



JUDICIARY OF
ENGLAND AND WALES

THE HON. MRS JUSTICE LAMBERT DBE

7 February 2020

Ms Alexandra Merity
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Independent Inquiry into Child Sexual Abuse
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Dear Ms Merity

Independent Inquiry into Child Sexual Abuse

Accountability and Reparations Investigation report: recommendations

I am writing as Chair of the Editorial Board of the Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases to respond to Recommendation 5 of the Inquiry's Accountability and Reparations Investigation Report.

The latest edition of the Guidelines (the 15th edition) was published in November 2019. The next edition is due to be published in the autumn of 2021 and, assuming a similar lead in time to publication as for this edition, it is likely that I will be reconvening the editorial team in early 2021 to start work on the next edition.

By way of introduction, the Guidelines reflect and categorise the awards for general damages for personal injury which have been made by the courts. The work of the editorial team therefore involves reviewing the awards which have been made by the courts since the previous edition and adjusting the guidelines figures in the light of those awards. The function of the editorial team is not to exercise independent judgement and to suggest, or advise, where the figures should lie in respect of any particular category of injury. This remains the prerogative of the courts. The editorial team also draws together various factors which may assist the reader in placing the award within the appropriate category; these factors are again derived from the judgments which have been reviewed and do not reflect the

personal or professional views of the editorial team. In short, the Guidelines simply represent what other judges have been awarding for similar injuries. Their purpose is to provide a distillation of those awards, placing them within a useful framework to encourage consistency in judicial approach.

I hope that this is useful background against which to address Recommendation 5 of the Accountability and Reparations Investigation Report. The Recommendation has two elements: the first, that the Judicial College should revise its Guidelines to include a freestanding section addressing damages in cases of child sexual abuse; the second, that the new, freestanding, section should advise the court to take into account a number of listed features which may be present in cases of child sexual abuse. I deal with each recommendation in turn although recognise that there is an element of overlap.

I agree that a section focussing upon awards for victims of child sexual abuse would be of considerable assistance to all involved in such cases. Within the context of victims of sexual abuse generally (that is, both adults and children) I observed in the Introduction to the 15th edition of the Guidelines that there were “*strong arguments for creating such a sub-category given the particular features which often arise in such cases such as breach of trust, the inability to form or maintain emotional and sexual relationships, the impact upon education and the effect on the victim of the, often, long interval before the fact of the abuse is reported.*” When working on the 15th edition, we considered carefully whether we should create a separate category for victims of sexual abuse. However, the difficulty we encountered was that there were very few relevant reported decisions making it, we felt, impossible to carve out a useful separate category for such cases.

I hope that over the course of the lifetime of the 15th edition however there will be a rather larger number of reported decisions in which judges have considered the appropriate level of general damages for victims of child sexual abuse. However, even if not, then we will nonetheless create a freestanding category, even if it must be accompanied by the caveat that it is based upon only a small number of historical cases. I recognise that such an approach may well be helpful to users of the Guidelines and would reflect the views of the Chair and Panel following evidence from a number of witnesses, including victims and their legal representatives.

I turn therefore to the second element of the Recommendation. As I have already highlighted, it is not the purpose of the Guidelines to advise the court of the factors to take into account in

determining the appropriate award or the weight to attach to any particular factor. This must be a matter for the court to determine on the basis of its evaluation of all of the evidence before it. However, the Guidelines do draw together features which appear to have influenced the various awards for general damages in the hope of encouraging consistency in approach.

The current edition refers to damages for sexual abuse in the preamble to Chapter 4 which covers awards for “Psychiatric and Psychological Damage”. The reader is reminded that the injuries inflicted in such cases may not be limited to psychiatric injury but may include the physical effects of the abuse and that, where evidenced, the award may reflect an element of false imprisonment, breach of trust, the claimant’s feelings of degradation and the claimant’s experience during the interval between the abuse and disclosure. In respect of child victims who have been subjected to prolonged abuse by a person in a position of trust, the Guidelines suggest that the award is likely to fall within the top category for either severe psychiatric injury or post-traumatic stress disorder. When addressing psychiatric damage generally (which will include awards arising from sexual abuse) the same preamble refers to a number of features which may, if present, influence the award. These include the claimant’s ability to cope with life, education and work and the effect of the injury upon relationships.

Having reviewed Chapter 4 therefore it appears that the Guidelines already encompass those factors referred to in Recommendation 5. However, I recognise that a list of the relevant factors drawn from the caselaw should accompany the new freestanding category for damages in cases of child sexual abuse. We will provide this in the next edition.

I hope that this letter addresses Recommendation 5 comprehensively but please do not hesitate to contact me should you require any further information or clarification.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Mrs Justice Lambert', with a small cross at the end of the signature.

The Hon. Mrs Justice Lambert DBE

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