

Status:  Positive or Neutral Judicial Treatment

AB and Others   **and**  **v Nugent Care Society**

 **v Wirral Metropolitan Borough Council**

Case Nos: B3/2009/0302 and 0220

Court of Appeal (Civil Division)

29 July 2009

[2009] EWCA Civ 827

2009 WL 2207412

Before: Lord Clarke of Stone-cum-Ebony MR Lord Justice Waller and Lord Justice Maurice Kay

Date: 29/07/2009

On Appeal from the High Court of Justice Queen's Bench Division

The Hon Mr Justice Irwin

1997 A No 03700/3710 and 801



And On Appeal from the Liverpool County Court

His Honour Judge Main QC

MA3 13631

Hearing dates: 5, 6 & 7 May 2009

Representation

Richard Maxwell QC and Aswini Weeraratne (instructed by Abney Garsden McDonald Solicitors) for the Claimants   **and** 

Justin Levinson (instructed by Pannone for the Claimant .

Edward Faulks QC and Nicholas Fewtrell (instructed by Hill Dickinson LLP) for both Defendants.

Judgment

Lord Clarke of Stone-cum-Ebony MR:

This is the judgment of the court, to which each member has contributed.

Introduction

1 These appeals raise questions as to the correct approach to the application of [section 33 of the Limitation Act 1980](#) in the light of the decision of the [House of Lords in A v Hoare \[2008\] UKHL 6, \[2008\] 1 AC 844](#) . Each appeal arises out of allegations of historic sexual abuse at a children's home or homes. We heard the appeals in two cases together.

2 In the appeals in AB and Others v Nugent Care Society ('the *Nugent Care Society* case') there

are three relevant claimants, namely [Name Redacted] and [Name Redacted]. They were all at St Aidan's children's home in Widnes at various times. [Name Redacted] was there between [DPA] 1967 and [DPA] 1968, [Name Redacted] from [DPA] 1971 to [DPA] 1972 and [Name Redacted] from [DPA] to [DPA] 1979 and from [DPA] 1979 to [DPA] 1980. The defendant is a Roman Catholic organisation which, either by itself or its predecessors in title, owned and managed the homes. The appeal arises in a group action in which there are a total of over 50 claimants, some of whom were at St Aidan's and some of whom were at a similar institution called St Vincent's in Formby. Both had varied legal status over the years, moving from being approved schools for the purposes of the [Criminal Justice Act 1948](#) to become Community Homes with Education under the [Children and Young Persons Act 1969](#). As Irwin J put it at [5] of his judgment, their function remained very similar, namely receiving boys who got into trouble with the law or had significant family problems or both. A significant number of former members of both institutions have been convicted of sexual abuse of children in their care. St Aidan's closed in 1982 and St Vincent's in 1989.

3 In the appeals in [Name Redacted] v Wirral Metropolitan Borough Council ('the *Wirral* case') the claim arises out of alleged sexual abuse in the 1970s in one of the defendant authority's care homes. These appeals too are from a determination of a preliminary issue. It is convenient to consider the appeals separately, although some of the relevant principles apply to both.

The Limitation Act 1980

4 It is the defendant's case in the Nugent Care Society case that the relevant limitation statute is the [Limitation Act 1939](#) but it is common ground that there is no distinction between the relevant provisions of that Act and the [Limitation Act 1980](#) ('the 1980 Act'). So the argument has proceeded upon that assumption and we will do the same.

5 By [section 2](#) of the 1980 Act the limitation period for an action founded on tort, which of course includes trespass to the person, is six years. By [section 11\(1\), \(3\) and \(4\)](#), an action "for negligence, nuisance or breach of duty" which includes a claim for damages in respect of personal injuries shall not be brought after a period of three years from the date on which the cause of action accrued or from "the date of knowledge (if later) of the person injured". By [section 28](#), where the claimant was under the age of 18 when any cause of action first occurred, the respective limitation periods start to run upon the attainment of majority. All the claimants in these appeals were under 18 when the alleged abuse occurred.

6 The critical provisions for present purposes are [sections 14 and 33](#), which provide, so far as relevant, as follows:

"14

(1) Subject to subsection (1A) below, in sections 11 and 12 of this Act references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts -

(a) that the injury in question was significant; and

(b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;

(c) the identity of the defendant; and

(d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant;

and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.