

## INDEX

abuse of position of trust, 34 Australia (cont.) abuse of process, 247 remoteness of damage, 232-233 abuse victims. See victims secondary victims, 71 tort litigation, 49-50 access to justice false accusations of abuse, 160–161 trespass or negligence, 57 and limitation periods, 59-60 vicarious liability, 111, 118–120 accountability, and tort litigation, 3, Australian Psychological Society, 203 43-45, 226 avoidance behaviours, 24, 279-280 accused. See litigation by accused admissibility of evidence bankruptcy, shield, 53 disciplinary proceedings, 180 battered child syndrome, 2, 27 hypnosis, 206 battery. See trespass to the person recovered memories, 24 belief, right to, 5, 6 English law, 201-206 Bichard Inquiry, 82 US law, 206-208 borderline personality disorder credibility of claimants, 225 adoption, iatrogenic neglect, 88, 151 adult victims, vicarious liability, diagnostic criteria, 222-223 124-125 effect of child abuse, 219 adversarial process, effect, 47 generally, 222-223 v post-traumatic stress disorder, 223 alcoholism, 223, 231, 233, 237 Alpert, J. 18 Bowman, C. G., 177 American Medical Association, 203 Brandon Report, 23, 202-206, 224 Aristotle, 37 breach of confidence assault. See trespass to the person abuse accusations, 164-166 Association of Child Abuse public interest defence, 166 Lawyers, 284 breach of fiduciary duty actions against non-perpetrators, Atiyah, Patrick, 43 Australia 104-105 breach of non-delegable duties, 106 actions against perpetrators, 54, 66-69 employers' negligence, 84 and battery, 56-58, 60-61 false accusations of abuse, 151, causation rules, 66, 234-235 contributory negligence, 235 180 - 182defamation actions, 186 limitation periods, 255–258 limitation periods, extension, 269-270 meaning, 66-69, 256-257 post-traumatic stress disorder, 221 non-tortious action, 108 pure psychiatric harm, quantum of damages, 66 compensation, 216-217 use of remedy, 286



> INDEX 300 breach of non-delegable duties, recovered memories, 202 105-107, 108 sexual abuse discourse, 13 breach of statutory duty substance abuse, 223 actions against non-perpetrators, tort litigation, 49-50 75-76 trespass or negligence, 57 vicarious liability, 108, 111, 117-118, false accusations of abuse, 155-157 strict liability, 76 120-123, 124, 125-126 Briere, J., 22 Wilkinson v. Downton actions, 62, British Medical Association, 64, 213-214 167-168, 171 Canning, Angela, 44–45 categories of abuse Browne, A., 18 bulimia, 173, 224 emotional abuse, 4, 14, 20, 132 generally, 3-15 bullying beyond school premises, 95–96 legal concepts, 3 defendants, 11-12 neglect. See neglect physical abuse, 4, 5-12, 19-20 definition, 10 sexual abuse. See sexual abuse form of physical abuse, 10-12 identification, 10-11 Catholic Church policies, 98 proliferation of civil claims, 53 standard of care, 96-99 vicarious liability, 108, 111 burden of proof causation child abuse, 200-208 and claimants' criminality, 229-231 civil v criminal actions, 45, 201 breach of fiduciary duty, 66, 234-235 'but for test,' 225-226 previous convictions, 201 bystander claims, 135-138 recovered memories, 201-206 bystander claims Clunis argument, 229-231 criminal injury compensation, criminal injury compensation, 135 crumbling skull rule, 233-234 135 - 138forms of actions, 69-71 delayed recognition, 266-268 diffused accountability, 3, 226 Canada Fairchild approach, 227-229, 235, alcoholism, compensation, 237 237, 242 generally, 225-235 battery, 129 breach of fiduciary duty, 104-105, 142 legal approaches, 35 Charter of Rights, 49 material contribution test, 226-228 criminal abuse trials, 48 novus actus interveniens, 229-231 damages, 240 proving causation in fact, 225-226 employers' liability in negligence, 78 psychoanalytical approaches, 34-35 false accusations of abuse, 151, remoteness of damage, 231-233 182-183 thin skull rules, 233 fiduciary obligations, 68-69, 256 child abuse iatrogenic neglect, 93, 100, 102 categories, 3-15 insurance policies, 129 context, 25-27 legal responses to abuse, 286-287 damage. See damage limitation periods, extension, 254, evolving social construction, 1–3 260, 268, 273–275, 280, 286 extent of problem, 24-25 false accusations. See false malicious prosecutions, 193

punitive damages, 242

accusations of abuse



child abuse (cont.)	Commission for Healthcare Regulatory
judicial scepticism, 177, 262, 284, 288	Excellence (CHRE), 180
legal concepts, 3	Commission for Social Care
litigation. See civil litigation; tort	Inspection, 31–32
litigation	compensation
child pornography, 12	apportionment, 235–238
child protection	contributions, 236
diffused accountability, 3, 226	corrective justice, 37
margins of appreciation, 159	crumbling skull rule, 233-234
onslaught of regulatory reforms,	distributive justice, 38-40
31–33	and just satisfaction, 74-75
child protection registers	'lifestyle' damage, 233
categories of abuse, 4	physical damage, 208-209
decline in registration, 30	psychiatric damage, 209-210
physical abuse statistics, 8	pure psychiatric harm, 210–215
sexual abuse statistics, 12	classification of illnesses, 218-224
sexual offenders, 81–82	intentional wrongs, 211–212
childcare institutions	negligence claims, 214–215
abuse in, 26–27	primary/secondary victim
bankruptcy shield, 53	dichotomy, 214–215
inspection, 31–32	recognised disorder requirement,
last resort, 31, 42	212–214, 215–217
and paedophilia, 112	role of expert evidence, 218
ChildLine, 27	Wllkinson v. Downton actions,
childminding, regulation, 32–33	212–214
Children's Commissioner, 33	purpose of tort litigation, 36–40, 198
children's rights	symbolic force, 37
judicial recognition, 34	thin skull rules, 233
UN Convention 1969, 4, 8	compensation culture, 52
civil litigation	confidentiality
adequacy of remedy, 74	and accusations of abuse, 164-166
and child abuse, 52-54	medical profession, 164–166
v criminal injury compensation,	doctor/patient relationship, 91
53–54, 131–141	v duty to report abuse, 166–168
escalation of claims, 35–36, 53–54	psychiatrist/patient, 79
functions, 36–47, 141–142	United States, 175
issues in English system, 141–143	contract, compensation, 215
judicial responses to abuse claims,	contributory negligence, 235
285–288	Convention on the Rights of the
judicial scepticism, 177, 262,	Child, 4, 8
284, 288	corporal punishment
Clark, Sally, 44–45	form of abuse, 5–8
Cleveland case, 2, 28–31, 44, 58	psychiatric injuries, 19
Cleveland Inquiry, 27, 171	reasonable chastisement, 6–8
Climbié Inquiry, 167	corrective justice
Clunis argument, 229–231	concept, 37–38
Clwyd County Council, 47	v distributive justice, 39–40
Colwell, Maria, 27	and duty of care test, 39



302

Cambridge University Press 978-0-521-86402-2 - Compensating Child Abuse in England and Wales Paula Case Index More information

> corroboration, recovered memories, 208, 275 damages for abuse allegations, 186 credibility, claimants, 43-44, 225 evidence of publication, 187-188 Criminal Injuries Compensation false accusations of abuse, 145, 185-192 Authority, 132 criminal injury compensation abuse claims, 139-141 libel, 185 loss of earnings, 239 adequacy of remedy, 74 malice, 178, 188, 189, 190-192 appeals and reviews, 132, 134 bystander claims, 135–138 qualified privilege defence, 188–190 causation, 135 slander, 185 ceiling, 133 defensive practice v civil actions, 53-54, and false accusations of abuse, 150, 131 - 141152, 153-154, 196-197 and convictions, 139 and tort litigation, 86-87 crimes of violence, 138-139 delay intra-family crimes, 139 See also limitation periods law reform, 131 mental injuries, 134-135 and public awareness of abuse, 28, 267, 284 pure psychiatric harm, 211 quantum, 37, 132-133 and right to fair trial, 75, 276-277 requirements, 132 therapeutic delay, 280 schemes, 131 delegation time limits, 134 breach of non-delegable duties, 105–107, 108, 257 criminal prosecutions burden of proof, 45, 201 vicarious liability, 115-116, 123 and criminal injury depression, 237, 269 compensation, 139 deterrence, and tort litigation, 40-42 fines v civil damages, 242 disability and recovered memories, 206 dissociative amnesia, 21-23, 283 Criminal Records Bureau, 82 and limitation periods, 252-253, crumbling skull rule, 233-234

damage child abuse, 16-24, 208-225 crumbling skull rule, 233-234 foreseeability, 231-232 'lifestyle' damage, 233 physical damage, 208-209 psychiatric damage, 209-210 See also psychiatric injuries remoteness, 231–233 thin skull rules, 233

damages. See compensation; quantum of damages day care, regulation, 32-33 declaratory orders, and limitation periods, 281–282

defamation

INDEX

innocent dissemination defence, 187

delayed discovery doctrine, 260-276

260, 279-280 law reform, 283

meaning, 252-253

disciplinary proceedings

appeals, 180

defective medical evidence, 36, 163-164, 178-180

and malicious prosecutions, 193

and recovered memories, 202

and tort litigation, 41

disqualification from working with children, 80-82

dissociative amnesia, 21-23, 283

distorted perceptions, victims, 23,

268, 284 distributive justice

compensation, 38-40



distributive justice (cont.)	employment status, 109-110
v corrective justice, 39–40	entrepreneur test, 109
and vicarious liability, 39	equal treatment, and limitation
doctor-patient relationship, 67-68, 91,	periods, 59–60
256–257	Erichsen, John, 219
drug dependency	estoppel, and limitation periods, 253-254
effect of abuse, 223	European Convention on Human Right
remoteness of damage, 231, 233	See also specific rights
Duff, P., 133	and child abuse, 3
duty of care	corporal punishment, 5, 6-7
and corrective justice, 39	use of jurisprudence, 72
false accusations of abuse, 145-146,	ex turpi non causa oritur, 230
168–170, 196	exemplary damages, 48, 241
floodgate argument, 77, 88	exhibitionism, 12
iatrogenic neglect, 84	expert evidence
legal approach, 35	Cleveland Case, 44
local authorities, 89-90, 145-146	and compensation for pure
medical profession	psychiatric harm, 218
accused as non-patients, 168–170	defective evidence, disciplinary
repressed memories, 172-174	proceedings, 178–180
negligence actions, 77	distrust, 44–45
non-delegable duties, 105–107,	and extension of limitation periods
115–116, 123	268–270
pregnancies, 152	witness immunity, 92, 163–164
tripartite test, 39	
to victims' relatives, 70	fabricated or induced illness (FII),
will drafting, 152, 153–154	8–10, 20
dyslexia, 287	fair trial
	access to justice, 59–60, 160–161
eating disorders, 224	and delay, 75, 245
education	false accusations of abuse, 161
bullying. See bullying	false accusations of abuse
educational neglect, 15, 87–88	breach of statutory duty, 155–157
floodgates of educational	comparative law, 180–184
malpractice, 155	damage, 144
iatrogenic neglect, 94–99	defamation actions, 185–192
non-delegable duties, 106	'East Berkshire claim', 147
and remoteness of damage, 231	forms of actions, 144–145
emotional abuse	good faith, 150, 161, 183, 191
criminal injury compensation, 132	Human Rights Act claims,
nature, 14	157–161, 178
psychiatric injuries, 20	access to courts, 160–161
statistics, 4	respect for family life, 157–160
employers	intentional infliction of psychiatric
negligence liability for abusers, 77–79	harm, 194–195
vetting standards, 79–84	judicial approaches, 145, 195–196
vicarious liability. See vicarious	judicial review, 184
liability	legal representation, 158



304 INDEX

false accusations of abuse (cont.) litigation by accused, 144–145 by local authorities, 145-164 by victims, 54-131 malicious prosecution actions, foster parents 192-194 iatrogenic neglect, 90, 101-104 by medical profession, 164–180 vicarious liability for, 110–111 misfeasance in public office, 162 fraud, and limitation periods, negligence 253-254, 260 defensive practice reasoning, 150, Freud, Sigmund, 16-17, 30 152, 153–154, 196–197 'Dewsbury claim', 147 General Medical Council foreseeability, 148-149 disciplinary proceedings, 179-180 implanting false memories, 172-174 disclosure of sexual abuse, 91 JD v. East Berkshire Community duty to report abuse, 166, 168 NHS Trust, 146-154 and false accusations of abuse, 153 Greer, E., 46, 178 justice, fairness and reasonableness, 149-151, 170, 181 by local authorities, 145–155 harassment, 65, 211 by medical profession, 168–178 Harper, S. J., 55, 255 'Oldham claim', 146 healthcare professionals. See medical proximity, 148-149, 168-170, 184 profession standards of care, 154-155, 171-172 Higgs, Marietta, 28 pandemics, 58 home abuse and standard of proof, 150 division of families, 25-26 types of claims, 144 and public policy, 25-26 hospital trusts, iatrogenic neglect, 93-94 witness immunity, 163-164 false negatives, 3 House of Commons Home Affairs Committee, 116 false positives, 2 family separation, 25-26 Human Rights Act 1998 and false accusations of abuse, feminism, 17 157-161, 178 fiduciary duty. See breach of fiduciary duty impact on abuse litigation, 49 Finkelhor, D., 18 non-retrospectivity, 60 Flannigan, R., 66 statutory interpretation floodgate arguments, 77, 88, 155, 211 compatibility, 60 third-party liability under, 72-75 foreseeability and awareness of abuse, 27-28 hypnosis, 205–206 criminal injury compensation, 136 damage, 231-232 iatrogenic neglect and false accusations of abuse, 148-149 abuse by children in need, 88 thin skull rules, 233 adoption agencies, 88, 151 forms of actions educational neglect, 87-88 against non-perpetrators. See thirdfloodgate argument, 88 party defendants foster home abuse, 90, 101-104 generally, 84-99 against perpetrators, 54-71 bystander family members, 69-71 heath care professionals, 91-92 choice, 35 hospital/NHS trusts, 93-94 and limitation periods, 24, 101, human rights actions, 89

255-258

limitation periods, 259–280



iatrogenic neglect (cont.)	judicial review
local authorities, 84–90	adequacy of remedy, 74
meaning, 72	false accusations of abuse, 184
non-intervening parents, 101–104, 282	juries, and hypnosis, 205
police and correctional services,	just satisfaction, ECHR, 74–75
99–101	V D. C. O. II. 2, 27
pure psychiatric harm, compensation, 214–215	Kempe, R. S. & H., 2, 27
schools and teachers, 94–99	Lamm, J., 274, 279
social workers, 91–92	language, and tort litigation, 47–49
X v. Bedfordshire County Council, 85–90	legal representation, 158
incest	libel, 185
and public opinion, 28	'lifestyle' damage, 233
public policy, 26	limitation periods
inhuman or degrading treatment	arbitrariness, 245
ECHR, 6–7, 54, 73	battery, 56, 58
local authorities, 89	choice of actions, 24, 101, 255–258
misfeasance, 107	breach of fiduciary duty, 255-258
positive obligations, 73	Wilkinson v. Downton actions,
insurance	63–64, 258
'accidental injuries', 127–128	declaratory remedies, 281–282
and actions by victims, 126-131	delayed discovery doctrine
'bodily injuries', 126–127	Canadian approach, 260, 268,
and choice of defendants, 54	273–275
construction of policies, 126-128	and claimants' character, 270-273
contra proferentem rule, 130	experts' role, 268–270
and extension of limitation	generally, 260–276
periods, 277	issues, 261
insured non-perpetrators, 129-131	judicial scepticism, 262, 284
insured perpetrators, 128–129	law reform, 283-284
public policy, 128	and nature of disorder, 274–276
and vicarious liability, 130–131	New Zealand approach, 266–267,
intentional infliction of psychiatric	273, 284
harm. See Wilkinson v. Downton	objectivity of test, 270–273
actions	recognition of causation, 266–268
international law, and child abuse, 3–4	significant injuries, 262–265
vp. p. 1.1: 0	US approach, 275–276
JD v. East Berkshire Community NHS	effect, 246, 281
Trust	extension, 35
comment, 151–154	avoidance behaviour, 279–280
defensive practice reasoning, 150,	battery claims, 252–254
152, 153–154	delayed discovery, 260–276
false accusations of abuse, 146–154	disability, 252–253, 260,
foreseeability and proximity, 148–149	279–280, 283
justice, fairness and reasonableness,	equity, 257, 276
149–151	fraudulent concealment,
reasoning by analogy, 147–148, 196	253–254, 260 indicial discretion, 276, 280
respect for family life, 159	judicial discretion, 276–280



306 INDEX

limitation periods (cont.) litigation by accused (cont.) negligence, 260 intentional infliction of psychiatric therapeutic delay, 280 harm, 194-195 human rights challenges, 59-60 judicial review, 184 malicious prosecution actions, 192-194 issues, 286-287 law reform, 61, 244, 282-284 types of claims, 144 legal framework, 244–248 local authorities Limitation Act 1939, 280-281 duty of care, 89-90 Limitation Act 1954, 280 false accusations of abuse, 145-164 Limitation Act 1980, 247-248 foster home abuse, 90, 101-104 negligence actions, 77, 259-280 iatrogenic neglect, 84-90 Northern Ireland, 255 X v. Bedfordshire County Council, 85-90, 145-146 and post-traumatic stress disorder, London bombings, 131 221-222, 265, 270 potency of limitation defence, 48, loss of earnings, 239 244-245 preliminary issues, 246-247, 277 malice, 162, 178, 188, 189, 190-192, 211 procedures, 246-247, 250 and public awareness, 28, 267, 284 malicious prosecution actions rationales, 38, 245-246 burden of proof, 145 and recovered memories, 24, 202 and disciplinary proceedings, 193 false accusation of abuse, 192-194 Scotland, 255, 264 Stubbings v. Webb, 248-251 and recovered memories, 178 circumventing, 255-258 margins of appreciation, 159 Meadow, Roy, 8, 44, 93, 163-164 third-party defendants, 258–280 torts, 247-248, 280-281 and abuse inquiries, 27-31 exception, 248 moral panics, 28-29 two-tier system, 247–248 medical profession vicarious liability, 258-259 Wilkinson v. Downton actions, confidentiality obligations, 164-166 63-64,258v duty to report abuse, 166–168 Linden, A. M., 43 doctor-patient relationship, 67-68, 91, 256-257 List 99, 80, 82 litigation. See civil litigation; litigation false accusations of abuse, 164–180 by accused; tort litigation accused as non-patients, 168-170 litigation by accused disciplinary proceedings, 178–180 against local authorities, 145-164 human rights challenges, 178 Human Rights challenges, implanting false memories, 172-174, 177, 204-206 157-161 misfeasance in public office, 162 negligence, 168-178 negligence, 145-155 policy considerations, 170 witness immunity, 163-164 proximity, 181 against medical profession, 164-180 standards of care, 171-172 negligence, 168–178 patient autonomy, 174 comparative law, 180-184 third-party liability, 168-170, 174-178 Australia, 180-182 damage, 144 defamation, 185-192 negligence actions, 91-92 forms of actions, 144–145 training in child abuse, 172



memory hardening, 205	by local authorities, 145–155
mental disability. See disability	by medical profession, 168–178
Mertz, E., 177	proximity, 148–149, 168–170,
mesothelioma, 227, 229, 235	181, 184
misfeasance in public office	standards of care, 154–155,
actions against non-perpetrators,	171–172
107–108	hospital/NHS trusts, 93–94
false accusations of abuse, 162	iatrogenic abuse/neglect, 84–99
forms, 107–108, 162	limitation periods, 77, 251, 259–280
malice, 162	local authorities, 84–90
meaning of public office, 162	medical profession, 91–92, 168–178
moral panics, 28–29	non-intervening parents, 101–104, 282
motor insurance, 41	police and correctional services,
Mullender, R., 39–40	99–101
Mullis, A., 59	primary and secondary victims, 76,
multidisciplinary approaches, 2–3, 171	214–215
multiple personality disorders, 224	pure psychiatric harm,
Munchausen syndrome by proxy, 5, 8	compensation, 214–215
7 7 7 7	requirement for actions, 76–77
Neeb, J. W. W., 55, 255	schools and teachers, 94–99
neglect	social workers, 91–92
corrective justice, 38	transferred negligence, 173-174
criminal injury compensation, 132	witness immunity, 92
educational neglect, 15	nervous shock, 219
iatrogenic neglect. See iatrogenic	New Zealand
neglect	Accident Compensation Scheme, 50
nature of abuse, 14-15	declaratory orders, 281–282
statistics, 4	definition of homicide, 195
negligence	disability, meaning, 253
actions against non-perpetrators,	false accusations of abuse, 151, 162,
76–104	183–184, 194–195
actions by accused, 145	fiduciary obligations, 69
benchmarks by regulatory bodies, 33	legal responses to abuse, 286–287
breach of confidence, 165	limitation periods, extension,
burden of proof, 201	266–267, 273, 281–282, 284, 287
duty of care, 77	punitive damages, 241–242
employers	tort litigation, 49–50
liability, 77–79	trespass or negligence, 58
vetting standards, 79–84	vicarious liability, 110–111
false accusation of abuse	Wilkinson v. Downton actions,
defensive practice reasoning, 150,	194–195
152, 153–154, 196–197	NHS trusts
foreseeability, 148–149	iatrogenic neglect, 93–94
implanting false memories, 172–174	non-delegable duties, 106
JD v. East Berkshire NHS Trust,	non-intervening parents, 47,
146–154	101–104, 282
justice, fairness and reasonableness,	North Wales Child Abuse Inquiry. See
149–151, 170, 181	Waterhouse Report



> 308 INDEX Northern Ireland, limitation post-traumatic stress disorder (cont.) periods, 255 thin skull rules, 233 novus actus interveniens, 229-231 with other disorders, 238 NSPCC, 24 pregnancy, duty of care, 152 prevention of incidents, and litigation, nursery education, regulation, 33 Oedipus theory, 17 prostitution, 12, 233 OFSTED functions, 32-33 proximity, and false accusations of ombudsmen, adequacy of remedy, 74, abuse, 148–149, 168–170, 156, 159 181, 184 psychiatric injuries Orkney scandal, 29-31, 58 outrage, 214 See also specific disorders avoidance behaviours, 24, 279-280 paedophilia, 12, 112 barriers to litigation, 20-24 parents, non-intervening parents, 47, classification, 218-224 101-104, 282 compensation partnerships, vicarious liability, 110 intentional psychiatric wrongs, 211-212 perpetrators breach of fiduciary duty, 54, 66-69 negligence claims, 214-215 insured, 128-129 pure psychiatric harm, 210–215 trespass to the person, 54-61 recognised disorder requirement, 212-214, 215-217 physical abuse bullying, 10-12 role of expert evidence, 218 corporal punishment, 5-8, 19 Wilkinson v. Downton actions, fabrication/induction of illness, 212-214 8-10, 20corporal punishment, 19 forms, 5 credibility of claimants, 43-44, 225 criminal injury compensation, nature, 5–12 psychiatric injuries, 19-20 134-135 damages in tort, 210-215 statistics, 4, 8 Pitcairn Islanders, 1 distorted perceptions, 23 POCA list, 80, 82 emotional abuse, 20 police, iatrogenic neglect, 99-101 fabricated or induced illness post-traumatic stress disorder (FII), 20 'bodily injury', 127 and insurance policies, 126-127 v borderline personality myths, 224 disorder, 223 non-sexual abuse, 19-20 diagnostic criteria, 219-220 physical abuse, 19-20 effect of child abuse, 219 physical/mental overlap, 209-210 generally, 219-222 proof issues, 35 invention of psychiatry, 219 psychiatric damage, 209-210 legal convenience, 220-221 repressed memory. See recovered and limitation periods, 221-222, memories 265, 270 sexual abuse, 16-19 non-divisible injury, 221, 237 PTSD. See post-traumatic stress physical characteristics, 209 disorder

pitfalls for litigants, 221-222

and sexual abuse, 17, 18

public authorities, human rights

obligations, 72–73



public awareness	recovered memories (cont.)
and approaches to litigation, 27–28	reliability, 24, 177, 203–204
and foreseeability of abuse, 27–28	sexual abuse, 12, 13
and limitation periods, 28, 267, 284	techniques, 202, 205–206
and tort litigation, 43–45	United States, 172–174, 175, 177,
public inquiries	206–208, 275
See also specific inquiries and reports	corroboration, 208, 275
focus, 2	reflex anal dilatation test, 44
media reporting, 27–31	regulatory bodies
public policy	benchmarks, 33
and consent defence, 55	
and escalation of claims, 53	reform onslaught, 31–33 rehabilitation of offenders, 81, 82
-	
and false accusations of abuse, 170	relatives
and insurance, 128	claims against perpetrators, 69–71
vicarious liability, 125–126	non-intervening parents, 47,
witness immunity, 163	101–104, 282
punitive damages, 48, 241	secondary victims, 70–71
	religion
quantum of damages	and paedophilia, 112
aggravating factors, 240–241	right to belief, 5, 6
apportionment, 235–238	remedies, right to
contributions, 236	adequacy of ombudsman remedy,
and criminal fines, 242	74, 156, 159
exemplary damages, 48, 241	declaratory remedies, 281–282
general and special damages,	ECHR, 73–74
239–240	false accusations of abuse, 159
generally, 235–242	remoteness of damage, 231–233
loss of earnings, 239	repressed memories. See recovered
punitive damages, 48	memories
and seriousness of wrongs, 41–42	respect for family life
supervening traumatic events,	false accusations of abuse,
238–239	157–160, 196
tort v criminal injury	margins of appreciation, 159
compensation, 37	remedies, 213
1	right of belief, ECHR, 5, 6
recovered memories	Rind, B., 17–18
admissibility of evidence, 24,	risk allocation, 39
201–206	risk management, 40
Brandon Report, 23, 202–206	Royal College of Paediatricians, 166
dissociative amnesia, 21–23, 283	Royal College of Psychiatrists, 202
effect of litigation, 46	11
implanting false memories,	sadism, 12
172–174, 177, 204–206	Safeguarding Vulnerable Groups Bill,
judicial scepticism, 177	82–83
lack of consensus, 22–23	Salem witch trials, 30
legal barriers, 21–23	Salmond, J., 112, 117
limitation of actions, 24	satanic abuse, 204
memory hardening, 205	schizophrenia, 222, 224



310

Cambridge University Press 978-0-521-86402-2 - Compensating Child Abuse in England and Wales Paula Case Index More information

> schools Southall, Professor, 36, 45, 153 iatrogenic neglect, 94-99 speech impediments, 11 non-delegable duties, 106 standards of care, and false accusation standard of care, 96-99 of abuse, 154-155, 171-172 Stocker, Petrina, 9 Scots law Stubbings v. Webb limitation and prescription, 245, 255, 264 circumventing, 255-258, 286 medical profession, third party critique, 249-251 effect, 30, 58, 101, 142-143, 282, liability, 170 vicarious liability, 123 285-286 secondary victims, 70–71, 76, 135–138, experts' role, 269 147, 214–215 human rights challenges, 59-60 seduction theory, 16-17, 30 judicial scepticism, 262, 284 self-blame, victims, 23, 268, 284 and law reform, 59 sexual abuse limitation periods, 248-251 criminalisation of home abuse, 25 and Scots law, 255 sexual abuse as breach of duty, discourse, 12-13 dominance, 4, 16 57, 249 judicial responses to, 285-288 substance abuse, 223, 231, 233 nature, 12-13 sudden infant death syndrome, 44 Pitcairn Islanders, 1 suicides psychiatric injuries, 16-19 borderline personality disorder, 222 recovered memory, 12, 13 bullying, 10 social construction, 12-13, 34 emotional abuse, 20 statistics, 4 sexual abuse, 18 unique crime, 12-13, 20, 285 Sweden, ban on smacking, 8 sexual offences criminal injury compensation, 133, teachers 139-141 iatrogenic neglect, 94-99 redefinition, 34 standard of care, 96-99 sex offenders' register, 81-82, 101 therapy shell shock, 219 and declaratory orders, 281 slander, 185 hypnosis, 205 social construction recovered memories, 204 evolution of child abuse concept, tort litigation as therapy, 45-47, 1 - 354, 198 sexual abuse, 12-13, 34 thin skull rules, 233 social workers third-party defendants See also local authorities actions by victims, 71-126 diffuse accountability, 3 breach of fiduciary duty, 104-105 false accusations of abuse, 145-164 breach of non-delegable duties, 105-107, 108 malpractice cases, 29 negligence actions against, 91-92 breach of statutory duty, 75-76 standards of care, 154-155 Human Rights Act actions, 72-75 stress, 197 iatrogenic neglect, 84-99 Soham murders, 82 insurance policies, 129-131 solicitors, third party liability, 152, limitation periods, 258-280 misfeasance actions, 107-108 153-154, 169



INDEX 3II

third-party defendants (cont.) Trindade, F. A., 62 negligence actions, 76-104 Tucker Committee, 249, 250 reasons for actions, 71-72 types of non-perpetrators, 72 undue influence, 67 vicarious liability, 108-126 United States tort litigation battered child syndrome, 27 See also specific torts employers' liability in negligence, accountability function, 43-45 extent of child abuse, 24 adversarial process, 47 and child abuse, 34-50 false accusations of abuse, 145, 151, choice of defendants, 54 172 - 174comparisons, 49–50 limitation periods, extension, 254, compensation function, 36-40, 198 275-276 medical profession, third party and defensive practice, 86-87, 150, liability, 174-177 152, 153–154, 196–197 outrage, tort, 214 forms of actions. See forms of preferential treatment of abuse, 199 recovered memories, 172-174, 202, actions functions, 36-47, 141-142 206-208, 275 and Human Rights Act 1998, 49 sexual abuse discourse, 13, 18 judicial responses to abuse claims, 285-288 vetting standards, 79-84 language issues, 47-49 vicarious liability abuse in non-residential settings, lengthy procedures, 46 limitation periods, 247-248, 123-124 280-281 actions by victims, 108-126 medico-legal joining of forces, 34 adult victims, 124-125 and motor insurance, 41 bullying, 11-12 perpetrators as defendants, 54-71 comparative law, 116–123, 125 preventive function, 40-42 connection test, 113-120, 123 proliferation of abuse claims, 35-36, course of employment, 112–123 distributive justice, 39 psychiatric harm issues, 20-24 dual liability, 110 public forum function, 43–45 employment relationship, 109-110 risk allocation, 39 entrepreneur test, 109 standard setting function, 40-42 fairness and reasonableness, therapeutic function, 45-47, 114-115 54, 198 insurance, 130-131 limitation periods, 258–259 time lag, 41 Wilkinson v. Downton actions, Lister v. Hesley Hall, 114-116, 126, 61-65, 194-195 142-143, 265, 288 non-delegable duties, 115-116, 123 trespass to the person actions against perpetrators, 54-61 non-employment relationships, consent defence, 55 110-111 limitation periods, 56, 58 non-profit organisations, 125–126 and parents, 193 pure psychiatric harm, 211 whether breach of duty, 56-58, public policy, 125–126 60-61, 249 spectrum of risk, 120-123



victims

Cambridge University Press 978-0-521-86402-2 - Compensating Child Abuse in England and Wales Paula Case Index More information

312 INDEX

adult victims, 124-125 bystander family members, 69-71, 135-138 distorted perceptions, 23, 268, 284 forms of actions, 54–131 portrayal in court, 47-49 primary/secondary victim dichotomy, 76, 214–215 secondary victims, 70-71, 135-138, 147 self-blame, 23, 268, 284 Vietnam War, 17 Waterhouse Report, 26–27, 31, 33, 42, 247 Wilkinson v. Downton actions actions by victims, 61-65 conduct calculated to cause harm, 62 damages, recognised disorder requirement, 212-214

194-195 generally, 61-65 limitation periods, 63-64, 258 recklessness, 62 type of harm, 64-65 Williams, L., 22 wills, and duty of care, 152, 153-154 witnesses credibility of mentally ill claimants, 43-44, 225 hypnosis, 205, 206 immunity, 92, 163-164 Working Together to Safeguard Children, 4, 5, 12, 14 World War I, 219 World War II, 25 Wyatt, Geoff, 28

false accusations of abuse,