

Local authorities: recoveries from abusers for the benefit of the public purse

It is an unfortunate reality that many local authorities face historical abuse claims, and often held vicariously liable for abuse by their former employees. We set out an overview of recoveries law and insight into successes we have had in recouping money for local authorities.

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It is an unfortunate reality that many local authorities face historical abuse claims, and very often will be held vicariously liable for abuse by their former employees. However, there is an increasing willingness on the part of local authorities and their insurers to look to the abuser for recovery of the outlay incurred in settling the claims from victims of abuse.

Having developed, alongside our clients, an effective recovery strategy we have seen a significant increase in the sums successfully recovered from abusers. This opportunity and ability to pursue the abuser, following the conclusion of the claim against the local authority, can easily be overlooked - we set out below a brief overview of the law that underpins recoveries and then some insight into the success we have had in recouping money for clients.

The Law

The Civil Liability (Contribution) Act 1978 ("the Act") provides a defendant to a claim the opportunity to pursue a third party for recovery after the defendant has settled the claim against it. The recovery claim must be brought within the limitation period of 2 years from the date damages were agreed or judgment was entered.

The Act is framed in such a way that, in the context of an abuse claim, a local authority is not required to prove that they were liable to the victim in order to pursue a recovery under the Act - s1(4) of the Act states: "*A person who has made or agreed to make any payment in bona fide settlement or compromise of any claim made against him in respect of any damage...shall be entitled to recover contribution in accordance with this section without regard to whether or not he himself is or ever was liable in respect of the damage, provided, however, that he would have been liable assuming that the factual basis of the claim against him could be established.*"

The interpretation of the Act was considered by Lord Justice Rimmer in the Court of Appeal Judgment of *WH Newson Holding Limited & Others (Claimants) -v- IMI PLC (1) & IMI Kynoch Limited (2) & Delta Limited (1) & Delta Engineering Holdings Limited (Part 20 Defendants/Appellants) [2016] EWCA Civ 773*, in which it was confirmed that the key issue is not whether the recovering party was, without doubt, liable in the initial action (which would often require the initial claim to proceed to trial), but rather that the settlement was bona fide. It is open to an abuser facing a recovery action to argue that the original settlement was not genuine, for example because it was collusive, corrupt or dishonest. However, in reality it is extremely rare for an original settlement to be successfully challenged.

In light of the legislation and judgment, if a bona fide settlement has been reached and the factual basis of the victim's claim would more likely than not have established that the local authority was liable, then a recovery can be pursued and should be considered.

If limitation has passed to bring a claim under the Act then a claim for breach of contract, if the abuser was an employee, might provide an alternative route to recovery.

Experience

The majority of claims brought by victims are against the local authority responsible for their care at the time the abuse took place. It is common for those claims to be settled on behalf of the local authority before we look to a recovery from the abuser, which allows the costs to be managed in the initial claim and then a focus on the recovery.

Where an abuser has been convicted it is a more straightforward process to establish a liability, although a conviction is not essential and we are often able to produce persuasive evidence that allows a successful claim to be pursued, such as convictions in respect of other victims or admissions or partial admissions made in contemporaneous records.

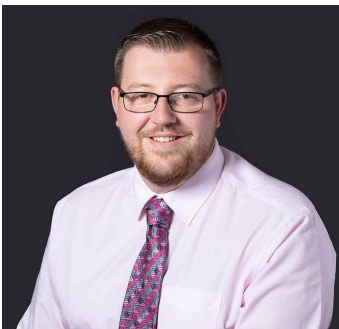
Although we seek to recover all sums paid out to victims a full recovery is not always achievable, whether due to a litigation risk or the availability of assets held by the abuser. An example of the litigation risk is where failings in supervision or monitoring by the local authority have facilitated or prolonged the abuse. When considering how much should be recovered from the abuser the court has to make an assessment of where the 'fault' lies. If there is some culpability on the part of the local authority a full recovery will not be possible, but a partial recovery can still be made.

As to availability of funds, it might be that the abuser simply does not have any or sufficient assets and we will want to establish the position at the earliest opportunity to avoid further costs being incurred where there is no realistic prospect of making a recovery. We have an intelligence team that trace abusers and conduct immediate asset searches which help shape our advice on the prospects of a successful recovery. Our experience is that the role held by former employees impacts the prospects of a successful recovery with higher status and comparatively higher paid roles (such as teachers) more likely to have funds and assets to satisfy a recovery claim.

Over the last 5 years we have recovered more than £1million from abusers, in addition to successfully establishing a number of ongoing payment plans and charging orders on properties (where significant sums will be realised on sale of the property or death of the abuser). The recovery strategy has been well received by our local authority clients because it is an extremely effective way of recovering public money and ensuring that those who perpetrate abuse bear the cost of compensating their victims.

At Browne Jacobson we are passionate about recovering money for the benefit of the public purse whilst tightly managing our own costs. If you would like to find out more about our recovery service or have any questions we would very much like to hear from you.

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