

## **Written Evidence by Association of Personal Injury Lawyers (BOR0024)**

### **Introduction**

The rationale for the changes proposed in the Bill of Rights Bill include helping to “prevent trivial human rights claims from wasting judges’ time and taxpayer money”<sup>1</sup>. The type of claims dealt with by our members include those brought by bereaved families after the avoidable death of a loved one, or by people who have suffered sexual abuse, physical abuse or serious neglect. These are not “trivial” claims. A legal claim for a breach of human rights can sometimes be the only way in which justice can be secured, or a public body can be held to account for its wrongdoing. There is no justification for making it more difficult for bereaved families or survivors of abuse to make a claim for a breach of human rights, or to receive full compensation.

We welcome the opportunity to respond to the call for evidence from the Joint Committee on Human Rights. Due to the experience and expertise of our members, however, we have restricted our comments to questions 12 and 13 in the call for evidence.

### **Q12. Do you think the proposed changes to bringing proceedings and securing remedies for human rights breaches in clauses 15-18 of the Bill will dissuade individuals from using the courts to seek an effective remedy, as guaranteed by Article 13 ECHR?**

The introduction of a permission stage for human rights claims, which requires claimants to show they have suffered “significant disadvantage”, will send a message from the Government that some breaches of human rights are acceptable. This message could dissuade people from using the courts because they may believe that what happened to them acceptable, when it was not.

Human rights are universal, and not a single breach of those rights should ever be considered acceptable. The proposed permission stage will create situations where people will have their human rights breached, but who will still be denied access to the courts to uphold their rights, or hold the wrongdoer to account. This goes against everything the UK stands for as a modern society, where all UK citizens, regardless how “significantly disadvantaged” they are, should enjoy the same access to justice.

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<sup>1</sup> <https://www.gov.uk/government/news/bill-of-rights-to-strengthen-freedom-of-speech-and-curb-bogus-human-rights-claims>

There is a “significant disadvantage” test for those who wish to take their claims to the European Court of Human Rights, but it does not mean that the same test should be adopted for courts in the UK. The duty of the courts in the UK is to consider all meritorious claims. The duty of the European Court of Human Rights is to act as the court of last resort for all citizens of the 46 member states of the Council of Europe who may have had their human rights breached. As the court of last resort for hundreds of millions of people across the member states, it is to be expected that the European Court of Human Rights would have a higher threshold for cases it considers.

Those who are not dissuaded could still find it difficult to pursue a claim for a breach of human rights because of the permission stage. It will, for example, be yet another barrier which must be passed by survivors of childhood abuse, who already struggle to make a claim because of the current time limit.

Section 7(5) of the Human Rights Act sets the time limit to bring a human rights claim as “the period of one year beginning with the date on which the act complained of took place; or such longer period as the court or tribunal consider equitable having regard to all circumstances”. This one-year time limit applies regardless of the person’s age, unlike in the Limitation Act 1980 for all other personal injury claims. In those circumstances, the limitation period is three years, and for children that limitation period commences when they turn 18.

If survivors do not bring a human rights claim within the one-year deadline in the Human Rights Act, they have to apply to the court for the time limit to be extended. It is rare that the courts will allow any Human Rights Act claim to proceed later than one year. It would, therefore, be inherently unfair to impose even more restrictions on the ability of survivors of abuse to make a claim for a breach of human rights.

**Q13. Do you agree that the courts should be required to take into account any relevant conduct of the victim (even if unrelated to the claim) and/or the potential impact on public services when considering damages?**

The proposals for a court to consider a claimant's relevant conduct, even if unrelated to the claim, risks penalising those whose conduct may be the direct result of the human rights breach to which the claim relates.

The relevant conduct could include a criminal record. This could be particularly detrimental to survivors of childhood abuse. Research has found that people who suffered trauma in childhood, including sexual abuse, are more likely to commit crimes as adults<sup>2</sup>. Other research has found that criminal activity can be adopted as a mechanism to cope with abuse, or even to escape from that abuse. A study from the University of Edinburgh includes an account of a survivor of abuse who began shoplifting in an attempt to get arrested to escape the person who was abusing him<sup>3</sup>.

It can be a very difficult journey for survivors of abuse to speak out about what has happened to them, and it can be equally difficult for them to pursue a claim for a breach of human rights. To then restrict the right to full compensation for those who have spoken out and succeeded in their claims, because of behaviour which could be the direct result of what happened to them, would be simply abhorrent.

**About APIL**

The Association of Personal Injury Lawyers (APIL) is a not-for-profit campaign group which has been committed to injured people for more than 30 years. Our vision is of a society without needless injury but, when people are injured, they receive the justice they need to rebuild their lives. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

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<sup>2</sup> <https://www.ed.ac.uk/news/2022/vulnerable-children-more-likely-to-offend-as-adult>

<sup>3</sup> Nelson, S. (2009) *Care and Support Needs of Men Who Survived Childhood Sexual Abuse: Report of a qualitative research project* The University of Edinburgh

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