency investigation team conjured up the spectre of a satanic ring operating unseen in a middle class street.

David Robson, Queens Counsel representing the Crown, harboured severe doubts about the reliability of the evidence from an early stage. But the CPS, backed by the Police, social workers and paediatrician Dr Lazaro, insisted it go to trial. Eventually, just days after Mr Justice Connell had delivered his stinging Pembroke ruling in December 1994, there was a flurry of meetings and the CPS and joint agencies backed down.

This time it was prosecuting counsel David Robson who delivered the death knell. Describing the case as reminiscent of Salem, he too criticised the way social workers had encouraged the children to make increasingly bizarre allegations. But he went further in suggesting that the protocol for interviewing, the Memorandum, was itself flawed in dealing with multiple allegations.

With four accused couples exonerated, there was a blaze of publicity but little enduring interest

within the media. The criticism of the Memorandum codes and the echoes of Pembroke and Nottingham were barely understood. In fact, they were interpreted by child abuse ideologues as a criticism of the restrictions imposed by the Memorandum and so became part of the campaign to relax the rules of evidence in relation to sexual abuse allegations.

Times had changed. Although the satanic bandwagon had been halted, the same processes and expectations had been transmuted into "organised abuse". It was a category that covered the search for "rings" operating secretly in children's homes. And it was the same *Working Together* guidelines, together with a diminution of the quality of evidence required to convict, which ushered in the epidemic of the compensation-linked retrospective children's home charges.

"The rich seam of retrospective allegations mined from the care homes for young delinquents became the dominant application of the *Working Together* organised-abuse guidelines."

Public and media prejudice against the teachers and care workers, who were mistakenly viewed as "social workers", precluded widespread sympathy with this target group. Nor was it appreciated how the same mistakes identified in preceding key cases, were being reproduced in the interviewing protocols – though the means of production would be veiled by the method of taking written statements which obscured the forms of interviewing.

The rich seam of retrospective allegations mined from the care homes for young delinquents became the dominant application of the *Working Together* organised-abuse guidelines. "Cooked" criminal cases involving very young children were rare because, following Shieldfield, courts were more ready to rule out tainted video recordings.

There were though a number of cases involving multiple defendants and alleged victims woven together through strategies similar to that used in Pembroke, but with a greater reliance on adult "recovered memory" narratives. An intergenerational case in South Devon in 1998 was the most notable and resulted in ten convictions including a now septuagenarian grandmother, still in prison protesting her innocence, as do the others. By this time, many of these cases were subject to reporting blackouts until the end of the trial. Consequently embarrassing revelations of the process of production of the allegations, as had happened in the Pembroke trial, were avoided. Where there were convictions, as in the Devon case, press reports simply précised the prosecution story. If there were acquittals, press interest was minimal. And with strict bans on identifying the alleged victims, which usually precluded the identification of those accused and the whereabouts of the alleged crimes, the cases carried an air of grotesque unreality that was nigh impossible for outsiders to research.

A melange of anxiety

Public anxiety about sex crimes against children escalated – although there was a world of difference between genuine cases, notably those involving the murder of young children, and the investigative and therapeutic induction cases where no evidence of the crimes existed outside retrospective uncorroborated statements. So it would in fact be the Shieldfield case which would place the greatest pressure on Government to introduce reforms which would relax rather than tighten up existing loopholes. An emotive Childline conference in 1999, led by Esther Rantzen, chaired by Cherie Booth and addressed by Hillary Clinton, resulted in the then Home Secretary, Jack Straw, capitulating to critical amendments of the Youth Justice and Criminal Evidence Act then going through Parliament.

These measures, which allow for pre-recorded cross examination of the child, and "intermediaries" to interpret young children, are now in the process of being implemented. Meanwhile, the reasonably compact Memorandum has been replaced by a vast sprawling document on "Best Evidence", though there is as yet little evidence that the defects in the original protocol will be cured.

As the new measures are implemented, the prospect of a new variant of bogus case construction not only cannot be ruled out, but can be reasonably predicted. All the signs are that, as with other judicial warnings and reports, the sage dissection of Shieldfield by Mr Justice Eady has been misinterpreted. In social work circles the word is simply that the team were punished for freedom of judgment. "Misguided zealots the inquiry panel may have been, but they did take up the cause of children", sympathised *Community Care*[xiv] and getting it exactly wrong. For what the long and continuing saga of empty cases and wrongful convictions tells us is that the welfare of children has been compromised by the obsessions of the interrogative adults – and sanctioned by fractured guidelines.

i. Amending Criminal Justice Act 1988 s.32A
ii. Criminal Justice Act 1988 s.34
iii. Ceci, S.J. and Bruck, M. (1993) The suggestibility of the child witness: A historical review and synthesis, *Psychological Bulletin, 113,* 403-439
iv. La Fontaine, J. (1994) *The Extent and Nature of Organised and Ritual Abuse.* HMSO
v. *Report of the Inquiry into Child Abuse in Cleveland 1987, Cm 412,* HMSO
vi. Some ACPCs such as Derbyshire, introduced discrete ritual abuse guidelines and others, such as Newcastle, ones concerning adult disclosure.
vii. *Child Abuse Review, Winter, 1993,* Editorial
viii. See for instance "Breaking the Web" by COCAN chair, Peter Bibby, *Social Work Today, 3.10.91,* 17-19.
ix. One of the female defendants was to be tried separately and was a coerced prosecution witness in the main trial. She was among those retracting their statements in the witness box.
x. See for instance "Satanic Cult Practices" by psychiatrist and Ritual Abuse Information Network and Support (RAINS) chair, Dr Joan Coleman in Sinason, V. (ed) *Treating Survivors of Satanist Abuse,* Routledge, 1994.
xi. Connell, J. *Re: The South Pembrokeshire Cases, 19.12.94.* High Court, Family Division
xii. www.users.globalnet.co.uk/~dlheb/Default.htm
xiii. Home Office with the Department of Health (1992), *Memorandum of Good Practice on Video Recorded Interviews with Child Witnesses for Criminal Proceedings,* HMSO
xiv. Editorial, 8-14 August 2002

Did you miss the AGM?

The transcript of Mark Pendergrast's speech is available priced at £5 to cover printing and postage. Contact BFMS.

FOCUS ON PRACTICE

Child Protection or "System Abuse"?

by Tania Hunter

> **…There can be no greater need for justice and equity than within a system that allows the state to intervene in family life. (Amphlett 1998: 92)**

Even critics of society's hysterical response to child sexual abuse accept child abuse as a very serious social problem requiring an effective child protection response. However the emotive and crusading enthusiasm surrounding the issue has somehow obscured the fact of an absence throughout the system of the checks and balances taken for granted in the delivery of other public services, particularly those involving the disbursement of huge amounts of public and private funds.

Fault lines in the development of the child protection system in the early 1980s were apparent long before they erupted so spectacularly in Cleveland in 1987. In 1985, as a result of their own experiences, Sue and Stephen Amphlett set up PAIN (Parents Against INjustice). They reasoned that if they, as an articulate and resourceful middle class family, had found themselves so isolated, marginalised and powerless within the investigation "system", the effect on those in less fortunate circumstances was likely to be even more profound.

PAIN started as a support group for parents and families but developed to include all those working with or connected to children. In addition to support services, PAIN collated data from its cases in order to influence procedure, practice, policy and law at national and local levels. A further objective was to educate the media and public about the processes of a child protection investigation. At first regarded with suspicion, PAIN gained respect and developed productive working relationships with organisations such as the NSPCC, the Association of Directors of Social Services and the National Institute of Social Work. Sue Amphlett recognised that one of the most striking features

of the distress of the families in contact with PAIN was their total bewilderment about the process to which they were being subjected.

> Probably the most effective way to disempower anyone is to keep them in the dark. Not only do you render them unable to *understand* what is happening but you also prevent them from *contributing* to what is happening and most effectively, you prevent them from *influencing* the outcome of what is happening. (Amphlett 1998: 79)

That this remains the experience of those on the receiving end of investigations is a shaming indictment of central government and all those responsible for the administration of the child protection system.

One explanation for the unchanged situation is that for some years officials have been untroubled by PAIN's persistent voice. In 1996 the Department of Health decided to withdraw its funding for PAIN and, despite every effort to find alternatives, the trustees were forced to close it down. PAIN's demise resulted in the loss not only of a referral route for people seeking advice about social services processes but also the only source of data about the actual workings and outcomes of child protection interventions. Social services departments are supposed to provide printed information, but even when leaflets are available, the information tends to be so basic as to be of little practical use. Family lawyers, despite their experience of child care cases, may have an incomplete understanding of the needs of those on the receiving end of biased social workers, false allegations and inappropriate therapeutic interventions. Statements from politicians and child care experts often indicate an alarming ignorance about the processes they administer. A frequent call in the wake of child care disasters is for local Area Child Protection Committees (ACPC) to be granted statutory powers. But since the ACPC is not a creature of statute, but consists of local representatives of diverse organisations all with (or without) their own governing statutes and responsibilities, it should be apparent that such powers would be unworkable in practice.

"Statements from politicians and child care experts often indicate an alarming ignorance about the processes they administer."

However, despite PAIN's achievements, its most important aims remain unfulfilled and the significance of the Amphletts' work is in danger of being forgotten. The problems associated with the management of abuse allegations have not diminished, and it is perhaps timely for a review of some of the issues identified by PAIN.

1. Data collection

Sue Amphlett understood that the greatest obstacle to the goal of an effective and fair child protection system is a lack of information and accountability:

> When a government or its agents undertake an intrusive action whilst carrying out their duties, it is incumbent upon them to establish proper checks and balances and to be accountable for their actions. (Amphlett 1998: 70)

While other systems and services are ring-fenced by targets, quality control and monitoring systems, the agencies and child abuse experts who come together under the aegis of local authority social services departments are amazingly unburdened by scrutiny or accountability. From Cleveland onwards politicians have ignored calls for the collation of national statistics about incidence and outcome of alleged abuse investigations. But in refusing to take on basic management responsibilities expected of any other organisation, the Government is failing in its duty of care towards vulnerable citizens subjected to statutory investigative systems. Without the knowledge and information that can only come from evaluation of the outcome of child protection interventions, the system remains beyond discussion or challenge. It is impossible to assess or rectify a system that provides no evidence of its operations.

In 1995 the Department of Health published *Child Protection – Messages from Research*, an overview of 20 pieces of research on the child

care and child protection systems. Based on findings that 87 per cent of investigations did not require or receive child protection action, one study concluded that this represented "an enormous burden of work for hard-pressed community services and far too many families [are] left feeling 'unjustly' accused" (Gibbons *et al* 1995: 78). In a foreword, John Bowis, the Conservative minister responsible for presenting the research stated:

> The research indicates that real benefits may arise if there is a focus on the needs of children and families rather than a narrow concentration on the alleged incident of abuse. …I urge all those working in child protection training and management to familiarise themselves with the messages coming out of the research and to assist front-line practitioners to use the research base to inform and improve their day-to-day practice.

But as long as successive governments remain ignorant of outcome, the professionals will continue to concentrate on punitive investigations. A national data collection system would not remove responsibility from local systems, and it would not lead to an instant cure. It would, however, remove the system's cloak of invisibility and provide evidence of what is happening.

2. The right to be "cleared"

PAIN campaigned for the right to have the outcome of investigations recorded as "unfounded" where no evidence was found to substantiate allegations. Amphlett pointed out that researchers had discovered for themselves that the Government had not considered the question of whether cases were "founded" or "unfounded". They acknowledged that before they could assess how cases had been handled, they had to "confront the difficult problem of the 'truth' or 'falsity' of these reputed concerns" (Gibbons *et al* 1995: 47). But politicians continue to ignore this most crucial of issues. PAIN maintained that their cases revealed that the number of families subjected to investigations because of unfounded allegations was much higher than the actual cases of children at significant risk of harm. But owing to the absence of national outcome data, child care workers were able to persist in the belief that their suspicions were correct and that most families are investigated because abuse has occurred. From this stems other overreactionary behaviour including disbelieving children who state that they have not been abused (Amphlett 1998: 73). This happens despite recognition that undiagnosed or wrongly diagnosed medical conditions, inaccurate information, and malicious or false allegations may lead to child protection investigations. Once an investigation is closed, it is unlikely that anyone will receive anything other than a statement that the allegations were "unsubstantiated". But not only does this "unproven" verdict leave individuals with a continuing sense of stigmatisation, it also protects workers from scrutiny:

> They [children and families] should be entitled to have their cases deemed "unfounded" with clear exoneration of all concerned. Very rarely do local authorities make such acknowledgements – perhaps because of the fear of litigation or being called to account in some other way – and certainly there is no right to the destruction of records, which is what most families want**.** I find the Government's reluctance to address the issue of unfounded cases to be reprehensible in a so-called fair and just society, and to be an infringement of natural justice of one's right to protect one's reputation – yet another example of how difficult it is to make the Government and child protection workers accountable for their actions. (Amphlett 1998: 75)

3. "Perceived" abuse

PAIN's data showed that 88 per cent of its cases arose because of "perceived" abuse rather than any empirical evidence or a direct allegation from a child. The source of referrals and the nature and reliability of the evidence upon which investigations are based are issues about which authorities should be seriously concerned. The Shieldfield nursery case is one of the most recent examples of how hugely expensive and damaging scandals may stem from something as insubstantial as a perception. The subsequent libel trial provided proof of the flawed methods used by paediatricians, child psychiatrists, social workers, police and Barnardo's workers to substantiate what was never more than a belief that abuse had taken place. The outcome of the trial should have raised concerns about the quality

and content of the training and knowledge base of child care experts.

Amphlett suggested that research was required into the influence of workers' perceptions, their personal agendas and belief systems upon the outcomes of cases. While the Government provides guidance on interagency child protection procedures (*Working Together,* The Stationery Office 1999), it does not provide guidelines on the practice of individual professionals on the recognition of child abuse or subsequent care or treatment. PAIN's efforts to persuade the Government to change its mind and produce such guidance were in vain. The outcome of this has been the development of an *ad hoc* and unregulated expertise. Lessons should have been learnt through the Cleveland affair, but the Government's main concern was interagency co-operation, and the field was left wide open to individual clinicians, therapists and voluntary organisations to promote their own particular theories and practices.

"In the absence of official standards of practice, there is nothing tangible to challenge if a person believes that they have been subjected to an unfair or badly conducted inquiry."

For the lay observer, it is a matter of incredulity that qualified members of respected professions provide official assessments and treat conditions such as mental illness, behavioural disorders and eating disorders on the basis of beliefs that are so often shown to be without any firm evidential base and are matters of controversy within a given discipline. The outcome is that flaws in the system only surface when things have gone seriously wrong. In the absence of official standards of practice, there is nothing tangible to challenge if a person believes that they have been subjected to an unfair or badly conducted inquiry. If an accused parent complains that a social services department has accepted a psychiatric assessment without investigation, since there is no guidance about the appropriateness of this approach, the complaint will not be considered. A complaint may be made about a psychological or risk assessment. But while it may seem far removed from evidence or common sense, because there is no actual standard against which to judge such assessments, a complaint will fail.

PAIN was one of the first organisations to warn about the problems associated with "recovered memory" therapy. But it was left to individuals and the BFMS to uncover practices that have caused so much harm to so many people. Not all members of the medical profession, however, appear to have changed their practice in any meaningful way following the public outcry over "false memory" cases. As a warning against complacency, recent anecdotal evidence from family law solicitors is that the term "attachment disorder" is cropping up with increasing frequency in social work assessments. In essence, attachment theorists identify behavioural and mental health disorders as manifestations of Post Traumatic Stress Disorder (PTSD), dissociation or multiple personalities, the origins of which are traced to presumed maternal abuse and the disruption of psychological development in infancy. Misleading claims are made about scientific knowledge of brain function. Patients receive psychotherapy to help unearth traumatic memories. The terminology and presentation may differ from recovered memory therapy, but little else has changed.

4. Complaints systems and the provision of mandatory local authority funding of independent advocacy services

PAIN identified a statutory child protection system that is a potential source of harm to those subjected unnecessarily to its interventions and suggested that in an ideal world parents should have access to free legal aid from the outset to protect themselves and their children. Their compromise suggestion was that funds should be made available to provide independent advice, advocacy and support from the start of the investigative process. The need for such services has become even more of a priority following PAIN's closure. If a degree of liaison between advocates and local authorities could be achieved, there is also the possibility that the current level of mistrust and acrimony might be reduced to the benefit of all concerned.

While the appearance of accountability and information is provided in the form of an "independent" complaints system, it is unlikely that a social services complaints investigation will provide a satisfactory outcome. Local authorities are required to draw up local systems within a statutory framework including an "independent person" to track complaints investigations. It is this provision which allows the complaints system to justify the description "independent". In reality the system is self-policing, cannot deal with the actions of other agencies, or consider anything other than the administration of structural procedures. The contract for the provision of an "independent person" will usually be made with a national charity such as the NCH. While they will be conversant with procedures, they may well share the same theoretical outlook of the social workers under investigation. It is more than possible that their organisation will have been involved in local child protection training.

"Local authorities are required to draw up local systems within a statutory framework including an "independent person" to track complaints investigations."

PAIN identified that the complaints system did not offer parents or children any hope of holding individual practitioners or agencies accountable for their perceived failures and suggested a multi-agency complaints system administered by the Area Child Protection Committee (ACPC). But with the current state of ignorance about the workings of the ACPC and its ambiguous legal status, the task of setting up a complaints system that would be required to pinpoint the failings of different professionals engaged in interagency investigations would be formidable.

5. General Social Care Council

A General Social Care Council is the one proposal made by PAIN to have come to fruition. However, the organisation is not yet fully operational and it is far from clear that it will be able to provide complainants with the redress that they seek. What it will do is add yet another complaints system to the present labyrinthine process. There must also be concerns about how a code of practice will be drawn up, who are the experts giving advice, and how good practice will be defined.

With the advent of Human Rights legislation and the Data Protection Act 1998, present day campaigners should be better placed to pursue the goals set by PAIN. The appointment of Margaret Hodge as a dedicated Children's Minister may also offer new opportunities. Where previously responsibilities have been spread across four different departments, the new appointment brings responsibility for coordinating children and family policy under one roof in the Department of Education. In the light of the Government's avowed intention of delivering effective and accountable public services, it is reasonable to expect that a minister with overall responsibility for the operation of child protection and welfare processes should have access to reliable data about the day-to-day performance of the child protection system.

PAIN and its trustees understood that the key to reform lies in persuading government ministers to evaluate and "safety-check" the child protection "system" – a process which would make visible the vulnerability of parents and child care workers drawn into a system intended to make the world a safer and happier place for children. The Government's failure to collate national data from child protection cases and to evaluate the workings of the child protection system is irresponsible and negligent and the time for calling child abuse "experts" to account for their practices and opinions is long overdue.

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MEMBERS' FORUM

Leaving a time warp

Our personal nightmare hit us in January 2002. Weeks later, our friends passed on an article from the *Daily Mail* which in turn led us to the BFMS. We took great comfort from Madeline and the organisation in our darkest hours.

We couldn't attend the annual general meeting of that year, our suffering was too great to even speak to, let alone meet, strangers. 2003 has been a better year and we both felt strong enough, though apprehensive about attending the meeting. What sort of people would we meet? Would they be friendly? Would they be genuine? Right from entering the building the feeling was good and the organisers welcoming, and our misgivings evaporated as members sought us out to put us at ease.

We were with friends and our feelings of gratitude and well being were immense. We were with people who really knew what we were going through and understood. To all the good, kind people who spoke to us, our heartfelt thanks. To the organisers, God bless you. To the speakers and supporters, you lifted our hearts so much we can't think of words that could adequately describe how much you helped us. To anyone who might be hesitating in attending a meeting for the first time, please do it. We are sure you will benefit so much from the experience, as we did.

We believe that this was the catalyst that started our emergence from the time warp, the light at the end of the tunnel. We will recover and be normal again with the help of the Society. We in turn, in time, hope to help others in a similar predicament to give something back.

What we are without doubt fortunate in, is the support of the superb society, the BFMS and all the supporters behind it and that Margaret is helping us "put our case" to the few who don't believe us.

We are indeed most grateful to all concerned.

An accused mother and father

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How can Dad forgive me?

My name is Nicki and I'm 41 years old. This year I was supposed to go with my mum to the AGM of the BFMS because I'd wrongly accused my Dad of abusing me a few years ago and we thought that going to the conference might help me not to feel so guilty and ashamed of what I did.

But the nearer I got to the conference the more guilty I felt. You see, I was totally wrong about the things I told the police but at the time I really believed it had happened. Looking back now I can see that the idea was planted in my head many years ago by a psychiatrist doing analytical psychotherapy with me. He has now been struck off for other matters. But it was a very harmful and dangerous thing that happened to me and my family. Social Services had to interview my nephew and God forgive me but my Dad had to go to the police station to be interviewed. I have schizophrenia and have had it since I was 14 so I was vulnerable to taking in ideas that were suggested by the doctors I saw. People tell me not to feel so guilty, ashamed and angry at myself for what happened but to my dying day I can never make it up to my Dad and family.

A retractor

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Who will save my daughters from their therapy?

It is almost ten years since my daughters broke off contact with me. I found out eight years ago they had made accusations that I had abused them during their childhood. Since then I have experienced endless anguish, knowing that these accusations are not true.

My innocence compels me to speak out all these years later, despite the restraints imposed on me by solicitors' letters. These were received several years ago from my daughters and ex-wife, threatening me with action for harassment if I did not refrain from trying to make contact with them. (I had been trying to get information, unsuccessfully, on the abuse accusations my daughters were making against me.) The gross

injustice of these untrue accusations is made worse by being unable to mount the defence which I am entitled to. I am prevented, in all sorts of ways, from engaging with my daughters over their allegations. I am up against a wall of silence from them and those few who believe them and have only ever received a small amount of information second-hand. My daughters have never told me what I am supposed to have done, or where and when I am supposed to have done it. Surely simple, common decency requires that an accused person be told what he (or she) is accused of. Nor has my eldest daughter told me the names of the babysitters and childminders who she claimed also abused her. My former wife has always been very vague regarding details of the allegations, when she is asked by other people.

"Matters have now gone so far that it is probably difficult for them to admit to having been mistaken, or duped, for fear of losing face."

Four people's lives have come close to being destroyed by "recovered memory" therapy; my two daughters who, as a result of this therapy, have been given palpably, untrue "abused" pasts with which they can despise me; my former wife, consumed with bitterness over my failings in our marriage, who appears to accept my daughters' allegations perhaps to justify that bitterness, and myself, falsely accused of abuse as a result of my daughters undergoing the therapy. My older daughter is on medication, without a career and financially insecure. Her reported depressions must be a severe strain on her and her partner. I believe, but can only surmise as I am prevented from having the facts, that the therapist took advantage of what appears to have been a serious breakdown to implant "false memories" of abuse. My younger daughter, prior to making her accusations and apparently influenced by those who see most men as abusers, talked endlessly of friends who she claimed had been abused. She appears not to have a settled relationship or a career with financial security.

Matters have now gone so far that it is probably difficult for them to admit to having been mistaken, or duped, for fear of losing face. So they stubbornly hold on to an untruth because they have to believe it, given what they have told so many friends and acquaintances. It also helps if they need someone to blame for every misfortune that they consider has happened to them. Each may be feeding the other's indignation, loathing and anger – anger that would surely be better directed at the therapists instead. I have heard of quite serious bouts of illness affecting them and wonder if this comes from stress caused by the misplaced animosity towards me and their unjustified fear of me. Reasonable happiness and contentment are not words I hear, from people in contact with them, to describe their state of mind. I have a sense that they may be caught in a vicious circle of resentment preventing them from leading more fulfilling lives.

Although I am happily married to my partner of twenty-two years and financially secure (a situation that may be fuelling that resentment towards me) sadly I have lost my daughters to this pernicious therapy. I also sense the agony of those I meet on prison visits and observe at trials, who have been wrongly convicted after their accusers' allegations, invented by this therapy, were used in court against them.

This is the past I shared with my daughters – not the one created by the therapists which has blighted all our lives. Immediately prior to the break up of my first marriage, almost twenty-six years ago, relations were often not at their best between me and my daughters. I have always accepted most of the responsibility for that as the parent and as they were only 12 and 10. However, after the separation my daughters kept in touch, coming together and singly to stay at my home, and going on holiday with me, on my own. When they went to college they were supported by me and my partner, whom I met four years after I separated from their mother. They regularly invited us to come and stay at their student houses. In the words of their college friends: "They had a great relationship with their dad." My youngest daughter told others warmly how she appreciated what I did for her. When my eldest daughter went to London she pleaded with me to come to see each new flat she moved to and to stay with her. I did this on my own on several

occasions. Almost the last time I saw her we walked through central London and she did as she sometimes did, put her arm in mine. This always embarrassed me and on this occasion I said, "People will think I'm a sugar daddy". Her reply was, "I do not care what they think, you're my dad." These were hardly the actions of daughters who had been abused by their father. So it is hard to believe these happier times between 1977 and 1994 were followed by the tragedy now affecting us.

The most frightening aspect of all this is that my daughters have been given a wrong diagnosis – paternal child abuse – as the cause of any emotional pain and psychological anxiety they may feel. Drastically, with a wrong diagnosis there can be no proper cure – so their catch-22 misery continues by feeding on the mistaken acceptance of child abuse as the cause. There is no way to challenge this "diagnosis" with alternative opinions as I have no access to the contents of the files from the consultations in which I suspect I am defamed.

This is yet another part of the injustice. The therapists have "diagnosed" abuse using unproven theories from a questionable field of psychotherapy and psychiatric medicine that appears to be immune to enquiry and accountability by the psychiatric profession and health authorities. There would be grave consequences in the field of physical medicine if a doctor's mistaken diagnosis, based on prejudiced beliefs, was not challenged by his or her peers and made accountable to the authorities.

So, with my daughters' past reinvented, with impunity, at therapy sessions, this rewritten history of their childhood has given them someone to reproach for their own failings. Not surprisingly, this surrender of responsibility clouds the awareness necessary for mature development. I suspect there has been a loss of confidence and self-esteem and I fear there will be regression to childishness. These are often the consequences of this kind of therapy.

Only three people can ever know that I did not abuse my daughters, the two of them and myself. Yet, if they are not wilfully telling lies they must sincerely believe falsehoods. It would seem that some were put in my eldest daughter's head by a therapist. The others were "beliefs" my youngest daughter acquired, as far as I can gather, at gay and lesbian therapy sessions. There, "disclosures" of abuse are awaited in an expectant atmosphere by people who accept the reliability of the "sexual abuse indicators". I have reason to believe that she and the others at the therapy session may have been aware of these "indicators" from the book, *The Courage to Heal* (Cedar 1993), the bible of the "recovered memory" movement. (Since every person on the planet experiences all or most of these "indicators", this would suggest that everyone has been sexually abused – which is patent nonsense.) With my daughters believing falsehoods, the only person left who truly knows that paternal abuse did not happen is their father. Thankfully at least, I have the confidence of relatives and friends who trust me that I am telling the truth – trust being all there is to sustain my friendships with them.

"Drastically, with a wrong diagnosis there can be no proper cure – so their catch-22 misery continues by feeding on the mistaken acceptance of child abuse as the cause."

My help is essential if my daughters are to be saved from their therapy and recover their equanimity. However I can do little, frustrated by the unjust constraints on me. So unless I can call the therapists to account, both professional and quack, my daughters will not regain their self-respect and my relationship with them will be gone forever. I am deeply saddened by their distress and unhappiness. I am also seriously worried about their mental stability since the fanatical search for "sexual abuse" by "recovered memory" therapists often drives their patients to suicide attempts – as BFMS supporters know only too well. Being pressurised by therapists to "cure" themselves by "confronting their abuse" is not the way to peace of mind, as it did not happen. Instead I wish my daughters would begin their recovery by rejecting the lies about their pasts invented in therapy. Even when your loved ones are your accusers you still want them back, in contrast to those I know, who have been imprisoned, whose false accusers are not related to them. They never want to set eyes on them again. They have expressed horror at the idea of

being falsely accused by their own flesh and blood. So I can only imagine the utter desolation felt by those men (and women) I have met who have been wrongly convicted and imprisoned on their own daughter's testimony. Despite the despair from being unable to do much to resolve my situation, I keep up my hopes of eventual reconciliation with my daughters as a result of them retracting their allegations. As their father, my concern for their well-being keeps me going. I still love them. I do not harbour bitterness towards their mother or have criticisms of her part in my past. I do not want a reconciliation with my daughters at her or their expense. I want it for the good of us all. As my eldest daughter once said "Dad never holds anything against anyone."

An accused father

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Light at the end of the tunnel

I previously wrote in the Newsletter of November 2000 about how psychiatry had failed my daughter and that despite her allegations against my husband, the Crown Prosecution Service (CPS) had decided to take no further action.

The last two and a half years have not been easy and it has been like riding a roller coaster. My daughter appears to improve only to regress. Once the CPS dropped the charges we started to see our daughter again on a regular basis. She was still obviously psychotic but never discussed the allegations of abuse, it was as if they had never been made. Prior to the accusations she had been working in the voluntary sector and continued to do so, despite at times being unwell. We gave her as much support as possible. She was given a wide variety of medications but none of this made any improvement in her condition.

In 2001 she began to work as a care assistant at a London hospital. She worked for seven weeks but while we were away on holiday she self-harmed, burning her hand and arm with an iron. The wounds were severe and necessitated treatment over a period of time at a burns unit. She started to spend time in hospital again as a voluntary patient. In September she broke away from an escort in the hospital garden and returned to her flat where she took a cocktail of drugs in another suicide attempt. The hospital ward did not inform me until the following day when I arrived to visit her. She was still in Casualty and very poorly with a very irregular heartbeat. As soon as possible she was transferred back to the ward and placed on a six-month section.

The next six months were not easy. She was again prescribed various drugs, none of which seemed to raise the severe depression or alter the psychosis. I visited her daily and her response was varied; some days bright, others she was hardly speaking. There were no real activities on the ward and her time was spent between the smoking room, watching TV or lying in bed. She had no self-esteem. At one stage she was very psychotic and returned to talking about the alleged abuse saying that she wished that I would believe her. With a nurse in the room, I told her that no abuse had taken place and that all she had ever had from us was loving care. She asked me to leave – which I did. When I next visited her she made no mention of what had happened but had obviously thought about it because she asked how she could get a second opinion. Her psychiatrist, whilst not being overtly obstructive, nevertheless put barriers in the way – like finance, that she had no reason to refer her and that the Trust would not allow it! It took nearly four months to arrange but in the end her psychiatrist did agree and also sent a resumé setting out our daughter's relevant case history to another consultant psychiatrist at a London teaching hospital. She did not enjoy the visit to the psychiatrist but after the visit she seemed to improve and had a more positive outlook.

In the meantime, in January, our daughter asked to come off all her medication. She talked this through with her psychiatrist who felt she had made a well reasoned and researched request and her medication was stopped. She has had no medication since.

Our daughter, although still on a section, began to spend days, then weekends, at her flat. Encouraged by the ward nursing staff she took up her reserved place at the local university to study Mental Health Nursing. Two weeks into the course she had to see the occupational health doctor for the course. He deemed her unfit to continue although she had her psychiatrist's support. She was devastated and we thought this would set her back. However she weathered the

storm and started to work in a voluntary capacity for Mind. Here she began to regain some of her self-esteem and ran several groups for service users.

In August 2002 she saw a job advertised in the paper for a manager with a charitable organisation. It was to set up and run a project for carers of people with severe mental health problems. She applied, but had to wait a long time to be interviewed as the post had to be re-advertised.

In the meantime she saw that Mind was advertising for service users to become user inspectors for the Commission for Health Improvement (CHI). She applied and got a position having been whittled down from 800 applicants to the final few. She did the training courses for CHI and passed. During this time she was also interviewed for the manager's position and was selected.

Her self-esteem rose and she began to realise that despite all the problems she had she was still considered worth employing. During all this time we continued to see her regularly and to encourage her. She came home frequently to tell us about her work and we all went out together to dine.

She has now been in this post for eight months and has had a lot of successes in her work. Professionals who treated her during her illness are now her colleagues. She has taken part in one CHI inspection, working alongside consultants and managers, etc., where her contributions have been highly praised. She has also returned to studying and has completed two counselling courses. These will enable her to go on and do an M.Sc. in counselling. Through this, as well, she seems to have gained an insight into her own condition. She talks freely about when she was "mad". She says she was always driven by a need to be the best at everything she attempted. If she succeeded then people would like her. This is very sad because all she really had to be was herself. She has never discussed the alleged abuse with us and we just look forwards and don't dwell on the past.

It has been good over the last year to see her improving and re-establishing the good relationship she had with her father. Socially she is cheerful and good company. She is aware that there will always be a possibility that the illness may return but that we are here for her. Relationships within the family with her brothers and sister are still strained but as time goes by we feel they will improve. It is now eight years since the start of her problems and we have travelled a long way and learned a great deal. We are not yet completely out of the tunnel and may never reach the end, but at least we have hope.

A mother

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The following is a husband's experience of helping his wife through false memories and beyond.

Keeping the door open

by Brian Berry

When my wife and I were at the [BFMS] April annual meeting in London the one thing that I was asked repeatedly was, "How did I keep the door open for her?" She is a survivor of false memory therapy and along the way I lost her for a period of time, along with most of my family contacts that have slowly re-established themselves. In no way is my journey to overcome the damage caused by three over-zealous therapists to my family relationships complete, but it is getting to the point where I can come to terms with what has occurred since 1991.

The first step, I feel, in keeping the door open and beginning the substantive communication process is a realisation of what has occurred. It would be great if we could turn back time to a point before our family member was victimised by a misguided therapist and guide them on the right path in their search for understanding. However, what has happened has happened and cannot be changed. Nonetheless, we do control how we view events and react to them. Once that point has been reached, taking the next step is a bit easier.

The next step in keeping the door open is being a participant in the journey and not a spectator. From my experience, I know it is hard to combat what is being said and directly combating the

allegations only confirms what the accuser has been told by their therapist. The best way to minimise the power of the stories is to *not* address them and to *not* give in to threats. Remember our time is finite. There is a lot that all of us would like to accomplish in our lifetime and taking the energy to fight every allegation takes away from the time that we could be using to achieve other goals that we have for ourselves. Simply put, fight the allegations by not making them a focus of your life. The easiest way, I believe, is to set some rules for communication with the accuser. For example, this one I have used and it has worked for me: "We are a couple – either you see both of us or none of us." Another example would be: "We would like you to come for the holiday as long as you do not discuss your therapy." Remember if you set rules then you need to back them up. In my experience, it may take people a while to come around but eventually they will. The most important thing is to let them know that you care, but that your "life" with your spouse is foremost – it will not be destroyed by false allegations.

"It is important to let them know that just because they are not hearing from you does not mean that you don't care. Sometimes, not talking may be what is needed."

Once the first two steps have been achieved and can be managed, the next is a bit harder. The question becomes, "How do you address those allegations that you know are completely false?" A lot depends on the nature and context of them. My experience has been that if it is taken head on, it is likely to be met with equal resistance. Before attempting this step make sure you have some form of communication that should have already developed through this journey. Don't be afraid to be the one directing the flow of the communication by stating something like, "I don't feel it is appropriate to discuss this now", or "I think we should agree to disagree on this". Hopefully by this point, with the level of communication that has been established, a fuller understanding of underlying issues may come to light. In my case, my spouse started realising that her allegations against her father were not real. She realised that it stemmed from the fact that her mother kept her from communicating with her father after the two of them divorced and her father wanted to see her graduate from high school but unfortunately was unable to due to her mother. Also at this point she had some very distinct graphic memories that were easy for her to either prove or disprove; she was able to disprove the memories about her father. At this stage, I think the best way is to be a sage, a guide.

The final step is to move beyond the allegations. As the false memories lose their strength and power, start developing other interests with them. Again, being a participant is important since you can guide your relationship with the accuser. It is necessary not to rush and to develop communication that will guide you to this point. It is hard to know when you have reached this point but I would say that the best guide is when you find you are talking less about the memories – feeling less of a need to directly confront them and feeling a desire to move beyond them with the accuser. Another way to describe it is having a feeling of peace inside you about them. If you cannot find other topics of conversation that do not lead to conflict then it is best not to attempt this step.

Somewhere along the way contact may be lost either through a decrease in communication or through a desire not to talk. It is imperative, at some point, to attempt to re-establish the communication. The accuser may be facing the realisation that the "memories" are wrong, that the therapists are not working in their best interests, or have some internal struggle regarding their accusations. Here is where understanding, patience, and compassion for their struggle needs to be understood. It is important to let them know that just because they are not hearing from you does not mean that you don't care. Sometimes, not talking may be what is needed. It gives everyone some "breathing room" and a chance to examine the events that have occurred. This is probably where, in my journey, I could have walked away or helped. I made the decision to help my spouse by leaving the door open.

It is important from the initial accusation that they are told and shown that you care for them. Sometimes it seems that everything that I have said may be in conflict, but remember, they are on a different journey from the journey that you are undertaking. They are trying to resolve what the therapist is saying to them with what they are

experiencing. This, as I have seen, can be quite powerful for some and is very difficult. At this time you need to think through what is important to you and be a guide for them. Listen to them without being judgmental and, if needed, give them a chance to think through all that has transpired since the initial accusation. You don't necessarily have to talk to them. Sending a card or an email can be just as powerful as talking. It may also be less intimidating too. This is probably the point, from my experience, where you should take it slowly. Don't push it, and if the opportunity arises gently address some of their accusations with facts, not emotions.

This has been written from my own experience. I realise that everyone is different. However, I wanted to share my experience and hopefully help someone along the way. To summarise: be assertive, define what is acceptable to you, and do not let the events dictate how you live your life. Instead, dictate how you are going to live your life by being a participant in this journey and not a spectator. I realise it is easier said then done. It is my hope that you will consider giving it a try.

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Research project on sexual abuse narratives – an update

Thanks again for your assistance in helping me find women willing to participate in my research project. I am just writing to let you know how I have got on. The letters you kindly agreed to send out to female members of the BFMS proved successful and generated ten respondents of whom nine have agreed to participate. It is about three weeks since the last woman contacted me so I think I now have all those who are interested. I was hoping for between about eight and fifteen so nine is quite alright. Although is sounds like a small number, as an in-depth study it is quite large enough.

Five have agreed to an interview and four preferred to do a written account. I shall be conducting the interviews over the next two months and hopefully will have the written accounts returned and the interviews transcribed by May, giving me the whole of my third year to write up the results. Thanks again for your time and help.

Jo Woodiwiss, The Centre for Women's Studies, University of York

Obituary

Nick Anning

by Margaret Jervis

Investigative journalist Nick Anning, who died in May following a heart attack, made a significant contribution to exposing the satanic abuse scare in the UK.

A veteran of the famed *Sunday Times* Insight team, with David Hebditch he researched the story of Caroline Marchant, a 23 year old nursery nurse who had committed suicide after claiming to be a "satanic survivor". This was in 1990 at the height of tabloid credulity about the satanic cults and the self-penned lifestory of "Hannah", Caroline's pseudonym on becoming a born-again Christian, was seized upon as confirmation of ritual abuse in the *Sunday Mirror* and elsewhere. Nick was meticulous and tenacious, and the pair researched every facet of her true existence back to early childhood and proved her story to be, as the outstanding and riveting piece in the *Independent on Sunday* magazine was entitled, "A Ritual Fabrication". It remains a classic piece of investigative journalism comparable to the exposé of Lauren Stratford, the author of the fake biography *Satan's Underground*. "A Ritual Fabrication" uncovered many of the influences and personalities shaping the satanic abuse scare, particularly that of evangelical Christians, as they impacted on a disturbed girl and those around her.

In the following year the pair would delve deeper to discover the shocking story of the suppression of the Nottingham Joint Enquiry Team report (JET) and the propaganda campaign by Judith Dawson (Jones) and Beatrix Campbell. At a late stage, a planned BBC *Public Eye* documentary was axed, and much of their research remains unpublished today.

In their 1999 book *Stolen Voices* (withdrawn prior to publication on legal advice), Campbell and Jones claimed to have jettisoned the programme through leaks and their influence in the BBC. With Nick and David having invested heavily in research and investigation, the smears, at that time unsourced, had a devastating effect on Nick's and David's finances and led to the liquidation of their production company Abraxis. Though he was personally without side in seeking

revenge, it was therefore of some small solace to Nick to see Judith Jones's ascendancy toppled through the finding of malicious libel in the Shieldfield case in 2002 – though she escaped personal financial liability. The JET report was finally published by Nick, David and me on the internet in 1997, prompting the taking out of an injunction and lawsuit by Nottinghamshire County Council against us and the author of the revised JET report, retired Nottingham Area Director John Gwatkin, who had contributed an important new preface. The case became an international cause célèbre as the Council attempted to sue hosts of mirror sites in other countries. The right to publish was fought on public interest grounds and the council eventually withdrew thus enabling this important historical document to be available both on the internet and in hard copy. Nick continued to investigate this area and exposed a much hyped documentary of an alleged satanic abortion as a fake prior to broadcast in 1992. But he was frustrated by the lack of interest and investment in serious investigative journalism by the media in the ensuing decade and spent much of his time concentrating on his specialist interest in exposing organised crime in Russia. But throughout this period he remained attuned to the issues connected to "recovered memory", contributing to the BFMS newsletter, and his work in this area remained unfinished at his untimely death.

Though he could be intellectually fierce – and a fearsome bowler playing cricket for the *New Statesman* team – he had a generosity of spirit rare in journalism and provided help to people whose stories he knew would never become publishable. His book *Porn Gold* co-authored with David Hebditch which researched the business side of pornography and was published in 1988, remains a classic in its field. It documented the reality of porn empires while puncturing some of the contemporaneous myths such as widely rumoured "snuff" movies. It proved to be a valuable precursor in unravelling the smoke-and-mirrors world of the satanic abuse allegations at their height and his cool analysis, wry sense of humour and solid judgment will be sorely missed.

Nicholas Jenner Anning, born 9 April 1942, died 7 May 2003.

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BOOKS AND REVIEWS

Daunting task object lesson

The Ritual Abuse Controversy: An Annotated Bibliography by Mary deYoung
McFarland & Company. 280 pp. £38.50

Reviewed by Professor Jean La Fontaine

This bibliography represents a Herculean task completed with success. In it are gathered together the published works that recorded a controversy which rocked much of the English-speaking world during the 1980s and 1990s. Both sides of this controversy are represented, but the unpublished ephemera: the photocopied lists of symptoms, seminar papers and conference lectures have been omitted. Such materials do provide evidence of how the ideas were spread and who spread them, but one can only accept that to collect a definitive array of these lesser items would be a gargantuan, maybe even an impossible, task. Mary deYoung has herself published on this topic, and the book provides balanced and comprehensive coverage of the literature as it is, and a good deal of information in doing so.

There are 775 citations; items may be cited more than once so the number is not that of works cited. They have been compiled from the 45 different databases listed at the end and are sorted into twelve chapters, each with its own sub-chapters. An introduction sets out the approach followed and there is a brief conclusion. In both of these Dr deYoung makes clear that she has resisted the temptation to steer the reader to any particular conclusion. The chapters deal with topics such as definitions, clinical and other features of the cases; three chapters deal with particular cases, two in the United States and one with cases elsewhere. The chapters on American cases will be of interest in Britain since they figured less in the British press. Other chapters cover the reports themselves, the narratives in them, related controversies such as multiple personality disorder and the nature of recovered memories, the impact on those who had to deal with the cases and approaches to the subject from

social science disciplines. Each chapter and sub-chapter opens with a brief statement of the issues, giving a context for the citations. The citations are arranged alphabetically rather than chronologically, which unfortunately loses the chance to show, by the arrangement of the citations, the development of an argument or the history of a case. There are two indices, one on the works and the other on issues – a useful aid. Chapter 8, "The Ritual Abuse Controversy and American Law", may seem less interesting to a British readership but the issues raised are not alien to British courts. Chapter 12 contains evidence of the controversy's continuance until the end of the century – of course, the controversy in Britain occured much later than that in the United States, so that some of the items cited here merely reflect that time difference, but clearly the controversy has survived the publication of research that failed to provide supporting evidence.

I have not read all the items in this massive bibliography myself, but I did not find any evidence that Mary deYoung has included anything she has not read. I was surprised not to find Nathan and Snedeker's book, *Satan's Silence*, particularly since much of Nathan's voluminous work is included, nor Robert Hicks's *The Pursuit of Satan*. The absence of John Parker's *At the Heart of Darkness* is less surprising since it was a British publication and not widely cited. Perhaps databases are not always reliable. I commend two books that are not strictly omissions, but which she and other readers might enjoy: Elliot Rose's *A Razor for a Goat* and Gareth Medway's *The Lure of the Sinister* are concerned with modern beliefs in the devil and in both the wit makes the erudition not merely palatable, but entertaining.

Dr deYoung's summaries are admirably neutral in tone. The stories of survivors are set down as factual accounts rather than unproven allegations and items that I know are seriously flawed are summarised without comment or critical remarks. For example she does not point out that Boyd's book (citation 368) used interviews of adult women to draw conclusions about children, merely gives a précis without mentioning his evidence. She does fail to note that Tate's book (citation 382) was withdrawn by the publishers just before publication (though not before copies were in the shops) because they and the author were successfully sued, but she might well not have read about that in the USA.

This book should be widely available, not merely as a guide to students of the ritual abuse controversy, but as an example of academic objectivity.

Jean La Fontaine, author of the Report "The Extent and Nature of Organised and Ritual Abuse". HMSO 1994

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When interrogations go wrong

The Psychology of Interrogations and Confessions: A Handbook (2nd edition) by Professor Gisli Gudjonsson
John Wiley & Sons. £37.50

Reviewed by Dr James Ost

This second edition of Prof. Gudjonsson's seminal book has been substantially revised and updated. As a result, as Gudjonsson states in the Preface, it is more like a new book than a second edition. There are now extended sections dealing with the latest research findings concerning interrogative suggestibility, detailed case histories involving disputed confessions, both in the UK and abroad, and a co-authored chapter dealing with the measurement of "oppressive police tactics".

There is much to commend in this new edition of Gudjonsson's book and too little space here to do it justice. Furthermore it may appear, on first glance, to be little of direct relevance to BFMS members. However, research has recently begun to address the possible relationship between "recovered memory" and false confession and much of the material in this book can be read with an eye on this relationship. With this in mind the present review will focus on three issues that are likely to be of interest to BFMS members: the relationship between false confessions and "recovered memories", the latest changes in the admissibility of expert testimony concerning psychological vulnerability, and the role of medication in cases of false confession.

Recovered memory – suggestibility and false confessions

The first important addition to this book is a section dealing with the relationship between false confessions and "recovered memory". Gudjonsson argues that, contrary to opinion, individuals who have "recovered memories" are no more or less suggestible than anyone else. Furthermore, he devotes a couple of pages to examining the possible relationship between "false memories" and false confessions, and argues that before someone can have a "false memory", they must first have a "false belief". Gudjonsson also describes briefly other factors that may be important in cases of both false confession and "recovered memory", including imagination and, what he terms, "memory distrust syndrome". He also highlights some of the important differences between cases of false confession and "recovered memories". This is noteworthy because it highlights the fact that "false memories" (or false allegations) are just as likely to occur without the involvement of any kind of therapy.

Expert evidence and psychological vulnerability

A further important addition to this edition of the book is the discussion of the change in legislation (brought about largely by Gudjonsson himself) with regard to the admissibility of expert testimony regarding false confessions. Previously it was assumed that only suspects with either a learning difficulty or a psychiatric diagnosis were at risk of making a false confession. In light of this, expert evidence regarding a possible false confession was only permitted if the suspect could be shown to be suffering from either of these conditions. In fact, as shown by Gudjonsson's research, there are many "risk" factors that raise the likelihood of confession being made, including, what might loosely be termed, a suspect's personality. Gudjonsson provides compelling examples of cases where a suspect's abnormally high scores on psychometric measures of suggestibility and compliance were enough to cast doubt on the safety of that suspect's conviction. This is important because it suggests that a person does not necessarily have to be suffering from some kind of psychiatric disorder in order for them to come to make a false confession or, by extension, a false allegation.

The role of medication in cases of false confession

Another noteworthy issue raised in this concerns the effects on testimony of drug intoxication and withdrawal. Although his discussion is limited, on the whole, to the effects of alcohol and opiates, the results suggest that there are marked effects on a suspect's interrogative suggestibility when questioned either "under the influence" (i.e. intoxicated) or at a later date (i.e. during withdrawal). Gudjonsson also mentions a noteworthy study involving allegations of sexual assault made against anaesthetists while the female patients were sedated. Again this raises important questions concerning the relationship between medication and the possibility of false allegations of sexual assault in other contexts. Clearly this requires further careful research.

In conclusion this is a substantially updated edition of Gudjonsson's seminal book and is a very worthy read on that basis alone. BFMS members may be disappointed to discover that there are only a couple of new sections devoted *exclusively* to "recovered memory". However, in light of the possible relationship between false confessions and "recovered memories" there are many other sections of this book that will be of interest.

Dr James Ost is a Lecturer in Psychology at the University of Portsmouth.

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Memory maze dusted down

Remembering Trauma by Richard J McNally, Harvard University Press. £23.50

Reviewed by Mark Pendergrast

Reprinted with permission from Community Care, 22-28 May 2003

As Harvard psychology professor Richard McNally observes in this much-needed survey of current scientific evidence, "how victims remember trauma is the most divisive issue facing psychology today". Although the "recovered memory" epidemic of the past decade has mostly subsided, the belief system underlying it has not gone away. Most people "know" that traumatic memories can be blocked out, only to well up again later in life.

In 1998 clinical psychologist Daniel Brown published *Memory, Trauma Treatment and the Law*, marshalling a seemingly impressive array of scientific studies to "prove" the reality of repression and dissociation. Now comes McNally with his meticulously argued corrective, in which (among other things) he dissects the Brown book and leaves its "evidence" in a little dust heap.

And McNally's conclusion? "Events that trigger overwhelming terror are memorable, unless they occur in the first year or two of life or the victim suffers brain damage. The notion that the mind protects itself by repressing or dissociating memories of trauma is a piece of psychiatric folklore devoid of convincing empirical support."

Remembering Trauma is destined to become a classic in the field.

Mark Pendergrast is the author of "Victims of Memory: Sex Abuse Accusations and Shattered Lives".

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Praise where it is due but don't forget to challenge

We want to ensure we give praise where praise is due but also we don't wish to underestimate the value of challenging inaccurate and misconceived articles and comments that you may read, hear or see.

How often have you read articles and thought the writer has got it wrong and then you put the paper down and forget all about it? We would like to encourage you to respond by writing more letters. To be really effective with this strategy we need your help to supplement the work of our office team.

Write a short letter to the editor or producer, making your point. Keep a list to hand with the contact details of letters editors and programme producers, including their email addresses for a quick response. Make it succinct - even if you have a lot to say resist the temptation to do so or your letter may lose its impact. We would like to hear from you too, so please send us a copy of your correspondence.

If you regularly have the time to spare and would like to go on our "willing writers list" we really want to hear from you.

LEGAL FORUM

Paying for Injustice

by Lawrence Kormornick

The recent success of Christopher Lillie and Dawn Reed's libel case against Newcastle City Council and the subsequent decision by the Home Secretary to make a payment of compensation to them for wrongful charge may give some hope to others seeking compensation from the Home Secretary for wrongful charge or wrongful conviction.

Two schemes for miscarriage of justice

The Home Secretary operates two compensation schemes for miscarriage of justice. The first is a statutory scheme and the second discretionary. There is no automatic right of entitlement. Both schemes are based on paper submissions only and there is no oral hearing. Applications can be made at any time to the Home Secretary who decides who qualifies for compensation. If successful, compensation is then decided by an independent assessor, currently Lord Brennan QC. If unsuccessful, there are no adverse costs. The Home Secretary has issued two guidance notes for applicants about the two schemes and how compensation is assessed.

Statutory scheme

Under section 133(1) of the Criminal Justice Act 1988, the Home Secretary will pay compensation if a conviction is reversed on new fact, "unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted". "Reversed" means a conviction having been quashed on an appeal out of time, so the statutory scheme does not apply to "in-time" appeals filed within 28 days of conviction.

The statutory scheme does not require proof of complete innocence. It only requires proof that the conviction was "unsafe". As is well known, Article 6(2) of the European Convention on Human Rights (now embodied in the Human Rights Act 1998) provides that, "everyone charged with a criminal offence should be presumed innocent until proven guilty according to law". Although a person who is acquitted or

whose conviction is quashed can rely on a presumption of innocence, this does not amount to a certificate of complete innocence (*see below*). Indeed, many prosecuting authorities would contend that an acquittal or the quashing of a conviction simply means that the prosecution was unable to satisfy the burden of proof and that if a case goes to the jury that means that there is a case to answer.

Discretionary scheme

The Home Secretary can make a discretionary payment in certain exceptional circumstances where an applicant has spent time in custody after charge where there has been:

1) serious default by a public authority such as the Police; or
2) a complete exoneration of the applicant; or
3) exceptional judicial error; or
4) some other exceptional circumstances.

Custody

The question of what amounts to custody is presently under consideration by the Court. The Home Secretary contends that the discretionary scheme covers only those who were imprisoned after wrongful conviction, or those who have spent a period in custody because bail was refused following a wrongful charge. The Home Secretary does not accept that the scheme was ever intended to cover periods in custody which are simply periods of restraint whilst the detailed processes of the law proceed. Subject to that criterion, the Home Secretary accepts that there is no minimum requirement for time spent in custody.

Serious default

To establish serious default, negligence is required. The Court has said that it does not matter that the negligence was not malicious or that it was caused by an oversight. The Court will look at the importance of the obligation; the failure to comply with it; and the result of that failure.

Complete innocence

The Home Secretary has agreed to compensate Christopher Lillie and Dawn Reed under the discretionary scheme. At their trial, they were acquitted after the charges against them were withdrawn because there was no case to answer. The Home Secretary's decision was made after Mr Justice Eady decided in their libel case against Newcastle City Council that they were completely innocent. This is thought to be the first time under the discretionary scheme that the Home Secretary has acknowledged the finding in a civil case.

Other potential applications may be less fortunate. The Home Secretary will only pay out to those who are able to satisfy him of their complete innocence beyond any doubt. The Home Secretary will not pay out to those who are only able to rely on their presumption of innocence. The present policy of the Home Secretary is that he is only prepared to pay compensation on the basis of "complete exoneration" where facts emerge at trial on an appeal within time which establish beyond any doubt that the applicant did not commit, or could not have committed, the crime. Although this is a difficult requirement to satisfy, the Court has said that it is not an impossible one and it is a matter of judgment for the Home Secretary.

Exceptional judicial error

The Home Secretary may make a payment where he is satisfied that there has been an exceptional judicial error. Serious error is not enough. The Court has said that it would be "a very rare case indeed where judicial misconduct…is of the exceptional nature which the second limb of the statement requires".

Although the Home Secretary does not publish his decisions under the scheme it is known that there have been at least two recent successful cases based upon exceptional judicial error. In the first, the estate of the late Derek Bentley persuaded the Home Secretary that there had been an exceptional judicial error where the summing of the trial judge had deprived the defendant of a fair trial. In the second case, Mr Tawfick succeeded on the basis that an attack by the trial judge on his integrity in open court in front of the jury was wholly exceptional.

Compensation and costs

The Home Secretary's Guidance Note states that a statutory or discretionary payment is "made in

recognition of the hardship caused by a wrongful charge or conviction. … the assessor will apply principles analogous to those governing the amount of damages for civil wrongs". The assessor will take account of both pecuniary and non-pecuniary loss arising from the wrongful charge or conviction and/or loss of liberty. Compensation is payable to the applicant or to his estate. Relatives are not entitled to compensation for their loss.

Personal pecuniary loss

Personal pecuniary loss includes loss of past, present and future earnings due to the wrongful charge or conviction, loss of pension rights, and other expenses including costs of care and counselling, relocation costs, campaign costs and travelling expenses (including those incurred by the applicant's immediate family).

Non-pecuniary loss

The Guidance Note explains that non-pecuniary loss comprises damage to character or reputation, hardship (including mental suffering, injury to feelings and inconvenience). The Note also states that, "in considering the circumstances leading to the wrongful charge or conviction, the assessor will also have regard, where appropriate, to the extent to which the situation might be attributable to any action, or failure to act, by the Police or other public authority, or might have been contributed to by the claimant's own conduct. … The assessor will also have regard to any other convictions of the claimant and any punishment resulting from them."

Interim payments

The Guidance Note states that, "one or more interim payments may be made by the assessor before the final amount is determined. The amount of any interim payment will be paid generally on account and will be deducted from the final award."

Costs

The Guidance Note states that, "when making his assessment, the assessor will take into account any expenses, legal or otherwise, incurred by the claimant in reversing his conviction, or pursuing the claim for compensation."

Conclusion

Although there is no automatic entitlement to compensation under the Home Secretary's schemes, it is well worth considering these before bringing a civil claim, especially where liability is likely to be contested and private or public funding is limited.

Lawrence Kormornick is a solicitor with Dechert, who specialises in compensation claims for wrongful charge or conviction.

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Appeal Court about turn?

On 11 February this year the Lord Chief Justice sitting in the Criminal Court of Appeal delivered a judgment that appears to change the landscape of retrospective prosecutions of uncorroborated claims of sexual abuse. The appellant, Brian Selwyn B, had been accused in 2001 by his stepdaughter of abusing her when she was aged between 7 and 11 between 1969 and 1971. An abuse of process argument, pre-trial, was rejected and upheld on appeal. Nevertheless Lord Woolf went on to quash the conviction and made some trenchant remarks on the principles of justice, the presumption of innocence and corroboration.

Below, a barrister comments on the potential significance of the judgment.

R v Brian Selwyn B[i] seems an astonishing decision. On its face it suggests a deep rift in the Court of Appeal between the orthodox and traditional approach of the court to historical abuse allegations over the past 15 years as reflected in numerous authorities, and the contemporary attitude of the Lord Chief Justice, who went on the record last year about the ease with which false allegations of past abuse might be made.

At that time the LCJ indicated that perhaps "the pendulum had swung too far…" in the legitimate desire to bring past abusers to book.

As was understood from the plethora of authorities that proceeded from *AG Ref. No.1 of 1990*[ii], a trial should not be stayed unless the

defendant proved on a balance of probabilities that a fair trial was impossible. That should be an exceptional situation because in most cases a trial judge had power to give juries strong directions about the consequences of delay and could regulate the admissibility of evidence in his overall duty to secure a fair trial.

The orthodox doctrine of abuse of process thus recognised:

1) there was no limitation on bringing prosecutions for serious crimes (no matter when "committed" or "alleged" ie regardless of the length of delay)
2) matters of credibility of witnesses were strictly within the province of juries who could be trusted to do the right thing
3) historic abuse allegations required neither corroboration, nor a "corroboration warning"
4) absent any misdirection on delay (or other material irregularity) convictions would be upheld by the Court of Appeal

This left potential appellants with a mountain to climb if they were asking the Court of Appeal to rule that the trial had been an abuse of process and wished to challenge the trial judge's discretion to allow the prosecution to proceed. In fact in the last twenty years the court of appeal is known only to have allowed one appeal on this ground[iii] whilst upholding the judge's proper exercise of his discretion in at least 20 others. In some of the others (a small minority) the appeal was allowed on other grounds, notably inadequate directions on the consequences of delay of which *Dutton*[iv] was the prime example.

Now, in the case of *Selwyn B*, the Court seems to have swept away the past 20 years of common law development by saying that there is residual power in the Court of Appeal to allow appeals in any case where the Court feels that conviction is 'unsafe or *unfair*' [emphasis added]. That is the case despite impeccable directions by the trial judge, and that the jury exercised its function as to witness credibility without the slightest hint of perversity.

What is the *ratio decidendi* of *Selwyn B*? Arguably – but by no means clearly – that where, in any case, because of the delay that has occurred the defendant's sole defence is reduced to a bare denial of the complainant's allegations of sexual abuse, then because of the innate prejudice that is likely to arise in the minds of the jury in such cases, any conviction which results is unsafe, or alternatively is the result of an unfair trial.

So at one stroke, albeit welcome, the Court of Appeal has in effect reversed the decision of Parliament as to the removal of the need for corroboration or a warning in such a case; has reversed the guideline code for prosecutors issued under the Prosecution of Offences Act 1985[v] (no time limit for the prosecution of serious offences), and the Criminal Appeal Act 1995[vi] that reduced the appeal court's jurisdiction to allow appeals only in the event of an unsafe conviction (by adding the crucial words unsafe 'or unfair').

i. [2003] EWCA Crim. 319
ii. [1992] 95 Cr.App.R. 296
iii. *R v Jenkins* [1998] Crim. L.R. 411
iv. *R v Dutton* [1994] Crim. L.R. 910
v. c.23
vi. c.35 s.2

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Going fishing! Volunteers needed for the cuttings service

We need your help with developing our cuttings collection. Over the years we have built up a considerable archive of newspaper and magazine articles but there is no doubt that we do not manage to catch them all.

If you are a regular subscriber to a particular newspaper, magazine or journal and you are willing to provide the BFMS with a cuttings service for one or more named publications we would like to hear from you. Telephone 01225 868682 or email bfms@bfms.org.uk.

Topics include:

Therapeutic practices, multiple personality disorder and dissociation, satanic ritual abuse, controversy about "recovered memories", false memories research, effects of child sexual abuse on adults, historical claims of childhood sexual abuse which are denied, civil and criminal claims for alleged childhood trauma.

Overseas False Memory Societies

Please feel free to write or phone if you have relatives in these countries who would like to receive local information. The American, Australian and New Zealand groups all produce newsletters.

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