

Current trends in faith abuse cases

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The principal challenge for faith groups and their insurers in dealing with historical abuse claims is that, unlike claims against local authorities, faith organisations will hold few if, any, relevant records.

They may be dependent on each claimant to provide all relevant material, and identify the key issues to be addressed. Only at that point can a faith organisation's legal team ascertain which witnesses need to be traced and whether it is possible to have a fair trial of the issues.

Who are the potential defendants?

In June this year the Church of England reported on increased allegations between 2015 and 2017. Surprisingly, only 12% of allegations related to clergy with others being made against church wardens, employees, volunteers and congregation members. The biggest category was sexual abuse, but concerns were also recorded about physical, emotional, psychological, domestic and financial abuse, and crucially, there was a 78% rise in concerns or allegations of abuse of vulnerable adults, with claims concerning child and young people falling slightly in 2017.

This month a preliminary hearing in relation to a new IICSA investigation will take place with the IICSA addressing child protection in religious organisations and settings. The IICSA is already carrying out some investigations in relation to the Anglican Church and the Roman Catholic Church, but the terms of reference of this this new investigation makes it clear that the Inquiry considers the religious setting will include mosques, temples, festivals, places of tuition regarding faith and traditional cultural matters and places where children and young people gather in connection with their religious beliefs.

In announcing this fresh investigation, the IICSA reported that more than 1 in 10 survivors of child sexual abuse who had spoken to the truth project referred to abuse in religious institutions. 24% of them said they were abused in institutions within the scope of this new investigation (including Jehovah's Witnesses, Baptist, Methodist, Judaism and Islam).

So what are the particular challenges that faith organisations will face?

First, the research shows that claims are not just going to be about a member of the clergy. In terms of the legal issues to be addressed, these claims are perhaps the most straightforward, as vicarious liability will almost always attach, and the key issues will be limitation, whether the abuse happened as alleged and what the consequences are. If it is possible to have a fair trial of those issues, then a case can be either taken to trial or settled relatively quickly.

However where claims are made because of allegations against volunteers or other members of the congregation, liability issues may be much more difficult to address. Questions will arise about whether a faith organisation can owe a duty of care in a particular set of circumstances, whether that duty of care was breached and what the consequences of that are.

As I have indicted above, the amount of surviving evidence needed to ask these duty and breach questions can vary very much from case to case, particularly in relation to allegations based in the past, so limitation will need to be considered.

Finally, and importantly for older claims, the insurance history of the faith organisation may be very patchy indeed. Unless it can be demonstrated that public liability insurance was available at the relevant time, the cost of this litigation present an existential threat to some faith organisations.

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