

Confronting an uncomfortable truth: Not all victims of alleged false accusations will be innocent!

Keynote Speech

Dr Michael Naughton

Introduction

This short article reports on some of the main points of the talk that I gave at the F.A.C.T. Winter Conference 2007, St Chad's, Birmingham. It questions F.A.C.T.'s central claim that the vast majority of complaints of child abuse made against carers and teachers are fabricated and/or exaggerated. It provides an outline of the 'typology of prisoners maintaining innocence' that I have created to assist the efforts of the Innocence Network UK (INUK) to ensure that member innocence projects do not receive unreliable referrals for their case investigations. It, then, puts the 'typology' to work, proposing that F.A.C.T. confronts the uncomfortable truth that some F.A.C.T. members may not be innocent, that some members of F.A.C.T. may be supporting alleged innocent victims of false accusation who may not be innocent, and that F.A.C.T. should devise means to identify members who may not be innocent to ensure that it supports only those that are likely to be innocent. Following this, the article engages with the two main responses to my talk in the discussion that followed – that F.A.C.T. takes members on trust that they did not abuse the children that they were accused of abusing, and that to engage in identifying potential abusers within the membership of F.A.C.T. is tantamount to 'cowering to power'. I want to stress that this discussion is offered in the interests of initiating and stimulating a debate within F.A.C.T., specifically, and the wider world of miscarriage of justice support organisations, more generally, about the need for rigour in the way that organisations aligned with the innocence movement construct and convey their message if they are to be

taken seriously and have any possible impact at all in effecting the changes that we all desire.

Are the vast majority of complaints of child abuse against carers and teachers exaggerated?

On the F.A.C.T. website under 'What We Do' it states:

'F.A.C.T. recognises that, tragically, some children are abused - including sometimes by carers and teachers. Abuse of children...is always wrong. Those who abuse children deserve to be punished. However, in recognising that abuse does occur, **it is our belief that it does not occur on the scale that is claimed. We believe the vast majority of complaints made against carers and teachers have been exaggerated, and that significant numbers of them have been fabricated, and are entirely false** (9th October 2007, my emphasis).

There are three parts to the foregoing assertion that will be considered in turn – a telling reference to child abuse, an empirical question of the likely scale of false accusations, and, a declaration that claims of child abuse by carers and teachers are exaggerated.

First, the reference to child abuse in the above quotation is described as 'telling' because it betrays the state of the power relations between the opposing sides in the struggle between what has been dubbed the 'child protection community' on one side, and supporters of alleged innocent victims of false accusations of abuse on the other. The sides can be distinguished by a total neglect of the possibility of false accusations by child protection advocates (look on any child protection website), although the false accusations side of

the equation go to great lengths to state that it is against child abuse in any form. The child protection community does not need to acknowledge the possibility of false accusations because it is in the driving seat; whilst the false accusations community is very much the passenger, attaching its claims to the dominant discourse of child protection to have any voice at all. This is important and, as will become evident in what follows, meaning that F.A.C.T. need to find effective ways to engage the child protection community to take on-board the harm caused by false accusations.

Second, to state that the 'vast majority of complaints made against carers and teachers have been exaggerated, and that significant numbers of them have been fabricated, and are entirely false' requires empirical validation in the form of statistical evidence. Instead, a stated collective 'belief' is offered on behalf of F.A.C.T. members that abuse against children does not occur on the scale that is claimed which cannot be substantiated – beliefs are no substitute for hard empirical evidence. Where is the evidence that abuse against children does not occur on the scale that is claimed? How do F.A.C.T. know that the vast majority of complaints against carers and teachers have been exaggerated and that a significant number of them have been fabricated and are entirely false? Why should these claims be believed by members of the public, the judiciary and/or governmental policy makers? If these fundamental methodological questions cannot be answered, the truth claims and 'beliefs' held and put forward on behalf of F.A.C.T. will not be taken seriously. Alternatively, forms of evidence and analysis need to be provided that give appropriate

support and credence to such contentions or F.A.C.T. will have little effect in the debates that it seeks to engage.

Third, to say that something is 'exaggerated' is not the same as saying that it is fabricated or entirely false. As I said on the day, if I slap a person, for example, who then reports to the police that I thumped her/him as hard as I could, it may well be exaggerated but it does not mean that a physical assault did not happen. How things are relayed from one person to another is highly subjective; what one person may believe is a little slap, another, who may be on the receiving end, may interpret the occurrence differently and in more significant terms; and, it is also possible that some people interpret a hard thump as a minor event and that some victims of abuse may not report the abuse due to their lived experiences and personal threshold of abuse toleration.

The typology of prisoners maintaining innocence

The typology of prisoners maintaining innocence (which is also relevant to alleged victims of wrongful conviction who do not receive a custodial sentence) is a work-in-progress construction that I have devised as part of my work with the Innocence Network UK (INUK) in an attempt to provide reliable referrals to member innocence projects for further investigation. It stems, equally, from my concerns that befall all who attempt to support alleged innocent victims of wrongful convictions, i.e. the accusation that we believe and take on trust (discussed further in the next section) that all alleged victims are innocent. In this sense, the typology of prisoners maintaining innocence is a practical demonstration that we (the INUK) do not just believe all who claim innocence but, rather, employ a rigorous screening process that separates prisoners (or alleged innocent victims of wrongful

conviction) who are clearly not innocent from those that may be innocent.

In essence, applicants to the INUK are sent a detailed questionnaire that asks, for a full account of the basis of their innocence, among many other things such as the prosecutions case against them, their defence case, appeal history, parole status, and so on. From an analysis of the INUK questionnaires, a range of reasons and motivations for why convicted people say that they are innocent when they are not have, thus far, emerged. These range from those that maintain innocence in the hope that they will overturn their cases on an *abuse of process* (to acknowledge guilt effectively forecloses such a possibility); it includes those who are *ignorant of criminal law* and do not know that their behaviour is criminal, such as the applicant convicted of a joint enterprise crime who believed that because he did not actually hit the security guard that he was guilty of attempted robbery only and innocent of the murder he was jointly convicted for; it includes those who know that their actions constitute a criminal offence but *disagree* that it should, such as the applicant who believed that because he had video evidence that his former girlfriend had once consented to have sex with him he could never be guilty of rape; and, it includes cases where *innocence is maintained to protect loved ones* from the knowledge that they were lied to by the perpetrators of crime, such as the man who promised his mother that he would never commit another burglary and claimed that he had been 'fitted-up' by the police when he was reconvicted for a subsequent burglary, it was only when his mother had died that he admitted his guilt for his crimes.

At the same time, some alleged victims of wrongful conviction and/or imprisonment that say that they are innocent may be telling the truth. The criminal justice system is riddled with

flaws, revealed in successful appeals against criminal conviction: police officers transgress procedures (e.g. Cardiff Newsagent Three) and have even been shown to make deals with suspects for incriminating evidence to obtain criminal convictions (e.g. Bob Dudley and Reg Maynard); prosecutors fail to disclose vital evidence (e.g. John Kamara, the M25 Three, Cardiff Three); forensic science expert witnesses exaggerate or make mistakes (e.g. Sally Clark, Angela Cannings, Donna Anthony), people make false accusations (e.g. Mike Lawson, Basil Williams-Rigby, Anver Sheikh, Warren Blackwell); and defence lawyers can fail to adequately represent their clients (e.g. Andrew Adams).

It is submitted that embracing the typology of prisoners maintaining innocence, honestly, whilst sustaining, also, that the flaws in the criminal justice process mean that it is possible that alleged victims of false accusations may be innocent does not detract from the forcefulness of the counter-discourse against false accusations and/or wrongful convictions. On the contrary, it only adds to it by taking seriously the possibility that people say that they are innocent for a variety of reasons when they are not, forcing 'the other side' to also recognise and take seriously the reality of false accusations/wrongful convictions, something that it has, hitherto, not engaged with at all.

Should alleged victims of false accusations of abuse against children be taken on trust?

One of the main objections to my proposal that F.A.C.T. members should be screened to eliminate the possibility that they are not innocent was that as the NSPCC (National Society for the Prevention of Cruelty to Children), police and courts, for instance, take accusations of abuse from children on trust that it is reasonable, therefore, that F.A.C.T. take members on trust, although

they have recently been required to sign a warrant that they have never abused a child.

This position is problematic for at least the following reasons. First, logically speaking, if the argument is that there is a problem with organisations such as the NSPCC and/or agencies of the criminal justice system such as the police taking complaints of abuse on trust, then it does not follow that F.A.C.T. should also adopt a similar incredulous position – two wrongs certainly do not make a right. Second, we have to remember that the F.A.C.T. warrant is a recent requirement and are we really to believe that a person who could abuse a child would be unwilling to sign the F.A.C.T. declaration? Third, as indicated in the typology of prisoners maintaining innocence above, it is possible that F.A.C.T. members could sign the declaration believing for reasons of ignorance of criminal law that they are, in fact, innocent. It is also possible that members may disagree that their actions should be criminal or may even say that they are innocent to protect children, wives or parents, for instance, from the stigma of being related to a convicted pedophile, possibly the worst type of crime to be accused and/or convicted for. Fourth, it is not the case that all children who make complaints of abuse are believed on trust. The National Association of Schoolmasters Union of Women Teachers (NASUWT), the largest union representing teachers and headteachers throughout the UK, for instance, reports that: ‘...over the last few years there have been 2,316 allegations against NASUWT members alone. Of the 2,231 which have been concluded, in a staggering 2,116 cases either no grounds were discovered for prosecution or the allegation was not proven at court’ (NASUWT website, 16 October 2007).

Leaving aside the argument that just because something was not proven in court does not, necessarily, mean that the claim of abuse did not occur, this

indicates that F.A.C.T.’s assertion that the vast majority of complaints against teachers for abuse are false may have some sound statistical support. However, it does not support the claim that complaints of abuse by children are taken on trust, as the vast majority do not lead to prosecution and/or convictions. It is one thing to acknowledge that false accusations can and do occur and that innocent people can and are wrongly convicted and/or imprisoned and quite another to accept on trust all those who claim that they have been falsely accused. There is a world of difference between the reality that the criminal justice system is a human system in which mistakes and/or intentional forms of malpractice and misconduct occur and a commitment that, therefore, any and all who claim to be innocent are accepted as innocent. As was disclosed in the discussion, evidence, albeit anecdotally, does exist of applications for membership of F.A.C.T. that have been turned down because of suspicions that they were not innocent. This needs to be formalized and more widely communicated in the interest of enhancing the credibility of the organisation and warding off charges that there is no attention paid at all to the possibility that those who seek support from F.A.C.T. may not be innocent and that members are admitted entirely on trust.

Cowering to power?

Related to the apparent reluctance to devise proactive methods for restricting F.A.C.T. membership to those who can satisfy a more stringent test of their claim of innocence, it was claimed that to introduce such a system would just be ‘cowering to power’, persecuting still further innocent victims who have already suffered enough. My immediate response to this notion is that entrenched standpoints that are unwilling to concede the truth that some people who say that they are innocent of the crimes for which they have been accused, charged or convicted when they are not will

remain on the margins and have little impact, if any, in the struggle for power to change the way things are. Alternatively, I would simply argue that it is in the interests of the truly innocent that they can show that they are not associated with a group of alleged victims or an organisation that takes little care to ensure that its membership does not contain members that fall within the various categories of non-innocence listed in the typology of prisoners maintaining innocence. Simultaneously, F.A.C.T.’s stated belief in the indivisibility of justice - for those who are abused as children (and their families) and for those who are falsely accused of abuse (and their families) - would appear more meaningful and credible.

Historically, all prisoners maintaining innocence/alleged victims of wrongful conviction have been labelled as ‘deniers’, without any attempt by the agencies of the criminal justice system to determine the complex nature of the problem and the varied reasons for why people say that they are innocent. The typology of prisoners maintaining innocence starts to redress this neglect, providing, I believe, a powerful case that the agencies cannot (and should not want to!) side-step. Yes, some prisoners maintaining innocence/alleged innocent victims of wrongful convictions are not innocent and this must be taken seriously by both sides. At the same time, some prisoners/alleged innocent victims of wrongful convictions may well be innocent, which also need to be taken seriously by both sides. This is not cowering to power, it is to confront power!

Conclusion

Although the foregoing has been pitched in terms of the organisation F.A.C.T. and around issues pertinent to false accusations, the points made relate, generically, to all groups and organisations that stand against the wrongful conviction and/or imprisonment of the innocent. It is

incumbent upon all allied with the innocence movement to resist any and all accusations that we are a refuge for the guilty by being proactive in being as rigorous as we can be about the people that we assist or support. The flaws with the criminal justice system are many and are well documented. As such, we are on firm ground in our shared central quest to raise awareness of such flaws, assist innocent victims to overturn their convictions and reduce the possibility of such wrongful convictions befalling others in the future. However, our cause is only weakened, not furthered, by exaggerated claims that are unsupported. We should not be reluctant to speak truth to power, acknowledging that some alleged innocent victims of false accusations, wrongful convictions and/or imprisonment may not be innocent. On behalf of those who are innocent, however, we should do all that we can to demand that they be heard.

Dr Naughton Bsc, PhD is a Lecturer in Law at the University of Bristol, and founder member of the Innocence Network and the Innocence Project in the UK. We are grateful to Dr Naughton for agreeing to attend our conference and for his challenging and thought provoking ideas. Not every one will agree with all that he says, but as Dr Naughton has indicated the article was written in order to stimulate a debate within F.A.C.T., specifically, and the wider world of miscarriage of justice. Please let have have your views.

Send them to P.O. Box 3074 Cardiff, CF3 3WZ or by email sec@factuk.org

The National Committee's Response.

As the name suggests F.A.C.T. exists to support falsely accused or wrongly convicted carers, teachers and other professionals. We are not here to apologise for those professionals who have abused children in the past, or to excuse their behaviour. F.A.C.T. has a zero tolerance of abuse of any kind and has always condemned those who abuse or have abused

children or adults. In previous conferences we have made it clear that F.A.C.T. has a duty to speak out against those who abuse children or adults. We do so on many occasions. We also fully accept that professionals who work with children or adults have a greater duty of care to keep them safe and a greater responsibility not to abuse their position of trust. F.A.C.T. takes its obligations seriously and tries to act professionally in the way it operates and conducts itself. For several years now (and not just recently) we have required prospective members to warrant that they are innocent of any allegations of abuse that have been made against them. Incidentally we will not allow any one to become a member of F.A.C.T. if they have been found in possession of child pornography. It is also perhaps worth bearing in mind that the vast majority of people we support have not been accused of sex offences or physical assaults but rather of abuse in the general sense i.e. alleged emotional abuse, alleged poor practice, failure to act etc. Perhaps only half of those who contact us have been accused, will have been, or are, subject of a police investigation. The vast majority of them have never been subject to criminal proceedings, and will not be convicted. As far as the law is concerned they are factually innocent.

We use the term falsely accused in the broadest sense to mean exaggerated, induced, or fabricated complaints. We accept that we have to take on trust those who maintain their innocence - are indeed innocent. From a public relations point of view it would obviously assist our cause if we were able to say we had examined each complaint made against a prospective member, and were satisfied on the evidence we have seen, that the person is factually innocent of the allegations made. Although, we will, if necessary, make inquiries and ask awkward questions of intending applicants for membership we cannot possibly audit

every application. With about 400 people contacting us each year we simply don't have the capacity to cope.

Should we be helping support people who might actually be guilty? No we shouldn't. In fact we withdraw support if we discover this to be the case

Should we be concerned that we might be infiltrated by paedophiles - of course we should - not that we provide any access to children.

*Should we abandon principles of trust which have served us well for a number of years. Well no! Trust is the essential element in any helping relationship. It is what the police, prosecution authorities, child protection workers and investigative bodies rely on in **their** decision making. They have to trust that the person who is alleging abuse is actually telling the truth. It is no different for us. Additionally social workers, of course, have to provide a service without making a distinction between the deserving and undeserving, and irrespective of the contribution their client makes to society. Lawyers are also obligated to represent their clients irrespective of whether they are telling the truth or not.*

Professionally and ideologically there is no reason why F.A.C.T. should feel uncomfortable about its position. The principle of innocent until proven guilty, is imbedded in British justice and whilst one could argue that the decisions of Courts should be respected they cannot claim a monopoly on the truth, or on wisdom - other wise there would be no need for an Appeal Court, or a Criminal Cases Review Commission. Our job is not to act as judge and jury but rather to accept that vast numbers of people, who each year are found guilty in our Courts, are indeed factually innocent, and deserve support. People have an inalienable right to maintain their innocence if indeed they are innocent.

End.