Ministry of Justice

Limitation Law in Child Sexual Abuse Cases

A response by the Association of Personal Injury Lawyers

June 2024

Introduction

APIL urges the Government to bring forward the Inquiry into Child Sexual Abuse's (IICSA) recommendation to abolish the time limit for child sexual abuse claims without further delay. IICSA conducted a thorough, independent and non-partisan investigation into reparations for child sexual abuse survivors and its recommendation to remove the time limit for civil claims was a result of this investigation. Views have been heard from all sides, and the feedback considered by legal advisors prior to IICSA's recommendations being made. This further consultation by the Ministry of Justice is simply unnecessary.

It is vital that any changes to the limitation legislation result in a removal of the time limit for child sexual abuse claims. If new legislation is introduced which still retains the three-year time limit, this will inadvertently make the limitation barrier even more difficult to overcome. At present, there is acknowledgement that the three-year limit was not introduced with child sexual abuse cases in mind. There is scope for exercise of the discretion to disapply the time limit. If this consultation results in changes to the legislation which do not result in an explicit removal of the limitation period for child abuse claims, the inference that may well be drawn from that decision is that limitation period for such cases has been considered by Parliament, and that three years from the date of majority has been deemed an appropriate time limit for the bringing of these claims. Consequently, it will be more difficult to persuade a court that the discretion to remove the limitation period should be exercised. In not implementing IICSA's recommendations, the Government will not only fail to improve access to justice for survivors of abuse; they may substantially worsen the position of survivors who wish to bring a civil claim outside of the limitation period.

Recommendation 15 of the IICSA report must be implemented in full, as a matter of urgency.

Q1) Should the three-year limitation period for personal injury claims be removed for claims brought by victims and survivors of child sexual abuse in respect of their abuse?

Yes. We strongly urge the Government to implement the recommendations of the Independent Inquiry into Child Sexual Abuse without further delay. The Government is already aware, from the IICSA inquiry, of the strength of argument for the need to remove the three-year limitation period for personal injury claims, and the impact that the current limitation period has on survivors of child sexual abuse. Removal of the three-year limitation period was not only supported by survivors and those who represent them; following the IICSA hearings in late 2018, and having heard the accounts of victims and survivors and the deterrent effect that the

current law of limitation has, the Association of British Insurers also indicated that they would be supportive of reform[1].

Research has shown that the average time it can take for a survivor to come forward can be 24-27 years. There are a number of reasons for this, which have been well documented. The effect of the abuse on the young and very vulnerable means that they often will not have appreciated what was happening to them and that it was wrong. They may have also been told as a child not to tell, and groomed by the perpetrator into silence. Abuse can also often have a "silencing effect", whereby the survivor wishes to bury the memory of what happened due to fear, shame and guilt. Additionally, many claimants have mental health issues as a result of the abuse they have suffered and the grooming process.

Survivors may also not disclose what has happened as they want to protect other family members from the stigma of what has occurred and so for example, victims often wait until their parents are deceased before they feel able to speak about what has happened to them. They may also have genuine fears about what may happen to their own children if they disclose that they were victims of abuse, for fear they will be seen as a danger to them by the authorities.

Many do not disclose what has happened as they are fearful that they will not be believed. This is particularly the case if the survivor disclosed to an authority figure while the abuse was taking place, but no action was taken to prevent it happening again. In the experience of APIL members, victims and survivors do not disclose abuse until they learn others have done so and they then feel more likely to be believed.

When child sexual abuse claims are brought outside of the limitation period – as they often are due to the reasons set out above - a limitation defence is routinely raised by most defendants as a reason not to settle the case and pay compensation. This causes a claimant further trauma and delay in obtaining recognition of their abuse. Claimants often see the raising of a limitation defence as punishing them for not coming forward sooner with their case. People who have suffered non-recent child abuse find it difficult to understand why any time limit applies as they see it as unduly strict and unfair.

All non-recent abuse survivors face the difficulty of persuading the court to exercise its discretion under section 33 of the Limitation Act 1980, to allow their claim to be brought outside of the limitation period. Given that, as described above, delayed disclosure is an inherent feature of childhood sexual abuse, the law should reflect this, and the limitation period must be removed for these cases.

Q2) Should the burden of proof be reversed in child sexual abuse cases so that an action can proceed unless the defendant can satisfy the court that it is not possible for a fair hearing to take place or that he/she (the defendant) would be substantially prejudiced were the action to proceed?

[1] https://www.abi.org.uk/globalassets/files/publications/public/iicsa/33---19a-letter-to-iicsa-.pdf

APIL accepts that a case should not proceed in circumstances where a fair trial is not possible, and we agree with IICSA that the burden to prove that a fair trial is not possible should fall on the defendant.

Recommendation 15 of IICSA's final report should be implemented in full, with a removal of the time limit, and a reversal of the burden of proof so that it is for the defendant to prove that a fair trial would not be possible. We note that the Government does not wish to proceed with option 1, but would agree that option 2 should be implemented. It is illogical to reverse the burden of proof but retain the three-year limitation period, which would indicate that Parliament has reviewed the evidence and maintains that three years is the correct default limitation period for these cases. If option 1 were not implemented, but option 2 was, this may well make things even more difficult for the claimant than at present, with the claimant being required to justify the delay and overcome the section 33 discretion as is the case now (proving that there is a fair trial), and then the defendant still being able to maintain that there is not a fair trial. The overall objective of these proposals is to ensure justice is done. This will be achieved through swift implementation of IICSA's recommendations in full.

Q3) Should existing judicial guidance (as set out by the Court of Appeal in *Chief Constable of Greater Manchester Police v Carroll*) be codified in statute?

There would be no benefit to codifying existing judicial guidance – the current situation around limitation in child sexual abuse claims is not satisfactory, and should not be codifed. As mentioned above, the unfairness in the current law can and should be rectified urgently through implementation of IICSA's recommendations.

Q4) What additional factors, if any, should be included in judicial guidance about section 33?

As above, no additional factors should be included in judicial guidance about section 33 – the limitation period should be removed completely, as recommended by IICSA

Q5) If there were to be changes to limitation law or judicial guidance for child sexual abuse cases, should claims that have already been adjudicated or settled be allowed to be reopened?

There are very few cases that go to trial and then fail purely on limitation in England and Wales. On balance, we do not believe that claims that have already been adjudicated or settled should be reopened as civil claims. We agree with IICSA that "it is generally inappropriate and impractical to reverse a judicial determination or an agreement reached in good faith by the litigation parties". We also believe that if people were permitted to bring their claim again, survivors would be re-traumatised by the reopening and re-examining of evidence, and it is unlikely that most of the claims that failed purely on limitation would now succeed, given that a fair trial must be possible. The most appropriate way to handle cases that have previously been adjudicated or settled would be via the proposed redress scheme. This necessitates that IICSA's recommendations must be implemented as a package, as intended. The redress scheme would allow those whose cases have previously been rejected due to the operation of the law of limitation; or whose cases have already settled, to seek redress, and to receive acknowledgement that the law under which their case was determined had been unfair. If the redress scheme is not implemented, then we consider that anyone who has lost their claim purely on reasons of limitation should be considered for some sort of redress, in recognition of the unfairness of the law under which their claim was determined.

Q6) Should any change to limitation law or judicial guidance apply where the limitation period has expired but claims have not yet been settled or dismissed by a court?

The new law should apply to all cases that have not yet been disposed of. We believe it would over-complicate matters if two limitation laws were in operation at one time. There should be a cut off, and any claims that have not been disposed of by the date the new law is brought into force should be decided under the new law.

Q7) Do you agree that any change to limitation law or judicial guidance should cover child sexual abuse claims only?

We do not agree with this. While IICSA's remit was specifically child sexual abuse, and as such they did not consider applying their recommendations to a broader scope of abuse, we believe there is much parity between child sexual abuse and other forms of child abuse, and any changes to the limitation law should be applied equally to those broader categories of case. APIL members report that there is a high level of overlap between sexual and physical abuse, and some forms of physical abuse can be carried out by perpetrators for sexual gratification. The inquiry points out at Section I.7, paragraph 90 that their work "revealed that child sexual abuse and exploitation are often accompanied by other forms of abuse, such as physical abuse, emotional abuse and neglect, each of which can have similarly devastating impacts on victims and survivors". There was acknowledgement therefore, that sexual abuse and other forms of abuse are linked, and we would suggest that any changes to the limitation law should apply equally to those other forms of abuse.

We do not agree with the consultation document at paragraph 59 which states that the IICSA inquiry recommended that changes to the limitation period should be for personal injury claims brought by victims and survivors of child sexual abuse in respect of their child sexual abuse only. While IICSA did not consider changes to limitation in respect of other forms of abuse, they did not specify that the changes should relate only to child sexual abuse. The wording of the recommendation states: "the Inquiry recommends that the UK Government makes the necessary changes to legislation in order to ensure: the removal of the three-year limitation period for personal injury claims brought by victims and survivors of child sexual abuse ***in respect of their abuse*** [emphasis added]". This could be interpreted to mean any type of abuse.

We believe that the correct approach would be to mirror the scope of the Scottish legislation, which covers physical and emotional, as well as sexual abuse.

Q8) Do you agree that the factors in section 33 should be adjusted to recognise the particular circumstances around child sexual abuse claims?

We do not agree. IICSA's recommendations to remove the limitation period and reverse the burden of proving a fair trial should be implemented.

Q9) Should there be a different limitation period for child sexual abuse claims?

As mentioned above, and as the government is well aware from the evidence heard through the IICSA inquiry, survivors often take many years to disclose what has happened to them. There should not be a different limitation period for child sexual abuse claims, because, as stated by IICSA at section G.5, paragraph 94, this would simply "introduce a different but equally arbitrary time limit". Some people may take 20 years to come forward, and some may take 22 – it would be unjust to provide that it is reasonable for someone to take 20 years to bring a claim, but not 22. Additionally, the overriding factor to determine whether a case can

proceed is whether or not a fair trial is impossible. This is something that will vary wildly from case to case. It may be possible in one case to have a fair trial after 30 years. In another case it may not be possible to have a fair trial after 20.

The fairest way forward is, as above, implementation of IICSA's recommendation to remove the limitation period for child sexual abuse claims, and for it to lie with the defendant to prove that a fair trial is not possible.

Q10) Should there be a specific Pre-action Protocol for child sexual abuse claims?

We would support the introduction of a specific pre-action protocol for child sexual abuse claims, alongside but not instead of, removal of the limitation period for child sexual abuse claims**.** As mentioned in the IICSA final report, "…legislative reform is also needed. Changes to practice are insufficient in the current framework within which claims are litigated". A protocol would be useful in providing guidance as to the reasonable timescales for pre-action disclosure of documents e.g. social services and police records. Currently claimants face significant delays in this regard. A protocol would also assist those parties who may not be experienced in abuse cases to handle a claim. While we would always advocate that claimants seek advice from an experienced abuse claims specialist, a protocol would help those who are less experienced to navigate the process and alleviate some of the problems they may have otherwise experienced.

Q11) What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform

We believe implementation of IICSA's recommendation to remove the limitation period for abuse cases would have a positive impact on those with protected characteristics, as it would create a more level playing field for those with vulnerabilities, removing an unnecessary barrier to bringing a claim.

Q12) Do you agree that we have correctly identified the range and extent of the equalities impacts under each of the proposals set out in this consultation?

We have no comments on this question.

Any questions about this response should be directed to Alice Taylor, alice.taylor@apil.org.uk in the first instance.