

# Evidence to the Bichard Inquiry

## Statement by F.A.C.T. (Falsely Accused Carers and Teachers)

F.A.C.T. appreciates the opportunity to provide evidence to this inquiry.

F.A.C.T. is a voluntary organisation which campaigns on behalf of carers and teachers throughout the UK who have been falsely accused of abuse.

We fully accept the need to inquire into the child protection procedures in so far as they relate to Humberside Police and Cambridgeshire Constabulary. Although F.A.C.T. is well informed about child protection procedures generally it is not however in a position to comment about the specific procedures that existed in Humberside or in Cambridgeshire. Neither is it in a position to comment upon what measures the police (or indeed other agencies) took (or did not take) in respect of legitimate and lawful requests to share information about Huntley.

We do however feel that we have a contribution to make in informing the inquiry “on matters of local and national relevance”, and in suggesting some recommendations for change.

### **1 Introduction**

1.1 F.A.C.T. owes its roots to the decision of various police forces in the UK to undertake historical investigations into alleged child abuse in former children’s homes and residential schools. The first police force to do this was North Wales Police who began their inquiries in 1991. They were followed by Merseyside Constabulary. At that time there was considerable concern among carers and teachers, and their families, that the investigative methods used by the police were unethical and likely to lead to miscarriages of justice. The concern was so great that significant numbers of carers and teachers banded together for mutual support. In 1996 a self help group was first set up in North Wales.

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1.3 Since this time well over three quarters of the police forces in the UK have set up major investigations into alleged abuse in former children's homes and residential schools. In the spring of 2000 hundreds attended F.A.C.T.'s first national conference held at St Helens. The huge number of investigations taking place struck a chord with carers and teachers throughout the UK who were in a similar position. What began as a local campaign became a national one. Local activists were joined by academics, lawyers, concerned professionals and politicians. As increasingly more individuals were accused and injustices became more apparent local groups and individual campaigns merged together to form a national F.A.C.T. network. Today F.A.C.T. has hundreds of members and supporters across the UK, indeed worldwide.

## **2 Values**

2.1 Since this time well over three quarters of the police forces in the UK have set up major investigations into alleged abuse in former children's homes and residential schools. In the spring of F.A.C.T. wishes to make it clear that it abhors child abuse. It accepts sadly that children are abused, including sometimes by their carers and by their teachers, but believes that the extent to which this happens is exaggerated.

2.2 F.A.C.T. is clear that all forms of child abuse are wrong, and that the police and investigative agencies have a difficult job to do. It accepts that all complaints of abuse must be thoroughly investigated.

2.3 F.A.C.T. will not allow anyone into its membership unless they warrant that they have not abused a child (or vulnerable adult) and sign a declaration that any allegations of abuse that have made against them are false.

2.4 F.A.C.T. strongly believes in the indivisibility of justice - for those who are abused as children (and their families) and for those who are falsely accused of abuse. It is our belief that child protection and false allegations are not mutually exclusive concepts - both are important and both impact on each other.

2.5 F.A.C.T. wishes to make it clear that in submitting this evidence to the inquiry it does not believe that Huntley and Carr have been falsely accused or wrongly convicted.

## **3 Background**

3.1 The position as F.A.C.T. understands it is that Huntley was accused of various unrelated incidents of child abuse over a span of some years, and that there was prior evidence that he was an unsuitable person to be working in close proximity to children. We do not dispute that this evidence exists. We are concerned however that in the public's clamour to ensure that nothing like this ever happens again the wrong lessons may be learned.

We hold this view not because we have any sympathy with Huntley, nor because we have not understood the outrage people feel over these events; but because we believe there is considerable evidence that whenever tragedies of this magnitude occur there is a clamouring for retribution and organisational change which does not necessarily lead to positive outcomes.

## **4 The issues**

- 4.1 The issue, as we see it, is that sadly children are abused and on occasions murdered. In a civilised society it is right that proper safeguards should be in place to minimise this risk. It is what we would want for our children and for our grandchildren.
- 4.2 The responsibility for ensuring that children are protected ultimately lies with the State. The State has a duty to exercise this responsibility in partnership with its citizens, communities and families. Part of this responsibility involves recognising that for the system to work effectively the procedures have to be implemented fairly and with public consent. In our view this is not happening.
- 4.3 The reasons why this is not happening are complex but for the purposes of this submission can be summarised as follows
  - a. Failures to learn the lessons of history
  - b. Increasing evidence of the failure of the child protection community to adopt an evidentially based, justice orientated, child centred, investigative model of child protection

## **5 Failures to learn the lessons of history**

- 5.1 The development of child care policy, and in particular child protection systems shows that it is largely reactive, panders to populist views and occurs without any sense of history. Indeed the majority of legislative change, from the 1948 Children Act right up to the 1989 Children Act has been precipitated by public concern over the welfare of individual children. Almost every child-care Act passed by Parliament as a result of the death of a child has resulted in a new welfare system and new ideologies. In 1948 it was the death of Dennis O'Neal. In the 1970s the death of Maria Colwell heralded a modern approach to child protection. In the 1980's the death of Jasmine Beckford (1984), Tyra Henry (1984), Heidi Kosedo (1984), Kimberly Carlisle (1985) were major factors in the development of the much heralded 1989 Children Act. The 1990's saw a shift in child protection policy following inquiries into allegations of non familial abuse. This resulted in a tightening up of employment practice and staff vetting procedures. These were further tightened up following the tragic death of Sarah Payne (2000).

## 6 Failures of the child protection system

- 6.1 In the last 30 years there have been over 35 formal inquiries into the deaths of children. These deaths, each one of them tragedies, have resulted in a plethora of legal and administrative action which at the time we were told would safeguard children. It has not done so. The evidence is clear - the current child protection system is not working and needs a complete overhaul.
- 6.2 Given the inquiry's terms of reference it is not appropriate that I go into the detail of what these inquiries conclude except to say two things:
- a. Firstly, they invariably show there have been failures of intervention, failures of communication, and failures of judgement. Indeed F.A.C.T. would be very surprised if such failures were not identified in this inquiry.
  - b. Secondly, and somewhat paradoxically, a significant number demonstrate an over zealous approach by child protection workers who often do not have sufficient training, skills or resources to do the job. This approach frequently leads them to make inaccurate and excessive claims about the extent to which child abuse occurs, and exaggerated claims about the nature of child abuse. There are numerous examples of this but perhaps the two most damaging can be found in findings of the Cleveland Report (Butler-Sloss, 1988) and the Orkney Report (Clyse,1992). In both cases social workers and child protection investigators are severely criticised for dealing with unproven theories (usually about sexual and ritual abuse) and with attributing medical evidence to cases (e.g. anal dilation test and repressed memory syndrome) where there no scientific basis for doing so.
- 6.3 One might have expected things to change so it is perhaps ironic that during the days I have spent writing this submission it has emerged that the State accepts that the child protection system is responsible for grave miscarriages of justice<sup>1</sup>, has needlessly (and permanently) separated children from their mothers<sup>2</sup>, and has unnecessarily subjected children and parents to state control<sup>3</sup>. At the same time various academics have accused the NSPCC of 'poisoning' family life<sup>4</sup>.
- 6.4 The recent intervention of the Attorney General, the Solicitor General, and the Minister for Children in respect of the wrongful convictions of three mothers (Sally Clarke, Trupti Patel and Angela Cannings) seem to confirm what F.A.C.T. members have long argued. So long as child

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<sup>1</sup>Decision of the Court of Appeal, 19th January 2004, and the subsequent decision by the Attorney General to review over 250 cases in which women have been convicted, on the basis of doubtful expert medical evidence, of killing their children. [This decision is summarised in The Guardian (on-line) "Unsafe Convictions" 20th January 2004]

<sup>2</sup>The Times 19th January 2004 "Announcement by Margaret Hodge, Minister of Children, that children placed for adoption on the basis of misdiagnosed medical evidence would not be returned to their birth mothers.

<sup>3</sup>The Independent 21st January 2004 "Announcement that the Solicitor General and Elizabeth Butler Sloss are to meet to consider examination of an estimated 5000 cases which may have been decided in error.

<sup>4</sup>The Times 19th January 2004 "Campaign by NSPCC 'poison families' "

protection investigations proceed on a presumption of guilt, serious miscarriages of justice will occur and families will be irrevocably damaged.

- 6.5 Similar judicial warnings have been given before, most notably in the Shieldfield Nursery Nurse libel case of Lillie and Reed<sup>5</sup>. Briefly<sup>6</sup>, this involved two local authority nursery nurses who were accused of multiple abuse of very young children. After due process they were taken to court and acquitted of all charges. Their employers did not believe in their innocence and in fact said so. They commissioned a major independent inquiry into the allegations that had been made and were supported in this action by the local community and by the Press. In what was dubbed as “the worst case of mass child abuse ever seen in this country” the inquiry concluded that they were not only guilty of the offences for which they had been cleared but were also guilty of carrying out other horrific acts of abuse. These included supplying children to a paedophile ring whose members had raped and abused their young victims, and allowing them to be used in the making of child pornography. The findings of the inquiry, which lasted for more than 3 years, were published and also reported in local and national newspapers. Graphic headlines appeared and the accused literally had to flee for their lives.
- 6.6 After going into hiding Reed and Lillie were approached by two investigative journalists who put them in touch with lawyers who agreed to take their case on a no win no fee basis. A decision was taken to sue for libel. In what was to become the longest, the most expensive and the most important libel case ever fought in the British courts the trial judge had to decide whether in compiling their report the review team had been so driven by their determination to find Reed and Lillie guilty, that they dishonestly concealed or misrepresented evidence which pointed to their innocence. The judge ruled that the inquiry team had acted dishonestly *and with malice* and awarded Lillie and Reed the maximum possible damages, which he said they had earned many times over.
- 6.7 Lillie and Reed were not, as had been claimed, members of a paedophile ring but victims of an over zealous approach by social workers, therapists and paediatricians, driven on by the best and most noble of intentions but utterly blind to the facts. Their zeal led to what many regard as the worst possible example of investigative malpractice. After nine long years, Reed and Lillie finally had their reputations restored.
- 6.8 In this judgement (which needs to read in full for its full impact) the judge demonstrated how misconceived allegations of abuse, many of which were related to children who for developmental reasons could not articulate the complaints themselves, grew in number and in intensity to create vengeful attacks on an individual’s freedom and physical security. At no point

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<sup>5</sup>[2002] EWHC 1600 (QB) Lillie & Reed V Newcastle City Council and others. The judgement can be down loaded from [http://www.courtservice.gov.uk/judgmentsfiles/j1302/lillie\\_reed\\_part\\_1.htm](http://www.courtservice.gov.uk/judgmentsfiles/j1302/lillie_reed_part_1.htm)

<sup>6</sup>A useful summary of this case was published in the Guardian on 31st July 2002

it seems did anyone ask the fundamental questions - are the allegations true? Does the evidence support the complaint? Indeed it seems that the Government was also fooled in to believing them. Its response to the Shieldfield investigation was to tighten its statutory child protection measures. Largely as a result of this 'scandal' the Protection of Children Act (1999) was introduced as a private member's bill by Debra Shipley, the MP for Stourbridge, and sought to prevent anyone who at any time had been *alleged* to have harmed children, from ever working with them again. The Bill was given government backing and passed into law with rare speed. No one, it seemed, had paused to consider the possibility that the Lillie and Reed were indeed totally innocent, as the criminal case had clearly shown.

6.9 What these 'tip of the iceberg' events show is that in matters of child protection the almost mandatory presumption is one of guilt followed by an over zealous approach to the work. This over zealous approach has been identified in the Governments own research. In 1995 in its publication '*Messages from Research*' it is stated that 250,000 children who came to the attention of child protection agencies were not maltreated<sup>7</sup>, and that 40,000 of the 160,000 referrals required no further investigation. Whilst it would be wrong to class all these as false allegations common sense indicates that a good number were.

6.10 In many ways it appears that the position since 1995 has got worse rather than better. In November 2001 in a much publicised press release the Lord Chief Justice warned that

*"The conviction of dozens of men for child sexual assault years after the alleged offence may be unsafe."*

6.11 Since that time the House of Commons Home Affairs Committee in its report entitled '*The Conduct of Investigations Into Past Cases of Abuse in Children Homes*' concluded that a "a new genre of miscarriages of justice" has occurred from the "over enthusiastic pursuit" of abuse allegations. The Committee concluded that many "innocent people have been convicted, and many others who have not been convicted have had their lives ruined". The Committee recognised the "prejudicial nature" of abuse inquires and called for a series of measures to minimise this risk. These included better police interviewing techniques and a stronger evidential test. In its final conclusion the Committee stated

*"We are conscious of the fact that many of these recommendations are simply closing the door after the horse has bolted. All the more important, therefore, that the Criminal Cases Review Commission and the Appeal Court take a robust approach to the review of suspected wrongful convictions"*<sup>8</sup>

6.12 Since publication of this report (31st October 2002) the work undertaken by the Select Committee has been buttressed by the All Party Parliamentary Group on Abuse Investigations led

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<sup>7</sup> DOH (1995) Child Protection: Messages from Research pp. 25-28 (HMSO)

<sup>8</sup>HC 836-1 Fourth report of the Home Affairs Committee 2001-2, *The Conduct of Investigations into Past Cases of Abuse in Children's Homes, para 142, p41* (HMSO)

by Claire Curtis-Thomas M.P. and Earl Howe. The Criminal Cases Review Commission have also reported that 'false abuse' cases now take up the majority of their work. A Historic Abuse Appeal Panel<sup>9</sup> has been set up and the Appeal Court have been begun overturning convictions.

## **7 What relevance has the issue of false abuse allegations to do with this inquiry**

7.1 There are several reasons why it has been necessary to provide an overview of child care policy and legislative practice:

- a. it is clear to us that this inquiry touches upon competing and conflicting values - the need on the one hand to protect children from the risk of serious harm and the need to respect individual's rights under the law, including the right to remedy a wrong, a right to a fair hearing, and the right to be regarded as innocent until proven guilty
- b. it provides a context to what happens when children are tragically killed whether in their own homes or at the hands of others. The public expect retribution and, rightly, protection for their children. The State responds reactively and policy develops in an often ad hoc way. Instead of providing a solution it creates for itself another set of problems and perpetuates abuse in another format.
- c. it demonstrates what F.A.C.T. members (many of whom have dedicated their lives to protecting children and promoting their welfare) experience. Child protection workers often get it wrong and when they do they devastate the lives of families and create serious injustice. Paradoxically child protection can itself be an instrument of abuse
- d. in our view the failure to protect children from serious harm results from the same failures which result in miscarriages of justice

7.2 The issue of false allegations is important in other respects:

- a. Firstly because there are clear signs that significant sections of the public, particularly those from whom the police and child protection agencies might reasonably expect to obtain support, are now seriously doubting claims about the extent to which abuse occurs. The more miscarriages of justice that occur the less likely people are to believe reports of abuse, and act appropriately when it does occur.
- b. Secondly, it raises important issues about 'trial by reputation', 'trial by association' and 'trial by volume'. It does not necessarily follow that because someone has been accused of abuse on a particular occasion they must be guilty of earlier, or indeed subsequent, accusations. Indeed as Mr Justice Eady reported in the Newcastle Nursery Nurse libel case such an attitude is both dangerous and inherently sloppy. What matters is the quality of the complaint, the quality of the investigation *and the evidence*. If false allegations are to be avoided these issues must be addressed.
- c. Thirdly, this case raises an important issue about the extent to which accusations of abuse (or sexual misconduct) which have been thoroughly investigated but have not satisfied any objective evidential test are recorded and/or passed to third parties.

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<sup>9</sup>This has been set up by a panel of solicitors with support from the Criminal Defence Service

## 8 Recommendations

1. In our view the existing child protection investigative system has to be replaced by new ethical, child centred, justice orientated, evidentially based investigative model.
2. Although we recognise changes to the child protection system are indicated we would urge that any recommendations that this inquiry makes are balanced out by a corresponding recommendation aimed at minimising the risk of individuals being falsely accused and/or permanently labelled as an 'abuse suspect'.
3. F.A.C.T. understands the considerable difficulties that arise when investigative bodies suspect that someone who works (or intends to work) with children or vulnerable adults poses a threat to children. Whilst we accept that such views need to be recorded and may need to be shared with third parties we do not believe that 'suspicion' alone is a strong enough evidential test.
4. We recommend that there should be a statutory basis for anyone's name appearing on a list which identifies them as a suspected or potential abuser. The statute should make it clear that there must be *reasonable* grounds for believing that they have abused (or are likely to abuse) children or vulnerable adults. There should also be a statutory right to challenge such decisions before an independent tribunal. This is particularly important in those cases which do not proceed to trial.
5. Greater safeguards against possible miscarriages of justice need to be built into the system so that any person believed to have abused someone, or to be unsuitable to work with children or vulnerable adults is firstly made aware of such concerns, and secondly has the right to challenge them at an independent tribunal, and prepare evidence in their own defence.
6. Lastly, we ask that the Government
  - a. do more to encourage those who have been abused to report their assaults *at the time they occur* (or very soon after). This will not only aid investigation but also limit the number of stale/historical complaints.
  - b. accept the reality of false allegations. By denying their existence the Government is passively encouraging them. As a result families are blighted, children are harmed, and the system of child protection and justice is brought into disrepute. As further revelations of serious miscarriages of justice emerge, children who do suffer abuse are less likely to be believed.

This completes our evidence.

22nd January 2004.