

A Challenging Year Ahead

There can be little doubt that 2009 will be a challenging year for most of us. Apart from our own personal battles we will all have to get used to fluctuating interest rates, the 'credit crunch', recession, down turn, economic squeeze - phrases which are daily splashed across our newspapers, and appear on radio and television almost hourly. These are indeed depressing times and according to some forecasters may be some of the worst in living memory.

Charities have already been warned to expect significant falls in income, employers anticipate loss rather than profit, and all Government departments will be expected to review their spending practices. Phrases like prudence, cost effectiveness and 'value for money' will once again become economic buzz words.

It is inevitable that when Government departments, State agencies and employers tighten their belts the quality of the services they provide drops and standards fall.

This need not be a problem if we readily accept that we can no longer expect the range and quality of service to which we have become accustomed. However, regardless of the prevailing economic conditions personal services (health, education and social care) still have to meet exacting minimum statutory standards even though they may be stripped of essential resources *and* required to do even more to make for reducing shortfalls in provision.

The tension between, on the one hand, the capacity to deliver, and the other hand, increasing demand is not only bad news for service users but also for service providers - especially those who work at the sharp end of service delivery. Who is going to support members of staff who, through no fault of their own, are unable to provide the required standard of service.

The history of social care and education tells us that staff are far more vulnerable during times of economic hardship when, for financial reasons, corners are cut and resources diminish. Far too many of the investigations into falling standards in schools and alleged poor practice or alleged misconduct have taken place against the backdrop of an economic downturn. In such circumstances it's the staff who are scapegoated whilst those truly responsible for failing standards get off scott free.

“... it's the staff who are scapegoated whilst those truly responsible for failing standards get off scott free”

All the indications are that 2009 and possibly 2010 will see increasing numbers of staff accused of abuse or misconduct. We must be prepared for this. F.A.C.T. must use this year, in which we celebrate our tenth anniversary, to consolidate progress and to prepare for the next decade. Two essential

ingredients are necessary. Firstly personal support which we have in good measure, and secondly individuals - able to lead us into the next decade, and to take responsibility for current activities as well for some new areas of work. A few extra hours a week from even a small number of people will make all the difference. We too have a responsibility to maintain our standard and meet increasing demand for our service.

Falling interest rates may be the sign of a healthy economy but for us they pose a critical threat.

IN THIS EDITION

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- 2008 - a year to forget or remember ?

We are grateful to our anonymous sponsor for this FACTION

Falsely Accused Carers and Teachers

F.A.C.T. is a voluntary organisation which supports carers and teachers who have been falsely accused and/or wrongly convicted of child abuse, and campaigns on their behalf for changes in investigative practice, and for reform of the criminal justice system.

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FACTion

FACTion is produced at approximately bi-monthly intervals at the national committee's discretion, and is provided free of charge to F.A.C.T. members.

The editorial team welcome articles for publication, of between 150 and 1,500 words, and letters of not more than 200 words. These should be sent, preferably by email, to faction@factuk.org or by post to FACTion, P.O. Box 3074, Cardiff, CF3 3WZ.

The editorial team reserve the right to edit any article or letter sent for publication. All submissions must be accompanied by your name and address which, on request, will be withheld from publication.

The views contained in FACTion are not necessarily those of F.A.C.T., or its national committee.

Contributors should be aware that FACTion also published on the internet and therefore is, potentially, available for everyone to read.

Editorial

As FACT enters its tenth year of campaigning, I cannot help but look back briefly before we move forward into the New Year.

I remember my first contact with FACT in 2000 and being so heartened by the support that was given and how this marked the start of a long and winding road.

Later came the Home Affairs Select Committee Report in 2002 and the elation which was so readily dashed by the Government's response. Throughout this time there have been many successful appeals, countered by a greater number of unsuccessful applications. 2005 saw the publication of Richard Webster's book *The Secret of Bryn Estyn*, the significance of which is still to be recognised.

Then most recently, another successful appeal and next month the publication of the paperback version of the Secret of Bryn Estyn and a renewed attempt at its achieving the required impact.

What highs and lows 2009 will bring remain to be seen, but one thing is certain, Committee members are growing older and closer to their retirement. One of the things we need to address in the coming year, as our front page article suggests is the need to encourage and recruit some new individuals to take up the reins when the current incumbents stand down.

Our greatest mistake would not be 'giving up' just before we succeed but in not making an effort in the first place.

With my best wishes for 2009

Gail Saunders.

For your New Year diary

Please note we have
a new address
for general correspondence

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National Conference on "The Challenges of Historic Allegations of Past Sexual Abuse"

Garden Court North chambers are pleased to announce the first national conference on "The Challenges of Historic Allegations of Past Sexual Abuse" in Manchester on 16th February 2009. The conference will address the challenges faced by both care home and domestic cases of historic sexual abuse and question whether the law can satisfy the expectations of victims and the public, whilst protecting those who have been falsely accused. By bringing together a panel of expert speakers with a range of backgrounds and experience the conference aims to highlight the challenges faced at all stages of the legal process in such cases.

Our Keynote speaker, Lord Justice Hooper, provided the judgments in two care home cases of R v Burke [2005] EWCA Crim 29 and R v Sheikh [2006] EWCA Crim 2625 which highlight the prejudices caused by the delay and that in certain circumstances no fair trial was possible. Other speakers include:

- John Weeden CB (Criminal Cases Review Commission);
- Claire Curtis-Thomas MP, former member of the Home Affairs Select Committee which considered historic allegations in the care homes context;
- Professor Martin Conway, an expert on young memories and the law;
- Representatives from the CPS, police and the media.

Further details are available Mark Newby, Jordan's Solicitors, 4 Priory Place, Doncaster, DN1 1BP, Tel 01302 309831 hray@gcnchambers.co.uk

Chris Saltrese Solicitors

Chris Saltrese Solicitors is a law firm providing a premium service in representing clients accused of sexual offences and domestic violence, in criminal proceedings. We have unrivalled expertise in these areas, both regionally and nationally. Many of our clients face allegations as a result of

- domestic or relationship disputes
- contact disputes
- mental health problems
- financial incentives

and have no prior experience of the criminal justice system. Often these allegations involve uncorroborated, historic allegations.

In this complex arena specialist legal advice and representation is vital especially as recent changes in the law, designed to convict genuine offenders, also put the innocent at greater risk of injustice.

We particularly welcome carers, teachers, and health care professionals who have been accused of abuse and are likely to be subject to a criminal investigation. Where allegations have been made we would be happy to advise, whether or not criminal investigations are underway.

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Policing by consent consigned to history

from the 'in my opinion series'



2008 has not been a good year for the police. In London the Commissioner for Metropolitan Police was accused of racism and of losing the confidence of some senior officers and of his political masters. In Jersey the Chief Police Officer was replaced after the senior investigating officer in charge of Haute de la Garenne abuse case was accused of "losing the plot", and in

Wigan three junior officers from Greater Manchester were filmed gratuitously attacking a drunken man.

Sadly 2009 has started in much the same vein. Already a former Northumbria police sergeant has pleaded guilty to charges of sexual assault following allegations about his behaviour towards fellow police officers and civilian staff whilst in charge of Northumbria police's mounted section. He was given a 12-month conditional discharge and required to place his name onto the sex offenders' register for a period of 12 months. His case is particularly interesting in that it marked the first occasion in which Independent Police Complaints Commission (IPCC) have used their powers given to them under the Police Reform Act 2002 to arrest and charge an individual. In another IPCC led initiative two Greater Manchester Police officers have been charged in relation to allegations that they failed to adequately investigate an allegation of indecent exposure, conspired to produce false notes of an interview, misled the alleged offender into signing those notes and lied to their supervisors about the work they had done.

Whether true or false, allegations of this nature undermine our trust in the police without which they cannot function and society cannot flourish.

One of the most striking things about talking to victims of miscarriages of justice is that they often say they no longer respect or believe the police, that they no longer trust the legal system, and that they are ashamed of British justice. It used to be said that the police were pre-occupied with an assault on the working classes. Whilst this may be true it is also very clear to the very many people who have been wrongly accused of abuse, and child abuse in particular that the police have also lost the trust and respect of the middle classes.

No longer are our prisons full of 'old lags' but rather, quiet, law abiding, innocent pensioners.

The police have a long and distinguished history which has served us well but they are now in danger of alienating the very people they serve.

It has long been recognised that policing cannot be effective unless it is by consent. The first Commissioners of the Metropolitan Police were Charles Rowan and Richard Mayne, acting jointly. Rowan was a military man and Mayne, fourteen years his junior, a barrister.

Their vision for the police was clear and based entirely on a philosophy of policing by consent. In 1829 they published nine key principles which were issued to every policeman as 'General Instructions',

The Nine Principles of Policing.

1. To prevent crime and disorder, as an alternative to their repression by military force and severity of legal punishment.
2. To recognise always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect.
3. To recognise always that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public in the task of securing observance of laws.
4. To recognise always that the extent to which the co-operation of the public can be secured diminishes proportionately the necessity of the use of physical force and compulsion for achieving police objectives.
5. To seek and preserve public favour, not by pandering to public opinion; but by constantly demonstrating absolutely impartial service to law, in complete independence of policy, and without regard to the justice or injustice of the substance of individual laws, by ready offering of individual service and friendship to all members of the public without regard to their wealth or social standing, by ready exercise of courtesy and friendly good humour; and by ready offering of individual sacrifice in protecting and preserving life.
6. To use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public co-operation to an extent necessary to

secure observance of law or to restore order, and to use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective.

7. To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police, the police being only members of the public who are paid to give full time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.

8. To recognise always the need for strict adherence to police-executive functions, and to refrain from even seeming to usurp the powers of the judiciary of avenging individuals or the State, and of authoritatively judging guilt and punishing the guilty.

9. To recognise always that the test of police efficiency is the absence of crime and disorder, and not the visible evidence of police action in dealing with them.

Every one of these principles is well worth reading and noting. Most have stood the test of time and should be framed and placed in every police station and served on every member of each police authority.

“When law abiding people lose their respect for the law-makers and the law enforcers society is seriously weakened.”

But the message they convey is not just for the police - its also for the judiciary and for the politicians. They too must embrace these values not just for the police but for themselves. When law abiding people lose their respect for the law-makers and law enforcers society is seriously weakened.

The answer is not in changing the views of the general population but in changing the behaviour of the police, the judiciary and the politicians - indeed all those who job it is to make or enforce the laws.

Respect is earned. It cannot be assumed nor can it be delegated.

When the Government or institutions of State lose the respect of those, who in the past they could count on most, then it is in serious decline.

How often have you heard “I used to respect the police” or “I would always stick up for the police - but no more.”

It would have been inconceivable a decade ago for great numbers of carers, teachers and other professionals to think of - let alone utter such words. Such actions would be seen as tantamount to treason, disloyal and a breach of one’s personal responsibility and civic duty. But that’s the state we are in and the police, politicians and judiciary have themselves to blame.

France to reform its magistracy following child abuse scandal



The French President, Mr Sarkozy has announced that the examining magistrate, a pillar of French justice, is to be scrapped.

The proposal prompted an outcry from judges and left-wing politicians who accuse Mr Sarkozy of abandoning the country's tradition of independent investigation and equality before the law. Others gave a cautious welcome to a long-debated overhaul of a system that limits suspects' rights and has led to spectacular abuses.

Although *juges d'instruction* now handle only serious crimes or sensitive cases, their demise would end the two-century tradition of the all-powerful secret super-sleuth.

As Interior Minister in 2005, Mr Sarkozy demanded reforms after the Outreau case, in which a zealous young judge imprisoned 13 innocent people on child abuse charges. Half of them were wrongfully convicted and one committed suicide. Patrick Devedjian, a senior figure in Mr Sarkozy's UMP party,

said the new system would give more weight to the presumption of innocence.

However, critics said that suspects would now be forced to pay lawyers to mount their own defence investigation in "Anglo-Saxon style".

The institution of the *juge d'instruction* stems from the church courts of the Middle Ages and became the heart of the Napoleonic criminal code in 1807. The magistrate has authority to arrest, imprison, search and summons in the course of what is supposed to be an open-minded inquiry into the guilt or innocence of the defendant.

In Anglo-American trials cases are brought with less investigation and argued from scratch in court. In France the more thorough investigation and conclusion by the judge presumes a degree of guilt which the defendant must dispel. Mr Sarkozy's reform should change this.

News round up - some stories you may have missed !

by our newseditor

A man who spent two years in jail before being cleared of rape has had his attempt to claim damages from his accuser denied at the High Court. Anthony Hunt, 65, of Blandford St Mary, Dorset, was jailed for four years in 2003 but had his conviction quashed on appeal in 2005. Mr Hunt, who maintained the sex was consensual, launched a civil claim for malicious prosecution against his accuser but Mr Justice Blake ruled that the woman was not the prosecutor. He argued that the woman became the prosecutor by giving a witness statement to police in 2002 and by agreeing to give evidence against him - although the charge was brought by the Crown Prosecution Service (CPS).

Counsel for the accuser Anthony Metzger, said that if Mr Hunt was right, the ability to be able to claim damages went against the need, wherever possible, to encourage women to come forward to make allegations, if true.

Dismissing the claim, Mr Justice Blake said the charge against Mr Hunt had been brought as the result of a thorough investigation. He concluded there was nothing to indicate in law that an accuser should be regarded as the prosecutor. Mr Hunt was refused permission to appeal against the decision.

Government figures show that 3,500 children were given fixed-term exclusions from school for sexual misconduct in the 2006-2007 academic year for incidents including groping, using sexually insulting nicknames, daubing obscene graffiti and sexual attacks - some of them serious.

Michele Elliott, of the children's charity Kidscape, said that the number of calls to its helpline about sexual bullying had increased sharply. "We are getting three calls a week reporting children as young as 7 being bullied by sexual comments or inappropriate touching, an increase from three per year previously," she said.

Television programmes, advertising and media now often have sex scenes and comments that are violent or nasty – children learn from what they see and hear so it is not surprising that some think using sex to bully is the norm. Official figures show that there were 207,240 fixed-period exclusions in 2006-2007. These included 79,180 suspensions for assault against a pupil, 18,590 suspensions for assault against an adult, 16,090 suspensions for threatening

behaviour against a pupil, 89,880 suspensions for threatening behaviour against an adult and 3,500 suspensions for sexual misconduct.

Teaching unions said that they had been campaigning to raise awareness of the issue.

"In recent years the NASUWT has dealt regularly with cases where women teachers have had pupils using mobile phones to photograph their cleavage, making sexual remarks to them, posting comments of a sexually explicit nature on the internet and on rare occasions threatening them with sexual assault."

A teacher who won £250,000 compensation after a pupil tried to strangle him has criticised the apparent 'can't touch' culture that exists in schools after other teaching staff initially refused to intervene to assist him.

The 50 year-old teacher, Colin Adams, was attacked by a 12 year-old boy who knocked Mr Adams to the floor before punching and kicking him and throttling him with his hands around Mr. Adams' neck.

The assault occurred because the boy had been misbehaving in another teacher's class and Mr. Adams, as the Head of Department, had gone to the teachers aid. He ordered the boy to leave but the pupil refused. Then, as Mr. Adams left the room the boy launched his attack.

Other teachers who arrived and witnessed the assault declined to step in to help fearing that if they touched the boy they would very likely be charged with assault.

Mr Adams ordeal ended only after another teacher eventually came to his aid by forcing the boys thumbs back to release the hold on Mr. Adams neck. However, later on the teacher admitted to Mr. Adams that he was afraid that the boy would accuse him of assault.

The extent of the problems in our schools were further highlighted when figures released under the Freedom of Information Act revealed that police were called to schools 10,000 times last year to deal with incidents of violence.

As a result of the attack Mr. Adams was forced to give up work after suffering severe stress and back problems. His distress was even further compounded by a lengthy court battle for compensation, taking four and a half years to secure compensation of £250,000 in an out of court settlement from Newham Borough Council.

Credit crunch - but where did the money go ?

by George Jensen

We are bombarded every hour of every day about how money is short and that the Government has had to borrow umpteen billions of pounds in order to keep the nation afloat, well I am going to let you into a secret; I know where all the money has gone!!

I mentioned elsewhere that the office of National Statistics had got it all wrong, or was it the Home Secretary? It matters not, the net result was money, million of pounds, being wasted; A second Metropolitan Police Officer has been awarded £300,000 for allegedly suffering racial discrimination, this after the news that the retiring Commissioner Sir Ian Blair will be awarded £400,000. Meanwhile an immigrant mother of seven is housed in rather splendid accommodation which is costing the Local Authority £12,458 every month, this is in addition to the £170,000 a year benefits she receives. The annual cost of salaries for teachers who have been suspended has reached £15 million! Since 2004 the figure has increased by 86% and has now reached 314 teachers each year being suspended as a result of what the Teaching Unions claim to be false allegations! These figures were obtained

by the BBC and represented 40% of the Local Authorities who were asked respond to their enquiry. One must wonder what the true overall cost might be.

Of course not all money is wasted in pointless investigations and such like, to prove this all you have to do is ask a policeman; I offer you some examples of what the police consider to be money well spent; Simon Clemett; a terrified dad was cuddling his baby when police officers in flak jackets stormed into his home barking at him " Put that baby down", there was only one thing wrong – they had the wrong man and the wrong house. They then laid siege to the correct house for five hours before discovering that there was no-one at home!! A father was shopping with his seven year old son, when the boy ran off in the shop, father very frightened that something might happen to the lad, gave him a light smack on his bottom when he was last found. Four hours later four police officers turned up at his home and arrested him, he was taken to the local nick and put in a cell over night. The child was made to

strip down to his underpants by the police officer (this might constitute abuse if you or I did the same) the police claimed that he was seen kicking his son, a fact which was proven to be false. One might think that such action was just a little over the top and a waste of police time and money. Some more of your hard cash was spent on a disciplinary hearing and the sacking of a care worker who it was said had "cared too much". She had worked for the sheltered housing scheme for fourteen years but was given two weeks to vacate the home which came with the job. An employment tribunal described her sacking as 'robotic' and found in her favour. Finally one with which you will all be too well aware; 'The Noble Cause Corruption' a phrase first used by Sir John Woodcock in 1992 when he was the

Chief Inspector of Constabulary. He was attempting to explain/excuse how miscarriages of justice occur. Am I alone in thinking that in a civilised society such an utterance from a leading member of the establishment is utterly deplorable? It is on a par with Denning's statement, when he was Lord Chief Justice "It may be better that innocent people should serve life sentences than that the law should be seen

to make gross errors". I wonder how much it costs in total when the law convicts an innocent person? Then of course there is the matter of 'compensation'. I have a very nice business card which is clearly nothing less than touting for business. The cards were being handed out to the passing public in a South Wales town main shopping street and could be seen as an open invitation to make a false claim, the insurance companies pay out but we have then to pay increased premiums as a result of their 'generosity'! You will all be fully cognisant with the compensation that has been paid for alleged sexual abuse, the last figure that I was able to calculate was approaching £25,000,000 and that does not count the cost of police time, court costs, and of the costs of keeping innocent men in prison for years on end, and of course the costs incurred in supporting their families. I would suggest that this abuse of the justice system has already cost this country something in the region of five hundred million pounds. Little wonder that there is a credit crunch!



"But on the bright side - at least it's not our money."

Teaching Union calls for Kerelaw Inquiry to treat teachers fairly

Report from Scotland

The Educational Institute of Scotland (EIS) Scotland's largest teaching Union has urged the Kerelaw Enquiry, established to examine the circumstances in which abuse occurred at the former Kerelaw residential school, to treat all teachers fairly during the enquiry process.

The EIS is concerned that some wholly innocent teachers are suffering damage to their reputations and to their careers due to past employment at Kerelaw.

EIS General Secretary Ronnie Smith said, "No pupil should ever have to suffer abuse in school. It is right that an independent enquiry was established so that lessons can be learned to help prevent similar incidents in the future. However, caution must be exercised to ensure that innocent individuals – those teachers

who played no part in, and had no knowledge of the abusive behaviour of others – can continue teaching without having their professional reputation tainted by their past association with Kerelaw.

Innocence should always be presumed unless and until guilt is proven beyond reasonable doubt." Alluding to other legal cases, as well as the recent media spotlight focused on the first teacher to be struck off the teaching register on the grounds of incompetence, Mr Smith added, "More and more, we are seeing teachers essentially 'named and shamed' before proper process has been carried out. In many legal cases, as well as in the case of the first ever GTCs competence case, the process is played out under an intense media glare with serious implications for the integrity of the process. While it is right that guilty individuals should be named and appropriately censured, public or media pre-judgement can make it impossible for those subsequently found to be innocent to recover their reputation afterwards.

"Mr Smith urged the Independent Inquiry, jointly set up by Glasgow City Council and the Scottish Government, to pay particular attention to the findings of the employment tribunal that Jim Hunter, former Head of School, had been unfairly dismissed. Moreover, Glasgow City Council had conceded in the case of two other teachers and the Tribunal accepted that these teachers had been unfairly dismissed too.

Mr Smith said "While we welcome this vindication of these

three members, the outcome does not remove their suffering subsequent to their dismissals. Frankly, they should never have been dismissed." He continued "These Tribunal findings show that Glasgow City Council got it spectacularly wrong. In their determination to scapegoat those who worked at Kerelaw, they set aside the normal standards for a fair investigation in favour of constructing a prejudicial report."

"Innocence should always be presumed unless and until guilt is proven beyond reasonable doubt".

Mr Smith concluded "Many EIS members who worked in Kerelaw have been tainted by the unfair internal Glasgow City Council report, which unjustifiably claimed that around 40 staff were involved in child abuse. By insinuation their professional reputations were damaged.

Mr Smith concluded by saying "I do not envy the Committee Chairman Eddie Frizzell and his team their task. The remit of the Inquiry is both wide ranging and demanding. However, in any fair examination of the issue the Committee must consider the handling of internal disciplinary procedures by the Council. Certain individuals were effectively hung out to dry by the Council".

Note:

Kerelaw School was a residential school for troubled and troublesome teenagers with an open and a secure unit, operated by Glasgow City Council. It was closed in 2006. Jim Hunter, the Headteacher was awarded £62,680 by the Employment Tribunal (Scotland). Two other members of staff have also been judged to have been unfairly dismissed by an employment Tribunal. Their settlements remain confidential.

Thankyou

Members of the
national committee
would like to thank all

F.A.C.T. members and their families
for their Christmas cards and best wishes

Children's homes - hard work, fun and fond memories

Reminiscences

Christmas was a wonderful time at the children's home where I was brought up from the age of seven in 1928. There were twenty children to a cottage and twenty cottages. We all helped to make the cakes, puddings and mincemeat. Each child stirred the pudding and made a wish.

On Christmas Eve the older children stayed up to put up the decorations that had been made by all children. A stocking was hung up by each child for Father Christmas, who left us an apple, an orange, a bag of sweets, a cracker and a new handkerchief.



He always left a toy in the fire grate as he went back up the chimney for the first child awake on Christmas morning.

We weren't allowed in the day room on Christmas Day until we came

back from Church, so breakfast was in the kitchen. It was always cold and ready to snow on that day, so it was welcoming to see the fire lighting up the day room as we came in from Church and the candles lit on the Christmas Tree. We felt as if we had come into Christmas Wonderland. Roast beef was our Christmas dinner and sixpence pieces were always found in the pudding. How we loved it all.

All the children had a little sleep after dinner and our presents were put at out at our feet to open when we woke up. Later in the afternoon the children put on a show for the superintendent, his wife and his family. Six children dressed in nighties and holding candles sang Silent Night in the day room, lit only by candles and the glow of the fire. We then performed Goldilocks and the three bears - I was always Mother Bear. To me it was a magical time - and it always snowed on boxing day.

This anonymous article was one of a series of articles on memories. It appeared in The Times during December 2008.

Friday night in the Units was always 'Big Job Night'. Everything was given a good clean, ready for the weekend. No place was left undusted. This was carried out with enthusiasm and vigour [and Vim] by the girls and by staff alike. All had to be finished before a certain senior member of staff did his rounds of inspection. He could be heard clumping up the stairs to the first floor Unit. So *everyone* knew he was on his way!! He had with him a cardboard box slung across his chest. Protruding from the box was a dust wand on the end of twisted wire - long before they ever became fashionable. This was the 'dust-buster'. Famed throughout the place. The 'wand' would pass over the tops of wardrobes, under beds, over here and across there, and woe betide any one should it show even the slightest speck of dust. There was always a sigh of relief from the girls when no dust was found - and a big sigh of relief from the staff on duty - they no longer needed to hold in their mirth.

We are grateful to Joan for sharing this experience.

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Clarke and Hartland have successfully defended a number of cases where allegations have been made against carers, teachers, and other professionals

Law Lords rule that provisional listing may breach human rights

focus on Human Rights

Safeguards to protect children and vulnerable adults from abuse are an unlawful infringement of the human rights of staff working in the NHS and social care, five law lords recently yesterday in a test case brought by the Royal College of Nursing.

The House of Lords outlawed a procedure that allows ministers to put staff on a provisional employment blacklist without investigating the strength of allegations made against them or listening to their side of the case. The RCN said it would seek millions of pounds in compensation for employees who were suspended for long periods without pay on the basis of allegations that were shown to be unfounded.

The judgment cast doubt on the procedures for placing staff in England on the Protection of Vulnerable Adults (Pova) scheme and Protection of Children Act (Poca) lists. The charity Age Concern warned this "could be a major setback in the drive to safeguard vulnerable older people from abuse".

Peter Carter, the RCN general secretary, said: "I am delighted the highest court in the land has upheld the principle that carers have a right to have their side of the story heard before losing their livelihoods, often for more than a year ... without the fundamental right to a hearing." Hospitals and care homes were obliged to refer allegations of abuse by staff to ministers, who decided whether to place an employee on a provisional blacklist without a hearing. Carter said there should be a mechanism to protect vulnerable people, but these mechanisms should be "simple, understandable and, above all, fair".

The test case was brought by four registered nurses who were able to clear themselves of misconduct allegations only after an investigation that lasted for several months. Lords Phillips, Hoffmann, Hope and Brown and Lady Hale unanimously declared the process of placing workers on the Pova or the Poca list without an early hearing was incompatible with articles 6 and 8 of the European convention on human rights, relating to the right to a fair hearing and to respect for private life.

Hale said the effect of provisional listing followed by a delay before the merits of the case were examined was "draconian".

Although the lists were not made public, there were some

people for whom the stigma attached to listing would amount to an interference with their private life.

The charity Action on Elder Abuse said the judgment would not help people who were at risk of abuse. "The blacklists were an effective component of a system to bar unsuitable staff from having access to vulnerable people," it said.

The Department for Children, Schools and Families said responsibility for deciding whether to bar individuals from working with children or vulnerable adults has now switched to the Independent Safeguarding Authority, an executive agency sponsored by the Home Office.

Note: It will be interesting to see whether the listing bodies simply abandon provisional lists or introduce a strict time limits for the accused to make initial representations and then list them provisionally.

Parents Cleared and Exonerated

Tim and Gina Williams's son and two daughters were taken into care for two years after the abuse allegations. The couple, from Newport, south Wales waived their right to anonymity after a judge "completely exonerated" them at the High Court in Cardiff in 2006. Mr Williams said the couple had suffered a "total nightmare". In January of this year they were back in court to settle their claim for compensation.

The couple were accompanied to the hearing to settle their claim against Newport City Council and Gwent Healthcare NHS Trust by their three children, who are now aged 14, 11 and seven. The terms of their settlement cannot be disclosed except to say as part of the terms Mr and Mrs Williams received a letter of apology from the council. Mr Williams, 39, said: "Since this all started four-and-a-half years ago, it's been a total nightmare. "Now we've got closure and can get back on with our lives and start afresh."

Their children were put in three separate foster homes in August 2004 after Mr Williams found his five-year-old daughter with an 11-year-old boy on top of her. Both children were naked from the waist down. The police were called and social services became involved.

continued on page 15

Law clarified on offender's right to contact with biological children

George Jensen

Re: *Shiers R. v* [2006] EWCA Crim 181 (23 January 2006)

Martin Shiers was convicted in 2005 of a Schedule One offence, part of his sentence was the making of a Sexual Offences Prevention Order (SOPO), the conditions of which were:

1. not to reside with a child under 16 years of age
2. not to undertake any activity with a child under 16 years of age
3. not to be alone with a child under 16 years of age.

He felt that as his offence was against a consenting teenage girl (USI) he should not be barred from having contact with children from his biological family. He asked counsel to argue the conditions imposed were unlawful because it would mean he could not see or be with any of his current children, or any future children he may father. Counsel's reply was that any appeal would be spurious and advised him not to challenge the SOPO.

Far from content with this reply, he built an appeal himself. Using his understanding of the law and he set about his research.

Article 8(i) of the European Convention on Human Rights secures to everyone the right to a family life.

That is: to be with and raise their children.

Article 12 of the European Convention on Human Rights secures to everyone the right to marry and found a family. That is: to be able to bear children.

Article 14 of the European Convention on Human Rights secures the rights within the Convention to everyone, without discrimination on any grounds. That is: everyone, regardless of crime, is entitled to Human Rights.

That said, he then had to show that the SOPO was unlawful as it did not take his human rights into account.

Section 6(i) of the Human Rights Act 1998 says "It is unlawful for a public authority to act in a way which is contrary to a Convention Right."

That is: a public authority or a person acting on behalf of a public authority is not permitted to act in such a way that would deny or restrict another person their Human Rights. So the SOPO was unlawful. He then had to find a legal authority which demonstrated the importance of human

rights. He found such an authority in the comments of Lord Justice Scarman in *R -v- Home Secretary exp Phansopkar* [1976] 606, where he said:

"Problems of ambiguity or omission, if they arise under the language of an Act should be resolved so as to give effect to or, at the very least, so as derogate from the rights recognised by the Magna Carta and the European Convention."

That is: where Human Rights are disregarded by an Act and a complaint arises from such, Human Rights are of paramount concern.

With his legal argument prepared, he then argued being a Schedule One offender, or committing a sexual offence where the victim is not part of the biological family, should not be enough to deny the offender his or her Human Rights and sent his case to the Court of Appeal.

After a single judge granted leave to appeal, three judges considered his claim. His appeal was allowed and his SOPO was varied to say:

"Save that the previous paragraphs shall not apply to any biological children, unless a Court so orders."

The judges agreed that being a Schedule One offender or committing a sexual offence against a person not within the biological family is not of itself sufficient for the offender to be prevented having contact or living with his or her own biological children. That is: it is has to be proven *before a Court* that the offender poses a significant risk of harm to his or her biological children for either restrictions or denial of his or her rights to found a family and a family life to be justified. If no specific Court Order is in place, then restrictions on contact with or living with biological children are unlawful. The only possible exception is if the victim of the original offence lives within a certain distance of the offender's home.

This result not only affects SOPOs, but also licence conditions and contact with the family whilst in custody. If you feel that this result applies in your case, contact a solicitor to go through your case and give them the Criminal Appeal Office reference number 200505513A2, so that they can obtain a copy of the judgement.

Congratulations Martin. If readers have any more Human Rights stories we would be pleased to know.

2008: A very mixed year

Some things to remember and some things to forget

from our newseditor

In our review of the past year we briefly look back at some of the stories and events which shaped 2008

January 2008

The Appeal Court stated that it would not normally be sufficient for the police merely to caution the maker of a false allegation of serious sexual crime.

The Times announces that they were mounting a campaign for reform of family courts.

In mid January two jurors spoke out against the conviction of a child-minder for manslaughter - rather worryingly the Attorney General is now considering the possibility that they may be in contempt.

February

The Police and Criminal Records Bureau faced a legal challenge from John Pinnington concerning disclosure policy on enhanced crb's. Although John's case attracted a lot of support his challenge was not successful.

The House of Lords ruled that care home residents should not be time barred when making claims for compensation.

The Parole Board also took a bit of a battering when the Appeal Court ruled that its relationship with the Government was too close to ensure its independence.

Truth and Reconciliation Forum was established in Scotland to support adults who suffered childhood abuse, initially focusing on the needs of survivors of historic abuse in residential care.

Jersey police stated a "finger tip" search at Haut de la Garenne after a sniffer dog reaction indicated other areas that warranted further investigation. Little did the police in Jersey know that this would turn out to be their most embarrassing story of the year.

March

Several newspapers in Ireland and the UK began to question the authenticity of "Kathy's Story". The publishers of the book remained adamant that it was genuine despite counter claims from Kathy's family that what was written was untrue.

The National Audit Office severely criticised the Prison Service for delays in providing reports to the Parole Board so that they could make proper assessments of whether or not parole should be granted. Despite this rebuke we have seen very little evidence of change.

UNLOCK, a charity for ex prisoners drew the public's attention to discrimination in the insurance market against ex offenders and asked the Prime Minister to ensure that insurance companies do not discriminate against ex-offenders with unspent convictions.

Various problems in recruiting male staff in schools (and elsewhere) were also highlighted by a number of bodies.

April

In April the Association of Teachers and Lecturers called on local authorities to establish a register for recording all instances of unfounded allegations, with a view to prosecuting those concerned. Interestingly this was followed by a number of police forces issuing warnings throughout the year that those who falsely report crimes will be punished. It seems that this only applies to theft and fraud and to sexual abuse where the problem is rife.

During April FACT identified ten cases of individuals appearing in Court as a result of making false allegations of abuse - most of which resulted in convictions.

The case for anonymity for teachers accused of abuse was given a major boost when the Children's Commissioner in Scotland called for a debate on the question of whether naming suspects helps children.

May

Somewhat predictably the GMC reinstated Dr Southall although they did not permit him to work in child protection.

Employers in the retail and commerce sector were reported to have set up a National Staff Dismissal Register (NSDR) for recording the names of those dismissed from their employment.

Eight nursing home workers from South Wales were cleared of wilful neglect of a patient after the prosecution dropped the case.

Recruitment issues continued to surface in newspaper columns with news that the Pre-school Learning Alliance had joined up with the University of Derby to launch research looking at why men are not attracted to working in childcare. Similar concerns were also expressed

by the Fostering Network when it was reported that local authorities were seeking 5,000 more foster carers this year.

June

The Crown Prosecution Service Inspectorate were very critical of the state of prosecution case files. Most of those examined were found to be incomplete and with missing data.

It was also announced 11.3 million people, just over a quarter of the adult population would need to be vetted by the Independent Safeguarding Authority. This figure represented an increase of nearly 3 million over initial Home Office estimates, making it the most extensive database of its kind in the world.

June saw widespread condemnation of a firm of solicitors who allegedly banked £30 million pounds profit for their handling of compensation claims for sick miners.

July

Newly published Government figures showed that hundreds of people have been wrongly branded as criminals by the Criminal Records Bureau. People applying to take up jobs as teachers, nurses, childminders and even those volunteering to work with youth groups were said to have been among those falsely accused of wrongdoing by the Criminal Records Bureau (CRB).

A mother was told she could not travel to school with her severely epileptic son because she has not been police checked.

In a case could set a precedent for prisoners who claim to be victims of miscarriages of justice and maintain their innocence the High Court instructed the Prison service to review the status of a man serving life for a murder he claims he did not commit.

In Australia it was reported that Tom Easling's fight to clear his name had been subject of parliamentary debate.

August

The Supreme Court in Washington ruled that the identities of public school teachers who face unsubstantiated allegations of sexual misconduct should be kept secret to protect the educators' privacy.

In Scotland an employment tribunal ruled Glasgow City Council had not carried out sufficient investigation into allegations of "gross misconduct" when they took the decision to sack Chris Johnson, 54, in July 2005.

A Tory parliamentary candidate who bombarded his Liberal Democrat rival with hate mail and vandalised the party's Watford headquarters was convicted after admitting more than 70 offences of criminal damage and

harassment including accusing a rival of paedophilia.

September

Park wardens in Telford were ordered to stop and interrogate anyone who is not accompanied by children.

In a new development parents were given the right to ask the police whether anyone who has access to their child (or children) was a convicted paedophile - or even suspected of abusing children. Police will pass on details of any relevant criminal convictions and may include "soft intelligence" detailing unproven complaints of abuse, even where there was no finding of guilt.

Graham Zellick, the outgoing chairman of the Criminal Cases Review Commission (CCRC), said the Court of Appeal should order retrials in cases that have a "lurking doubt" about the safety of the conviction. In an interview with The Independent, Professor Zellick also called on judges to prevent "very dubious" expert evidence, including lip-reading and ear-prints.

October

Strathclyde University's School of Journalism became the first university in Scotland to set up an innocence project. The Innocence Project was set up the USA in 1992 and now operates several cities in the UK.

There was continuing disquiet about the reported findings and police investigation carried out at the Haut de la Garenne children's home.

November

A man who spent two years in jail before being cleared of rape had his attempt to claim damages from his accuser denied at the High Court.

Research by Thames Valley University found that teachers are reluctant to apply first aid to pupils in an emergency because they are scared of being sued by parents.

Graham Power, Chief Officer of the States of Jersey Police was relieved of his duties pending an inquiry into his role in the high-profile investigation into events at Haut de la Garenne children's home, which closed in 1986. His departure followed criticism of the island's then deputy chief officer, Lenny Harper, for his handling of media coverage.

Jim Hunter became the third man in Scotland to establish that he had been unfairly dismissed from his post at Kerelaw Young People's Centre in Scotland.

December

The European Court of Human Rights ruled that the retention by State authorities (including the UK police) of fingerprints, cellular samples and DNA profiles after a person has been acquitted or discharged, was unlawful.



Dear friend, I just want to express my thanks for being sent the latest copies of Faction even though I have not been involved in F.A.C.T. myself for some time. My brother Brian is still boarding at HMP Wymott and has been recently informed by the CCRC that they will not be referring his case back to the Appeal Court and he is obviously devastated by that news. He is due for release in May 2009 having served 10 years of his sentence. He will no doubt continue to try and prove his innocence whilst trying to adapt to life outside which is going to be very difficult. I forward Faction on to him and try to keep him informed of what is going on from my visits to the FACT website. Thanks again for your support and I

hope you and your families enjoy a very happy Christmas.
(Name with-held)

Dear Faction,
I am writing to express my sincerest thanks to all of the membership for the many Christmas cards and messages of support for my predicament. It is truly overwhelming. To me Christmas is a time for family. This nightmarish situation and prison service have torn not only my life but also Christmas apart for me by ripping my family away. At a time when I was going to feel my loneliest, the many Christmas Cards I have received from FACT members have given me strength, heart and a sense of hope. This Christmas I have an adopted family called F.A.C.T. Thankyou,
Martin.

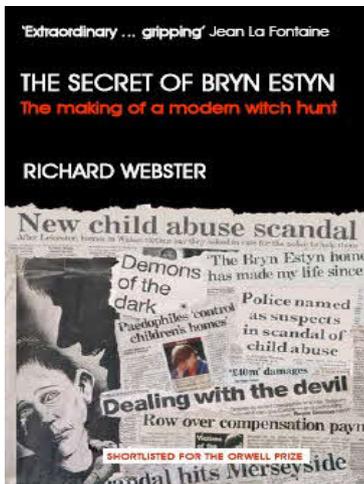
Our very best wishes to
Freda and also to Brian.
Both have been unwell recently
and required surgery.
Pleased to hear you are on the mend.

Dear Fact.
I have been meaning to write for some time. Quite why I haven't defeats me. Here time stands still and there's not enough to do except think - and think - and think!
I never quite knew what the phrase 'doing my head in' meant till I came here. You think of what *ought* to be, what *should* be - and what *will* be - and when you've done that that - you start all over again.
It's very easy to get sidetracked and lulled into thinking that everyone is against you. That's what it has been like for me - mostly days filled by dark and heavy clouds - that is until someone or some thing jolts you out of your mood. That's what its been like for me. What makes the difference you may ask ? Well let me tell you. Just two days before Christmas I received a bundle of Christmas cards. I was expecting a few from close family but not the dozens given to me. "You want me to deliver these I said half joking. "No they are for you."
Who are they from I was asked? I now know they were from friends I never knew I had. Thankyou - every one of you.
(Name with-held)

The Secret of Bryn Estyn

by Richard Webster

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2008 - Review of the year (contd.)

A corrupt policeman was jailed for six years for trying to extort hundreds of thousands of pounds from sex offenders using secret crime files.

Convicted sex offenders who are being supervised in the community will be made to undertake a polygraph test under a new scheme. They will be asked if they are sticking to the conditions that govern their release, such as staying away from schools and leisure centres, and will have changes in their heart rate, levels of sweating and breathing monitored to see if they are telling the truth.

The law which puts serious sex offenders on the register for life violates their human rights, three High Court judges said. Under the Sex Offences Act 2003, sex offenders sentenced to 30 months or more 'shall be subjected for life' to being on the register. But Lord Justice Latham, sitting with Mr Justice Underhill and Mr Justice Flaux, said the law was incompatible with article eight of the Act.

The new F.A.C.T. Website
is now on-line
www.factuk.org

Crime Team

We specialise in all aspects of criminal defence work including Magistrates Courts, Crown Court Advocacy, High Court, including the Court of Appeal and referrals to the Criminal Cases Review Commission.

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01302 365 374

Parents cleared and exonerated continued from page 10

The girl was medically examined by a doctor who said she had been chronically abused and that it could not have been by the boy, so the investigation turned to look for adult perpetrator. A second opinion from another UK doctor agreed there had been sexual abuse, but did not agree that it was to the same extent. But six days before a final court hearing, the notes were sent to another doctor in the US, an expert in child abuse, who said he did not think any abuse had taken place.

The girl was re-examined by the doctor who gave a second opinion who then agreed there had been no sexual abuse. The first doctor then accepted their opinions. The council accepted that the Williams's daughter had never been abused and that none of the children should have been taken into care.

Giving his judgement, Judge Crispin Masterman said the children's names were never placed on the Child Protection Register and it was simply decided to remove them from the family home. He said meetings were held in private so the couple were not able to correct any of the wrong assumptions made about them. But the judge added that the criticisms were coupled with an acknowledgement that all professionals involved were acting for the good of the children.

He said: "It is undoubtedly true that social services departments have in recent years operated with inadequate resources and under immense stress and run the risk of attracting equal criticism whether they remove a child or whether they do not." Robin Tolson QC, who represented the Williams's said the settlement "brings closure at least of a kind" for the family. "The effect of what happened will continue to be felt for a long time, but at least this now marks the end of four years spent fighting for their children and their rights before the court."

After the settlement, Jessica Good, the family's solicitor, who has been with them from the start of the proceedings said she had seen the "tremendous toll" it has taken. She said: "Today represents a huge relief for them, but this will live with them for a long time to come."

A Newport Council spokesman said: "A settlement has now been reached which will support the children's future. The well-being of the children has remained paramount throughout this case. "While the local authority has offered their sincere apologies to the family, our priority was always the safety of the children.

"The court concluded that the council acted in good faith given the strength of the medical evidence presented," the spokesman added.

APPLICATION FOR MEMBERSHIP

Title	First Name:	Last Name:
Address 1		Post Code:
Address 2		Telephone number:
Address 3		Email :
Are you ? (circle as appropriate)	<ul style="list-style-type: none"> • the accused person • their partner or spouse • a work colleague • presently working/retired 	<ul style="list-style-type: none"> • is your work mainly with children, adults or both • a relative or friend of the accused • other (specify) • suspended/dismissed
Have you been listed by	<ul style="list-style-type: none"> • PoCA • PoVA • Care Standards Tribunal 	<ul style="list-style-type: none"> • General Teaching Council • Healthcare body • Other listing body (specify)
Occupational Task	<ul style="list-style-type: none"> • carer, teacher, social worker 	<ul style="list-style-type: none"> • health care professional
	<ul style="list-style-type: none"> • church official or faith worker 	<ul style="list-style-type: none"> • youth or community worker (paid or volunteer)
	<ul style="list-style-type: none"> • sports coach (paid or volunteer) 	<ul style="list-style-type: none"> • child minder, foster carer or other

Declarations

Only answer if you have been accused	The allegation that has been made against me is being dealt with by ...			
	Police <input type="checkbox"/>	Social Services <input type="checkbox"/>	Employer <input type="checkbox"/>	Other (specify) <input type="checkbox"/>
	I declare that I am are innocent of the abuse allegations that have been made against me and that they are false			
Applies to all applicants	I agree to my contact details being stored on an electronic database			
	I accept that membership of F.A.C.T. may be refused, revoked or suspended if I bring the name of F.A.C.T. into disrepute			
	Signed:	Date:		<input type="checkbox"/>
Please tick box if you need immediate advice or support				

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Members are asked to pay £20 for 12 months membership	I enclose £ _____ for 12 months membership subscription	I enclose £ _____ as a voluntary contribution to the <i>Contested Allegations Research Fund</i> . The CARF is an independently managed trust fund which aims to commission and/or promote research into contested allegations in cases of alleged abuse.
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Please return to: Joy Gower, Membership Secretary, The Oaklands, Stroat, Chepstow, NP17 7LR