Autumn 2025 - Abuse

AWARE

Keoghs
a Davies business

Contents

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Welcome

Welcome to the autumn edition of Keoghs Abuse Aware update. This newsletter contains a collection of some important developments in relation to abuse claims that have taken place over the last six months. This includes the Crime and Policing Bill – a flagship part of the government's Safer Streets agenda; the proposed removal of the limitation period for child sexual abuse claims and the new mandatory reporting duty; Baroness Casey's audit on group-based child sexual exploitation and abuse; post-Brexit civil contribution claims and cross-border enforcement; the proposed Church of England Redress Scheme; and further developments in Scotland in relation to the case of NM v Graeme Henderson and the Scottish Ambulance Service.

I am pleased to bring you the insight and expertise of several members of Keoghs market-leading abuse team in relation to these developments. I hope that you find this edition of Abuse Aware interesting and informative. If you would like to speak to any of the contributors, they would be delighted to hear from you.

Head of the abuse team, Partner Ian Carroll, discusses the Crime and Policing Bill and specifically the new clause, which will remove the 3-year limitation period for personal injury claims arising from child sexual abuse and reverse the burden of proof for the defendant to show that a fair hearing would not be possible and that it would be "substantially prejudiced" if the action did proceed, implementing a key recommendation made by the Independent Inquiry into Child Sexual Abuse and following similar reforms that were introduced in Scotland in 2017.

Lauranne Nolan, Associate and Safeguarding Lead, considers the Crime and Policing Bill in relation to the mandatory reporting duty and sanctions for failing to report.

Sarah Swan, Partner, and **Daniel Tyler,** Associate, explore Baroness Casey's audit on group-based child sexual exploitation and abuse, identifying the 12 powerful and necessary reforms aimed at transforming how organisations and society confront and prevent group-based child sexual exploitation as proposed by Baroness Casey.

Richard Kirby, Solicitor, discusses and provides an analysis in respect of post-Brexit civil contribution claims and cross-border enforcement of civil and commercial judgments in the UK in relation to The Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.

Patrick Williams, Associate, considers the proposed Church of England redress scheme in relation to eligibility, redress pathways, financial awards, and other forms of redress.

Heather Lillis, Solicitor, provides a further update on Scottish abuse case law regarding the Scottish abuse case of NM v Graeme Henderson and the Scottish Ambulance Service on the issues of vicarious liability (stage two) and negligence, which was previously discussed in our spring 2025 edition of Abuse Aware.

Keoghs market-leading abuse team has cross-border expertise and members who are listed in the legal directory rankings as being experts in this area. The team has over 20 years' experience of both recent and non-recent abuse cases and advises on safeguarding issues in several sectors, including:

- Education
- Faith
- Local Authority
- Police
- Military
- Charities
- Inquiries
- Care Home and Private Care
- Sporting Clubs and Associations

Crime and Policing Bill – Proposed Removal of the Limitation Period for Child Sexual Abuse Claims

The Crime and Policing Bill, a flagship part of the new government's Safer Streets agenda, completed its passage through the Commons and had its First Reading in the House of Lords on 19 June. The Bill includes wide-ranging reforms on knife crime, retail violence, anti-social behaviour and child protection.

Among the amendments added during the Commons stages is a new clause which will remove the 3-year limitation period for personal injury claims arising from child sexual abuse and reverses the burden of proof for the defendant to show that a fair hearing would not be possible and that it would be "substantially prejudiced" if the action did proceed. This is to implement a key recommendation made by the Independent Inquiry into Child Sexual Abuse and follows similar reforms which were introduced in Scotland in 2017.

However, the English drafting raises some potential legal and practical uncertainties about how such claims might be considered by the courts in the future.

Author:
Ian Carroll
Partner and Head of Abuse

Limitation Reform Provisions

The proposed new section 11ZA of the Limitation Act 1980 would apply to all claims for "negligence or breach of duty". This essentially copies the existing wording of section 11 of the Limitation Act 1980, which already covers claims for negligence, nuisance or breach of duty. The key words are therefore 'breach of duty', meaning the House of Lords decision in A v Hoare will still apply, which decided that the case of Stubbings v Webb had been wrongly decided and unanimously concluded that the words 'breach of duty' used in section 11 of the Limitation Act 1980 were wide enough to encompass deliberate acts of assault. It will therefore still cover claims pursued in vicarious liability.

For the new section 11ZA to apply, three 'conditions' must be met:

1. the damages must be for personal injuries;
2. the abuse must have occurred when an individual was under 18 years old; and
3. the act or omission to which the claimant's personal injuries were attributable "constituted sexual abuse".

Section 11ZA will not apply to claims which have previously been "settled by agreement between the parties or determined by a court".

The proposed new section 11ZB of the Limitation Act 1980 will also have the effect that:

- Section 33 factors in the Limitation Act 1980 will no longer apply;
- The claim must be dismissed if the defendant shows "it is not possible for a fair hearing to take place";
- The claim must also be dismissed if the defendant shows there would be "substantial prejudice" to the defendant if the claim proceeded and having regard to the defendant's prejudice, and the prejudice to the claimant if the action is dismissed, that it would "not be equitable to allow the action to proceed".

Issues

Claims involving sexual abuse as well as other types of abuse

The government and IICSA were very clear that reforms should be limited to child sexual abuse claims as the case for reform had been comprehensively explored by the Inquiry in this specific group of cases. Accordingly, as the current drafting applies to sexual abuse only, it is unclear how this wording might treat claims where other types of abuse are being alleged at the same time, such as physical and emotional abuse (which is not an issue in Scotland as the scope is much wider, to include claims pursued for physical abuse, emotional abuse and neglect).

It is therefore possible that in such cases the new limitation provisions would apply to those allegations that relate to sexual abuse but other abuse types will remain subject to the current limitation regime within the same action (a 3-year limitation period; burden upon the claimant; and the application of section 33 factors), with parallel limitation provisions applying to the same claim.

What Constitutes "Settled by Agreement"?

Paragraph 7 of section 11ZA disapplies the reform where claims have been "settled by agreement between the parties or determined by a court". However, no definition is provided as to what is meant by claims that had been "settled by agreement between the parties" and whether this will apply to pre-litigation or claims that had been discontinued or settled other than by way of formal agreement between the parties. This therefore creates some uncertainty over re-litigation of past cases and arguments where a claim had in fact been settled by agreement or not.

It will therefore remain to be seen whether any amendments are made to define what is meant by "settled by agreement between the parties" and whether it will only apply to all claims where a claim has been concluded either by formal agreement or consideration between the parties (e.g. discontinued with no order as to costs) or whether it will also include unilateral discontinuances.

Reversal of the Burden of Proof (fair hearing and substantial prejudice)

Under the new section 11ZB, the proposed "fair hearing" and "substantial prejudice" provisions replicate the approach taken in Scotland, which has already resulted in several judicial interpretations favourable to claimants in that jurisdiction. Part of the explanation for this is that prior to the introduction of the Scottish 2017 legislation it was a jurisdiction in which very few claimants, if any, were able to pursue claims for abuse because of the statutory limitation period. Accordingly, judicial interpretations of the 2017 Act appear to recognise that past restriction to allow more claimants to pursue claims for abuse.

However, the position in England & Wales is very different. This jurisdiction has already had the benefit of established and authoritative judicial guidance on fair trial/prejudice issues (e.g. A v Hoare in the House of Lords in 2008 on fair trial factors), which has resulted in several successful claims being pursued for abuse, despite being statute-barred.

The new provisions therefore potentially raise some uncertainty as to whether such judicial guidance will be rendered redundant based on the new wording and whether the Scottish interpretation will now apply. For example, there is no concept of "substantial prejudice" in England & Wales and instead the judicial guidance on prejudice has been framed in other words, namely whether a defendant will be "exposed to the real possibility of significant prejudice".

It also raises an additional question as to whether having "fair hearing" as a standalone defence potentially increases the prospect of defendants having to revive the approach for applications for limitation to be tried as a preliminary issue.

It follows that lengthy test litigation on the interpretation and application of this new wording as drafted will be almost inevitable. In order to avoid such test litigation, one approach would be to rephrase the wording to use existing England & Wales guidance provided by the courts, so the statutory wording seeks to better reflect the common law position, that court must dismiss the action if the defendant satisfies the court that in defending the action it will be exposed to the real possibility of significant prejudice and having regard to all the circumstances of the case it would not be equitable to allow the action to proceed.

Conclusion

While the intent to remove the 3-year limitation period and reverse the burden of proof in child sexual abuse cases is widely supported, there is some potential ambiguity in the drafting of the legislation that could create legal uncertainty with a real risk of lengthy satellite litigation on the issues identified above, which will have an impact on both claimants and defendants as well as the courts.

The Crime and Policing Bill is vast and is yet to be given a date for a second reading in the House of Lords. It will therefore be necessary to closely monitor the progression of the bill and any amendments that might be made, given the potential impact on how such claims are to be dealt with in the future.

Crime and Policing Bill – Mandatory reporting and legislative scrutiny

The Crime and Policing Bill ('the Bill') was published on 27 February 2025. It is currently awaiting its second reading in the House of Lords, with the date yet to be scheduled. The Bill has now undergone legislative scrutiny by the Joint Committee on Human Rights who have made some comments on a number of proposals contained within the Bill. Lauranne Nolan, an Associate and the Safeguarding Lead in the Specialist Abuse Team at Keoghs, considers the findings and comments in relation to the Mandatory Reporting Duty ('the duty').

Author:
Lauranne Nolan
Associate and Safeguarding Lead

A brief recap

Mandatory reporting was one of the centrepiece recommendations from the final report of the Independent Inquiry into Child Sexual Abuse (IICSA) published in October 2022. In April 2023, the then Home Secretary announced that the Government would seek to deliver a mandatory reporting regime that would be informed by a full public consultation.

Since then, there has been a call for evidence on the implementation of such a duty and a consultation setting out the proposals for delivering the duty and to test the remaining undecided policy questions. The main areas that caused split opinion were whether or not it should be a criminal offence for failing in the duty to report, and wh;at the other alternative punishments could be. There was also a difference in opinion about what should be reported.

Finally, after all the above, the government issued its full response to the call for evidence and consultation, confirming that the duty would be introduced through amendments to the Criminal Justice Bill which, at that time, was at the Commons Report stage. However, a general election was then called, which meant that the Criminal Justice Bill did not complete its passage through Parliament in time and did not become an Act.

Following the King's Speech on 17 July 2024 and the convening of a new government and Parliament opening, it was indicated that the duty would be introduced at Chapter 2 Part 5 of the Crime and Policing Bill.

The duty

Under the duty, a person aged 18 years or over who is involved in a relevant activity relating to children in England (i.e. any activity that involves teaching, training, looking after children or having unsupervised contact with them) will be required to report suspicion of child sexual abuse to the police or social services, if that suspicion arises from certain circumstances.

The Bill proposes that the requirement to report applies:

- where an individual witnesses a child sex offence;
- where they see an image or hear an audio recording of a child sex offence;
- where a person (A) communicates something that would cause a reasonable person to suspect that A may have committed a child sex offence; and
- where a child communicates something that would cause a reasonable person to suspect a child sex offence may have been committed.

The Bill would not require reporting in any other circumstances, for example when an adult brings the information forward.

Sanctions for failing to report

The Bill proposes to make it a criminal offence for a person who knows that someone is under a duty to report to "engage in any conduct with the intention of preventing or deterring that person from complying with that duty".

The Bill does not include a criminal offence of failing to report. Instead, the Bill would amend the Safeguarding Vulnerable Groups Act 2006 so that "failing to comply with the duty to report is a behaviour that should be considered relevant for considering inclusion on the children's barred list maintained by the Disclosure and Barring Service". The effect of the Bill's amendment to the Safeguarding Vulnerable Groups Act 2006 would mean a duty to make a referral to the DBS would apply to regulated activity providers (i.e. employers or volunteer managers of those working directly with children) and personnel providers (e.g. employment agencies supplying those who work with children) where, as a result of a failure to comply with the mandatory duty to report suspicions of child abuse, they have withdrawn permission for someone to carry out, or moved them out of, regulated activity. Interestingly, failing to comply with this duty to refer to the DBS is a criminal offence.

Comments and recommendations from the Joint Committee on Human Rights

The Committee has reiterated that the introduction of the duty is welcomed and represents an important step forward for the safeguarding and protection of children. However, concerns have been raised that the scope of the duty and the consequences of breaching that duty may not do enough to provide effective protection against child sexual abuse. The Bill on its current drafting risks a failure to comply having little or no consequence. This could undermine the efficacy of the duty.

The Committee has recommended that the government keep under review the efficacy of the duty once it is in place, with a view to expanding its scope if necessary. The government should also reconsider the consequence of failing to comply with the duty to report child sexual abuse, so that it operates as an effective deterrent.

Keoghs comment

The introduction of the duty is clearly going to be an important milestone in safeguarding and child protection, however there is a real risk that despite the significant amount of time it has taken to reach this point, the duty will not provide as much benefit or protection as initially hoped.

Further criticisms of the proposals are that, under the circumstances where the duty would apply, it would actually be rare for the duty to be triggered given that there is clear evidence that most children do not or cannot disclose their abuse. In addition, IICSA was unable to document any examples where a perpetrator disclosed their abuse. Finally, the consequences for a person failing to report depends on referrals being made by employers, managers or personnel providers who may be under pressure to protect reputation.

We will of course keep you updated of any further developments on this issue.

‘It’s time that we drew a line in the sand’

Baroness Casey’s audit on group-based child sexual exploitation and abuse

Author:
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Partner

Author:
Daniel Tyler
Associate

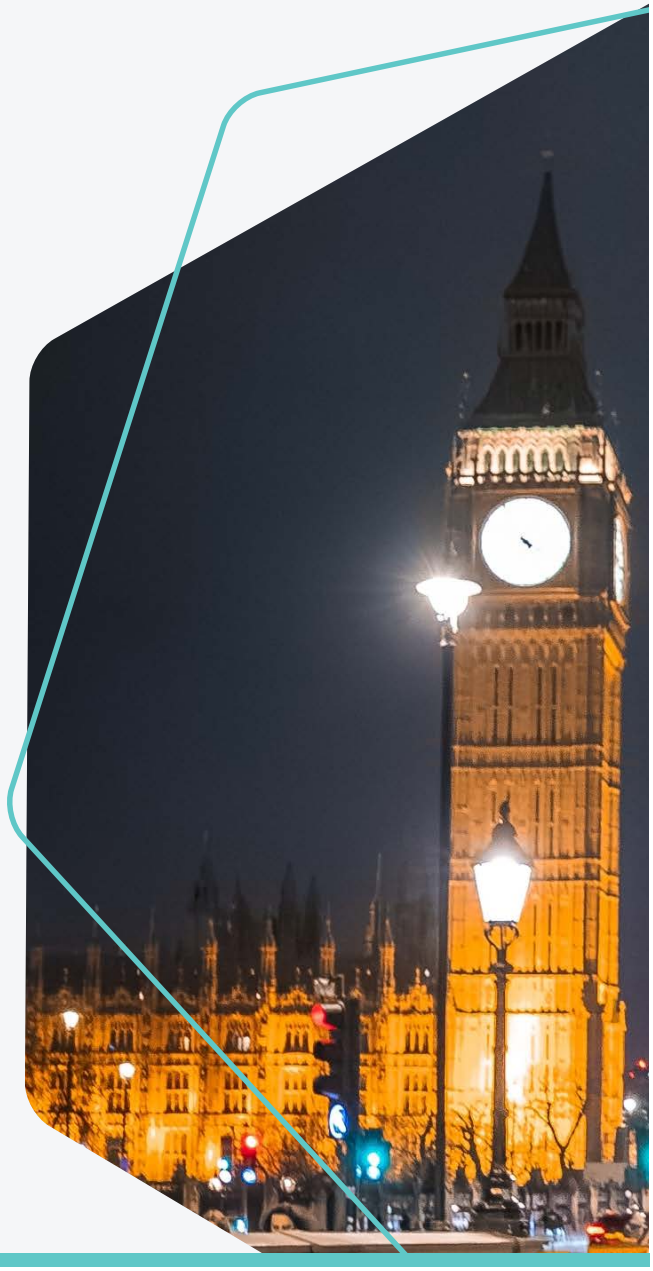
In February 2025, in response to serious and persistent concerns about group-based child sexual exploitation (CSE), the Prime Minister commissioned Baroness Casey of Blackstock to carry out a rapid national audit. Her task was to evaluate our understanding of the scale, nature and drivers of group-based CSE and abuse at a national and local level. Over the following months, reviewers conducted visits and met with survivors, police, local authorities and other organisations and individuals. They also reviewed documentary material including serious case reviews, police problem profiles, a range of published research and data, and conducted some further reviews and analysis of national and local reports, data and other information provided from local agencies.

The audit was not born out of a lack of previous inquiries. In fact, the UK has seen more than a decade of reviews and investigations since CSE was first formally defined in 2009. Yet despite countless recommendations, real progress has remained elusive. Children continue to be failed. Offenders continue to walk free. And the system that should protect the vulnerable has remained fractured, inconsistent, and lacking in accountability.

Baroness Casey's 197-page audit, is a sobering and excoriating account of a system marked by repeated and ongoing missed opportunities. Victims have too often been ignored, criminalised or left without justice, while perpetrators – particularly in group-based CSE – have avoided prosecution. For at least the last decade there has been "a repeating cycle" with "seminal moments of scandal and public outrage which lead to bursts of government focus and activity but no sustained improvement, leaving victims and the public with insufficient justice, action, accountability or answers".

The audit exposes critical gaps in how the UK responds to group-based CSE because of poor information sharing between agencies; lack of accountability within statutory services; disjointed and under-resourced investigations; and severe underreporting of abuse and inconsistent and incomplete data collection, particularly in relation to perpetrators and their backgrounds.

A repeated finding within the report is the persistent failure of organisations to record ethnicity data in the majority of national databases. The absence of comprehensive data renders national understanding incomplete. This lack of clarity hampers effective prevention, investigation, victim protection and public trust. Yet "despite the lack of a full picture in the national data sets, there is enough evidence available in local police data in three police force areas which we examined which show disproportionate numbers of men from Asian ethnic backgrounds amongst suspects for group-based child sexual exploitation, as well as in the significant number of perpetrators of Asian ethnicity identified in local reviews and high-profile child sexual exploitation prosecutions across the country, to at least warrant further examination".



Baroness Casey proposes 12 powerful and necessary reforms, aimed at transforming how organisations and society confront and prevent group-based CSE:

1. The law in England and Wales should be changed so adults who intentionally penetrate the vagina, anus or mouth of a child under 16 receive mandatory charges of rape. However a "Romeo and Juliet" clause should be created so that teenagers in relationships with each other are not penalised.

2. A national police operation should be planned to focus on reviewing and re-investigating historic cases, holding perpetrators – and complicit organisations – fully accountable. Swift movement of cases through the courts should be ensured to stop perpetrators and so as not to retraumatise victims.

3. The criminal convictions of victims of CSE should be reviewed. Where victims were criminalised instead of protected, convictions should be quashed.

4. Data systems should be reformed so that it is mandatory to record ethnicity and group-based CSE as distinct categories for better analysis and accountability. A recommendation of separating this data from other offences of sexual abuse has been made, while sharing data effectively should be prioritised over data protection issues.

5. Cross-agency information sharing should be made mandatory, including police, health, education, and social services in cases of child sexual abuse, and it should be overseen by a proposed Child Protection Authority.

6. Unique reference numbers for every child should be introduced to improve safeguarding through better tracking and information sharing.

7. Police systems and safeguarding technology should be upgraded, using AI to connect the dots across systems and flag risks earlier. This will improve investigations across the country and ensure that they can be done quickly.

8. Group-based CSE should be classified as organised crime, applying the same rigour and protocols used in major investigations with consideration given to whether the National Crime Agency can support police forces so that proven and best methods are used to investigate and bring perpetrators to justice swiftly.

9. Safeguarding records should be audited and interrogated to identify discrepancies, identify the lack of CSE and abuse information in Child in Need assessment data, and to hold services to account.

10. The government should commission research into the drivers for group-based CSE, including online offending, cultural factors and the role of the group.

11. Taxi licensing laws should be tightened, closing regulatory loopholes that have allowed perpetrators to access vulnerable children via this known group-based CSE method.

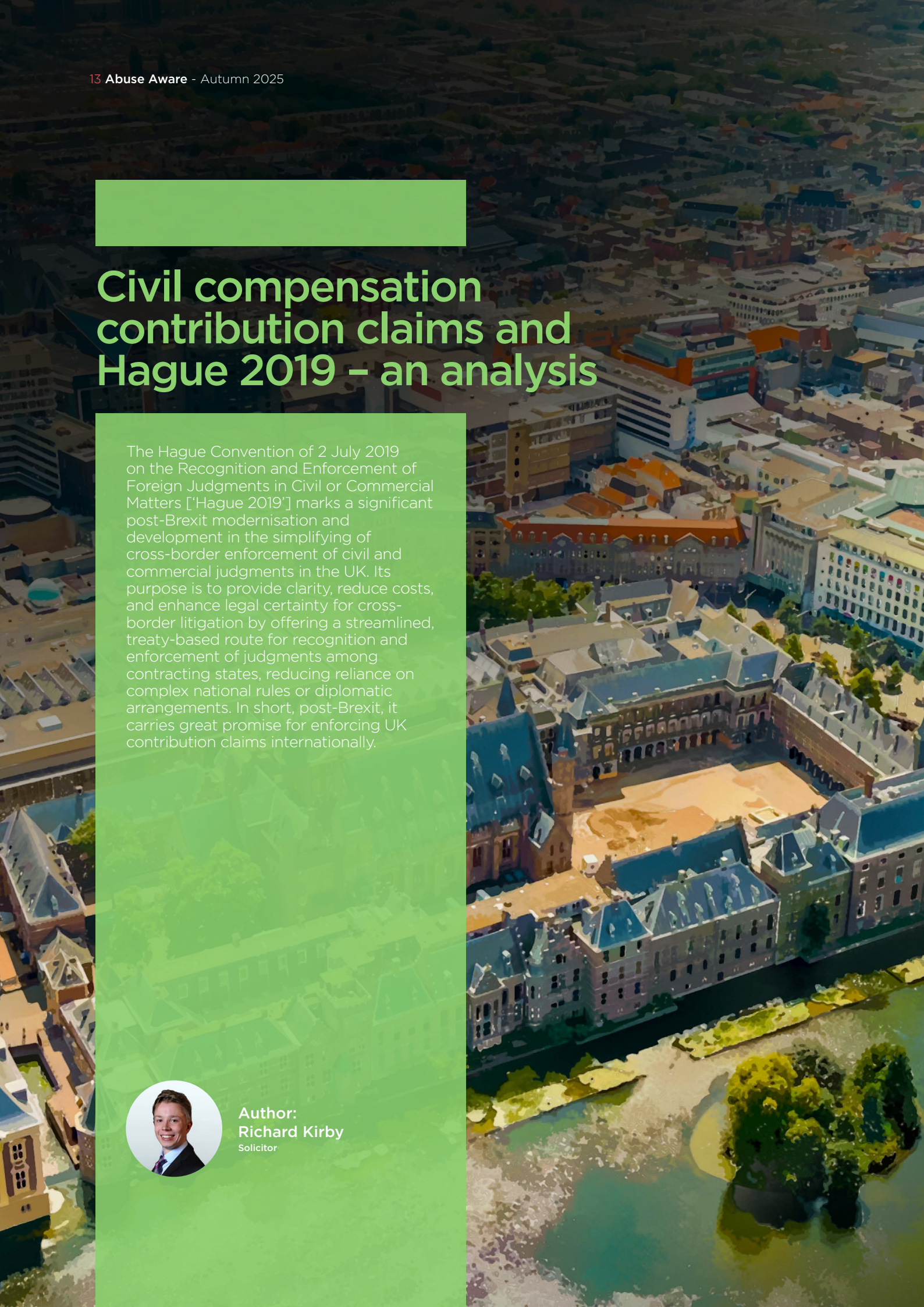
12. The government should commit to resourcing the implementation of these recommendations fully over multiple years and to tracking their implementation across departments and other organisations, with regular reports to parliament.

In a powerful foreword, Baroness Casey stated that

> it's time that we drew a line in the sand and took definitive action. We are a country that should rightly pride itself on the way it cares for and protects children – all our children – and we have an opportunity here to reassert those values as a nation.

The government has announced a National Inquiry to build on Baroness Casey's work. The full terms of reference are expected soon. For this inquiry to be effective, it must be independent, properly resourced, and empowered to compel action across all levels of government and statutory services. We await next steps with interest.

Civil compensation contribution claims and Hague 2019 – an analysis



The Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters ['Hague 2019'] marks a significant post-Brexit modernisation and development in the simplifying of cross-border enforcement of civil and commercial judgments in the UK. Its purpose is to provide clarity, reduce costs, and enhance legal certainty for cross-border litigation by offering a streamlined, treaty-based route for recognition and enforcement of judgments among contracting states, reducing reliance on complex national rules or diplomatic arrangements. In short, post-Brexit, it carries great promise for enforcing UK contribution claims internationally.

Author:
Richard Kirby
Solicitor

Civil contribution claims and enforcement following Brexit

A civil contribution claim arises when a party has paid damages or a debt, including under a joint-liability scenario, and seeks reimbursement from another party. In the context of historic personal abuse injury claims involving schools, for instance, this typically involves the school and/or its insurers seeking indemnity from the tortfeasor themselves, i.e. the employee who has committed assaults against a pupil victim, from which injury flowed. In England and Wales, such action is brought pursuant to the Civil Liability (Contribution) Act 1978. It may be that, after obtaining judgment against a tortfeasor, the tortfeasor's assets are located abroad and they are the only assets against which to enforce the judgment.

Prior to Brexit, UK courts enforced civil judgments under the Brussels I Recast Regulation. Contribution claims could be enforced automatically across the EU with mutual recognition, with no re-litigation, and harmonised procedures.

Following Brexit, the UK lost streamlined enforcement avenues like the Brussels I Recast Regulation and the Lugano Convention between it and EU member states. There was no automatic enforcement of England and Wales judgments in many foreign jurisdictions. Instead, judgment creditors were left with a mixture of options, which significantly complicated enforcing tort-based contribution claims:

Common Law:

The judgment creditor would have to enforce under the foreign state's common law rules with the requirements varying from country to country. The issues with doing so include:
(i) the judgment creditor may need to re-litigate aspects of the case, as defences may arise in the foreign jurisdiction;
(ii) non-monetary judgments, such as injunctions, are not enforceable; and
(iii) time and cost considerations.

2005 Hague Choice of Court Convention:

After Brexit came into effect on 1 January 2021, the UK acceded to Hague 2005. However, this only applies to contractual claims, as opposed to tort-based contribution claims against a tortfeasor.

Bilateral Treaties or National Laws:

Whether the judgment creditor is able to enforce its judgement abroad depends on whether
(i) a bilateral or reciprocal treaty exists between the UK and the foreign state or
(ii) the foreign state allows recognition of foreign judgments under its domestic law.

These mechanisms are often slow, costly, and may involve merits review or re-litigation, which is precisely what Hague 2019 aims to avoid.

Analysis of Hague 2019

On 27 June 2024 the UK ratified Hague 2019, which entered force on 1 July 2025. The UK's implementation extends to England and Wales, Scotland, and Northern Ireland, aligning all three jurisdictions under the Convention.

As of August 2025, contracting parties to Hague 2019 are as follows:

1. the United Kingdom;
2. the EU [except Denmark];
3. Ukraine; and
4. Uruguay. Its reach is expanding, with Hague 2019 set to enter force in Albania and Montenegro on 1 March 2026 and for Andorra on 1 June 2026. There are also six further signatories – Costa Rica, Kosovo, Israel, North Macedonia, Russia, and the United States of America – who have yet to ratify it.

To be enforceable, the judgment must meet only one of the jurisdictional links under Article 5. If the judgment debtor who must pay the contribution was

1. pursuant to Article 5(a), habitually resident in the UK at the time proceedings began and
2. committed, pursuant to Article 5(j), the tort in the UK, the criteria would clearly be satisfied with two requirements met.

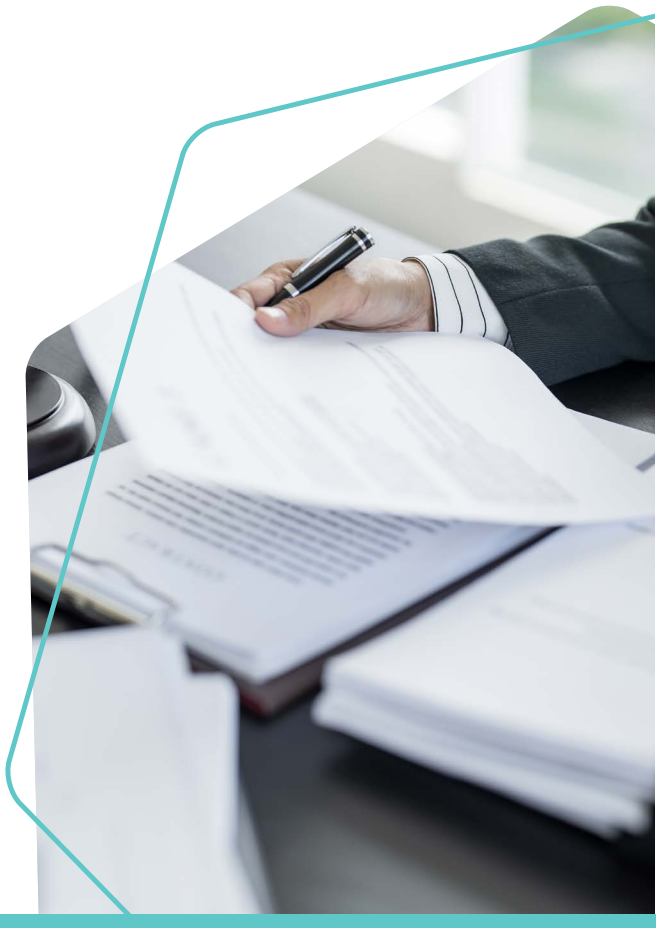
Pursuant to Articles 4 and 7, other contracting courts must not review the merits of the original judgment, and enforcement can only be refused on specific grounds – for instance:

1. judgments being obtained by fraud;
2. public policy conflict (including situations where the specific proceedings leading to the judgment were incompatible with the fundamental principles of procedural fairness of that State); and
3. improper service.

As such, when seeking to enforce a final contribution judgment abroad under Hague 2019, the following steps apply:

1. **Check eligibility:**
   Ensure the judgment arose from proceedings that commenced after 1 July 2025 and relate to civil and commercial matters.
2. **Confirm the Article 5 filter:**
   Verify the existence of a jurisdictional link.
3. **Prepare required documents:**
   Present a certified copy of the judgment, evidence of finality and enforceability, and ensure proper service of the documentation.
4. **Submit to the foreign court:**
   Apply to register or enforce under that state's domestic procedures, without asking the court to review the case's merits.
5. **Anticipate any defences:**
   Pay particular heed to permissible objections under Article 7.

If all the conditions are satisfied, the enforcing court must recognise the contribution judgment and enforce it as if it were a domestic judgment.



Comment

Hague 2019 marks a significant and promising development in cross-border enforcement of civil and commercial judgments in the UK. As to the benefits for contribution claims:

- Restored cross-border enforcement:
  Post-Brexit, Hague 2019 fills the void left by the loss of Brussels I Recast Regulation and the Lugano Convention.
- Certainty and efficiency:
  Final contribution judgments from the UK can be enforced quickly in other contracting states without re-litigating liability.
- Expanding jurisdictions:
  Its reach is expanding, being set to enter force for both Albania and Montenegro on 1 March 2026 and for Andorra on 1 June 2026. There are a further six signatories yet to ratify it.

However, legal practitioners must remain mindful of the following strategic considerations:

- Eligibility:
  It applies only to proceedings commenced after 1 July 2025.
- Scope exclusions:
  It excludes interim relief, e.g. freezing injunctions and interim payments.
- Jurisdictional requirements:
  For tort-related contribution claims rooted in foreign events, this may render judgments ineligible. Ensure judgments satisfy Article 5.
- Possible defences:
  Anticipate potential permissible objections under Article 7.
- Required documentations:
  Be prepared with required documentation for foreign enforcement.
- Updates:
  Keep updated as to new ratifications extending the scope of enforceability.

Conclusion

Hague 2019 significantly enhances the enforceability of civil contribution judgments across borders, so long as they are (i) initiated post-1 July 2025, (ii) final, and (iii) meet jurisdictional criteria. Hague 2019 simplifies and expedites enforcement of civil contribution claims, preserving the value of UK judgments abroad.

Still, we must remain mindful of limitations: (i) it is not retroactive, (ii) there are scope exclusions, and (iii) it has limited coverage. For pre-Hague 2019 judgments or interim claims, traditional enforcement pathways – which can prove time-consuming and costly – remain necessary.

Church of England Redress Scheme

On Monday 14 July 2025, the General Synod of the Church of England approved legislation that will underpin the redress scheme ("the Scheme") for survivors of Church-related abuse, paving the way for the scheme to open for redress applications. However, this legislation still requires parliamentary approval and royal assent before applications can be accepted.

This announcement follows the recommendations made by the Independent Inquiry into Child Sexual Abuse (IICSA) and represents four years of development with input from survivors and safeguarding professionals, with the Scheme's aim to embody a trauma-informed and person-centred approach.

Author:
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Associate

The Scheme

The Scheme will be known as Redress Church of England and its purpose is to help survivors rebuild their lives. The Scheme will be open to applicants – or their families, where the survivor has died – for five years from the date it opens. Applicants will be able to apply via a dedicated website and a mobile app, or in writing if they do not have access to a computer, with the intention that the application process will be as straightforward as possible for each individual. Once an application is submitted, it will be independently assessed.

In respect of when the experience of harm or abuse took place, there is no time limit. Further, applicants can apply whether they were an adult or a child when the abuse took place or whether the alleged perpetrator is now dead or alive.

In terms of eligibility, there are two separate pathways:

Close Connection:

The first may be met where there is a close connection between the role which a person was authorised to undertake in the Church and the abuse.

Failure to Act:

The second recognises that there may be occasions in which an appropriate person in the Church failed to take steps which would have prevented abuse, once they were aware of the risk, but where that person failed to take a step which it would reasonably have been open to them to take.

A medical assessment may be required before redress can be offered, and in those circumstances an applicant would be offered the choice of two suitably qualified medical assessors to evaluate them online. It is said that the assessment will help to inform specific types and duration of therapeutic support required, and will also provide the assessors with the information required to help them award redress fairly and consistently.

It is understood that the Scheme will offer financial awards, calculated through a four-stage process as follows:

- Stage One: A base award ranging from £5,000 to £150,000, based on the type of abuse experienced.
- Stage Two: Aggravating factors, such as the abuser forcing a victim to give evidence in court, will be considered, which can lead to a further award of up to twice the Stage One amount.
- Stage Three: An additional award between £10,000 and £250,000 will be made for the impact the abuse has had on the applicant's life.
- Stage Four: In rare and exceptional circumstances, a discretionary uplift of 20% may be applied to the total award from the first three stages.

In addition to financial compensation, the Scheme will offer other forms of redress, including:

+ A formal apology
+ Acknowledgement of the Church's wrongdoing
+ Therapeutic support (e.g. therapy)
+ Spiritual and emotional support
+ Other bespoke forms of support

While accessing legal assistance is not a mandatory requirement for redress, eligible applicants can choose to access funding for legal assistance up to a fixed fee of £5,000 to help them understand the redress process and receive legal advice on the best course of action.

It is understood that the Scheme will be independently administered, and the Church Commissioners have committed £150 million for the Scheme's implementation and long-term sustainability.

While parliamentary approval and royal assent is awaited, prospective applicants are invited to register their interest

Register here

NM v Graeme Henderson and the Scottish Ambulance Service

Inner House of The Court of Session

Opinion delivered by Lady Wise

The case of NM v Graeme Henderson and the Scottish Ambulance Service (SAS) recently called on the reclaiming motion (appeal) by the pursuer following the decision at debate (strike out hearing).

The second defender (SAS) also cross-appealed the decision, which allowed the vicarious liability case to proceed to proof.

Author:
Heather Lillis
Solicitor

Background

NM pursued the claim on the basis that she had met Graham Henderson ("GH"), an ambulance technician, when he attended in an ambulance to take her to hospital. GH then attended her home on several other occasions but was not working at those times; when he visited, he is said to have physically and sexually assaulted her, harassed and abused her.

NM sued GH for damages in respect of alleged sexual assaults and the Scottish Ambulance Service ("SAS") on the basis that they were vicariously liable for GH's actions and that they were negligent as they had failed to investigate a previous complaint made against GH.

Position at First Instance

Following debate, the court struck out the negligence case against the SAS on the basis that there was not sufficient proximity between the claimant and SAS to impose a direct duty of care.

There was no authority to say that a vulnerable person who may need an ambulance is owed a duty of care by the SAS. The point was made that not everyone with a physical/mental condition satisfies the test for proximity.

On this basis, the court held that imposing a direct duty of care on the second defender would not be fair, just and reasonable.

The case in relation to vicarious liability was allowed to proceed to trial.

Reclaiming Motion

Pursuer's Position

The pursuer's position was that the Lord Ordinary was wrong to decide that the direct case for breach of duty against the second defender was irrelevant in law. The pursuer sought a proof on the entirety of the pleadings on record.

The pursuer's position was as follows:

- NM offered to prove that a competent investigation would have resulted in dismissal of GH.
- SAS had a duty to take reasonable care to avoid acts which could reasonably be foreseen to cause harm.
- The Lord Ordinary failed to address properly stage 1 and consider whether a duty of care could be said to be owed on established principles. He analysed matters on the point that this was a novel case.
- The correct question to ask is whether NM fell within the class of persons who ought to be in contemplation of the SAS.
- On the facts that NM offered to prove, the SAS had a duty to take care to avoid exposing NM to harm as she would be closely and directly affected by their acts or omissions.
- The pleadings went further than suggesting that the employment was only an opportunity to meet NM. The pursuer offered to prove that throughout GH's employment he was in a position of trust in interacting with patients who were vulnerable. Much depended on whether it could be concluded that there was an increased risk of exploitation arising from the trust and authority given by this employment.
- Even if the analysis on behalf of NM was wrong and this was a novel case where the tripartite test in Caparo had to be applied, it would be fair, just and reasonable.

Second Defender's Position

The second defender was of the view that the Lord Ordinary was correct to strike out the case for direct duty of care; however, the second defender cross appealed regarding the decision to allow the case for vicarious liability to proceed to proof.

The second defender's position was as follows:

- The question of whether a duty of care existed was a question of law to be answered without evidence.
- It was correct to question whether the duty was novel or if it could be answered by existing principles. The Lord Ordinary thought the case was novel and therefore applied the tripartite test set out in Caparo.
- He correctly concluded there was no relationship of proximity between NM and the SAS giving rise to a duty of care.
- There was no authoritative determination on whether a duty of care arises in the present case.
- The Lord Ordinary was correct that NM was not in a defined class of persons under special contemplation of the SAS. Even with the additional averments that she was a regular user of the service and that she was vulnerable, the issue was still about proximity.
- Any duty arising between a patient and the service arises when the call for an ambulance is accepted. The duty persists for the duration they are in the care of the service.

Direct Duty of Care

The court was of the view that the case for direct duty of care was relevant enough to be heard at proof.

The pleadings contained averments regarding a previous complaint against NM in 2015, and the failure to investigate this complaint could expose NM to harm. The court held that this point should not have been dismissed without hearing evidence on the matter.

Vicarious Liability

The decision of the judge at first instance allowed the case to proceed to proof on the vicarious liability arguments.

The court agreed with the position that evidence was required to be heard before the court could make a decision.

There were stage two arguments in relation to vicarious liability which could not be decided without hearing evidence.

Decision

The court acknowledged that there was merit in the argument that the incidents did not take place when NM was carrying out his duties; however, the pursuer offered to prove these facts and therefore this was required to be explored at trial.

The court allowed the reclaiming motion for the pursuer, recalling the previous interlocutor. The cross-appeal for the second defender was refused.

The case will now proceed to trial on both the direct duty of care and vicarious liability case.

Comment

While the defender made sound arguments about why the case should not proceed to trial, the court refused to dismiss the case against the SAS at a preliminary stage.

This case underlines that the Scottish Courts consider it to be a high bar for a case to be disposed of at a preliminary stage without giving the pursuer the opportunity to prove their case.

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