

# Scottish Court awards substantial damages in historic abuse case

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A Scottish court has made an award of damages in excess of £300,000 to a man who developed a “life-long psychiatric injury” after being physically and sexually abused by monks while staying at a residential school nearly 40 years ago. The court ruled that the pursuer would suffer for the rest of his life as a result of the abuse he experienced during his two-year stay at the residential home, which justified an award near the top of the scale for Post-Traumatic Stress Disorder (£120,000).

The pursuer, who wished to remain anonymous, was placed in care in an establishment run by a religious order between January 1979 and December 1980. There he was raped, beaten and sexually assaulted by one Brother who died in 2013 and sexually assaulted by another, who was jailed in 2016 and at whose trial the pursuer gave evidence; he was also repeatedly assaulted by a lay teacher at the school.

The pursuer suffered life-long consequences as a result of the abuse, being anti-social, aggressive and trouble seeking in his teens and early 20s and continuing to face difficulties in forming close relationships after his marriage. His education and employment were adversely affected and it took some time before he started to work steadily and full-time, albeit by trial he had secured and was holding down a managerial post with his employers.

Although it was not diagnosed at the time, he developed Post-Traumatic Stress Disorder shortly after leaving the residential school - a condition that persisted throughout his adult life. He suffered from emotional instability, difficulty with trust and establishing relationships, low mood and anxiety, flashbacks of the abuse, nightmares, behavioural problems, abuse of alcohol to cope with problems, sleep problems, recurring feelings of hopelessness and worthlessness and hyper-vigilance and avoidance behaviours. In 2007 he was diagnosed with depression and in 2010 he attempted suicide by hanging. He hid his background and experiences from others including his wife.

Whilst the pursuer sought damages in excess of £1,000,000 and the defender sought to persuade the court that the damages should be £140,000, the court ordered the Order to pay a total of £317,224. In awarding damages, the Court took into account the English judgments in *JXL & SXC v Winston Britton*; *RAR v GGC*; *FZO v Adams*; and *LXA v Willcox* in relation to lost earnings and in relation to general damages (solatium) the judgment of the Court of Session in *J v Fife Council* and the following factors:

- i. the nature and severity of the abuse, and its character whether sexual, non-sexual but violent, or mental/emotional;
- ii. the frequency of the abuse;
- iii. the duration of the abuse;
- iv. the age of the pursuer at the time of the abuse;
- v. the immediate effects of the abuse on the pursuer;
- vi. whether any apportionment is required to reflect abuse by others, or other causes of the pursuer’s problems;
- vii. the emotional and social consequences of the abuse for the pursuer;
- viii. any psychiatric illness or psychological condition suffered by the pursuer as a consequence of the abuse.

We anticipate an increase in the volume of Scottish abuse claims once the Scottish QOCS provisions are brought into force later this year. At the moment many of the leading Scottish claimant firms are known to be registering a high volume of claimants arising from the ongoing Scottish Historic Child Abuse Inquiry. In Scotland, in terms of legislation passed by the Scottish Parliament, limitation does not apply to claimants who were under 18 at the time of the conduct relied upon.

*Our Scottish office is now instructed by a number of our insurance clients in abuse cases. For further information please contact Andrew Ireland, a partner in our Glasgow office and member of our specialist liability team.*

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