

Limitation under the Human Rights Act

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The recent decision in [CJ & Ors v Chief Constable of Wiltshire Police](#) has given useful guidance as to how the courts can exercise discretion when applying the Human Rights Act (HRA) and its limitation period of one year.

The case

Following a family member's discovery of photos of naked children on a family laptop in December 2012, police were notified and given permission to take the laptop away to be destroyed. Once the laptop had been examined, a delay of 13 months occurred due to police disciplinary proceedings. When one of the claimant's solicitors' firms were instructed in 2016, the Independent Police Complaints Commission (IPPC) investigation was ongoing and therefore did not become available to the solicitors until August 2017.

During these delays, the family member who owned the laptop sexually abused children in his care. All five claimants sought damages under the Human Rights Act, alleging that the abuse could have been prevented had the police properly investigated the report on the family member's possession of indecent images of children.

The decision

Although the court held that no duty of care was owed by the police and found in favour of the defendant, this case did raise a number of important factors in applying the limitation period of the HRA, namely:

- the one-year period began on the date the IPCC report was released. The following delay in which the claimants sought legal aid and leading counsel's advice could not be considered unreasonable; and
- as this case concerned the serious sexual assault of young children, Justice Martin Spencer noted, "the court will be slow to drive such claims from the judgment-seat on the grounds of limitation and there is a wider public interest in seeing claims such as this properly considered, with both its factual and legal implications. In the circumstances, I exercise my discretion to extend time to bring the HRA claims to the date of issue of proceedings..."

Considerations for insurers

When considering exposure to Human Rights Act claims, underwriters may take some comfort from the relatively short limitation period. However, this case shows that Human Rights Act claims can be brought many years after the corresponding incident for a number of reasons. Underwriters should ensure their pre-inception enquiries go back a number of years and may also want to consider the extent of any retroactive protections in their wordings.

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