

Justice Committee

Limitation (Childhood Abuse) (Scotland) Bill

Written submission from Social Work Scotland

Proposal to remove cases relating to historical childhood abuse from the limitation regime set out in the 1973 Act.

Social Work Scotland agree with the proposal. Our experience of supporting victims of childhood abuse indicates that, in many cases, a significant number of years will pass before the victim is able or willing to disclose or even acknowledge what has happened to them. As a result of this particular set of circumstances, a 3 year limitation period in practice negates any possibility of the victim being able to bring a civil case.

Impact of the new exemption on i) victims of historical childhood abuse who could bring claims; ii) the individuals, organisations and insurers who might be involved in defending claims; and iii) the Scottish courts.

i) We anticipate that this will have a positive impact on those who previously were barred from bringing claims due to the time bar. However, this is one part of a suite of actions necessary to support victims of childhood abuse. Victims of childhood abuse are overrepresented in many of the services provided by social work addressing issues such as addiction, mental health and criminal activity. Social work services and other key agencies, most notably health services, require a robust and sustained programme of funding to support victims in their recovery.

ii) With respect to the organisations for whom our members work for and who are or have in the past provided direct care services for children, the impact at this time is unclear. It is of particular concern that we do not yet know how the insurance industry will respond to the change in legislation. If for example, insurers refuse to honour claims which arise as a result of the change, or significantly increase premiums or decline to continue to insure organisations, this will have a significant impact and could affect the current service provision for vulnerable children and families. There requires to be dialogue with the insurance industry with a view to a consistency in approach.

iii) We are unable to offer comment in this area.

Should the Bill takes the wider approach and cover all children within the proposed exemption.

We agree in principle with this approach. However, we acknowledge that where cases are brought against individuals or small local organisations (even if they still exist), claims may be more likely to be symbolic rather than providing compensation which could impact on victim's trust in the process.

The definitions of "child" and "abuse" found in the proposed new section 17A (2) of the 1973 Act (which would be inserted by section 1 of the Bill).

Whilst we agree with the definition of the term “child” being a person under the age of 18 as it applies today, we are unclear as to whether this will cause difficulty in relation to historic cases where young people were considered as adults post 16 years. A review of legislation pre 1995 would be useful to ascertain whether prior to the Children (Scotland) Act 1995, there was in existence any provision of children and family services to those over 16 years.

We agree with the definition of “abuse” and note the importance of not focussing solely on sexual abuse.

Our views on Section 1 of the Bill allowing claims previously raised but found to be time-barred to be raised again under the new regime.

We agree that those cases which have previously fallen due to the time bar should have the opportunity to be raised again. This will have particular importance for those survivors for whom it has not been possible to take forward criminal cases.

In applying the further provision to reopen cases previously considered settled, it will be important to ensure that the safeguards built into the Bill are actionable to prevent a loss of trust from an organisational perspective.

Our views on Section 1 of the Bill (which would insert a new section 17D into the 1973 Act) which empowers the court to dismiss a case in two specific sets of circumstances. These are where the defender can demonstrate either that i) it would not be possible for a fair hearing to take place; or ii) the defender would be subject to “substantial prejudice” if the case did proceed.

We agree that this is a sensible proposal, but in practice will need to be carefully managed to ensure that it is fair to both the pursuer and defendant. In particular, care should be taken to avoid this being seen as a default practice position as victims must have confidence in legal remedies.

Social Work Scotland
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