

# Limitation Time Limits in Abuse Claims

## Why this article may be of interest to you

- A recent decision of the Courts means that the usual 6 year limitation period is abolished for bringing claims following cases of deliberate physical and mental abuse;
- The impact is likely to mean a possible flood of claims by alleged victims against Council operated schools, local authorities, charities and care organisations;
- Ashfords have a specialist Personal Injury team who are able to offer you expert advice in this area, whether you are the potential claimant or defendant in such a claim.

## Introduction

On 30 January 2008 the House of Lords delivered a land mark ruling on the limitation period for abuse claims in 5 appeal cases (including *A v. Hoare*, the so called "Lotto Rapist" case). They overturned their 1993 decision in *Stubbings v Webb*, and have potentially opened a floodgate of claims for damages by victims of abuse outside of the usual 6 year time limit.

## What is the usual limitation period?

Under section 11 of the Limitation Act 1980 personal injury claims in negligence or breach of duty proceedings must be brought within 3 years of:

- a) the date on which the cause of action accrued; or
- b) the date of knowledge (if later) of the person injured.

Section 33 grants the Court the power to extend this time limit in special circumstances provided it is equitable to do so.

The usual time limit for other types of claim is 6 years

## The *Stubbings v Webb* decision

In this case, a claim for damages for child abuse at a children's home was made after the usual 3 year time limit. The House of Lords decided that acts of deliberate assault (including indecent assault) did not fall under section 11 (1) actions for "negligence, nuisance or breach of duty". They ruled it followed that this claim didn't fall within usual 3 year time limit, and therefore the Judges were unable to apply their usual section 33 discretion to allow an extension of time. Instead, the House of Lords ruled that victims of deliberate abuse must bring their claims within a 6 year time limit, and that this time limit was *not* extendable.

## What problems did this cause?

House of Lords decisions bind lower Court rulings in future cases, and only the House of Lords can overturn one of its own rulings. Following *Stubbings v Webb* victims of deliberate abuse had to bring claims within 6 years, or not at all. This caused huge difficulties where the victim was a child, or was particularly vulnerable. It also led to anomalies within the system – one claimant was barred from an out of time claim against her father for sexual abuse, although she was able to bring a claim against her mother for negligently failing to protect her.

## The background to the House of Lords decision

Mrs A was violently raped by Iorwarth Hoare in 1988. Hoare was convicted and received a 16 year prison sentence. Mrs A chose not to sue Hoare (despite being entitled to do so) within the usual 6 year limitation period. At that time Hoare did not have the means to pay any damages so he was not worth suing. However, Hoare bought a lottery ticket whilst on day release from prison in 2004 and won a share of the jackpot, netting some £7.2m.

Mrs A heard of Hoare's windfall and subsequently tried to sue him for damages for the severe psychiatric harm she had sustained as a result of the rape, using the section 33 exception. However, the Court ruled that her claim was limitation barred following the decision in *Stubbings v Webb*. Mrs A appealed to the House of Lords, together with 4 other claimants, including claims against London Borough of Wandsworth and Middlesborough Council that they ought to be held vicariously liable for child abuse sustained by two young pupils in the 1980s. In these cases, the pupils had failed to bring claims until 6 years after their 18th birthday, and until a teacher was convicted a decade later.

## The House of Lords decision

The Lords decided it was inconceivable that their predecessors had intended to exclude the victims of deliberate assault with their earlier decision in *Stubbings v Webb*. They therefore extended the meaning of claims under "negligence, nuisance or breach of duty" to include deliberate assault. The Lords ruled that the usual time limit for such claims was 3 years, and not 6 years, and that the exception under section 33 could now apply. This will permit Judges to exercise their discretion in future claims involving abuse and to take special circumstances into account.

## What does this mean for care organisations and Local Authorities?

Mrs A and other victims of deliberate abuse are now entitled to bring their claims out of the usual 3 year time limit. This is with one notable caveat – the section 33 exception will only permit Judges to exercise their discretion in extending the time limit for claims beyond 3 years, *providing it is fair and equitable to do so*.

Whilst we can potentially expect to see a rise in claims by people who allege they have been victims of child abuse, the Lords have wisely urged caution. Of paramount importance is that the defendants be given a fair trial – not all such claims will be true, and defendants must be given the opportunity to investigate the allegations. If allegations were made at the time, or if the abuser has been convicted this may allow the victim to bring a claim. However, it will be hard for claimants to bring such claims out of the blue.

Some comfort is to be offered by Lord Brown's comments in particular: - He said "by no means everyone who brings a late claim for damages for sexual abuse, however genuine his complaint may in fact be, can reasonably expect the court to exercise [its] discretion in his favour....On the contrary, a fair trial... is in many cases likely to be found quite simply impossible after a long delay."

## If you want to know more?

To read the case in full please use the link below:

<http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080130/hoare-1.htm>

If you would like further information please contact

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