Browne Jacobson

Limitation reform in sexual abuse claims: How this affects sports clubs

06 February 2025 Sarah Erwin-Jones

Until now, all personal injury claims, including those for childhood sexual abuse, have been subject to a three-year limitation period.

The clock starts on a complainant's 18th birthday and expires when they are 21, although they can take on the burden of (and often succeed in) persuading the court that it would be equitable to allow the claim to proceed out of time, and that a fair trial can still happen.

New government legislation on sexual abuse claims explained

This week, the government has announced new reforms to support victims of child sexual abuse, which will remove this time limit.

For such claims, the burden will be reversed under the proposal. The burden of proving it is not possible to have a fair trial, and not equitable for the claim to proceed, will now fall on the defendant being sued.

This is significant for the sports sector as there is an undoubted upsurge in safeguarding in sexual abuse claims against sports clubs and bodies.

Claimants' solicitors practising in this area have whole areas of their website devoted to resources for people who wish to make complaints and claims of this nature. They don't usually sue the alleged perpetrators themselves, instead directing the claims to the organisations they regard as being vicariously liable for the perpetrators' actions, and that they assume will have the insurance or financial wherewithal to pay the claims.

Over the past 15 to 20 years, the law has changed significantly and, in many ways, it has simplified matters for claimants.

Generally, the assertion that clubs and governing bodies face is their organisations are vicariously liable for the actions of abusers engaged by the club, such as coaches, board members and physios.

If a court can be persuaded the relationship is sufficiently similar to employment, then vicarious liability is established. No matter how robust the recruitment, monitoring and safeguarding resources are, they will, in principle, be liable for any sexual assault and personal injury each claimant will prove.

How change in law to sexual abuse claims impacts sports clubs

Sports clubs and similar organisations often face particularly complex issues in these claims.

They comprise many different organisational structures, changing committees, complex networks with regional and national organisations, and heavy reliance on volunteers, parents and carers.

Therefore, incidents alleged to have been perpetrated by "an employee of the club" are often, in fact, subject to much more complex organisational dynamics. Unpicking these after many years poses a particular challenge.

Clearly, the more robust procedures that are in place the better, as the level of risk will reduce and there will be fewer claims going forward. But even with the law as it stands, we see claims being brought 10, 20 and even 30 years after an individual's 21st birthday.

It follows that this week's announcement of an impending change in the law on limitation in sexual abuse cases may lead to a significant increase in historical sexual abuse claims.

Reviewing insurance cover is imperative

While the new legislation makes it way through parliament, it will be sensible for sports clubs to review their records and liaise with their brokers in order to ascertain what their historical public liability insurance cover has been, and whether it might cover such claims. They should look at which products are available that might bridge gaps.

The process may be laborious, but the fact is that sexual abuse claims often go back decades and this can make them very difficult to investigate and expensive to fund.

Where there has been a conviction of an alleged perpetrator or admission on their part, handling the cases can be relatively straightforward.

However, a significant proportion of the claims we are asked to investigate on behalf of sports organisations name alleged perpetrators who haven't been convicted and who deny the allegations against them.

This means the club is effectively expected to be the funder of a claim for which it is not said to be "at fault", simply because the club is said to be liable for the actions of somebody who denies the claim against them.

Creation of a rebuttable presumption

Another feature that is common to these claims is they are often funded by way of qualified one-way cost shifting (QOCS), so even if a club is able to successfully defend a claim, it is likely to have to bear its own costs of that successful defence.

The proposed legislation will create a rebuttable presumption that it is fair to have a trial of the facts, even if the events in question happened more than three years or even decades ago. It will be for the defendant organisation – in this case sports clubs and societies – to show it is not possible or equitable after such a long period of time to have a fair trial.

This can be an onerous task and caselaw demonstrates that in these situations, defendants are expected to carry out fairly exhaustive searches for documents concerning both the complainant and the person against whom they are making allegations, as well as any safeguarding records, referrals, internal investigations and so on.

Next steps

Now is the time to revisit your document retention protocols to consider whether evidence should be is preserved and protected both so that:

- Claims out of time can be investigated
- Alleged perpetrators can be traced and asked to give evidence about the allegations against them.

Insurance

We recommend clubs look back at their public liability insurance history going back as far as they can and speak to their brokers about what products might be available to them to fill in any gaps.

This may also be an appropriate time to check in on notification requirements – which often require insurers to be told of incidents likely to give rise to a claim – to ensure cover is protected in relation to claims that may arise after many years.

Information management

We are hoping the government will work with the Information Commissioner's Office to update guidance on document retention and storage in view of the legislation that is coming forward.

In the absence of this, we can expect a realignment of expectations around retention. From this point on, organisations are aware that sexual abuse claims may be brought at any time after the alleged events, and therefore we will see arguments that any existing records relating to allegations should now be retained.

This is a significant issue to reflect upon given the sensitivity of those records, and data-minimisation principles. This creates a real quandary as to whether organisations should follow retention guidance and rely on this in relation to limitation, risking later criticism for having destroyed relevant evidence.

In our experience, clubs often rely heavily on ‘institutional memory’ with long-term members or former members being custodians of knowledge and interpreters of team photos and so on in relation to past organisational structures, personnel and even insurance cover.

For those that haven’t done so already, now may be the time to capture key information such as insurance and reorganisations in writing, and digitally.

It is also worth revisiting your own policies to identify which documents you intend to retain, along with what steps will be taken to keep them secure, for how long and with reference to the forthcoming legislation.

For more information about any of the issues raised in this article, please contact Browne Jacobson for a discussion.

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