

Charities group

Avoiding the risks of abuse claims

Recent headlines such as **“Churches, Schools and Charities Braced for Flood of Claims after Ruling on Lotto Rapist”** (*The Times*) do nothing to allay the fears of the many institutions and organisations that may be affected by an increase in claims made by victims of alleged abuse which may have taken place even decades before.

The House of Lords in the recent case of *A v Hoare and Other Appeals* (also known as the ‘Lotto Rapist Case’) made a landmark decision to overrule its own decision, some fifteen years earlier, in the case of *Stubbings v Webb*. In a nutshell, one of the key implications is that victims of sexual and physical abuse can now be given an extension of time to bring their claims.

Blake Laphorn Tarlo Lyons' Health and Care and Charities and Education teams have been looking at the implications of the case for their many clients who provide care or educational services who may be concerned about how the case might affect them.

In order to understand the significance and implications of this very important decision, it is necessary to look briefly at the law as it was before *Stubbings* was overturned and the law as it is now.

Then

When *Stubbings* was heard in the House of Lords in 1993, the Law Lords held that under the Limitation Act 1980, the victim of an intentional assault (physical or sexual) could only bring their claim within a strict, non-extendable six year period. Therefore, any victim of intentional assault wishing to bring a claim against his abuser, or the institution in which he was abused, would be time-barred from doing so if those six years had expired (except in the case of children where the six years ran from attaining the age of eighteen).

The six appellants in *Hoare* were all appealing against decisions of lower courts dismissing their claims for unrelated sexual assaults, on the basis that they were time-barred in this way.

Now

In overturning the *Stubbings* decision, the House of Lords in *Hoare* held that a case of intentional assault could actually fall within far more generous time provisions contained elsewhere in the Limitation Act 1980. This is significant in a number of ways.

In the first instance, a claim for personal injuries as a result of negligence, nuisance or breach of duty, can now be brought three years from the date of the injury (or, in the case of child victims, from the victim attaining eighteen) or, if later, from the date on which the victim came to know of his injury - ‘the date of knowledge’. There are special provisions defining ‘the date of knowledge’ within the Act but suffice to say, the date of knowledge could be many years after the original assault and certainly more than the previous strict six year time limit.

Furthermore, a victim may now ask the court to exercise discretion to disapply the limitation period *altogether*

if and where it would be fair to do so. Again, there are special provisions and considerations to which the court must have regard before exercising its discretion; not least the length of and reasons for delay in bringing the claim, whether the delay is likely to render the evidence less cogent, and whether a fair trial can be held at all. The discretion will certainly not be exercised lightly. Nevertheless, this is a further significant opportunity to bring a claim after the strict six year time limit previously applied under *Stubbings*.

In the six appeals before the House of Lords in *Hoare*, all being outside of the six year time limit, the appellants argued that either their knowledge had not yet arisen within the three year period referred to above *or* that the court should exercise its discretion in their favour to disapply the limitation period altogether to allow their claims to proceed.

The House of Lords held that two cases (including *Hoare*) should be sent back to the original courts to consider whether discretion should be exercised to extend time for the claims. In three claimants' cases, against local authorities, the Law Lords ordered the damages that the original trial judges indicated they would order if they were not constrained by the strict six year time limit previously in force. The final case, against Catholic Care and the Home Office was to be sent back to the trial judge for fresh consideration.

The future

While the overruling of the *Stubbings* decision may have set alarm bells ringing for potential defendant schools, local authorities, charities, churches and others by opening the doors to 'old' claims, the strict requirement for a fair trial may not be capable of being met years after the abuse complained of. This itself will preclude any trial at all, in many cases. The judgment of Lord Brown of Eaton-Under-Heywood makes this clear:

"[A] substantially greater number of allegations (not all of which will be true) are now likely to be made many years after the abuse complained of. Whether or not it will be possible for defendants to investigate these sufficiently for there to be a reasonable prospect of a fair trial will depend on a number of factors, not least when the complaint was first made and with what effect. If a complaint has been made and recorded, and more obviously still if the accused has been convicted of the abuse complained of, that will be one thing; if, however, a complaint comes out of the blue with no apparent support for it (other perhaps than the alleged abuser has been accused or even convicted of similar abuse in the past), that would be quite another thing. 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 the section 33 discretion in his favour. On the contrary, a fair trial (which must surely include a fair opportunity for the defendant to investigate the allegations) is in many cases likely to be found quite simply impossible after a long delay".

There is certainly a great degree of uncertainty as to how courts will treat cases brought many years, even decades, after the abuse complained of. Some comfort can be gained from the word of the judgment however, particularly where no relevant conviction has been obtained and where the defendant is likely to encounter serious obstacles in compiling a defence due to the delay in the case being brought.

Practical points

We recommend that all organisations that have concerns should take the following practical steps so as to be prepared in case enquiries or claims are made against them:

- make sure you have a policy and systems for safeguarding vulnerable adults or children
- all policies should be recorded in writing and checked by lawyers
- if there has been abuse or suspected abuse, keep all documents, records, and other evidence to strengthen your position should you need to defend a claim at any point in the future
- if a claim is made seek legal advice straight away
- notify your insurers
- if the organisation is a Charity be aware that all serious incidents should be notified to the Charity Commission. Notification requires care because of implications for insurance and for protection of confidentiality. We recommend you to take legal advice before notifying

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