



Compass Chambers

Claims for Abuse Liability and Limitation

Ranald Macpherson, Advocate

Compass Chambers

22 November 2019



The Fife cases

- *Morris v Fife Council* 2003 SLT 926; 2005 1 SC 72 (IH)
- *Livingstone v Fife Council* 2004 SLT 161
- *J(M) v Fife Council* 2007 SLT 86
- *JM v Fife Council* 2009 SC 163



J(M) v Fife Council 2007 SLT 86

- (1) The nature and severity of the abuse, and its character – whether sexual, non-sexual but violent, or mental / emotional.
- (2) The frequency of the abuse.
- (3) The duration of the abuse.
- (4) The age of the pursuer at the time of the abuse.
- (5) The immediate effects of the abuse on the pursuer.
- (6) Whether any apportionment is required to reflect abuse by others, or other causes of the pursuer's problems.
- (7) The emotional and social consequences of the abuse for the pursuer.
- (8) Any psychiatric illness or psychological condition suffered by the pursuer as a consequence of the abuse.



The value of money

- £75,000 in 2009 has the same value as £5,400 in 1966
- Interest on £75,000 at 4%/2% pa from 1966 to 2009 is c. £107,500
- £107,500 in 2009 has the same value as £7,740 in 1966



The 1973 Act

19A.— Power of court to override time-limits etc.

(1) Where a person would be entitled, but for any of the provisions of section 17, 18, 18A or 18B of this Act, to bring an action, the court may, if it seems to it equitable to do so, allow him to bring the action notwithstanding that provision.



Compass Chambers

Limitation

- *AS v Poor Sisters of Nazareth (B v Murray No 2)* 2008
SC (HL) 146

Limitation and damages

- *A v N* 2009 SC 449 (debate and reclaiming motion)
- *EA v GN* 2014 SCLR 225 (proof)
- *A v N* 2015 SLT 289 (reclaiming motion after proof)



Limitation (Childhood Abuse) (Scotland) Act 2017

17A Actions in respect of personal injuries resulting from childhood abuse

- (1) The time limit in section 17 does not apply to an action of damages if—
 - (a) the damages claimed consist of damages in respect of personal injuries,
 - (b) the person who sustained the injuries was a child on the date the act or omission to which the injuries were attributable occurred or, where the act or omission was a continuing one, the date the act or omission began,
 - (c) **the act or omission to which the injuries were attributable constitutes abuse** of the person who sustained the injuries, and
 - (d) the action is brought by the person who sustained the injuries.



Limitation (Childhood Abuse) (Scotland) Act 2017

- **17C Childhood abuse actions: previously litigated rights of action**
 - (1) This section applies where a right of action in respect of relevant personal injuries has been disposed of in the circumstances described in subsection (2).
 - (2) The circumstances are that—
 - (a) prior to the commencement of section 17A, an action of damages was brought in respect of the right of action (“the initial action”), and
 - (b) the initial action was disposed of by the court—
 - (i) by reason of section 17, or
 - (ii) in accordance with a relevant settlement.



Limitation (Childhood Abuse) (Scotland) Act 2017

- **17D Childhood abuse actions: circumstances in which an action may not proceed**
 - (1) The court **may not** allow an action which is brought by virtue of section 17A(1) to proceed if **either** of subsections (2) or (3) apply.
 - (2) This subsection applies where the defender satisfies the court that **it is not possible for a fair hearing to take place.**
 - (3) This subsection applies where—
 - (a) the defender satisfies the court that, as a result of the operation of section 17B or (as the case may be) 17C, **the defender would be substantially prejudiced were the action to proceed, and**
 - (b) **having had regard to the pursuer's interest in the action proceeding, the court is satisfied that the prejudice is such that the action should not proceed.**



Limitation (Childhood Abuse) (Scotland) Act 2017

- **17D Childhood abuse actions: circumstances in which an action may not proceed**
 - (2) This subsection applies where the defender satisfies the court that **it is not possible for a fair hearing to take place.**
- *Grubb v Findlay* 2018 SLT 463
- *Tonner v Reiach and Hall* 2008 SC 1



Limitation (Childhood Abuse) (Scotland) Act 2017

- **17D Childhood abuse actions: circumstances in which an action may not proceed**
 - (3) This subsection applies where—
 - (a) the defender satisfies the court that, as a result of the operation of section 17B or (as the case may be) 17C, **the defender would be substantially prejudiced were the action to proceed, and**
 - (b) **having had regard to the pursuer's interest in the action proceeding, the court is satisfied that the prejudice is such that the action should not proceed.**
- *B v Murray (no 2)* 2005 SLT 982
- *AS v Poor Sisters of Nazareth* 2008 SC(HL) 146
- *CW v Archdiocese St Andrews and Edinburgh* [2013] CSOH 185



Compass Chambers

Damages

- *A and B v C* 2018 SLT 1194
- *Three Siblings v Church of Scotland* McEwan and Paton
CN35-00



Compass Chambers

Contact

**Compass Chambers
Parliament House
Edinburgh
EH1 1RF**

DX 549302, Edinburgh 36

LP 3, Edinburgh 10

www.compasschambers.com

**Ranald Macpherson,
Advocate**

ranald.macpherson@compasschambers.com

**Gavin Herd
Practice Manager**

Phone: 0131 260 5648

Fax: 0131 225 3642

gavin.herd@compasschambers.com