



Limitation in sex abuse cases

A discussion on the new law

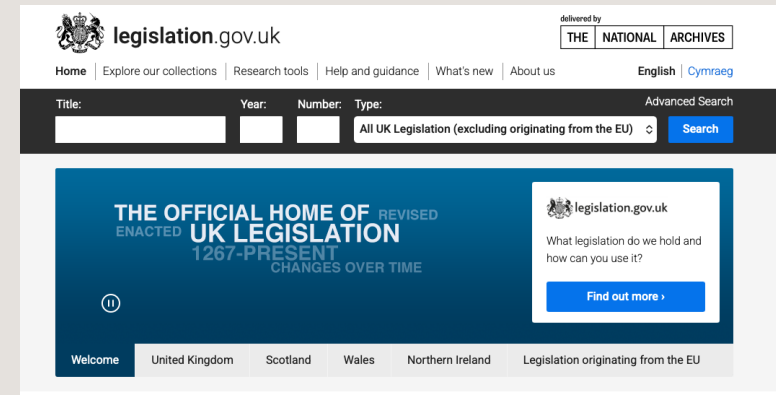
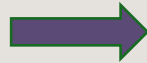
Paul Stagg KC
Kings Counsel
Deka Chambers



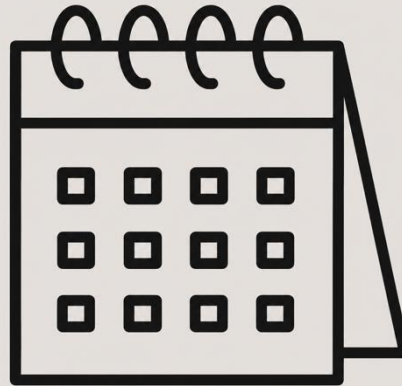
Bethany Hutchison
Barrister
Deka Chambers



The Crime and Policing Act 2026



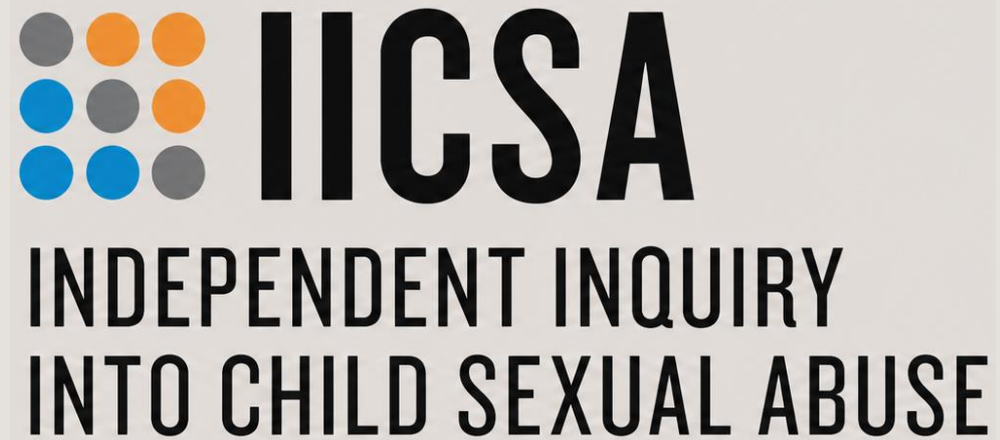
Limitation



Limitation Act 1980 - Section 33 factors

- All the circumstances of the case, and in particular:
 - the length of, and reasons for, the delay in bringing the claim;
 - the extent to which the evidence is less cogent than if the claim had been brought within time;
 - the duration of any disability of the claimant*
 - the extent to which the claimant acted promptly and reasonably once they knew that there was a possibility of bringing a claim and
 - any steps taken by the claimant to obtain medical, legal or other expert advice, and the nature of any such advice.

Why the change?



The recommendation

Recommendation 15: Limitation

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; 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.

Baronness Levitt's summary in the Lords

Baroness Levitt:

- *“The inquiry looked at this in great detail. It found that the limitation period for civil claims itself acted as a deterrent to victims and survivors—just the very fact that it existed. The inquiry also found that it acted as a deterrent irrespective of the existence of the discretion in Section 33, and the inquiry therefore found that Section 33 did not provide sufficient protection for victims and survivors.*
- *The inquiry found that the regime acted as a barrier to claimants at three stages: first, solicitors' willingness to take on claims, because it can make it really hard for them to find a lawyer to represent them; secondly, the settlement and valuation of claims, because it can lead to victims accepting lower settlements because of uncertainty about the limitation issue; and, thirdly, the hearings themselves in relation to the limitation period, the effect of which on the claimants was described as “intrusive and traumatic”.*

The proposal

CHAPTER 3

REMOVAL OF LIMITATION PERIOD FOR CHILD SEXUAL ABUSE

98 Removal of limitation period in child sexual abuse cases

(1) The Limitation Act 1980 is amended as follows.

(2) After section 11 insert –

“11ZA Actions in respect of personal injuries attributable to child sexual abuse

(1) None of the time limits given in the preceding provisions of this Act apply to an action to which this section applies.

(2) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) which meets conditions 1 to 3.”

The proposal cont.

- (3) Condition 1 is that the damages claimed by the claimant consist of or include damages in respect of personal injuries to the claimant.
- (4) Condition 2 is that the claimant was under 18 on the date on which the cause of action accrued.
- (5) Condition 3 is that the act or omission to which the claimant's personal injuries were attributable constituted sexual abuse.
- (6) This section applies in relation to actions brought, and causes of action accrued, before (as well as after) this section comes into force.
- (7) But it does not apply in relation to a claim which, before this section comes into force, was settled by agreement between the parties or determined by a court (whether or not the determination is subject to appeal).
- (8) This section does not apply to any action brought for damages under section 3 of the Protection from Harassment Act 1997.
- (9) This section does not apply to a cause of action surviving for the benefit of a person's estate by virtue of section 1 of the Law Reform (Miscellaneous Provisions) Act 1934, except where an action was brought by the person before the person's death.

The proposal cont.

“11ZB Dismissal of action in respect of personal injuries attributable to child sexual abuse

- (1) This section applies where an action to which section 11ZA applies is brought after the expiration of the time limit that would apply but for that section (disregarding the possibility of the time limit being disapplied under section 33).
- (2) The court must dismiss the action if the defendant satisfies the court that it is not possible for a fair hearing to take place.
- (3) The court must also dismiss the action if –
 - (a) The action was begun, or the cause of action accrued, before section 11ZA came into force,
 - (b) The defendant satisfies the court that, because of the application of section 11ZA, there would be substantial prejudice to the defendant if the action were to proceed, and
 - (c) Having regard to that prejudice, and the prejudice to the claimant if the action is dismissed, the court is satisfied that it would not be equitable to allow the action to proceed.
- (4) In this section “the court” means the court in which the action has been brought.

Progress of the Bill and debate in the Lords



- *"Nothing wrong with the law as it is"*
- *"The law currently caters adequately for the balance between the interests of claimants and defendants"*
- *"New Section 11ZB(3) to be inserted by Clause 82 provides the perfect escape clause for such a defendant"*
- *"The link of prejudice can be mitigated through fair trial procedures and should not override the fundamental right of survivors to have their claims heard."*



Progress of the Bill and debate in the Lords

- *“Clause 82 is [...] welcome in principle, yet new Section 11ZB(3) then proceeds to undermine it, mandating dismissal if defendants can show “substantial prejudice”—a vague term undefined in the Bill, which, as my noble friend Lady Brinton said, may be appealing to defence lawyers. A court already has the power to dismiss a case if it believes that the defendant cannot receive a fair trial, so we find it difficult to understand the justification for this extra layer of protection.”*
- *“I add my voice to what has been said by the noble Baroness, Lady Doocey, and the noble Lord, Lord Faulks. The fundamental principle is set out in new Section 11ZB(2): if the defendant cannot have a fair trial, the hearing cannot proceed. The gravity of the allegations and the public interest demand that there be no hearing, notwithstanding the damage that this causes to the unfortunate alleged victim. I entirely agree that new Section 11ZB(3) confuses the position; it introduces uncertain concepts and will inevitably lead to unhelpful litigation.”*

Where are we now? s11ZB

“11ZB Dismissal of action in respect of personal injuries attributable to child sexual abuse

- (1) This section applies where an action to which section 11ZA applies is brought after the expiration of the time limit that would apply but for that section (disregarding the possibility of the time limit being disapplied under section 33).
- (2) The court must dismiss the action if the defendant satisfies the court that it is not possible for a fair hearing to take place.
- (3) In this section “the court” means the court in which the action has been brought.

The new law

- Section 96 of the 2026 Act inserts new provisions into the 1980 Act
- Sub-section (2) inserts the new sections 11ZA and 11ZB of the 1980 Act
- Sub-section (3) inserts a new provision into section 12 of the 1980 Act concerning claims where C is deceased

Territorial effect of the new law

- Section 254(1): generally, the 2026 Act applies only to England and Wales
- Section 96 is not one of the exceptions
- So the new provisions do not apply in Scotland or Northern Ireland

The position in other parts of the UK

- Scotland
 - Now governed by sections 17A-17D of the Prescription and Limitation (Scotland) Act 1973, inserted by the Limitation (Childhood Abuse) (Scotland) Act 2017
 - Similar to the new provisions in the 2026 Act but there are important differences
- Northern Ireland
 - Old law continues to apply
 - Articles 7 and 50 of the Limitation (Northern Ireland) Order 1989 SI No 1339

The position in other parts of the UK

- The main differences between England/Wales and Scotland

England/Wales

Applies only to sexual abuse

Does not apply to cases which have been decided or settled before commencement

Action must be dismissed only if no fair trial can take place

Scotland

Applies to abuse generally, including physical and emotional abuse and neglect

Further claim can be brought if previous claim dismissed or settled due to limitation

Action must additionally be dismissed if D satisfies court that D has suffered substantial prejudice and action should not proceed

- When reading Scottish case law, these distinctions must be remembered.

When are the new provisions in force?

- The 2026 Act received Royal Assent on April 29th 2026
- Section 255(1): generally, a statutory instrument must bring the provisions in the 2026 Act into force
- That does not apply to provisions in sub-sections (2) and (3)
- Section 96 is listed in section 255(3)(b), and so it comes into force two months after Royal Assent on June 29th 2026.

When do the new provisions apply?

Section 11ZA of the 1980 Act

(2) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) which meets conditions 1 to 3.

(3) Condition 1 is that the damages claimed by the claimant consist of or include damages in respect of personal injuries to the claimant.

(4) Condition 2 is that the claimant was under 18 on the date on which the cause of action accrued.

(5) Condition 3 is that the act or omission to which the claimant's personal injuries were attributable constituted sexual abuse.

When do the new provisions apply?

"any action for damages for negligence, nuisance or breach of duty which meets conditions 1 to 3"

- Will include a claim for deliberate assault (*A v Hoare*)
- Will include a claim for deliberate infliction of psychiatric harm (*Wilkinson v Downton*)
 - Voyeurism
 - Image-based abuse
 - Grooming

When do the new provisions apply?

"any action for damages for negligence, nuisance or breach of duty which meets conditions 1 to 3"

- Will not include a claim for harassment under the Protection from Harassment Act 1997: separate limitation period of six years: see section 11ZA(8)
- Will not include a claim under Human Rights Act 1998 to which separate time-bar provisions apply under s7(5) of the 1998 Act
- Will not include claims where C deceased, to which special rules apply under sections 11ZA(9) and 12(1A)

When do the new provisions apply?

(3) Condition 1 is that the damages claimed by the claimant consist of or include damages in respect of personal injuries to the claimant.

- "the damages claimed consist of or include"
 - Personal injury damages need not be the sole or even the main claim
 - eg where sexual abuse filmed and put on internet and claim under data protection legislation also made
- "damages in respect of personal injuries"
 - This will clearly include physical or psychiatric injury
 - Debateable whether it includes a case where sexual abuse has occurred but has not caused psychiatric injury: probably not, but such cases will be rare

When do the new provisions apply?

(4) Condition 2 is that the claimant was under 18 on the date on which the cause of action accrued.

- A cause of action in respect of sexual abuse will accrue on the date that the abuse occurs.
- Each act of abuse gives rise to a separate cause of action.
- If C was abused both before and after their 18th birthday, it is probable that the old law continues to apply to that part of a claim arising from abuse that occurs after C is an adult.

When do the new provisions apply?

(5) Condition 3 is that the act or omission to which the claimant's personal injuries were attributable constituted sexual abuse.

- "attributable": as long as sexual abuse contributed to the injuries, it need not be the sole cause
- "the act or omission constituted sexual abuse"
 - "sexual abuse" is not defined
 - It is likely to be given a broad meaning by the courts
 - Besides assaults, will apply to any conduct involving misuse of power, where conduct has a sexual element

Application to existing cases

Section 11ZA

(6) This section applies in relation to actions brought, and causes of action accrued, before (as well as after) this section comes into force.

(7) But it does not apply in relation to a claim which, before this section comes into force, was settled by agreement between the parties or determined by a court (whether or not the determination is subject to appeal).

Application to existing cases

- The new provisions apply to:
 - claims brought after June 29th 2026 but relating to abuse occurring before that date
 - claims brought before June 29th 2026 but which have not been settled or "determined" by a court
 - "determined" means a final order has been made following trial
- The new provisions do not apply to:
 - cases settled or "determined" before June 29th 2026
 - cases in which a final order has been made following trial before June 29th 2026, but which are still under appeal after that date

What is the effect of the new provisions?

- There is no limitation period as such: section 11ZA(1).
- But the court must dismiss the claim if:
 - it is brought beyond the time limit that would otherwise apply: section 11ZB(1)
 - 3 years from 18th birthday, ignoring possibility of section 33 extension
 - so C gets until 21st birthday to commence proceedings in any event
 - "the Defendant satisfies the court": so the burden of proof is on D
 - "it is not possible for a fair hearing to take place": section 11ZB(2)

When is a fair trial not possible?

- There are no express criteria: court must have regard to all the circumstances of the case
- The courts will have regard to decisions of the Scottish courts on the Scottish provisions
- *JXJ v Christian Brothers*
 - [2020] EWHC 1914 (QB), [2020] ELR 579
 - An English case in which Scottish law applied
 - [101(c)] relevant to have regard to Scottish cases on whether fair hearing possible

When is a fair trial not possible?

B v Sailor's Society

- [2021] CSOH 62, 2021 SLT 1070
- [202] if a fair hearing is not possible, "that is an end of the matter"
- [203] must show more than substantial prejudice
- [242] significance of death of wrongdoer depends on facts, but court must be cautious about assuming that wrongdoer's evidence could not affect outcome
- [254] unlikely that occurrence of sexual abuse would be recorded in paper records
- [273], [290] death of unconvicted abusers sufficient of itself to render trial unfair

When is a fair trial not possible?

Kennedy v Bonnici

- [2021] CSOH 106, 2022 SLT 63
- [64] it was premature to consider the question of fairness of trial at the equivalent of a strike-out/summary judgment hearing
- [65] it was necessary to consider fairness of trial throughout the case, which militated against summary consideration of the issue

When is a fair trial not possible?

B v Congregation of the Sisters of Nazareth

- [2022] CSIH 52, 2023 SLT 942
- [7] comparison of facts with other cases not generally likely to be helpful
- [8] a trial can be fair even if not all evidence available

.... a fair hearing is not dependent on each party being able to investigate all that it would wish to pursue, nor on reassurance that all pertinent evidence remains extant and available to the court.

- [9] speculation about missing documents unlikely to assist; the evidence must be specific

When is a fair trial not possible?

GD v Congregation of the Sisters of Nazareth

- [2023] SC EDIN 27
- [192] part only of C's case can be allowed to proceed
- [229]-[231] where perpetrator dead but person alleged to have facilitated abuse alive, the loss of the perpetrator's evidence was less significant
- [234] availability of evidence from other witnesses also militated against dismissal for want of fair hearing
- [238] delay of itself cannot justify finding that trial will be unfair

When is a fair trial not possible?

- Delay alone is not likely to make a fair trial impossible
- Criminal courts regularly try defendants for abuse which occurred decades previously
- Civil courts deciding whether a fair trial is possible are likely to focus on particular factors relating to non-availability of evidence
- *JXJ* at [102]-[103]: the question must be considered separately in relation to different causes of action
 - vicarious liability for assault etc
 - negligent failure to prevent abuse

When is a fair trial not possible?

- It is essential to look at the issues in dispute in deciding how fairness of trial is affected
- Vicarious liability for assault/other conduct: issues will be:
 - did it happen?
 - is D vicariously liable?
 - what injury has C suffered?
- Negligence: critical additional issue: whether D's employees in breach of duty

When is a fair trial not possible?

- Did it happen? Issue will be capable of being tried unless:
 - unconvicted perpetrator unavailable and no 'smoking gun'
 - vital witnesses unavailable
 - critical documents missing
- Vicarious liability: fairness more likely to depend on availability of documents showing relationships etc

When is a fair trial not possible?

- Breach of duty
 - Can expert witness fairly assess whether D's staff acted in accordance with standards of time?
 - Availability of records
- Nature of injury
 - what competing causes are there?
 - are all medical and other records available?
 - rare to be impossible to try issue fairly

When is a fair trial not possible?

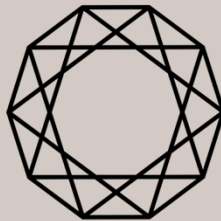
- Previous complaints
 - How well are they recorded?
 - Would they be expected to be recorded?
- Previous court proceedings
 - What were the findings?
 - Does relevant documentation eg transcripts survive?

Practical tips

- Since the passage of the Bill began, it is probable that C's solicitors have been stockpiling cases: beware the deluge!
- More important than ever to make early inquiries about:
 - availability of witnesses, particularly alleged perpetrator
 - what documents are available
 - if documents are missing, why?
- May be invited to agree limitation moratorium: refer to new provisions
- Avoid agreeing that a fair trial is possible

Thank you for your attention

Contact our clerking team
clerks@dekachambers.com



DEKA
CHAMBERS

www.dekachambers.com