

## St Leonards joint position statement

22 July 2016

### Practicalities

This statement has been created by Malcolm Johnson and Tracey Storey, the principal Claimant Solicitors in the St Leonards litigation, with Sarah Erwin-Jones of Browne Jacobson, instructed on behalf of Tower Hamlets insurers; MMI.

The Claimant solicitors have no access to any papers created during the litigation. From their perspective this document is created from their memories. All agree that it would not be in any claimant's interests to approach them about their memories of this litigation that concluded, for almost all, over 14 years ago. Accordingly, it is agreed that confidential personal information will not be sought or included in this statement, nor will any party waive Legal Professional Privilege concerning communications with their own solicitors.

Browne Jacobson does have some incomplete paper and electronic files, and has been authorised by MMI to share some illustrative documents that were created during the litigation for the benefit of the civil court.

### Background

St Leonard's Cottage Homes was a children's home in Hornchurch, Essex. It was owned by the London Borough of Tower Hamlets from the late 1960s and closed in the early 1980s. The establishment was set up as a series of "family" cottages into which children, often from the same families, were placed. Each cottage was run by a house father and mother together with other members of staff. Although there were facilities on site, children attended local schools.

In the early 1970s a social worker was convicted of taking indecent photographs of children, some of whom came from St Leonards. Another member of St Leonards was convicted for possession of indecent photographs in the early 1980s.

In 1996 the Police commenced investigations that ultimately led to the prosecution and conviction of two former care workers, Alan Prescott and William Starling. Alan Prescott was sentenced to six months imprisonment after admitting indecently assaulting four boys in his care at St Leonards. William Starling received 14 years imprisonment after being found guilty of 11 out of the 12 charges of sexual offences he faced. Both trials concluded in 2001.

### Legal Context for the Civil Claims

Malcolm Johnson, then a solicitor at Steel & Shamash, was first instructed by [DPA] [DPA] more than six months before the criminal trials took place, but civil litigation did not commence until approximately a year later. It is agreed between us that at that point, and indeed throughout this litigation (2001-2005) the legal position could be summarised as follows:

- It was possible for a local authority to be found vicariously liable for the deliberate abusive actions of residential care workers with pastoral responsibility for the care of children following *Lister v Hesley Hall* [2001] UK HL 22.
- However, the St Leonards litigation pre-dated the House of Lords decision in *A v Hoare* by six years, meaning that at that point in time, any claim based on an assault perpetrated by an employee was statute barred by virtue of Section 2 of the Limitation Act 1980. Legislation did not allow any discretionary extension of time for cases based on deliberate torts.
- No insurance indemnity was available to individual perpetrators of the abuse itself, so claimants' lawyers had to look elsewhere - to the insurers of assailants' employers - to be confident that there would be funds to pay any damages awarded. The changes in the common law that took place throughout the 1990s and 2000s were driven by that need.

This meant that each claimant would need to prove that a duty of care owed to them was breached (in that the staff, home and/or children were negligently placed and/or supervised, when judged against acceptable residential social care practice at the time), and that this breach caused a personal injury and losses for which damages were recoverable. Each claimant would need to prove that a fair trial of his or her claim was possible and that s33 of the Limitation Act should operate in his or her favour. It was possible that a court would allow some of these claims to proceed under s33 of the Limitation Act 1980, whilst others might not have discretion exercised in their favour.

An example of how this might operate was later illustrated in the case of *AB ( and Ors ) -v- Nugent Care* [2009] EWCA Civ 827, in which two claims were allowed to proceed, and two were not.

### Procedural Developments

Malcolm Johnson issued protective proceedings on behalf of five Claimants on 31 October 2001. The group of individuals who wished to pursue a claim arising out of events at St Leonards' and other children's homes grew. By March 2002 MMI on behalf of the Defendant instructed Browne Jacobson to make an application for a group litigation order. That application was successful (copy GLO attached). Malcolm Johnson was nominated as Lead Solicitor. A cut off date for all claims to be notified was set for 23 July 2002, with the trial initially set for 10 November 2003.

On 1 May 2002 Malcolm Johnson set up his own firm, Malcolm Johnson & Co, taking his clients with him. Other solicitors involved included Tracey Storey, first of Russell Jones & Walker and later of Irwin Mitchell. By the time the cut off date of 23 July 2002 was reached there were 56 Claimants.

Further direction were given on 30<sup>th</sup> July 2002 (Copy Order attached),

Generic Particulars of Claim ( copy attached) were served on 27 September 2002 and Claimants were also directed to serve individual schedules detailing their allegations. Claimants' solicitors generally provided sufficient information in each Claimant's

individual schedule to enable MMI to form an early view as to the probable value of each case.

This meant that the Defendant was often in a position to make an offer without requiring a Claimant to be medically examined at all. The success of this strategy was demonstrated by the fact that by the date of the first case management conference on 9 December 2002 ( Copy Order attached), 17 of the 55 claims notified had been settled.

On 31.3.2003 a Generic Defence (copy attached) had been filed. The Lead Solicitor had allowed the Council and its insurers sufficient time to investigate the legal and practical elements of the case which meant that:-

- The Council's Access to Records Team could be given training on the proper and consistent way to deal with disclosure of social services files ( then under the Data Protection Act 1998)
- The Council was able to establish insurance policy cover, which was, in this particular case, straightforward. That is often not the case.
- The Council was able to consider the questions of duty and breach, what admissions could be made to reduce the need to disclosure, and focus on the merits of each individual claim.

The Defence was straightforward. It admitted for the purposes of the litigation only, that subject to any limitation defence, the Defendant was liable for any personal injury a Claimant might prove they suffered, as set out at paragraph 4 of the Generic Defence. The benefit to the Claimants was that each case was dealt with on its own merits, and each Claimant's solicitor could focus on the quality and cogency of their client's evidence about what had happened to them, and what the psychiatric consequences were. The limitation risks then became particular to each Claimant, rather than across the board.

That meant a significant savings in costs because:-

- o There was no need for a liability ( breach of duty) expert
- o There was no need for generic disclosure of anything but the files of those abusers that had been named by the Claimants, and any internal reports that had been drafted about St Leonards

On 9<sup>th</sup> April 2003, in anticipation of a Round Table Meeting ("RTM") the following month, the directions were varied a little ( Copy Order attached) to allow more time for disclosure and psychiatric evidence.

On 12 May 2003 the RTM took place. 28 cases had settled prior to the meeting. When the meeting concluded a further 11 had settled, with 6 more acceptances likely.

Permission for 3 claimants to join the register was given at a CMC on 30 June 2003. A copy of the Order made is attached. It gave directions for trial in November 2003.

In September 2003 a further RTM took place at which all outstanding cases but 1 were compromised. In that one case the Claimant's Solicitors struggled to satisfy themselves as to their client's capacity. The trial was vacated.

In March 2004 Malcolm Johnson was asked to write an article about the St Leonards Cottage Homes Litigation for the Association of Child Abuse Lawyers newsletter. A copy of the article is attached. It speaks for itself.

At the time that article was published, the one case where capacity was an issue remained outstanding. After nearly 2 years this was formally resolved when Tracey Storey, then at Irwin Mitchell took over the case. She had it listed before Master Whittaker for Approval, within 3 months of being instructed. 29.6.2005 was the date of the Approval Hearing.

#### Counselling Support for the Claimants

All solicitors making this statement recall that some sort of Counselling was put in place for the Claimants through the Tavistock Clinic.

We believe, but cannot be sure that this was funded by the Council, rather than its insurers. Tracey Storey has a vague memory that this might have been a joint Police/Social Services department initiative. We also believe that this Counselling was put in place to support witnesses in the criminal trials, but the details of how this was set up, and the proportion of claimants who took it up is not currently clear. Counselling referrals were apparently still being made in 2003, 2 years after the criminal trials had concluded.

#### Total Outlay

58 cases were settled. Unusually none were repudiated, which suggests some rigorous triaging of cases by the Claimants' solicitors.

The best information currently available to Browne Jacobson is that total outlay was £2,508,026.43, broken down as follows:-

£1,300,000.00 Damages  
£ 975,526.43 Claimants' individual costs  
£ 76,500.00 Claimants' generic costs  
£ 156,000.00 Defendant's Costs

Signed

DPA

Malcolm Johnson

DPA

Sarah Erwin-Jones

DPA

Tracey Storey

28/7/16