

STATES OF JERSEY



CHILD ABUSE COMPENSATION CLAIMS: FREEDOM OF EXPRESSION FOR SURVIVORS

Lodged au Greffe on 6th April 2009
by Senator S. Syvret

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to agree that in respect of claims being made against the States of Jersey by survivors of child abuse, the States shall not offer, seek or impose any form of confidentiality clause in any negotiations or settlement with claimants and their representatives, and to further agree that the States shall not make any request to a court, future redress board or similar body considering compensation claims, to impose such a clause as part of any judgment or settlement.

SENATOR S. SYVRET

REPORT

This is a simple proposition which is easily understood, and has several objectives.

By adopting this proposition, the States of Jersey will be agreeing that, in the event of any civil claims being made against the States by survivors of child abuse, that no “gagging-clause” will be sought or required by the States, either in any out-of-court settlement, redress board or any civil proceedings before court.

The objectives of this proposition are:

- 1: To secure for, and guarantee to, survivors their Right to free expression as described in the European Convention on Human Rights.
- 2: To enable survivors, should they choose, to write books about their experiences, or engage in other public expression of their experiences and opinions.
- 3: To relieve survivors of the pressure and *de facto* blackmail many are being subjected to in an attempt to make them sign agreements which contain gagging clauses.
- 4: To enable survivors to contribute to the protection of children today and into the future, by bringing to public discourse their experiences and the changes they believe may be necessary.
- 5: To enable survivors to contribute to a full, transparent and honest public understanding of the facts, any deficiencies of public administration and the failings of specific services which may have occurred.
- 6: To enable the States of Jersey to benefit from the knowledge and experience of survivors, so that the public good is served through learning lessons from any mistakes that may have been made in the past.

Having described the objects and purposes of this proposition – we must also have a clear understanding as to what this proposition does not do.

- It does not pre-judge the conduct, culpability or liability of the States of Jersey.
- It does not pre-judge any current or potential criminal cases.
- It does not pre-judge the merits of any civil cases nor of any potential claims arising therefrom.
- It in no way obliges survivors to make public their experiences and opinions, should they prefer privacy.
- It does not relieve survivors of any obligations they may have to maintain the confidentiality of their witness testimony in respect any criminal proceedings which may arise.

- It does not confer any immunity upon survivors from the established laws of defamation.

To summarise the above observations, by adopting the proposition, the States would be agreeing that survivors will not be gagged, and instead, will retain their Right to free speech as described in Article 10 of the European Convention on Human Rights, and that any restriction upon their Right to self-expression shall be no more than that which applies to any person.

I include Article 10 of the ECHR in full as Appendix 1, and quote the relevant section of Article 10 here.

The key part of paragraph 1 of Article 10 says this:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

THE NEED FOR THIS POLICY

It would be oh so easy – would it not – for the States to brush under the carpet its many failings towards the Island’s children over the decades? To quietly put the failings behind us – having ensured that the truth remains hidden?

Very easy, indeed, to preserve and maintain the very culture of concealment which has enabled these issues to remain hidden for decades.

Whilst maintaining the culture of concealment would be very, very politically convenient for the Island’s establishment – it is an inescapably clear fact that the public good – the public interest – requires the opposite.

Secrecy and concealment are the friends of child abusers.

If the government of this community cannot tolerate to hear, or to read, the experiences of survivors – to listen to them, to take them seriously, to believe them – then how can we – without shame – expect people in our society to take the subject seriously?

If no less an authority than the Island’s government pro-actively strives to keep its malfeasances secret – what example, what moral leadership, do we exhibit in the battle against the secrecy that enables child abuse to flourish?

We must not carry out further oppressions against survivors by attempting to prevent them from expressing their experiences and feelings, should they so choose.

And the States of Jersey must, finally, show some leadership and responsibility by willingly accepting that the facts will emerge – so that we, as an administration, may learn from the mistakes of the past – and better protect children in the future.

Financial and manpower statement

No financial or manpower implications arise from this proposition – save the possibility that from learning the truth, we may need to increase expenditure on child protection measures.

If necessary, could such measures seriously be opposed?

ARTICLE 10 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 10 – Freedom of expression

- 1: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- 2: The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.