

## **Submission by Ecclesiastical Insurance Office plc in response to Issues Paper number 1: Civil Justice System**

### **Introduction to Ecclesiastical Insurance**

Ecclesiastical is a specialist financial services group. Our insurance businesses offer insurance products and risk management services to customers in the faith, heritage, charity, education and property investor markets. In the UK, we are the market leading insurer of Grade I listed buildings, we insure more than 40,000 charities, over 20,000 churches and religious buildings across a wide range of faiths, over 40% of independent schools and, with other insurers, 10 of the UK's World Heritage sites.

We insure a broad range of businesses and organisations against many eventualities, principally under our property-related and liability insurance policies.

Claims made against the organisations we insure involving physical and sexual abuse (PSA) are typically insured under public liability policies. In practice, PSA claims made against the organisations we insure are a small fraction of the overall claims we handle. Claims involving PSA represented 0.4% of all our 2015 claims and 5.5% of all public liability claims that year.

Managing claims involving PSA is an area that we believe is exceptionally important, demanding particularly sensitive, careful and experienced consideration by a specialist team. We recognise that claims of this nature have to be conducted with sensitivity, empathy and integrity and understand that PSA claims can be challenging and traumatic, regardless of how long ago the abuse occurred.

Our response to the IICSA's Issues Paper on the Civil Justice System is intended to assist the Inquiry to identify the complexities inherent in handling PSA claims within the existing civil justice system, and to outline our own experiences of handling such claims.

### **Reparation generally and the civil claims process; introductory comments**

Civil litigation seeks to deliver justice in a practical way by ensuring that appropriate evidence is obtained, material facts identified and the substantive law applied to those facts; this is something different to a truth-seeking process.

The misconception is to expect the civil justice system alone to deliver closure for the Claimant and prevent recurrence of abuse. A civil claim can only play one part in the overall process.

It is often the unrealistic expectations of what the civil justice system is there to deliver which cause disillusionment with the current process. Claimants' solicitors therefore have a key role in explaining the process, explaining to their clients what is achievable, and what is not.

### **The Claimant and his/her solicitor's role in the process**

**a) Management of Claimants' expectations:** We have commented above that an adversarial system of civil justice can never fully satisfy a Claimant's needs. The chasm between expectation of the current system, and what it is capable of delivering, may lie at the heart of much of Claimant's disillusion with the current system. It may be suggested that the management of expectation (or lack of it) is one key factor to consider in assessing the efficacy of the current system and any need for reform. Claimants often appear to have an unrealistic expectation in respect of financial compensation. In Ecclesiastical's experience, many Claimant solicitors, on occasion, inflate schedules of loss at the outset of a claim. The expectation therefore created can often lead to unrealistic expectation and eventual Claimant disappointment.

Key to this is the role of the Claimant's solicitor. As stated, access to specialist and effective legal advice is key for any Claimant engaging in the litigation process; that solicitor will bear a heavy responsibility of explaining the system, explaining what is/is not available, considering pastoral and interim needs, and managing expectation.

**b) Letters of Claim:** The level of detail included in Letters of Claim varies enormously between different firms of claimant solicitors and on an individual claim basis. Letters of Claim are frequently not Pre-Action Protocol compliant and contain scant factual detail about the abuse alleged to have taken place. The inevitable outcome of a poorly drafted Letter of Claim is that the insurer has to refer back to the Claimant for further information, which may lead to delays and lengthen the investigatory stage of the claim. This is an issue that is unrelated to the process itself.

**c) Funding:** There is often a considerable delay between funding being arranged for a Claimant (the signing of the CFA, for example) and a Letter of Claim being submitted. Medical records and social service records are also slow to be provided. These often considerable delays can add months to the life cycle of the claim.

**d) Interaction with Criminal cases:** One key part of managing client expectation is explaining the problems inherent in the interaction between criminal and civil claims. This can impact upon the depth of the necessary investigation and consequent duration of a claim. When a civil claim is commenced or initiated at a time when a criminal investigation and prosecution is live, the parties have to be extremely careful not to take any action which may prejudice any ongoing criminal investigation which in some cases results in the civil claim being stayed while the criminal case progresses. This problem is exacerbated by an understandable police reluctance to disclose information.

**e) Admission of liability and the role of an apology:** Claimants invariably seek an acknowledgement that the alleged abuse did in fact occur. Vindication is a vital part of the process to any Claimant and the role of an apology in achieving this cannot be underestimated. The Civil Procedure Rules do not currently provide any requirement for an

apology to be given whatever the outcome of a claim, and it is difficult to see how any system could introduce an element of compulsion to do this. This again leads to a need to manage expectations.

However, apologies can be volunteered – and apologies can be given as a part of any claim settlement. Part 1 Section 2 of the Compensation Act 2006 also confirms that offering an apology is not to be construed as an admission of liability. An apology can also be given at the outset of a claim without jeopardising liability while investigations take place. An apology may be most effectively given at the time of admission of liability, but this is of course dependent upon the defendant organisation.

**f) Basis of liability:** Claimants, understandably, are not familiar with the concept of vicarious liability. There is a need for Claimants to understand the concept and have it explained. It should also be made clear to a Claimant by his/her lawyer that any insurer has a prudential (regulatory) responsibility to investigate a claim and consult, for example, with the accused.

An insurer cannot simply accept allegations of abuse without proper investigation. Unfortunately false and vexatious claims do happen, which if not detected will ultimately impact upon insurance premiums and claims reserves. The significance of this is that the cost of fraudulent claims is borne by all customers. As insurers, Ecclesiastical have a duty to investigate all claims.

**g) Expert evidence:** Part 35 of the Civil Procedure Rules makes provision for the instruction of experts in civil cases. It makes clear that where possible, matters requiring expert evidence should be dealt with by only one expert. The current system therefore provides for this.

It is in the historic nature of litigation, and ingrained in both Claimants and Defendants, that both sides would wish to instruct their own expert in the hope of obtaining a report that is favourable to their position. Consequently, it is predominantly the case that Claimants will resist the concept of instructing a joint expert. Indeed, some medical experts refuse to take instructions from defendant (or Claimant) insurers even though this is contrary to the principles within the Civil Procedure Rules.

Many Claimants obtain expert medical opinion without referral to insurers and without giving them an opportunity to suggest a joint approach. Requiring Claimants to undergo multiple medical evaluations may cause further distress.

The current approach can also result in a position where the two appointed experts have contradictory views on the level of psychiatric injury caused to the Claimant. This polarisation between the experts' views makes it more difficult to value claims sensibly and perpetuates an adversarial system by both parties having to compromise between extreme positions. In addition this extends the length of the claim as the more reports that are disclosed, the longer the process takes and further reports and counter-reports are produced, which also results in increased costs.

A further difficulty is the limited number and availability of medical experts with the requisite qualifications and willingness to complete a proper forensic analysis of all the evidence in PSA cases. There is also some confusion between the appropriate field of expert to appoint, and whether this should be a psychiatrist or a psychologist. In Ecclesiastical's experience,

psychiatrists are more appropriately qualified to provide an expert diagnosis, but this is often challenged by Claimant solicitors.

Realistic management of Claimant expectations by their solicitors at an earlier stage in the process would reduce the incidence of dissatisfaction with the ultimate result.

**h) Availability of evidence and records:** Sexual abuse claims by their very nature are generally pursued many years and often decades after the alleged abuse took place. Often there is a lack of available evidence and witnesses which makes investigating the claim all the more difficult. In addition, alleged perpetrators and/or witnesses are often deceased or reluctant to assist with any investigations and some documents will have been destroyed.

**i) Identification of correct Defendant:** Identifying the correct Defendant for a civil claim is not always straightforward, particularly where abuse may have been perpetrated in a number of different locations owned by differing institutions, or by a perpetrator or multiple perpetrators with links to multiple organisations. Consequently, Letters of Claim frequently identify an incorrect Defendant. This is an understandable problem faced by Claimants' lawyers. Where the Defendant has not been correctly identified, this should be flagged quickly with the claimant solicitor and the correct Defendant identified, helping the Claimant to re-issue the Letter of Claim with the correct Defendant identified as soon as possible. In pursuance of the Overriding Objective, the incorrect identification of the Defendant should not be used by insurers or Defendants as a technical point to delay a claim, but it is important that claims are pleaded correctly.

### **The Insurer's perspective**

**a) The types of policy which are relevant to claims of child sexual abuse:** In general, it is public liability insurance cover that responds to indemnify the insured in respect of civil liability claims for bodily injury/illness arising from abuse perpetrated by its employee(s) or representative(s). The cover afforded by a public liability policy is usually an indemnity against legal liability to members of the public. Public liability is not a mandatory form of insurance, nor is it a public benefit. It is a private contract between two parties and the insurer's liability is ultimately determined by the liability of the insured and subject to a policy limit of indemnity.

If a person brings an action for an abuse related injury (physical and/or psychological) an indemnity will usually respond provided:

- There is a legal liability;
- **and**
- The event is accidental and not a deliberate act by the insured (even though it may be a deliberate act by an employee or volunteer for which the insured is legally liable).

It is important to note, therefore, that there is no indemnity under general insurance terms and conditions for the individual perpetrator or alleged perpetrator of abuse. This is because the actions of the abuser are not accidental; the act is intentional and is of a serious criminal nature.

**b) The basis of cover:** Public liability insurance may be provided on two very different bases of cover. The first is on a “losses occurring basis”, whereby cover is provided for incidents of abuse that occur during the period of insurance cover. This means that the relevant date to trigger policy coverage is the date upon which the abusive incident is alleged to have happened and not the date of the claim. Cover is also subject to the policy terms applying at the time of the alleged incident. The second basis of cover is a “claims made” basis, which provides cover for claims made or presented during the period of cover.

Ecclesiastical has always maintained its public liability cover on a “losses occurring” basis. This is because moving a policyholder’s liability policy from a “losses occurring” basis of cover to a “claims made” basis of cover creates a gap in cover for the policyholder. Ecclesiastical recognises that this can ultimately lead to Claimants with valid claims being left without access to a Defendant with insurance cover. Some insurers in the market have elected to change their basis of cover to “claims made”, irrespective of the gap in cover that this causes for the insured. There is therefore no consistency of approach among insurers.

**c) The conduct of the proceedings/negotiation process:** As the insurer is providing an indemnity to the insured, the insurer has the right (which it exercises) to step into the shoes of the Defendant insured and take over the conduct of the defence of the claim. There is often a public misconception that Defendant organisations should be able to dictate to insurers how the defence of claims should be managed. This is incorrect. As a matter of insurance law and practice, the process of managing claims is a matter for the insurer alone, who is authorised and regulated by the Prudential Regulation Authority and the Financial Conduct Authority. The insurer, when providing the indemnity, can take over the defence.

### **Specific issues relating to two possible lines of defence**

**a) The use of limitation as a defence:** Where a claim is brought a very long time after the abuse has been perpetrated this can cause implications for organisations, insurers and for claimants. In many cases, claims are brought several decades after the incident of abuse occurred. In some cases, the delay can seriously prejudice the ability to investigate and validate a claim, for example where police records have been destroyed, insurance is no longer traceable or vital witnesses have died. Where serious prejudice occurs from a delay to bring a claim, limitation will usually be considered at the outset. However, the impact of the Limitation Act 1980 upon PSA claims is in our experience limited. Claimants are not automatically prevented from bringing a claim if more than three years has passed since the injury occurred (or the date of requisite knowledge) given that the courts have the power to extend the limitation period in accordance with Section 33 of the Limitation Act and frequently do so. Limitation may therefore be considered to be a line of defence that Defendants may not be able to rely on.

**b) Consent:** In some cases where the Claimant was over the age of consent when the alleged abuse occurred, there may be evidence to suggest that the Claimant consented to the sexual acts. The insurer will need to carefully consider the available evidence and think carefully about whether a defence of Claimant consent is appropriate in an individual case. Incidents of sexual abuse will often involve a power imbalance between the victim and perpetrator, and more often than not it will not be appropriate to plead consent as a defence to a claim.

Nevertheless, there will be situations where evidence of consent is present and it may remain appropriate to plead accordingly.

### **Other counselling/pastoral care**

The civil justice system allows for the continuation of other forms of support for the Claimant while their financial claim for compensation is progressed. The provision of counselling support and other forms of psychological treatment by the Defendant organisation will not by itself be deemed to be an admission of legal liability. The updated 2015 Rehabilitation Code specifically allows for this and is there to encourage both sides to seek early medical redress so as to mitigate the effects of any injury. The system provides for such care, and both Claimant and Defendant lawyers should be aware of the need to raise Claimant awareness as to the options available.

### **The Ecclesiastical experience**

From Ecclesiastical's experience, the civil justice system can effectively deliver compensation to Claimants of sexual abuse. This can happen without undue delay. Some statistical analysis in this regard may be helpful<sup>1</sup>:

- 9% of the Claims develop into the issue of proceedings
- limitation has been pleaded as a defence in 4% of the Claims
- consent has been pleaded as a defence in 0.3% of the Claims
- 86% of the Claims were settled by agreement before issue
- the average allocation of payment made by Ecclesiastical in relation to the claims is as follows –
  - o 33% to claimant's solicitors' costs (after a reduction on average of 30% on the amount claimed)
  - o 12% to own solicitor costs
  - o 55% to Claimant damages

The current reparations system cannot be wholly relied upon to achieve closure for the Claimant without simultaneous delivery of an apology, counselling, support and other forms of psychological treatment for those who would benefit from it. While Ecclesiastical believes the current system can deliver its main purpose (the payment of compensation), there are a number of issues and behaviours which sometimes inhibit the system from performing in the best possible way for Claimants. This includes inflated schedules of loss that fail to manage the Claimants' expectations as outlined above.

In July 2016 Ecclesiastical published a Statement of Principles outlining its approach to managing PSA claims because we wanted to make our guiding principles for handling PSA claims understandable and available to all. A copy of our Statement is attached as Appendix

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<sup>1</sup> This data is derived from analysis of 334 PSA claims ("Claims") dealt with by Ecclesiastical in the UK, arising over a period of more than 15 years and made against policies purchased by more than one customer. Whilst this does not represent the totality of the PSA claims dealt with by Ecclesiastical, we believe it to be representative of them.

1 and is also available on our website, where we have a dedicated section focused on how we handle PSA claims:

<http://www.ecclesiastical.com/fororganisations/claims/abuse-claims/index.aspx>

The Statement is designed to help policyholders and Claimants, as well as other interested parties, better understand both the processes and the principles which Ecclesiastical applies when handling civil actions for compensation in PSA claims. The Statement also seeks to help policyholders understand what actions they can take to continue to support and care for Claimants and survivors without prejudicing their insurance position throughout the claims process. The Statement encourages the positive behaviours applied by Ecclesiastical claim handlers to the industry as a whole.

As expressed in the Statement, Ecclesiastical is committed to a fair and transparent claims process. Ecclesiastical does not insist or include a confidentiality requirement in any settlement agreement unless specifically requested by the Claimant. We consider that the current civil justice system can effectively deliver results for Claimants when claims are conducted in accordance with the principles embodied in our Statement and the CPR Overriding Objective.

### **Changes for the future**

Ecclesiastical has provided this submission to aid the Inquiry in its work to determine the most appropriate mechanism to provide redress to Claimants, by highlighting both the strengths and shortcomings of the existing civil justice system. While Ecclesiastical believes the existing system can effectively deliver compensation to Claimants, Ecclesiastical recognises that alternative routes of redress and changes to the existing system may be recommended and explored by the Inquiry, particularly following submissions from other interested parties. Ecclesiastical is willing to contribute further, whether by subsequent submissions or by participation in seminars, in order to assist the Inquiry to understand the role of the insurer and any implications for the insurance industry in adopting new or amended systems of redress.

Ecclesiastical Insurance Office plc

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## Appendix 1



Our guiding principles for the handling of civil claims involving allegations of sexual and physical abuse

### What is the purpose of these guiding principles?

- To identify and document the fundamental principles which Ecclesiastical as an insurance company adopts and implements when handling civil actions brought against policyholders of Ecclesiastical where such civil actions include allegations of sexual or physical abuse.
- To aid policyholders to understand the principles Ecclesiastical will adhere to when handling such claims as the insurer of the defendant organisation.
- To aid policyholders to understand what actions they can take without such actions prejudicing their insurance position.
- To help claimants and survivors of sexual or physical abuse who decide to bring a civil action against a policyholder of Ecclesiastical understand the principles which Ecclesiastical applies when handling civil actions for compensation.

### Applicability & Scope

Ecclesiastical will apply the principles set out in this document to all civil claims against an insured policyholder where the civil action includes allegations that sexual or physical abuse has taken place. Sexual abuse includes any action by a perpetrator that sexualises the claimant. Such actions could be a onetime incident but in many cases may constitute multiple events of abuse.

The applicable law and legal system for redress differs across the U.K. These guiding principles will be applied to all UK jurisdictions, subject to the law governing a claim.

These guiding principles will apply where Ecclesiastical is the only defendant insurer concerned. This document cannot comment on the policy position or principles of claims handling adopted by other insurance companies.

Additionally, each case will need to be considered on an individual basis with a view to fairness to all parties and apply the appropriate insurance and contractual provisions in place at the relevant time.

Ecclesiastical expects all third party organisations engaged by Ecclesiastical in connection with such claims to adhere to the principles set out in this document.

### Review

These guiding principles will be reviewed periodically. Ecclesiastical undertakes a continuing assessment of its claims handling practices of which this document forms a part. Ecclesiastical may review, amend and update this document from time to time without notice.

### **Feedback on these guiding principles and/or Ecclesiastical's claims process**

Ecclesiastical welcomes feedback from any individual or organisation who wishes to comment upon the claims process they have experienced. Any such feedback should be sent in writing to: The Claims Director, Ecclesiastical Insurance Office Plc, Beaufort House, Brunswick Road, Gloucester GL1 1JZ or email [sensitiveclaims@ecclesiastical.com](mailto:sensitiveclaims@ecclesiastical.com). All feedback received will be duly considered as part of Ecclesiastical's continuing review of claims handling best practice and will always be treated with the utmost confidence.

Please note that Ecclesiastical is regulated by the Financial Conduct Authority and the Prudential Regulation Authority. Any contact from an individual which constitutes a "complaint" in accordance with the Financial Conduct Authority's definition will be dealt with in accordance with the rules for Complaint handling in the FCA Handbook under Redress - DISP Dispute Resolution: Complaints which is available to view at: <https://www.handbook.fca.org.uk/handbook/DISP/>

### **An overview of the claims process**

- The main parties involved in the claims process are:
  - The claimant/plaintiff – the claimant or survivor of abuse who is making the claim.
  - The defendant – the insured or policy-holding organisation with potential liability for the actions of its employee(s) or representative(s) who are accused of perpetrating the abuse.
- Specifically in England and Wales, both claimants and defendants are obliged to act in certain ways by the provisions of the Pre-Action Protocol which forms part of the Civil Procedure Rules. In Scotland and Northern Ireland it is best practice to follow the same principles wherever possible.
- To fail to comply with the provisions of the Pre-Action Protocol allows the aggrieved party to bring such behaviour to the attention of the court in litigation and if accepted by the judge can lead to cost penalties. The following can thus be expected from the claims process:
- A compliant Letter of Claim in England and Wales must be issued by the claimant or their solicitor to the proposed defendant. This letter has to include (to make it Pre-Action Protocol compliant) the following:
  - A chronology of the alleged abuse so that the defendant can quickly establish the period of injury;
  - The allegation of where fault lies with specific details as to who the alleged abuser is;
  - The claimant's present medical condition, details of the injury sustained (often psychological in nature) and the financial loss that has been incurred (in general terms);
  - The way the case is being funded.
- Upon receipt of the Letter of Claim the defendant or their insurer has 21 days (from the date the letter was posted) to acknowledge receipt. Letters of Claim must be passed by policyholders to Ecclesiastical immediately because it is a policy condition of liability insurance cover that if a claim is made against a policyholder, the insurer has the right to take over the conduct of any claim in the insured's name and generally does so. This includes full discretion for the insurer to negotiate, agree or defend the settlement of claims. Ecclesiastical will therefore take over the conduct of the formal civil claim

from the policyholder (acting in the policyholder's name) and it is therefore vital that Ecclesiastical has time to act within the prescribed timescales of the Pre-Action Protocol. Where there has been no reply by the defendant or insurer within 21 days, the claimant will be entitled to issue proceedings.

- A further 90 days (beyond the 21 days) is allowed for the defendant to investigate legal liability and inform the claimant of their decision, i.e. is legal liability admitted or disputed and if disputed the reasons why, with suitable documents to support that view (usually witness statements).
- Cases of abuse are often complex and sometimes extra time is needed beyond the 90 days. It is Ecclesiastical's experience that most claimant solicitors will extend the time period so long as they are kept informed of progress and there are legitimate reasons why extra time is needed.

When Ecclesiastical receives a Letter of Claim from a policyholder which includes an allegation of sexual abuse, this is passed to Ecclesiastical's specialist physical and sexual abuse claims handling team. Ecclesiastical will firstly need to ascertain that cover is in place for the policyholder. Assuming cover is in place, the claim will be allocated to a senior specialist handler.

The appointed specialist claims handler will investigate the claim, and in doing so, will need to:

- Be careful to ensure Ecclesiastical's actions in relation to the civil claim do not impinge or compromise any criminal investigation;
- Appreciate that the policyholder, in conjunction with statutory agencies, may be running a safeguarding investigation in parallel to any civil and/or criminal action.

The abuser will have been identified in the Letter of Claim. Ecclesiastical will then need to consider whether the insured policyholder is liable for the actions of the abuser. That will involve consideration of the link between the abuser and the insured policyholder.

In many cases there will have been a previous conviction which will usually make the investigation quicker and simpler. The duration of the investigation is usually much reduced where solicitors acting for the claimant have provided a detailed and thorough Letter of Claim.

Where there has been a conviction and it is clear the insured policyholder would be found liable (bearing in mind the test in civil liability is on the "balance of probability" as opposed to "beyond all reasonable doubt" in criminal matters) then there is little doubt that liability for the abuser's actions should be accepted. In those cases where the liability of the policyholder is clear it is in everyone's interest for an early admission of liability to be made once this is determined. Early admission of liability usually quickens the claims process for the claimant and also helps to keep legal costs to a minimum.

Ecclesiastical will need to have sight of, or obtain medical evidence, to fully understand the impact of the abuse on the claimant in order to be able to assess the financial value of the civil claim. Sometimes claimants will have already obtained their own medical evidence from an expert by the time a formal claim is made, but in other cases there may be an opportunity to appoint a joint expert. The lack of availability of expert medical evidence will not prevent Ecclesiastical in appropriate cases from making an early settlement offer if Ecclesiastical is able to value the claim before such evidence is obtained.

Where liability has been established and Ecclesiastical has been able to assess the financial value of the claim, Ecclesiastical will usually make an offer to settle the claim. Ecclesiastical may propose a Joint Settlement Meeting ("JSM") with the claimant and his/her solicitors. A

JSM is a meeting between the claimant and the defendant teams to try to secure an acceptable settlement, with the intention of resolving the claim as soon as possible. The claim may be settled without the claimant needing to commence formal legal action. Ecclesiastical may agree the inclusion of a therapy fund within the terms of a settlement agreement. If an acceptable settlement can not be reached, the Courts remain available to resolve disputed claims.

### **Ecclesiastical's principles of claims handling**

Claims arising from physical and sexual abuse can be challenging and traumatic for all concerned, regardless of how long ago the abuse occurred.

Ecclesiastical is often asked by policyholders what action should be taken where allegations of abuse are made against them and the claimant is asking for some assistance, short of making a formal legal claim. The concern policyholders have is that to take any action at all may imply legal liability and prejudice the position of their insurance company. Policyholders will have an obligation to comply with the terms of the policy in place at the relevant time.

It is important that policyholders understand that offering an apology or offering pastoral care and/or counselling sessions to the claimant can be extremely important steps to help the claimant and can be offered without prejudicing insurance cover.

Ecclesiastical supports an approach by policyholders as set out below:

1. Policyholders should respond constructively from the outset (including before a civil claim is made)

We believe the response given by policyholders to claimants should not be done in such a way that it is experienced as negative, resistant or unhelpful because this can create relationship difficulties and may worsen the claimant's wellbeing.

2. Policyholders should consider adopting these principles

Always acknowledge how difficult it must have been for the claimant to come forward and thank them for taking this step. Explain what will happen next. This document is intended to assist in that process. Policyholders should always inform Ecclesiastical of the situation on a timely basis. One of our specialist abuse case handlers will be able to assess the facts of a particular case with the policyholder and assist.

3. Policyholders should consider the appropriateness of an apology

Policyholders should consider whether they feel it is appropriate to offer an apology or an acknowledgement of what has happened to the claimant. Ecclesiastical will not prevent an apology, either oral or written, being made by a policyholder.

Generally, Part 1 (section 2) of the Compensation Act 2006 makes it very clear that "offering an apology, an offer of treatment and other redress [not defined] shall not in itself amount to an admission of negligence or a breach of statutory duty". Therefore, to give an apology or simply acknowledge the abuse circumstances will not normally prejudice the position, but such action is best considered by policyholders in consultation with Ecclesiastical.

4. Policyholders should consider offering support or counselling

Policyholders should consider providing or offering pastoral care, counselling and/or other forms of available support to the claimant if it would aid the claimant's well-being.

Offering to pay for some counselling or treatment would not in itself be deemed to be an admission of legal liability. The updated 2015 Rehabilitation Code specifically allows for this and is there to encourage both sides to seek early medical redress so as to mitigate the effects of any injury. Ecclesiastical is a strong supporter of the rehabilitation approach as we wish to assist where possible to achieve the best post trauma outcome for a claimant. Ecclesiastical is prepared to discuss supporting the policyholder's provision of pastoral care/counselling on a case by case basis.

The making of a formal claim will usually result in communications between the claimant and the policyholder taking place between their respective legal advisers. This should not however prevent any policyholder continuing to support the claimant through the provision of pastoral care that is being provided or offering support/counselling as outlined above. Ecclesiastical recognises the importance of the continuance of pastoral care throughout the claims process.

#### 5. Our commitment to empathetic claims investigation

Ecclesiastical will approach any claim investigation with sensitivity, empathy and integrity. Each case will be considered carefully and individually, recognising that it is in everyone's interests and wellbeing to conclude matters as soon as possible.

#### 6. Our commitment to appointing joint medical experts where appropriate

Ecclesiastical recognises that requiring claimants to undergo multiple medical evaluations may cause further distress. Ecclesiastical will always consider the appropriateness of agreeing with the claimant the instruction of a joint expert if the claimant, and his/her advisers, so wish.

#### 7. Our commitment regarding the use of limitation as a defence

The Limitation Act 1980, in England and Wales with similar provisions in Scotland and Northern Ireland states that a personal injury claim must be pursued within three years of the claimant being aware they have been injured. The courts do have the power to extend the limitation period in accordance with Section 33 of the Limitation Act and frequently do so. Ecclesiastical acknowledges that limitation should be pleaded as a defence to a claim very sparingly in relation to sexual abuse claims. Ecclesiastical has an internal escalation procedure which requires the pleading of a limitation defence to be considered and approved before it is pleaded in any individual case.

#### 8. Our commitment regarding the use of consent as a defence

Currently, there is no set age of consent in civil claims. Ecclesiastical recognises however that a claimant who was under 16 when the abuse took place should not be deemed to have consented to such abuse and this will not be raised as a possible defence.

Ecclesiastical will be mindful of the power imbalance that is often presented in such cases even where the claimant was over the age of 16 at the date of the abuse.

#### 9. Our commitment to fairness in the claims process

Ecclesiastical is committed to acting fairly towards all parties who are affected by the claim. Ecclesiastical will apply an overriding principle of fairness to all aspects of the claims process.

10. Our commitment to transparency

Ecclesiastical will not insist or include a confidentiality requirement in a settlement agreement unless specifically requested by the claimant.

Ecclesiastical Insurance Office Plc

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