

Spring 2026 - Abuse

AWARE

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Contributors



Ian Carroll
Partner and Head of Abuse team
E: icarroll@keoghs.co.uk



Patrick Williams
Associate
E: patrickwilliams@keoghs.co.uk



Anna Churchill
Associate
E: achurchill@keoghs.co.uk



Georgia Wilkie
Paralegal
E: gwillkie@keoghs.co.uk



Heather Morrison
Solicitor
E: hmorrison@keoghs.co.uk



Robbie McAdam
Solicitor
E: rmcadam@keoghs.co.uk

Welcome

Welcome to the spring edition of Keoghs Abuse Aware. This edition contains a collection of some important developments in relation to abuse claims that have taken place over the last six months.

This includes a recent case law update in respect of limitation, several updates arising from the recently released 18th edition of the Judicial College Guidelines, proposed legislation targeting child criminal exploitation as part of The Crime and Policing Bill, proposed amendments to the Online Safety Act 2023 in relation to the creation of non-consensual images and child sexual abuse material using AI tools, and important updates in Scotland in relation to two recent decisions.

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.

Ian Carroll, Partner and Head of Keoghs Abuse Team writes about the Crime and Policing Act 2026 that recently received Royal Assent and how the new limitation laws introduced will affect abuse claims in the future. He also discusses the recently published 18th edition of the Judicial College Guidelines with several updates being made relating to both the level of guideline damages as well as new aggravating factors leading to an award of damages in abuse claims.

Patrick Williams, Associate, discusses the decision in *AB & Ors v Leicestershire County Council* [2026] EWHC 331 (KB), in which Judgment was given pre-Crime and Policing Act 2026 and considers the relevant issues against the background of the new limitation laws for child sexual abuse claims in England & Wales. Patrick also considers the forthcoming changes to the Online Safety Act 2023 in relation to the creation of non-consensual images and child sexual abuse material using AI tools, and the impact on abuse claims in relation to the developing area of image-based abuse.

Anna Churchill, Associate, explores the second reading of The Crime and Policing Bill and discusses the proposed specific legislation targeting child criminal exploitation. Anna also considers the Government policy paper, "*Renewing fostering – homes for 10,000 more children*", in respect of the Government's plan to improve foster services.

Heather Morrison, Solicitor, and **Georgia Wilkie**, Paralegal, consider the issues determined at the debate on preliminary issues in the case of *JWE -v- LGBT Youth Scotland* CSOH 2026 in relation to the two-stage test for vicarious liability and liability for abuse by a third party.

Robbie McAdam, Solicitor, discusses the recent Judgment in the case of *DBAK v The Governors of the Fettes Trust* [2026] CSOH 5, where Lord Young considered damages arising from historical sexual abuse at Fettes College and provided further judicial guidance on the assessment of loss of earnings and pension loss in abuse claims.

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



Ian Carroll
Partner and Head of Abuse team
E: icarroll@keoghs.co.uk



Crime and Policing Act 2026 Receives Royal Assent: new limitation laws to apply relating to child sexual abuse claims



Author:
Ian Carroll
Partner and Head of Abuse team

The Crime and Policing Act 2026 received Royal Assent on 29 April 2026. While the Act introduces numerous measures on policing powers, retail crime, antisocial behaviour and public safety, one of its key changes relates to the abolition of any limitation period for child sexual abuse civil claims.

Civil claims for personal injury arising from child sexual abuse in England and Wales were previously governed by the Limitation Act 1980, which imposed a three-year time limit starting from the claimant's 18th birthday. Courts had a discretion to allow claims to proceed out of time and the burden was generally on the claimant to prove that a fair trial was still possible.

Under the Crime and Policing Act 2026, the Limitation Act 1980 will be amended to insert new sections which will:

1 Remove the three-year limitation period. Accordingly, there is now no time period in which a victim of child sexual abuse must pursue a civil claim.

2 Put the burden on the defendant to satisfy the court that it is not possible for a 'fair hearing' to take place.

The changes apply only to civil personal injury claims arising from child sexual abuse. They do not apply to other forms of abuse, such as neglect or physical abuse. Further, the changes do not apply to any claims which have been settled or adjudicated upon by the court.

While the burden now shifts to defendants to show a fair hearing is not possible under the Act, even prior to its introduction, defendants had an evidential burden to show that a fair hearing was not possible. It therefore remains to be seen the extent to which this materially changes the approach taken by defendants. Further, it is likely judicial guidance will be required on the interpretation of what constitutes a 'fair hearing' and whether existing judicial guidance in civil abuse claims will still apply.



Limitation in abuse claims – AB & Ors v Leicestershire County Council: the present and the future?

On 17 February 2026, the High Court of Justice handed down a judgment that it would not be equitable to disapply the limitation period in respect of claims arising from alleged physical and sexual abuse taking place at a children's home.

Patrick Williams, Associate Solicitor in the Keoghs Specialist Abuse team, discusses the decision in *AB & Ors v Leicestershire County Council* [2026] EWHC 331 (KB) and considers the relevant issues against the background of the new limitation laws for child sexual abuse claims in England & Wales.



Author:
Patrick Williams
Associate



Background

The three claimants each alleged that in the 1980s they were the victims of physical and sexual abuse at The Beeches Children's Home, Leicester Forest East ('the Beeches'), by Mr Frank Beck, who was the officer in charge of the home, and Mr Greville Janner MP (as he then was), who is alleged to have been a frequent visitor.

The defendant denied that the claimants were victims of the alleged abuse and that the claims were statute barred.

Mr Beck was a former marine and had worked in children's homes in Leicestershire since 1973. In November 1991 he was convicted of 17 offences including buggery and rape and sentenced to life imprisonment. He died in prison in May 1994.

Mr Janner was called to the Bar in 1954 and was elected MP for the constituency of Leicester North West in 1970 and for Leicester West from 1974 until 1997. Allegations of sexual abuse against him began to slowly accumulate over a very long period of time, but it was not until 2015 that he was charged with 22 counts of indecent assault and buggery against young complainants between 1963 and 1988. Mr Janner died in December 2015 before his trial had begun and therefore was never convicted.



▶ AB

It was alleged by AB that on a number of occasions he disclosed the abuse to his social worker, but she told him to stop being silly. He also alleges that he told the police about the abuse when on various occasions they picked him up after he absconded from the Beeches but he was not believed.

Further, AB was interviewed by the police in October 1990 and provided a statement in respect of Mr Beck's physical and sexual assaults on other children at the Beeches but did not mention any assaults against him. It was not until 2015 that he disclosed the assaults against him to the police.

▶ Wayne Phillips

Mr Phillips alleged that he reported only the physical abuse to his social worker at the time, and to the police either when he was arrested or had absconded from the Beeches, but he says nothing ever came of it. When he was approached by the police in May 1990 in respect of their investigation into Mr Beck, he reported the physical abuse but not the sexual abuse. It further appears that around this time he made a successful claim in respect of the physical abuse alleged against Mr Beck. It was not until July 2015 when he himself was serving a custodial sentence at HMP Ryehill that he disclosed to police the alleged sexual assaults at the Beeches.

▶ Timothy Betteridge

Mr Betteridge previously brought a claim against the defendant alleging that he was sexually and physically abused by Mr Beck when he was at the Beeches. The defendant admitted liability and settled his claim in 1996. Therefore, this claim related only to additional sexual abuse alleged to have been committed against him by Mr Janner. It appears that he first reported the alleged sexual abuse by Mr Janner to police in 2015 when others were making complaints against him.



Judgment

Judgment was given pre-Crime and Policing Act 2026. Accordingly, while Mr Justice Turner acknowledged the presence of the Crime and Policing Bill (as it then was) he made clear that the limitation issue was to be determined in accordance with the law at that time.

In his judgment, the death of Mr Janner was considered to have a significant impact on the cogency of evidence as a whole, which was inadequately mitigated by the existence of any compensating contemporaneous documentary evidence or by the combined recollections of those who worked with him at the relevant time. He also considered the length of the delay in bringing these claims (up to 45 years) to be considerable.

Accordingly, having regard to the delay, the evidence adduced or likely to be adduced by the claimant or the defendant was less cogent than if the action had been brought within the time allowed. In particular:

- The passage of time inevitably rendered it significantly harder to obtain evidence from staff (most of whom were deceased) or former residents about any specific interactions between Mr Beck and AB and Mr Phillips. Neither of these claimants nor the defendant called any witnesses either to corroborate or refute the individual allegations made.
- The delay had significantly impaired the cogency of the evidence to assist the court to get to the truth. In particular, both Beck and Janner were now deceased so it was no longer possible to test the allegations. While the court acknowledged that Mr Beck's credibility would have been limited had he still been alive, the court referenced two cases in which Keoghs had been instructed, *Murray v Devenish* and *FXF v Ampleforth*, in which it was found that, while the alleged abusers would have had a case to answer, their deaths had undeniably disadvantaged the defendant.
- There was no contemporaneous record of any complaint made by any of the three claimants of the abuse alleged to have been perpetrated upon them by either Mr Beck or Mr Janner. A substantial volume of material had been retained, including social services records and day books relating to AB and Mr Phillips, but a significant quantity of other documentation was no longer available. However, the defendant admitted that its responses to complaints – particularly from external social workers with respect to the conduct of Mr Beck – were inadequate. Accordingly, in his judgment Mr Justice Turner attached little weight to the absence of such records.
- The very long passage of time between the alleged abuse and the assessment of the medical experts had rendered the task of assessing causation more difficult and had contributed to genuine and important differences in views on the issue between the psychiatrists.

Having taken all of the above into account, Mr Justice Turner concluded that in respect of all claims by all three claimants against both Mr Beck and Mr Janner that it would not be equitable to disapply the primary limitation period and allow their claims to proceed.

Application to the future?

The Crime and Policing Act 2026, which received Royal Assent on 29 April 2026, will amend the Limitation Act 1980 to remove the three-year limitation period in personal injury claims arising from child sexual abuse and put the burden on the defendant to satisfy the court that it is not possible for a 'fair hearing' to take place.

While the judge in *AB & Ors v Leicestershire* was required to assess the claim on the law as it stood pre-Crime and Policing Act 2026, considering the specific factors of this case and the judge's findings, it would seem very likely the outcome on limitation would still have been the same.

Defendants already have an evidential burden to discharge to show that a fair trial is no longer possible. While under the new law, the claimant could not be criticised for the length of the delay itself, the effect of that delay will remain a significant factor to demonstrate that a fair hearing cannot take place. In this respect, as illustrated in this case, relevant factors to be considered when determining whether a fair hearing can take place will undoubtedly rely upon common law factors as illustrated in *Murray and FXF* to include the deaths of the alleged perpetrators, the nature and extent of previous disclosures of the alleged abuse, or in the alternative where no previous disclosure is made despite having the opportunity to do so, the impact of delay upon the cogency of both the claimant and defendant evidence, the availability and recollection of witness evidence so long after the alleged events, and the absence of contemporaneous records.

It follows that limitation remains and is likely to remain a valid defence in appropriate cases where the effect of delay severely prejudices a fair hearing taking place.

Damages in abuse claims: Judicial College Guidelines 18th Edition

The 18th edition of the Judicial College Guidelines has now been released with several updates being made relating to both the level of guideline damages as well as new aggravating factors leading to an award of damages in abuse claims.



Author:
Ian Carroll
Partner and Head of Abuse team

Updated brackets

Category	17th Edition	18th Edition	Increase (approx.)
Severe	£109,830 - £183,050	£129,920 - £197,440	+£20,000 (lower), +£14,000 (upper)
Moderately Severe	£54,920 - £109,830	£59,450 - £129,920	+£4,500 to +£20,000
Moderate	£25,100 - £54,920	£27,170 - £59,450	+£2,000 to +£4,500
Less Severe	£11,870 - £25,100	£12,850 - £27,170	+£1,000 to +£2,000

The new brackets essentially reflect inflationary uplifts but there have been larger proportional increases in both the severe and moderately severe brackets. This would appear to give further recognition to the more serious cases in which there are greater psychiatric consequences and long-term effects of abuse.

The new edition also now specifically includes a new factor to be taken into account when valuing general damages, namely “whether any images have been published”, thus effectively embedding image-based abuse further into the guidelines.

New aggravating factors

The 18th edition also introduces new aggravating factors to be taken into account when assessing any additional award for injury to feelings. These include:

- the person’s age at the time of the abuse,
- the perpetrator’s lack of remorse; and
- the conduct of the litigation, including conduct such as refusing to engage with the injured party’s legal representative, failing to respond to correspondence, and culpable failure to make timeous payment of any interim payments ordered.

This change now places some emphasis on damages being awarded not just for the abuse and the consequences of the same, but any additional trauma which may be caused by the subsequent criminal and civil claim processes.

However, it is difficult to envisage circumstances in which an institutional defendant could be liable for additional damages for a perpetrator’s lack of remorse, particularly when it is only likely to be vicariously liable for the actions of that perpetrator on a no-fault basis. Further, the conduct of the litigation has always been a relevant factor in terms of potential costs consequences so defendant organisations should continue to conduct litigation appropriately and efficiently.

Finally, it is still the case that these are guidelines only and the assessment of any appropriate award is for the courts to decide.

Government proposes specific Child Criminal Exploitation legislation in Crime & Policing Bill

The Crime & Policing Bill had its second reading in the House of Lords in October 2025. Within this, the Government has proposed specific legislation targeting child criminal exploitation. Following the second reading, the Children's Commissioner has criticised the much-needed legislation, pointing to loopholes that are likely to be exploited by perpetrators.



Author:
Anna Churchill
Associate



What is child criminal exploitation?

Child criminal exploitation (often referred to as 'CCE') is the exploitation of children for criminal gain; occurring when an adult uses a child to commit crimes for them. Often, the perpetrators of these crimes are members of gangs or organised crime organisations, and the victims are vulnerable children. Often, perpetrators groom and exploit children into committing crimes to avoid detection and/or conviction for themselves or other adult members of the gang.

Child criminal exploitation is particularly complex as the victims often do not view themselves as such and may believe they are carrying out the criminal acts of their own volition. The children involved therefore often face punishment instead of support and are themselves criminalised.

As there is no statutory definition of child criminal exploitation and no specific crime at present, it is difficult to obtain data about how widespread it is. Current estimates show that between 2023-2024, 14,500 children were identified as at risk of or involved in child criminal exploitation. However, due to the very nature of child criminal exploitation, many victims will not be known to authorities, so this figure is likely to be underestimated.

The proposals in the Crime & Policing Bill

The Government's Crime & Policing Bill was first introduced to the House of Commons on 25 February 2025. The second reading in the House of Lords took place on 16 October 2025, and the committee stage commenced on 10 November.

Part 4 of this Bill provides the new legislation regarding child criminal exploitation. It will create a standalone offence of child criminal exploitation which will make it a crime for an adult (defined as anyone aged 18 or over) to use a child (who is under 18) to commit crime or to engage in conduct toward the child with the intention of causing them to commit a crime. Conviction will carry a maximum penalty of 10 years' imprisonment, a fine, or both.

Furthermore, the Bill introduces child criminal exploitation civil preventative orders, to prevent exploitative conduct from occurring or reoccurring. These orders give the Court powers to restrict the actions of a person who is at risk of committing or recommitting child criminal exploitation where such an order is necessary to protect children. For example the Court could impose restrictions on an adult from contacting certain individuals or attending a specific address. Breach of this order is a criminal offence carrying a maximum penalty of 5 years' imprisonment. Such orders are available at the conclusion of criminal proceedings regarding the offence of child criminal exploitation or without a criminal trial, on application by the police.

The Secretary of State also has the power to produce statutory guidance in support of the new offences and to ensure consistency in the application of the legislation. Chief police officers and the NCA will have a duty to have due regard to this guidance.

Criticism by the Children's Commissioner

Dame Rachel De Souza, Children's Commissioner, has welcomed specific legislation to deal with child criminal exploitation due to its growing prevalence and concerns regarding the criminalisation of victims. However in a response to the Bill on 16 October 2025, she criticised the legislation in its current form.

A particular concern is that the new offence allows a perpetrator to escape conviction if the child is over 12 and the perpetrator 'reasonably believed' they were an adult. This provides a defence to an offender who can claim that they believed the child was older than they were.

The Children's Commissioner is concerned that this would result in similar issues as those that arise in child sexual exploitation cases, where perpetrators often allege that they believed the child was over 16, and in doing so can avoid prosecution for sexual offences against the children they have groomed. Furthermore, there is a risk of victim blaming - if the perpetrator uses the child's behaviour and/or looks to suggest that they felt they were an adult and therefore avoid conviction.

Dame De Souza calls for national strategy and statutory guidance on child criminal exploitation, bringing together police, social services, education and health.

Keoghs comment

It is clear that any legislation and strengthening of laws surrounding child criminal exploitation is necessary and positive for vulnerable victims. However, there is an opportunity to close the loopholes seen in relation to child sexual exploitation convictions and it would be a shame for this new legislation to simply bring child criminal exploitation into line with child sexual exploitation and miss the opportunity to further protect vulnerable children.

Keoghs await developments and the final stages of this Bill with interest.

Online Safety Act 2023: AI and Image-Based Abuse Claims

Patrick Williams considers the forthcoming changes to the Online Safety Act 2023 (“the Act”) in relation to the creation of non-consensual images and child sexual abuse material using AI tools, and the impact on abuse claims in relation to the developing area of image-based abuse.



Author:
Patrick Williams
Associate

On 12 January 2026, the UK's Independent online safety watchdog, Ofcom, announced that it had opened a formal investigation into social media platform X under the Act, to determine whether it has complied with its duties to protect people under the Act.

The investigation was brought about by concerning reports that the "Grok AI chatbot account" on X was being used to create and share images of people, including children, of an intimate or pornographic nature.

Ofcom therefore decided to open their investigation to establish whether X has failed to comply with its legal obligations under the Act to:

- assess the risk of people in the UK seeing content that is illegal in the UK, and to carry out an updated risk assessment before making any significant changes to their service;
- take appropriate steps to prevent people in the UK from seeing 'priority' illegal content - including non-consensual intimate images and child sexual abuse material;
- take down illegal content swiftly when they become aware of it;
- have regard to protecting users from a breach of privacy laws;
- assess the risk their service poses to UK children, and to carry out an updated risk assessment before making any significant changes to their service; and
- use highly effective age assurance to protect UK children from seeing pornography.

On 14 January 2026, X confirmed that it had implemented safety measures to prevent the Grok account from being used to create intimate images of people.

Online Safety Act 2023

The Act came into force on 25 July 2025 and intended to protect children and adults online; it created a range of new duties for social media platforms and technology companies by making them legally responsible for the content they host as well as user safety on their platforms.

However, despite the implementation of a number of new duties and standards to be complied with, the Act currently does not specifically mention the use of AI products. While it is illegal to share intimate, non-consensual images, including "deepfakes", it is currently not an offence under the Act to ask AI to create such images. Therefore the UK Government has announced its intentions to swiftly bring into force a new law which will make it an offence to create such

images using an AI tool as well as amending existing law to create an offence for companies to supply the tools designed to make them.

Commentary

Image-based abuse claims are now being made more often – the first judgment concerning an image-based abuse claim was handed down on 27 February 2023 in the case of *FGX v Gaunt* [2023] EWHC 419 (KB). The alleged circumstances were that the claimant discovered that her partner had concealed a camera in their bathroom and had uploaded intimate images of her online, with a photo of her face, for which he had obtained payment from pornographic websites. The claimant suffered PTSD as a result. Thornton J presiding over the case considered the claim to be one of image-based abuse and the impact on the claimant in such circumstances akin to the impact of sexual abuse, notwithstanding the abuse being image-based and not physical. Accordingly, general damages were awarded at £60,000 under Section C of Chapter 4 of the Judicial College Guidelines 2022 and within the "moderate" bracket, for cases where the claimant's prospects of recovery with professional help are better but still likely to suffer from significant disability for the foreseeable future.

Since, and likely at least in part as a result of, the case of *FGX v Gaunt*, the 17th edition of the Judicial College Guidelines released on 5 April 2024 for the first time included image-based abuse within its definition of "abuse". The Guidelines themselves refer to a "small cluster of decisions concerning damages for sexual abuse, including image-based abuse ... which has led to ... adjustments to the brackets". As these still remain an emerging abuse claim, reported damages awards are rare in this area, therefore the only cases which the Judicial College could be referring to are *FGX v Gaunt* and possibly the claim made by Georgia Harrison, who successfully sued her ex-partner, Stephen Bear, for general damages totalling £120,000 after he shared sexually explicit images of her online without her consent.

The development of AI products to have the ability to create non-consensual images and child sexual abuse material is another extension of image-based abuse, whereby a user is able to manipulate the AI tool to create such images and therefore presents the same risks of image-based abuse. Accordingly, it is entirely possible that in respect of image-based abuse claims we may also start to see claims made in circumstances where individuals have created such materials with the use of AI.

Government publishes policy paper: Renewing fostering – homes for 10,000 more children

In February 2026, the Government published a policy paper: *Renewing fostering – homes for 10,000 more children*. This paper sets out the Government's plan to improve foster services by reversing the sharp decline in foster parents and rebuilding a fostering system capable of providing 10,000 additional homes for children in England.



Author:
Anna Churchill
Associate



A declining number of foster placements is a significant issue because fewer placements lead to increased use of unregulated settings, higher instability and increased safeguarding risk.

The paper identifies several problems within the current foster care system:

- A decade long decline in foster carers, leaving many children without suitable placements
- Growing pressure on local authorities, who struggle to find suitable homes for children
- Inconsistency in how fostering is delivered across England
- Complex rules and processes that can deter potential carers

A future is envisioned where every child who needs foster care has access to a stable, loving home, and foster carers are well supported, valued and retained. An increase in available foster placements means that children who cannot remain at home or live with their wider family can, where appropriate, remain in their local area and maintain their family relationships. The system will be simplified, with greater regional collaboration and innovation to improve outcomes for children.

To achieve this, the Government has set out a five stage Action Plan:



1 National scale actions to expand fostering

This includes a nationwide communications campaign to raise awareness of fostering and ensure that prospective foster carers clearly understand what is involved and what will happen when they apply. There will be a focus on increasing capacity in areas with the greatest shortages of foster carers, reducing reliance on emergency placements which can increase safeguarding risks.

2 Enhanced regional collaboration

There will be stronger collaboration between local authorities, with shared approaches to recruitment, training and placement planning.

3 Innovation to improve outcomes

The Government will encourage new models of care and support to strengthen relationships, improve stability and enhance outcomes for children and young people.

4 Stronger support around foster families

There will be improved wraparound support for carers and children, as well as enhancements to training, supervision and crisis support. Improved support may also reduce the likelihood of allegations escalating due to miscommunication or unmet need.

5 A simpler rulebook

Regulations and guidance around foster care will be streamlined, reducing unnecessary bureaucracy and ensuring the rules prioritise trusted, stable relationships.

The Consultation and the Focus on Allegations of Abuse

The first stage of this programme was a consultation on fostering reform, looking at proposed changes to the assessment of foster carers and the handling of allegations of abuse.

The consultation proposes significant reform to the way allegations of abuse and standards of care concerns are handled, with the aim of creating a more proportionate, transparent and consistent national approach. The Government recognises that allegations can be stressful and disruptive for foster carers and children and wants to ensure that there is better support for both children and carers.

A key proposal is the introduction of a clear distinction between allegations of abuse and standards of care concerns. This distinction is intended to prevent minor practice issues being escalated into formal safeguarding investigations, which can be distressing for carers and destabilising for children. For abuse related allegations, the proposals emphasise faster decision making, clearer communication, and improved support for both the child and the carer. Suggested reforms include only removing children where there is a safeguarding concern or where the child requests to be moved, and ensuring faster and more transparent investigations.

There have also been two calls for evidence relating to the reforms, including one seeking the views of children and young people themselves. Including young people's views at this stage reflects a wider shift towards embedding lived experience in safeguarding reform.

The consultation and calls for evidence closed on 17 March.

Comment

The Government has launched a strategic, system wide plan aimed at rebuilding fostering provision in England, improving consistency, ensuring access to the most appropriate homes for children, and strengthening the way allegations of abuse within foster placements are managed.

For those involved in safeguarding, risk management and abuse related claims, the proposed reforms — particularly the clearer categorisation of concerns and the emphasis on proportionality — may have significant implications for how allegations are investigated,

recorded and defended. If implemented, the reforms could reduce unnecessary escalation, improve evidential clarity, and support more consistent decision making across local authorities and fostering agencies.

Keoghs will provide further updates as the consultation and reforms progress.



Vicarious Liability and Grooming Related Abuse Claims - JWE v LGBT Youth Scotland CSOH 2026

JWE alleged that when he was a vulnerable 15 year old, he attended a youth group run by LGBT Youth Scotland (LGBTYS). He claimed that during his attendance he was groomed by staff members who gave him cigarettes, alcohol, and false ID, introduced him to adult venues, and later met older men who sexually abused him.



Author:
Georgia Wilkie
Paralegal



Author:
Heather Morrison
Solicitor

Background

JWE raised an action against LGBTYS . The action for damages was based on the alleged failure of LGBTYS to safeguard him; that they were vicariously liable for the acts of their employee SG, who took him to adult venues and introduced him to older men who sexually abused him.

The case called for debate on preliminary issues (strike out) before Lord Braid. The defendant initially sought dismissal of the case, however, at the hearing the issues at debate were limited to:-

1

Whether Scots law recognised the tort (delict) of grooming.

2

Whether the claimant had relevantly pled that the defendant is vicariously liable for the acts of its employees in grooming the claimant and introducing him to exploitative environments.

3

Whether the defendant could be liable for the acts of third parties (i.e the sexual assaults by older men).

Grooming

The claimant claimed that he was “groomed” by staff who supplied cigarettes, alcohol, and introduced him to adult venues. As a result of this grooming, he was ultimately subjected to assaults.

The claimant accepted that there was no authority which demonstrated the existence of a duty not to groom another person, or a duty not to introduce another person to exploitative environments. However, SG’s grooming of the claimant and his introduction of him to adult venues amounted to a breach of duty. SG’s conduct actively created the circumstances in which third party males were able to assault the claimant. This is not a case of mere omission; rather, SG actively encouraged the claimant into situations of obvious risk.

Grooming is a criminal offence; however, Scots law does not currently recognise grooming as a tort. However, nonconsensual sexual activity is an actionable civil wrong, and so if sexual activity arose from grooming, there would be an issue relating to consent. Accordingly, the court ought to hold that a sexual assault had happened.

If the court did accept that a tort of grooming ought to or indeed does exist, the extent to which it arose in the present case and whether there had been any fraud or deceit amounting to a breach of duty, was a matter for evidence.

Lord Braid accepted that this matter required evidence to be heard before it could be determined, so this aspect should be allowed to proceed to trial.

Vicarious Liability- Close Connection?

The two-stage test for vicarious liability was most recently considered in the case of *Trustees of the Barry Congregation of Jehovah’s Witnesses v BXB*. The first stage looks at the relationship between the parties, and the second stage looks at the close connection between the wrongful act and what the wrongdoer had been employed to do.

It was accepted by the defendant that the first stage of the test was satisfied (proximity of relationship e.g. employment), however, there were issues in relation to stage two (close connection). Were SG’s alleged actions (grooming, supplying alcohol, giving fake ID, introducing the claimant to bars) sufficiently connected to his role?

The defendant accepted that this is a fact sensitive issue. However, there was clearly an insufficiently close connection between the work that the employees were employed to do, and the acts of abuse complained of. None of the acts of abuse were said to have occurred whilst SG was acting in the course of his employment.

The court held that when assessing stage two, the issues are fact sensitive, and the court is required to have regard to “all the circumstances”.

The question of whether LGBTYS are held to be vicariously liable for the acts of their employees can be determined only after the court has heard evidence. This aspect was allowed to proceed to trial.

Liability for Abuse by a Third Party

The claimant sought to impose liability on LGBTYS in respect of the abuse by older men as it was fair and reasonable to impose upon the defendant a duty to have prevented the claimant from being harmed by third party abusers. In addition, the harm arose because of the deliberate introduction by SG to environment and abusers.

The defendant's argued that there was no duty on the defendant to guard against deliberate wrongdoings of a stranger. Generally, the law is reluctant to impose duties on person A to prevent harm by third party C. However, it was accepted that there were certain exceptions to this general rule.

1 where there was vicarious liability.

2 where there was an obligation to supervise the third party.

3 where the defendant created the risk of danger; and

4 where there was an assumption of responsibility.

However, none of the exceptions were applicable in this case.

Lord Braid noted that mere foreseeability of harm alone does not create a duty to protect a person from harm caused by another. However, the House of Lords recognised that the law could impose such duties may arise in certain situations (*Mitchell v Glasgow City Council*). The court must assess whether the circumstances are sufficient to impose a legal duty having regard to the facts and circumstances of each case.

In the matter at hand there was an existing relationship between the claimant and defendant through the youth group.

It follows that, in light of the authorities, it cannot be said that, at this stage, the claimant's case is bound to fail. A decision as to whether any liability on the part of the defendant extends to the acts of third parties can only be made after evidence has been led.

The matter will now proceed trial.

Comment

The courts are reluctant to dismiss sensitive claims at a preliminary stage without giving the claimant the opportunity to lead evidence in support of their case.

In JWE, the court has not yet determined whether grooming constitutes a separate actionable wrong (delict/tort). Grooming is often a multistage process

which occurs when person builds a relationship with a child, young person or vulnerable adult to abuse or manipulate them. The process of grooming occurs over time and is non-physical harm. Whether that constitutes a specific tort in the absence of a physical assault will be determined by evidence in court.

Judicial guidance on the assessment of special damages in abuse claims - *DBAK v The Governors of the Fettes Trust*

In *DBAK v The Governors of the Fettes Trust* [2026] CSOH 5, Lord Young considered damages arising from historical sexual abuse at Fettes College and provided further judicial guidance on the assessment of loss of earnings and pension loss in abuse claims.



Author:
Robbie McAdam
Solicitor

SCHOOL

Introduction

The court was required to determine the level of compensation payable to DBAK, a former pupil who was sexually abused by a teacher while attending Fettes Junior School in the late 1970s.

Liability was admitted. The only issue for determination was quantum, and whether, but for the abuse, DBAK would have performed better at school, obtained a degree, and earned significantly more over his working life.

Background

DBAK claimed that as a result of the abuse he had “switched off” at school and performed poorly in exams. He stated that without the abuse, he would have gone to university and pursued a career in business, therefore his loss of earnings should be calculated on that hypothetical career path on a multiplier/multiplicand basis.

His combined claim for past and future wage loss and pension loss exceeded £2,000,000.

The pursuer had a varied employment history, initially working in hospitality and retail before moving into financial services. He later established a property development business with his wife, which generated fluctuating, though sometimes substantial, profits

Issues in Dispute

Vocational expert evidence explored several alternative career pathways, including average earnings comparisons and senior managerial or director-level roles. Although the pursuer had periods of high income, his overall earnings record fell below the comparator models.

The defenders disputed that the abuse had caused any long term earning disadvantage. They emphasised that the pursuer later achieved entrepreneurial success and argued that his move from financial services into property development was a voluntary career decision, reflecting personal preference and commercial risk. It was not as a result of any limitation caused by psychological injury.

The pursuer also advanced a substantial claim for pension loss, supported by actuarial calculations. While the defenders did not challenge the actuarial methodology, they rejected the assumption that he would probably have pursued salaried employment with occupational pension benefits.

Decision

Lord Young stressed the inherent difficulty in reconstructing hypothetical career trajectories many decades after the events in question. While acknowledging that childhood abuse can have profound psychological consequences, the court reiterated that economic loss claims must be supported by evidence demonstrating a *probable* alternative career path, not one based on aspiration or speculation.

The court also attached weight to the fact that the pursuer did not attempt to pursue higher education later in life as a mature student and instead made a voluntary decision to develop a property business.

The pursuer’s siblings were considered relevant comparators, and the court observed that his exam results were not materially out of step with those of his older brother.

Lord Young stated: “*The pursuer would be entitled to compensation for the loss of earning capacity brought about by the effect of the abuse, but the defenders are not liable to underwrite the profitability of his business in poor trading years. ... even if the pursuer had obtained a business degree and embarked on the career modelled [by expert evidence] ... there is a real chance that he would have chosen, at some stage, to move to a self-employed occupation*”

He held that the absence of a business management degree did not place the pursuer at a significant disadvantage in accessing general business management roles.

Accordingly, Lord Young refused the claims for special damages (past and future earnings and pension loss) and made an award for general damages only.

Comment

This decision highlights the evidential & causation challenges commonly encountered in historical abuse litigation. Where the court is required to assess the trajectory of a claimant’s life over several decades in an effort to quantify lifelong losses, it cannot engage in speculation. A pursuer must establish a clear causal link between abuse and long-term financial disadvantage.

In this case the court recognised the “free choice” to embark on a chosen career path and noted that even if the pursuer had established, but for the abuse, he would have obtained a business management degree, any award would have been made on a broad brush Blamire basis—and at a much lower level than sought.

This decision builds on the approach taken in *D v The Bishops Conference of Scotland 2022 SLT 816* and *F v Chalmers [2025] CSOH 23*, demonstrating that the court is unlikely to award loss of earnings on a multiplier/multiplicand basis in historic abuse cases.

Keoghs LLP

Registered Office:

2 The Parklands, Bolton, BL6 4SE

E: info@keoghs.co.uk W: keoghs.co.uk F: 01204 677 111

Belfast | Birmingham | Bolton | Bristol | Dublin | Glasgow | Leeds | Liverpool | London | Manchester | Newcastle | Southampton

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