

Justice Committee

Limitation (Childhood Abuse) (Scotland) Bill

Written submission from Victim Support Scotland

Victim Support Scotland (VSS) is a national charity that supports people affected by crime through the provision of practical help, emotional support and essential information. VSS welcomes the opportunity to provide evidence to the Justice Committee on the Limitation (Childhood Abuse) (Scotland) Bill.

The Bill's proposal

VSS agrees with the Scottish Government that “the current law in relation to limitation...does not adequately reflect that it is the nature of the abuse that is a barrier to raising a claim within the required period.”¹ There are numerous reasons why victims of child abuse are unable to pursue civil action against their abuser within the current limitation period of three years. It can take many years for someone to realise that what has happened to them was in fact abuse, and it is common for abusers to use silencing tactics to ensure that the abuse is kept hidden. A significant amount of time can also be required for a person to feel able to disclose their abuse due to feelings of shame or embarrassment, the trauma resulting from the abuse, and/or suppressed memories. Because abusers are often figures of authority in the victims' lives, they are regularly left with feelings of fear or mistrust towards authorities, which presents challenges in reporting the abuse or participating in court action.

Victim Support Scotland therefore warmly welcomes the Bill's proposal to remove cases relating to historical childhood abuse from the limitation regime set out in the 1973 Act.

Impact of the new exemption

We believe it is likely that there will be an increase in the number of actions raised and cases that will come to court, as more victims of childhood abuse will be able to pursue claims. The actual number will depend on victims being made aware of their rights in this area.

Although the matter under discussion relates to compensation claims for personal injury caused, Victim Support Scotland does not believe that the benefits for pursuers can be quantified. Many victims pursue civil action for acknowledgement of their abuse, to have their abuser held to account, and for the psychological benefits associated with accessing justice. Similar to criminal injuries compensation, those claiming often tell us that the amount of financial award given is of lesser importance than the acknowledgement of the crime and its impact on them.

¹ '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', Scottish Government (2015) p.10

Those who decide to pursue a personal injury claim against their abuser will still need to be aware of the challenges presented by the time that has lapsed in relation to evidence production and quality. In most cases however, civil claims are made with the aim of having their case heard in the first instance, with a general understanding that there is no guarantee of a successful outcome.

We also recognise the challenges for victims in pursuing civil action if the perpetrator is a 'man of straw'. In these circumstances, the state-run Criminal Injuries Compensation Scheme is of major significance to victims in being able to provide both recognition of the crime and its impact on them, and compensation for the injuries they have sustained. It is vital that criminal injuries compensation should be available to victims regardless of whether civil action has been pursued. Unfortunately, criminal injuries compensation is currently denied to victims who lived with their abuser between 1964 (the establishment of the scheme) and 1979. This issue is being considered by the Public Petitions Committee under Public Petition PE1612.

Scope of the Bill

Covering only those abused in a care setting would be an arbitrary distinction to make, creating injustices and inconsistencies in the way that childhood abuse is dealt with through the civil courts. As stated in our written evidence on Public Petition PE1612 (as mentioned above), we would look for consistent practices in relation to compensatory systems and processes for all victims of abuse, regardless of where or when the abuse took place. In place of the narrow approach of covering only those abused in a care setting, VSS welcomes the expansive scope of the Bill as introduced.

Definitions of “child” and “abuse”

Victim Support Scotland agrees with the definitions found in section 1 of the Bill. The Bill's definition of “child” reflects the general approach within Scotland to define a child as a person under the age of eighteen years, and complies with Article 1 of the United Nations Convention on the Rights of the Child. The definition is also consistent with the Victims and Witnesses (Scotland) Act 2014.

We agree that “abuse” should cover sexual, physical and emotional abuse, with the understanding that long-term patterns of physical neglect are categorised as physical and/or emotional abuse. This would ensure recognition of the fact that abuse is often carried out in a variety of ways.

Allowing previously raised claims to be raised again

VSS welcomes Sections 1's provision to allow previously raised claims to be raised again under the new regime. It would be inherently unjust for those who were previously denied justice through the current limitation law to be further prevented from accessing justice - all victims should receive equal treatment and fairness within the civil

justice system regardless of whether they have already attempted to pursue a personal injury claim.

Circumstances in which a case can be dismissed

We believe the powers provided to the court through the Bill to allow a case to be dismissed where the defence can demonstrate that it would not be possible for a fair hearing to take place, or that they would be subject to “substantial prejudice” if the case did proceed, to be reasonable.

Victim Support Scotland
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