

Title: Limitation Law in Child Sexual Abuse Cases Consultation 2024	Impact Assessment (IA)
IA No: MoJ073/2023	
RPC Reference No: N/A	
Lead department or agency: Ministry of Justice	
Other departments or agencies: N/A	
Date: 15 05 2024	
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: limitationlawconsultation@Justice.gov.uk

Summary: Intervention and Options**RPC Opinion:** N/A**Cost of Preferred (or more likely) Option** (in 2023 prices)

Total Net Present Social Value N/A	Business Net Present Value N/A	Net cost to business per year N/A	Business Impact Target Status
			Not a regulatory provision

What is the problem under consideration? Why is government action or intervention necessary?

Limitation law sets time limits within which a party must bring a claim, or give notice of a claim, to the other party in a legal dispute. The present law on limitation in England and Wales is primarily contained in the Limitation Act 1980 which sets a range of time limits for various types of civil claims. Child sexual abuse claims are normally treated as personal injury claims and are usually subject to a three-year limitation period. This means that claims must be brought within three years of the abuse happening or the victim having knowledge of the abuse or alternatively, when the victim attains the age of 21 if they were under 18 when the abuse occurred.

The Independent Inquiry into Child Sexual Abuse in England and Wales (the Inquiry) was established in 2015 to carry out a wide-ranging review into historical child sex abuse. In its final report the Inquiry recommended that the UK Government makes changes to legislation in order to ensure: the removal of the three-year limitation period for personal injury claims brought by victims and survivors of child sexual abuse in respect of their abuse; and the express protection of the right to a fair trial, with the burden falling on defendants to show that a fair trial is not possible. These provisions should apply whether or not the current three-year period has already started to run or has expired, except where claims have been dismissed by a court or settled by agreement. They should, however, only apply to claims brought by victims and survivors, not claims brought on behalf of victims and survivors' estates. The Government's response to the Inquiry agreed to publish a consultation paper exploring options on how the existing judicial guidance in child sexual abuse cases could be strengthened as well as setting out options for the reform of limitation law in child sexual abuse cases.

What are the policy objectives of the action or intervention and the intended effects?

The objective is to gather the views of stakeholders and other interested parties regarding the options on a) how the existing judicial guidance in child sexual abuse cases could be strengthened and b) the reform of limitation law in child sexual abuse cases. The Government will consider the next steps following the consultation.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- **Option 0** – Do Nothing. Make no change to the law of limitation or to judicial guidance
- **Option 1** - Complete removal of the limitation period in child sexual abuse cases
- **Option 2** - Reverse the burden of proof in child sexual abuse cases
- **Option 3** - Codify existing judicial guidance
- **Option 4** - Allow the reopening of claims that have already been adjudicated or settled
- **Option 5** – Extend the definition of abuse (beyond sexual abuse)
- **Option 6** – Adjust the factors in Section 33 of the Limitation Act 1980 in relation to Child Sexual Abuse Cases
- **Option 7** - An extended limitation period for child sexual abuse cases
- **Option 8** - Procedural Reform

The Government's opening position, ahead of consultation, is that it supports options 2 and 3. These options take account of the exceptional nature of child sexual abuse while respecting the need for finality and certainty.

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	Micro No	Small No	Medium No	Large No

What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A	Non-traded: N/A
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Will the policy be reviewed? It will not be reviewed.

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible:

Lord Bellamy KC

Date:

15 May 2024

Summary: Analysis & Evidence

Policy Option 1

Description: Complete removal of the limitation period in child sexual abuse cases

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	Optional	Optional	Optional

Description and scale of key monetised costs by 'main affected groups'

Measuring the scale and nature of child sexual abuse is difficult because it is usually hidden from view. Victims often feel unable to report their experiences and adults are not always able to recognise that abuse is taking place. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes. Therefore, it is not possible to calculate the monetised costs of this option.

Other key non-monetised costs by 'main affected groups'

This option may lead to increased costs as more victims and survivors may bring civil claims for compensation against those who they claim have abused them as well as potentially against local authorities and other organisations that have run schools and other residential facilities, organisations that have previously run child migration programmes, religious organisations and settings. Insurance companies and their policy holders may also be impacted by the cost of claims made against organisations that they insure. HM Courts and Tribunals Service, the judiciary and the providers of legal services would be impacted if additional cases are brought to court.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	Optional	Optional	Optional

Description and scale of key monetised benefits by 'main affected groups'

Measuring the scale and nature of child sexual abuse is difficult because it is usually hidden from view. Victims often feel unable to report their experiences and adults are not always able to recognise that abuse is taking place. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes. Therefore, it is not possible to calculate the monetised benefits of this option.

Other key non-monetised benefits by 'main affected groups'

Evidence received by the Inquiry suggested that limitation acted as a barrier at stages of the litigation process. This option would therefore potentially be beneficial to those groups of victims and survivors by removing those barriers so allowing for them to claim compensation.

Key assumptions/sensitivities/risks	Discount rate (%)	N/A
As noted above measuring the scale and nature of child sexual abuse and therefore the total number of victims and survivors is difficult. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes.		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m: N/A			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	

Summary: Analysis & Evidence

Policy Option 2

Description: Reverse the burden of proof in child sexual abuse cases

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)			
			Low:	High:	Best Estimate: N/A	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	Optional		Optional		Optional	
Description and scale of key monetised costs by 'main affected groups'						
<p>Measuring the scale and nature of child sexual abuse is difficult because it is usually hidden from view. Victims often feel unable to report their experiences and adults are not always able to recognise that abuse is taking place. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes. Therefore, it is not possible to calculate the monetised costs of this option.</p>						
Other key non-monetised costs by 'main affected groups'						
<p>This option would see an action for compensation proceed unless the defendant satisfies the court that it is not possible to have a fair hearing or that he/she (the defendant) would be substantially prejudiced were the action to proceed. It may therefore mean that more victims and survivors are able to bring civil claims against those who they claim have abused them as well as potentially against local authorities and other organisations that have run schools and other residential facilities, organisations that have previously run child migration programmes, religious organisations and settings. Insurance companies and their policy holders may also be impacted by the cost of claims made against organisations that they insure. HM Courts and Tribunals Service, the judiciary and the providers of legal services would be impacted if there are additional cases brought to court.</p>						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	Optional		Optional		Optional	
Description and scale of key monetised benefits by 'main affected groups'						
<p>Measuring the scale and nature of child sexual abuse is difficult because it is usually hidden from view. Victims often feel unable to report their experiences and adults are not always able to recognise that abuse is taking place. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes. Therefore, it is not possible to calculate the monetised benefits of this option.</p>						
Other key non-monetised benefits by 'main affected groups'						
<p>Evidence received by the Inquiry suggested that limitation acted as a barrier at stages of the litigation process. Allowing action to proceed unless the defendant satisfies the court that it is not possible for a fair hearing to take place or that he/she (the defendant) would be substantially prejudiced were the action to proceed would therefore potentially be beneficial to those groups of victims and survivors who would otherwise not be allowed to bring a claim for damages.</p>						
Key assumptions/sensitivities/risks					Discount rate (%)	N/A
<p>As noted above measuring the scale and nature of child sexual abuse and therefore the total number of victims and survivors is difficult. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes.</p>						

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m: N/A			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	

Summary: Analysis & Evidence

Policy Option 3

Description: Codify existing judicial guidance

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)			
			Low:	High:	Best Estimate: N/A	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	Optional		Optional		Optional	
Description and scale of key monetised costs by 'main affected groups'						
Measuring the scale and nature of child sexual abuse is difficult because it is usually hidden from view. Victims often feel unable to report their experiences and adults are not always able to recognise that abuse is taking place. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes. Therefore, it is not possible to calculate the monetised costs of this option.						
Other key non-monetised costs by 'main affected groups'						
This option may lead to more victims and survivors bringing civil claims for compensation against those who they claim have abused them as well as potentially against local authorities and other organisations that have run schools and other residential facilities, organisations that have previously run child migration programmes, religious organisations and settings. Insurance companies and their policy holders may also be impacted by the cost of claims made against organisations that they insure. HM Courts and Tribunals Service, the judiciary and the providers of legal services would be impacted if additional cases come to court.						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	Optional		Optional		Optional	
Description and scale of key monetised benefits by 'main affected groups'						
Measuring the scale and nature of child sexual abuse is difficult because it is usually hidden from view. Victims often feel unable to report their experiences and adults are not always able to recognise that abuse is taking place. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes. Therefore, it is not possible to calculate the monetised benefits of this option.						
Other key non-monetised benefits by 'main affected groups'						
Evidence received by the Inquiry suggested that limitation acted as a barrier at stages of the litigation process. This option would see the current guidance provided by the Court of Appeal in <i>Chief Constable of Greater Manchester v Carroll</i> given a statutory footing which would increase the legal force of the guidance and require courts to formally take account of it when considering child sexual abuse cases. It is envisaged that this would provide greater certainty to victims and survivors as well as other parties in child sexual abuse cases.						
Key assumptions/sensitivities/risks					Discount rate (%)	N/A
As noted above measuring the scale and nature of child sexual abuse and therefore the total number of victims and survivors is difficult. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes.						

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m: N/A			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	

Summary: Analysis & Evidence

Policy Option 4

Description: Allow the reopening of claims that have already been adjudicated or settled

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)			
			Low:	High:	Best Estimate: N/A	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	Optional		Optional		Optional	
Description and scale of key monetised costs by 'main affected groups'						
It is likely that some claims that have already been settled will be reopened. However, the data we hold records child sexual abuse claims as personal injury claims. This category includes a broad range of claims other than child sexual abuse claims. Therefore, it is not possible to be definitive about the number of child sexual abuse claims that have already been adjudicated or settled in the civil courts.						
Other key non-monetised costs by 'main affected groups'						
This option may lead victims and survivors who have already settled civil claims related to child sexual abuse to bring those claims for damages back to court. As well as an impact on the court system this would also impact those who they claim have abused them as well as potentially local authorities and other organisations that have run residential schools, organisations that have previously run child migration programmes, religious organisations and settings. Insurance companies and their policy holders may also be impacted by the cost of claims made against organisations that they insure. In addition, HM Courts and Tribunals Service, the judiciary and the providers of legal services would be impacted if there are additional cases brought to court.						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	Optional		Optional		Optional	
Description and scale of key monetised benefits by 'main affected groups'						
Victims and survivors who have already settled their claim would be able to take advantage of any change made to limitation law or judicial guidance on limitation law to potentially reopen their claims.						
Other key non-monetised benefits by 'main affected groups'						
There is an equity argument to be made for this option. After all victims and survivors in settled and already adjudicated cases will have come across the same barriers as other victims and survivors. Furthermore, it may be argued that victims and survivors with settled claims would have acted differently had limitation law or judicial guidance been different when their claim was made.						
Key assumptions/sensitivities/risks					Discount rate (%)	N/A
As a result of the stress and trauma which can be caused by child sexual abuse there may be a reluctance amongst claimants who have already settled to reopen their claim. Furthermore, it is likely that many claimants will be content with the settlement reached when their claim was settled. It is therefore reasonable to assume that, if this option is pursued, not all settled claims will be reopened						

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m: N/A			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	

Summary: Analysis & Evidence

Policy Option 5

Description: Extend the definition of abuse (beyond sexual abuse)

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: N/A
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate	Optional		Optional		Optional
Description and scale of key monetised costs by 'main affected groups'					
<p>Measuring the scale and nature of child abuse, sexual and non-sexual, is difficult because it is usually hidden from view. Victims often feel unable to report their experiences and adults are not always able to recognise that abuse is taking place. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, sexual or non-sexual child abuse or how many potential victims and survivors may be impacted by these changes. Therefore, it is not possible to calculate the monetised costs of this option.</p>					
Other key non-monetised costs by 'main affected groups'					
<p>This option may lead to more victims and survivors being able to bring civil claims for damages as the cohort within scope will be larger than if it were restricted to sexual abuse victims and survivors only. Groups likely to be impacted, apart from victims and survivors, are local authorities and other organisations that have run schools and other residential facilities, organisations that have previously run child migration programmes, religious organisations and settings. Insurance companies and their policy holders may also be impacted by the cost of claims made against organisations that they insure. HM Courts and Tribunals Service, the judiciary and the providers of legal services would be impacted if there are additional cases brought to court.</p>					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate	Optional		Optional		Optional
Description and scale of key monetised benefits by 'main affected groups'					
<p>Measuring the scale and nature of child abuse, sexual and non-sexual, is difficult because it is usually hidden from view. Victims often feel unable to report their experiences and adults are not always able to recognise that abuse is taking place. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, abuse or how many potential victims and survivors may be impacted by these changes. Therefore, it is not possible to calculate the monetised benefits of this option.</p>					
Other key non-monetised benefits by 'main affected groups'					
<p>Evidence received by the Inquiry suggested that limitation acted as a barrier at stages of the litigation process. This option may lead to more victims and survivors being able to bring civil claims for damages as the cohort within scope will be larger than if it were restricted to sexual abuse victims and survivors only.</p>					
Key assumptions/sensitivities/risks					Discount rate
As noted above measuring the scale and nature of child abuse, sexual and non-sexual, and therefore the total number of victims and survivors is difficult. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, abuse or how many potential victims and survivors may be impacted by these changes.					N/A

BUSINESS ASSESSMENT (Option 5)

Direct impact on business (Equivalent Annual) £m: N/A			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	

Summary: Analysis & Evidence

Policy Option 6

Description: Adjust the factors in Section 33 of the limitation Act in relation to Child Sexual Abuse Cases

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	Optional	Optional	Optional

Description and scale of key monetised costs by 'main affected groups'

Measuring the scale and nature of child sexual abuse is difficult because it is usually hidden from view. Victims often feel unable to report their experiences and adults are not always able to recognise that abuse is taking place. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes. Therefore, it is not possible to calculate the monetised costs of this option.

Other key non-monetised costs by 'main affected groups'

This option may lead to more victims and survivors bringing civil claims for damages against those who they claim have abused them as well as potentially against local authorities and other organisations that have run residential schools, organisations that have previously run child migration programmes, religious organisations and settings. Insurance companies and their policy holders may also be impacted by the cost of claims made against organisations that they insure. In addition, HM Courts and Tribunals Service, the judiciary and the providers of legal services would be impacted if there are additional cases brought to court.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	Optional	Optional	Optional

Description and scale of key monetised benefits by 'main affected groups'

Measuring the scale and nature of child sexual abuse is difficult because it is usually hidden from view. Victims often feel unable to report their experiences and adults are not always able to recognise that abuse is taking place. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes. Therefore, it is not possible to calculate the monetised benefits of this option.

Other key non-monetised benefits by 'main affected groups'

Evidence received by the Inquiry suggested that limitation acted as a barrier at stages of the litigation process. Victims and Survivors may therefore benefit because these changes would ensure there is a less onerous burden on claimants claiming for child sexual abuse when applying Section 33 factors.

Key assumptions/sensitivities/risks	Discount rate (%)	N/A
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As noted above measuring the scale and nature of child sexual abuse and therefore the total number of victims and survivors is difficult. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes.

BUSINESS ASSESSMENT (Option 6)

Direct impact on business (Equivalent Annual) £m: N/A			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	

Summary: Analysis & Evidence

Policy Option 7

Description: An extended limitation period for child sexual abuse cases

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)			
			Low:	High:	Best Estimate: N/A	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	Optional		Optional		Optional	
Description and scale of key monetised costs by 'main affected groups'						
Measuring the scale and nature of child sexual abuse is difficult because it is usually hidden from view. Victims often feel unable to report their experiences and adults are not always able to recognise that abuse is taking place. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes. Therefore, it is not possible to calculate the monetised costs of this option.						
Other key non-monetised costs by 'main affected groups'						
This option may lead to more victims and survivors bringing civil claims for damages against those who they claim have abused them as well as potentially against local authorities and other organisations that have run schools and residential settings, organisations that have previously run child migration programmes, religious organisations and settings. Insurance companies and their policy holders may also be impacted by the cost of claims made against organisations that they insure. HM Courts and Tribunals Service, the judiciary and the providers of legal services would be impacted if there are additional cases brought to court.						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	Optional		Optional		Optional	
Description and scale of key monetised benefits by 'main affected groups'						
Measuring the scale and nature of child sexual abuse is difficult because it is usually hidden from view. Victims often feel unable to report their experiences and adults are not always able to recognise that abuse is taking place. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes. Therefore, it is not possible to calculate the monetised benefits of this option.						
Other key non-monetised benefits by 'main affected groups'						
Evidence received by the Inquiry suggested that limitation acted as a barrier at stages of the litigation process. This option would therefore potentially be beneficial to those groups of victims and survivors who may be impacted by those barriers by allowing an extended period for them to make a claim.						
Key assumptions/sensitivities/risks					Discount rate (%)	N/A
As noted above measuring the scale and nature of child sexual abuse and therefore the total number of victims and survivors is difficult. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes.						

BUSINESS ASSESSMENT (Option 7)

Direct impact on business (Equivalent Annual) £m: N/A			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	

Summary: Analysis & Evidence

Policy Option 8

Description: Procedural Reform

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	Optional	Optional	Optional

Description and scale of key monetised costs by 'main affected groups'

Measuring the scale and nature of child sexual abuse is difficult because it is usually hidden from view. Victims often feel unable to report their experiences and adults are not always able to recognise that abuse is taking place. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes. Therefore, it is not possible to calculate the monetised costs of this option.

Other key non-monetised costs by 'main affected groups'

This option may lead to more victims and survivors bringing civil claims for damages against those who they claim have abused them as well as potentially against local authorities and other organisations that have run schools and other residential settings, organisations that have previously run child migration programmes, religious organisations and settings. Insurance companies and their policy holders may also be impacted by the cost of claims made against organisations that they insure. HM Courts and Tribunals Service, the judiciary and the providers of legal services would be impacted if there are additional cases brought to court.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	Optional	Optional	Optional

Description and scale of key monetised benefits by 'main affected groups'

Measuring the scale and nature of child sexual abuse is difficult because it is usually hidden from view. Victims often feel unable to report their experiences and adults are not always able to recognise that abuse is taking place. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes. Therefore, it is not possible to calculate the monetised costs of this option.

Other key non-monetised benefits by 'main affected groups'

This option would potentially be beneficial to victims and survivors as well as defendants by encouraging the early settlement of claims.

Key assumptions/sensitivities/risks	Discount rate (%)	N/A
As noted above measuring the scale and nature of child sexual abuse and therefore the total number of victims and survivors is difficult. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, child sexual abuse or how many potential victims and survivors may be impacted by these changes.		

BUSINESS ASSESSMENT (Option 8)

Direct impact on business (Equivalent Annual) £m: N/A			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	

Evidence Base

A. Background

1. Limitation law set time limits within which a party must bring a claim, or give notice of a claim, to the other party in a legal dispute. The present law on limitation in England and Wales is primarily contained in the Limitation Act 1980 which sets a range of time limits for various types of civil claims for redress or compensation. Child sexual abuse claims are normally treated as personal injury claims and are usually subject to a three-year limitation period. This means that claims must be brought within three years of the abuse happening or the victim having knowledge of the abuse or alternatively, when the victim attains the age of 21 if they were under 18 when the abuse occurred.

Problem Under Consideration

2. The Independent Inquiry into Child Sexual Abuse in England and Wales ('the Inquiry') was established in 2015 to carry out a wide-ranging review into historical child sex abuse. The Inquiry's remit was wide-ranging and as a statutory inquiry it had the authority to compel witnesses and request any material necessary to investigate where institutions failed to protect children in their care.
3. In its final report, published in 2022, the Inquiry recommended that the UK Government makes the necessary changes to legislation in order to ensure: The removal of the three-year limitation period for personal injury claims brought by victims and survivors of child sexual abuse in respect of their abuse; and the express protection of the right to a fair trial, with the burden falling on defendants to show that a fair trial is not possible. These provisions should apply whether or not the current three-year period has already started to run or has expired, except where claims have been dismissed by a court or settled by agreement. They should, however, only apply to claims brought by victims and survivors, not claims brought on behalf of victims and survivors' estates.
4. In evidence to the Inquiry the Government recognised that some child sexual abuse claims were rejected because they were outside the standard limitation period. However, it was also recognised that changes to limitation law in child sexual abuse claims may have an impact on other groups and that ultimately the key focus should be on ensuring a fair trial is able to take place protecting the interests of both claimants and defendants.
5. The Government's response to the Inquiry therefore agreed to publish a consultation paper exploring options on how the existing judicial guidance in child sexual abuse cases could be strengthened as well as setting out options for the reform of limitation law in child sexual abuse cases. This Impact Assessment (IA) supports the consultation paper.

B. Policy Rationale and objectives

Policy Rationale

6. The conventional economic approaches to Government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing Government interventions (e.g. waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more vulnerable groups in society).

7. The rationale for consulting on limitation law in child sexual abuse cases is equity. As set out in our response to the Inquiry, the Government recognises that it might take years, and in many cases decades, for victims and survivors of child sexual abuse to come forward and feel ready to disclose their trauma. We therefore accept the critical issue the Inquiry recommendation on limitation seeks to remedy. This consultation paper sets out options for the reform of limitation law in child sexual abuse cases as well as examining how the existing judicial guidance in child sexual abuse cases could be strengthened.

Policy Objective

8. The objective of the consultation is to ensure that any decisions in response to the Inquiry recommendation on limitation are informed by views of stakeholders and interested parties.

C. Affected Stakeholder Groups, Organisations and Sectors

9. The following groups would be most affected by the options presented in this IA:

- Victims and survivors of child sexual abuse
- Local Authorities
- Religious organisations and settings
- Organisations that have run schools and residential settings for children
- Organisations that have previously run child migration programmes
- Insurance companies
- HM Courts and Tribunals Service
- Judiciary
- Providers of legal services
- Defendants

D. Description of options considered

10. The following options are discussed in this IA:

- **Option 0** – Do Nothing. Make no change to the law of limitation or to judicial guidance
- **Option 1** - Complete removal of the limitation period in child sexual abuse cases
- **Option 2** - Reverse the burden of proof in child sexual abuse cases
- **Option 3** - Codify existing judicial guidance
- **Option 4** - Allow the reopening of claims that have already been adjudicated or settled
- **Option 5** – Extend the definition of abuse (beyond sexual abuse)
- **Option 6** – Adjust the factors in Section 33 of the limitation Act in relation to Child Sexual Abuse Cases
- **Option 7** - An extended limitation period for child sexual abuse cases
- **Option 8** - Procedural Reform

11. The Government's opening position, ahead of consultation, is that it supports options 2 and 3. These options take account of the exceptional nature of child sexual abuse while respecting the need for finality and certainty. Responses to the consultation will be taken into account ahead of the Government's final position being settled.

Option 0 – Do nothing. Make no change to the law of limitation or to judicial guidance on child sexual abuse cases

12. This option would maintain the current scope and time limits for limitation law in child sexual abuse cases. However, the Government recognises, as reinforced by the Inquiry, that it might take years – and in many cases decades – for the victims and survivors of child sexual abuse to come forward and feel ready to disclose their trauma. That is why we accepted the critical issue the Inquiry sought to remedy in calling for reform of limitation law to overcome some of the barriers to justice that are faced by victims and survivors.

Option 1 - Complete removal of the limitation period in child sexual abuse cases

13. This option would fully implement the Inquiry recommendation that the UK government makes the necessary changes to legislation in order to ensure: the removal of the three-year limitation period for personal injury claims brought by victims and survivors of child sexual abuse in respect of their abuse; and the express protection of the right to a fair trial, with the burden falling on defendants to show that a fair trial is not possible. These provisions would apply whether or not the current three-year period has already started to run or has expired, except where claims have been: dismissed by a court; or settled by agreement. They would, however, only apply to claims brought by victims and survivors, not claims brought on behalf of victims and survivors' estates.

Option 2 - Reverse the burden of proof in child sexual abuse cases

14. At present limitation law can operate as a complete procedural defence to a claim of child sexual abuse. If a defendant raises limitation in their defence, then it is incumbent on the claimant to persuade the court to exercise its discretion under section 33 of the Limitation Act to allow their claim to proceed. This option would allow an action to proceed unless the defendant satisfies the Court that it is not possible to have a fair hearing or that he/she (the defendant) would be substantially prejudiced were the action to proceed (thus reversing the normal burden of proof for a claim).

Option 3 - Codify existing judicial guidance from the Court of Appeal in *Chief Constable of Greater Manchester v Carroll*

15. Section 33 of the Limitation Act provides the court with a wide discretion to disapply the primary limitation period of three years if it is equitable to do so and lists a number of circumstances to which the court is to have regard when reaching its decision.

16. In the *Chief Constable of Greater Manchester v Carroll [2017]* the Court of Appeal handed down guidance on application of Section 33 (see Annex A). This option would see that guidance codified on a statutory basis which would increase the factors courts would be required to consider when hearing applications for an extension of time limits.

Option 4 - Allow the reopening of claims that have already been adjudicated or settled

17. If there are to be changes to limitation law or judicial guidance for child sexual abuse cases, then it may be argued that it is only just and equitable that all victims and survivors are allowed to benefit. Under this option claims that have already been adjudicated or settled could be reopened.

18. Different jurisdictions have taken different approaches on this matter and the Government is mindful that certainty and finality are fundamental aspects of the rule of law.

Option 5 - Extend the definition of abuse (beyond sexual abuse)

19. This option would extend any reforms beyond child sexual abuse to also cover other types of abuse such as physical or emotional abuse.

Option 6 - Adjust the factors in Section 33 of the Limitation Act in relation to Child Sexual Abuse Cases

20. Section 33 of the Limitation Act 1980 enables courts to exercise discretion in extending time limits for personal injury claims. This option would see a less onerous burden placed on claimants claiming for child sexual abuse when applying Section 33 factors. For example, rather than go into specific details Section 33 would be adjusted so that if child sexual abuse is stated as a reason for delay in bringing a claim the court must accept this as a valid reason without requiring the claimant to give further details to justify why child sexual abuse caused the delay

Option 7 - An extended limitation period for child sexual abuse cases

21. The three-year limitation period for child sexual abuse cases is a relatively recent development with the time limit previously being a fixed six-year period in most cases. This option asks whether there should be an extended limitation period for child sexual abuse claims and, if so, what it should be.

Option 8 - Procedural Reform

22. There is currently a Pre-action Protocol for Personal Injury Claims, which applies to child sexual abuse claims. It requires a claimant to include sufficient information in the letter of claim for the defendant to assess the merits of the case and its potential value. The defendant is then required to produce a letter of response that admits or denies the claim, with reasons if necessary. Disclosure is also encouraged in order to help clarify or resolve issues in dispute.

23. This option asks whether there should be a bespoke pre-action protocol for child sexual abuse claims

E. Cost & Benefit Analysis

24. This Impact Assessment follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with the His Majesty's Treasury Green Book

25. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in Great Britain with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.

26. The costs and benefits of the options for each policy area are compared to Option 0, the counterfactual or 'do nothing' option.

27. However, in this instance there are no monetised benefits in this IA. This is because measuring the scale and nature of child sexual abuse is not possible because it is usually hidden from view. Victims often feel unable to report their experiences and adults are not always able to recognise that abuse is taking place. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, sexual abuse as a child or how many potential victims and survivors may be impacted by these changes. Therefore, it is not possible to calculate the monetised costs of the options. As a result, in this IA, only a qualitative assessment is made of the impact of each of the options.
28. The objective of the options considered in this IA would be to make changes in the law to allow victims to recover damages in a wider range of cases. However, there is limited evidence as to levels of damages or how these might change as a result of the options considered, in part because such cases are normally considered as part of the wider personal injury claims category. Finally, any damages would constitute a transfer of resources and so are not normally considered by IAs.
29. In summary, it is not possible to conduct a full appraisal of the options considered in this IA.
30. The numbers of victims and survivors seeking damages in the civil courts is likely to be small as many cases will already have been dealt with in the criminal courts. Furthermore, non-recent abuse perpetrators may be deceased or lack the means to pay adequate compensation, and where organisations may have potential liability, they may no longer exist. However, in such circumstances, it may still be possible for victims and survivors to make a claim to the statutory Criminal Injuries Compensation Scheme.
31. Any impact on Legal Aid funding would be marginal as while victims and survivors may be eligible for legal aid this would only be granted through Exceptional Case Funding.

Option 1 - Complete removal of the limitation period in child sexual abuse cases

Costs of Option 1

32. This option may lead to more victims and survivors bringing civil claims for compensation against those who they claim have abused them as well as potentially against local authorities and other organisations that have run schools and other residential facilities, organisations that have previously run child migration programmes, religious organisations and settings. This option therefore would have an impact on costs for these groups.
33. Insurance companies and their policy holders may also be impacted by the cost of claims made against organisations that they insure. It is likely that insurance companies would seek to pass any additional costs to their customers. The costs of insurance to all organisations is therefore likely to rise in the future
34. HM Courts and Tribunals Service, the judiciary and providers of legal services would be impacted if additional cases are brought to court. However, as the expected number of cases is likely to be small (see paragraph 30) these impacts are expected to be marginal.

Benefits of Option 1

35. Evidence received by the Inquiry suggested that limitation acted as a barrier at three stages of the litigation process: taking on claims, settlement and value of claims; and trial. This option would therefore potentially be beneficial to those groups of victims and survivors who may be impacted by those barriers making it easier for them to bring a claim and recover compensation.

Option 2 - Reverse the burden of proof in child sexual abuse cases

Costs of Option 2

36. This option may mean that more victims and survivors are able to bring civil claims for compensation against those who they claim have abused them as well as potentially against local authorities and other organisations that have run schools and other residential facilities, organisations that have previously run child migration programmes, religious organisations and settings.
37. Insurance companies and their policy holders may also be impacted by the cost of claims made against organisations that they insure. It is likely that insurance companies would seek to pass any additional costs to their customers. The costs of insurance to all organisations is therefore likely to rise in the future.
38. HM Courts and Tribunals Service, the judiciary and providers of legal services would be impacted if additional cases are brought to court. However, as the expected number of cases is likely to be small (see paragraph 30) these impacts are expected to be marginal.

Benefits of Option 2

39. Evidence received by the Inquiry suggested that limitation acted as a barrier at three stages of the litigation process: taking on claims, settlement and value of claims and trial. Allowing action to proceed unless the defendant satisfies the Court that it is not possible for a fair hearing to take place or that he/she (the defendant) would be substantially prejudiced were the action to proceed would therefore potentially be beneficial to those groups of victims and survivors who may be impacted by those barriers, so allowing them to bring a claim and recover compensation when they might otherwise be discouraged from bringing a claim.

Option 3 - Codify existing judicial guidance from the Court of Appeal in *Chief Constable of Greater Manchester v Carroll*

Costs of Option 3

40. This option may lead to more victims and survivors bringing civil claims for compensation against those who they claim have abused them as well as potentially against local authorities and other organisations that have run schools and other residential facilities, organisations that have previously run child migration programmes, religious organisations and settings.
41. Insurance companies and their policy holders may also be impacted by the cost of claims made against organisations that they insure. It is likely that insurance companies would seek to pass any additional costs to their customers. The costs of insurance to all organisations is therefore likely to rise in the future.
42. HM Courts and Tribunals Service, the judiciary and providers of legal services would be impacted if additional cases are brought to court. However, as the expected number of cases is likely to be small (see paragraph 30) these impacts are expected to be marginal.

Benefits of Option 3

43. Evidence received by the Inquiry suggested that limitation acted as a barrier at stages of the litigation process: taking on claims, settlement and value of claims and trial. This option would see the current guidance provided by the Court of Appeal in *Carroll* given a statutory footing which would increase the legal force of the guidance and require courts to formally take account of it when considering child sexual abuse cases. It is envisaged that this would provide greater certainty to victims and survivors as well as other parties in child sexual abuse cases when bringing a claim.

Option 4 - Allow the reopening of claims that have already been adjudicated or settled

Costs of Option 4

44. This option may lead victims and survivors who have already settled civil claims related to child sexual abuse to bring those claims back to court and receive higher compensation. This would also impact those who they claim have abused them as well as potentially local authorities and other organisations that have run residential schools, organisations that have previously run child migration programmes, religious organisations and settings.

45. Insurance companies and their policy holders may also be impacted by the cost of claims made against organisations that they insure. It is likely that insurance companies would seek to pass any additional costs to their customers. The costs of insurance to all organisations is therefore likely to rise in the future.

46. HM Courts and Tribunals Service, the judiciary and providers of legal services would be impacted if additional cases are brought to court. However, as the expected number of cases is likely to be small (see paragraph 30) these impacts are expected to be marginal.

47. However, as a result of the stress and trauma which can be caused by child sexual abuse there may be a reluctance amongst claimants who have already settled to reopen their claim. Furthermore, it is likely that many claimants will be content with the settlement reached when their claim was settled. It is therefore reasonable to assume that, if this option is pursued, not all settled claims will be reopened.

Benefits of Option 4

48. Victims and survivors who have already settled their claim would be able to take advantage of any change made to limitation law or judicial guidance on limitation law to potentially reopen their claims and have them reconsidered by the Courts.

Option 5 - Extend the definition of abuse (beyond sexual abuse)

Costs of Option 5

49. This option may lead to more claims for compensation being brought by victims and survivors against those who they claim have abused them as well as potentially against local authorities and other organisations that have run schools and other residential facilities, organisations that have previously run child migration programmes, religious organisations and settings.

50. Insurance companies and their policy holders may also be impacted by the cost of claims made against organisations that they insure. It is likely that insurance companies would seek to pass any additional costs to their customers. The costs of insurance to all organisations is therefore

likely to rise in the future. Under this option these costs could be greater than those for some of the other options in this IA as the potential scope of reform would be greater.

51. HM Courts and Tribunals Service, the judiciary and providers of legal services would be impacted if additional cases are brought to court. However, as the expected number of cases is likely to be small (see paragraph 30) these impacts are expected to be marginal.

Benefits of Option 5

52. Evidence received by the Inquiry suggested that limitation acted as a barrier at three stages of the litigation process: taking on claims, settlement and value of claims and trial. This option may lead to more victims and survivors being able to bring civil claims and recover compensation as the cohort within scope will be larger than if it were restricted to sexual abuse victims and survivors only.

Option 6 - Adjust the factors in Section 33 of the limitation Act in relation to Child Sexual Abuse Cases

Costs of Option 6

53. This option may lead to more victims and survivors bringing civil claims for compensation against those who they claim have abused them as well as potentially against local authorities and other organisations that have run schools and other residential facilities, organisations that have previously run child migration programmes, religious organisations and settings.

54. Insurance companies and their policy holders may also be impacted by the cost of claims made against organisations that they insure. It is likely that insurance companies would seek to pass any additional costs to their customers. The costs of insurance to all organisations is therefore likely to rise in the future.

55. HM Courts and Tribunals Service, the judiciary and providers of legal services would be impacted if additional cases are brought to court. However, as the expected number of cases is likely to be small (see paragraph 30) these impacts are expected to be marginal.

Benefits of Option 6

56. Evidence received by the Inquiry suggested that limitation acted as a barrier at three stages of the litigation process: taking on claims, settlement and value of claims and trial. Victims and Survivors may therefore benefit because these changes would ensure there is a less onerous burden on claimants claiming for child sexual abuse when applying Section 33 factors.

Option 7 – An extended limitation period for child sexual abuse cases

Costs of Option 7

57. This option may lead to more victims and survivors bringing civil claims for compensation against those who they claim have abused them as well as potentially against local authorities and other organisations that have run schools and other residential facilities, organisations that have previously run child migration programmes, religious organisations and settings.

58. Insurance companies and their policy holders may also be impacted by the cost of claims made against organisations that they insure. It is likely that insurance companies would seek to pass

any additional costs to their customers. The costs of insurance to all organisations is therefore likely to rise in the future

59. HM Courts and Tribunals Service, the judiciary and providers of legal services would be impacted if additional cases are brought to court. However, as the expected number of cases is likely to be small (see paragraph 30) these impacts are expected to be marginal.

Benefits of Option 7

60. Evidence received by the Inquiry suggested that limitation acted as a barrier at three stages of the litigation process: Taking on claims, Settlement and value of claims and Trial. This option would therefore potentially be beneficial to those groups of victims and survivors who may be impacted by those barriers by allowing an extended period for them to make a claim.

Option 8 - Procedural Reform

Costs of Option 8

61. This option may lead to more victims and survivors bringing civil claims for compensation against those who they claim have abused them as well as potentially against local authorities and other organisations that have run schools and other residential settings, organisations that have previously run child migration programmes, religious organisations and settings.

62. Insurance companies and their policy holders may also be impacted by the cost of claims made against organisations that they insure. It is likely that insurance companies would seek to pass any additional costs to their customers. The costs of insurance to all organisations is therefore likely to rise in the future

63. HM Courts and Tribunals Service, the judiciary and providers of legal services would be impacted if additional cases are brought to court. However, as the expected number of cases is likely to be small (see paragraph 30) these impacts are expected to be marginal.

Benefits of Option 8

64. This option would potentially be beneficial to victims and survivors as well as defendants by encouraging the early settlement of claims. If this happened, then this would positively impact claimants and potential defendants.

65. HM Courts and Tribunals Service and the judiciary would benefit from a reduction in the number of cases brought to trial if the rates of early settlement were to increase.

F. Assumptions & Risks

66. Measuring the scale and nature of child sexual abuse and therefore the total number of victims and survivors is difficult. As a result, there is no data available to represent the full scale of the issue. We therefore do not know how many people are currently experiencing, or have experienced, sexual abuse or how many potential victims and survivors may be impacted by these changes.

G. Wider Impacts

Equalities

67. An Equality Impact Statement has been completed and will be published alongside this Impact Assessment.

Better Regulation

68. These proposals do not meet the definition of regulation under the Small Business Enterprise and Employment Act 2015.

Environmental Impact

69. There is no direct environmental impact from the policy options presented in this IA.

International Trade

70. No impacts on international trade are expected from the options presented in this IA.

H. Monitoring & Evaluation

71. The Government will respond to the consultation in due course.

ANNEX A

This annex provides further detail of the judgement in the case of *Chief Constable of Greater Manchester v Carroll* which forms the basis for Option 3 in this Impact Assessment.

The guidance handed down by the Court of Appeal in this case stated that:

- Section 33 of the Limitation Act is not confined to a "residual class of cases". It is unfettered and requires the judge to look at the matter broadly.
- The matters specified in section 33(3) are not intended to place a fetter on the discretion given by section 33(1), as is made plain by the opening words "the court shall have regard to all the circumstances of the case", but to focus the attention of the court on matters which past experience has shown are likely to call for evaluation in the exercise of the discretion and must be taken into a consideration by the judge.
- The essence of the proper exercise of the judicial discretion under section 33 is that the test is a balance of prejudice and the burden is on the claimant to show that his or her prejudice would outweigh that to the defendant. Refusing to exercise the discretion in favour of a claimant who brings the claim outside the primary limitation period will necessarily prejudice the claimant, who thereby loses the chance of establishing the claim.
- The burden on the claimant under section 33 is not necessarily a heavy one. How heavy or easy it is for the claimant to discharge the burden will depend on the facts of the particular case.
- Furthermore, while the ultimate burden is on a claimant to show that it would be inequitable to disapply the statute, the evidential burden of showing that the evidence adduced, or likely to be adduced, by the defendant is, or is likely to be, less cogent because of the delay is on the defendant. If relevant or potentially relevant documentation has been destroyed or lost by the defendant irresponsibly, that is a factor which may weigh against the defendant:
- The prospects of a fair trial are important. The Limitation Acts are designed to protect defendants from the injustice of having to fight stale claims, especially when any witnesses the defendant might have been able to rely on are not available or have no recollection and there are no documents to assist the court in deciding what was done or not done and why. It is, therefore, particularly relevant whether, and to what extent, the defendant's ability to defend the claim has been prejudiced by the lapse of time because of the absence of relevant witnesses and documents.
- Subject to considerations of proportionality (as outlined below), the defendant only deserves to have the obligation to pay due damages removed if the passage of time has significantly diminished the opportunity to defend the claim on liability or amount.
- It is the period after the expiry of the limitation period which is referred to in sub-sections 33(3)(a) and (b) and carries particular weight. The court may also, however, have regard to the period of delay from the time at which section 14(2) was satisfied until the claim was first notified. The disappearance of evidence and the loss of cogency of evidence even before the limitation clock starts to tick is also relevant, although to a lesser degree.

- The reason for delay is relevant and may affect the balancing exercise. If it has arisen for an excusable reason, it may be fair and just that the action should proceed despite some unfairness to the defendant due to the delay. If, on the other hand, the reasons for the delay or its length are not good ones, that may tip the balance in the other direction. It is considered that the latter may be better expressed by saying that, if there are no good reasons for the delay or its length, there is nothing to qualify or temper the prejudice which has been caused to the defendant by the effect of the delay on the defendant's ability to defend the claim.
- Delay caused by the conduct of the claimant's advisers rather than by the claimant may be excusable in this context.
- In the context of reasons for delay, it is relevant to consider under sub-section 33(3)(a) whether knowledge or information was reasonably suppressed by the claimant which, if not suppressed, would have led to the proceedings being issued earlier, even though the explanation is irrelevant for meeting the objective standard or test in section 14(2) and (3) and so insufficient to prevent the commencement of the limitation period.
- Proportionality is material to the exercise of the discretion. In that context, it may be relevant that the claim has only a thin prospect of success, that the claim is modest in financial terms so as to give rise to disproportionate legal costs, that the claimant would have a clear case against his or her solicitors, and, in a personal injury case, the extent and degree of damage to the claimant's health, enjoyment of life and employability.
- An appeal court will only interfere with the exercise of the judge's discretion under section 33, as in other cases of judicial discretion, where the judge has made an error of principle, such as taking into account irrelevant matters or failing to take into account relevant matters, or has made a decision which is wrong, that is to say the judge has exceeded the generous ambit within which a reasonable disagreement is possible.