

**4.3. Limitation (Childhood Abuse) Bill 2019 –
Second Reading approved**

Mr Thomas to move:

That the Limitation (Childhood Abuse) Bill 2019 be read a second time.

The Speaker: Item 4.3, Limitation (Childhood Abuse) Bill 2019, and I call on the Mr Thomas to move.

Mr Thomas: Thank you, Mr Speaker.

I am pleased to move the Second Reading of the Limitation (Childhood Abuse) Bill 2019.

The purpose of this Bill, which amends the Limitation Act 1984 for one specific reason, is to remove the present limitation period for bringing an action in damages for personal injuries where the action relates to abuse and the person who sustained the injuries and who is bringing the action was a child at the time of the abuse. It responds to the recognition of the impact of historic childhood abuse on the victims of such abuse by removing the limitation which constitutes a barrier to access to justice for this specific group.

Under the current law as provided for in section 11 of the Limitation Act 1984, personal injury claims, including claims involving child abuse, have to be brought within three years of the cause of action arising or, if later, three years from the date of knowledge of the person injured. If the person was a child at the time when the right to bring an action arose, the three-year period starts to run from when the person is 18 years old, or 21 years old for causes of action arising before 1st April 1972 because until that time the age of majority was 21.

If a person wants to bring an action for damages for personal injuries after the limitation period, at present they must persuade the court to exercise its discretion under section 31 of the 1984 Act to permit the action to be brought despite being out of time. It is therefore possible, but by no means certain, that the court will exercise its discretion and permit a childhood abuse action to proceed if it is brought outside the limitation period.

In the very specific context of child abuse the current law is burdensome on a person who has suffered such abuse. It can take years before the abused person, a survivor of child abuse, reaches the point where they feel able to bring an action for damages; and once a victim feels able to bring a claim, if it is outside the three-year period the victim faces the additional hurdle of persuading the court it would be fair to allow the claim to proceed.

The Bill seeks to facilitate access to justice in such cases, removing the limitation period so that a claimant would no longer have the burden of establishing before a court why a claim should be allowed outside that period. Under the proposed legislation the burden would be on a defendant to show why a case should not proceed. It closely follows similar provision made by the Scottish Parliament in the Limitation (Childhood Abuse) (Scotland) Act 2017.

Specifically the Bill inserts additional provisions into the Limitation Act 1984 to remove the limitation period in childhood abuse cases if the damages are in respect of personal injuries; the person who sustained the injuries was a child when the act or omission which caused the injuries took place, or if the act or omission was a continuing one, on the date the act or omission began; the act or omission to which the injuries are attributable constitutes abuse; and the person bringing the action is the person who sustained the injuries.

Actions meeting the criteria are not subject to limitation, including those that arose before the provision removing the limitation period comes into operation. This will allow claims to be brought which currently fall outside the limitation period. Retrospective application of the legislation is considered appropriate in the case of childhood abuse for the reasons outlined earlier.

It should be noted that only surviving victims of child abuse may make a claim without any limitation period applying under the proposed new legislation. However, child abuse claims

which have already been subject to litigation may be re-litigated in certain specific circumstances. As the limitation on actions is being removed for survivors of child abuse who have never made a claim, it would be unfair not to permit those survivors of child abuse who have made a claim but who have never had the claim heard by a court because the claim was time barred under the old legislation to have the benefit of the new legislation.

There are, however, restrictions on the ability to re-litigate under the Bill. The Bill will only permit a previously brought child abuse action to be re-litigated if the court did not make a decision on the merits of the claim and the reason the previous action was unsuccessful was the limitation period. The initial claim must either have been disposed of by the court as being time barred, or disposed of under a settlement between the parties in the belief that the claim would be likely to be time barred.

In addition, if a previously litigated case was disposed of by a settlement, the claim can only be re-litigated if the claimant recovered no more than the costs of bringing the action under the settlement. A claimant will not be able to bring the claim again if the claimant recovered any financial compensation beyond his or her costs in bringing the claim.

The Bill does not permit repeat claims on the same issue. New proceedings which are in substance the same as cases previously litigated are only permitted to be brought where there has been an initial claim disposed of by the court before the Bill comes into operation.

It is also important to stress to Hon. Members that the provisions permitting retrospective application of the new law, and indeed the provisions of the new law itself, relate only to the removal of the limitation period for a very specific category of claims. The Bill does not change the existing law on rules of evidence, liability and procedure for the hearing of a claim in damages. A survivor of child abuse would still have to make out the substantive claim and establish the liability of the defendant, judged on the standards of the time when the abuse took place.

Clearly, Mr Speaker, the Bill aims to make the law more generous to victims of childhood abuse by removing the limitation period in these specific cases. To strike a balance between the purpose of the Bill to remove a barrier which inhibits or prevents access to justice for victims of child abuse, on the one hand, and the rights of those accused of such abuse on the other, the Bill includes two important safeguards for defendants.

Firstly, there is provision in the Bill that the court must not permit an action to proceed if it is not possible for a fair trial to take place. This reflects the current position under the European Convention on Human Rights that a court may not permit an action to proceed if a fair hearing is not possible. Secondly, the court must dismiss the action if the defendant satisfies the court that, because of the law's retrospective effect, the defendant will suffer substantial prejudice which outweighs the claimant's interest in the action proceeding. In this way the Bill aims to strike a fair balance between facilitating access to justice for the very specific and vulnerable group of surviving victims of childhood abuse and protecting a defendant's Convention rights.

As set out in the explanatory memorandum to the Bill, the proposed new legislation will have financial implications for Government and for other bodies who have provided care for children, but the implications are difficult to quantify. Nevertheless, the Government take the view that it is proper to accept the risk which is involved in order to secure justice for victims of child abuse.

What is paramount in all this, Mr Speaker and Hon. Members, is the principle that those harmed as children should be entitled to seek compensation through the court process provided the person defending the claim can have a fair trial, and this is more fundamental than the costs implication.

With your permission and help, Mr Speaker, and in closing, I should like to make it clear that there are live civil proceedings on foot at present, the claimants in which will be assisted by the passage of the Bill. But equally there are criminal proceedings involving child abuse allegations going on and I am sure Hon. Members will not wish to prejudice their outcome by referring to them, so I respectfully suggest the debate today and forthcoming debates on the present Bill should be confined to discussing the merits and provisions of the Bill alone. There should be no

pre-emptive debate on the work of the Social Affairs Policy Review Committee on this topic or specific reference to any individual cases which are presently before the courts or may come before them in the future.

With that, Mr Speaker, I beg to move that the Limitation (Childhood Abuse) Bill 2019 be read a second time.

The Speaker: Hon. Member, Mr Harmer.

Mr Harmer: I beg to second and reserve my remarks.

The Speaker: Mr Baker.

Mr Baker: Thank you, Mr Speaker.

I am clearly going to take the wise words of the Minister for Policy and Reform as stated and not try to link this to any particular case, but I really just stand to welcome this very progressive step which will remove a barrier to justice for those who have suffered. I think it is a god step. It does not automatically mean that those who have suffered will achieve justice and restitution effectively, but it does remove one of those barriers and I think it is an important step forward for the Island.

Thank you, Mr Speaker.

The Speaker: Mover to reply.

Mr Thomas: Thank you very much, Mr Speaker.

I thank my seconder and I thank Mr Baker for showing respect to all the processes that are under way with his wise words.

Please feel free, Hon. Members, to discuss further any of the detail with the Attorney General's Chambers in coming weeks.

With that, I beg to move.

The Speaker: I put the question that the Limitation (Childhood Abuse) Bill 2019 be read for a second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that completes our business for today and the House will now stand adjourned until 5th November at 10 o'clock in our own Chamber. Thank you.