



**The Forum of Complex Injury Solicitors
(FOCIS)**

response to

**The Ministry of Justice's Consultation:
"Limitation Law in Child Sexual Abuse
Cases"**

July 2024

About Us

FOCIS members act for seriously injured claimants with complex personal injury and clinical negligence claims, including group actions. Some of our members also act as deputies principally for those who lack capacity to manage their own finances and affairs. The objectives of FOCIS are to:-

1. Promote high standards of representation of claimant personal injury and medical negligence clients,
2. Share knowledge and information among members of the forum,
3. Further better understanding in the wider community of issues which arise for those who suffer serious injury,
4. Use members' expertise to promote improvements to the legal process and to inform debate,
5. Develop fellowship among members.

See further www.focis.org.uk.

Membership of FOCIS is intended to be at the most senior level of the profession, currently standing at 24 members. The only formal requirement for membership of FOCIS is that members should have achieved a pre-eminence in their personal injury field. Eight of the past presidents of APIL are members or Emeritus members of FOCIS. Firms represented by FOCIS members include:

Anthony Gold	Hugh James
Ashtons Legal	JMW
Balfour + Manson	Irwin Mitchell
Bolt Burdon Kemp	Leigh Day
Dean Wilson	Moore Barlow
Digby Brown	Osbornes Law
Fieldfisher	Serious Law
Fletchers	Slater and Gordon
Freeths	Stewarts
Hodge Jones & Allen	Switalskis
	Thompsons NI

FOCIS has been the name since 2007 of the organisation formerly known as the Richard Grand Society (founded in 1997 based on the concept of the American 'Inner Circle of Advocates' which had been formed in 1972 by Arizona and San Francisco Attorney Richard Grand).

FOCIS members act for seriously injured claimants with complex personal injury and clinical negligence claims. In line with the remit of our organisation, we restrict our responses relating to our members' experience, practices and procedures. We will defer to others to respond on the impact relating to other classes of case.

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 urge the Government to act swiftly on the Independent Inquiry into Child Sexual Abuse's recommendations. The Government is already aware of the compelling reasons to remove the three-year limitation period for personal injury claims, as highlighted by the IICSA inquiry. This period significantly affects survivors of child sexual abuse.

Survivors and their advocates support removing this limitation. After the IICSA hearings in late 2018, the Association of British Insurers also backed the reform. Research shows it can typically take survivors 24-27 years to come forward. Many factors contribute to this delay. Young victims often don't realise what happened to them was wrong. They may have been coerced into silence by the abuser. Abuse can have a "silencing effect," causing survivors to suppress memories due to fear, shame, and guilt. Many survivors also suffer mental health issues from the abuse and grooming process.

Survivors may not disclose abuse to protect family members from stigma. For example, victims often wait until their parents have passed away before speaking out. They may fear repercussions for their own children if they disclose their abuse, worrying authorities might see them as a danger.

Many survivors fear they won't be believed. This is especially true if they reported the abuse to an authority figure at the time, but no action was taken. It should be noted that survivors often disclose abuse only after learning others have done so, feeling more likely to be believed.

When child sexual abuse claims are brought outside the limitation period, defendants often use this as a reason not to settle and pay compensation. This causes further trauma and delays for claimants. Survivors see this as punishment for not coming forward sooner. They find it hard to understand why any time limit applies, viewing it as unfair.

All non-recent abuse survivors face the challenge of convincing the court to allow their claim outside the limitation period under section 33 of the Limitation Act 1980. Delayed disclosure is a common 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

FOCIS agrees that a case should not proceed if a fair trial is not possible. We agree with IICSA that the burden of proving this should fall on the defendant.

Recommendation 15 of IICSA's final report should be fully implemented. This includes removing the time limit and reversing the burden of proof, so the defendant must prove that a fair trial is not possible. We note that the Government does not support option 1 but agrees that option 2 should be implemented. It is illogical to reverse the burden of proof but keep the three-year limitation period. This suggests that Parliament believes three years is the correct default period for these cases.

If option 1 is not implemented but option 2 is, it may make things harder for the claimant. The claimant would need to justify the delay and overcome the section 33 discretion, proving a fair trial is possible. Meanwhile, the defendant could still argue that a fair trial is not possible.

The goal of these proposals is to ensure justice. This will be achieved by swiftly implementing 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 is no benefit to codifying existing judicial guidance. The current situation around limitation in child sexual abuse claims is unsatisfactory and should not be codified. As mentioned earlier, the unfairness in the current law can and should be urgently rectified through the implementation of IICSA's recommendations.

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

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. 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 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, 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. Any changes to the limitation law should apply equally to those broader categories of cases.

FOCIS members practicing in this area report a high level of overlap between sexual and physical abuse. Some forms of physical abuse can be carried out by perpetrators for sexual gratification. The inquiry points out in 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. We 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 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. 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 varies 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 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".

Where a defendant asserts that a fair trial is not possible, we would expect such a protocol to oblige a defendant to make that clear in its response to the claimant's letter before claim.

A protocol would be useful in providing guidance on reasonable timescales for pre-action disclosure of documents, such as 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 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. 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.

Forum of Complex Injury Solicitors (FOCIS)

9th July 2024

For further information please contact Jonathan Wheeler: jonathanwheeler@bbkllp.co.uk.