

Select Committee Shocked by the Treatment of Accused Staff

The Chairman of the Children, Schools and Families Parliamentary Select Committee warned, in a report published 16th July, that the principle of 'innocent until proven guilty' is at risk unless urgent changes are made to the way schools, local authorities and the Government deal with allegations against school staff.

In a well argued and balanced report Barrie Sheerman MP said that, "Headteachers are still too quick to suspend staff when an allegation is made and there is too much pressure on headteachers to refer cases unnecessarily to local authorities. Allegations should be dealt with speedily, effectively and justly, at minimum cost personally and financially to those involved".

"Headteachers must have more discretion in handling allegations of misconduct and the Department for Children, Schools and Families (DCSF) should provide clearer guidance to help identify when headteachers can justifiably handle complaints internally.

Barring suspended staff from social contact with colleagues is inhumane and unjust. The Committee is shocked that DCSF condones such action by employers".

The report says:

- Investigations must be truly independent and objective.
- Powers of arrest should be used sensitively and judiciously.
- Better data and more systematic reviews of complaints must be compiled by the DCSF to determine the cost of allegations and justification of any sanctions.
- Arguments for and against a statutory right of anonymity for those accused should be re-examined.
- Evidence-based decisions to delete unfounded allegations from personnel records should be taken by the Independent Safeguarding Authority (ISA).
- Terminology used in records of allegations must not unfairly indicate a suspicion of guilt.

- The ISA should assess all proposed disclosures of 'soft', non-conviction information.

The Chairman of the Committee, Barry Sheerman MP, said: "There is a fine balance to be struck between safeguarding the rights of children, and the rights of those who work with children. Allegations proven to be true must be punished. But the vast majority of complaints made against school staff have little or no foundation.

"My Committee heard shocking evidence about the treatment of accused staff and the devastating impact unfounded allegations of misconduct can have on those involved, which can ruin careers and can come at a significant physical, mental and financial cost. I urge the Government to take immediate action to ensure people's lives are not ruined by a failure to deal appropriately, sensitively, and quickly with complaints when they are made."

A F.A.C.T. spokesman said they welcomed publication of the report and in particular the Committee's emphasis that those accused are entitled to be treated fairly, and that in the prevailing climate there is a reversal of natural justice in that they are considered to be guilty until they prove themselves innocent.

We also welcome the Committee's views on the need for more independence in investigative practice and in deciding cases, however we do not agree with their suggestion that outsourcing investigations to 'independent bodies' is the answer.

Whilst there is much in the report to be commended F.A.C.T. would have wished the Committee to have given a stronger lead on the need for anonymity and the need to ensure all investigations are evidence driven rather than belief driven.

We very much hope the Government will respond positively to the committee's report.

House of Commons: Children Schools and Families Committee. Allegations Against School Staff: Fifth report of Session 2008-09 HC 695

Have you thought about sponsoring an edition of FACTION?

Falsely Accused Carers and Teachers

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

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FACTION

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

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

The editorial team reserve the right to edit any article or letter sent for publication.

All submissions must be accompanied by your name and address which, on request, will be withheld from publication.

The views contained in FACTION do not necessarily represent those of F.A.C.T., or its national committee.

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

Editorial

I very much thought I had written my last Editorial for FACTION but with the AGM and Conference looming we thought it might be appreciated if we got out the September edition earlier rather than later. It's not often we are ahead of ourselves!

Things are always very busy in September so we wanted to avoid any slippage at that time. Our next edition will come out in early October and then another in December.

As you will see from this edition The AGM will soon be upon us. I do ask all of you who can, to come to the meeting and to have your say.

We would also like to see you at the Conference and are delighted Claire Curtis Thomas MP will be joining us. I know the national committee are very keen to use the conference not just to look back on the past decade but also forward to the next.

Some of you I know are a little worried that inevitable changes of personnel might set back FACT a bit but I can assure you that the Committee are totally committed to FACT growing in the years ahead. I would not have ended my tenure as Chairman if I did not think this was the case. Inevitably there will be some changes, just as there has been in years gone by but I am sure FACT's core values will remain the same.

On a personal note I would ask you to show your support to the Committee. They work incredibly hard on your behalf. If you have not been to a FACT conference before and have been grateful for its existence of FACT you would be very welcome to attend the AGM and the conference. There's no charge and you can bring a friend!

I look forward to meeting you on the day. With my very best wishes and thanks for all your support

Gail

Stop press

We have just heard that one of our members who was accused of serious sexual abuse had his case thrown out after the prosecution finished their case when the judge ruled there had been an abuse of process and there was no case to answer.

Disciplinary Watchdog Comes Under Fire: Cost of Disciplinary Hearings Excessive

A teacher's watchdog has come under fire after it was revealed that it costs an average of £17,400 to hold a disciplinary hearing in Wales.

This makes it more expensive for the General Teaching Council for Wales (GTCW) to discipline a teacher than for bodies in other parts of the UK.

The National Union of Teachers (NUT) said the figure was "extortionate", but the GTCW said hearings were important and could determine a teacher's future.

The National Union of Teachers (NUT) criticised the GTCW for holding many hearings in some of Wales' most expensive hotels and refusing to employ its own in-house solicitors.

But the GTCW said they needed to be held in suitable venues with the appropriate legal and professional staff.

Cardiff's Park Hotel, and the city's Holland House are just two of the venues which have been used by the Council.

The General Teaching Council for England said the average cost of a case is £9,118, in Scotland the figure is between £5,000 and £13,000. Northern Ireland is in the process of establishing its own watchdog.

The NUT's leader in Wales, David Evans, said: "Any hearing that's costing between £17,400 and 18,000 for what is invariably a one day hearing is unacceptable."

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Chris Saltrese Solicitors

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Chris Saltrese Solicitors is a law firm providing a premium service in representing clients accused of sexual offences and domestic violence, in criminal proceedings.

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

We particularly welcome carers, teachers, and health care professionals who have been accused of abuse and are likely to be subject to a criminal investigation.

Where allegations have been made we would be happy to advise, whether or not criminal investigations are underway.

For further information please contact

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Phone: 01704 535 512

Quarriers

One of Scotland's biggest charities which cares for vulnerable children has threatened its 2,000 staff with redundancy, according to a trade union.

Unison claimed that Quarriers had told workers they would be dismissed and re-hired on new contracts if they did not agree to pay changes.

The charity had been negotiating with unions about changes to staff conditions since May.

Quarriers said contracts would only be terminated as a "last resort".

Unison said the redundancy threat was issued in a letter on Friday.

The union said the charity's management wanted to cut staff night shift payments and payments for public holidays.

"Our members work very hard for the charity and provide an excellent service to some of the most vulnerable in society."

It also claimed Quarriers had proposed cutting sick pay by a quarter for any worker with less than five years service.

The charity has more than one hundred projects across Scotland and provides residential accommodation for vulnerable children and young people and adults with disabilities.

Note: Quarriers has recently been subject to a number of compensation claims arising from historical allegations - see letters page.

John Pinnington - CRB's

For those who missed it, John Pinnington recently appeared on the George Galloway programme (Talk Sport Radio) discussing CRB's. It's been a busy few weeks for John. He also spent an hour on the Fourth Plinth in Trafalgar Square.

Now there's an idea - there are still vacancies !

Allegations Against School Staff

On the 18th May of this year the Children, Schools and Families Parliamentary Select Committee began an inquiry into allegations against teachers and school staff. Evidence was submitted by various organisations and individuals. Eight organisations were selected to give oral evidence. These were; NAS/UWT, NUT, NAHT, ASCL (Association of School and College Leaders) Paul Kaufman (Solicitor) TSN (Teachers Support Network), The National Governors Association, the Local Government Association and F.A.C.T.

The Select Committee's Report was published on the 29th July.

F.A.C.T.'s written submission was nine pages of close print and was augmented by a further two pages of verbal presentation. We were congratulated upon the quality of our evidence and the fine detail which we were able to bring to the attentions of the members present.

To summarise, our submission drew attention to:

- 1) issues relating to school staff (teaching and otherwise) from the perspective of F.A.C.T., to whom they frequently turn for advice.
- 2) the increasing number of school related referrals we receive.
- 3) the need for detailed research into the scale and nature of allegations.
- 4) the fact that disciplinary hearings were 'belief' driven rather than 'evidence' driven.
- 5) the need for improvement in the training of investigating officers.

We also expressed our scepticism about the suggestion that no record should be entered on a staff personnel file, partly due to the extreme difficulty in defining 'false'

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Legal representation permissible in disciplinary hearings

The High Court recently ruled that, in certain circumstances, an employee should have the right to be represented by a lawyer at an internal disciplinary hearing. Previously, only a co-worker or union official had been permitted to accompany an employee into hearings.

In the case of R v The Governors of X School, disciplinary action for breach of trust was taken against a music teacher after it was alleged that he had behaved inappropriately with a 15 year old student. The school had a duty to notify the Secretary of State for Children, Schools and Families of the result of the hearing. They then decide whether or not the employee will be added to a register of people not fit to work with children.

The employee requested that his lawyer represent him at the disciplinary hearing, but this request was refused.

The teacher claimed that by not allowing his lawyer to attend the hearing the school breached Article 6 of the European Convention of Human Rights (ECHR) by not giving him a fair trial, and requested a judicial review by the Court.

The Court determined that due to the seriousness of the allegations made against the teacher and the fact that the decision of the school could have wide-ranging and severe consequences for the teacher's personal life and career, he should be entitled to "an enhanced measure of procedural protection", and that he should have been granted legal representation at the original hearing and the appeal.

In a matter of such importance, the Court ruled that the teacher could not reasonably be expected to represent himself, and that the assistance of a Trade Union official or a colleague was not sufficient to ensure that the disciplinary hearing was conducted fairly. Although the teacher did have the right to claim for unfair dismissal, this was not an adequate alternative remedy.

An employee of a school facing a disciplinary committee for allegations of sexual misconduct was entitled to an enhanced measure of procedural protection afforded by article 6.1 of the European Convention on Human Rights, guaranteeing the right to a fair hearing, which included the right to legal representation at the disciplinary hearing.

Mr Stephen Morris, QC, sitting as a Deputy Judge in the Queen's Bench Division, so held when allowing a claim for a judicial review by the claimant, G, of decisions made by his employer, X School, on February 20, 2008, and May 6, 2008, refusing to allow him legal representation: both at his disciplinary hearing before a panel of the school's governors and at the later hearing of his pending appeal against the decision to dismiss him from his employment at the school.

The Judge made an order that nothing was to be published which might identify the claimant, the school or the local authority. G was employed as a music assistant at X School. As a result of alleged acts of abuse of trust with a boy aged 15 disciplinary procedures were instigated against him.

The claimant was summarily dismissed from his employment with the school and the disciplinary committee referred the matter to the Secretary of State for Children, Schools and Families, who had the power to make a direction under section 142 of the Education Act 2002 to prohibit a person from working with children in educational establishments.

At his disciplinary hearing and at the later hearing concerning his appeal against his dismissal, the claimant requested that his solicitor represent him.

The school refused permission on both occasions, stating that an employee could be represented by a colleague or trade union representative but that no other person would be permitted to attend the hearing.

The claimant sought a judicial review of those decisions on the grounds that the proceedings before the disciplinary committee and the appeal committee, including the referral to the Secretary of State, which could thereafter lead to the

making of a section 142 direction, constituted a single procedure for the purpose of article 6.1 of the Convention.

By virtue of the seriousness of the conduct alleged and the severity of the consequences of a section 142 direction, the claimant was entitled to the procedural protection provided specifically for criminal proceedings in article 6.3(c) and (d), which included the right to defend himself through legal assistance.

Alternatively, the claimant contended that the proceedings nevertheless involved a determination of his civil rights and obligations under article 6.1, so that legal representation was required as a commensurate measure of procedural protection.

The court ruled that there could be no distinction drawn between the dismissal from employment and a referral to the Secretary of State. They stated:

A referral to the Secretary of State was a natural and likely outcome of such a disciplinary procedure and certainly at the outset of disciplinary proceedings involving allegations of sexual misconduct, the outcome of such a referral and the consequent section 142 procedure was inevitable in the event that the allegations were proved.

The disciplinary proceedings and referral therefore formed part of one and the same proceedings for the purposes of article 6 of the Convention.

Disciplinary proceedings leading to a section 142 direction did not amount to a criminal offence for the purposes of article 6.3 and the protection it offered.

However, the claimant was entitled, by reason of his right under article 6.1, to a fair hearing in a civil matter.

Given the seriousness of the nature of the allegations and the consequences of a section 142 direction, the claimant could not fairly be expected to represent himself at the disciplinary and appeal committee hearings.

Being accompanied by a colleague or trade union representative was insufficient. The claimant was entitled to a commensurately enhanced measure of procedural protection under article 6.1, which meant entitlement to legal representation at the disciplinary and appeal committee hearings.

It was stressed by the Court that this decision would not have far-reaching implications - the decision was very much dictated by the facts of the particular case, and the use of the ECHR was only possible because the employer was a public authority.

Queen's Bench Division, Published April 24, 2009, Regina (G) v Governors of X School, Before Mr Stephen Morris, QC, Judgment March 18, 2009 Solicitors: Keith Levin & Co, Liverpool; Solicitor, Y City Council.

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from page 4, col 1

in respect to allegations, and partly because police forces now routinely record the fact that an allegation of abuse has been made against a teacher on enhanced certificates issued by the CRB.

Our final point was that the morale of the teaching and caring professions would not improve unless and until there was a 'root and branch' reform of the CRB and investigatory procedures.

F.A.C.T. also submitted further written evidence regarding the widespread practice of denying the accused legal representation during disciplinary hearings. (Note that this very point exercised the minds of the High Court later the same week, when a judgement made it clear that this exclusion was unacceptable and unlawful under section 8 of the European Convention of Human Rights.)

Other Contributions

The NAS/UWT also submitted a lengthy paper and statistical summary which showed the consistent rise in the numbers of allegations during the previous decade, the number of investigations which found their way to the Courts, and the number of convictions and or cautions. Basically the total number of allegations to April 2009 was 2741. No further action was taken in 2347 cases; 314 cases went to Court; no further action was taken in 169 cases; 136 received a caution or were convicted; 89 cases were outstanding.

You will not need me to point out that the percentage of guilty individuals is extremely small.

The NSPCC submitted written (but not oral) evidence, most of it at variance with the professional associations who represent those who have day to day involvement with children. Their opening statement read, "The NSPCC argue

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that extending anonymity to the point of conviction could provide less protection for children and young people in schools". They produced a series of 'figures' from Childline which claimed that there had been 68,758 calls which included 1,491 reports of inappropriate conduct on the part of teachers, (approximately 2%). Their report then went on to state that some of these calls may have been repeats – and or calls that did not appear to be genuine.

The NSPCC were also opposed to the use of the word 'false' in respect of allegations, and recommended the use of the terms 'unfounded', 'unsubstantiated' or 'malicious'.

Apart from the NSPCC submission the majority of those giving evidence took a somewhat similar viewpoint to that which F.A.C.T. had taken.

There were of course subtle differences, and perhaps slightly different emphases on some of the points which were made.

Committee's Findings

Having received evidence and having listened to the oral evidence the Select Committee stated "We believe that school staff subject to allegations should be treated according to acknowledged principles of justice and that a person accused of wrongdoing should be seen as innocent until proven guilty".

They made twenty seven recommendations ranging from the necessity for a speedy conclusion to properly conducted investigations, to anonymity for those subject to allegations. They stated that investigations should not only be concerned with assembling a case against the member of staff concerned but look at the whole circumstances of any case. The term 'unsubstantiated allegation' carries with it the whiff of guilt and should be discontinued unless there is no other suitable phrase.

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YOUR LETTERS

Dear FACT

With regards to the information on your web site [which we have also referred to on page3 of this FACTion. Quarriers have recently been subject to a number of compensation claims arising from historical allegations of abuse. I just wish to clarify that a number of compensation claims made against the Quarriers organisation have arisen out of the fact that 8-ex-employees have been found guilty of abusing children in the organisation's past care in the Scottish Courts. Many of these abuse cases have been upheld in the Scottish Appeals court.

These particular compensation claims are not based on allegations but on proven claims of abuse. To-date Quarriers have simply blocked and continue to deny all claims including those where abuse was upheld in the Scottish courts. To-date only one individual received compensation of £10,000 and this was subject to a confidentiality clause and restrictions. Children in care have every right to exercise fully their "Rights" as they see fit including in respect of compensation claims or any other such claims where abuse has been proven beyond reasonable doubt including taking into considerations the safe guards in Scottish Law to protect against false accusations.

Under a legal precedent called the Moorov doctrine, at least two separate but similar crimes must be proved in Scotland, if the only witness is the accuser. As a measure to protect the fairness of trials, a further safeguard, in Scotland is provided by the need to show corroboration i.e. evidence from at least two sources that the alleged offence has been committed, and that it was the accused who committed the said offence.

Regards

David Whelan

FBGA (Former Boys and Girls Abused in Quarriers Homes)

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

"We need to look at where these costs are coming from, what is the cost of the legal advisors, the professional advisors who are presenting the case on behalf of the GTCW and whether or not there is a better, cheaper alternative, and of course venue hire is a significant cost."

The GTCW has rejected claims that its hearings are too costly and in some cases unnecessary.

Mal Davies, a Cardiff head teacher and chair of the GTCW, says the costs compare favourably with the rest of the UK.

"These are important decisions that are being made. It is about the livelihood of a teacher and they need to be done with due care, and of course the decisions that are made are challengeable in the High Court so we need to get them right - and indeed we have got them right."

He also denies claims by the NUT that the hearings could be held in more cost-effective surroundings than city hotels.

"I think the unions would be very concerned if we were treating their members so poorly on such an important occasion - a couple of rooms in county hall just wouldn't do.

"We need to have a room for the hearing, we need for witnesses to be kept separate from and the other

"There's a public rooms for the legal advice and everywhere. We important be treated in a

Recently the Government

the registration fee paid to the GTCW - in part to reflect what was described as "the significant increase in the number of disciplinary cases that the council considers".

The GTCW has the power to suspend or even remove teachers from the register - effectively ending their careers.

It says with 38,000 registered teachers in Wales the number of disciplinary hearings is very small - 0.08% are referred to the watchdog.

Local authorities, the police, parents and schools are referring cases to the GTCW. They carry out an investigation before a decision is made to go to a full disciplinary hearing.

However, the NUT says it could save money by cutting the number of hearings and employing their own in-house legal team - rather than using the services of external lawyers.

Mr Davies said: "The NUT has a different stance about how we get legal advice. We believe it's the most cost-effective way of doing it, they believe we could employ a solicitor."

"It's been confirmed to us that the cost of a solicitor to us - they are talking about a very junior solicitor who would not manage the level of seriousness and importance of these cases.

"We believe we are conducting these appropriately in the best interest of the public and we have to keep that in mind."

This attack by one of the country's biggest teaching unions comes after the NASUWT union called for the GTCW to be scrapped and merged with the English watchdog.

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Welsh Assembly agreed to increase the

registration fee paid to the GTCW - in part to reflect what was described as "the significant increase in the number of disciplinary cases that the council considers".

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Recommendation number 24 was the most forceful in that it states; "We believe that the Independent Safeguarding Authority should take responsibility for deciding whether allegations recorded in a personnel file of a member of school staff should be retained or expunged". The final recommendation, is most interesting in that it reads; "We question whether an employer should have the right to reject an applicant or appointee simply on the basis of unproven and quite possibly unfounded 'soft' information supplied by chief officers for Enhanced Disclosure CRB checks. The Government should examine this practice and either justify permitting it or take steps to prevent it".

We await The Government's response with interest.

George Jensen.

Ed. Note. We are grateful to George for this contribution especially as printing deadlines meant that he had very little time to compile it. For these reasons the article is shorter than it might otherwise have been. We urge you to read the report in full and would welcome your views on its contents.

HELP-LINE

Due to the high volume of calls we are looking for ways to ease the pressure on the Secretary. A number of suggestions are currently being considered and it is likely that in the interim we will operate a reduced service from September. We urgently need a volunteers who would be willing to man the help-line for a session or two each week - normally 3 hours morning or evenings. Some experience of being accused or knowledge of investigative practice would be an advantage.

Access to your own phone is essential, and preferably access to email. Help and support will be provided.

If you are interested please contact the secretary a.s.a.p.

F.A.C.T. CONFERENCE AND OFFICIAL NOTICE OF AGM

The F.A.C.T. AGM will take place at St. Chad's Meeting Rooms (behind the RC Cathedral) on Saturday 5th September Commencing 11:00 am. The meeting is expected to last no longer than one hour and will be followed by lunch and the F.A.C.T. Autumn Conference at which Claire Curtis Thomas has kindly agreed to be the keynote speaker.

This year the conference will be a celebration of F.A.C.T.'s tenth anniversary and will take a different form to our normal conferences.

If you have had reason to be grateful for F.A.C.T.'s existence this is your opportunity to show your thanks and to support our on-going campaign.

If you have not previously been to a F.A.C.T. conference we will be particularly delighted to see you.

AGM AGENDA

1. Welcome
2. Apologies
3. Minutes of AGM 2008
4. Approval of Minutes
5. Chairman's Report
6. Adoption of Chairman's Report
7. Secretary's Report
8. Adoption of Secretary's Report
9. Treasurers Report
10. Adoption of Treasurer's Report
11. Resolutions
12. Election of officers (Chairman and Committee Member(s))

If you would like to put a resolution before the conference or propose someone for the vacant position of Chairman or Committee member you must send them to PO Box 3074 Cardiff, CF3 3WZ to arrive no later than mid-day on Friday 28th August.

Please make sure the resolution/nominations are signed by yourself and a seconder.

Please contact the secretary or any other committee member for further details.

Appeal Court Rules Not All Harm is Significant

In a judgement that will be of particular interest to carers and teachers (and others) accused of physical abuse, the Appeal Court has clarified where the dividing line between harm, and significant harm is established. The ruling could also have a wide-ranging impact on local authorities and families.

Judges in the case of a girl who was kicked and slapped by her parents have drawn a line at which disciplining children becomes physical abuse.

The couple's three children had been placed with foster parents and care proceedings begun by Swansea council.

A High Court Judge in Cardiff earlier dismissed the care proceedings.

The Appeal Court has upheld that ruling and the children will be going home. Swansea council said it had to examine the judgement fully before commenting.

The hearing related to two homosexual parents, a "wealthy well-educated" father and his wife trapped in a loveless marriage.

They have conceived three natural children - all still very young - despite only ever having had sex on a single occasion, and thereafter used artificial insemination.

They said their marriage was merely "a product of cultural and family expectations," the Civil Appeal Court in London heard.

Lord Justice Ward

The parents first came to the attention of social services when it was discovered they had subjected a young girl, who was in their care but not one of their own children, to what a judge described as "shocking treatment".

That included regular beatings and threats that a savage dog would be set upon her if she did not behave herself.

The girl was taken into care last year and the situation between the parents and their own children was closely scrutinised.

The children were placed with foster parents after their natural daughter, known as "M", said she had been kicked and slapped by both her parents.

However, in the at the family division of Cardiff, Mr Justice that the statutory a care order in relation been crossed.

In his view they had not harm", he said. It could more than a handful of isolated minor acts of chastisement forgotten as soon as administered

"... this court has had to consider where the dividing line between harm, and significant harm, is established ..."

judgement delivered the High Court in Roderick Wood found "threshold" for making to the children had not

suffered "significant equally amount to no

The children's court-appointed guardian challenged that finding at the Appeal Court in London on Friday.

Solicitor-advocate, Graham Jones, argued that it was "irrational" of the judge at Cardiff not to order that all the children be taken into care.

But the Appeal Court's ruling, which is likely to have a wide-ranging impact for local authorities and families alike, means the children, who were kept away from their parents pending the ruling, will now be returning home.

'Dividing Line'

Giving his judgement on the case, Lord Justice Ward said: "This is, as I understand it, the first time this court has had to consider where the dividing line between harm, and significant harm, is established.

"I readily understand that the words of the judgement [from the family court] record a catalogue of findings capable of causing any social services department concern.

"On an unspecified occasion, or occasions, "M" was slapped on her hand by her parents, she was slapped on her face by her mother, kicked by her father, kicked by her mother, hit on the side of her face by her father, hit to the right hand side of her face, kicked and pushed by her father.

"It sounds terrible. It could speak of a persistent campaign of abuse causing real suffering."

The judge added: "Yes, it amounts to ill treatment, and therefore to harm.

"Yet, despite intensive outside intervention in this family's life, no one ever saw a mark on that little girl and the stark fact is that she appeared to be well nourished, well cared for and with close attachments to her parents.

"The judge heard this case for six days. He is highly experienced in this class of case. The nuances would set his antennae reverberating.

"In my judgement he was fully entitled to come to the conclusion that he did. I am inclined to think that I well have come to the same conclusion myself."

Lady Justice Hallett agreed, saying: "Reasonable physical chastisement of children by parents is not yet unlawful in this country."

Lord Justice Wilson gave a dissenting judgment, saying that he would have allowed the guardian's appeal, but was out-voted by the other judges.

A spokesman for Swansea Council said: "We need to consider the ruling in full before making a comment."

Acknowledgement: BBC Wales

Has Your Mail Been Answered ?

We have recently discovered that the Post Office in Newport have been retaining mail which they were required to send on to us. As a result we received a number of items, some of which were sent to us several weeks ago. If you have sent mail to the Newport box number and have not had a reply can you please contact us. We apologise to anyone affected by this.

McSparran McCormick

McSparran McCormick is a family firm of solicitors based in Glasgow with a well deserved reputation for its advocacy, and for its friendly, efficient and professional service.

We firmly believe that everyone has a right to justice.

We specialise in educational law, employment law, civil litigation and criminal law.

If you have been falsely or wrongly accused then contact:

John McCormick, Solicitor Advocate

McSparran McCormick

Waterloo Chambers, 19 Waterloo Street, Glasgow, G2 6AH

Tel: 0141 248 7962

Email: mail@mcsparranmccormick.co.uk Website: www.mcsparranmccormick.co.uk

When choosing any Solicitor, always make that decision in the light of the reputation of the Solicitor, his experience and qualifications.

News From Jersey

Following allegations of historic systematic abuse at a former care home in Jersey, an investigation involving allegations over a 40-year period, the Attorney General for Jersey recently published a statement on why it was decided not to prosecute certain individuals.

The importance of the evidential test

The Attorney General for Jersey highlights the importance of applying the evidential test in the decision that no charges will be brought in respect of either of the two outstanding files in the Jersey Historic Abuse Investigation. In his statement dated 3rd June 2009 he said, "A decision not to prosecute is capable of being perceived as denying the complainant the right to be heard. Indeed, this can lead to a pressure to allow the complainant to have his or her day in Court. However to succumb to such pressure would mean that the prosecution was not applying the evidential test which is its function to apply. The Courts are entitled to know that they are not faced with prosecutions which even the prosecutor thinks will not succeed. The criminal justice system as a whole requires each part of that system – police, prosecutors and Courts – to fulfil its functions professionally and properly. To compromise the test to allow evidentially weak cases to proceed is not an exercise of the objective approach which is demanded of prosecutors by the Code on the Decision to Prosecute. It is not fair to anyone – the complainants, the accused, the witnesses or the public – to do otherwise than apply the evidential test professionally and objectively."

Corroboration by volume not found, nor similar fact substantiated

In discussing Case 5 the Attorney General explained,

Continued overleaf

"Nine complainants have made complaints against Mr. A, now a middle aged man who spent approximately five to six years as a junior trainee and then employee at Haut de la Garenne in the 1970s and 1980s. The complaints relate to incidents which are alleged to have taken place between 20 and 30 years ago. Four of them contained allegations of different types of sexual offending, some of it of the most serious nature; all but two were alleged to have taken place at Haut de la Garenne.

The police have conducted a very thorough and detailed investigation tracing and interviewing all known witnesses before submitting the papers to the independent lawyers instructed by the Attorney General.

In none of the cases is the complaint corroborated by any independent evidence, and none of the complaints is sufficiently similar in nature to suggest that they might supply mutual corroboration.

In two cases, the employment records show that the complainants were not at Haut de la Garenne at the same time as Mr. A. In two of the cases, the makers of the statements were not those against whom the alleged crimes were committed, the alleged victims no longer being alive."

The papers were carefully evaluated by lawyers, a senior lawyer in the Law Officers' Department and by the Attorney General, none of whom considered the evidential test passed.

The report goes on to discuss the reinvestigation of Case 6 which was first considered and formally abandoned by the Crown in 1998.

The considerations for restarting a prosecution are covered in the Attorney General's statement at <http://www.thisisjersey.com>

The Attorney General admitted that the decision not to prosecute in these cases was a hard one but that taking into account the legal principles it was the right one.

We are grateful to BFMS for permission to publish this article which first appeared in their July Newsletter

SERVOCA Recruit Peter Ackerley

News has reached us that Peter Ackerley, QPM formerly Detective Chief Superintendent of North Wales Police and lead officer in the North Wales Police Inquiry into alleged abuse at North Wales children's homes is now working as a child protection risk assessor. We understand he is working for SERVOCA who are an AIM listed provider of specialist outsourced solutions to police forces, local and national government, law firms and companies throughout the private sector. They provide help and expertise by supporting organisations in their day-to-day activities by providing specialist expertise to manage investigations, supporting law enforcement projects and assisting in areas of organisational risk. They also provide training to the police service, local and national government and the private sector, assisting in the development of the competencies and skills of their staff.

A significant part carry out for police forces, law firms, local enforcement stiff opposition,

" ... (the) team comprises twenty experienced investigators all of whom are retired detectives ... "

contract to be the lead agency in carrying out the independent investigations into alleged child abuse in Wales. The investigation team is headed by the former head of South Wales Police CID and his team comprises twenty experienced investigators, all of whom are retired detectives individually selected for their expertise, professionalism and sympathetic approach in this sensitive area.

SERVOCA has announced plans to expand into schools outside Wales and relies on an extensive database of former police officers and staff and other experts to undertake their work. "We provide a complete independent enquiry undertaken by experienced retired detectives which nicely pre-empt any police involvement and also satisfies the criterion that the matter has been professionally dealt with."

Crime Team

We specialise in all aspects of criminal defence work including Magistrates Courts, Crown Court Advocacy, High Court, including the Court of Appeal and referrals to the CCRC

We also advise UK wide on prison law including:-

- Prison Adjudications
- Sentence Planning
- Re-Categorisation
- Tariff Representation
- Lifer panels
- Human Rights Issues

We are the managing firm of the Historical Abuse Appeal Panel (HAAP) and have an unrivalled reputation for dealing with abuse allegations in a historical context, especially those where multiple or serious sexual offences are alleged to have taken place.

Crime-Team is a division of Jordans LLP

4 Priory Place, Doncaster, DN1 1BP

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AGM 2009

I hereby give notice that the F.A.C.T. AGM will take place on **Saturday 5th September at the St. Chad's R.C. Cathedral Meeting Room, Shadwell Street, Birmingham B4 6HH.**

The meeting will commence at 11:00am. Tea/Coffee will be available from 10:30am.

The purpose of the AGM will be to receive reports from the Chairman, Secretary and Treasurer, and to discuss any resolutions which have been submitted in advance of the meeting. These must be sent to the Secretary to arrive no later than mid-day on **Friday 28th August 2009.**

The AGM is expected to finish at mid-day and will be followed by our conference which this year will be a celebration of F.A.C.T.'s tenth anniversary. Lunch will be provided at 12:30 pm.

National Secretary 10th August 2009

CHAIRMAN:

Proposer

I am a member of F.A.C.T. and I wish to nominate _____ for the position of **Chairman.** My nominee has confirmed they are a F.A.C.T. member and has agreed to their name going forward.

Signed _____ NAME _____ Date _____

Seconder

I am a member of F.A.C.T. and I wish to second _____ for the position of **Chairman.**

Signed _____ NAME _____ Date _____

Committee Member: (Currently there are no vacancies for Committee members. However if an existing committee member is appointed to the vacant position of Chairman a vacancy will be immediately created in the post they currently hold. Nominations are therefore requested in the event that this happens.

Proposer

I am a member of F.A.C.T. and I wish to nominate _____ for the position of **committee member.** My nominee has confirmed they are a FACT member and has agreed to their name going forward.

Signed _____ NAME _____ Date _____

Seconder

I am a member of F.A.C.T. and I wish to second _____ for the position of **committee member.**

Signed _____ NAME _____ Date _____

For resolution slips please turn over

Resolutions

I wish to submit the following resolution(s) for discussion at the AGM. (If you need advice regarding your resolution please contact the secretary)

Signed _____ Name _____ Date _____

I wish to second the above resolution for discussion at the AGM

Signed _____ Name _____ Date _____

Please note: To be valid resolutions can only be submitted by F.A.C.T. members and must be signed by a proposer and a seconder.

Please note:

- 1 Copies of these forms will be sent out to F.A.C.T. members in due course
- 2 THE AGM is open to F.A.C.T. members and F.A.C.T. supporters
- 3 Only existing F.A.C.T. members can vote at the AGM
- 4 Annual reports by the outgoing Chairman, the Secretary and Treasurer will be available at the AGM

MAP

