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A helpful decision for claimant solicitors on Limitation under the Human Rights Act in abuse and assault cases?

In this month's decision of CJ & Ors v Chief Constable of Wiltshire Police the court was given the task of considering whether a sexual abuse action, brought under the Human Rights Act 1998 should be allowed to proceed to trial where the claim had been brought outside the one-year period prescribed by the Act.

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In this month's decision of **CJ & Ors v Chief Constable of Wiltshire Police** the court was given the task of considering whether a sexual abuse action, brought under the Human Rights Act 1998 should be allowed to proceed to trial where the claim had been brought outside the one-year period prescribed by the Act.

Facts

These were complicated, and concerned a family blighted by a history of sexual abuse of some of the children by their father.

In short, one of the sisters in the family found photos of naked children on a family laptop. The police were notified, viewed the laptop in December 2012 and were then given permission to take it away for it to be destroyed. The laptop was delivered to the high-tech crime unit on 2 January 2013 who considered it and the contents in accordance with their triage system, which commonly allows an investigative delay of up to 12 months in cases such as these. When the laptop was examined in accordance with that triage system, it became clear that the images in question had been downloaded by a 16-year-old son in the family (MP), using a web-based email account.

There was then a further delay of 13 months. This second delay was the subject of police disciplinary proceedings that led to a final written warning being issued for the officer concerned. The relevance of this is that when at least one of the claimant's two solicitors' firms were instructed (in 2016), the Independent Police Complaints Commission (IPPC) investigation was ongoing. It did not become available to solicitors until August 2017.

It transpired that during these delays, MP had very seriously sexually abused his niece, nephew and three other children for whom he was given care responsibilities. There were five claimants in total, all seeking damages for very serious sexual assaults and psychiatric consequences both in negligence and under the Human Rights Act.

Limitation under the Human Right Act

The Act requires litigants to commence proceedings within one year of the act they complain of taking place, and that limit applies whether or not the litigant is a child.

This note focuses on the court's analysis of whether its discretion to extend that one year period should be exercised under Section 7(5)(b) of the Human Rights Act. Many commentators (in particular the claimant solicitors) are treating this decision as a catch-all for arguing that where their clients are minors, a court should always exercise its discretion of the Human Rights Act.

In fact, the decision is significantly more nuanced and fact based. In carrying out his analysis, Mr Justice Martin Spencer adopted the principles to be applied as set out in Rafiq v Thurrock Borough Council [2022] EWHC 584(QB) and Rabone v Pennine Care NHS Trust [2012] 2AC 72. Whilst Section 7(5)(b) of the HRA does not adopt or contain the language of Section 33(3) of the Limitation Act 1980, it is

not wrong for the court to have regard to those factors if it considers it proper to do so. In this particular case, these were some of the factors the court took into account.

- The date of knowledge was treated as being when the IPCC report was released. The delay thereafter, to obtain legal aid funding and obtain leading counsel's advice coordinated by two separate firms of solicitors was not unreasonable.
- The judge could see no prejudice to the defendant. All the evidence required, particularly in relation to the issue of police failings had been garnered a long time ago.
- The mother of two claimants who acted as litigation friend, had herself suffered serious sexual abuse. It took time for her to come to terms with what had happened to both herself and to her children in order to be able to provide coherent instructions.
- Although it was weak factor, there was mention of the dilatory conduct of the defendant in pre-action correspondence about the request for limitation mortarium.
- This case concerns serious sexual assaults of very young children. It was said, "*the court will be slow to drive such claims from the judgment seat on the grounds of limitation and there is a wider public interest in seeing claims such as this properly considered…*"

We will all see claimant's solicitors heartened by this decision, made much more confident that since Claimants are minors, it is likely that the Human Rights Act discretion under Section 7 will be exercised in their favour.

In fact, as is often the case, a key issue will be the effect of delay on the cogency of the surviving evidence. In this case, an IPCC investigation had been convened, disciplinary proceedings had concluded and detailed reports were available to both parties. That is not usually the case in HRA claims. Most of the abuse cases we see are based on alleged social work failings falling short of misconduct. The key issue is often whether practitioners were, by virtue of either their own failings or systemic shortcomings, responding inadequately to information that was available to them. This is a much more subtle exercise to carry out and one which can be made significantly more difficult by the passage of time.

The courtesy point does arise. Whilst the judge regarded it as a "weak factor", he did observe that the defendant had been dilatory in responding to requests for a limitation moratorium. The defendant's response was to say it made "no difference", because when they eventually did respond, it was to refuse to agree it.

In future, we will be recommending that defendants make their position on limitation clear as soon as possible, to avoid adding straws to the camel's back at a later stage when the delicate balancing of limitation issues falls to be considered.

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