



## 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 explain the principles of the approach that Ecclesiastical, as an insurance company, takes when handling civil actions for financial compensation brought against policyholders where there are allegations of sexual or physical abuse.
- To help policyholders understand these principles and what actions they can take without prejudicing their insurance position.
- To help victims and survivors understand these principles and what the claims process involves.

### **Ecclesiastical's role in sexual and physical abuse claims**

Ecclesiastical is an independent, regulated insurance company specialising in the heritage, charity (including care), arts, education and faith sectors where we provide insurance cover for property and liability risks.

Claims involving sexual and physical abuse are covered under public liability policies. Our role is to provide an indemnity in accordance with the terms and conditions of the insurance contract that our policyholder has paid for. In line with policy conditions, once an abuse claim is brought against any of the organisations we insure, we take full control of handling the claim itself.

The process of managing claims is a matter for Ecclesiastical alone and cannot be directed or determined by the policyholder. This is our duty and responsibility as a commercial and independently run insurer, authorised and regulated by the PRA and FCA.

Ecclesiastical believes that insurance is just one part of the reconciliation process and that policyholders should always consider what further they can do to support survivors of abuse from the moment an allegation is made, right through the claims process and beyond, for example providing counselling and/or pastoral care.

### **Ecclesiastical's guiding principles**

Our guiding principles are divided into two sections – the first section is intended to guide policyholders on how to respond to an allegation of abuse, and the second section explains Ecclesiastical's commitment to handling claims in a way that treats victims and survivors with sensitivity, compassion and respect. We outline the claims process in detail later in this document.

### **Principles guiding the policyholder's own response**

Claims arising from sexual and physical 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 victim and survivor 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 policy. Policyholders have an obligation to comply with the terms and conditions of the policy in place at the relevant time.

Ecclesiastical therefore encourages an approach by policyholders that upholds the following principles:

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

Policyholders should respond to victims and survivors in such a way that it is not experienced or seen as negative, resistant or unhelpful, because this can create relationship difficulties and, may worsen their wellbeing.

2. Policyholders should acknowledge the allegation and notify Ecclesiastical immediately

Policyholders should always acknowledge how difficult it must have been for the victim and survivor to come forward and 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 claim handlers will be able to assess the facts with the policyholder and provide assistance as required.

3. Policyholders should consider the appropriateness of an apology

Policyholders should consider whether they feel it is appropriate to offer an apology in addition to acknowledging what has happened to the victim and survivor. 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 clear that “offering an apology, an offer of treatment and other redress 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 insurance 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 victim and survivor if it would aid their well-being. Ecclesiastical fully supports and encourages the continuance of pastoral care and/or other forms of support throughout the claims process.

Offering to pay for 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, where possible, to assist in achieving the best post trauma outcome for a claimant. As part of the civil claims process, Ecclesiastical is able to provide financial support on proven claims for counselling and rehabilitation services to address the consequences of the abuse on the victim and survivor’s health.

The making of a formal claim should not prevent any policyholder continuing to support the claimant through the provision of pastoral care or offering support/counselling as outlined above.

Once a claim is settled, there is nothing to prevent the policyholder from continuing to provide pastoral care and/or other forms of support to claimants, as necessary.

**Principles guiding the conduct of claims handling - Ecclesiastical’s commitments following the receipt of a formal claim**

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 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.

#### 7. Our commitment to transparency

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

#### 8. 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 and their advisers the instruction of a joint expert.

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

Ecclesiastical acknowledges that, limitation should be pleaded as a defence to a claim sparingly in relation to physical and sexual abuse claims. Ecclesiastical has an internal escalation procedure, which requires the pleading of a limitation defence to be considered and approved only at a senior level before it is pleaded in any individual case. The Limitation Act 1980, in England and Wales, with similar provisions in 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.

In Scotland, the introduction of the Limitation (Childhood Abuse) (Scotland) Act 2017, which came into effect on 4 October 2017, retrospectively abolishes the three-year time limit for personal injury claims resulting from childhood abuse.

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

Ecclesiastical recognises 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 never be raised as a possible defence.

Currently, there is no set age of consent in civil claims. 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.

### **Applicability and 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 UK. 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 or defendants.

Additionally, each case will need to be considered on an individual basis with a view to ensuring fairness for all parties and that the appropriate insurance and contractual provisions are applied 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.

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

#### **Who's involved in the claims process?**

- The main parties involved in the claims process are:
  - The claimant/pursuer – the victim or survivor of abuse who is making the claim.

- The defendant – the insured or policy-holding organisation with potential legal liability for the actions of its employee(s) or representative(s) who are accused of perpetrating the abuse. The insurer will take control of handling the claim in its entirety on behalf of the insured.
- The abuser – the alleged perpetrator of the offence.

### **Bringing a claim**

- 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.
- The parties are expected to follow the provisions of the Pre-Action Protocol. Failure to do so could lead to cost penalties imposed by the Court.
- 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.

### **Responding to a claim**

- 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. 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.

### **Investigating a claim**

When Ecclesiastical receives a Letter of Claim from a policyholder which includes an allegation of physical and/or sexual abuse, this is passed to Ecclesiastical's specialist claims handling team.

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

- Ascertain that cover is in place for the policyholder.
- Be careful to ensure Ecclesiastical's actions in relation to the civil claim do not impinge or compromise any criminal investigation.
- Recognise 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 some cases there will have been a criminal conviction of the perpetrator which will usually make the investigation of any claim 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 already been a conviction of the abuser and there is a clear link to the insured policyholder establishing they were 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.

The claimant will need to demonstrate that the defendant's actions were the cause of the actual loss or damage suffered by the claimant. 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 it is in the interests of the claimant and has been requested by their solicitor.

### **Settling a claim**

Where liability has been established as the cause of the injury and loss claimed, and its financial value determined, Ecclesiastical will make an offer to settle the claim. Ecclesiastical and/or the claimant’s solicitors may propose a Joint Settlement Meeting (“JSM”) with the claimant and their 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. This is also an opportunity for the defendant to make a formal apology where the claimant has asked for one. The claim may be settled without the claimant needing to commence court proceedings. Ecclesiastical may agree the inclusion of a therapy fund within the terms of a settlement agreement. If an acceptable settlement cannot be reached, the Courts remain available to resolve disputed claims.

### **Involvement of the perpetrator**

Where an organisation is responsible for the acts of an individual perpetrator of sexual or physical abuse and that institution is insured, the civil claim will usually be brought against the insured organisation (the policyholder) rather than the individual perpetrator.

Whilst the policyholder is therefore the defendant for the purposes of such claims, it may be necessary for the insurer to disclose the claimant’s allegations and evidence of abuse to the perpetrator (if still alive) as part of the insurer’s proper investigation of the allegations. Insurers can in some circumstances decide to add the individual perpetrator as an additional defendant to the civil claim (as a Part 20 Defendant). Ecclesiastical generally chooses not to do this.

### **Following settlement**

When an insurance company has paid a claim under an insurance policy, they will seek to recover all or some of that payment loss from the third party who caused the loss or injury. This is called the right of subrogation.

After a claims payment has been made, Ecclesiastical does consider recovery against the perpetrators. Sometimes this is not possible, for example where the perpetrator is deceased. In other cases, the

perpetrator has little or nothing in the way of assets. However, in the right circumstances subrogation proceedings are taken against the perpetrator.

In order to exercise its right of subrogation, Ecclesiastical will need to demonstrate to the perpetrator that the amount paid in settlement of the claim was reasonable in the circumstances. This may require Ecclesiastical to disclose elements of the claimant's evidence to the perpetrator in order to prove their claim against them. Ecclesiastical recognises the sensitivity of disclosing such information and will endeavour to inform the claimant or their legal representative before disclosure and will seek to minimise any information shared for this purpose.

## **Review**

Ecclesiastical is committed to reviewing these guiding principles 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, 2000 Pioneer Ave, Brockworth, Gloucester GL3 4AW, or email the dedicated address [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/>

Ecclesiastical Insurance Office Plc

2018