

**LIMITATION (CHILDHOOD ABUSE)
(SCOTLAND) ACT 2017 –
WHAT DOES IT MEAN FOR ME AND
WHAT DO I NEED TO KNOW ABOUT
MAKING A CLAIM?**



Scottish Government
Riaghaltas na h-Alba
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What does the Limitation (Childhood Abuse) (Scotland) Act 2017 do

The Limitation (Childhood Abuse) (Scotland) Act 2017 is a piece of legislation which changes the rules around the time limits within which you can make a claim for compensation in the civil courts. Usually you have to make your claim within three years of the injury, or (if it is later) three years from your sixteenth birthday.

This change will mean that there will no longer be a time bar on childhood abuse claims in the civil courts. (It applies to abuse of a person under the age of 18.) There will no longer be a requirement to make a claim within the three years or to ask the court to use its discretion to allow the case to go ahead after that period.

The law usually prevents claims being taken to court more than once. The Act makes a limited change to this for childhood abuse claims. If you took a claim to court before the Act became law, but lost because of the time bar, the Act means that you should not be prevented from taking another claim to court.

This change is in relation to the three year limitation period, which is relevant to abuse that took place on or after 26 September 1964.

The Scottish Government intends for the Act to come into force in October 2017.

Pre-1964 Abuse

Claims based on abuse that took place before 26 September 1964 are affected by the law on prescription. Prescription is a different law about a different type of time limit. The Act makes no change to that law. This means that anyone whose abuse took place before 26th September 1964 will continue to be unable to make a claim for that abuse. (There may be some exceptions to that where the abuse continued past this date, or where a claim was raised in court in the past).

What is involved in claiming compensation through the civil courts?

You may be entitled to sue someone for the personal injuries you have suffered as a result of the abuse. This includes psychological injuries.

Speak to a solicitor

The first step involves speaking to a solicitor who will be able to give you advice about your case.

Initially a solicitor will want to get a basic idea of what happened to you. Sometimes they ask you to fill in documents or forms before you go to see them. Some solicitors offer free initial consultations. It's important to know that you can afford legal fees, or will get legal aid, before you ask the solicitor to do anything further. Be sure to ask the solicitor about this when you first meet them. See, **How do I get legal advice?** on page 6 and, **How do I pay for legal advice?** on page 7.

Seeing a solicitor can seem daunting, but keep in mind that solicitors are bound by a strict duty of confidentiality. Whatever you say will remain completely confidential and will not be revealed to anyone without your authority. Your solicitor will be able to tell you how likely your case is to succeed and what they think the value of your claim is.

Evidence

Evidence is required to prove your case. You have to show someone is legally responsible for the injury caused by the abuse. To help you do this, your solicitor will have to get a medical report about you, and you will usually have to visit a specialist such as a psychologist.

Your solicitor may also need to gather other evidence such as medical records, police reports, records from schools/residential homes, and witness statements.

The Defender

Your solicitor will send a letter to the person/people or organisation you are holding responsible for your injury (the defender). This sets

out the details of your injury and what happened. Your solicitor will normally fix a deadline for the defender to respond. The defender must say whether they accept responsibility for your injury. If they accept responsibility, your solicitor will try and settle the matter without going to court. You may never have to go to court and give evidence - it will depend on whether the case settles.

If you cannot settle for a fair amount out of court, your solicitor will advise you whether to start legal action in court to challenge the defender and to ask the court to award you compensation.

The court process

The claim is raised in either a sheriff court or the Court of Session. The solicitors for the parties to the case submit documents which set out their positions on the facts and on legal responsibility for paying compensation. There can then be a number of different types of hearings in the court. Some are about the procedure to be followed, some are about legal arguments and some are about settling any disputes about what actually happened. This last type of hearing usually involves each side calling on the evidence of their witnesses and experts. Witnesses may be cross-examined by the opposing side. You may be called as a witness, and may be cross-examined.

There may be a number of technical questions to be settled in court which may mean that the case does not go forward. Even though the Act has removed the three year time limit for childhood abuse cases, these might include considering whether the circumstances of a particular case mean that it would be unfair to let the case proceed.

If you are ultimately successful, the court will decide the amount of compensation to be awarded. All you can receive from the court is compensation. The civil courts have no power to punish the abuser as that is the job for the criminal courts. The court does not have the power to order an apology either.

Remember that any compensation you are awarded may affect your entitlement to benefits. You should speak to an experienced welfare rights adviser at your local Citizens Advice Bureau. Find your local bureau in the yellow pages or at www.cas.org.uk/bureaux.

How long will the process take?

Claiming compensation through the courts can be a long and complicated legal process. It can be full of unpleasant surprises and frustrating delays.

Each case is unique but cases often take a long time. There have not been many cases in Scotland, but in England and Wales the process commonly takes two to five years.

How do I get legal advice?

If you want to take legal action you should consult a solicitor who is experienced in personal injury work. The Law Society of Scotland should be able to provide details of solicitors who specialise in personal injuries work. Many solicitors offer a free initial consultation. It's important to work out whether you can cover the costs before you take legal action further. You should check that the solicitor does legal aid work, if you think you will need help with legal costs. The Scottish Legal Aid Board can help you to find a solicitor who does legal aid work. See **How do I pay for legal advice?** on page 7.

The Law Society of Scotland

Atria One
144 Morrison Street
Edinburgh
EH3 8EX

Tel: 0131 226 7411

Fax: 0131 225 2934

E-mail: lawscot@lawscot.org.uk

Website: www.lawscot.org.uk/find-a-solicitor/

The Scottish Legal Aid Board

Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

Legal aid information line: 0845 122 8686

E-mail: general@slab.org.uk

Website: www.slab.org.uk

How do I pay for legal advice?

Get information about financial assistance at your local Citizens Advice Bureau

If you are considering taking legal action and have not yet been to a solicitor you may want to seek advice about possible sources of financial assistance or help with legal costs from an experienced adviser, for example, at your local Citizens Advice Bureau.

Find your local bureau at www.cas.org.uk/bureaux or find advice online at www.citizensadvice.org.uk/scotland.

Bureau can provide advice on issues like housing, debt and how compensation can affect your benefits, but they cannot provide legal advice about your case.

Legal Aid

Claiming compensation for a personal injury can be expensive. You may be able to get help with legal costs from legal aid. Legal aid is the general term for schemes available to help people with the costs of legal advice or representation. The schemes are administered by the Scottish Legal Aid Board (SLAB). There is more information on the SLAB website, including online calculators to see whether you would qualify for legal aid. See www.slab.org.uk or phone the legal aid information line on 0845 122 8686.

Civil legal aid is a scheme that may be available to help pay for a solicitor to prepare and negotiate a claim for personal injury. Civil legal aid is means-tested. Depending on your income and savings legal advice may be free, or you may have to make a contribution towards the cost. Getting civil legal aid also depends on whether the SLAB agrees that it is reasonable to go to court to pursue or to defend the case.

The advice and assistance scheme allows people on low incomes to get free legal advice and assistance from a solicitor. You must complete an application form for advice and assistance. The form asks for details of savings and income over the previous seven days. The solicitor should help you fill in the form and will say immediately whether you are eligible for help under advice

and assistance; and if so, whether you have to make a financial contribution.

Speculative fee arrangements with solicitors or “no-win, no-fee”

A speculative fee arrangement means that if you win a case, you must pay your solicitor’s fees and expenses from the damages you receive. If you lose, you will not have to pay fees to your own solicitor, but you may have to pay the other party’s costs. Your solicitor will normally ask you to take out insurance to cover this.

Legal expenses insurance

You may have home insurance or another insurance policy that covers the expenses of certain legal matters, like personal injuries. Many policies will exclude certain kinds of legal expenses, or may not meet the total cost of claims that are covered. Contact your insurance company to find out if you are covered. Remember that if you make a claim your insurance premiums may increase. If you are considering taking legal action and have not yet been to a solicitor you may want to seek advice about possible sources of help with legal costs from an experienced adviser, for example, a Citizens Advice Bureau.

Are there any other options?

Criminal Injuries Compensation Authority

If you have been injured as a result of a criminal act you may be able to claim compensation through the Criminal Injuries Compensation Authority (CICA). Remember that compensation may affect your entitlement to benefits. You should seek advice from an experienced welfare rights adviser at your local Citizens Advice Bureau.

You should speak to a solicitor about whether a claim for criminal injuries compensation or a personal injury claim is right for you. You usually have to pay money back, or will have your award reduced, if you are awarded compensation for the same injuries under both claims.

You must report an incident to the police at the earliest opportunity and an application to the Criminal Injuries Compensation Authority must normally be made within two years of the incident. However, in exceptional circumstances, the authority may be willing to extend this limit, for example if you are making a claim for abuse you suffered as a child.

The details of the crime and injuries that must be entered on the claim form are important and if you are completing it you may want to consult an experienced adviser, for example, one from a Citizens Advice Bureau (see page 7).

A request for compensation must be made on an application form, which can be obtained from:

Criminal Injuries Compensation Authority

Alexander Bain House
Atlantic Quay
15 York Street
Glasgow
G2 8JQ

Helpline: 0300 003 3601 (Monday-Friday 8.30am to 5pm, except Wednesdays, which are 10am to 5pm)

Website: www.cica.gov.uk

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