

## Should solicitors be allowed to advertise for historic child abuse cases?

By Peter Garsden

In last month's insidetime was an extract from the Sunday Times complaining about solicitors advertising for childhood abuse claims to prisoners, and opposite it an article from a convicted sex offender called Chris Denning, in which he stated that in English Law there is no time limit in child abuse cases, which put certain elderly men in constant fear of arrest. As my firm was one of those quoted in the Sunday Times, I thought I ought to respond to both points so as to broaden the argument.

Frankly, it is a fallacy and often-alleged contention, that advertising for child abuse cases provokes false allegations. Abuse of boys by older men, which make up 95% of our cases, is something which victims are intensely ashamed of. There is a stigma against the victims of past abuse, which leads people to believe, wrongfully, that the abused go on to be abusers. Often survivors of abuse are afraid to tell their own families for fear that they will be thought of as abusers, even though this isn't the case at all. To disclose in intimate detail sexual assault by an adult on a child is not a pleasant experience when the allegations are true. Why on earth anyone would want to invent allegations of abuse, and go through a psychiatric examination, which in itself can reveal untypical symptoms, is quite difficult to understand. Clients do not approach us saying that they want us to co-operate in the fabrication of false allegations against innocent men. If anyone were so foolish as to do this, ethics would prevent us from accepting the case. Needless to say it has never happened.

In response to the adverts, we often receive quite moving letters from prisoners, who have kept secret details of abuse by family, relatives, strangers, and others for decades. They are usually terrified that officers will read rule 39 correspondence (an oft repeated complaint), and ask us not to write but visit. They have reached a point in their lives where they have realised that a lot of their behaviour and crimes are influenced by inner anger against authority generated by childhood abuse. They want to sort their life out, and see making a complaint of abuse as coming to terms with the demons in their soul.

Sometimes it is not prisoners themselves but personal officers of prisoners, chaplains, counsellors, or other support workers who approach us on behalf of a prisoner, afraid to come to us direct. They make preliminary enquires on behalf of a prisoner to see what is involved. In the course of offender behaviour, or drug treatment programmes prisoners are encouraged to look back at their life and influences. They often disclose the abuse, realise how much of their life is affected by it, and want to sort their life out. Therapists often encourage their patients to process a complaint of abuse because it is seen as part of the healing process. Exorcising the inner self-directed anger which most victims feel, and moving on toward some sort of psychological closure is what all survivors of abuse want.

Once victims have taken that first step to disclose even to a cell mate or counsellor etc. Pandora's box is open, and try as they may, the demons will not go back into the box again. A good analogy is fire inside ice, fire being the inner anger, and ice being how the survivor appears on the outside, often deceiving those who interact with them.

So what of time limits. Firstly it is important to distinguish between criminal and civil law. The police bring criminal charges against alleged abusers on behalf of the public. Victims are witnesses. The purpose is to punish the offender. In civil cases the survivor is called a Claimant, and brings private proceedings against the abuser or his employer. In both types of law there are rules, which prevent some cases from proceeding because they are out of time or too old.

In criminal cases an accused can, and often does apply for an abuse of process hearing. He/she argues that the evidence too old to subject him/her to a criminal trial, which could deprive him/her of his/her liberty. They argue that witnesses are dead or documents have

been destroyed, which might have benefited their case, and such the trial should not take place. I know of many cases that have succeeded, such that alleged abusers never faced trial. Similarly many cases move on to trial, when a conviction or acquittal is still possible.

At civil law the Defendant is entitled to argue, in a similar way, that the case should not be allowed to proceed because it is too stale, and a fair trial is not possible. The rules are complicated but always argued in our historical cases, particularly where we are trying to sue the employers of a dead abuser. They argue that they cannot adduce rebuttal evidence to counter the evidence of the Claimant.

In neither type of law are there any absolute long stops ie a number of years certain beyond which no case can proceed. Why? Simply each is different, and must be tried on its own facts. For instance in one case the abuser may have written a letter of confession to his victim yet died. In another case there may have been a successful prosecution 40 years ago of the abuser even though all documents have been destroyed.

Sex offenders often groom their victims, entice them into abuse, and almost cast a spell over them, which inhibits disclosure though fear of the consequences. The victim might be influenced by fear, disbelief, or the thought that he/she is to blame. Victims are often threatened by their abusers. For instance, if in care, they could be threatened with not going home, or a severe custodial establishment with a bad reputation. The silence often lasts for years.

It is often the shame, embarrassment, and self disgust, which acts on the victim, preventing him/her for psychological reasons from disclosing. As this is the product of the abuse itself, how unfair would it be to prevent them from proceeding years later with their case, particularly when mental illness has stopped them from doing anything earlier. So disabled are the victims of rape that they are often not strong enough mentally to disclose until they have had some therapeutic treatment.

If there were a longstop provision that applied in all cases, it would prevent the court from examining each case on its own facts and judging appropriately.

Finally, there is something peculiarly circular about abuse. If the child in the care of government, attempts to disclose abuse in childhood, and is not believed because of influence exerted on authority by the abuser, how wrong would it be if the same authority then prevented him/her from proceeding with a case many years later because of an esoteric fixed time limit rule. It is an act of repeating the same abuse on him/her, thus damaging him/her psychologically even further, and repeating the rejection all over again.

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Peter is the senior partner of a firm of solicitors who have the only dedicated child abuse compensation department in the country. They run several group actions, and have a legal aid franchise. Peter has extensive media experience of Radio, Television, has written articles for many newspapers and other publishers. Peter also lectures on the subject of child abuse for ACAL (Association of Child Abuse Lawyers) and other organisations..