

Justice Committee

Limitation (Childhood Abuse) (Scotland) Bill

Written submission from Former Boys and Girls Abused in Quarriers Homes

Please find attached Former Boys and Girls Abused in Quarriers Homes (FBGA) submission in relation to the call for evidence. We would also welcome the opportunity to provide oral evidence to the committee as we have direct experience of the justice system and time-bar.

1. *Do you agree with the proposal in the Bill to remove cases relating to historical childhood abuse from the limitation regime set out in the 1973 Act?*
 - Yes the law needs reforming as the current legislation has “simply failed generations of abused children” as the current legislation has been narrowly defined and strictly interpreted by the Scottish Judiciary in the Civil legal system.
 - Effects of childhood abuse are long-term latent and extremely harmful. In historical abuse cases the negligent party should be held fully accountable, responsible and liable for all and any harm caused including physical, mental, emotional and any other trauma or harm inflicted on victims-survivors. Please refer to all the Quarriers civil and criminal cases, numbers 155, 158, 159, 160, 161 in the Scottish Civil Justice system. Children were put in care by the authorities and the State for protection and care.
 - Previous attempts at a remedy have become mired in the Scottish civil legal system. This includes numerous Quarriers cases being time-barred in the civil courts, despite the fact that there had previously been a conviction of an abuser in the Scottish Criminal Courts.
2. *What will the impact of the new exemption on i) victims of historical childhood abuse who could bring claims; ii) the individuals, organisations and insurers who might be involved in defending claims; and iii) the Scottish courts?*
 - The victims of childhood abuse will have equitable access to the Civil Justice system Child abuse cases where abuse is proven will have a better opportunity to have a fair hearing to access civil justice and hopefully achieve a fair and reasonable remedy based on the harm inflicted on the victim. These cases under the new legislation should not be automatically time-barred as has occurred in the past.
 - The organisations rights will not be affected and organisations and institutions may wish to take the opportunity to settle cases out of Court.

- The insurers are a special interest group and have demonstrated that they will resist any opportunity to avoid liability. Insurers have previously opposed and challenged numerous Quarriers cases on the basis of current time-bar legislation in the Scottish civil justice system which have already been proven in the Scottish Criminal Courts.
3. *The Scottish Government consulted on whether the proposed exemption in the Bill should cover all children or be restricted to those abused in a care setting. The Bill takes the wider approach – do you agree with its proposed scope in this regard?*
- Yes the law has to be equitable and accessible for all childhood abuse victims.
4. *Do you agree with the definitions of “child” and “abuse” found in the proposed new section 17A (2) of the 1973 Act (which would be inserted by section 1 of the Bill)?*
- Yes.
5. *The exemption in the Bill does not just apply to entirely new claims. Section 1 of the Bill (which would insert a new section 17C into the 1973 Act) allows claims previously raised but found to be time-barred to be raised again under the new regime. What are your views on this aspect of the Bill?*
- It is an absurd position that you have Quarriers child abuse cases proved in the Scottish Criminal Court only for these cases to be time-barred in the Scottish Civil Justice system. .
 - All barriers to equitable justice must be removed for childhood victims of abuse.
 - Quarriers cases previously time-barred must have a full and equal opportunity to be raised again as the current law has simply failed and been used as a blocking mechanism tool by the insurers and organisations to deny liability and be held fully liable and accountable.
 - The insurers and organisations have also used the current law to their advantage placing the Quarriers victims at an extreme disadvantage by seeking to have these childhood abuse cases previously proven in the Scottish criminal courts excluded in the Civil Courts by using a legal mechanism “decree absolutor” under the guise of time-bar.
6. *Section 1 of the Bill (which would insert a new section 17D into the 1973 Act) empowers the court to dismiss a case in two specific sets of circumstances. These are where the defender can demonstrate either that i) it would not be possible for a fair hearing to take place; or ii) the defender would be subject to “substantial prejudice” if the case did proceed. What are your views on the proposed new section 17D?*

- All childhood abuse cases should be given a fair and reasonable hearing process in the Scottish Civil Courts without exception. Victims should be given a full opportunity to present their individual case to the Civil Courts.
- We fully accept that the defenders have a right to challenge any cases they wish and the change in time-bar legislation will not remove that right.
- Where there is clear fact and evidence that abuse took place in an organisation, institution and where there was a failure in the duty of care including by the State. Then the court should exercise fully its discretion on behalf of the victim.
- No childhood abuse case should be dismissed in the Civil Courts without first having a fair hearing of the all facts and evidence.
- Our expectation is that the defenders will act to minimize further harm to the victims of childhood abuse and use the change in time-bar legislation to address past wrongs to the benefit of the victims.

Former Boys and Girls Abused In Quarriers Homes (FBGA)
9 January 2017