CAMPAIGN ON BEHALF OF FALSELY ACCUSED CARERS AND TEACHERS

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FACTION

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Conference Edition

The Pressure Mounts: CRB disclosures under scrutiny

Teachers should have the right to appeal against unfounded allegations appearing on their Criminal Record's Bureau (CRB) checks, MPs were told.

Teacher support groups and unions told a Commons select committee that records of unproven claims brought against teachers could blight careers.

MPs were told how teachers often felt they were presumed guilty until they could prove themselves innocent.

They were also increasingly fearful that pupils would make false claims.

Michael Barnes, national secretary for Falsely Accused Carers and Teachers (F.A.C.T.) said, "Following the Soham murders, more information was now disclosed on CRB checks.

"Issues that previously wouldn't have appeared on an enhanced CRB now routinely appear because of the Huntley situation at Soham," he told the cross-party committee of MPs.

MPs were told teachers should have the right to appeal against unfounded allegations appearing on their Criminal Records Bureau (CRB) checks.

“There needs to be some sort of appeals process against information that is put on the CRB, because, at the present time, it is entirely a matter for the chief constable. What is needed is a change in the law. Parliament must act".

In a wide ranging discussion teaching unions and support groups told MPs of the nature and scale of of false allegations, the need to support accused staff, the need for improved guidance and better training for investigators and for a more just child protection system. Their message was clear - there needs to be root and branch reform of the CRB enhanced disclosure system.

Speaking after the session Michael Barnes thanked the Committee for raising this issue. "It was clear", he said, "that the Committee had a good understanding of the issue and that many MPs knew of constituents who careers had been ruined by unfounded allegations.

"It is also clear that the politicians accept that people are sometimes wrongfully or falsely accused, and that there needs to be a better balance between the need to investigate complaints thoroughly and the need for just solutions.

"Progress however will not be made unless child protection workers also recognise this need. At the present time there is an overwhelming presumption of guilt in the the accused and an overwhelming presumption of truth in the accounts given by accusers. This is completely illogical and needs to change".

F.A.C.T’s. Tenth Birthday Celebration

F.A.C.T. is to celebrate its tenth birthday at a special conference to take place at St. Chads in Birmingham on Saturday 5th September 2009. The special conference will begin at 12:30pm (refreshments provided), and will follow the AGM.

A F.A.C.T. spokesman said F.A.C.T. was inaugurated at a meeting held on the 29th November in the North West and over the years it has grown into a UK wide organisation. During that time a great deal has been achieved.

We all have particular reasons for being grateful to those, who in the early days, had the insight and courage to set up this organisation.

The birthday celebration will take a different form to our usual Autumn conference as we want to use the occasion to thank all those who have supported us over the years, and to encourage the continuation of our campaign.

We have invited Claire Curtis Thomas and Lord Howe to speak and, depending on the date of the election, they have agreed to do so.

It is expected that the demand for places will be high so it will help if those wishing to attend can let the organisers know so that we can make the necessary catering arrangements.

For further details contact Joy Gower, The Oaklands, Stroat, Chepstow, NP16 7LR, or by telephone 01594 529 237, or by emailing joy-iangower@stroat.fsnet.co.uk

Sponsored by the 'Justice for Kevin' Support Group

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 do not necessarily represent those of F.A.C.T., or its national committee.

Contributors are reminder that FACTion is also published on the internet and therefore is, potentially, available for everyone to read.

Editorial

It does not seem that long ago since I last put pen to paper - but what a few weeks its been. As you will see from this edition there has been quite a lot of Parliamentary activity going on, on our behalf.

I know that you will be particularly pleased with the progress that is being made on CRB issues, and with the news that F.A.C.T. gave evidence to the Children, Schools and Families Select Committee earlier this month. It is not only pleasing that some of our concerns are shared by such an influential Committee but also by virtually all of the teaching unions and the teaching support groups.

However not all news this past few weeks has been pleasant reading. The publication of the Kerelaw Report and the report of the Ryan Commission both, for quite different reasons make very unpleasant reading.

The Kerelaw report provides a clear picture of how, over time, staff were to a large extent set up to fail and were abandoned by their employers for basically doing the job asked of them.

The Ryan Report makes grim reading and provides very clear evidence of widescale physical and sexual abuse over many decades in Ireland's State run ophanages provided by the religious communities. Those who abuse others, or cover up abuse, make our task of defending the innocent much more difficult.

We must also acknowledge that significant numbers of people caught up in the process of inquiry have been wrongly and falsely accused. It must have been particularly painful for them to read the full scale of events in Ireland, and what appears by some to have been a systematic cover up.

F.A.C.T. has always taken the view that we should take seriously reports of abuse when published, and for these reasons we have devoted some space in this edition to summarising the position both in Scotland and in Ireland.

Now to other things. I hope very much that you enjoyed the Spring Conference. We had two excellent speakers, and although attendance was a little lower than last year we had a very good day indeed. Our next conference will be our tenth birthday celebration so I very much hope you will come along.

As you many of know from our last AGM I will not be standing as a candidate in the forthcoming election of F.A.C.T. officials. It will be sad to leave but as I indicated last year F.A.C.T. needs some new blood if it is to continue for another ten years.

To finish on a positive note. It is not a coincidence that Dave Jones, the former Southampton FC manager, and now manager of Cardiff City FC, has just anounced publication of his book '**No Smoke, No Fire'** in which he describes the devastation experienced by him and his family when he was falsely accused of child abuse. When was that? Just a decade ago. He's come a long way since then, and so too has F.A.C.T.

Gail Saunders,
Chairman

Insurance

Following previous articles in FACTion regarding insurance we have received a number of emails on the subject.

F.A.C.T. North Wales have drawn our attention to an article which appeared in Inside Time regarding the 'Second Chance' scheme provided by Sale Insurance Services (SIS). The article was full of praise for SIS and stated that they not only understood the various issues faced by former prisoners, indeed by anyone with convictions trying to obtain insurance, but very passionate about the subject. SIS's specialist team has been working in this field for a number of years and has developed a good range of competitive products including motor, household, life and travel insurance.

SIS's specific 'Second Chance' products are for people with convictions. Clients who are unable to obtain insurance cover anywhere else are often referred to them by BIBA (British Insurance Brokers Association). They also work in partnership with charities and organisations such as the Princes Trust, Unlock, SERCO and Probation Service.

SIS can be contacted on 0845 313 0974 and also have a very comprehensive web site www.saleinsurance.co.uk/

F.A.C.T. North West members have also reported excellent service from Crownsway Insurance Brokers Ltd, DJS House, Holyhead Rd. Birmingham, B21 0BD. Tel :- 0121 554 3566 / 9788. Ask for Dr Rose Duggal and mention F.A.C.T.

Readers might also like to know that the prison charity UNLOCK also provide specialist advice concerning insurance.

UNLOCK are also looking for case studies for a BBC documentary on insurance. For further details contact chris.stacey@unlock.org.uk

Children Schools and Families Select Committee

F.A.C.T. has given evidence in person to the Children Schools and Families Select Committee when it met on the 17th June.

In April 2009 the committee announced that it would undertake a short inquiry in order to examine the scale and nature of allegations of improper conduct made against school staff, and the extent to which guidance on how to handle investigations and on the retention of records of allegations enables practice which is fair to all parties involved.

The committee had already announced that they were particularly interested in:-

- whether or not staff subject to allegations should remain anonymous while the case is investigated;
- whether the guidance available to head teachers, school governors, police and others on how to handle claims of improper conduct by school staff should be revised, with particular reference to:
    1. the procedures to be followed by disciplinary panels;
    2. when suspension of the staff member concerned is appropriate;
    3. when arrest of the staff member concerned is appropriate; and
    4. the retention of records of allegations found to be false.

In its submission to the Committee F.A.C.T. has drawn attention to the tension that exists between the need to protect children from the risk of abuse or harm and the need to safeguard the right of the accused to a fair process.

F.A.C.T. has also highlighted the need for a new ethically based, evidence driven, approach to child protection, the need for improvements in investigative practice including training for investigative officers, and reform of the CRB system.

Court Raps Police

The courts have delivered a sharp rap over the knuckles to Avon and Somerset police, reminding them in no uncertain terms that it is they – and not individual police officers – who rule on legal matters.

Lord Justice Richards and Mr Justice Owen, held in a judicial review that a search for alleged pornographic material carried out by Police at the Market Harborough home of forensic expert Jim Bates had been unlawful – and thus any seizures made in the course of that search were unlawful too.

The case brought by Bates was that the warrants themselves were issued unlawfully, because the police had no reasonable ground for assuming that Bates was not entitled to possess privileged or "special procedure" material .

The court upheld this contention, pointing out that contrary to statements made by the defence, the police were directly aware that Mr Bates *had* acted in an expert capacity as recently as 2005 and was therefore entitled to possess such material. They added that, in previous cases, it had been held that in applying for a warrant it was "the duty of the *applicant* to give full assistance to the District Judge, and that includes drawing to his or her attention anything that militates against the issue of a warrant". Clearly, the police had not done this.

In this case the Police continued to remove items despite protests by Bates that they were taking away "privileged material" – specifically, material that could not be seized under warrant by virtue of its privileged status in respect of past and ongoing court cases.

Declaring the original warrant unlawful, the judicial review went on to rule the subsequent extension of the search to be illegal as well. In what has echoes of another case known to F.A.C.T. members the police appeared to have seriously mishandled this case and exposed themselves to the risk of allegations that they are 'out to get' a defence witness who has been a thorn in their flesh many time previously.

Enhanced Criminal Record Bureau Disclosures
Parliamentary Debate - April 2009

The following is an extract from Hansard concerning a Parliamentary debate which took place on 2nd April 2009 regarding issues relating to the enhanced certificates of disclosure issued by the Criminal Records Bureau. The debate was requested by Paul Goodman M.P. following representations made by a constituent Nick Cousins.

Mr. Paul Goodman (Wycombe) (Con): I am grateful to have secured this debate today. I want to tell part of the story of my constituent, Nick Cousins, because that will allow me to ask how a teacher who has never been found guilty by a court is now unlikely to be able to return to his vocation because, in effect, of the intervention of the Government and their agencies. The story raises serious questions about the balance—in our schools, in the education system as a whole, in government and in our popular culture—between the protection of pupils and justice for teachers, and about the consequences for those schools, that system and our education and popular culture if that balance goes awry. It also raises profound questions of justice and equity.

Let me now begin. In 1998, Mr. Cousins was a senior housemaster at Dulwich college in London. A pupil made an allegation of inappropriate behaviour against him. There followed an internal inquiry in which Mr. Cousins was cleared. In 2001, he became deputy headmaster of the Royal Grammar school—or RGS, as it is sometimes known—in my Wycombe constituency. In 2004, another Dulwich college pupil made allegations that Mr. Cousins had indecently assaulted him during the late 1990s. Later, a third boy, a contemporary of the other two pupils, made similar allegations. In July 2004, Mr. Cousins was arrested. In April 2005, he was charged with indecent assault; in March 2006 he went on trial.

Obviously, that series of events created difficulties for the school, which understandably suspended Mr. Cousins from his duties. I should say at this point that nothing I say this evening is meant to be in any way a criticism of the school, which acted in crucial respects, as we shall see, on the advice of the authorities.

At the trial, Mr. Cousins was acquitted on three counts and the jury did not reach a decision on the other two. The Crown Prosecution Service decided not to order a retrial, but instead left the other two counts on file. My hon. and learned Friend the Member for Beaconsfield (Mr. Grieve), who is aware of Mr. Cousins' case, has pointed out that this is a standard method of disposal of counts on which juries are unable to agree verdicts, and is entirely neutral in its implications.

Following the trial, the RGS decided to set up its own internal inquiry in relation to the suitability of Mr. Cousins to work with children. I should say at this point that nothing I say this evening takes a view on his suitability to work in that regard. Rather, as I say, my central purpose is to ask whether he has been treated fairly by the Government and their agencies.

In my view, the RGS was justified in setting up its inquiry. There are evidently circumstances in which there are grounds for proceeding against people, even if they are cleared in court, especially perhaps where child protection is concerned. The school asked Buckinghamshire county council for advice, which is understandable, and the council recommended that the school use an independent investigator—again understandable. The council also recommended who that investigator should be. His report turned out to be controversial. The investigator allegedly met Mr. Cousins and the RGS headmaster only briefly and based his report mainly on the police's evidence in relation to the Dulwich college charges, which the House will remember were not upheld by a court. My hon. and learned Friend the Member for

Beaconsfield, who saw the report, raised concerns at the time about its impartiality.

Following the inquiry and report, the RGS decided to reinstate Mr. Cousins on the balance of probabilities. It is perhaps not surprising that both prior to the inquiry and following it, the RGS, backed by the council, approached Mr. Cousins's union representative to discuss a compromise agreement, whereby Mr. Cousins would resign in return for a compensation payment. Mr. Cousins rejected both offers since he wished to return to work at the school.

In mid-August 2006, Mr. Cousins was told by the school that he would have to complete a new enhanced Criminal Records Bureau check—apparently, on the advice of Buckinghamshire county council. By the beginning of September, the CRB check had not arrived. Mr. Cousins was then told at a meeting with the headmaster, which was also attended by a representative from Buckinghamshire county council, that he would therefore be unable to return to work at the beginning of the approaching autumn term. Consequently, when the new term began later that month, Mr. Cousins worked from home.

At the end of September, he was allowed to return to work at the school, subject to the restriction that he should not seek contact with the boys without the headmaster's permission. He then had to wait a further five months—until February 2007—to receive the results of the enhanced CRB disclosure. According to Mr. Cousins, this disclosure contained no new information, but it did apparently contain no fewer than 14 factual errors in the so-called soft box, which is where chief police officers can add additional relevant information at their discretion. The soft box also included allegations that had not been upheld in court and that had obviously been inserted there by the Metropolitan police.

The House will remember that Dulwich college, the site of the original accusations against Mr. Cousins, falls within the Metropolitan police area. On that basis, Buckinghamshire county council was unable to issue a certificate clearing Mr. Cousins to return to work, in an unrestricted way, at the RGS.

Needless to say, Mr. Cousins challenged the terms of the disclosure. At the beginning of June he met Metropolitan police officers, and, following further correspondence, a new disclosure was agreed. Later in June, it arrived. Mr. Cousins claimed that it was still inaccurate in two significant respects, and that the agreed form of words had not been used. Consequently, the Criminal Records Bureau referred the matter to the information commissioners. I do not know whether the commissioners have published a view.

continued on page 6

Happy Birthday

Happy birthday

to

David 11th June

Keith 30th July

Kevin 7th August

North Wales

F.A.C.T. North Wales. We recently

had a very successful day fundraising.

We also recently held our AGM. All officers and committee members were re-elected. We are planning to go to Llangollen to the International Eisteddfod to distribute some leaflets as we did the year before last.

News has also been received that David Athol has now moved to Scotland, near to Falkirk, to be with his partner. David has been very supportive to F.A.C.T. North Wales and has a case pending with the Ombudsman.

We wish David and his partner the very best that Scotland can offer.

Oh Happy Days !

It was the usual practise when a social worker brought a new referral to a 'Home' to remove their shoes in the car, so that they could not abscond. In theory.

One day the front door bell of the 'Home' rang, and when it was opened, all that could be seen was a pair of shoes on the doorstep, and the vision of a social worker legging it down the drive in hot pursuit of the new arrival. O Happy Days !

Sent in by Serendipity.

FACT AGM

Notice is hereby given that the F.A.C.T. AGM will take place on **Saturday 5th September** 2009 at the St. Chads R.C. Cathedral Meeting Rooms, commencing 11:00am.

Official details will be sent out towards the end of July. In the meantime please note that Gail Saunders has confirmed that she will not be able to stand for re-election.

We are particualry sorry to be losing Gail although she will remain a member of F.A.C.T. Gail's resignation also means we will be requiring someone to act as a Press Officer and will need some additional help organising conferences.

This means that the following positions are subject to election.

Chairman

Treasurer

Committee Member (one vacancy)

Ian Argyle is willing for his name to go forward for re-election as Treasurer.

Joy Gower, Roger Griffiths, and Jim Hepburn (co-opted) will remain members of the National Committee.

The secretary, Michael Barnes, has also annouced that he will be seeking to reduce his workload and will no longer be providing representation for members.
Subject to members approval he will continue to hold responsibility for the website and FACTion. Michael is also currently considering a suggestion that he should resign as National Secretary and put his name forward for the position of Chairman. Should this happen new arrangements will also need to be made for some of his secretarial functions and for manning the help-line.

For further details regarding any of these positions please contact the secretary/or any committee member.

If you have a particular skill or interest and would like to help out, even for just a few hours per week please let us know. You don't have to become a Committee member to help - just volunteer. Reasonable expenses paid.

continued from page 5

I now return to events at the RGS, where, as the House will remember, Mr. Cousins had returned to work pending receipt of a certificate from the county council, subject to the restriction that he should not seek contact with the boys without the headmaster's permission. At this point, we have a new entrant to the story. On 14 May 2007, the then Department for Education and Skills wrote to Mr. Cousins stating that it had come to the Department's notice—more than a year after the trial—that he had been charged and tried with respect to certain allegations. The letter announced that the DFES was to launch its own investigation of Mr. Cousins under section 142 of the Education Act 2002.

Nearly two years later, neither Mr. Cousins nor I, his Member of Parliament, have been able to obtain any explanation from what is now the Department for Children, Schools and Families of why it became involved. I understand that neither Buckinghamshire county council nor the Met referred the case to the DFES, as it then was. Mr. Cousins's solicitor has claimed that the DCSF received a newspaper cutting about the case. I shall return to that later.

On 18 May, four days after Mr. Cousins received the letter from the then DFES, he was handed a letter by the headmaster of the RGS claiming that he had broken the restrictions imposed on him following his return to school. On 12 June, Mr. Cousins was asked to leave the school. The RGS then appointed another investigator to write a report regarding Mr. Cousins's alleged infringements of the restrictions imposed on him on his return to the school. According to Mr. Cousins, the investigator was being advised by Buckinghamshire county council.

At the end of August 2007, Mr. Cousins was dismissed at a disciplinary hearing. I believe that the dismissal was upheld at an appeal at the beginning of November 2007, with the result that Mr. Cousins took his case to the employment tribunal. This part of the story finally ends in October 2008, when he reached a settlement with the RGS and the council. In a statement agreed by all three parties, the governors of the RGS acknowledged that Mr. Cousins had been unfairly dismissed, and the council apologised for not providing him with the level of support that he had expected in relation to his dismissal. The council also agreed to review the

way in which the whole matter had been handled, and to learn lessons for the future. Mr. Cousins, for his part, acknowledged that the school had acted on advice and therefore in good faith.

The story of Mr. Cousins does not end with that agreement, however. The House will remember that in May 2007, more than a year after the trial, the then DFES wrote to him to say that it would launch its own investigation of his suitability to teach. However, it was not until January 2008 that he was interviewed by a psychologist from the Lucy Faithfull Foundation, which provides consultancy services for the DCSF. During the interview, it apparently emerged that she did not have any of the defence papers relating to the case, as they had been mislaid by the foundation. In the summer of 2008— more than a year after the Department had first written to him— Mr. Cousins finally received a copy of the Lucy Faithfull Foundation report. According to him, the psychologist stated in the report: "I would not consider Mr Cousins to represent a risk of harm to children and young persons in education or other settings".

"I would not consider Mr Cousins to represent a risk of harm to children and young persons in education or other settings".

By the beginning of this year, however, the DCSF had still not issued any recommendation with regard to Mr. Cousins, despite having initiated the investigation more than 18 months earlier. When Mr. Cousins finally managed to speak to an official in the Department at the end of January 2009, he was informed that his case had been transferred to another worker, and that the Department was still working through its internal reviews before a recommendation was made to the Secretary of State. I wrote to the DCSF at the beginning of February to ask why the inquiry was taking so long.

At the beginning of March, I received a letter from the Department saying that "It is not possible to say precisely how long it may take to conclude any given case, because the circumstances of each case vary. The length of time it takes to reach a decision very often depends on how long it takes for other agencies or bodies to provide relevant information and evidence. However, we aim to conclude a case as soon as possible after receiving all the relevant information."

On 10 March, nearly three years after Mr. Cousins was acquitted, the head of the children's safeguarding unit at DCSF wrote to Mr. Cousins to inform him that the Secretary of State had decided not to bar or to restrict his employment. The letter, however, had a twist in the tail: "Although it has been decided, on this occasion, not to make a direction under section 142 of the education Act 2002 on the grounds of your misconduct, you are warned that your behaviour has caused great concern".

The letter goes on to refer to "any further misconduct on your part".

The House will remember that the governors of the RGS agreed that Mr. Cousins had been unfairly dismissed in 2007 and that he has never been found guilty in court, so to what "misconduct" is the Department referring?

Furthermore, Mr. Cousins alleges that it is clear from the letter that the DCSF has not sent him copies of all the documentation that it has considered, despite having promised to do so. That means that he has not had a chance to comment on all the allegations made against him. Not surprisingly, my constituent has now written to the Department about both those points.

To sum up this section of my speech, we have a teacher who has never been found guilty in court, who has been unfairly dismissed, who has apparently been the subject of inaccurate police claims, some of which have been

continued on page 8

It could only happen in the USA !

A North Carlolina lawyer purchased a box of very rare and expensive cigars, then insured them against, among other things, fire.

Within a month, having smoked his entire stockpile of these great cigars, the lawyer filed a claim against the insurance company.

In his claim, the lawyer stated the cigars were lost 'in a series of small fires.'

The insurance company refused to pay, citing the obvious reason, that the man had consumed the cigars in the normal fashion.

The lawyer sued and won!

Stay with me!

Delivering the ruling, the judge agreed with the insurance company that the claim was frivolous. The judge stated nevertheless, that the lawyer held a policy from the company, in which it had warranted that the cigars were insurable and also guaranteed that it would insure them against fire, without defining what is considered to be unacceptable 'fire' and was obligated to pay the claim.

Rather than endure lengthy and costly appeal process, the insurance company accepted the ruling and paid $15,000 to the lawyer for his loss of the cigars that perished in the 'fires'.

After the lawyer cashed the cheque, the insurance company had him arrested on 24 counts of arson!

With his own insurance claim and testimony from the previous case being used against him, the lawyer was convicted of intentionally burning his insured property and was sentenced to 24 months in jail and a $24,000 fine!

Note: Reputed to be true but I stopped believing what appears in the papers, or on the internet, a long time ago - but that is another story!

The Ryan Commission publishes its report

The Ryan Commission, or to give its its full title the *Commission to Inquire Into Abuse* was established in May 2000 by the Irish Government. Its purpose was:-

1. to inquire into abuse from persons who allege they suffered abuse in childhood, in institutions, during the period from 1940 or earlier, to the present day;
2. to conduct an inquiry into abuse of children in institutions during that period and, where satisfied that abuse occurred, to determine the causes, nature, circumstances and extent of such abuse; and
3. to prepare and publish reports on the results of the inquiry and on its recommendations in relation to dealing with the effects of such abuse.

The Commission heard evidence through two separate committees – an Investigation Committee and a Confidential Committee both chaired by Mr. Justice Ryan, a High Court judge.

When the Commission was set up it was tasked with the responsibility to listen to victims of childhood abuse who want to recount their experiences to a sympathetic forum; to fully investigate all allegations of abuse made to it, except where the victim does not wish for an investigation, and to publish a report on its findings to the general public.

The Commission did not award financial compensation. That function was delegated to the "Residential Institutions Redress Board".

An Overview of the Report

Witnesses reported being physically, sexually and emotionally abused, and neglected by religious and lay adults who had responsibility for their care, and by others in the absence of adequate care and supervision. Many of the 216 named settings were the subject of repeated reports of abuse. In excess of 800 individuals were identified as physically and/or sexually abusing the witnesses as children in those settings. Neglect and emotional abuse were often described as endemic

continued on page 9, col 2

continued from page 8

dismissed in court, who has been investigated by the DCSF on a basis that that Department is unwilling to disclose either to him or to his Member of Parliament, and who the Department now judges to be guilty of misconduct on a basis that it has yet to disclose and may be unwilling to disclose, despite the fact that Mr. Cousins has never been found guilty in court but has been found to be unfairly dismissed. All this while, Mr. Cousins has endured delay, dismissal, disruption to his standard of living and quality of life, strain on his family life, public scandal and above all separation from the vocation to which he dedicated much of his working life. He would be entitled to feel that he has effectively been put on trial twice: once by a judge and jury, who did not find him guilty, and once by the Government and the authorities, who in effect did, but Government and the authorities are not, as the old saying has it, 12 men good and true. If the DCSF has evidence against my constituent, surely that must be produced. If it does not, the House and the world can only conclude that the handling of the case reeks of injustice.

I now want to ask the Minister some questions. I would be grateful if she indicated either now or during her response to the debate that she will write to me in response to any questions that she does not this evening have time to answer. I would be grateful if, rather than simply reading the brief, she would at least answer this evening the questions that pertain directly to Mr. Cousins.

> "If the DCSF has evidence against my constituent, surely that must be produced. If it does not, the House and the world can only conclude that the handling of the case reeks of injustice".

What is the nature of the "misconduct" referred to in the DCSF's letter of 10 March, bearing in mind that Mr. Cousins has never been found guilty in court but has been found to have been unfairly dismissed? Was he shown all the documentation relating to his case? If not, why not, and will he now be shown it? More broadly, in what circumstances where a teacher is acquitted will the DCSF launch its own subsequent investigation? What are the procedures for referring such cases for investigation, and who is entitled to make these referrals? Assuming that the Department does decide to launch its own investigation, how does it appoint the investigator and how does it ensure that the investigator is both qualified and impartial? What checks has the Department introduced to ensure that any investigator has papers relating to both sides of the case? In this instance, although Mr Cousins did not dispute the findings of the Lucy Faithfull Foundation, were a teacher to do so, what procedures would enable that teacher to appeal against the findings of a report? Given the delay, what guidelines has the Department issued on the speed with which it will conclude any investigation that it launches? Its latest letter to me said that "The length of time it takes to reach a decision ... depends on how long it takes for other agencies... to provide relevant information and evidence."

I now turn to the role of the Metropolitan Police. I would be grateful if the Minister could pass on the following questions to her counterparts in other Departments if she is not in a position to answer them herself. First, as a chief police officer can add "other relevant information" in the so-called soft box of a CRB form, how is relevant information defined, and what guidelines cover its use? According to a letter I received from the Met in October 2007, the principles that can be extracted from the case law relating to CRB disclosures are as follows: "The Chief Officer is not required to carry out further police

investigations and/or enquiries into the accuracy or nature of the information."

Do the Government believe that it is right that chief police officers are not required to make inquiries or carry out investigations into the accuracy or nature of such information? In how many and what percentage of cases is it conceded that a CRB disclosure is inaccurate, as the CRB conceded in the case of Mr. Cousins in relation to its first disclosure? What is the Met's policy on the speed with which CRB checks should be completed? Are there recommended response times? If so, were they adhered to in this instance, and if not why not?

I am pleased to have had the opportunity to tell the House part of the story of the life of my constituent, Nick Cousins. I am saddened to have had to ask how he has been put on trial twice—once by a judge and jury, who did not find him guilty, and once by Government and authorities, who in effect did, without any new evidence of which I am aware.

I know that in these times it is not done to quote poetry in the Chamber—dear me, that would be rather old-fashioned. None the less, I am mindful as I speak this evening of the words of Auden: "Acts of injustice done, Between the setting and the rising sun, In history lie like bones, each one."

Finally, I close by reflecting on what this story suggests not just for one teacher, but for all teachers, all schools, our education system as a whole, and our educational and popular culture. Not long ago, there was an imbalance between the protection of children and the autonomy of teachers. The former was compromised at the expense of the latter. That imbalance had to be addressed. By and large, I think that it has been. The protection of children should be non-negotiable.

Ministers, the DCSF, local authorities, Parliament, the courts, schools, teachers and governors have no easy task in deciding where the balance lies. As I said earlier, there are circumstances in which there are grounds for proceeding against people even if they have been cleared in court, especially, perhaps, when child protection is concerned. None the less, there are, as I say, serious questions about whether this balance is now right.

Like other Members, I visit schools in my constituency. I am acutely aware that the life of teachers is modern Britain is not always easy. Once, teachers were

continued on page 10

Ryan Commission (contd.)

within institutions where there was a systemic failure to provide for children's safety and welfare.

Witnesses gave evidence of abuse they directly experienced and also of abuse to others which they witnessed. A number of witnesses stated that they wished to report abuse in senior schools only as they had general but no detailed recall of abuse in their junior schools. Other witnesses wished only to report memories of extreme abuse.

Physical abuse

More than 90% of all witnesses who gave evidence to the Confidential Committee reported being physically abused while in schools or out-of-home care. Physical abuse was a component of the vast majority of abuse reported in all decades and institutions and witnesses described pervasive abuse as part of their daily lives. They frequently described casual, random physical abuse but many wished to report only the times when the frequency and severity were such that they were injured or in fear for their lives. In addition to being hit and beaten, witnesses described other forms of abuse such as being flogged, kicked and otherwise physically assaulted, scalded, burned and held under water. Witnesses reported being beaten in front of other staff, residents, patients and pupils as well as in private. Physical abuse was reported to have been perpetrated by religious and lay staff, older residents and others who were associated with the schools and institutions. There were many reports of injuries as a result of physical abuse, including broken bones, lacerations and bruising.

Sexual abuse

Sexual abuse was reported by approximately half of all the Confidential Committee witnesses. Acute and chronic contact and non-contact sexual abuse was reported, including vaginal and anal rape, molestation and voyeurism in both isolated assaults and on a regular basis over long periods of time. The secret nature of sexual abuse was repeatedly emphasised as facilitating its

continued on page 10, col 1

Ryan Commission (contd.)

occurrence. Witnesses reported being sexually abused by religious and lay staff in the schools and institutions and by co-residents and others, including professionals, both within and external to the institutions. They also reported being sexually abused by members of the general public, including volunteer workers, visitors, work placement employers, foster parents, and others who had unsupervised contact with residents in the course of everyday activities. Witnesses reported being sexually abused when they were taken away for excursions, holidays or to work for others. Some witnesses who disclosed sexual abuse were subjected to severe reproach by those who had responsibility for their care and protection. Female witnesses in particular described, at times, being told they were responsible for the sexual abuse they experienced, by both their abuser and those to whom they disclosed abuse.

Neglect

Neglect was frequently described by witnesses in the context of physical, sexual and emotional abuse in addition to accounts of inadequate heating, food, clothing and personal care. Neglect of a child's care and welfare occurred both by actions and inactions by those who had a responsibility and a duty of care to protect and nurture them. Witnesses reported that the failure to provide for their safety, education, development and aftercare had implications for their health, employment, social and economic status in later life. The neglect reported by witnesses referred to the actions and omissions of individual staff and the organisations within which they operated. Untreated injuries and medical conditions were reported to have caused permanent impairment.

Emotional abuse

Emotional abuse was reported by witnesses in the form of lack of attachment and affection, loss of identity, deprivation of family contact, humiliation, constant criticism, personal denigration, exposure to fear and the threat of harm. A frequently

continued on page 11, col 2

continued from page 10

repositories of knowledge. Like policemen, clergymen, councillors and even, dare I say it, Members of Parliament, they had authority, and a certain status. Now, they are often surrogate parents in what can be, for children, a world made even more bewildering and confusing than it already is by the way in which we live now—sometimes there is a lot of choice, but not always a lot of love.

Teachers no longer have the authority that they automatically possessed a generation ago. Nor does our culture always give them the respect and indeed the reverence to which they are entitled as the passers-on of the light of learning to the next generation. Their options, faced with children who are sometimes difficult at best and violent at worst, are limited. I note that the Chairman of the Children, Schools and Families Committee has said that it plans to hold an inquiry into the handling of allegations against teachers.

In these circumstances, it is surely vital to ensure that teachers, no less than children, are treated fairly by Government and by the authorities. It is for this wider reason, as well as for the sake of justice and equity, that I bring before the House this evening the case of my constituent, Nick Cousins.

The Parliamentary Under-Secretary of State for Children, Schools and Families (Sarah McCarthy-Fry): I congratulate the hon. Member for Wycombe (Mr. Goodman) on securing this debate. Our first duty in government and as a society is to do all we can to keep children safe, and I know that duty is shared by hon. Members on both sides of the House. That is why we have been strengthening the system for preventing unsuitable people from gaining access to children through their work, and it is why we have established the new vetting and barring system and the Independent Safeguarding Authority.

I am sure that the hon. Gentleman will appreciate that it is not appropriate for me to comment on individual cases in the House, particularly given the obvious sensitivities for all concerned, but I would be more than happy to commit the Department to write to him in confidence to address some of the procedural issues raised by this case if that would be of help and if his constituent gave permission. The remarks that I make tonight will be about the processes in general as regards the DCSF and not about the process in this case.

Mr. Goodman: Can the Minister confirm whether that letter would include what I described as the whole misconduct question if my constituent gave permission for the letter to be written?

Sarah McCarthy-Fry: We will look at the letter that is given. On the decisions made by our Department, we will always disclose any information that we rely on when making such decisions. On the procedural issues, we will look at the letter when it comes. This is a very sensitive issue.

As limited time is left for me to respond, let me say that CRB disclosures come under a different Department, so I will pass that issue to my colleagues. If I do not manage to get through all the procedures that the hon. Gentleman referred to, I undertake to write to him about the rest.

It is absolutely critical for both the Independent Safeguarding Authority and my own Department to be as scrupulous and rigorous as possible in consideration of all such cases. They frequently deal with very complex issues, and we owe it to all concerned, including those who are under consideration, to review the information that we receive with all due diligence.

The changes that we are introducing under the Safeguarding Vulnerable Groups Act 2006 will help to make sure that we have the toughest possible vetting and barring system for all those working with, or seeking to work with, children and vulnerable adults. We have already tightened the current system, so that anyone cautioned, as well as those who are convicted, for specified sexual offences against children will automatically be entered on list 99 and barred from working in schools and other education settings. We have made

CRB checks mandatory for all new appointments to the schools work force, including staff entering the work force from overseas.

The primary purpose of the process for considering cases is to safeguard children from contact with people who are considered unsuitable, either because they present a risk to a child's safety or welfare, or because their behaviour presents an unacceptable example to children. Cases are typically triggered by reports from the police, schools or local authorities, wherever there are grounds for concern about an individual working in a school, a further education institution or a local authority education setting.

"Supporting evidence is required to assess the seriousness of the behaviour, or alleged behaviour, and to establish whether the allegations are proved on a balance of probabilities".

In addition, any relevant information received by the Department—for example, through the media—may be considered. Where allegations or offences cause concern but do not meet the criteria for automatic barring, information will be sought from a range of agencies and from the individual concerned. Supporting evidence is required to assess the seriousness of the behaviour, or alleged behaviour, and to establish whether the allegations are proved on a balance of probabilities.

It is impossible to say precisely how long it will take to conclude any given case, because the circumstances of each will vary. The length of time it takes to reach a decision very often also depends on how long it takes other agencies or bodies to provide us with the relevant information and evidence. However, we aim to conclude a case as soon as possible after receiving all the necessary information. Although we try to deal with all these cases as quickly as possible, obtaining sufficient information to decide whether to take up a case and then completing the processes inevitably takes time. Strengthening existing

continued on page 12

Ryan Commission (contd.)

identified area of emotional abuse was the separation from siblings and loss of family contact. Witnesses were incorrectly told their parents were dead and were given false information about their siblings and family members. Many witnesses recalled the devastating emotional impact and feeling of powerlessness associated with observing their co-residents, siblings or others being abused. This trauma was acute for those who were forced to participate in such incidents. Witnesses believed emotional abuse contributed to difficulties in their social, psychological and physical well-being at the time and in the subsequent course of their lives.

Knowledge and disclosure

Parents, relatives and others knew that children were being abused as a result of disclosures and their observation of marks and injuries. Witnesses believed that awareness of the abuse of children in schools and institutions existed within society at both official and unofficial levels. Professionals and others including Government Inspectors, Gardai, general practitioners, and teachers had a role in relation to various aspects of children's welfare while they were in schools and institutions. Local people were employed in most of the residential facilities as professional, care and ancillary staff. In addition, members of the public had contact with children in out-of-home care in the course of providing services to the institutions both at a formal and informal level. Witnesses commented that while many of those people were aware that life for children in the schools and institutions was difficult they failed to take action to protect them.

Contemporary complaints were made to the School authorities, the Gardai, the Department of Education, Health Boards, priests of the parish and others by witnesses, their parents and relatives. Witnesses reported that at times protective action was taken following complaints being made. In other instances complaints were ignored, witnesses were punished, or pressure was brought to bear on the

continued on page 12, col 1

Ryan Commission (contd.)

child and family to deny the complaint and/or to remain silent. Witnesses reported that their sense of shame, the power of the abuser, the culture of secrecy and isolation and the fear of physical punishment inhibited them in disclosing abuse.

Conclusions

1. Physical and emotional abuse and neglect were features of the institutions. Sexual abuse occurred in many of them, particularly boys' institutions. Schools were run in a severe, regimented manner that imposed unreasonable and oppressive discipline on children and even on staff.

2. The system of large-scale institutionalisation was a response to a nineteenth century social problem, which was outdated and incapable of meeting the needs of individual children. The defects of the system were exacerbated by the way it was operated by the Congregations that owned and managed the schools. This failure led to the institutional abuse of children where their developmental, emotional and educational needs were not met.

3. The deferential and submissive attitude of the Department of Education towards the Congregations compromised its ability to carry out its statutory duty of inspection and monitoring of the schools. The Reformatory and Industrial Schools Section of the Department was accorded a low status within the Department and generally saw itself as facilitating the Congregations and the Resident Managers.

4. The capital and financial commitment made by the religious Congregations was a major factor in prolonging the system of institutional care of children in the State. From the mid 1920s in England, smaller more family-like settings were established and they were seen as providing a better standard of care for children in need. In Ireland, however, the Industrial School system thrived.

5. The system of funding through capitation grants led to demands by Managers for children to be committed

continued on page 13, col 2

arrangements in the ways I have mentioned has led to a significant increase in the number of individuals on list 99. Last year, the total number was 8,036, but it had risen to 12,992 by January this year. The vast majority of the increase is due to the implementation of the amended list 99 regulations that came into force in February 2007...

.... From July next year, all individuals registering with the new vetting and barring system will be subject to a regime of continuous monitoring. They will be reassessed against any new information, whether that comes from police, employers, social services departments or other sources. If necessary, they will be barred from the work force as a result. Legal penalties will exist to enforce that provision.

In certain circumstances, people will be barred automatically from working with children, although in the majority of cases they will be able to make representations about why the bar should be lifted. While those representations are being made, they will continue to be barred from employment as teachers or school workers.

Where the criteria for automatic barring are not met, all the facts of cases will be considered in deciding whether people are unsuitable to work with children and whether they should therefore be barred to prevent them from entering the children's work force. People are automatically barred from working with children and young people if they have been convicted or cautioned for any of a range of offences against children, including sexual offences. People are also automatically barred if they are subject to a court order that disqualifies them from working with children.

Barring becomes discretionary when there are allegations or offences that cause concern but do not meet the criteria that I have just mentioned. In cases where there are allegations of concern, the ISA will perform the most rigorous assessment by seeking information from police, employers and other agencies, as well as from the individual concerned, before reaching any decision. In some cases, a specialist risk assessment of the person will be commissioned: once completed, that evidence will be taken into account by the ISA.

The system is designed to be as fair and rigorous as possible. It gives those under consideration the opportunity to state their case, but it also reflects the huge importance that we have to place on safeguarding every single child's welfare.

Of course, placing people who are unsuitable to work with children on a barred list is one of the main safeguards in place to protect young people from harm, but it must be stressed that former and prospective employers also play a vital role. It is for any prospective employer to decide, on the basis of information gathered from criminal record checks and other relevant sources of recruitment information, whether to employ a person. It is for former employers, when asked, to provide frank and accurate references for former employees.

The safety and welfare of children is always our top priority. If there is any suggestion that an individual might pose an immediate risk to any child or young person, we would expect action to be taken without hesitation. In cases where no criminal offence has been committed, the Department will be absolutely rigorous in its efforts to ensure that it has all the information that it needs to make a decision on whether a person poses a risk to children and should be barred.

The Department continues to consider cases after court proceedings have been completed: it does take court outcomes into account, but the Secretary of State also considers cases at the civil standard—that is, "on the balance of probabilities". The criminal courts test evidence at the higher criminal standard of proof—that is, "beyond all reasonable doubt"—so an acquittal of charges at court does not necessarily mean that an individual will not be barred.

As I have said, the Secretary of State is under a duty to consider allegations of a serious nature that suggest that children have been put at risk of harm. If the Department becomes aware of information—such as a press report, or information from police, employers, the courts or a member of the public.
The debate was adjourned.

FACT CONFERENCE
Enhanced Disclosure - Obscured Justice

John Pinnington *was a well respected, committed, caring deputy headteacher at Thornley Hill College for autistic young people and adults. He was dismissed from his post when his employers requested an enhanced Criminal Records Bureau (CRB) check after a change in his responsibilities in 2005 which revealed an unsubstantiated allegation of sexual abuse that was made against him by an autistic child four years earlier. Police had investigated the allegation at the time and dismissed it. In this summary of a talk he gave at the F.A.C.T. Spring conference John talks about the effect this had on him and his family and his quest for justice.*

When first told that the police had been approached to look into an allegation of sexual abuse made against him, John's initial reaction was relief that a foolish misunderstanding would at last be cleared up. His accuser was one of his students, a young autistic adult who had a history of making false allegations, and the accusation against him was made via Facilitated Communication***,** (FC) a method previously described by a High Court judge as 'unreliable and dangerous'. John was convinced he could rely on the police to apply logic and common sense to a situation that had been evidently mismanaged and manipulated by the local Social Services. That was in the summer of 2001. Seven years and two further allegations later, John was to have that belief dashed. There would be no clearing of his name, no return to the job that he loved, and little hope of ever finding work again.

As John was never tried for any of the allegations, he has had to live under a cloud of suspicion that cannot be lifted. As there is no evidence that any crime was ever committed against the young men in question, naturally there is no evidence that can be weighed in any court. In common with all who are subjected to false accusations of abuse, the only way the damage can be undone is if the accusers withdraw their allegations. But these young men were all severely handicapped. If none of them were capable of naming John without help from a third party, how could they possibly instigate any retractions? While there may be countless 'experts' on hand to ensure that all allegations are taken seriously, there is not the same willingness to validate retractions, as we discovered. Using the same flawed method of FC, the student did in fact retract his allegation, but this inconvenient truth was covered up by the authorities. Had the retraction of the first allegation been properly acknowledged, it is hard to accept that there would have been a second or third allegation.

John is not, indeed never has been on any form of sex offenders register, POVA list, or list 99. He was sacked because hearsay allegations appeared on his Enhanced CRB. After the Soham murders, new laws concerning the disclosure of 'soft intelligence' – i.e. mere information rather than hard fact – were hastily drafted and put in place. This was to ensure that there could be no opportunity for a character such as the murderer Ian Huntley to be allowed to work with children. The new laws would grant the police wide discretionary powers over what might be disclosed to prospective employers.

Having been eliminated from police enquiries in the case of the first allegation, John was confident that that issue had been dealt with. Although he was interviewed after the second allegation, the investigation was so poorly handled that the Independent Police Complaints Commission (or Police Complaints Authority as it was then known) upheld four of John's six complaints against the investigating officer. The third allegation was so weak, so spurious, and so unbelievable that it was not even subject to a crime report. Yet this seemed to be the one that secured John's fate when he finally had his day in court.

In 2006, after John had been sacked because of the wording on his Enhanced CRB – a check demanded by his new employers – he learnt that the first student's brother, three years after last seeing John, had purportedly made a serious allegation against him. John didn't learn the full extent of the exploitation of this unfortunate young man, until he saw the damning police reports that were set before the police's CRB decision maker, the Assistant Chief Constable. He was

continued overleaf

Ryan Commission (contd.)

to Industrial Schools for reasons of economic viability of the institutions.

6. The system of inspection by the Department of Education was fundamentally flawed and incapable of being effective.

The Inspector was not supported by a regulatory authority with the power to insist on changes being made.

There were no uniform, objective standards of care applicable to all institutions on which the inspections could be based.

The Inspector's position was compromised by lack of independence from the Department.

Inspections were limited to the standard of physical care of the children and did not extend to their emotional needs. The type of inspection carried out made it difficult to ascertain the emotional state of the children.

The statutory obligation to inspect more than 50 residential schools was too much for one person.

Inspections were not random or unannounced: School Managers were alerted in advance that an inspection was due. As a result, the Inspector did not get an accurate picture of conditions in the schools.

The Inspector did not ensure that punishment books were kept and made available for inspection even though they were required by the regulations.

The Inspector rarely spoke to the children in the institutions.

7**.** Many witnesses who complained of abuse nevertheless expressed some positive memories: small gestures of kindness were vividly recalled. A word of consideration or encouragement, or an act of sympathy or understanding had a profound effect. Adults in their sixties and seventies recalled seemingly insignificant events that had remained with them all their lives. Often the act of kindness recalled in such a positive light arose from the simple fact that the staff member had not given a beating when one was expected.

8. More kindness and humanity would have gone far to make up for poor standards of care.

continued on page 14, col 1

Ryan Commission (contd.)

Physical abuse

9. The Rules and Regulations governing the use of corporal punishment were disregarded with the knowledge of the Department of Education.

The legislation and the Department of Education guidelines were unambiguous in the restrictions placed on corporal punishment. These limits however, were not observed in any of the schools investigated. Complaints of physical abuse were frequent enough for the Department of Education to be aware that they referred to more than acts of sporadic violence by some individuals. The Department knew that violence and beatings were endemic within the system itself.

10. The Reformatory and Industrial Schools depended on rigid control by means of severe corporal punishment and the fear of such punishment.

The harshness of the regime was inculcated into the culture of the schools by successive generations of Brothers, priests and nuns. It was systemic and not the result of individual breaches by persons who operated outside lawful and acceptable boundaries. Excesses of punishment generated the fear that the school authorities believed to be essential for the maintenance of order. In many schools, staff considered themselves to be custodians rather than carers.

11. A climate of fear, created by pervasive, excessive and arbitrary punishment, permeated most of the institutions and all those run for boys. Children lived with the daily terror of not knowing where the next beating was coming from.

Seeing or hearing other children being beaten was a frightening experience that stayed with many complainants all their lives.

12. Children who ran away were subjected to extremely severe punishment.

Absconders were severely beaten, at times publicly. Some had their heads shaved and were humiliated. Details were not reported to the Department, which did not insist on receiving information about the causes of

continued on page 15 , col 2

Enhanced Disclosure - Obscured Justice (contd.)

allowed access to these papers only after being granted leave for judicial review, in January 2008. Missing from this file was paperwork showing that the first allegation had been withdrawn: information listed on the crime reports was incorrectly recorded and filed. There was no mention of John having registered complaints that were upheld by the Police Complaints Authority. Nothing that might have pointed to John's innocence was included. Also missing from the material shown to the ACC was any reference to an important meeting held in 2003; a response to the mishandled second allegation. An agreement had been reached between the police and John's employers that something positive needed to come from the mistakes of the past, and a considerable amount of work had been put in to this new venture. It comprised a set of protocols to be used by the police in the event of any forthcoming allegations involving those on the autistic spectrum.

These guidelines gave clear instructions on how to proceed when dealing with the uniquely demanding problems of the autistic mind. A countywide panel of six experts – all consultants in their profession – agreed to be on call if and when needed, to assist and guide through the maze surrounding autistic spectrum allegations. The police themselves agreed that this course of action would become the 'model', possibly to be adopted by other forces. The senior officer involved in co-ordinating the scheme assured John's employers that the guidelines were ideal, even adding, jokingly, that he hoped the police wouldn't need to bother the experts too often. This turned out to be very much the case, as when the third student's allegation surfaced, he ignored not just the expert panel itself, but all the advice that he had been offered. His choice of 'expert' was drawn from a different source altogether - a Home Office intermediary, who, lacking the autism-specific expertise of the agreed experts, was clearly used by the police officer to suit his own purposes. One need only read the judgment handed down by Lord Justice Richards to see how the selective use of chosen experts helped to finish off John's career.

> "Nothing that might have pointed to John's innocence was included".

Chris Saltrese, John's solicitor, advised that the judicial review would not be an exercise in fact finding; it was simply going to review the policy on disclosure of disputed information on CRB's. Given that all three allegations fell outside the Government's own description of what could be regarded as 'credible' and 'capable of belief' [Home Office: Circular 5/2005], John believed that he stood a good chance of having them removed from his CRB. At the time that he took the decision to proceed with the judicial review he believed that that any sensible judge would recognize that these allegations were fanciful, and therefore could not and should not have been disclosed. John was however, unaware of, and unprepared for, the determination of individuals within the Adult Protection agency, and beyond, to ensure that the facts, as presented to the High Court, looked as damaging as they possibly could.

** Facilitated Communication (FC) is so-called because a facilitator, supporting the hand, wrist or elbow of a user assists them to spell out words by means of a letter board. Practised properly, and in accordance with the strict protocols drawn up by the National FC steering group, it can be a valuable tool in the therapeutic education of speech-impaired people. Opinion on its efficacy remains divided. Most reputable organisations will not endorse its use, partly because it is so open to misuse. Research by Howlin in 1997 in a review of 45 controlled trials of FC (involving 350 subjects) found confirmation of independent communication in only 6% of subjects. In more than 90% of cases the responses were found to have been influenced by the facilitators rather than the clients.*

Ed. note: Although Lord Justice Richards expressed some sympathy with Mr Pinnington he made it clear that Parliament intended the law to operate in this way. He said "There was nothing unlawful about the actions of the Police force in passing on allegations ... future employers should be made aware aware of the accusations, however weak and unreliable they are".

F.A.C.T. Conference
A Decade of Progress

A summary on the talk given by Mark Barlow at the F.A.C.T. conference

It's always a delight to come to a F.A.C.T. conference. I think it is ten years ago that I first had the pleasure to address you. I remember vividly telling everybody then that it would take ten years to change people's attitudes towards the care home cases. And I am rather pleased to say that I was wrong. F.A.C.T. was able to change people's ideas and perceptions about the care home cases very rapidly.

2002 saw the Select Committee in Parliament looking at the problems of the historical care homes and perhaps represents the first significant change in attitude towards those who have been convicted following the police trawling of historical allegations in the care home cases.

And I remember very vividly, back in those awful days, explaining to people I defend carers and teachers who have been falsely accused and convicted of historical sex crimes. And the reaction was always, 'Well, they're guilty as hell aren't they?' We lived in a society then that accepted without any word, any criticism, that former care home residents were telling the truth and that we allowed these children to be abused by carers and teachers. It really did upset me.

But in a very short period of time, by 2004, 2005, the conversation I was having with people that I met on trains and elsewhere, the attitude was very different. 'Yes, people have been falsely convicted and accused, it's all about money isn't it? Compensation'.

And that change in attitude by the public and by the media and by the politicians wasn't caused by me or by lawyers, it was caused by you – by this organisation and other organisations that campaigned fearlessly for those who have been convicted of historical allegations of past sexual abuse.

> "I've always said it and I'm going to say it now .... without F.A.C.T. there would be men still in prison."

And I've always said it and I'm going to say it now ten years down the line. Without F.A.C.T. there would be men still in prison. The courts would not be interested in overturning convictions or considering whether or nor a fair trial was possible. And we would be in a situation where even more men and women would still be facing trials on historic allegations based upon the word of former residents of care homes.

So ten years down the line I salute every one of you that's been involved because what changes the law, what changes politicians and the media are you, the people. Because of you us lawyers have inherited a very different landscape today.

Now of course, there are men, women, who still stand convicted on these historical allegations some of whom are still serving sentences of imprisonment.

Over the past ten years I have noticed a positive difference of attitude in the Court of Appeal. Initially they showed little interest in recognising that a miscarriage had happened. And it wasn't until the cases of Burke, Sheikh and Joynson that the Courts of Appeal actually started to re-consider the fairness of the trial process on historical allegations.

But of course, as I say, there are a lot more cases that are pending. And again, as a lawyer, I've always found my inspiration from people like yourselves and people who have found themselves accused, convicted, imprisoned for crimes that never happened.

So, what happened on the legal front was that following the case of Burke, where Patrick Jennings QC was there for the appeal, the emphasis was changed by the lawyers of how we could actually get the Court of Appeal to accept that a conviction was unsafe.

The problem that all care workers face was do you prove that something did not happen? No matter how much we argued abuse of process arguments it was

Ryan Commission (contd.)

absconding. Neither the Department nor the school management investigated the reasons why children absconded even when schools had a particularly high rate of absconding. Cases of absconding associated with chronic sexual or physical abuse therefore remained undiscovered. In some instances all the children in a school were punished because a child ran away which meant that the child was then a target for mistreatment by other children as well as the staff.

13. Complaints by parents and others made to the Department were not properly investigated.

Punishments outside the permitted guidelines were ignored and even condoned by the Department of Education. The Department did not apply the standards in the rules and their own guidelines when investigating complaints but sought to protect and defend the religious Congregations and the schools.

14. The boys' schools investigated revealed a pervasive use of severe corporal punishment.

Corporal punishment was the option of first resort for breaches of discipline. Extreme punishment was a feature of the boys' schools. Prolonged, excessive beatings with implements intended to cause maximum pain occurred with the knowledge of staff management.

15. There was little variation in the use of physical beating from region to region, from decade to decade, or from Congregation to Congregation.

This would indicate a cultural understanding within the system that beating boys was acceptable and appropriate. Individual Brothers, priests or lay staff who were extreme in their punishments were tolerated by management and their behaviour was rarely challenged.

16. Corporal punishment in girls' schools was pervasive, severe, arbitrary and unpredictable and this led to a climate of fear amongst the children.

The regulations imposed greater restrictions on the use of corporal punishment for girls. Schools varied as to the level of corporal punishment

continued on page 16 , col 1

Ryan Commission (contd.)

that was tolerated on a day-to-day basis. In some schools a high level of ritualised beating was routine whilst in other schools lower levels of corporal punishment were used. The degree of reliance on corporal punishment depended on the Resident Manager, who could be a force for good or ill, but almost all institutions employed fear of punishment as a means of discipline. Some Managers administered excessive punishment themselves or permitted excesses by religious and lay staff. Girls were struck with implements designed to maximise pain and were struck on all parts of the body. The prohibition on corporal punishment for girls over 15 years was generally not observed.

17. Corporal punishment was often administered in a way calculated to increase anguish and humiliation for girls.

One way of doing this was for children to be left waiting for long periods to be beaten. Another was when it was accompanied by denigrating or humiliating language. Some beatings were more distressing when administered in front of other children and staff.

Sexual abuse

18. Sexual abuse was endemic in boys' institutions. The situation in girls' institutions was different. Although girls were subjected to predatory sexual abuse by male employees or visitors or in outside placements, sexual abuse was not systemic in girls' schools.

19. It is impossible to determine the full extent of sexual abuse committed in boys' schools. The schools investigated revealed a substantial level of sexual abuse of boys in care that extended over a range from improper touching and fondling to rape with violence. Perpetrators of abuse were able to operate undetected for long periods at the core of institutions.

20. Cases of sexual abuse were managed with a view to minimising the risk of public disclosure and consequent damage to the institution and the Congregation. This policy resulted in the protection of the

continued on page 17, col 2

A Decade of Progress (contd.)

simply down to the discretion of the judge, given the delay, whether or not the trial was fair or whether or not any resulting convictions could be considered to be safe.

As usual, all the judges always came to the view that any trial process could be fair regardless of what documents were missing. Why is it always that important documents are always missing from the unused material? Why is it that the register when a particular defendant or complainant was there at the school just seems not to have existed whereas they have the one for the year before and the year after? Call me a bit suspicious, I'm very sure there's in drawers all over England and Wales and police officers' offices documents that should have been disclosed.

Where, for example, you can actually place a complaint in particular circumstances (i.e. place/time/date specific etc.) but the documents to evidence this are missing, no fair trial can be possible. Similarly where the complainant makes an assertion which is crucial for their credibility but has no bearing upon the actual count on the indictment, that also needs to be evidenced. For example, how many times have you seen or you've read in a care home case allegations that after he abused me, I saved up all my tablets and took them and I tried to take my own life and I was carried out by the teacher from the classroom and just dumped in the dormitory and left for five days. We've all read the statements with these absolutely outrageous remarks in evidence made by these former people in care.

Now let me just pause here. How often do we hear allegations that I was abused when I sat on the carer's lap. Then it turns out his mother made a statement saying, 'I remember my little boy coming back after the term saying he wasn't happy about sitting on the persons lap and as a result I complained to the Social Services'. But of course, thirty years down the line, those records did not exist.

And it really does signify to me the Court of Appeal's attitude now. They are worried. They're worried about the safety of these convictions on the care home cases.

And of course it's ten years, fifteen years, twenty years down the line. When they started trying people in the mid 1990s none of this was at the forefront of the Courts or the Court of Appeal. But now, they are having to face up to the reality of trying to sort out the legal mess that has been left behind.

And as I said, ten years ago at St Helens, the one thing that the Court of Appeal must recognise and the CCRC have got to recognise is that you're not going to go away. These men aren't going to go away. They are going to carry on fighting to clear their names.

The CCRC, I believe, is also a very important part of our legal process. Without the CCRC we would have no way upon which we can get cases referred back to the Court of Appeal if they've been refused leave in the first place.

And I know that some people have a go at them and sometimes you could say they're a bit limp, bit conservative in the sense of what they send back and what they don't send back. But as John Weedon, a Commissioner at the CRCC says, all they can do is second guess what the Court of Appeal is going to do.

There are still a large number of cases at the CCRC as we speak. I know that we, the lawyers are hoping that with the change in leadership here in Birmingham, they might start to refer the more care home cases following changes in case law arising from the successful cases which have been heard in the Court of Appeal during the last decade.

So, on a legal front, I think these cases represent very significant developments and are perhaps the only way in which we have been able to breathe life back in our struggle to get the Court of Appeal to take these cases seriously. There's

no doubt in my mind, and speaking to Lord Justice Hooper who recently spoke at conference on the subject in Manchester, he and other judges are very concerned about these historical care home cases.

And again I pause here. They're concerned because of the work that organisations like F.A.C.T. the media and the Select Committee have done, in highlighting the miscarriages that have happened. But of course they can only overturn convictions within the law. So, again, maybe I'm being optimistic. And all I can really wish for is that we can still continue to take these cases to the Court of Appeal.

Now there's no doubt in my mind that the police have given up. And that's a victory. That's a victory to you, a victory to the Select Committee and of course a victory for those that have been campaigning for the last ten years highlighting the dangers and the miscarriages. And of course, what we have to do now, and it might be the final stage, I hope it's the final stage, is to carry on supporting those who find themselves still in prison, still convicted. For the lawyers to carry on supporting those who have been convicted and getting the law to edge forward.

So, again, just pausing here and looking back on the last ten years which have gone extremely fast. We have come a long way, you've come a long way but there's still that final bit to go in the sense of the historical care home cases.

I am confident that the CCRC will be referring more cases and what I would really love to see would be a series of care home cases from the CCRC being referred at the same time. Not to do it individually, get all their cases, refer them to the Court of Appeal and get the Court of Appeal to make the decision.

If we could get four or five cases overturned at the same time I think that would really signal the end and hopefully, hopefully we can get in the other cases. The ones for the men and the women who have been out for many years now

The easiest thing to do is to do nothing. As a lawyer the easiest thing to do is not to spend hours and hours trawling over papers and trying to find a ground of appeal or looking at transcripts. But there's nothing more satisfying than being on the doorsteps of the Court of Appeal.

But, it's almost time for me to go. All I wanted to say is this: Thank you. Thank you to F.A.C.T., to all of you, without your support and your determination we would not have got where we are in the Court of Appeal without that support and I thank each and every one of you. Thank you.

Mark Barlow *is a member of Garden Court North Chambers, and specialises in cases of alleged historic sexual abuse. Amongst his many successful cases are:-*

Joynson, R. v [2008] EWCA Crim 3049 (26 November 2008) (Court of Appeal quash carer's conviction from 1969)

R v Paul Hughes [2008] (Conviction overturned in Northern Ireland on historic domestic allegations of sexual abuse)

Anver Daud Sheikh v The Crown [2006] EWCA Crim 2625 (abuse conviction quashed for second time upon basis that no conviction could be safe given prejudice caused by delay; allegations made by former North Yorkshire children's home residents)

R. v. Robson and others [2006] EWCA Crim 2754 (correct approach in cases involving historic allegations of abuse from a care home involving multiple defendants)

R v Basil Rigby Williams [2003] EWCA Crim 693 - (miscarriage case involving historic allegations of abuse in children's homes (Operation Care) conviction quashed upon fresh evidence) judgment

And more recently, the case of Ian Lawless whose conviction for murder was overturned earlier this month.

Ryan Commission (contd.)

perpetrator. When lay people were discovered to have sexually abused, they were generally reported to the Gardai. When a member of a Congregation was found to be abusing, it was dealt with internally and was not reported to the Gardai.

The damage to the children affected and the danger to others were disregarded. The difference in treatment of lay and religious abusers points to an awareness on the part of Congregational authorities of the seriousness of the offence, yet there was a reluctance to confront religious who offended in this way. The desire to protect the reputation of the Congregation and institution was paramount. Congregations asserted that knowledge of sexual abuse was not available in society at the time and that it was seen as a moral failing on the part of the Brother or priest. This assertion, however, ignores the fact that sexual abuse of children was a criminal offence.

21. The recidivist nature of sexual abuse was known to religious authorities.

The documents revealed that sexual abusers were often long-term offenders who repeatedly abused children wherever they were working. Contrary to the Congregations' claims that the recidivist nature of sexual offending was not understood, it is clear from the documented cases that they were aware of the propensity for abusers to re-abuse. The risk, however, was seen by the Congregations in terms of the potential for scandal and bad publicity should the abuse be disclosed. The danger to children was not taken into account.

22. When confronted with evidence of sexual abuse, the response of the religious authorities was to transfer the offender to another location where, in many instances, he was free to abuse again. Permitting an offender to obtain dispensation from vows often enabled him to continue working as a lay teacher.

Men who were discovered to be sexual abusers were allowed to take dispensation rather than incur the opprobrium of dismissal from the

continued on page 18, col 1

Ryan Commission (contd.)

Order. There was evidence that such men took up teaching positions sometimes within days of receiving dispensations because of serious allegations or admissions of sexual abuse. The safety of children in general was not a consideration.

23. Sexual abuse was known to religious authorities to be a persistent problem in male religious organisations throughout the relevant period.

Nevertheless, each instance of sexual abuse was treated in isolation and in secrecy by the authorities and there was no attempt to address the underlying systemic nature of the problem. There were no protocols or guidelines put in place that would have protected children from predatory behaviour. The management did not listen to or believe children when they complained of the activities of some of the men who had responsibility for their care. At best, the abusers were moved, but nothing was done about the harm done to the child. At worst, the child was blamed and seen as corrupted by the sexual activity, and was punished severely.

24. In the exceptional circumstances where opportunities for disclosing abuse arose, the number of sexual abusers identified increased significantly.

For a brief period in the 1940s, boys felt able to speak about sexual abuse in confidence at a sodality that met in one school. Brothers were identified by the boys as sexual abusers and were removed as a result. The sodality was discontinued. In another school, one Brother embarked on a campaign to uncover sexual activity in the school and identified a number of religious who were sexual abusers. This indicated that the level of sexual abuse in boys' institutions was much higher than was revealed by the records or could be discovered by this investigation. Authoritarian management systems prevented disclosures by staff and served to perpetuate abuse.

25**.** The Congregational authorities did not listen to or believe people who complained of sexual abuse that occurred in the past, notwithstanding

continued on page 19, col 2

Kerelaw Inquiry
Publication of the Independent Report

This inquiry was commissioned by the Scottish Government and Glasgow City Council in November 2007. Its purpose was to secure comprehensive insight into the circumstances that led to abuse at Kerelaw Residential School and Secure Unit over a period of years, and to make recommendations to ensure similar circumstances could not arise again and to offer any other insights relevant to the safe care of young people in residential settings. The inquiry was chaired by Professor Eddie Frizzell a retired civil servant and former chief executive Chief Executive of the Scottish Prison Service. The following are extracts from the report.

Methodology

A small Inquiry team comprising the chairman, 3 further investigators and an office manager examined a large volume of paper and electronic records held by Glasgow City Council and contacted a wide range of organisations and individuals,and conducted 166 interviews. The notes of these interviews formed a central core of evidence to the Inquiry. We drew on expert advice from a small group of external advisers. The Inquiry took place in private to encourage more open communication on some very sensitive and personal issues, and we committed to anonymise the information provided by interviewees when preparing our report.

Kerelaw Residential School and Secure Unit

Kerelaw opened in Stevenson, Ayrshire in 1970, initially as a residential school for 72 boys, and later became co-educational. A mixed sex Secure Unit was added in 1983 and extended in 1988 to cater for a further 24 young people. Most were placed under a supervision requirement, with smaller numbers on remand or sentence. All had significant behavioural, emotional and/or educational needs. Education was provided up to statutory school leaving age, and young people had access to a range of specialist support including psychology, psychiatry and addiction counselling.

Legislation and regulation

During Kerelaw's existence there were significant developments in the regulation of care for looked after children and changes in public and professional attitudes towards large residential institutions.

Policy trends

These regulatory changes underpinned policy developments in residential care that would impact on the residents and staff of Kerelaw. A growing ambivalence towards the use of residential care for young people from the early 1990s led to a move towards favouring foster care and a view that resorting to a residential placement was a failure. As fewer young people were placed in residential care, those who were so placed had more complex needs. We were told that an increasing number of those placed at Kerelaw had problems with drug or alcohol misuse and, as the complexity of the problems increased, more and more placements took place on an emergency basis.

Abuse and physical restraint

Glasgow City Council reported in 2007 that there were between 350 and 400 allegations from 159 people complaining of emotional, physical or sexual abuse. Two staff were convicted of physical and sexual abuse, and one of physical abuse, as a result of police investigations. A further case of alleged sexual abuse was not proven. **It was not the role of the Inquiry to examine individual allegations of abuse, nor to re-run investigations into whether**

abuse occurred at Kerelaw. However, to fulfil our remit, it was important to understand the range of allegations made and the nature and scale of abuse.

Some young people testified to Council investigators and to the Inquiry that they had a positive experience at Kerelaw and had never been subject to abuse themselves. Similarly, some former staff said they had never witnessed abuse of young people. Other young people were clear that they had been poorly restrained and hurt as a result, and some said that they had been assaulted without any pretence of a restraint. Some staff admitted to the Inquiry that they had undertaken restraints that were poorly executed and probably caused pain, while others acknowledged that they had taken action in a restraint that they now recognised as inappropriate. Nobody admitted to the Inquiry that they had intentionally assaulted a young person in their care, although some staff and young people did describe having seen one or more members of staff assaulting someone.

The Inquiry concluded that over a period of years, although a range of allegations, complaints and concerns emerged, and were investigated, there was no systematic overview taken of what lay behind them and such findings as emerged produced no lasting effect.

The child at the centre

The Inquiry did not gain a sense that the rights, needs and welfare of children were central to the operation of Kerelaw or the actions of all staff who worked there. While some ex-staff told us they encouraged advocacy services, social workers and others to visit young people in Kerelaw, many of the advocacy workers we spoke to expressed concerns about being excluded, obstructed or treated dismissively by some unit staff.

An effective complaints system is key to safeguarding young people in residential care, but we heard mixed accounts of the system at Kerelaw both from former residents and staff. Problems with the complaints system were regularly raised by inspectors. By some accounts the system worked well and was effective. Others said that complaining was discouraged, that the system worked inconsistently, or that complaints were not followed through so for some there was no point in making them. We were told by some staff that young people could only complain by accessing a form through the unit manager.

Although the admission of young people to Kerelaw should have been on the basis of formal assessment and planning, the Inquiry learned that many admissions took place on an emergency basis. As a local authority resource, Kerelaw was not in a position to be as selective as other establishments and as a result came to be seen by some as a safety valve for a dysfunctional system. Expectations of the quality of care and positive outcomes for young people resident there were not high. Problems inherent in the school were compounded by poor throughcare and aftercare planning and provision.

The Inquiry also found a mixed picture of the arrangements for needs assessment and care planning for young people placed in Kerelaw. The large number of emergency admissions, shortages of field social workers and significant caseloads did not facilitate effective care planning. Evidence suggested some effective planning by field social workers, but poor record keeping led the Inquiry to have concerns about the adequacy of care planning and delivery. The importance of care planning was emphasised to staff at Kerelaw from the mid-1990s, and some former employees told us that they welcomed this, although the Inquiry found little evidence to substantiate it.

Absconding appears to have been routine for many young people at Kerelaw and staff responses varied. Some saw absconding as adding to the complexity and pressure of their jobs, while others recognised the importance of trying to prevent it and of dealing sensitively with young people when they returned,

continued on page 20

Ryan Commission (contd.)

the extensive evidence that emerged from Gardai investigations, criminal convictions and witness accounts.

Some Congregations remained defensive and disbelieving of much of the evidence heard by the Investigation Committee in respect of sexual abuse in institutions, even in cases where men had been convicted in court and admitted to such behaviour at the hearings.

26. In general, male religious Congregations were not prepared to accept their responsibility for the sexual abuse that their members perpetrated.

Congregational loyalty enjoyed priority over other considerations including safety and protection of children.

27. Older boys sexually abused younger boys and the system did not offer protection from bullying of this kind.

There was evidence that boys who were victims of sexual abuse were physically punished as severely as the perpetrator when the abuse was reported or discovered. Inevitably, boys learned to suffer in silence rather than report the abuse and face punishment.

28. Sexual abuse of girls was generally taken seriously by the Sisters in charge and lay staff were dismissed when their activities were discovered. However, nuns' attitudes and mores made it difficult for them to deal with such cases candidly and openly and victims of sexual assault felt shame and fear of reporting sexual abuse.

Girls who were abused reported that it happened most often when they were sent to host families for weekend, work or holiday placements. They did not feel able to report abusive behaviour to the Sisters in charge of the schools for fear of disbelief and punishment if they did.

29. Sexual abuse by members of religious Orders was seldom brought to the attention of the Department of Education by religious authorities because of a culture of silence about the issue.

When religious staff abused, the matter tended to be dealt with using internal disciplinary procedures and

continued on page 20, col 1

Ryan Commission (contd.)

Canon Law. The Gardai were not informed. On the rare occasions when the Department was informed, it colluded in the silence. There was a lack of transparency in how the matter of sexual abuse was dealt with between the Congregations, dioceses and the Department. Men with histories of sexual abuse when they were members of religious Orders continued their teaching careers as lay teachers in State schools.

30. The Department of Education dealt inadequately with complaints about sexual abuse. These complaints were generally dismissed or ignored. A full investigation of the extent of the abuse should have been carried out in all cases.

All such complaints should have been directed to the Gardai for investigation.

The Department, however, gave the impression that it had a function in relation to investigating allegations of abuse but actually failed to do so and delayed the involvement of the proper authority. The Department neglected to advise parents and complainants appropriately of the limitations of their role in respect of these complaints.

Neglect

31. Poor standards of physical care were reported by most male and female complainants.

Schools varied as to the standard of physical care provided to the children and while there was evidence from many complainants that conditions improved in the late 1960s, in general no school provided an adequate standard of care across all the categories.

32. Children were frequently hungry and food was inadequate, inedible and badly prepared in many schools.

Witnesses spoke of scavenging for food from waste bins and animal feed.

In boys' schools there was so little supervision at meal times that bullying was widespread and smaller, weaker boys were often deprived of food.

The Inspector found that malnourishment was a serious problem in schools run by nuns in the 1940s and, although improvements were

continued on page 21 , col 2

often under the influence of alcohol or drugs. There was no clear evidence of any consideration of the reasons why young people were absconding.

A number of ex-residents related poor experiences of education at Kerelaw, although some achieved qualifications. Ex-residents described classes being disrupted, while teachers spoke of the difficulties of educating a shifting population of young people, many of whom had missed significant periods of schooling.

Glasgow City Council's stewardship of Kerelaw

The timing of local government reorganisation in 1996 was not helpful. Senior Council managers found themselves having to respond to major changes in legislation and regulation while under serious financial pressures. In the immediate aftermath of reorganisation, much senior management time in Glasgow was devoted to dealing with the consequences of a financial settlement that created major difficulties for social work services provision. Kerelaw was both a generator of revenue and a drain on resources, and financial issues diverted senior management time in the Council from proper consideration of the quality of provision or the future direction for the establishment.

Prior to local government reorganisation, the external management of Kerelaw was provided by Strathclyde Regional Council and the Inquiry was told that arrangements worked reasonably well, although a relatively "hands-off" approach to how Kerelaw was run seems to have been the norm. Once responsibility transferred to Glasgow City Council, external management was unsatisfactory. Responsibilities were inappropriately delegated, and burdens on managers meant that they made few visits to Kerelaw. This lack of visibility and oversight was compounded in later years by poor relationships between internal and external managers. Poor relationships within the senior management team in the Council's Social Work Department militated against effective action being taken. The Inquiry concluded that Glasgow City Council did not give Kerelaw the attention it needed or deserved.

Investigations and disciplinary process

Glasgow City Council set up its joint Social Work/Education investigation of Kerelaw following an investigation into staff complaints of bullying and harassment by a unit manager. During that investigation a number of other staff and young people came forward with allegations of poor treatment and abuse. Separately, historic allegations precipitated a concurrent police investigation into Kerelaw. As this and the internal investigations continued, and the net widened, more and more allegations were made. The two investigations remained separate, although there was regular communication and information flow.

The Council's investigations continued for 3 years and resulted in 29 disciplinary hearings, followed by internal appeals against dismissal and in some cases Employment Appeals Tribunals which have now spanned a period of more than 4 years. As a result of the investigations and disciplinary processes, 14 staff were dismissed. Two of the dismissals were deemed unfair by Employment Appeals Tribunals, and the Council withdrew its defence in the case of another two.

Many ex-Kerelaw staff criticised the handling of the investigation, feeling that the approach was aggressive and the process poorly handled and over-long. Staff felt they were not adequately informed about the allegations against them and that they therefore found it difficult to respond adequately. On the other hand, some were unwilling to cooperate and the joint investigation team faced the challenge of finding a way through the networks of cliques and relationships which they concluded had obstructed a number of fact-findings over the years. The investigation team had a complex and difficult task, but the

Inquiry was nevertheless surprised by the lack of attention to detail in some fact-finding reports and the weakness of some paperwork put forward for disciplinary hearings.

The claim by some that young people were driven to make allegations by the lure of compensation is not borne out by the evidence. Fewer than a fifth of those who were interviewed by internal investigators had by March 2009 made compensation claims. The statistics suggest that the convictions of the teacher and the unit manager following their Court cases in 2006 precipitated compensation claims.

Analysis and conclusions

The Inquiry concludes that abuse of young people did take place at Kerelaw after 1996 and that physical abuse was prevalent, although it did not involve all staff. Weaknesses in TCI training contributed to poor practice that was often abusive. The circumstances that allowed abuse to happen comprised a complex mix of cultural factors, including an over-emphasis on control. There were cliques and factionalism and inappropriate relationships which inhibited challenge and attempts at change, for which there was limited capacity. There was a lack of strategic direction, both in Kerelaw and in Social Work HQ, and no united sense of purpose. Training did not support culture change as there was no shared view of the kind of organisation Kerelaw should be. There was no robust system for performance management and supervision of staff was inadequate. The complaints system was inconsistent and poorly monitored and there was little follow-through from fact-finding investigations of young people's allegations. Inspection did not stimulate culture change at Kerelaw. Criticisms that were made were insufficiently followed through by Kerelaw, the Council or, until after 2003, the inspection agencies.

Glasgow City Council's stewardship of Kerelaw was lacking in important respects. local government reorganisation created serious financial problems for the Council and distracted senior managers from the real issues at Kerelaw. External management was inappropriately delegated and inadequately carried out. Poor professional relationships at senior level in the Social Work Department compounded the problem. Proposals for the redevelopment of Kerelaw were a long term aspiration from 1996 onwards which may also have been a distraction. The Council's investigations from 2004 onwards were robust, but could have been better handled, and would have benefited from closer quality control of documentation. Staff were not well supported during the investigations and disciplinary processes. The quality of information management by the Council and the adequacy of records relating to young people in care were a cause for concern. Overall, there was a significant failure in leadership and management that led to the relative neglect of Kerelaw and, as a consequence, the dual abandonment of those who lived and worked there. That failure did not occur only in Kerelaw's final years: it grew over many years under changing circumstances and different management regimes.

Recommendations

Residential child care has moved on since Kerelaw and the protection afforded to young people is being improved. There is no room for complacency, and our recommendations build on those developments. All the strategies in the world will not prevent mistakes or failures. The best protection we can offer young people in care is that everyone, from front line care workers to the most senior managers, takes their responsibilities fully on board, puts the client first, and does their job.

Other recommendations include:

- **Improving leadership and management capability** by better succession planning; effective recruitment of high calibre candidates;

continued on page 22

Ryan Commission (contd.)

made, the food provided in many of these schools continued to be meagre and basic.

33. Witnesses recalled being cold because of inadequate clothing, particularly when engaged in outdoor activities.

Clothing was a particular problem in boys' schools where children often worked for long hours outdoors on farms. In addition, boys were often left in their soiled and wet work clothes throughout the day and wore them for long periods.

Clothing was better in girls' schools and some individual Resident Managers made particular efforts in this regard but in general girls were obliged to wear inadequate ill-fitting clothes that were often threadbare and worn.

In all schools up until the 1960s clothes stigmatised the children as Industrial School residents.

34. Accommodation was cold, spartan and bleak. Sanitary provision was primitive in most boys' schools and general hygiene facilities were poor.

Children slept in large unheated dormitories with inadequate bedding, which was a particular problem for children with enuresis.

Sanitary protection for menstruation was generally inadequate for girls.

35. The Cussen Report recommended in 1936 that Industrial School children should be integrated into the community and be educated in outside national schools. Until the late 1960s, this was not done in any of the boys' schools investigated and in only in a small number of girls' schools.

36. Where Industrial School children were educated in internal national schools, the standard was consistently poorer than that in outside schools.

National school education was available to all children in the State and those in Industrial Schools were entitled to at least the same standard as that available in the country generally. Internal national schools were funded by a national school grant and teachers were paid in the same way as in ordinary national schools. The evidence was however that the standard of education in these schools was poor.

Ryan Commission - contd

There was evidence particularly in girls' schools that children were removed from their classes in order to perform domestic chores or work in the institution during the school day. In general, Industrial School children did not receive the same standard of national school education as would have been available to them in the local community. This lack of educational opportunity condemned many of them to a life of low-paying jobs and was a commonly expressed loss among witnesses.

37. Academic education was not seen as a priority for industrial school children.

When discharged, boys were generally placed in manual or unskilled jobs and girls in positions as domestic servants. There were exceptions, and particularly in girls' schools in the later years, some girls received the opportunity of a secretarial or nursing qualification. Education usually ceased in 6th class, after which children were involved in industrial trades, farming and domestic work with very limited education thereafter. Even where religious Congregations operated secondary schools beside industrial schools, children from the Industrial Schools were very rarely given the opportunity of pursuing secondary school education.

38. Industrial Schools were intended to provide basic industrial training to young people to enable them to take up positions of employment as young adults. In reality, the industrial training afforded by all schools was of a nature that served the needs of the institution rather than the needs of the child.

This was a problem that had been pointed out by the Cussen Commission in 1936 and continued to be a feature of industrial training in these schools throughout the relevant period. Child labour on farms and in workshops was used to reduce the costs of running the Industrial Schools and in many cases to produce a profit. Clothing and footwear were often made on the premises and bakeries and laundries provided facilities to the school and in some cases to the general public. The cleaning and upkeep of girls' Industrial

continued on page 23,

clarifying roles and responsibilities for external management; and accountability for the monitoring and quality assurance of reporting systems.

- **Enhancing performance management** by introducing personal performance planning for external managers and the heads and other senior managers of residential establishments, and consideration of peer and subordinate appraisal processes.
- **Reinforcing the requirements of good supervision** underpinned by a supervision policy for every provider and consideration of group-based supervision.
- **Better training and learning** in mixed groups with appropriate reflection and evaluation of the learning experience; resourced to ensure underpinning of the SSSC registration requirements; and with guidance and refreshing of training in crisis intervention to ensure understanding and appropriate application.
- **Improving the avenues for listening to children** including easily understood and accessible complaints procedures; effective monitoring and review of complaints; and adequately resourced children's rights and children's advocacy services.
- **More rigorous follow-up to inspection** by service providers, external management and inspection agencies; and the transfer of historic inspection information to new inspection bodies.
- **More effective investigation and disciplinary processes** conducted jointly with the police where there is the possibility of crime; and based on sound legal advice and up-to-date expertise in employment law.
- **Good record-keeping** to underpin effective investigation and discipline and to afford looked after children the dignity and respect they deserve.
- **Competent referrals to the DWCL and registration bodies** based on thorough and efficient investigation to ensure those who should be disqualified from working with children are disqualified quickly and efficiently.

Editorial Comment:

In many way this predictable report mirrors the *Lost in Care* report by Sir Ronald Waterhouse concerning alleged abuse in North Wales Children's homes. Both inquiries are set against a background of organisational change. In each case the working assumption has been that abuse had occurred on a very large scale, and no real attempt has been made to identify the extent to which the majority of staff provided good care to children and young people who, for the most part, were extremely challenging. In neither case was evidence found of systematic paedophilia.

Both reports acknowledge the extent to which these facilities were under-resourced and the the extent to which public policy at that time worked against the provision of 'good enough' care and education; yesterdays events are in many ways judged by today's standards. Critical questions regarding society's ambivalence about the need for 'care *and* control' are overlooked. Society expects its delinquent and anti-social youth to be controlled but when this is applied it is very quick to criticise and shout out "abuse".

Significantly these reports do not address in a meaningful way the fact that each inquiry resulted in a number of staff being wrongly and falsely accused, although, in fairness the Kerelaw Inquiry was, rightly, very critical of Glasgow City Council's very heavy handed approach in applying its disciplinary procedures.

Neither is the complicit nature of the role of the State in abuse that *did* occur given a great of attention. The fact is that staff have mostly been abandoned by the the State and the public bodies who administered and managed residential care and imposed their own standards and expectations on the workforce. Having been abandoned staff were left having to defend historic practice, policies and procedures over which they had very little control, and were *required* to implement. They are the real victims; abandoned, bullied, scapegoated and shamed by the procedure, the press, and the general public.

Schools was largely done by the girls themselves. Some of these chores were heavy and arduous and exacting standards were imposed that were difficult for young children to meet. In girls' schools also, older residents were expected to care for young children and babies on a 24-hour basis. Large nurseries were supervised and staffed by older residents with only minimal supervision by adults.

Emotional abuse

39. A disturbing element of the evidence before the Commission was the level of emotional abuse that disadvantaged, neglected and abandoned children were subjected to generally by religious and lay staff in institutions.

Witnesses spoke of being belittled and ridiculed on a daily basis. Humiliating practices such as underwear inspections and displaying soiled or wet sheets were conducted throughout the Industrial School system. Private matters such as bodily functions and personal hygiene were used as opportunities for degradation and humiliation. Personal and family denigration was widespread, particularly in girls' schools. There was constant criticism and verbal abuse and children were told they were worthless. The pervasiveness of emotional abuse of children in care throughout the relevant period points to damaging cultural attitudes of many who taught in and operated these schools.

40. The system as managed by the Congregations made it difficult for individual religious who tried to respond to the emotional needs of the children in their care.

Witnesses from the religious Congregations described the conflict they experienced in fulfilling their religious vows, whilst at the same time providing care and affection to children. Authoritarian management in all schools meant that staff members were afraid to question the practices of managers and disciplinarians.

41. Witnessing abuse of co-residents, including seeing other children being beaten or hearing their cries, witnessing the humiliation of siblings and others and being forced to participate in beatings, had a powerful and distressing impact.

Many witnesses spoke of being constantly fearful or terrified, which impeded their emotional development and impacted on every aspect of their life in the institution. The psychological damage caused by these experiences continued into adulthood for many witnesses.

42. Separating siblings and restrictions on family contact were profoundly damaging for family relationships. Some children lost their sense of identity and kinship, which was never recovered.

Sending children to isolated locations increased the sense of loss and made it almost impossible for family contact to be maintained. Management did not recognise the rights of children to have contact with family members and failed to acknowledge the value of family relationships.

43. The Confidential Committee heard evidence in relation to 161 settings other than Industrial and Reformatory Schools, including primary and second-level schools, Children's Homes, foster care, hospitals and services for children with special needs, hostels, and other residential settings. The majority of witnesses reported abuse and neglect, in some instances up to the year 2000. Many common features emerged about failures of care and protection of children in all of these institutions and services.

Witnesses reported severe physical abuse in primary schools, foster care, Children's Homes and other residential settings where those responsible neglected their duty of care to children.

The predatory nature of sexual abuse including the selection and grooming of socially disadvantaged and vulnerable children was a feature of the witness reports in relation to special needs services, Children's homes, hospitals and primary and second-level schools. Children with impairments of sight, hearing and learning were particularly vulnerable to sexual abuse.

Witnesses reported neglect of their education, health and aftercare in all residential settings and foster care. No priority was given to the special care needs of children who were placed away from their families.

Children in isolated foster care placements were abused in the absence of supervision by external authorities. They were placed with foster parents who had no training, support or supervision. The suitability of those selected as foster parents was repeatedly questioned by witnesses who were physically and sexually abused.

Many witnesses described losing their sense of family and identity when placed in out-of-home care, they reported that separation from siblings and deprivation of family contact was abusive and contributed to difficulties reintegrating with their family of origin when they left care. Witnesses reported emotional abuse in institutions, foster care and schools when they were deprived of affection, secure relationships and were exposed to personal denigration, fear and threats of harm.

When witnesses left care the failure to provide them with personal and family records contributed to disadvantage in later life. Many witnesses spent years searching for information to establish their identity.

The failure of authorities to inspect and supervise the care provided to children in hospitals and special needs services was noted as contributing to abuse which occurred in those facilities. When opportunities were provided for children to disclose abuse they did so.

Witnesses reported that the power of the abuser, the culture of secrecy, isolation and the fear of physical punishment inhibited them in disclosing abuse.

Recommendations (Summarised)

A memorial should be erected.

The following words of should be inscribed on a memorial to victims of abuse in institutions as a permanent public acknowledgement of their experiences. "On behalf of the State and of all citizens of the State, the Government wishes to make a sincere and long overdue apology to the

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victims of childhood abuse for our collective failure to intervene, to detect their pain, to come to their rescue."

The lessons of the past should be learned.

It is important for the State to admit that abuse of children occurred because of failures of systems and policy, of management and administration, as well as of senior personnel concerned with Industrial and Reformatory Schools.

The Congregations need to examine how their ideals became debased by systemic abuse, and how they came to tolerate breaches of their own rules when sexual and physical abuse was discovered. They must examine their attitude to neglect and emotional abuse and, more generally, how the interests of the institutions and Congregations came to be placed ahead those of the children who were in their care.

Counselling and educational services should be available.

Counselling and mental health services have a significant role in alleviating the effects of childhood abuse and its legacy on following generations.

Family tracing services should be continued.

Family tracing services to assist individuals who were deprived of their family identities in the process of being placed in care should be continued. The right of access to personal documents and information must be recognised and afforded to ex-residents of institutions.

National childcare policy should be clearly articulated and reviewed on a regular basis.

It is essential that the aims and objectives of national childcare policy and planning are stated as clearly and simply as possible.

A method of evaluating the extent to which services meet the aims and objectives of the national childcare policy should be devised.

Evaluating the success or failure of childcare services in the context of a clearly articulated national childcare policy will ensure that the evolving needs of children will remain the focus of service providers.

The provision of childcare services should be reviewed on a regular basis.

Care services should be reviewed on a regular basis with reference to best international practice and evidence-based research by the Department of Health and Children and should be co-ordinated to ensure that consistent standards are maintained nationally.

It is important that rules and regulations be enforced, breaches reported and sanctions applied.

The failures that occurred cannot be explained by the absence of rules or any difficulty in interpreting what they meant. The problem lay in the implementation of the regulatory framework. The rules were ignored and treated as though they set some aspirational and unachievable standard that had no application to the particular circumstances of running the institution.

A culture of respecting and implementing rules and regulations and of observing codes of conduct should be developed.

Managers and those supervising and inspecting the services must ensure regularly that standards are observed.

Independent inspections are essential.

All services for children should be subject to regular inspections in respect of all aspects of their care.

Management at all levels should be accountable for the quality of services and care.

Performance should be assessed by the quality of care delivered.

Children in care should be able to communicate concerns without fear.

The Department of Health and Children must examine international best practice to establish the most appropriate method of giving effect to this recommendation.

Childcare services depend on good communication.

Every childcare facility depends for its efficient functioning on good communication between all the departments and agencies responsible. It requires more than meetings and case conferences. It should involve professionals and others communicating concerns and suspicions so that they can act in the best interests of the child.

Children in care need a consistent care figure.

Children in care should have a consistent professional figure with overall responsibility. The supervising social worker should have a detailed care plan the implementation of which should be regularly reviewed, and there should be the power to direct that changes be made to ensure standards are met. The child, and where possible the family, should be involved in developing and reviewing the care plan.

Children who have been in State care should have access to support services.

Aftercare services should be provided to give young adults a support structure they can rely on. In a similar way to families, childcare services should continue contact with young people after they have left care as minors.

Children who have been in childcare facilities are in a good position to identify failings and deficiencies in the system, and should be consulted.

Continued contact makes it possible to evaluate whether the needs of children are being met and to identify positive and negative aspects of experience of care.

Children in care should not, save in exceptional circumstances, be cut off from their families.

Priority should be given to supporting ongoing contact with family members for the benefit of the child.

The full personal records of children in care must be maintained.

Reports, files and records essential to validate the child's identity and their social, family and educational history must be retained. These records need to be kept secure and up to date. Details should be kept of all children who go missing from care. The privacy of such records must be respected.

Children First

The National Guidelines for the Protection and Welfare of Children should be uniformly and consistently implemented throughout the State.