

## Historic civil claims – a folly converted to madness



Historic civil claims threaten secular and religious teaching institutions with bankruptcy

A test case in the High Court has opened the floodgates to long-delayed civil damages claims for alleged sexual abuse that could echo cases in the United States.

Former City solicitor Patrick Raggett brought a £5million legal action against a Jesuit-run school in Preston. He said he had been sexually abused by a priest at the school in the 1970's and that this had caused psychological damage ruining his career and personal relationships.

Until last year, when a historic ruling in the House of Lords changed the interpretation of the law, he would have been statute-barred from bringing the claim under English law.

But in reversing a decision that the victim of the so-called 'Lotto rapist', Iorworth Hoare, could not sue out of time when the perpetrator had come into a chance fortune, the Law Lords lifted the bar to delayed actions across the board. In future the right to sue out of time would be decided subject to the discretion of the court in applying s.33(3) of the Limitation Act 1980.

Mr Raggett's right to sue out of time was decided by a High Court judge who ruled that some of the abuse claimed had taken place and that he had not been fully aware of the fact until an emotional apocalypse in 2005 'resulted in an awakening of the memories of certain incidents of abuse that had occurred and, more particularly, of the emotions associated with the abuse'.

In what might be termed a 'split-level' recovered memory decision the judge has opened the way for historic civil compensation claims for alleged sexual abuse based on retrospective inference.

By allowing the claim to go ahead despite finding that the claimant would

have had the requisite knowledge to sue within time the judge was accepting that the re-evaluation of the claimant's life following the alleged realisation and therapy was sufficient both to prove the fact of the abuse and justify the delayed claim.

Whatever the truth of the matter, we make no apology for deploring this decision. For the reasoning accepted by the judge is akin to fevered ideological and religious conversion fuelling paranoia and igniting witch hunts.

Just what might have occurred at the school is unlikely to be unravelled with any certainty. The accused is deceased as are many of the staff and the school closed in 1978.

Notably the judge rejected the reliability of some 'recovered memory' alleged – that produced by the quasi-hypnotic eye movement desensitization and reprocessing (EMDR) and also that the claimant may have suffered from 'dissociative amnesia' – the theory that sexual abuse memory is stored in separate personas or personalities.

However the underlying principles for justifying the delayed claim were those associated with recovered memory but where a division is artificially drawn between reliable and unreliable recovered memory recall.

Any attempt to distinguish reliable from unreliable aspects of recall following 'recovered memory' therapy is a moot point; such claimants can and do recast recently discovered 'memories' as always remembered when re-writing the past to fit into a narrative sufficient to cause the effects comprising the basis of the financial claim.

Although these types of claims may now be brought on an individual basis against parents and carers, the most likely targets will be institutions and the public and charitable purse.

Given that the focus is on the alleged effects over a lifetime rather than conscientious concern for establishing the truth of the allegations with the lower than criminal standard of civil proof applicable, who knows how far back claims may go.

In the United States and Ireland there have been claims as far back as the 1940's and there seems no reason to suppose that a similar gold rush might not prosper here.

It is wrong to compromise the principles of justice on the basis of what can only be viewed as muddle-headed psychological theories and the culture of complaint.

And while such speculative claims might have been affordable in boom time Britain, at a time of unprecedented financial crisis where the public funds available for basic services diminishes as the burden on tax payers rises, they now look like a financial folly of the first order.

There is an urgent need to employ the principles of justice and good science in approaching these claims – while proposed statutory reform to rubber stamp the law lords' decision should be put into reverse.

In the interests of justice and a robust and confident society, a cap needs to be placed on historic claims of alleged abuse, and if the courts will not act, then a political solution must be sought.

**Chris Saltrese Solicitors** is able to provide advice to individuals and institutions faced with historic civil claims for alleged sexual abuse.