Browne Jacobson

Limitation in claims for Child Sexual abuse (CSA)

14 February 2025

What has Changed?

On 5 February 2025, Government confirmed it will legislate to change the operation of limitation in CSA claims. Rather than a default 3 year limitation period a claim will be able to proceed at any time, unless a Defendant can show a fair trial is no longer possible.

Impact

Courts already have discretion to extend limitation periods in CSA claims and often do so. There is evidence Defendants are selective as to the claims in which they raise limitation. Nonetheless, experience following similar reform in Scotland suggests this will lead to an increase in claims.

Settled Claims

Claims that have been “settled or adjudicated” will not be able to be re-opened, even if limitation was a factor. While we await precise wording of the legislation, this may leave scope for claims which were simply not progressed due to limitation to be re-opened. We already see instances of claims being re-presented, leaving defendants to establish whether they are already resolved. This behaviour may increase given the way the reforms shift the onus to defendants to explain why a claim cannot proceed.

What sectors are affected?

Any sector with exposure to CSA claims. These include, health, care, education, child care, tuition services, clubs, sports organisations, religious organisations and charities.

For Defendants

With a wide range of organisations potentially affected by this reform, each organisation will need to consider how it may be impacted. Small businesses, clubs and charities may particularly need to consider how they can establish and record retention policies to support responses to claims. It is important to bear in mind that a victim of CSA may know an organisation’s name and that the perpetrator was connected with it, without understanding the complexity of organisational structures, changes in the organisation over time, the role of the individual in the organisation (staff, volunteer, contractor etc). Defendants will often be left to plug the gaps. Now the reform has been announced, expectations around retention of information, in particular in connection with relevant safeguarding allegations and investigations are likely to change.

For insurance practitioners

While the scope for legacy claims arising from CSA is well known, the reform may lead to increased exposure for past years and future policies. A review of IBNR and underwriting approaches may be required. Legacy claims often shine a light on the impact of claims made and claims occurring policies, and test policy wording including in relation to cover for CSA (including aspects such as voyeurism and image manipulation) or dual insurance.

Assisting existing and prospective policyholders to make disclosures supporting a sound assessment of risk, and to follow notification obligations will support sound underwriting and reserving. Consideration of proactive steps to investigate and resolve potential claims may be desirable following some notifications.

A pre-action protocol (PAP)?

Interest in a PAP for CSA has been rekindled. We have worked with industry on this, and found obstacles included disagreement on early notification to defendants and insurers. These reforms make it all the more important that these are requirements of a PAP, supporting early investigation and decisions on limitation.

How can we help?

We offer a range of services of relevance including insurance wording, policy and process reviews, advice on retention and use of data, and training. As leading experts in CSA claims we offer investigation and dispute resolution solutions tailored to this complex and sensitive area.

Key contact

James Arrowsmith

Partner

james.arrowsmith@brownejacobson.com

+44 (0) 330 045 2321

Related expertise

Abuse and social care claims

Child protection and safeguarding in schools

Children's services

Employment

HR services

HR services for health and social care