

# RESPONDENT INFORMATION FORM: CONSULTATION PAPER ON REMOVAL OF THE 3-YEAR LIMITATION PERIOD FROM CIVIL ACTIONS FOR DAMAGES FOR PERSONAL INJURY FOR IN CARE SURVIVORS OF HISTORICAL CHILD ABUSE

Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

## 1. Name/Organisation

Organisation Name

Victim Support Scotland

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Merrin

Forename

Nicola

## 2. Postal Address

15/23 Hardwell Close

Edinburgh

Postcode EH8 9RX

Phone 0141 404 7124

Email

nicola.merrin@victimssupportsco.org.uk

## 3. Permissions

I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate  Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate  Yes  No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate  Yes

## CONSULTATION QUESTIONS

B.01 This Annex summarises all the questions that appear in this consultation paper. Respondents should not feel obliged to answer all of them. However, the Scottish Government would appreciate all responses, whether from individuals or from organisations, with views on any or all of these matters.

B.02 Please explain and, where possible, provide evidence for each answer that you give.

### Chapter 5: Proposal to Remove the Application of the Limitation Period to Survivors of Historical Child Abuse Who Wish to Raise Personal Injury Actions

Q.1 Do you agree with our proposal to remove cases relating to historical child abuse from the limitation regime?

Yes

No

Don't know

#### Please set out your reasons:

Victim Support Scotland supports the Scottish Government's position that "the current law in relation to limitation...does not adequately reflect that it is the nature of the abuse that is a barrier to raising a claim within the required period." (p.10 of the consultation paper). There are many reasons why victims of child abuse are unable to pursue civil action against their abuser within the current limitation period of three years. It can often take many years for victims to realise that what has happened to them was in fact abuse, and it is common for abusers to use silencing tactics to ensure that the abuse is kept hidden.

In addition, it can take several years, sometimes decades, for a person to feel able to disclose their abuse due to feelings of shame or embarrassment, the trauma resulting from the abuse, and/or suppressed memories. Because abusers are often figures of authority in the victims' lives, they are regularly left with feelings of fear or mistrust towards authorities, which presents challenges in reporting the abuse or participating in court action. From providing information on the justice system to our service users, VSS is aware that victims rarely possess an adequate understanding of the workings of the Scottish justice systems and their rights in relation to pursuing justice; this is an additional barrier for victims in pursuing civil actions within the current limitation period.

It is our experience that the pursuance of personal injury claims through the civil justice system by victims of child abuse often originates from a desire for access to justice rather than monetary compensation. Many victims tell us that no amount of money can repair the damage caused by the actions of their abuser, and that raising civil action is the only avenue left to them to achieve some sort of justice for the acts that were committed against them. Seeing their abuser compelled to answer the allegations against them coupled with being able to tell the courts of their abuse can bring a form of closure to many victims, especially if there has been insufficient evidence to bring forward a criminal prosecution.

The impact of being denied access to justice through civil means on victims of child abuse should be recognised by the courts and the Scottish Government. The proposals to remove cases of historical child abuse from the limitation regime would provide many more victims with the opportunity to pursue justice through civil means, and accordingly, the psychological and financial benefits of this. This will be in part attributable to an increase in successful legal aid applications, which would enable those without the financial means to pursue their claim.

Q.2 What are your views on how the proposed change in the law may apply to cases which have been raised unsuccessfully on the basis of the current law on limitation?

**Please set out your reasons for your answer:**

It is our view that it would be unfair to allow some victims the opportunity to pursue a personal injury claim against their abuser whilst denying others the same opportunity. It would be inherently unjust for those who were previously denied justice through the current limitation law to be further prevented from accessing justice - VSS believes that all victims should receive equal treatment and fairness within the civil justice system regardless of whether they have already attempted to pursue a personal injury claim.

## **Chapter 6: Application of the Proposed Change in law**

Q.3 Do you agree that child should be defined as someone who has not yet attained the age of 18?

Yes

No

**If no, please explain your reasons:**

Q.4 Do you agree that any definition of 'child abuse' should cover physical, sexual, emotional, psychological, unacceptable practices and neglect?

Yes

No

**If not, why not:**

Q.5 Do you agree that types of care (outlined in Para's 6.9 to 6.11) should be covered?

Yes

No

**If not, why not:**

Q.6 Do you think that the proposed exemption from the limitation regime should be extended to cover all children, not just those abused "in care"?

Yes

No

**If not, why not:**

Q.7 What do you think the impact of implementing these proposals would be in relation to the issues below, where possible please illustrate your answer with figures:-

**Q.7(a) Is it likely that more or fewer actions will be raised?**

We believe it is likely that more actions will be raised, as more victims will be able to pursue claims. The actual number will depend on victims being made aware of their rights in this area.

**Q.7(b) Is it likely that more or fewer cases come to court?**

It is likely that more cases would come to court if these proposals were to be put into effect. Again, this will depend on victims' awareness of their rights.

**Q.7(c) Is it likely that more or fewer cases will be settled out of court?**

No comment

**Q.7(d) Is it likely that cases will require more or less preparation time?**

No comment

**Q.7(e) Is it likely that cases will require more or less court time?**

No comment

**Q.7(f) Can you quantify the benefits for pursuers?**

Although the matter under discussion relates to compensation claims for personal injury caused, Victim Support Scotland does not believe that the benefits for pursuers can be quantified. As previously mentioned in our answer to question 1, many victims pursue civil action for acknowledgement of their abuse, to have their abuser held to account, and for the psychological benefits associated with accessing justice. Similar to criminal injuries compensation, those claiming often tell us that the amount of financial award given is of lesser importance than the acknowledgement of the crime and its impact on them.

**Q.7(g) Can you quantify the benefits for defenders?**

No comment

**Q.7(h) Can you quantify the drawbacks for pursuers?**

Victims who decide to pursue a personal injury claim against their abuser will still need to be aware of the challenges presented by the time that has lapsed in relation to evidence production and quality. In most cases however, civil claims are made with the aim of having their case heard in the first instance, with a general understanding that there is no guarantee of a successful outcome.

We also recognise the challenges for victims in pursuing civil action if the perpetrator is a 'man of straw' and there are no other parties able to meet the claim. In these circumstances, the state-run Criminal Injuries Compensation Scheme is of major significance to victims in being able to provide both recognition of the crime and its impact on them, and compensation for the injuries they have sustained. It is vital that criminal injuries compensation should be available to victims regardless of whether civil action has been pursued; civil action should not be part of the eligibility criteria for access to criminal injuries compensation through the State.

**Q.7(i) Can you quantify the drawbacks for defenders?**

No comment