

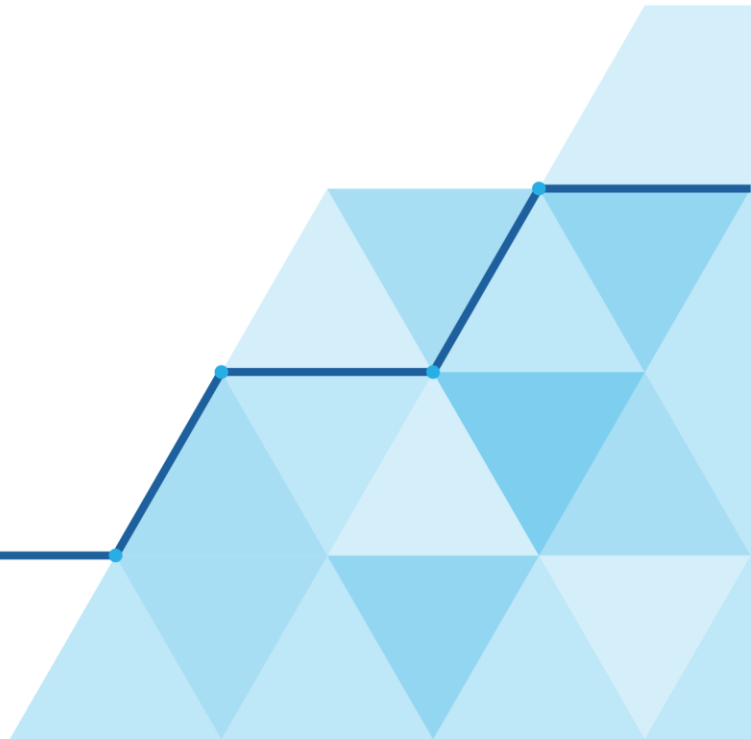


Ministry
of Justice

Limitation Law in Child Sexual Abuse Cases

This consultation begins on 15 May 2024

This consultation ends on 10 July 2024





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of Justice

Limitation Law in Child Sexual Abuse Cases

A consultation produced by the Ministry of Justice. It is also available at <https://consult.justice.gov.uk/>

About this consultation

- To:** All those involved in or with an interest in civil proceedings in England and Wales, including litigants, legal professionals representing both claimants and defendants, the insurance industry and members of the judiciary.
- Duration:** From 15/05/24 to 10/07/24
- Enquiries (including requests for the paper in an alternative format) to:** Limitation Law in Child Sexual Abuse Cases Consultation
Ministry of Justice
Civil Justice and Law Division
Postpoint 5.25
102 Petty France
London SW1H 9AJ
Email: limitationlawconsultation@justice.gov.uk
- How to respond:** Please send your response by 10 July 2024 to:
Limitation Law in Child Sexual Abuse Cases Consultation
Ministry of Justice
Civil Justice and Law Division
Postpoint 5.25
102 Petty France
London SW1H 9AJ
Email: limitationlawconsultation@justice.gov.uk
- Response paper:** A response to this consultation exercise will be published in due course. The response paper will be available online at GOV.UK.

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Foreword

The Government recognise that child sexual abuse is completely abhorrent and I want to pay tribute to the victims and survivors who came forward and told the Independent Inquiry into Child Sexual Abuse about the abuse they had experienced. I also want to thank Professor Alexis Jay and the other panel members for the very thorough work they carried out on behalf of victims and survivors.

At present child sexual abuse cases in the civil courts are normally subject to a three-year limitation period. This means that claims must be brought within three years of the abuse happening or the victim having knowledge of the abuse or alternatively, when the victim attains the age of 21 if they were under 18 when the abuse occurred. The law does also enable the courts to grant extensions to time limits where there are legitimate reasons for a delay in bringing a claim, and a significant number of historic child sexual abuse claims will involve applications for such extensions.

In evidence to the Inquiry the Government recognised that some child sexual abuse claims were rejected because they were outside the standard three-year limitation period and there may be potential to assist in those cases by changes to the law of limitation. However, it was also recognised that changes to limitation law in child sexual abuse claims may have an impact on other groups and that ultimately our key focus is that a fair trial should be able to take place.

The Inquiry made a number of recommendations for the law on limitation. These were focused on legislative reform to remove the three-year limitation period for personal injury claims brought by victims and survivors of child sexual abuse in respect of their abuse while also reflecting the importance of the right to a fair trial. In our response to the Inquiry, the Government accepted the critical issue this recommendation seeks to remedy (that a significant number of claims about child sexual abuse are rejected on grounds of the limitation period having passed) and agreed to consult on options for reform of limitation law in child sexual abuse cases.

This consultation fulfils our promise to consult and the Government is keen to hear views on how limitation law can be reformed to protect the interest of victims and survivors while ensuring the right of defendants to a fair trial are maintained. The Government will consider all responses carefully and publish a response setting out the way forward in due course.

Lord Bellamy KC

Parliamentary Under Secretary of State

Executive summary

This consultation paper seeks views on options for the reform of the law of limitation in child sexual abuse cases in England and Wales.

Specifically, it considers the recommendation by the Independent Inquiry into Child Sexual Abuse (“the Inquiry”) on limitation law.

It also examines the law of limitation in child sexual abuse cases in other jurisdictions examined by the Inquiry and seeks views on options, other than removal of the limitation period, for reform of limitation law in child sexual abuse cases.

Introduction

This paper sets out for consultation, options for reform of limitation law in child sexual abuse cases in England and Wales.

The consultation is aimed at all those involved in or with an interest in civil proceedings in England and Wales. We are particularly interested in hearing from victims and survivors; victims' groups, services and charities; academics; representatives from the legal sector and professionals from across the justice system. However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

A Welsh language consultation paper is available at <https://www.gov.uk/government/organisations/ministry-of-justice>

An Impact Assessment and Equality Impact Assessment have been prepared and published alongside this consultation. Comments on these are welcome.

Instructions for responding to the consultation can be found on page 31. The deadline for submissions is 10 July 2024. The Government will carefully consider the responses received and subsequently publish a response.

The Law of Limitation in England and Wales

Background

1. The present law on limitation in England and Wales is primarily contained in the Limitation Act 1980¹ (the Limitation Act). This Act sets a range of time limits for bringing various types of civil claims, known as limitation periods, after expiry of which the claim may no longer be allowed. The legislation balances a number of factors that are relevant to the right of access to justice and fair trials. They include the need to permit a person to bring a claim to court to establish their rights; the need for people who may be subject to those claims to have certainty of their obligations, or lack of them, in good time; and the need to ensure that fair trials are possible and not undermined by the passage of too much time.
2. If the limitation period has expired, the claimant will be prevented, 'time barred', from bringing the claim regardless of the substantive merits of the claim.
3. However, where a claim is brought after a limitation period has expired it is for the defendant to raise limitation as a defence. Once the defendant has raised the limitation defence, it is generally for the claimant to demonstrate that the limitation period has not expired.
4. The length of the limitation period is different for different causes of action, reflecting the different types of legal dispute. For example, defamation cases must be brought within a year of publication of the defamatory comment. Alternatively, for negligence resulting in personal injury, the standard limitation period is three years from the date of the alleged negligence or the date of the claimant's knowledge of damage, whichever is later.
5. The Limitation Act also provides wide discretion to the Courts to vary the limitation periods for different claims. Of particular relevance to this consultation, section 33 permits an extension of the time limit in respect of most personal injury or death claims if the Court considers that it is just and equitable to do so.
6. Nearly all historic child sexual abuse claims will be brought outside the standard three year time limit and will rely on an application under section 33 seeking the court's permission to extend the limitation period.

¹ <https://www.legislation.gov.uk/ukpga/1980/58>

The guidance handed down by the Court of Appeal stated that the factors that will be taken into account by the Court when applying s.33 are:

- (a) the length of, and the reasons for, the delay on the part of the plaintiff;
- (b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11[...], by section 11A, by section 11B or (as the case may be) by section 12;
- (c) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;
- (d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;
- (e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;
- (f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

The law of limitation in Child Sexual Abuse Cases

7. For many years, with some exceptions, the courts considered that child sexual abuse was a deliberate act to which a fixed, six-year limitation period applied.²
8. Today child sexual abuse cases will generally be brought as personal injury claims. In 2001 the Law Commission recommended that all personal injury claims, whether for negligence or assault, should be subject to the same extendable limitation period of three years.³ The government decided not to implement this recommendation.
9. However, the House of Lords came to the same conclusion as the Law Commission in the case of *A V Hoare*,⁴ where it was held that the same limitation period must apply to all claims for damages for personal injury but that the Court has discretion to hear claims brought after this time period has elapsed where 'it is equitable to do so'.

² Pg 254, IICSA Final Report, (https://webarchive.nationalarchives.gov.uk/ukgwa/20221215051709/https://www.iicsa.org.uk/key-documents/31216/view/report-independent-inquiry-into-child-sexual-abuse-october-2022_0.pdf)

³ The Law Commission (LAW COM No 270), LIMITATION OF ACTIONS -Item 2 of the Seventh Programme of Law Reform: Limitation of Actions (https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/03/lc270_Limitation_of_Actions.pdf)

⁴ *A V Hoare*[2008] UKHL 6 (<https://publications.parliament.uk/pa/ld200708/ldjudgmt/jd080130/hoare.pdf>)

10. Following this judgment child sexual abuse cases have been subject to a three-year limitation period which can be extended by the court provided that it is just and equitable to do so.
11. If the injury, including sexual abuse, was suffered by a child, the three-year period does not start to run until the person is 18.

The Independent Inquiry into Child Sexual Abuse (“the Inquiry”)

12. The Inquiry received evidence that limitation law unfairly operated as a barrier to victims and survivors of child sexual abuse bringing civil claims at three stages of the legal process: deterring lawyers from taking on claims; when valuing and settling claims; and at trial when issues around limitation law can make the process intrusive and outcome unpredictable.⁵
13. Following consideration of written and oral evidence on this issue, as part of the Inquiry’s review of the civil justice system, in its final report the Inquiry recommended 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; and
- The express protection of the right to a fair trial, with the burden falling on defendants to show that a fair trial is not possible.

These provisions should apply whether or not the current three-year period has already started to run or has expired, except where claims have been:

- Dismissed by a court; or
- Settled by agreement.

They should, however, only apply to claims brought by victims and survivors, not claims brought on behalf of victims and survivors’ estates.

14. In evidence to the Inquiry the Ministry of Justice recognised that a significant amount of claims about child sexual abuse were rejected on grounds of limitation.⁶ However, there was also a recognition that any changes to limitation law for child sexual abuse

⁵ Pg 344, IICSA Final Report, (https://webarchive.nationalarchives.gov.uk/ukgwa/20221215051709/https://www.iicsa.org.uk/key-documents/31216/view/report-independent-inquiry-into-child-sexual-abuse-october-2022_0.pdf)

⁶ IICSA Inquiry Accountability and Reparations Investigation, Evidence, 5 February 2020, pg18 (<https://webarchive.nationalarchives.gov.uk/ukgwa/20221215051347/https://www.iicsa.org.uk/key-documents/17383/view/public-hearing-transcript-weds-5-feb-2020.pdf>)

victims and survivors may impact other groups⁷ and that above all the key focus is that a fair trial should be able to take place.⁸

15. The Ministry of Justice also accepted that practical difficulties are arising in relation to the conduct of litigation in child sexual abuse cases and that it would be helpful to examine aspects of current procedure in order to ensure it operates effectively.⁹
16. The Government's response to the Inquiry's final report was published in May 2023. In response to the recommendation on limitation the Government's response was:

- The government recognises, as reinforced by the Inquiry, that it might take years, and in many cases decades, for victims and survivors of child sexual abuse to come forward and feel ready to disclose their trauma.
- The present law on limitation in England and Wales is set out in the Limitation Act 1980. It sets a range of time limits for various types of civil claims. The current three-year limit, most common in historic child sexual abuse claims, is not absolute. Section 33 of the Limitation Act allows the court to disapply the time limit if it considers that it is just and equitable to do so, with regard to all the circumstances of the particular case. There is existing case law and guidance on how the court should exercise its discretion under Section 33 in claims of this nature.
- The government will publish a consultation paper... exploring options on how the existing judicial guidance in child sexual abuse cases could be strengthened as well as setting out options for the reform of limitation law in child sexual abuse cases.

17. **We accept the critical issue this recommendation seeks to remedy, and we will consult on strengthening existing judicial guidance in child sexual abuse cases and set out options to reform limitation law in child sexual abuse cases.**
18. This consultation paper fulfils that commitment to consult on reforms.

⁷ IICSA Inquiry Accountability and Reparations Investigation, Evidence, 5 February 2020, pg27/8 (<https://webarchive.nationalarchives.gov.uk/ukgwa/20221215051347/https://www.iicsa.org.uk/key-documents/17383/view/public-hearing-transcript-weds-5-feb-2020.pdf>)

⁸ IICSA Inquiry Accountability and Reparations Investigation, Evidence, 5 February 2020, pg28 (<https://webarchive.nationalarchives.gov.uk/ukgwa/20221215051347/https://www.iicsa.org.uk/key-documents/17383/view/public-hearing-transcript-weds-5-feb-2020.pdf>)

⁹ Second Witness Statement of Nicola Hewer on behalf of the Ministry of Justice, 14 October 2019, pg3 (<https://webarchive.nationalarchives.gov.uk/ukgwa/20221215044819/https://www.iicsa.org.uk/key-documents/17393/view/MOJ000906.pdf>)

Other Domestic and Foreign Jurisdictions

19. In its final report the Inquiry made reference to the law of limitation in other domestic and foreign jurisdictions, giving as examples New Brunswick, Victoria and Scotland. A brief summary of those jurisdiction's limitation regimes follows.

New Brunswick

20. The Limitation of Actions Act, SNB 2009 makes clear in Section 14.1 that:

"There is no limitation period in respect of a claim for damages for trespass to the person, assault or battery if the act complained of is of a sexual nature".¹⁰

21. New Brunswick retains a limitation period for other forms of abuse such as physical abuse and psychological abuse.
22. In Canada as a whole, eight of the nine provinces and all three territories have now excepted sexual abuse from the ordinary limitation periods.¹¹

Victoria

23. The Limitation of Actions Amendment (Child Abuse) Act 2015 makes clear that the purpose of the Act is

"to remove limitation periods that apply to actions in respect of causes of action that relate to death or personal injury resulting from child abuse".¹²

24. The Act was introduced by the Victorian Government to deal with difficulties, caused by limitation law, that survivors of child abuse face in recovering compensation for

¹⁰ Limitation of Actions Act, SNB 2009, (<https://www.canlii.org/en/nb/laws/stat/snb-2009-c-l-8.5/latest/snb-2009-c-l-8.5.html?autocompleteStr=snb%202009%20c%20l-&autocompletePos=1>)

¹¹ <https://www.parliament.scot/-/media/files/legislation/bills/previous-bills/limitation-childhood-abuse-scotland-bill/introduced/policy-memorandum-limitation-childhood-abuse-scotland-bill.pdf>

¹² Limitation of Actions Amendment (Child Abuse) Act 2015 (https://content.legislation.vic.gov.au/sites/default/files/6b781973-d7e4-3478-8868-dad3a6de5a03_15-009aa%20authorised.pdf)

the effects of their abuse.¹³ Limitation law was described by the relevant minister as a “major obstacle”¹⁴ to survivors and victims of child sexual abuse receiving compensation.

25. The new law replaced a situation in Victoria, described by the minister as “complex and confusing”,¹⁵ whereby different limitation periods applied in child abuse cases depending upon the identity of the alleged perpetrator and the time and context of the abuse.
26. While the Act does not reopen cases that have previously been settled or been subject to final judgement,¹⁶ it does apply retrospectively to injuries sustained before the commencement of its provisions.¹⁷
27. The definition of ‘child abuse’ used in the Act is broad, encompassing both the physical and sexual abuse of children, as well as psychological abuse (such as grooming) that arises out of instances of physical or sexual abuse. The Act does not define the exact boundaries of what constitutes ‘abuse’. Instead, the Act allows the courts to determine whether or not abuse has occurred in accordance with the ordinary meaning and common understanding of the term.¹⁸
28. The Act expressly notes that it does not affect any existing powers the courts have to control or dismiss proceedings, which might include circumstances where a court

¹³ Extract from Book 3 – Legislative Assembly Hansard – Wednesday, 25 February 2015, https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2015/Assembly_Daily_Extract_Wednesday_25_February_2015_from_Book_3.pdf

¹⁴ Extract from Book 3 – Legislative Assembly Hansard – Wednesday, 25 February 2015, https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2015/Assembly_Daily_Extract_Wednesday_25_February_2015_from_Book_3.pdf

¹⁵ Extract from Book 3 – Legislative Assembly Hansard – Wednesday, 25 February 2015, https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2015/Assembly_Daily_Extract_Wednesday_25_February_2015_from_Book_3.pdf

¹⁶ Extract from Book 3 – Legislative Assembly Hansard – Wednesday, 25 February 2015, https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2015/Assembly_Daily_Extract_Wednesday_25_February_2015_from_Book_3.pdf

¹⁷ Limitation of Actions Amendment (Child Abuse) Act 2015 (https://content.legislation.vic.gov.au/sites/default/files/6b781973-d7e4-3478-8868-dad3a6de5a03_15-009aa%20authorised.pdf)

¹⁸ Extract from Book 3 – Legislative Assembly Hansard – Wednesday, 25 February 2015, https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2015/Assembly_Daily_Extract_Wednesday_25_February_2015_from_Book_3.pdf

determines that a fair hearing of a matter is impossible due to a lack of evidence caused by the passage of time.¹⁹

29. In 2015 the Royal Commission into Institutional Responses to Child Sex Abuse recommended that each state government introduce legislation to remove any limitation period for compensation claims related to child sexual abuse. All Australian jurisdictions have now taken action to remove the limitation period for child sexual abuse.²⁰

Scotland

30. The Limitation (Childhood Abuse) (Scotland) Act 2017 is,

“An Act of the Scottish Parliament to remove the limitation period for actions of damages in respect of personal injuries resulting from childhood abuse”.²¹

31. Prior to the Act, in general, claims had to be made within three years of the abuse (injury), or (if it is later) three years from the claimant’s sixteenth birthday. Now there is no longer a time bar on childhood abuse claims in the civil courts for abuse claims that took place on or after 26 September 1964 and there is no longer a requirement to make a claim within three years of the injury or to ask the court to use its discretion to allow the case to go ahead after that 3 year period.²²
32. Claims based on abuse that took place before 26 September 1964 are affected by the law on prescription. Prescription is a different law about a different type of time limit. The Act makes no change to that law. This means that anyone whose abuse took place before 26th September 1964 will continue to be unable to make a claim for that abuse. (There may be some exceptions to that where the abuse continued past this date, or where a claim was raised in court in the past).²³

¹⁹ Extract from Book 3 – Legislative Assembly Hansard – Wednesday, 25 February 2015, https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2015/Assembly_Daily_Extract_Wednesday_25_February_2015_from_Book_3.pdf

²⁰ Statute of limitations: where we are now, Shine Lawyers, <https://www.shine.com.au/resources/survivors-of-abuse/child-sex-abuse-statute-limitations>

²¹ <https://www.legislation.gov.uk/asp/2017/3/introduction/enacted>

²² Limitation (Childhood Abuse) (Scotland) Act 2017: guidance on making a claim (<https://www.gov.scot/publications/limitation-childhood-abuse-scotland-act-2017-mean-need-know-making/>)

²³ Limitation (Childhood Abuse) (Scotland) Act 2017: guidance on making a claim (<https://www.gov.scot/publications/limitation-childhood-abuse-scotland-act-2017-mean-need-know-making/>)

33. There are 4 conditions that must be met for the removal of the three-year limitation period. These are:
- they must be damages in respect of personal injuries
 - the person must have been a child (under 18) when the abuse took place or began
 - the nature of the act or omission which must be abuse (includes sexual abuse, physical abuse and emotional abuse)
 - it must be the person that the injuries happened to who brings the action, not somebody else
34. The definition of abuse is non-exhaustive and covers a wide range of abusive behaviour – sexual abuse, physical abuse, and emotional abuse. The Act does not alter what is an actionable delict and any successful action will depend on the person bringing the action being able to show that the behaviour falling under the definition of abuse has caused an actionable (non-negligible) injury.²⁴

²⁴ <https://www.parliament.scot/-/media/files/legislation/bills/previous-bills/limitation-childhood-abuse-scotland-bill/introduced/explanatory-notes-limitation-childhood-abuse-scotland-bill.pdf>

Options for Reform

Option 1 – Complete removal of the limitation period in child sexual abuse cases

35. As already noted, the Inquiry recommended the removal of the three-year limitation period altogether for personal injury claims brought by victims and survivors of child sexual abuse in respect of their abuse.²⁵
36. Evidence received by the Inquiry suggested that limitation acted as a barrier at three key stages of the litigation process:²⁶
- Taking on claims: Although the figures either could not be given or agreed amongst claimant solicitors, the Inquiry was told that limitation prevented many solicitors from taking on a significant proportion of child sexual abuse claims. In addition, there was evidence presented to the Inquiry that claimants may find it off-putting to have to persuade a court to be allowed to bring their claim notwithstanding its merits.
 - Settlement and value of claims: A number of claimant solicitors indicated that limitation was a significant factor during the process of valuing and settling claims on the basis that victims and survivors may be advised that it would be better to accept a reduced settlement offer, rather than proceed to court where there is not only a risk of losing on limitation but also a risk of being re-traumatised by the trial process.
 - Trial: The Inquiry noted that the trial of limitation issues can be intrusive and traumatic for claimants and the outcome difficult to predict.
37. The Inquiry heard that the vast majority of child sexual abuse cases are brought outside the limitation period, which means that most claimants must first get permission from the court to proceed.²⁷ Failure to obtain permission from the court acts as a barrier to the substantive case being heard. The Inquiry also heard

²⁵ Pg 259, IICSA Final Report, https://webarchive.nationalarchives.gov.uk/ukgwa/20221215051709/https://www.iicsa.org.uk/key-documents/31216/view/report-independent-inquiry-into-child-sexual-abuse-october-2022_0.pdf

²⁶ pg 255, IICSA Final Report, https://webarchive.nationalarchives.gov.uk/ukgwa/20221215051709/https://www.iicsa.org.uk/key-documents/31216/view/report-independent-inquiry-into-child-sexual-abuse-october-2022_0.pdf

²⁷ pg 257, IICSA Final Report, https://webarchive.nationalarchives.gov.uk/ukgwa/20221215051709/https://www.iicsa.org.uk/key-documents/31216/view/report-independent-inquiry-into-child-sexual-abuse-october-2022_0.pdf

evidence that the limitation defence was “always advanced” and “used as often as possible to defeat cases” with even defendant representatives accepting that the limitation defence is continuing to be used “routinely” in historic child sexual abuse cases.²⁸

38. While a number of claimant representatives felt that the law of limitation was unfair to victims and survivors of child sexual abuse and that it should be changed, it is important to note that this view was not universal.²⁹ Indeed, one claimant representative was uncertain that “tinkering or disposing of the limitation periods, as has been advocated,... (is) going to solve the problem” as “we are all lawyers, there are going to be ways around it”.³⁰
39. There was also recognition that other groups of claimants may consider themselves just as “deserving”, as victims of child sexual abuse, of having the limitation period reviewed for their claim.³¹
40. As the Inquiry recognised, “The purpose of limitation periods is to strike a balance between the rights of claimants to bring claims and the interests of defendants in not having to defend historic cases when, for example, it may be difficult to establish what happened due to the passage of time. (furthermore) The imposition of limitation periods is also in the general public interest, as it allows individuals and institutions to arrange their affairs (including, for example, in taking out insurance or destroying documents), without the fear of facing litigation at some indeterminate time in the future”.³² The complete removal of a limitation period for child sexual abuse cases would end this certainty and mean that defendants could face claims many years after the alleged incidents are supposed to have occurred. Overturning such a key tenant of the legal system should not happen lightly.

²⁸ pg 43, Accountability and Reparations Investigation Report, (<https://webarchive.nationalarchives.gov.uk/ukgwa/20221215042324/https://www.iicsa.org.uk/key-documents/14231/view/accountability-reparations-report-19-sep-2019.pdf>)

²⁹ Pg 37, Accountability and Reparations Investigation Report (<https://webarchive.nationalarchives.gov.uk/ukgwa/20221215042324/https://www.iicsa.org.uk/key-documents/14231/view/accountability-reparations-report-19-sep-2019.pdf>)

³⁰ Pg 37/8, Accountability and Reparations Investigation Report, (<https://webarchive.nationalarchives.gov.uk/ukgwa/20221215042324/https://www.iicsa.org.uk/key-documents/14231/view/accountability-reparations-report-19-sep-2019.pdf>)

³¹ Pg 37, Accountability and Reparations Investigation Report, (<https://webarchive.nationalarchives.gov.uk/ukgwa/20221215042324/https://www.iicsa.org.uk/key-documents/14231/view/accountability-reparations-report-19-sep-2019.pdf>)

³² pg36, Accountability and Reparations Report, (<https://webarchive.nationalarchives.gov.uk/ukgwa/20221215042324/https://www.iicsa.org.uk/key-documents/14231/view/accountability-reparations-report-19-sep-2019.pdf>)

41. Furthermore, over time it is likely that the quality and availability of evidence will decline. Combined with the potential for witnesses to die or become incapacitated there is the potential that having no limitation period risks the interests of justice available to both claimant and defendant.
42. Ultimately, Section 33 of the Limitation Act³³ already provides a wide discretion to the court to vary the limitation period in child sexual abuse cases and to allow cases that are outside the limitation period to proceed if it is in the interests of justice for them to do so. A limitation period also encourages disputes to be resolved timeously thus promoting finality and certainty. Both are key cornerstones of the legal system. As such, the Government's opening position, ahead of consultation, is that it does not support this option. However, that position is also taken on the basis of additional reforms being made to the current system to amend the law as set out below.

Option 2 – Reverse the burden of proof in child sexual abuse cases

43. Action would proceed unless the defendant satisfies the Court that it is not possible for a fair hearing to proceed or that he/she (the defendant) would be substantially prejudiced were the action to proceed.
44. At present limitation can operate as a complete procedural defence to a claim of child sexual abuse. If a defendant raises limitation in their defence, then it is incumbent on the claimant to persuade the court to exercise its discretion under section 33 of the Limitation Act to allow their claim to proceed.
45. While this is in line with the general position of the burden of proof being on claimants in civil cases (to show why a fair trial can proceed outside the statutory time limits) it can act as a barrier for the claimant, placing an additional burden on them to relive their, potentially traumatic, experience before they even get to a substantive court hearing. Indeed, the current arrangement, where the burden is on the claimant, has led to limitation being described as a “particularly powerful tool at a defendant's disposal”.³⁴
46. Other Jurisdictions, such as Scotland, have reversed the burden of proof so that the onus is on the defendant rather than the claimant to persuade the court that the claim should not be allowed (S 17D of the of the Prescription and Limitation (Scotland) Act

³³ <https://www.legislation.gov.uk/ukpga/1980/58>

³⁴ Abolishing limitation in child sexual abuse claims and the IICSA report, 12 King's Bench Walk, <https://www.12kbw.co.uk/abolishing-limitation-in-child-sexual-abuse-claims-and-the-iicsa-report/>

1973 as inserted by the Limitation (Childhood Abuse) (Scotland) Act 2017).³⁵ This means that action can proceed unless the defendant satisfies 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.

47. The government's position in publishing this consultation is that it supports this option in view of the exceptional nature of historic child sexual abuse claims.

Option 3 – Codify existing judicial guidance

48. In the judgment in the case of *Chief Constable of Greater Manchester v Carroll*,³⁶ Sir Terence Etherton MR provided a general summary of relevant principles which the Court should use when deciding whether or not to exercise its discretion under S33 of the Limitation Act. This provided guidance in common law for other courts to follow.
49. The full relevant extract from the judgment (para 42) of the Court of Appeal in *Chief Constable of Greater Manchester Police v Carroll* [2017] EWCA Civ 1992 is as follows:

- 1) Section 33 is not confined to a "residual class of cases". It is unfettered and requires the judge to look at the matter broadly: *Donovan v Gwent Toys Ltd* [1990] 1 WLR 472 at 477E; *Horton v Sadler* [2006] UKHL 27, [2007] 1 AC 307, at [9] (approving the Court of Appeal judgments in *Finch v Francis* unrptd 21.7.1977); *A v Hoare* [2008] UKHL 6, [2008] 1 AC 844, at [45], [49], [68] and [84]; *Sayers v Lord Chelwood* [2012] EWCA Civ 1715 [2013] 1 WLR 1695, at [55].
- 2) The matters specified in section 33(3) are not intended to place a fetter on the discretion given by section 33(1), as is made plain by the opening words "the court shall have regard to all the circumstances of the case", but to focus the attention of the court on matters which past experience has shown are likely to call for evaluation in the exercise of the discretion and must be taken into a consideration by the judge: *Donovan* at 477H-478A.

³⁵ Limitation (Childhood Abuse) (Scotland) Act 2017, <https://www.legislation.gov.uk/asp/2017/3/section/1/enacted>

³⁶ *Greater Manchester Police v Carroll* [2017] EWCA Civ 1992 (<http://www.bailii.org/ew/cases/EWCA/Civ/2017/1992.html>)

- 3) The essence of the proper exercise of the judicial discretion under section 33 is that the test is a balance of prejudice and the burden is on the claimant to show that his or her prejudice would outweigh that to the defendant: *Donovan* at 477E; *Adams v Bracknell Forest Borough Council* [2004] UKHL 29, [2005] 1 AC 76, at [55], approving observations in *Robinson v St. Helens Metropolitan Borough Council* [2003] PIQR P9 at [32] and [33]; *McGhie v British Telecommunications plc* [2005] EWCA Civ 48, (2005) 149 SJLB 114, at [45]. Refusing to exercise the discretion in favour of a claimant who brings the claim outside the primary limitation period will necessarily prejudice the claimant, who thereby loses the chance of establishing the claim.
- 4) The burden on the claimant under section 33 is not necessarily a heavy one. How heavy or easy it is for the claimant to discharge the burden will depend on the facts of the particular case: *Sayers* at [55].
- 5) Furthermore, while the ultimate burden is on a claimant to show that it would be inequitable to disapply the statute, the evidential burden of showing that the evidence adduced, or likely to be adduced, by the defendant is, or is likely to be, less cogent because of the delay is on the defendant: *Burgin v Sheffield City Council* [2015] EWCA Civ 482 at [23]. If relevant or potentially relevant documentation has been destroyed or lost by the defendant irresponsibly, that is a factor which may weigh against the defendant: *Hammond v West Lancashire Health Authority* [1998] Lloyd's Rep Med 146.
- 6) The prospects of a fair trial are important: *Hoare* at [60]. The Limitation Acts are designed to protect defendants from the injustice of having to fight stale claims, especially when any witnesses the defendant might have been able to rely on are not available or have no recollection and there are no documents to assist the court in deciding what was done or not done and why: *Donovan* at 479A; *Robinson* at [32]; *Adams* at [55]. It is, therefore, particularly relevant whether, and to what extent, the defendant's ability to defend the claim has been prejudiced by the lapse of time because of the absence of relevant witnesses and documents: *Robinson* at [33]; *Adams* at [55]; *Hoare* at [50].
- 7) Subject to considerations of proportionality (as outlined in (11) below), the defendant only deserves to have the obligation to pay due damages removed if the passage of time has significantly diminished the opportunity to defend the claim on liability or amount: *Cain v Francis* [2008] EWCA Civ 1451, [2009] QB 754, at [69].

- 8) It is the period after the expiry of the limitation period which is referred to in sub-subsections 33(3)(a) and (b) and carries particular weight: Donovan at 478G. The court may also, however, have regard to the period of delay from the time at which section 14(2) was satisfied until the claim was first notified: Donovan at 478H and 479H-480C; Cain at [74]. The disappearance of evidence and the loss of cogency of evidence even before the limitation clock starts to tick is also relevant, although to a lesser degree: Collins v Secretary of State for Business Innovation and Skills [2014] EWCA Civ 717, [2014] PIQR P19, at [65].
- 9) The reason for delay is relevant and may affect the balancing exercise. If it has arisen for an excusable reason, it may be fair and just that the action should proceed despite some unfairness to the defendant due to the delay. If, on the other hand, the reasons for the delay or its length are not good ones, that may tip the balance in the other direction: Cain at [73]. I consider that the latter may be better expressed by saying that, if there are no good reasons for the delay or its length, there is nothing to qualify or temper the prejudice which has been caused to the defendant by the effect of the delay on the defendant's ability to defend the claim.
- 10) Delay caused by the conduct of the claimant's advisers rather than by the claimant may be excusable in this context: Corbin v Penfold Company Limited [2000] Lloyd's Rep Med 247.
- 11) In the context of reasons for delay, it is relevant to consider under sub-section 33(3)(a) whether knowledge or information was reasonably suppressed by the claimant which, if not suppressed, would have led to the proceedings being issued earlier, even though the explanation is irrelevant for meeting the objective standard or test in section 14(2) and (3) and so insufficient to prevent the commencement of the limitation period: Hoare at [44]-[45] and [70].
- 12) Proportionality is material to the exercise of the discretion: Robinson at [32] and [33]; Adams at [54] and [55]. In that context, it may be relevant that the claim has only a thin prospect of success (McGhie at [48]), that the claim is modest in financial terms so as to give rise to disproportionate legal costs (Robinson at [33]; Adams at [55]); McGhie at [48]), that the claimant would have a clear case against his or her solicitors (Donovan at 479F), and, in a personal injury case, the extent and degree of damage to the claimant's health, enjoyment of life and employability (Robinson at [33]; Adams at [55]).

13) An appeal court will only interfere with the exercise of the judge's discretion under section 33, as in other cases of judicial discretion, where the judge has made an error of principle, such as taking into account irrelevant matters or failing to take into account relevant matters, or has made a decision which is wrong, that is to say the judge has exceeded the generous ambit within which a reasonable disagreement is possible: *KR v Bryn Alyn Community (Holdings) Ltd* [2003] EWCA Civ 783, [2003] 3 WLR 107, at [69]; *Burgin* at [16].

50. Judicial discretion and the guidance provided by the Court of Appeal in *Carroll* is a key aspect of ensuring that the court retains the flexibility to consider the individual circumstances of each case. This is particularly important given the circumstances of child sexual abuse cases where it is recognised that few victims and survivors bring their claims before the expiration of the limitation period.³⁷
51. The Government wishes to examine how this guidance may be used and strengthened to buttress existing judicial discretion. At present the guidance in *Carroll* and other cases forms part of the common law and will be considered by judges in determining applications for extension to time limits. However, codifying such guidance in statute would increase its legal force and require courts to formally take account of it.
52. The Government's position ahead of consultation is that there would be merit in codifying existing judicial guidance and putting it on a statutory footing.

Option 4 – Allow the reopening of claims that have already been adjudicated or settled

53. If there are to be changes to limitation law or judicial guidance for child sexual abuse cases then it may be argued that it is only just and equitable that all victims and survivors are allowed to benefit. After all victims and survivors in settled and already adjudicated cases will have come across the same barriers to a fair trial as other victims and survivors. It may also be argued that victims and survivors would have acted differently had limitation law or judicial guidance been different.
54. Different jurisdictions have taken different approaches on this matter. In Scotland, the Limitation (Childhood Abuse) Scotland Act 2017 was applied to previously raised

³⁷ Pg 254, IICSA Final Report, https://webarchive.nationalarchives.gov.uk/ukgwa/20221215051709/https://www.iicsa.org.uk/key-documents/31216/view/report-independent-inquiry-into-child-sexual-abuse-october-2022_0.pdf

cases on the basis that “It would be unfair that a survivor of historic abuse who has already litigated, but who has been prevented from pursuing the claim by reason of the current law on time bar, should not have the benefit of the new regime”.³⁸

However, by comparison, in Victoria the Limitation of Actions Amendment (Child Abuse) Act 2015 does not reopen cases that have previously been settled or subject to final judgement.³⁹

55. Certainty and finality are fundamental aspects of the rule of law. As the Inquiry itself recognises, “It is generally inappropriate and impractical to reverse a judicial determination, or an agreement reached in good faith by litigation parties”.⁴⁰ It goes on to recommend that “Changes to the law of limitation should therefore not allow such claims to be re-opened”.⁴¹
56. As such, the Government’s position ahead of this consultation is that it would not be appropriate to legislate to enable claims which have already been determined to be reopened.

Option 5 – Extending the definition of abuse (beyond sexual abuse)

57. It should be noted that the impetus for this consultation was the Inquiry which focused solely, and analysed in depth, sexual abuse of children rather than wider forms of abuse.

³⁸ Pg 17, Policy Memorandum, Limitation (Childhood Abuse) (Scotland) Bill, <https://www.parliament.scot/-/media/files/legislation/bills/previous-bills/limitation-childhood-abuse-scotland-bill/introduced/policy-memorandum-limitation-childhood-abuse-scotland-bill.pdf>

³⁹ Extract from Book 3 – Legislative Assembly Hansard – Wednesday, 25 February 2015, https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2015/Assembly_Daily_Extract_Wednesday_25_February_2015_from_Book_3.pdf

⁴⁰ Pg 259, IICSA final report, https://webarchive.nationalarchives.gov.uk/ukgwa/20221215051709/https://www.iicsa.org.uk/key-documents/31216/view/report-independent-inquiry-into-child-sexual-abuse-october-2022_0.pdf

⁴¹ Pg 259, IICSA final report, https://webarchive.nationalarchives.gov.uk/ukgwa/20221215051709/https://www.iicsa.org.uk/key-documents/31216/view/report-independent-inquiry-into-child-sexual-abuse-october-2022_0.pdf

58. The Scottish Government noted that “abuse can be physical, sexual or emotional”,⁴² that “often children are abused in more than one way”⁴³ and that different forms of abuse often co-occur.⁴⁴ On that basis the Limitation (Childhood abuse) (Scotland) Act 2017 used a definition of abuse that is non-exhaustive and covers a wide range of abusive behaviour; sexual abuse, physical abuse, and emotional abuse.⁴⁵ The state of Victoria adopted a similar approach with the definition of ‘child abuse’ used in the Limitation of Actions Amendment (Child Abuse) Act 2015 being broad, encompassing both the physical and sexual abuse of children, as well as psychological abuse (such as grooming) that arises out of instances of physical or sexual abuse. The Victoria Act does not seek to define the exact boundaries of what constitutes abuse. Rather, it leaves it to the courts to determine whether or not abuse has occurred in accordance with the ordinary meaning and common understanding of the term.⁴⁶
59. However, legislation in some other jurisdictions, such as Ireland and most provinces in Canada, limits the relevant provisions to sexual abuse only rather than abuse more widely. Indeed, in Ireland the Minister recognised that child sexual abuse specifically was a category deserving of “special rules”⁴⁷ and that in “other forms of child abuse...the issues are not always as clear-cut as in the case of sexual abuse”.⁴⁸ In their report the Inquiry recommends that changes to the limitation period should be

⁴² Pg 19, Scottish Government Consultation on the Removal of the 3 Year Limitation Period From Civil Actions for Damages For Personal Injury for in Care Survivors of Historical Child Abuse, <https://webarchive.nrscotland.gov.uk/3000/https://www.gov.scot/Publications/2015/06/5970/downloads#rs480479>

⁴³ Pg 19, Scottish Government Consultation on the Removal of the 3 Year Limitation Period From Civil Actions for Damages For Personal Injury for in Care Survivors of Historical Child Abuse, <https://webarchive.nrscotland.gov.uk/3000/https://www.gov.scot/Publications/2015/06/5970/downloads#rs480479>

⁴⁴ Pg 28, Limitation (Childhood abuse) (Scotland) Bill, Policy Memorandum, <https://www.parliament.scot/-/media/files/legislation/bills/previous-bills/limitation-childhood-abuse-scotland-bill/introduced/policy-memorandum-limitation-childhood-abuse-scotland-bill.pdf>

⁴⁵ <https://www.legislation.gov.uk/asp/2017/3/section/1/enacted>

⁴⁶ Extract from Book 3 – Legislative Assembly Hansard – Wednesday, 25 February 2015, https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2015/Assembly_Daily_Extract_Wednesday_25_February_2015_from_Book_3.pdf

⁴⁷ Statute of Limitations (Amendment) Bill, 1998: Second Stage (Resumed). – Dáil Éireann (28th Dáil) – Thursday, 27 May 1999 – Houses of the Oireachtas, <https://www.oireachtas.ie/en/debates/debate/dail/1999-05-27/6/>

⁴⁸ Statute of Limitations (Amendment) Bill, 1998: Second Stage (Resumed). – Dáil Éireann (28th Dáil) – Thursday, 27 May 1999 – Houses of the Oireachtas <https://www.oireachtas.ie/en/debates/debate/dail/1999-05-27/6/>

for personal injury claims brought by victims and survivors of child sexual abuse in respect of their child sexual abuse only.⁴⁹

60. The Government's position ahead of this consultation is that the reforms should be limited to child sexual abuse claims as the case for reform has been comprehensively explored by the Inquiry in that specific group of cases.

Option 6 – Adjusting the factors in Section 33 of the limitation Act in relation to Child Sexual Abuse Cases

61. Section 33 of the Limitation Act 1980 enables courts to exercise discretion in extending time limits for personal injury claims.
62. There are other areas of civil litigation in which amendments have been made to Section 33 to address particular features for specific types of claims. One recent example was the Overseas Operations (Service Personnel and Veterans) Act 2021⁵⁰ which amended Section 33 of the Limitation Act in order to provide greater certainty for service personnel and veterans, requiring prosecutors to take into account the unique context of military operations overseas⁵¹ and creating a precedent for setting out specific circumstances that must be taken into account in certain claims.
63. A similar approach, with regard to child sexual abuse, could be taken by amending the Limitation Act to recognise the particular circumstances around fear and shame a claimant can feel in child sexual abuse cases and which often leads to a delay in victims bringing forward claims. This may be aggravated by a fear of – or lack of trust with – the authorities stemming from their childhood experiences. This could lead to a less onerous burden on claimants claiming for child sexual abuse when applying Section 33 factors.
64. For example, rather than go into specific details Section 33 could be adjusted so that if child sexual abuse is stated as a reason for delay in bringing a claim the court must accept this as a valid reason without requiring the claimant to give further details to justify why child sexual abuse caused the delay. This would potentially ease the burden slightly on the claimant, mitigating what was described by one claimant

⁴⁹ Recommendation 15, pg 259, IICSA Final Report, https://webarchive.nationalarchives.gov.uk/ukgwa/20221215051709/https://www.iicsa.org.uk/key-documents/31216/view/report-independent-inquiry-into-child-sexual-abuse-october-2022_0.pdf

⁵⁰ <https://www.legislation.gov.uk/ukpga/2021/23/contents/enacted>

⁵¹ Overseas Operations (Service Personnel and Veterans) Act 2021, Explanatory Notes, <https://www.legislation.gov.uk/ukpga/2021/23/notes/division/3/index.htm>

solicitor as the “single-most traumatic feature of this type of litigation”,⁵² while maintaining safeguards from the rest of Section 33 for the defendant.

65. However, in evidence to the Inquiry it was suggested (by a claimant lawyer) that while in some other jurisdictions very few cases would actually get past the limitation hurdle the landscape in England and Wales was different and by implication that the limitation hurdle wasn't so much of a barrier.⁵³ This would suggest that adjusting the factors in Section 33 of the Limitation Act is not such a key factor. Furthermore, it may be argued that it would be an unreasonable fettering of judicial discretion to require the court to allow a claim to proceed simply if child sexual abuse is given as the reason for delay.
66. The Government welcomes views from respondents on the case for and against reform.

Option 7 – An extended limitation period for child sexual abuse cases

67. The three-year limitation period for child sexual abuse cases is a relatively recent development with the time limit previously being, prior to the ruling in *A v Hoare*, a fixed six-year period in most cases.
68. The Inquiry heard evidence that many victims of child sexual abuse feel ashamed, guilty, distrustful and angry and try to forget or block out the memories of their abuse.⁵⁴ As a result, very few victims and survivors of child sexual abuse bring their claims before the expiration of the three-year limitation period.⁵⁵ Indeed, research for the All-Party Parliamentary Group on Adult Survivors of Child Sexual Abuse indicated the average time for victims and survivors of child sexual abuse to disclose their

⁵² Pg 256, IICSA Final Report, https://webarchive.nationalarchives.gov.uk/ukgwa/20221215051709/https://www.iicsa.org.uk/key-documents/31216/view/report-independent-inquiry-into-child-sexual-abuse-october-2022_0.pdf

⁵³ Pg 32, IICSA Inquiry Accountability and Reparations Investigation, public hearing transcript, <https://webarchive.nationalarchives.gov.uk/ukgwa/20221215043542/https://www.iicsa.org.uk/key-documents/17401/view/public-hearing-transcript-weds-27-nov-2019.pdf>

⁵⁴ Pg 36/37, accountability and reparations report, <https://webarchive.nationalarchives.gov.uk/ukgwa/20221215042324/https://www.iicsa.org.uk/key-documents/14231/view/accountability-reparations-report-19-sep-2019.pdf>

⁵⁵ Pg 254, IICSA Final report, https://webarchive.nationalarchives.gov.uk/ukgwa/20221215051709/https://www.iicsa.org.uk/key-documents/31216/view/report-independent-inquiry-into-child-sexual-abuse-october-2022_0.pdf

abuse is 26 years.⁵⁶ Similarly, a study of sexual abuse allegations by 180 survivors against Anglican clergy in Australia found that the average time from the alleged sexual abuse to making a complaint was 25 years for males and 18 years for females.⁵⁷ A longer limitation period in these cases would therefore give more time for claimants to consider whether they wish to bring a claim.

69. However, an extended limitation period, say 25–30 years, would likely give rise to many of the same issues caused by the passage of time and lack of certainty, among other factors, as removing the limitation period completely. This would particularly be the case if claims were made towards the end of the 25–30 year period. In short, a different limitation period for child sexual abuse cases would just introduce a different but equally arbitrary time limit and would still leave the burden on claimants to persuade the court to disapply the time limit. It may also have the unintended effect of courts feeling they were being steered to decline claims in excess of 30 years from being considered. Victims of other crimes, such as domestic violence and other sexual offences, may also feel that it is unjust to exclude them from any extended limitation period.
70. The Government’s position prior to consultation is that it is not minded to set a different fixed limitation period for child sexual abuse claims, but it welcomes views on the point.

Option 8 – Procedural Reform

71. There is currently a Pre-action Protocol for Personal Injury Claims, which applies to child sexual abuse claims. As identified by the Inquiry, “The protocol’s objectives are to encourage the exchange of early and full information, early investigation, settlement before proceedings and the efficient management of any proceedings. It requires a claimant to include sufficient information in the letter of claim for the defendant to assess the merits of the case and its potential value. The defendant is then required to produce a letter of response that admits or denies the claim, with reasons if necessary. Disclosure is also encouraged in order to help clarify or resolve issues in dispute”.⁵⁸

⁵⁶ Pg 257, IICSA Final Report, https://webarchive.nationalarchives.gov.uk/ukgwa/20221215051709/https://www.iicsa.org.uk/key-documents/31216/view/report-independent-inquiry-into-child-sexual-abuse-october-2022_0.pdf

⁵⁷ Pg 12, Limitation (Childhood Abuse) (Scotland) Bill Policy Memorandum, <https://www.parliament.scot/-/media/files/legislation/bills/previous-bills/limitation-childhood-abuse-scotland-bill/introduced/policy-memorandum-limitation-childhood-abuse-scotland-bill.pdf>

⁵⁸ Pg 40, IICSA Accountability and Reparations Report, <https://webarchive.nationalarchives.gov.uk/ukgwa/20221215042324/https://www.iicsa.org.uk/key-documents/14231/view/accountability-reparations-report-19-sep-2019.pdf>

72. A group of representatives for both claimants and defendants each prepared a draft of a pre-action protocol for child sexual abuse claims. These drafts were supplied to the Civil Procedure Rule Committee for review and were subsequently incorporated into a broader workstream by the Civil Justice Council looking at the broader issue of how to enhance the experience of vulnerable people involved in civil proceedings. Specifically, “the extent to which existing support services, compensation frameworks and the civil justice system are fit to deliver reparations to victims and survivors of child sexual abuse...(with recognition) that fair legal processes must be adapted to address the vulnerabilities of witness and parties if victims and survivors of child sexual abuse are to obtain justice”.⁵⁹ This work resulted in a report issued in February 2020, which made 18 recommendations to assist vulnerable witnesses and parties (including victims and survivors of child sexual abuse).⁶⁰
73. The Government is open minded on whether there should be a bespoke pre-action protocol for child sexual abuse claims and would welcome views.

⁵⁹ Pg 5 – “Vulnerable Witnesses and parties within civil proceedings – Current position and recommendations for change” - <https://www.judiciary.uk/wp-content/uploads/2022/07/VulnerableWitnessesandPartiesFINALFeb2020-1-1.pdf>

⁶⁰ Vulnerable Witnesses and parties within civil proceedings – Current position and recommendations for change” – <https://www.judiciary.uk/wp-content/uploads/2022/07/VulnerableWitnessesandPartiesFINALFeb2020-1-1.pdf>

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

1. **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/NO?**

Please provide reasons and any supporting evidence for your answer

2. **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? YES/NO.**

Please provide reasons and any supporting evidence for your answer.

3. **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? YES/NO**

Please provide reasons and any supporting evidence for your answer

4. **What additional factors, if any, should be included in judicial guidance about s33? Please refer to relevant cases when suggesting additional factors.**

5. **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? YES/NO**

Please provide reasons and any supporting evidence for your answer

6. **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? YES/NO**

Please provide reasons and any supporting evidence for your answer

7. **Do you agree that any change to limitation law or judicial guidance should cover child sexual abuse claims only? YES/NO**

Please provide reasons and any supporting evidence for your answer

8. **Do you agree that the factors in Section 33 should be adjusted to recognise the particular circumstances around child sexual abuse claims? YES/NO**

If so, what changes should be made?

Please provide reasons and any supporting evidence for your answer

- 9. Should there be a different limitation period for child sexual abuse claims?
YES/NO**

If so, what should it be?

Please provide reasons and any supporting evidence for your answer

- 10. Should there be a specific Pre-Action Protocol for child sexual abuse claims?
YES/NO**

Please provide reasons and any supporting evidence for your answer

- 11. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform?**

Please provide reasons and any supporting evidence for your answer.

- 12. 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?**

Please provide reasons and supply evidence of further equalities impacts as appropriate.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 10 July 2024 to:

Limitation Law in Child Sexual Abuse Cases Consultation

Ministry of Justice

Civil Justice and Law Division

Postpoint 5.25

102 Petty France

London SW1H 9AJ

Email: limitationlawconsultation@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from the address listed above and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested from limitationlawconsultation@justice.gov.uk.

Publication of response

A paper summarising the responses to this consultation will be published. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), UK GDPR and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Impact Assessment, Equalities and Welsh Language

Impact assessment

A separate impact assessment has been published alongside this consultation.

Equalities

A separate equalities statement has been published alongside this consultation.

Welsh Language Impact Test

A Welsh language version of this consultation has been published alongside this consultation.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf



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