

A LIBEL DISPUTE

Janet and John had no children and out of Christian principles adopted three siblings, who had been sexually and physically abused by their natural parents. Adoption of three siblings in such circumstances did not prove to be without its difficulties. The eldest (14 at the time of the various incidents) was very disturbed and had tendencies to theft, arson, school truancy and other anti-social behaviour. A visit by Janet, John and the child to a child psychiatrist, resulted in medical advice that their son ought to be removed to a foster-home, with the help of Social Services.

A meeting with Social Services agreed this. On the next day, the boy lit a fire in his bedroom. It had been planned to take the family to a granny for Christmas, who had recently suffered a heart attack. In these circumstances of the boy's increasingly disturbed behaviour, it was not felt feasible by Janet and John to take the boy along with them to the granny, and they felt elements of desperation.

The day after the fire in the bedroom, Janet phoned Social Services, explaining what had happened, and suggested that her son go into a foster-home over the Christmas period, pending a longer term foster placement. She said that her son was with his family most of the time but if alone was confined to his room. The issue of fostering was resolved, but Social Services sought to levy a massive contribution from John for fostering out his son.

Arguments about this went on for months. The lawyer for Janet and John asked Social Services eight months later, for a review of who started the fostering request, because that was relevant to the contribution discussion. The solicitor- to- solicitor response was that fostering out was as the result of a threat that Janet that her son would be "locked in his room" if he were not fostered out quickly. (This is the alleged libel).

The allegations about "locked in his room" were formally denied and ultimately the request for a contribution was dropped by Social Services.

Other problems occurred between Social Services and Janet/John in relation to the other children. These were not disclosed at the mediation, but it seems that personality clashes

happened between the parties, and that relationships went from bad to worse. Janet and John regarded Social Services as heavy-handed, high-handed, arrogant, difficult and unco-operative and it is clear that these feelings were mutual.

At some point with Social Services on the discussion of the financial contribution, Janet complained about the fact that the lawyer for Social Services had got it wrong and she would not have locked her son in his room. In any event, there was no lock on the door. She claimed that she had been goaded by Social Services to issue a libel writ against Social Services, if she really had a case. This sent her over the top. She issued a writ and pursued it, implacably, with by now corrosive and unforgiving feelings of hostility to anybody connected with Social Services and their three children.

The matter went to Court on the issue of absolute privilege. It proved not to have absolute privilege but the general feeling subsequent to the case was that probably qualified privilege applied. Social Services took the view that Janet would have an uphill task on proving malice and in addition publication was only to her solicitor who had been promptly told of the denial by her. If there was liability in libel, damages would be negligible, according to Social Services.

The extent of the hostility now felt by Janet and John towards Social Services was such that they spent vast amount of their savings in the various court cases and were prepared to bankrupt themselves in the attempt to fight back against what they perceived as the heavy-handedness of Social Services on all the other issues. They wanted to "vent their feelings" and tell someone all about it. If they lost the case and were bankrupted, so be it. John also started to file a formal complaint to Social Services about every two weeks for many months, each of which required formal investigation and staff needing to be taken off ordinary work, to prepare reports as necessary for the investigator. All this was giving Social Services a real administrative headache and daily mounting irritation, and in addition its legal bills on the libel action were mounting week by week.

Social Services recognised that this was a war, which would never end, unless an attempt was made to cut to the heart of all the issues. So they suggested mediation and this was accepted, reluctantly, by Janet and John.

Those at Social Services involved in the original discussions had moved on in the usual way, so the personalities at the mediation from Social Services were historic "beneficiaries" of the events surrounding the fostering out and the alleged libel. In addition, Janet and John had also moved out of the Social Services area on a change of job, so that there was no continuing contact with this Social Service on current issues relating to the children. But at least now the solicitor-mediator could and did persuade the parties that personalities could be separated from the issues. This was critical.

Fairly predictably, the mediation opened with argument about what was said at the meeting and the telephone call two days later shortly before Christmas. The solicitor-mediator had to deal with Janet and John at greater length than normal, to let them "vent their feelings" and to tell a neutral all about it. The solicitor-mediator identified that libel damages was probably not so much of an issue as an apology. Janet wanted Social Services to recognise what hell they had put Janet and John through, and that their procedures were less than perfect in practice. So the solicitor-mediator concentrated first on whether an apology could, or would, be given by Social Services.

What transpired in private sessions with the solicitor-mediator was that with incidents over the years, both sides had reached opposite conclusions. An apology letter had been prepared by Janet's lawyers right at the start but it was refused to be signed by Social Services in that form, as in their view they had nothing to apologise for. Frequently both sides said incredulously: "I can hardly believe that was understood. Why didn't the lawyer pick the phone up and sort out an apology with me if it /could be given/was so important?" (Omitting to remember that Janet had insisted on that wording and nothing else, and that Social Services had refused to sign an apology in that form). In other words a breakdown of communication, getting steadily worse, and the parties had locked themselves into the issue of the libel case.

Three hours later, via shuttle diplomacy, a written apology was agreed by Social Services relating to the use of the words in their solicitor's letter "locked in his room" and apology for the hurt felt by Janet. Janet sat back in her chair and for the first time had a smile, though a small one. The overt issue was now resolved but there was a large amount of legal costs incurred by Janet and John and they wanted this fully reimbursed by Social Services.

This really caused the "fur to fly". Social Services, incensed, said that the matter could have been resolved right at the start by an apology but recognised that it had not been. Janet, incensed, pointed out that an apology letter (more or less in the form now agreed) had been prepared by her lawyers right at the start but never signed by Social Services. Social Services, in her view, had invited the libel action, and had prevaricated and messed around in complex litigation procedures since then and had given her family a lot of unnecessary hassle.

Social Services disputed all this and said that the libel action had no merit and had never had had, and had been a waste of everyone's time. Social Services would win the libel action hands down. Janet should think herself lucky that Social Services were offering to walk away, each party to pay their own costs.

Janet pointed out that she had been awarded costs of the Court action on the question of absolute privilege and she was not going to give way on that, at least.

The mediation was faltering and needed to be kept on the go by the solicitor-mediator and the two solicitors.

The solicitor-mediator then sought to define the core agendas of the different parties and to re-define the issues as follows: -

Janet

1. To vent her feelings
2. To extract a written apology
3. To make Social Services recognise what hell they had put her and John through.
4. The best way to do this was to hurt them financially.
5. To make Social Services recognise deficiencies in their procedures in practice.
6. To recover as much as possible of her legal costs she had paid out.

Social Services

1. To lance the boil and shut down the legal action for libel.
2. To stop the fortnightly stream of complaints coming from John.
3. To stop the drain on financial and staff resources concerning the libel action and John's complaints.

4. No publicity.

The level of recovery of costs which Janet was seeking was way beyond the worst nightmares of Social Services. So instead of revealing at an early stage, the full extent of her likely claim for costs contribution, the solicitor-mediator first obtained from Social Services an acceptance in principle that it would honour the Court Order for costs awarded against Social Services on the Court case. Then having established that, on a slice-by-slice basis, the mediator obtained the consent of Social Services in principle to paying a (small) contribution to the balance of Janet's legal costs, over and above the Court costs.

By this time Janet had had "her day in Court" and was visibly much more relaxed than for the first six or seven hours of the mediation. She saw how the land lay with Social Services and understood the strength of their views, which were clearly hardening. Both parties showed evidence of tiredness. Having got the apology "in the bag", she was much more open to discussion. Janet and John were encouraged by the solicitor-mediator to take a less emotional and much more realistic common sense view of what was achievable. They decided that they did not want Social Services walking out at this stage, having got so far.

The solicitor-mediator, as devil's advocate, invited Janet to consider Social Services' reactions if the full extent of her claim for costs was transmitted.

So Janet reduced dramatically her claim for costs, to something she thought that Social Services might live with, or at least not walk out on hearing it. As expected, Social Services rejected this but remained at the mediation. So the solicitor-mediator had ascertained that both parties were still there to reach agreement and it was "only" the level of contribution, which was a sticking point. Over the next two hours the parties, via shuttle-diplomacy, horse-dealed a settlement on Janet's fees on the basis that (1) John withdrew all his outstanding complaints filed with Social Services and undertook to file no more in relation to matters arising before the mediation and (2) Social Services signed an apology in the agreed form.

There was clear relief on all parties that the matter had been resolved. It turned out that after seven hours of the mediation, each side had thought the other would not settle and that the mediation would fail; but they kept at it for over four hours more, having got so far.

Tiredness and boredom played a significant part in reaching the settlement. The role of the solicitors who were advising each of the parties was critical, because they kept the process "on the go" at times when almost everybody else, except the solicitor-mediator (who had perceived subtle shifts of attitude in both sides) thought that there was not much point in carrying on.

Once Janet had got her apology, which had been resisted for years, she felt able to consider and take a common sense view and reach a sensible conclusion.

Nobody was particularly "content" with the settlement, but it was the best available. All sides could live with it. Janet, John and their three children could get on with their lives. They had regular and happy visits from their eldest son, now 19, and the whole family was not doing badly. Social Services could get on with their job and put this terrible file away forever. The war was over. But as everyone wearily trudged out, no one put out any flags.