



Neutral Citation Number: [2010] EWHC 1005 (QB)

Case No: 1997 A 03700 & 1997 A 03710

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**MANCHESTER DISTRICT REGISTRY**  
**SITTING AT CHESTER CROWN COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 07/05/2010

**Before :**

**THE HON MR JUSTICE IRWIN**

**Between:**

**AB and OTHERS**  
**(Names Redacted)**

**Claimants**

**- and -**

**THE NUGENT CARE SOCIETY**  
**(Formerly Catholic Social Services, Liverpool)**

**Defendants**

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**Ms Rosalind Coe QC & Miss A Weeraratne (instructed by Abney Garsden McDonald) for  
the Claimant**

**Mr Edward Faulks QC & Mr Nicholas Fewtrell (instructed by Hill Dickinson ) for the  
Defendants**

Hearing dates: 23 February – 4 March 2010

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Approved Judgment

serious cases in terms of the consequences of assault, an outcome which will depend on the facts of the assault, the psychological resilience of the victim, the other factors affecting the victim for better or worse, and so forth. Therefore the approach I adopt in a case where no discrete psychiatric disorder is demonstrated, is to consider the adverse psychiatric consequences as part of the picture to be borne in mind when considering the level of damages at large for the assault itself.

94. I bear in mind that there were three acts of abuse, the third of which was worst. I do not intend to segment the award into a discrete amount for each episode, but to look at them in the round. In any event, the shame and distress and the psychological effects are cumulative, not separate. I award damages in the total sum of £10,000.
95. There must be interest on those damages at 2% per annum, and it is agreed interest should run from 1 January 2000, which for the sake of simplicity I calculate as 20%, meaning that I award interest of £2,000.

Conclusions

96. For the reasons set out above, I extend the limitation period to permit the claim to proceed. I find that there were three identifiable episodes of abuse by McEvoy, for which it is admitted the Defendants are vicariously liable. In the absence of any identifiable psychiatric disorder, I decline to make any discrete award for the long-term psychological effects of the abuse, even though these exist. I take those consequences into account in awarding the damages for assault. I award the sum of £10,000 in damages and £2,000 in interest.

Introduction – [REDACTED]

97. The case of [REDACTED] has had the most complex litigation history of any in this Group. He gave evidence in November 2006 before Mr Justice Holland, when his case was listed one of three for decision by the Judge on both limitation and liability. Following an application by the Defendants, resisted by the Claimant, the Judge decided to limit his findings to limitation. In the course of giving judgment the Judge made extensive findings in relation to this Claimant which are set out at paragraphs 13 – 43 inclusive of the judgment, see: *AB and Others –v- Nugent Care Society* [2006] EWHC 2986 (QB).
98. In June 2008, the decision of Mr Justice Holland to refuse to extend the discretion in favour of this Claimant was reviewed by the Court of Appeal and the decision on limitation was quashed, the Court ordering the matter to be remitted to Mr Justice Holland for a fresh decision on limitation: see: *AB and Others –v- Nugent Care Society* [2008] EWCA Civ 795. For reasons explained elsewhere, Sir Christopher Holland was unable to deal with the matter and this case was one of four decisions on limitation given by me on 30 January 2009, see: *AB and Others –v- Nugent Care Society* [2009] EWHC 481 (QB) at paragraphs 53 – 64. As was necessarily the case following the ruling of the Court of Appeal in 2008, I adopted the facts as set out by Mr Justice Holland for the purposes of giving my ruling on limitation. I did not then hear further evidence from this Claimant or indeed any other witness. I extended the limitation period in the Claimant's favour.

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avoid duplication between the two. The abuse here was significant, repeated and from more than one abuser. It lasted for months at least, although it is not possible to specify the period with any precision including compensation for injury to feelings, I award general damages of £25,000.

154. Since there has been PTSD to which the abuse has significantly contributed, I will award discrete damages for that injury. It seems to me it has only been significant since the police investigations in the late 1990s. I will make some allowance for the considerable troubles which [Name Redacted] faced anyway, which must to some degree reduce the loss of amenity from the PTSD. I must also be careful not to double compensate for the injury to feelings for which I have already compensated the Claimant and which is in truth hard to distinguish from the distress and anger associated with contracting PTSD: sufferers from that condition very frequently experience such emotions strongly, in connection with those who exposed them to the original trauma.
155. For all those reasons, the discrete award for PTSD will be somewhat lower than might otherwise be suggested by the *JSB Guidelines for the Assessment of General Damages in Personal Injury Cases* 9<sup>th</sup> Edition (2008). For the PTSD here, I award general damages of £12,500.
156. The total of general damages is therefore £37,500. Interest should be paid at 2% per annum since February 2002, which is agreed at 16% and therefore interest is awarded in the sum of £6000.
157. I am not convinced that [Name Redacted] will go through any extensive psychotherapy, but it is likely he will benefit from (and accept) some counselling or therapy, particularly if delivered by a woman counsellor or therapist. For this claim, I award £2000.
158. The total award is therefore £37,500 general damages, £2000 special damages and £6000 interest.

[Name Redacted]

159. [Name Redacted] was born on [DPA] 1955. He is one of four brothers. He had a loving mother to whom he was very close, but a difficult relationship with his father who was violent in the home, when in drink.
160. [Name Redacted] began to get into trouble from an early age. It seems that it was late 1967, when he was just 12, that he was sent to [DPA] where he stayed for approximately two months before being sent to St Vincent's. He arrived at St Vincent's on [DPA] 1968 and remained there until about [DPA] 1969. He was then at St Aidan's from [DPA] 1969 until [DPA] 1971.
161. After leaving St Aidan's, [Name Redacted] re-offended and in 1974 was sent to Borstal Training. He subsequently continued to offend for some years, receiving community service probation and periods of imprisonment. [Name Redacted]'s mother died in 1983 and on his own account, and that of his long term partner [Name Redacted] this caused him to "go off the deep end". [Name Redacted] had to get an injunction to have him removed from the house. He re-offended and was sent to prison, and they were apart for a year. However, because [Name Redacted] felt that [Name Redacted]'s behaviour was out of character and linked directly to his mother's death she forgave him and took him back. Thereafter

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206. There was no relevant conduct on the part of the Defendants here, in the sense of any improper conduct causing delay to the carriage of the case by the Claimant. There has been excessive delay since these claims were issued for which both parties bear responsibility.
207. There is no relevant disability within the meaning of S33(3)(d).
208. I have already dealt with the reasons for delay on the part of the Claimant instituting proceedings. There was no significant delay once this Claimant in fact realised he could take legal proceedings.
209. No delay arose from seeking legal or medical advice or its content, which is relied on by the Defendants.
210. Is this claim proportionate? It would be a proportionate claim, if the abuses complained of were established, since the claimed abuse is serious. In addition, albeit delayed in time, there is evidence of PTSD as a consequence of the abuse.
211. I have reminded myself that the discretion under S33 is unfettered and not merely a matter of considering the specific matters indicated in the sub-paragraphs of S33(3). However, the fundamental point in this case is that given the discrepancies and conflicts in the accounts given by the Claimant, set beside the significant loss of evidence of potential aid to the Defendants, it seems to me there is a real risk of injustice if this matter were to proceed. For those reasons, I decline to extend the limitation period. The action must be dismissed as being out of time.