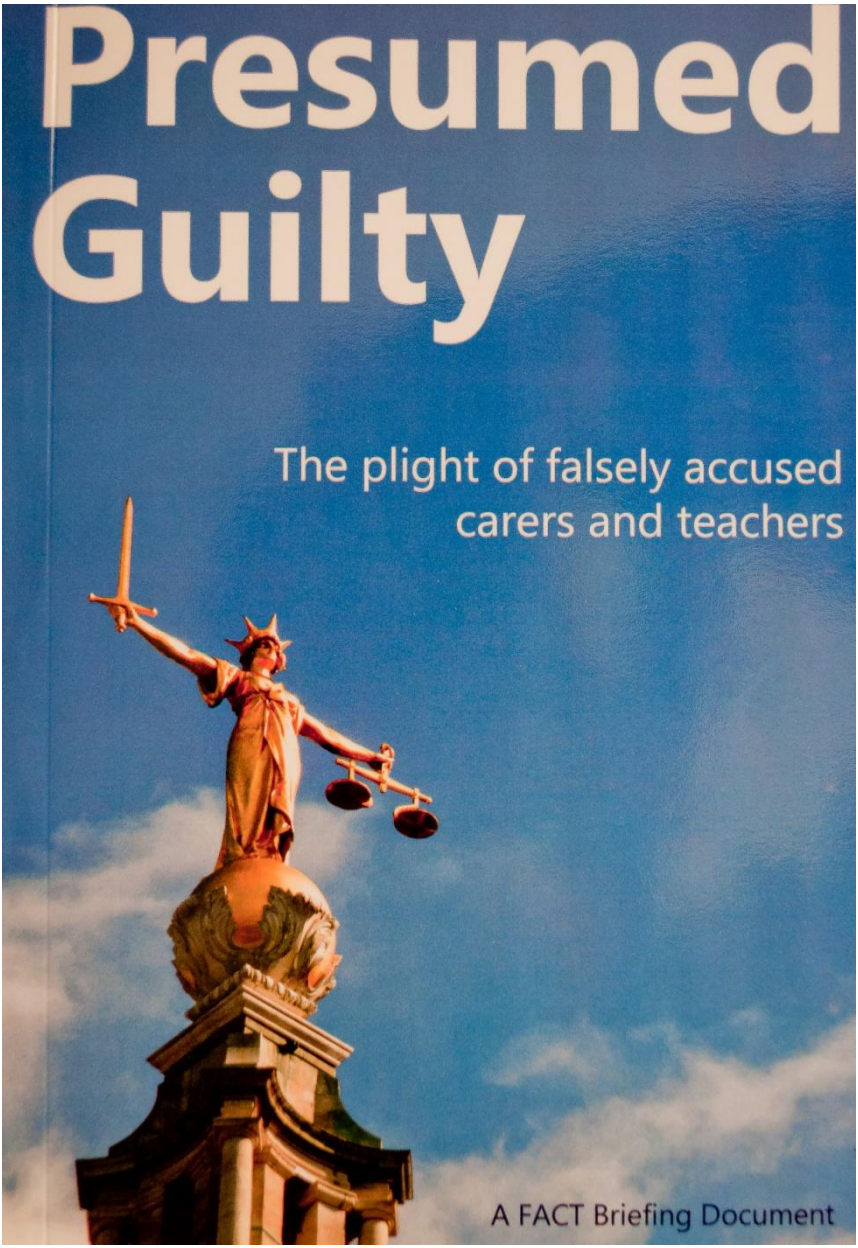
Presumed Guilty

The plight of falsely accused carers and teachers



A FACT Briefing Document

"It is better that ten guilty persons escape than one innocent suffer"

(Sir William Blackstone 1723 – 1780)

"It may be better that innocent people should serve life sentences than that the law should be seen to make gross errors"

(Lord Justice Denning 1899 – 1999)

"The convictions of dozens of men for child sex assaults years after the alleged offences may be unsafe"

(The Lord Chief Justice, Lord Wolfe
BBC Teletext 23rd November 2001)

Presumed Guilty

The plight of falsely accused and wrongly convicted carers and teachers

A FACT Briefing Paper
Published in Great Britain by F.A.C.T. (Falsely Accused Carers and Teachers)
Dedicated to all falsely accused carers and teachers and their families

Contents

Foreword i

Preface iii

Open letter to David Cameron, Prime Minister iv

Introduction 1

Executive Summary 4

Part 1: Investigative Practice

- The task of the police 7
- Case management and the ACPO guidelines 7
- The need to conduct objective inquiries 8
- Trawling and dip sampling 10
- Missing documentation 11
- Investigative malpractice 12
- Interviews with ex-residents: the risks 13

Part 2: The Justice System

- A breakdown of trust 15
- 'Striking similarities' and 'similar fact evidence' 16
- The Crown Prosecution Service 16
- The passage of time and the problem of recall 18
- Abuses of process 20
- Limitations of the appeal process 20
- Civil Courts and Tribunals 22

Part 3: Time for Change

- The case for reform 25
- Agenda for action 25

Acknowledgements 28

Appendix 30

Endnotes 35

Foreword

The Presumption of Innocence is commonly held to be the 'golden thread' that runs through the criminal justice system. It is enshrined in the Universal Declaration of Human Rights, the European Convention on Human Rights and is enacted domestically in the UK by the Human Rights Act (1998). It requires that the criminal justice system is biased in favour of presuming that suspects of crime or defendants in criminal trials did not commit the offence that they are accused of. It places the burden firmly on the State (Crown) to prove guilt beyond a reasonable doubt. This means that innocent people should be protected from being wrongly convicted even at the expense of guilty offenders escaping conviction for their crimes.

Contrary to this, this FACT Briefing Paper provides a compelling analysis of a working presumption of guilt by the police and the prosecutorial authorities in response to allegations of historic sexual and/or physical abuse in children's homes and residential schools many years ago. With incontrovertible and shocking evidence of cases of innocent carers and teachers who were falsely accused or wrongly convicted of criminal offences against children it presents a cogent challenge to the continued legitimacy of police investigatory methods and prosecution practices in the area of allegations of historical abuse: police and prosecution are shown to seek to obtain convictions rather than an objective pursuit of the truth and a just outcome for the accused, victims and society as a whole.

Lawyers of both persuasions in the adversarial contest are also implicated in the wrongful conviction of innocent carers and teachers. On the one hand, prosecution minded lawyers solicit false allegations by the lure of compensation and withhold evidence favourable to the defence so that they can win cases and get convictions. On the other, defence lawyers are depicted as not grasping the context of complaints, which contributes to ineffectual representation that seals the fate of teachers and carers who maintain innocence as inadequate defence is not generally accepted as grounds for appeal.

There is a well known children's adage, 'sticks and stones may break bones but names can never hurt'. This Briefing Paper illustrates how far this is from the truth when considering the devastation that a false allegation can cause. Lives are destroyed, careers are ruined and there is permanent and on-going social stigma and psychological trauma from the false label (name) 'child abuser' or 'paedophile'. This not only affects direct victims but extends also to their families, the communities in which the alleged offences were said to have occurred, and society as a whole in terms of suspicion and diminished trust in the care and educational systems.

Yet, the concerns presented here are not novel and have even been the subject of scrutiny by two previous Parliamentary committees. The shared consensus of the

2002 House of Commons Home Affairs Select Committee (HASC) and the 2008 Children, Schools and Families Select Committee (CSFSC) was that carers and teachers are vulnerable to false allegations, that a significant number have been victims of miscarriages of justice and that staff in schools, like anyone else accused of crime, should be treated according to acknowledged principles of justice and be seen as innocent until proven guilty.

However, despite the awareness raised by such Parliamentary interest, little has changed in practical terms and large numbers of those convicted of historic abuse continue to protest their innocence from their prison cells and many hundreds more claim that they have been falsely accused of offences that they did not commit. This calls for an urgent need for the issue of allegations against carers and teachers, particularly when allegations are historic, to be revisited afresh with a view to root and branch reforms that introduce evidential standards in line with other areas of criminal justice and which adhere to the letter and the spirit of the presumption of innocence.

Dr Michael Naughton

Biography

Dr Michael Naughton is a Senior Lecturer at the University of Bristol. He teaches undergraduates in the School of Law and the Department of Sociology in the general area of crime and society and postgraduates in the specific area of miscarriages of justice. He is the Founder and Director of the Innocence Network UK (INUK), an organisation to facilitate casework, research and communications in the area of wrongful convictions that has spawned 30 innocence projects in UK universities since September 2004. He is Founder and Director of the University of Bristol Innocence Project, the first innocence project in the UK, through which he directs investigations into cases of alleged wrongful imprisonment on a pro bono basis. He has written extensively on issues related to miscarriages of justice and the wrongful conviction of the innocent for academic journals and broadsheet newspapers. He is the author of Claims of Innocence: An introduction to wrongful convictions and how they might be challenged (University of Bristol, 2010; with Gabe Tan), Rethinking Miscarriages of Justice: Beyond the Tip of the Iceberg (Palgrave Macmillan, 2007) and the editor of Criminal Cases Review Commission: Hope for the Innocent? (Palgrave Macmillan, 2009).

Preface

This document describes the plight of many carers and teachers (and other professionals) who have been falsely accused of child abuse.

In 2002 these issues were examined by the House of Commons Home Affairs Select Committee (HASC), and in 2008 by the Children, Schools and Families Select Committee (CSFSC).

In July 2002 the H.A.S.C. published their report *The Conduct of Investigations into Past Cases of Abuse in Children's Homes (2002 HC 836).* It concluded *(page 40)* by saying:

We share the general view that a significant number of miscarriages of justice have occurred.

In 2008 the Children, Schools and Families Select Committee (CSFSC) revisited the subject in so far as it related to schools and published its report *Allegations Against School Staff* (2008 HC 836). In their introduction (page 3) they emphasise:

There is a risk of losing sight of the principle that school staff, like anyone else accused of wrongdoing, should be treated according to acknowledged principles of justice and should be seen as innocent until proven guilty. The aim should always be to deal with allegations speedily, effectively and justly, to minimise the cost and the impact upon those accused.

Whilst both of these reports have helped increase public awareness, the risk of justice miscarrying persists to this day, particularly for those convicted of offences said to have taken place many years ago.

There are still men and women in prison who maintain they are factually innocent of wrongdoing. More than two hundred have served long prison sentences and still wish to clear their name.

Hundreds more have been caught up in widespread police investigations and as a result have lost their professional reputation and personal standing.

Lives have been shattered, careers have been lost and families have been torn apart.

All they ask for is justice.

Open letter to David Cameron

Falsely Accused Carers and Teachers (F.A.C.T.)
PO Box 15971
SOLIHULL
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Dear Prime Minister

You will be aware that in 2002 the Home Affairs Select Committee, of which you were a member, considered the *Conduct of Investigations into Past Abuse in Children's Homes.*

The Government's response [Cmd. 579] to what was acknowledged on all sides of the House to be a very balanced report was hugely disappointing. Whilst it accepted that "deep dissatisfaction and frustration had been voiced by those who were concerned that justice has not been done" (para 6) … it indicated that the best way to proceed was "to adopt a cautious and prudent approach, firmly based on objective fact" (para 9). It seemed that the Government was unable to accept that *any* of the evidence presented to the Select Committee was credible.

The Committee's report and the Government's response were discussed in Parliament on the 19th June 2003 [HC Deb vol 407 cc533-64] when the Minister for Crime Reduction, Policing, and Community Safety (Ms Hazel Blears) said that although the Government respected the views of the Committee, it did not share its belief in the existence of large numbers of miscarriages of justice, but that it was open to the possibility of further improving guidance and taking steps to ensure that, where it is sensible to develop or improve investigative processes, action is taken.

Regretfully very little progress has been made to improve investigative practice since then as the Children, Schools and Families Select Committee noted in its report *Allegations Against School Staff* (HC 836) published in 2008.

Having drawn attention to the vulnerability firstly of carers to historic allegations of alleged abuse, and secondly, to teachers of false allegations by pupils two select committees have every reason to feel let down by Government. Careers continue to be ruined and lives shattered.

We are however grateful for the excellent work done by the All Party Group on Abuse Investigations which was so ably chaired (jointly) by Claire Curtis Thomas MP (retd) and the Earl (Freddie) Howe. Both share our concern that miscarriages of justice against carers and teachers are far more common than is generally realised, and have worked tirelessly on behalf of falsely accused and/or wrongly convicted carers and teachers.

We know that many MPs' surgeries, including in your own Constituency, are taken up by people who in all other respects represent the very best in humanity but who now find themselves falsely accused of child abuse. Imagine it.

We are however aware that there is cross party support developing amongst an increasing number of well informed MPs for a radical review of the way in which allegations against carers, teachers and others in the front line of delivering personal services to others, are handled by the State.

We are also encouraged by the news that the Government does plan to bring about changes to the Vetting and Barring Scheme particularly in respect of disclosures of criminal records to prospective employers, which are due out shortly.

As this paper shows we are in touch with hundreds of carers and teachers who *have* been falsely accused, many of whom have been wrongly convicted and imprisoned.

As Prime Minister you have an opportunity to right a wrong and to address many of the concerns you expressed as a member of the Select Committee in 2002/3. By doing so you will also address many of the concerns outlined in this paper.

It is now time the Government looked at the plight of all falsely accused carers and teachers, including in particular those accused of alleged historic child abuse, with fresh eyes. Please do not let us down.

Yours faithfully,

Ian Booth,
National Secretary, F.A.C.T

Introduction

British Justice is usually regarded as the epitome of fairness and our society is justifiably proud of it. Whilst there is much in our justice system of which we *can* be proud there have been a disturbing number of cases where justice has miscarried. Some of these cases have been so marked that the names of those affected are firmly etched into public consciousness.

The conviction of the Guildford Four, wrongly convicted for IRA-related bombings in the 1970s, led to a public crisis of confidence in the entire criminal justice system. They spent more than 15 years in prison before their convictions were overturned.

In 1979 Sean Hodgson was convicted for the murder of 22 year old Teresa De Simone. In March 2009 having served 27 years in prison his conviction was overturned when DNA testing of the semen sample collected at the crime scene did not match his profile. Tragically Hodgson could have been exonerated 11 years earlier had the Forensic Science Service not declared at the time, quite wrongly, that all exhibits in the case were destroyed.

In 1990 The Cardiff Three, Tony Paris, Stephen Miller and Yusef Abdullahi, were convicted for the murder of Lynette White in 1988. Their convictions were quashed 1992. In July 2003 Jeffrey Gafoor was convicted of her murder on the basis of incontrovertible DNA evidence. Several former police officers are currently under criminal investigation in relation to their handling of the initial investigation into the Cardiff Three case.

Stefan Ivan Kiszko (1952–1993), a local tax clerk of Ukrainian/Slovenian parentage, served 16 years in prison after he was wrongly convicted of the sexual assault and murder of eleven year old Lesley Molseed.

At his appeal a catalogue of errors by the police and his defence team were revealed. Crucially, the Court was told, three teenage girls, as a joke, falsely alleged that Kiszko had exposed himself to them the day before the murder. Had the investigation been properly conducted, it would have shown that Kiszko had a medical condition which made him incapable of carrying out the alleged offence.

Whilst in prison his claims of innocence were labelled by prison staff as denial and schizophrenic delusions. Eventually, in 2007, Ronald Castree was convicted of Lesley Molseed's murder on the basis of new DNA evidence.

Kiszko's ordeal has been described by one MP as the worst miscarriage of justice of all time and led West Yorkshire Police to publicly apologise for his wrongful arrest and imprisonment, and to admit to a dreadful miscarriage of justice.

Less well known are the numerous miscarriages of justice which have affected carers and teachers. Most of these have occurred in the past decade as it is only in relatively recent times that the vulnerability of carers and teachers to false allegations has been recognised.

In December 2000 former Southampton FC manager David Jones was cleared of 14 allegations of historic child abuse which related to his previous employment as a care worker.

A week before Jones' trial began, relatively few people understood how any former care worker could possibly be facing multiple counts of physical and sexual abuse, all of which were false. However by the time the trial collapsed practically every national newspaper knew the explanation. David Jones had become a victim of 'trawling', a form of police investigation (which had evolved only in the previous 10 years) and the pursuit of compensation.

In March 2003 Basil Williams-Rigby and Mike Lawson, former colleagues of David Jones, were also cleared at the Court of Appeal of multiple offences. Basil Williams-Rigby, 57, had been convicted of 22 counts of abuse and jailed for 12 years in August 1999. Michael Lawson, 62, who served with Liverpool police for 15 years before becoming a social worker, had been convicted of 17 counts of indecent assault and jailed for seven years in June 2000.

In October 2006 Anver Sheikh, 56, from Leicester, was freed after the Appeal Court quashed, for the second time, his conviction for offences allegedly committed in 1980 whilst working at a children's home. The Court ruled that Mr Sheikh's original trial was not fair as documents which he was certain pointed to his innocence had gone missing.

In April 2006 Darryl Gee, a music teacher who died while serving an eight-year jail sentence for raping a pupil, was cleared posthumously by the Court of Appeal. His mother, Molly, 88, waged a five-year battle to clear his name. Gee was convicted in 2001 on the word of his accuser about incidents that she claimed happened more than a decade earlier, when she was 11 years old. During the Appeal hearing Lady Justice Smith said that expert psychiatrists had concluded that the alleged victim's claims were unreliable and had become "more florid" since the trial.

George Anderson and Margaret Hewitt were convicted in 2004 of 70 accounts of abusing children at a Barnardo's home more than 20 years earlier. Anderson was given an 18 year prison sentence and Hewitt 11 years. Their convictions were quashed after one complainant admitted that his allegation was entirely invented and alleged that other complainants had lied. It also emerged during the appeal hearing that one of the police officers who had gathered the original evidence had taken the complainants to see a compensation lawyer before arrests had even been made.

In June 2006 John Sidall and Ian Brooke, two care workers who served long jail terms over children's homes sex abuse claims, had their names cleared by the Court of Appeal. The convictions were overturned because of doubts about the reliability of a witness, known as RW, a 35 year-old mother. Contemporary reports had shown that she had had a tendency to make implausible allegations throughout her young years.

In 2007 Frank Joynson was convicted of abusing 5 former residents under his care.

A year later the Court of Appeal held that all of Frank Joynson's convictions were unsafe because the complainants' credibility was seriously in question, the delay of 38 years in bringing the allegations before a court, and the fact that critical documents were missing. The Crown did not seek a re-trial.

These are just a few of the many examples of carers and teachers who have been let down by the justice system.

What all these cases have in common is that the accused protested their innocence from the outset and were not believed. To achieve justice the accused had to fight the system every inch of the way.

Why is it that carers and teachers - people who hitherto have had an unblemished record of public service should find justice so elusive?

What sets these cases apart is that the public response is not determined by rational scepticism and intelligent debate but, more usually, by an unquestioning presumption of guilt, moral panic, and all too often, exaggerated media coverage sometimes bordering on hysteria.

The 'witch-hunt' metaphor has frequently been used in connection with the investigation of alleged historic abuse. Many academics and commentators concur with its appropriateness. Witchcraft was considered *crimen exceptum*, an exceptional crime demanding that normal evidential safeguards and rules of prosecution be dropped. The predominant feature of a witch hunt is the tendency to accept bizarre accounts of events and not to probe the facts.

The process through which allegations against carers and teachers have been investigated is remarkably similar. This readiness to believe, and the failure to challenge the evidence and undertake intelligent inquiries will be apparent in some of the more bizarre illustrative examples which are included in this paper.

What we highlight is common practice and peculiar to the investigation of historic abuse alleged to have occurred in residential schools, children's homes and numerous foster homes, many years ago.

We cannot escape the conclusion that the system of investigation of such cases is flawed and that there are institutional weaknesses in the British system of justice which fails to protect the staff who work in these settings from miscarriages of justice.

Is this the kind justice system we want to see in Great Britain? Do we really want carers and teachers to be so affected by these issues that they no longer have the necessary trust in the police and the judicial process?

We hope very much that you will read this document with fresh eyes and be energised to take these issues forward within your own localities or work place, and with your own Members of Parliament, Members of the Scottish Parliament or your Assembly Member sitting in Wales or in Northern Ireland.

Executive Summary

1. Carers and teachers are particularly vulnerable to false accusations of child abuse. Many have been imprisoned but maintain they are factually innocent. Hundreds of others have had their lives shattered, lost their careers or had their families torn apart by false allegations.
2. Whenever accusations of abuse against carers or teachers are made the working presumption is one of guilt. This skews the investigative process right from the outset and makes it almost impossible to prove one's innocence.
3. Vast numbers of carers or teachers have been accused of historical abuse – that is events which are said to have happened 10, 20, 30, or even 40 years previously. Defending such allegations is extremely difficult.
4. The police have a difficult job in deciding which allegations are true and which are false. All too often they fail to consider that the complainants may be mistaken, or indeed lying, or that their narratives may be motivated by the prospect of psychological gain, financial compensation or the mitigation of their own life style behaviours such as drug/alcohol misuse and/or past or current criminal activity.
5. The investigation of alleged historical abuse garnered by police trawling raises a number of quite unique ethical, evidential and justice issues. The Police Service and the Crown Prosecution Service have both had to change their working practice as a consequence of trawling and, as a result, many established safeguards against a miscarriage of justice have been eroded.
6. The use of trawling and dip sampling is unregulated and has no place in modern police practice. Both methodologies inevitably trap and punish the innocent as well as the guilty.
7. There is a need for a complete re-examination of the way the Police conduct inquiries into alleged historical abuse, and in particular the way the Crown Prosecution Service tests the credibility of the evidence relied upon. New national guidance is required.
8. The reputation of the police, the justice system and the judiciary has fallen into disrepute as a result of their handling of cases involving allegations of historic child abuse. Neither the Police, the Prosecution Service nor the Judiciary seem to have a good understanding of the residential task historically, or appreciate the potential of administrative records and individual case papers (if available), to confirm innocence.
9. There is a disturbing amount of evidence that some police officers act incorrectly and contrary to best police practice when investigating allegations of abuse in children's homes and/or residential schools. It is essential the Police remain objective throughout and do not over identify

with the complainants.

10. The soliciting of complaints, by advertising, letter or cold calling leads to many false allegations. Advertising the prospect of compensation in potential abuse cases should be banned.

11. Convictions obtained in respect of trawled evidence are more likely than not to be unsafe because of:-

    a. the heavy reliance on similar fact evidence,

    b. the very real danger of collusion,

    c. the risk of contamination or manufactured evidence,

    d. the problems of memory and recall,

    e. and the difficulty of corroboration (of innocence)

    all of which affect the accused disproportionately. Trials which are heavily dependant on such factors should, in our view, be automatically regarded as an abuse of process.

12. There is a need to review Sections 32 – 33 of part 3 of the Criminal Justice and Public Order Act 1994 which dispenses with the requirement for corroboration.

13. There is a reluctance to acknowledge that carers and teachers (and others employed in the caring, teaching or healing professions) are especially vulnerable to false allegations.

14. The Courts, including in particular the Appeal Court, seem very reluctant to accept the reality that it is almost impossible to defend oneself against historic allegations of abuse, and that, as a result, there is no equality of arms for those accused of historic child abuse.

15. The Civil Courts and Tribunals are also vulnerable to perpetuating these miscarriages of justice.

PART 1
THE INVESTIGATIVE PRACTICE

The task of the police

The task of the police in all investigations is to carry out a full and thorough investigation into all the facts which support the allegation(s) made, **and** all the facts which run contrary to them.

Teachers and carers under investigation of historical abuse frequently report that the police fail to consider that the complainants may be mistaken, or indeed lying, or that their narratives may be motivated by the prospect of psychological gain, financial compensation or the mitigation of life style behaviours such as drug/alcohol misuse and/or criminal activity. The working presumption is one of guilt.

Whenever an historical complaint is made of child abuse in a children's home or residential school the Police go to considerable lengths to contact the largest possible number of former residents in care homes where the suspect has been known to have worked in order to amass sufficient allegations to justify prosecution.

In our view unsolicited approaches of this sort are more likely than not to lead to serious miscarriages of justice, partly because of the problems of accurately recalling events alleged to have occurred decades previously, and partly because it inevitably leads the police to interview former residents who might wish to take advantage of the situation or whose narratives should not be relied upon.

Denial by the accused is seen by the Police as confirming guilt and serves only to justify the original decision to investigate. This makes it impossible for the genuinely innocent to convince the police that they are not guilty.

Case management and the ACPO guidelines

Inevitably when the police investigate allegations of alleged abuse in children's homes or residential schools they ask the question whether or not the allegation is an isolated one or whether it is part of a wider and perhaps long standing problem within the establishment.

Such investigations may become very complex and involve dozens of police officers examining thousands of pieces of evidence generated over many years.

This requires careful case management. In almost every case a Senior Investigating Officer (SIO) is put in charge of the operation and draws up the necessary protocols and strategies.

In 2002 the Association of Chief Police Officers (ACPO) informed the Home Affairs Select Committee[1] that they had drawn up national guidelines to ensure best investigative practice and consistency of approach. A document was produced and shown to members of the Committee who were told that the manual would be kept under review and would be audited for compliance.

We understand that Centrix, who were charged with writing a revised manual, disclosed to Claire Curtis Thomas MP that the manual shown to the Select Committee was written exclusively for the purposes of the HASC inquiry. That is to say that it did not exist as a working document other than for the review being conducted by the Home Affairs Select Committee.

It would therefore appear that ACPO misrepresented the position and that, perhaps unwittingly, the Select Committee were misled.

This may also explain why no auditing of police compliance and revision of the manual appears to have taken place despite the fact that the Government gave an undertaking[2] that it would.

The need to conduct objective inquiries

F.A.C.T. is aware of many instances of inadequate investigative practice by the police into historical allegations of child abuse in residential settings. This is despite the fact there is a requirement[3] for prosecutors to ensure they have all the information they need to make an informed decision, and that they put *all* relevant evidence before the court.

At a care home trial in Cardiff Crown Court, in 2001[4] a complainant told His Honour Judge Jacobs that one of the defendants had murdered a boy because the lad would not allow himself to be abused.

The police were immediately required to investigate his claim and merely checked relevant care home admission registers in the area, and finding no-one of the name given did no further investigation.

The claimant had previously been interviewed in prison where he was on remand for attempted murder. Three days before the meeting he had been diagnosed as 'being unfit to plead in his own defence', a fact which the interviewing police officers ought to have been aware of. The diagnosis was confirmed by a second psychiatrist a few days after the police interview and yet the complainant was considered fit to act as a witness for the prosecution.

During a period of cross-examination by a defence barrister a Detective Sergeant denied knowing about the murder allegation referred to above. However it later emerged during the trial that he had accompanied another officer and the claimant to view the site of the alleged murder and burial. The judge stopped this particular trial immediately after the prosecution had presented their evidence.

In June 1994 at Chester Crown Court[5] a complainant alleged that the defendant had thrust a crowbar in his anus, twisted it around and then pulled it out. The

barrister produced a crowbar and the claimant agreed that this was the type of instrument that had been used. The boy claimed that he did not require any medical treatment.

In the same trial another claimant stated that he had jumped from a road bridge over the railway on to a coal train going from Wrexham to Cardiff. In fact there had not been any coal trains travelling on that stretch at that time and for a number of years previously.

In July 2000 during the trial of R v S at Warrington Crown Court a claimant alleged that he had been sexually abused in a garage while assisting in a minor excavation at the defendant's home. A local authority building inspector verified that although excavation work had been carried out, that had been done two years after the alleged assault had supposedly occurred.

In the same trial another claimant alleged that he had been abused in a specific type of vehicle belonging to the defendant whilst it was parked at a site between two bridges. The complainant identified the precise spot to police. He claimed to have been dragged into the vehicle through a sliding door, however the vehicle he described did not have a sliding door. The DVLA were also able to advise the defendant's counsel that his client did not own a vehicle of the type described at the time and furthermore, it could not have passed under either of the bridges referred to, due to height restrictions.

One man was convicted on evidence which was supported by an individual whom the defendant had never met. This second individual claimed in court that he had been a 'rent boy' when he was ten years old, and had met the defendant in public toilets opposite the old Bolton Wanderers football ground. The Planning Department of Bolton Council was later able to verify that the toilets in question had not been built until eleven years after the alleged abuse.

In another South Wales historic abuse trial[6] which took place 28 years after the alleged offences were said to have happened, it was stated that the complainants had absconded and driven a stolen car to Newport along the M4 motorway. The Cardiff to Newport section of that motorway had not however been built at the time of the alleged incident. It was also claimed that the boys were returned from Newport in the Home's minibus but no record existed that the Home had such a vehicle at that time. Had they had one, records would have been generated for road tax purposes, insurance and usage.

In the North Wales care homes cases there have been several instances of people being accused by persons they had never taught, or cared for, or met.

In each of the above examples the police could, and should, have readily ascertained that the claims made were untrue; however with the exception of the first case cited which was stopped by the Judge, all the defendants were convicted.

Trawling and dip sampling

The term trawling is derived from the fishing industry where a trawling net gathers fish indiscriminately from the sea bed.

For several years now trawling has also been used as a term which describes the police action in identifying and then inviting former care home residents to make allegations against staff members either by letter, by phone call or by personal visit. Quite often these invitations were repeated on numerous occasions.

The ethics of police trawling were considered at some length by the Home Affairs Select Committee. In expressing reservations about this practice the committee recommended that

> *any initial approach by the police to former residents of care should – so far as possible - go no further than a general invitation to provide information to the investigative team.*[7]

The fact of the matter is that the police, quite often, go well beyond this requirement and pressurise individuals to make complaints even when that person previously, and sometimes repeatedly, has indicated that they have no complaint to make.

The Committee suggested[8] that there was a need for the Association of Chief Police Officers (ACPO) to revise their handbook in order to clearly set out the terms of an initial approach to potential witnesses.

ACPO have persistently refuted the concept of 'trawling' which is now referred to as 'dip sampling', a description which the Government later endorsed.[9]

In practice, as part of the information gathering stage, the police identified the names of all those who were resident in the relevant Homes over a period of several years and interviewed those who could be traced.

This approach is exemplified by the conduct of Gwent Police in 2000 in relation to allegations made by former residents of Ty Mawr, a South Wales residential school for young offenders.

Detective Chief Inspector Terry Hapgood confirmed[10] that the Gwent police investigation had employed 30 police officers, and had involved interviews with approximately 2000 ex-residents resulting in allegations against 100 staff. The police were expecting to contact a further 5000 individuals.

Police forces in North Wales, the North West and other parts of England, and elsewhere, have adopted a similar approach. This goes way beyond dip-sampling.

There is some evidence that in their approach to the former residents, the police officers clearly named which staff had been arrested and why. This is contrary to established police practice and inevitably risks eliciting false allegations.

As David Rose, Special Investigations Reporter on the Observer newspaper, told the Select Committee,

> *The problem with trawling as it is now carried out is that it remains an absolutely*

unregulated process which is almost tailor-made to generate false allegations.[11]

There is also ample evidence that the police officers made repeated visits to prisons to interview ex-residents of children's establishments in an attempt to elicit complaints. Whilst we accept that prisoners have the same right to complain as anyone else the motivation of anyone in prison who wishes to make historical complaints needs to be considered with great care.

It is not generally realised that only a small number of allegations of historical abuse were made by ex-residents spontaneously - most are garnered by the police using methods of investigation which they have acknowledged run contrary to normal police practice.

In April 2005 Claire Curtis Thomas MP, asked the Secretary of State for the Home Department what types of investigations other than historical sex abuse police use in respect of (a) trawling and (b) dip-sampling.

Hazel Blears, Minister of State (Policing, Security and Community Safety) at the Home Office informed her that:

> *dip-sampling, also referred to as trawling, is rarely used during the course of police investigations ... and is invariably limited to investigations involving allegations of historical sex abuse in care or residential homes, where the police need to identify any corroborating evidence relating to the allegations under investigation.*[12]

Normally the police start with a spontaneous complaint from a victim and then investigate the facts to determine if a crime has been committed. In cases of alleged historical abuse they start with a presumption that a crime has occurred and then look for 'victims' willing to supply information to justify their presumption of the guilt of the accused.

Missing documentation

One of the most striking features of cases of alleged historic abuse is the extent to which records which ought to be made available to the defence are missing.

Many (but not all) of the accusations made by ex-residents are set in the context of some key event within the establishment. It might be illness, misbehaviour, running away, a restraint episode, an admonishment, or some memorable feature of the Home's life such as sports day, a birthday party, an outing or a holiday.

When faced with an allegation that is not true, the only avenue open to the accused is to rebutt the allegation and draw attention to facts which might point to their innocence.

All children's homes and residential schools have a statutory duty to maintain various administrative records such as an admission and discharge register, medical records, punishment books, missing person records, as well as detailed case files on each resident.

Each of these would be inspected from time to time in order to ensure compliance with regulations. Almost without exception a detailed daily log and a running

sheet would also be kept on each child describing their daily behaviour, their mood and key events in their life. Yet all too often the accused member of staff is told that the documents are missing.

Other administrative records may also point to their innocence, for example staff time tables, signing on/off logs, sickness records, etc but these are rarely available.

Complainants will often describe abuse taking place in a particular location. The descriptions given can be very graphic and easily verifiable; yet all too often the accused is told that no plans or photographs of the scene exist.

One must question the extent to which such documents are actually missing, particularly in local authority settings where considerable emphasis is put on record keeping and archival systems.

In our experience many current local authorities do not have a good understanding of the records which care homes generate and do not have the necessary resources to carry out a thorough search of their archives.

It is also not unusual to find that relevant documents *have* been secured by the police but that they fail to appreciate their significance.

As the comments in the introduction show, a person is unlikely to get a fair trial if information which, potentially, could establish innocence is withheld or is simply missing.

Investigative malpractice

Although some police forces have improved their investigative practice this does not help those who, in the past, have been victims of inappropriate practice or have wrongly served time in prison.

Instances of doubtful practice encompass such things as dramatic dawn raids, multiple arrests, witness statements favourable to the accused being deemed of no value; a failure to disclose material helpful to the defence; selective recording of witnesses' interviews, and statements written by investigating officers which do not accord with their interview notes.

Negative statements, as defined by the ACPO guidelines, are in fact positive statements for the defence. Often these statements are not disclosed or are immersed in the 'unused material' files.

Multiple arrests for strategic reasons are also an extreme example of police malpractice. In 1999 the entire male staff, including past staff members, of a a former Approved School in the North West were arrested, 91 men in all. The decision to arrest them all was clearly a ploy by the police to ensure that none of those arrested could act as a character witness for a colleague appearing in Court.

During the investigation of personnel at the Headlands School in Penarth staff were selectively interviewed. Those who had information useful to the defence

were passed over. Selective interviewing of this sort not only results in an incomplete investigation but also runs the risk that vital evidence necessary for establishing the truth is not recorded.

It should also be recognised that investigative malpractice is likely to occur when there is irresponsible media reporting, particularly when it is sensational and persistently intrusive. Irresponsible media reporting invites unreliable allegations, colours public understanding and puts unnecessary pressure on investigating officers to obtain a "quick result".

A recent example was the sensationalist reporting of the Haut de la Garenne Children's Home on Jersey, which led a great many people to believe that the most appalling crimes against children, including murder had taken place there over a number of years. It also created a surge in unfounded allegations and labelled all care workers as potential abusers. When the true facts emerged, almost all the allegations were shown to be without foundation.

Not surprisingly social scientists and cultural historians have likened the nature of such investigations and the feelings of suspicion they generate to the witchcraft trials of the seventeenth century.[13] [14]

Interviews with ex-residents: the risks

In several recorded incidents ex-residents made it clear to the police that they had no complaints to make, but, following further police visits, the individuals then started to make allegations of abuse. The police justify the practice of multiple visits on the basis that, typically, disclosures of abuse are made incrementally and over a period of time.

Whilst this may be true in some cases, it is also essential that police officers listen to witnesses and acknowledge the psychological effect on the witness of being repeatedly asked to provide information. There is a fine dividing line between encouraging genuine victims of abuse to make full disclosure, and pestering other ex residents who stated they were *not* victims, to make disclosures.

A former resident informed the Home Affairs Select Committee that he never saw any abuse happening but the police kept trying to make something out of the simple things.

> *The staff were like parents really and I did not have a bad time whilst at the school and I told them that I had nothing bad to say about the staff, but they kept throwing names at me, trying to see if I would say anything different.*[15]

Such cases are too frequent to be a matter of chance and clearly support the belief that individual police officers have, in some instances, relied on unethical methods to conduct their interviews in an effort to collect what they see as corroborating evidence.

In one of the trials linked to Operation Goldfinch in South Wales, a witness for the defence who had made a substantial statement in favour of the defendant

enquired why it was so many ex-residents had made allegations. He was told that they were seeking compensation and that in some cases awards amounted to £10,000. Later that same day he walked into a police station and made a formal complaint that he had been sexually abused by the very person he had spoken so highly of previously.

There is widespread agreement amongst police and professionals that the prospect of compensation to ex-residents can sometimes skew the truth. Terry Grange, Chief Constable of Powys, speaking on behalf of ACPO, indicated that advertisements for compensation (which occur very frequently including in prisons) encouraged fabricated allegations.[16]

Karen Reilly, Head of Children's Services, Flintshire County Council was unequivocal when asked if there was a risk that the advertisement of prospective awards of compensation in child abuse cases encouraged people to come forward with fabricated evidence.

> Yes. Common sense *dictates* this is bound to be the case. The extent to which it has happened is difficult to measure ... However there is local anecdotal knowledge of such occurrences.[17]

Other witnesses, including ex care home residents, made a similar point.[18] [19] [20]

Despite this, solicitors continue to advertise in the media and on prison notice boards for victims of historic institutional child abuse to come forward as they may be entitled to compensation.

PART 2
The Justice System

A breakdown of trust

Many wrongly accused teachers and carers recall how, in the early days of their investigation they put their trust in the judicial system and fully expected that the truth would be unveiled. Some thought it unnecessary even to engage a solicitor; others were shocked by the poor standard of representation by duty solicitors at police stations.

Many were surprised to discover that the police were not interested in the pursuit of the truth but only in amassing evidence that would secure a conviction regardless of the truth.

Most did not see the necessity to engage the services of a specialist solicitor or could not afford it.

All too often they discovered that those investigating them, or passing judgement on them, especially if young, did not have a good understanding of what was legally permissible or expected of staff in bygone times. Often they are judged not on the lawful standards that existed at the time but on today's more enlightened standards.

In particular there has been a failure to understand that staff were required by law to care for children and young people **and** to control their behaviour.

Because of the social circumstances that had led them to be in care homes, many of those children inevitably presented very challenging behaviours. Staff often worked with limited resources and in sub standard facilities which neither the State nor local authorities regarded as a priority for change.

Teachers and carers found that as their case progressed they were not always kept informed of developments and that their lawyers had a poor grasp of the facts and the context in which the complaints had been made. Many defendants did not meet their barristers until the day of their hearing.

A common complaint made by defendants is the failure of barristers to cross-examine prosecution witnesses and police with sufficiently robust questioning. The attitude seemed to be, 'We must not risk confronting the police, in case it influences the jury'! Surely, to influence juries is precisely the task of the barrister.

Many were to discover that poor representation or an inadequate defence are not grounds for an appeal.

It was only in the nineties when several men had been convicted on false evidence,

that some solicitors began specialising in historic claims. They recognised that the law was being interpreted in new and quite different ways, and that investigative practice was unjust.

'Striking similarities' and 'similar fact evidence'

One of the contributory factors to the number of convictions which have taken place in historic abuse cases from the late 1980s to the present day is the change in the burden of evidential proof from 'striking similarities' to 'similar fact'.

Prior to 1991 in any trial of this kind it was necessary to show that there were striking similarities[21] between alleged crimes before it could be presumed that one statement corroborated another.

This change came about following a ruling of the Law Lords (1991) in a case referred to as DPP v P[22] In deciding to dispense with the concept of striking similarities and substitute it with similar fact this ruling was intended partly to make convictions easier and partly to ensure a greater number of convictions by the simple expedient of using similar circumstances as factual evidence.

The term 'similar fact evidence' is often used by the prosecution to suggest to juries that when two or more complainants make allegations which have some similarity, they are linked by similar fact(s).

In the context of alleged historic abuse when two, or more, individuals make similar statements these should not be seen as similar 'facts' but as similar *allegations*. The concept of factual evidence is absent from such statements and does not afford the Court objective evidence. Such 'evidence' when presented to the Court usually has no substance other than the word of the complainants.

This was apparent in a case of alleged multiple sexual abuses in a Northern Ireland care home referred to in the introduction. Two people were convicted and given long prison sentences but later appealed.

In their opening address, the prosecution informed the Northern Ireland Appeal Court that they considered statements made by all the complainants as 'mutually supportive' although they did not factually corroborate each other. However the defence were able to demonstrate that what was alleged was not true, and the two care workers were declared not guilty.

One of the other factors found to be present in that case was collusion. The issue of collusion between complainants is almost always dismissed as unlikely yet in that case collusion was not only shown to have taken place, but it was also shown that the police colluded with the complainants and that the Prosecution were aware of this.

The Crown Prosecution Service

The Crown Prosecution Service (CPS) was established in response to the Prosecution of Offenders Act 1985 and became law in October 1986. Until then the

police had prosecuted their own cases. The CPS was instituted in order to separate investigative from prosecutorial functions.

The task of the CPS is to assess the evidence gathered by the police, to provide them with independent advice and to determine whether it is more likely than not that the evidence will result in a conviction.

In order to determine whether a prosecution should go ahead the CPS applies two fundamental tests: (1) The evidential test and (2) the public interest test.

These principal tests are broken down into a number of sub-tests including the requirement to consider whether the evidence to be used is reliable.

In 2003 A Crown Prosecution Service (CPS) spokesman addressing a meeting in Liverpool stated,

> *When an allegation is made, it becomes part of the evidence.*[23]

That is a questionable concept: whilst an allegation may become part of an investigation, without corroboration it cannot be relied upon as evidence.

Significant numbers of carers and teachers have been convicted on the basis of uncorroborated evidence. All too often the evidence is based solely on one person's word without there being real corroboration to support it.

It seems that where multiple complaints are made against individuals the decision to prosecute is automatic; whereas the question which the CPS should always pose is, *has sufficient reliable evidence to establish the truth been obtained?*

As Lord Shawcross, Attorney General, said many years ago in a House of Commons debate.

> *"It has never been the rule in this country - and I hope it never will be - that suspected criminal offences must automatically be the subject of a prosecution.*[24]

One of the reasons the Code for Crown Prosecutors gives for not prosecuting is a long delay between the date of the alleged offence taking place and the trial.

In historic abuse cases however, the interval may be as long as 40 years and has no legal limit. In our view no one is likely to get a fair trial in respect of events which are alleged to have taken place twenty, let alone forty years previously.

The need for the Crown Prosecution Service to conduct a robust review of the evidence presented has already been referred to.

It is particularly important, especially in cases where the allegations amount to one person's word against another, that statements made by complainants are properly validated.

The Home Affairs Select Committee recommended that resources be channelled into researching and piloting the use of "Statement Validity Analysis" as a tool for assessing the credibility of witness testimony in complex historic abuse cases.[25] But there has been little evidence since then of police forces adopting such methods.

In their opening statements to the court the prosecution often list in lurid details a catalogue of the alleged abuse which it is claimed each defendant has committed. This creates a highly charged, prejudicial and emotional atmosphere that causes the jury considerable confusion and anxiety.

Webster draws attention to this risk.

> *.... he or she [the carer or teacher] has been effectively demonised in the minds of the jury... by the time the prosecution opening has been completed both the jury and the judge may have been caught up in a current of prejudice so powerful that they are swept together toward a guilty verdict without being able properly to assess the evidence which is presented to them.*[26]

The approach that seems to be taken by many juries is that there is 'no smoke without fire' and that if so many people are involved, some of the indictments must be true.

Not infrequently defendants are offered a compromise by the prosecution. If they would plead guilty to some specimen charges the remainder would be dropped.

In one case[27] a Deputy Head was charged with many counts of sexual abuse, but these would be dropped if he pleaded guilty to two specimen charges of physical abuse. Eventually none of the sexual abuse charges were presented to the court. One must therefore question the strength of the prosecution's case if the sexual abuse charges could be so summarily discontinued.

The passage of time and the problem of recall

When former residents are minded to make false allegations they will usually avoid situating them at a specific date. They are more likely to choose a vague period of time.

There have been several instances where the timeframe given by the complainants is an impossibility. The dates given pre or post date the time when they were residents at the Home, or when the accused member of staff was working there.

It is surprising just how many staff have been accused of abuse by an individual who, verifiable evidence shows, has never come into contact with them. This raises important questions of how the complainant can gain sufficient information about the person's identity when they have never even met them. What these cases show is that somewhere there must have been some contamination of evidence or some collusion between complainants, or between the accuser and the police.

When the defence can prove that the alleged crimes could not have taken place in a specific time frame or on the dates given, the prosecution indicates that the witness has made a simple mistake of recall and that he or she should be allowed to modify the dates to a different or longer time frame.

Often the prosecutors will assert that with the passage of time the complainant could not reasonably be expected to recall accurately when the incident took

place. In contrast, however if the accused candidly indicates that he or she is unable to remember particular facts he/she is accused of being deliberately vague in an attempt to manipulate the evidence.

Memory recall often features as an issue in these cases. Prosecutors, and for that matter juries, seem very reluctant to accept that memory is subjective and may not necessarily accord with reality. There has been a great deal of research into memory and recall of events in recent years. It is now a well established fact that memories can be inaccurate, particularly after long periods of time.

The British Psychological Society has recently published a helpful document called *'Guidelines on Memory and the Law'* which makes clear that false memories are extremely common, and memory of events often changes according to the situation in which they are recalled including police interviews and court appearances.

> *Memory is prone to error and is easily influenced by the recall environment, including police interviews and cross-examination in court... People can remember events that they have not in reality experienced. This does not necessarily entail deliberate deception.*[28]

A question which needs to be asked early in the investigation of alleged historic abuse is why there has been a long delay in reporting it. The prosecution often claims that residents were unable to make a complaint at the time because no one would have believed them. That is invariably accepted without challenge or clarification. The fact is that young people in such institutions did make complaints and were listened to.

Individuals would have had many opportunities of making a complaint whilst resident at the establishment where the abuse is said to have taken place. A picture has been painted in the media that these were closed institutions but this a distortion of the facts. Most children visited their own home frequently. They had regular visits by social workers who would quite often take them away from the premises and routinely question them regarding how they felt – whether they were happy or not - and what was happening at the Home.

Many of the residents, particularly the boys, were habitual offenders and will have become involved in criminal activity at some point and been interviewed by the police. They would have been able to speak with their solicitor, who would have wanted to establish whether there were any factors he or she could put forward in mitigation, including whether the young person was unhappy in the Home or suffering ill-treatment.

It seems paradoxical that the youngsters should feel they would not be believed by their carers, yet, years later, as adults, should turn to the police and expect to be believed. This is particularly surprising in cases where the accusers are habitual criminals who usually regard the police with hostility.

Abuses of process

> *It is arguable that nobody should be prosecuted – let alone convicted – on the basis of uncorroborated, or barely corroborated, allegations of sex abuse.*[29]

In many instances of historic abuse allegations the defence counsel has asked for an 'Abuse of Process' to be considered and granted by the trial judge. The reason for such a request is usually that after a period of twenty or thirty years and in some cases even longer, memory may be unreliable, documentation has been lost or destroyed, and it is difficult to find key witnesses who were present at the time.

Judges, however, only rarely accept that an 'abuse of process' is taking place. Lord Lane stated in a summing up statement

> *Stays imposed on the grounds of delay, or for any other reason, should only be employed in exceptional circumstances. If they were to become a matter of routine, it would only be a short time before the public, understandably, viewed the whole process with suspicion and mistrust.*[30]

On the other hand Professor Martin Conway, a leading expert on memory, recently questioned the possibility of accurate recall in historical cases. He considers that such circumstances justify claiming an abuse of process.[31]

The Appeal Court has previously stressed the importance of the integrity of the criminal process

> *...the integrity of the criminal process is the most important consideration for courts which have to hear appeals against conviction. Both the innocent and the guilty are entitled to fair trials. If the trial process is not fair, if it is distorted by deceit or by material breaches of the rules of evidence or procedure, then the liberties of all are threatened.*[32]

Whilst some of the difficulties faced by defendants in historic cases have been recognised and guidelines have been put in place for judges to follow in order to ensure a fair trial, this has not prevented injustice.

Limitations of the appeal process

Court of Appeal

There are a number of hurdles which have to be overcome if one is to be a successful appellant. Permission has to be given by a judge before an appeal can be launched and it is only granted if new evidence has emerged or if there is a strong indication that the trial process was unfair.

The law seems stacked against appeals in cases of historical allegations of sexual abuse. In those cases where appeals have been successful the Court goes out of its way to indicate that the judgement is case specific, and that no precedent has been set. Indeed at times it seems that the judgement tightens the criteria even more strictly in order to prevent further appeals on a similar basis as the following examples show.

The first of the cases was a conviction based on the statement of a 19 year old girl, who had alleged she was abused by her father as a four year old. The 'evidence' was so detailed that it was shown to be beyond the power of human memory. Expert opinion on the limitations of human memory was accepted at appeal as 'new evidence'. The court then issued what it described as a note of caution referring to any future appeal based on similar circumstances.

> *"It will only be in the most unusual of circumstances that such evidence will be relevant and admissible at the trial of alleged child abuse. The evidence would be relevant only to those rare cases in which the complainant provides a description of very early events which appears to contain an unrealistic amount of detail.*[33]*"*

The criterion here is modified and 'strengthened' in anticipation of any future appeal.

In another case heard in the Appeal Court it was accepted that

> *"There was a narrow window of opportunity for the alleged offence to have taken place and the records of the home, had they been available, could have resolved whether it was possible that the offence could have occurred as it was described by the complainant."* [34]

Lord Justice Hooper recognised that in this particular case the absence of crucial records made it impossible to confirm whether the appellant had had the opportunity to abuse the complainant in the circumstances alleged; their absence had prevented the accused from having a fair trial.

The Appeal Court, it seems, has stiffened its resolve to maintain the status quo:

> *"The Court of Appeal is even more reluctant in 2008 than in the 1990s to quash convictions because they think they are unsafe".*[35]

A major factor in restricting the anticipated number of applications to the Court of Appeal is the exorbitant cost to an individual. The only other avenue is an application to the Criminal Cases Review Commission.

Criminal Cases Review Commission (CCRC)

For many of those convicted of alleged historic abuse the Criminal Cases Review Commission (CCRC) offers the last hope they have that their convictions might be overturned. The CCRC independently assesses all the evidence obtained prior to and during the trial together with any new evidence that has emerged, with a view to determining whether or not there is a reasonable possibility that the conviction was unsafe.

The terms under which the CCRC is able to consider applications are so stringent that few applications meet the necessary criteria. The majority of applications therefore are unsuccessful and are not referred to the Court of Appeal.

During the first ten years of its existence, the Commission has only referred six cases of contested historical abuse in care homes, and not all of them were successful.

The CCRC told the Home Affairs Select Committee in 2002

> *"Few of those convicted as a result of trawls have applied to the Commission ... The resulting fragmentary evidence does not demonstrate a causal link between trawling and miscarriages of justice, or any other pattern. If the situation changes, the Commission will communicate that fact to its stakeholders."* [36]

In response a group of specialist defence solicitors set up a new body, the Historic Abuse Appeal Panel (HAAP), with a view to examining such cases and establishing whether a link exists between trawling and contested allegations. They received a considerable number of new referrals and in the early months worked closely with the CCRC.

Unfortunately the Legal Services Commission was unable to continue providing the necessary funding and this resulted in a large number of cases being effectively held in abeyance. Had funding been available more detailed information would have become available and subsequently, it is thought, clear patterns would have emerged linking inappropriate police practice and contested convictions.

Civil Courts and Tribunals

Vast numbers of teachers and carers who find themselves caught up in long investigations of historic abuse are not, in the end, prosecuted; they eventually receive a letter from the Police or the Crown Prosecution Service stating that, on the basis of the information available to them, there is insufficient evidence to proceed. However, few workers, if any, will receive a letter exonerating them or making it clear that the allegation made against them was false even when there is evidence that it was.

If a staff member is currently in work, the employer will also want to carry out an internal investigation into the allegations made. Staff are likely to be suspended whilst inquiries are being conducted and will be summoned to an investigative meeting. That may be followed by a disciplinary hearing where dismissal is often the outcome. The employer will usually dismiss the teacher or carer even if (s)he has been cleared in court – even if the judge has declared that the defendant is leaving the Court with his or her reputation intact. Employers justify this approach on the basis of operating zero risk employment policies.

The employer is then obliged to inform one or more of the listing bodies who determine whether or not the person is suitable to work with children and/or vulnerable adults. These include the Independent Safeguarding Authority, the General Social Care Council and the General Teaching Council.

The police will also routinely inform the Criminal Records Bureau of the details of the allegation(s) made. This information will then be released by the CRB whenever they issue an enhanced certificate of disclosure to an employer or a prospective employer. Enhanced certificates are currently mandatory for all people working with children and/or vulnerable adults.

The police also inform the listing bodies in cases where the accused is retired or no longer working which usually prevents them from undertaking voluntary work in the community.

The current safeguarding processes make it virtually impossible for any innocent carer or teacher caught up in such an investigation, however benign, ever to regain employment in his or her preferred profession.

In 1996 William Hague, (then Secretary of State for Wales) ordered an inquiry "into the abuse of children in care in the former county council areas of Gwynedd and Clwyd [North Wales] since 1974." It was conducted by the retired High Court Judge Sir Ronald Waterhouse.

The terms of reference were such that the Tribunal was to inquire into the abuse as if it were a given fact. This not only precluded any possibility that allegations might have been false but also prevented the issue of false allegations being raised.

The principles underpinning inquiries of this kind were established in 1978 by a Royal Commission headed by Lord Salmon; they became known therefore as the Salmon principles[37].

Webster has shown in his book *The Secret of Bryn Estyn – the making of a modern witch hunt*[38] that these principles of objectivity were not always adhered to and that there was little attempt to ascertain the truth or validity of the allegations. The testimonies of complainants were accepted in a positive manner, while those of former residents who were supportive of the care they had experienced and denying the existence of abuse were ignored.

A number of people were named as offenders during the inquiry. Many of the claims made were later proven to be untrue and yet no avenue of appeal was made available to them

Anna Pauffley QC, the barrister (now a Judge) who represented the majority of the accused, made a number of criticisms both during the hearings and at their conclusion regarding the unfair manner in which the proceedings were being conducted. Her criticisms were treated with disdain by Sir Ronald Waterhouse.

PART 3
TIME FOR CHANGE

The Case for Reform

British Justice is usually regarded as the epitome of fairness. Many countries in the world have modelled their justice system on it. The concept of being innocent until proven guilty is one of its cornerstones. However innocent teachers and carers who have unwittingly become involved in criminal investigations of historical sexual abuse come through the judicial system with a very different perception of it.

As we have sought to show in the preceding sections of this document, they suffer from a presumption of guilt at every stage of the process, from their first appearance in front of the police to their appearance in front of the jury. They are criminalized even when declared innocent. Investigations into alleged historical abuse are by their nature complex and make considerable demands on available resources. As we have demonstrated such investigations are likely to result in errors by overwhelmed police and prosecution services.

The fact is that considerable damage is being caused to the caring and teaching professions, **and** to the justice system as a result of false allegations, yet until quite recently neither the media, the public, nor most politicians seemed to care.

We need your support to help:

- restore public confidence in teaching, care work and related disciplines
- restore justice for all falsely accused or wrongly convicted carers and teachers, and
- ensure that proper safeguards are in place so that the police and prosecuting authorities are more able to sift false allegations from true ones, and deal with them all in a just and proper way.

Agenda for Action

Much needs to be done to limit the impact of false allegations on the personal and professional lives of carers and teachers, and to improve investigative practice and the law.

Limiting the personal impact of false allegations

F.A.C.T. calls on the Government and the relevant agencies to:-

1. take positive action to recognise the vulnerability of carers and teachers,

and of all those who work directly with children and young people, to false allegations;

2. recognise that false allegations cause immense distress to individuals, and to their families and colleagues, and bring the police and justice system into disrepute.

Limiting the professional impact of false allegations

F.A.C.T. calls on the Government and the relevant agencies to:-

3. recognise that false allegations have career threatening consequences as grave as those that occur when a truthful allegation is made;

4. inquire into the reasons for falling levels of male recruitment in education, care settings, and youth work and to assess the impact this has on providing suitable role models for all children;

5. issue guidance to child protection agencies and safeguarding bodies concerning the need for just solutions for staff who are accused of child abuse when there is insufficient evidence to establish abuse, or when it is accepted the evidence proves that in all probability the alleged abuse did not take place;

6. take action to ensure the fact that an allegation has been made against a carer or teacher is not recorded on their CRB unless the allegation(s) has been proven in a criminal court, or beyond all reasonable doubt in a tribunal or civil court;

7. end the criminalisation of innocent carers and teachers whose names appear on the Criminal Records database.

Improving investigative methodology

F.A.C.T. calls on the Government and the relevant agencies to:-

8. ensure that ACPO (the Association of Chief Police Officers) develops an up-to-date manual in accordance with the recommendations of the HASC report of 2001-2002 for use in cases of alleged historic abuse, where it is believed there are multiple victims of abuse and multiple suspects;

9. institute independent audits of the work of the Crown Prosecution Service in order to determine whether or not it is complying with the evidential requirement to ensure that all relevant information has been examined in selected cases;

10. ban the soliciting of complaints, whether by advertising, letter or by cold calling;

11. make the tape-recording of *witness* interviews mandatory in cases of alleged historic abuse;

Reforming the Law

F.A.C.T. calls on the Government to:-

12. review the law as it is applied in cases of alleged historic abuse, particularly with regard to the issue of 'similar facts' and 'striking similarities', and the rules on the disclosure of unused and third party material;

13. amend the law in relation to memory and recall in the light of recent scientific findings.

14. establish a Committee of Inquiry comprised of members of the Home Affairs Select Committee, the Justice Select Committee and the Children, Families and Schools Select Committee to consider what safeguards are necessary to protect vulnerable professionals from false allegations.

Acknowledgements

Care has been taken in this document only to include statements which can be supported by documentary evidence. In most cases direct references are given but in some instances these have been withheld in order to protect the privacy of individuals.

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We would also like to thank all those who have shared their testimonies and experiences with us.

Appendix

Throughout this briefing paper we have referred to the plight of all falsely accused and wrongly convicted carers and teachers. Careers destroyed, live torn apart and families unnecessarily exposed to considerable stress. One can only imagine how they feel. When the Home Affairs Select Committee published its report the Government's response was to suggest that the Select Committee's report was too anecdotal and that it overstated the problem.

Since then there have been many more cases of carers, teachers (and others) being falsely accused as the excerpts from various media reports below illustrate.

Whilst it might be tempting to think that these illustrative cases, taken from across the UK, demonstrate that the system works very well, every one represents unnecessary trauma to those involved and their families. These examples are just the tip of the iceberg below which are hundreds more cases where the accused has not been able to demonstrate their innocence.

1. This is Cornwall: 25th Sept 2010
   A vicar and former teacher accused of molesting pupils more than 30 years ago acquitted by a jury on all counts
   http://www.thisiscornwall.co.uk/news/Vicar-cleared-molesting-children-30-years-ago/article-2684621-detail/article.html
2. Journal Live: 25th Sept 2010
   Police witch hunt criticised: Former school housemaster cleared of abuse allegations
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   Merseyside teacher cleared of having sex with pupil, 16
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   Headmistress wrongly accused of racism by Muslim governors wins £400,000 payout
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   Judge rules fair trial not possible on past child abuse claim. Alleged abuse too far in the

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A blind musician from Sheffield has been cleared of all charges after four week trial. Accused of molesting a schoolboy over 20 years ago.
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West Yorkshire Police Assumed Guilt of Innocent Men in Abuse Inquiry. In this instance … there appears to have been an assumption of guilt … it is understandable that those subject to the investigation will feel hounded and under unwarranted pressure, particularly if they are innocent.
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Solicitors drum up childhood-abuse cases with jail ads
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A teacher has been cleared of sexually touching three pupils – with the judge slamming an "unacceptable" two-year delay in the court case
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Former residents of children's homes have launched a record compensation claim against Manchester council for alleged sexual and physical abuse stretching back over 30 years ago
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MP blasts Government over handling of allegations against deputy head teacher
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Teacher seeks Royal Pardon over 'assault'. Man barred from schools after touching pupil's chin to appeal to the Queen. More than 100 MPs, peers and members of the Northern Ireland Assembly have backed the first ever school teacher in the UK campaigning for a pardon from the Queen
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Teachers fear the lasting mark of sex abuse allegations as Welsh teacher is acquitted
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Cleared teacher says "they wanted enough rope to hang me"
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Judge throws out sexual assault case against Christian Brother
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Nanny cleared of killing baby after trial collapses
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Three judges give teacher leave to appeal, based on the conduct of the police investigation and the credibility of the victims' evidence. Released after serving two years of a ten year sentence in prison
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Norfolk teacher wrongly accused of punching one of his pupils in the face tells of his six-month ordeal after finally being cleared of the attack
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How reliable are allegations of child abuse 30 years ago? Fay Wertheimer on why her years working in care homes make her question today's name-shame-blame culture
http://www.guardian.co.uk/society/2006/nov/29/childrensservices.guardiansocietysupplement

23. Evening Star: 27th November 2006
A school caretaker acquitted of indecently assaulting a young girl 30 years ago has today spoken publicly for the first time of the personal hell he has endured for the past year
www.factuk.org

24. BBC: 16th November 2006
Teacher cleared of three charges of sexual activity with a child and also one count of abuse of trust
http://news.bbc.co.uk/1/hi/england/west_midlands/6154154.stm

25. BBC: 25th October 2006
Campaigners back sacked teacher
http://news.bbc.co.uk/1/hi/education/6083490.stm

26. Scottish Sunday Mail: 23rd October 2006
Now clear our names: accused staff to sue
http://www.dailyrecord.co.uk

27. BBC: 6th October 2006
"It was hell," says acquitted head. Primary school head teacher found not guilty of sex assaults against a boy pupil
http://news.bbc.co.uk/1/hi/wales/north_east/5412500.stm

28. Wales on Line: 2nd October 2006
Scandal of children's homes abuse payouts: More than 160 adults who claim they were abused in a sex scandal that rocked children's homes in South Wales have been paid a total of £3m in compensation

29. Daily Mail: 26th September 2006
A nursery owner with more than 40 years of experience has spoken of her relief after she was cleared of assaulting a toddler at the end of a 14-month ordeal
http://www.dailymail.co.uk/news/article-407153/Nursery-bosss-relief-cleared-Supernanny-discipline.html

30. News Scotsman: 30th August 2006

Law under scrutiny as deputy head cleared of assaulting unruly pupil
http://news.scotsman.com/education/Law-under-scrutiny-as-deputy.2806349.jp

31. Fleetwood Today: 13th March 2006
School bus driver cleared of sex attack charges whilst driving pupils to school
http://www.factuk.org/2008/03/school-bus-driver-cleared-of-sex-attack-charges/

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Teachers in Northern Ireland have no protection against false allegations
http://www.factuk.org/2006/01/teachers-in-northern-ireland-have-no-protection-against-false-allegations/

33. Belfast Telegraph: 17th January 2006
A false allegation of indecent assault against a teacher at a Lisburn school could cost the South Eastern Education and Library Board an estimated £50,000 after an out-of-court settlement
http://www.belfasttelegraph.co.uk/?story=675756

34. Community Care: 6th Dec 2006
Foster Carer Speaks Out: In her 15 years as a foster carer Judy Drake never thought it was a job for someone who wanted an easy life. But in the past two years, she has lost £60,000 in income, has nearly lost her home and is £25,000 in debt because of false allegations
http://www.factuk.org/2005/12/foster-carers-speak-out/

35. The Irish Times: 2nd Dec 2005
The prosecution of a former nun for rape in a case involving evidence from a witness known to be unreliable should not have been brought, a judge has said. The Court of Criminal Appeal earlier this month declared a miscarriage of justice in relation to the wrongful conviction of Nora Wall for the rape and indecent assault of a 10-year-old girl in a care home in Waterford. The three judges who yesterday gave reasons for their decision also said there had been an "unfortunate breakdown in communications or systems failure" between the offices of the Director of Public Prosecutions, the Chief State Solicitor, the Garda Síochána and prosecuting counsel. This constituted "a serious defect in the administration of justice brought about however unintentionally in this instance by the agents of the State".
http://www.factuk.org/2005/12/nuns-conviction-for-child-rape-overturned/

36. Wales on Sunday: 18th Jan 2005
A teacher yesterday won £22,000 for being wrongly sacked over sexual allegations by two girl pupils. Married Iwan Rees, 48, won his case of unfair dismissal over claims by girls aged 12 and 16 in an ordeal dubbed by education experts as "every teacher's worst nightmare".
http://www.walesonline.co.uk/news/wales-news/tm_objectid=15088238&method=full&siteid=50082&headline=-every-teacher-s-worst-nightmare--name_page.html

37. The Guardian: 19th December 2002
"Wrongfully jailed couple get compensation: Blunkett payout for abuse libel pair.
The Home Secretary, David Blunkett, has agreed to pay compensation to Dawn Reed and Christopher Lillie, the former nursery nurses who won a libel case after being falsely accused of child abuse.
Mr Blunkett has exonerated the pair of criminal charges based on facts arising from a case in the civil courts. Lawyers have also pointed out that the decision to accept the pair's claim has been reached ... with exceptional speed.

Ms Reed, 31, and Mr Lillie, 38, were originally charged with child abuse at Shieldfield nursery in central Newcastle in 1993, but were acquitted the following year after the Crown offered no evidence against them.

Tony Flynn, then the acting leader of Newcastle city council, repudiated the verdict, and the council set up an inquiry. The report, published in November 1998, found Ms Reed and Mr Lillie guilty of serious sexual and physical abuse of children in their care.

The pair then brought an action for defamation against the council and the four authors of the report, Richard Barker, Judith Jones and Roy Wardell, who had backgrounds in social work, and Jacqui Saradjian, a clinical psychologist.

At the end of the six-month libel trial in July, Mr Justice Eady found that the report was "malicious" and that the authors had made "a number of fundamental claims which they must have known to be untrue".

The judge concluded that "[Reed and Lillie] are entitled to be vindicated and recognised as innocent citizens who should be untouched by the stigma of child abuse". He awarded them each £200,000 in damages, the maximum possible.

http://www.guardian.co.uk/society/2002/dec/19/childrensservices.politics

Please note the hyperlinks are accurate as of 1st February 2011

Endnotes

1 2001-2: The Fourth Report of the Home Affairs [Select] Committee. "The Conduct of Investigations Into Past Cases of Abuse in Children's Homes (HC 836, para's 686-692)

2 Government reply to the Fourth Report from the Home Affairs Select Committee 2001-2002 HC 836, para's 24 and 28

3 Code for Prosecutors. Crown Prosecution Service, para's 2.2 and 3.2 (2010). See also Addendum to the Code for Crown Prosecutors, 2 General Principles, 2.2, 2.4 – 3, Evidential Test 5.3 e & f

4 Private papers – trial transcript

5 Private papers

6 Private papers

7 The Conduct of Investigations Into Past Cases of Abuse in Children's Homes (HC 836-1, para 34)

8 The Conduct of Investigations Into Past Cases of Abuse in Children's Homes (HC 836-1, para 129)

9 Government reply to the Fourth Report from the Home Affairs Select Committee 2001-2002 (HC 836, para 25)

10 Webster R, The Secret of Bryn Estyn- the making of a modern witch hunt, Orwell Press (2005), page 514/5

11 The Conduct of Investigations Into Past Cases of Abuse in Children's Homes, (Minutes of Evidence, para 63)

12 Hansard: HC Deb, 4 April 2005, c1132W. See also Hansard 7 Apr 2005 : Column 1795W.

13 Webster R: The Great Children's Home Panic, (1988) and The Secret of Bryn Estyn: the making of a modern witch hunt (2005), Orwell Press.

14 Smith M: Historical Abuse in Residential Child Care: An Alternative View, Practice: Social Work in Action, vol 20, no 1, (March 2008)

15 Evidence of Mark Merrett: Former care home resident, "The Conduct of Investigations Into Past Cases of Abuse in Children's Homes (HC-2 836, Ev 74, Memorandum 40)

16 Evidence of Chief Constable Terry Grange: The Conduct of Investigations Into Past Cases of Abuse in Children's Homes (HC 836-2, Ev 2, Memorandum 2)

17 Evidence of Karen Reilly: Flintshire County Council, The Conduct of Investigations Into Past Cases of Abuse in Children's Homes (HC 836-2, Ev 54 Memorandum 23)

18 Evidence of Janet Donaldson: Executive Head of Children's Services, Barnsley, The Conduct of Investigations Into Past Cases of Abuse in Children's Homes (HC 836-2, Ev 22, Memorandum 8, para 3)

19 Evidence of Devon County Council: The Conduct of Investigations Into Past Cases of Abuse in Children's Homes (HC 836-2, Ev 42, Memorandum 18, para3)

20 Evidence of Julie Driscol: Care Leaver, The Conduct of Investigations Into Past Cases of Abuse in Children's Homes (HC 836, Volume 2, Ev 43, Memorandum 19)

21 Evidence of Professor Sadako: The Conduct of Investigations Into Past Cases of Abuse in Children's Homes (HC 836-2, Ev103, Memorandum 55)

22 House of Lords decision in DPP v P (1991)

23 Address to a F.A.C.T. meeting held at St Anthony Padua, Mosely Hill, Liverpool 20th August 2004 given by Norman Larkin, the Acting Chief Crown Prosecutor, Liverpool

24 Hansard: Vol 483, column 681, 29th January 1951

25 The Conduct of Investigations Into Past Cases of Abuse in Children's Homes (HC 836-1, para 50)

26 Webster R, The Secret of Bryn Estyn- the making of a modern witch hunt, Orwell Press (2005), page 311

27 Private papers – trial transcript

28 Guidelines on Memory and the Law - Recommendations from the Scientific Study of Human Memory, British Psychological Society Research Board (2008), Key Points, page 2, para's iii and viii

29 Elks L, Righting Miscarriages of Justice? Ten years of the CCRC, Justice Publications, 2008

30 Court of Appeal: R v Jenkins [98/4720/W 3] para 82

31 Address at F.A.C.T. Conference May 2010

32 R v Hickey & Ors, [1997] EWCA Crim 2028 extract from the appeal judgement that quashed the Bridgewater case: Quoted in Rethinking Miscarriages of Justice – beyond the tip of the iceberg, Michael Naughton, Palgrave 2007, page 22

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