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# Uncivil Justice? The Report of the Independent Inquiry into Child Sexual Abuse and Civil Litigation

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Andrew Warnock KC  
Lisa Dobie

# Time line of Inquiry

- Inquiry originally announced in July 2014.
- Reconstituted as a statutory inquiry in February 2015.
- Chaired by Prof Alexi Jay OBE since August 2016.
- Final Report Presented to Parliament on 20 October 2022



## Remit:

*“consider the extent to which State and non-State institutions have failed in their duty of care to protect children from sexual abuse and exploitation; to consider the extent to which those failings have since been addressed; to identify further action needed to address any failings identified; to consider the steps which it is necessary for State and non-State institutions to take in order to protect children from such abuse in future; and to publish a report with recommendation”.*



# Work of the Inquiry

- 15 investigations
- Interim Report of the Inquiry
- 41 other reports and publications.
- Final report contains 20 recommendations
- Complements 87 recommendations already made.

# Truth Project:

More than 6200 victims and survivors of childhood sexual abuse gave evidence

Common themes: barriers to reporting:

- Not being listened to
- Shame
- Fear of consequences
- Too young at time to recognise treatment as abusive



# What claimants wanted from (Civil) Justice System

*“I want justice ... I want justice”*

Compensation: yes: suffered *“spectacular financial losses”*;

No: do not want *“blood money”*

*“I just want an apology”*

*“I was hoping that I’d get some recognition for what had happened to me, hoping that I would be vindicated for being called a liar all these years and that finally someone would listen to me”.*

*“Day in court”*



# Experiences

*“I was not taken seriously”*

*“I was literally torn apart on the stand”*

Giving evidence *“re-traumatising”*

*“It took too long”.*



# Civil Justice: Shortcomings

- Difficulties accessing representation
- Funding
- Adversarial
- Slow process: though improved in recent years.
- Court cannot order an apology
- Difficulty of Proof
- Solvency of defendant
- Identifying the insurer





# Pre-Action Protocols

Current: Pre-action Protocol for Personal Injury Claims

Future: Specific protocol for abuse claims?

Civil Justice Council consultation



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# Insurers: Previous Recommendation

Register of Public Liability Insurers

Under Consideration

# Insurers: Guidance and Codes

ABI Code of Practice (August 2021):

- (i) Sensitivity
- (ii) Limitation defence to be taken exceptionally
- (iii) Consent defence to be taken only exceptionally
- (iv) Single jointly instructed experts to be considered
- (v) Apologies, acknowledge, redress and support “where possible”



# Local Government

Code of Practice June 2022:

- (i) Sensitivity
- (ii) Support: work with claimants
- (iii) Apologies
- (iv) Limitation defence: “likely to be appropriate in exceptional circumstances only”
- (v) Careful consideration of single joint expert



# Limitation

## Section 33 of Limitation Act 1980:

**“Discretionary exclusion of time limit for actions in respect of personal injuries or death.**

(1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which—

(a) the provisions of section 11 [11A, 11B] or 12 of this Act prejudice the plaintiff or any person whom he represents; and

(b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents



# Limitation: S.33 continued

(3) In acting under this section the court shall have regard to all the circumstances of the case and in particular to—

(a) the length of, and the reasons for, the delay on the part of the plaintiff;

(b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11 [by section 11A] [by section 11B] or (as the case may be) by section 12;

(c) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;

(d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;

(e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;

(f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.



## **Cain v Francis EWCA Civ 1451:**

*“in the exercise of the discretion, the basic question to be asked is whether it is fair and just in all the circumstances to expect the defendant to meet this claim on the merits, notwithstanding the delay in commencement”*

*(Janet Smith LJ)*



# RE v GE [2015] EWCA Civ 28

*“Whether a fair trial can still take place is undoubtedly a very important question. However, it seems to me that if a fair trial cannot take place it is very unlikely to be “equitable” to expect the defendant to have to meet the claim. **But if a fair trial can take place that is by no means the end of the matter. In other words, I would regard the possibility of a fair trial as being a necessary but not a sufficient condition for the disapplication of the limitation period”***

(Lewison LJ)





# Carroll v Chief Constable of Greater Manchester Police [2017] EWCA Civ 1992

*“The prospects of a fair trial are important: ... . The Limitation Acts are designed to protect defendants from the injustice of having to fight stale claims, especially when any witnesses the defendant might have been able to rely on are not available or have no recollection and there are no documents to assist the court in deciding what was done or not done and why: ... . It is, therefore, particularly relevant whether, and to what extent, the defendant's ability to defend the claim has been prejudiced by the lapse of time because of the absence of relevant witnesses and documents”*

(Sir Terence Etherton MR).

# DSN v Blackpool Football Club [2021] EWCA Civ 1352

“Furthermore, although the policy reasons that have caused Parliament to establish limitation periods are well known, so too are those that caused Parliament to temper the harshness of fixed-point cut-offs by a series of statutory provisions from 1963 onwards, including s. 33 . Thus, for example, a finding that a claimant *could not* have brought an action before they did is likely to attract significant weight, particularly if that inability is attributable to the tort that is to be the subject of the action. Precisely how much weight is to be attributed to different features of a case is quintessentially a matter for the Judge in the exercise of their discretion”

(Stuart-Smith LJ)

# Limitation: ICCSA

- *“one of the most challenging legal issues”* victims and survivors face
- A barrier at 3 stages:
  - a) Taking on claims
  - b) Settlement and Value
  - c) Trial
- Concern about requiring reasons for delay: *“single-most traumatic feature of this type of litigation”*



# Recommendations

## Legislation:

- to remove the limitation defence in claims brought by victims and survivors of child sexual abuse “in respect of their abuse”.
- Provide express protection of the right to a fair trial, with the burden falling on defendants to show that a fair trial is not possible.

Legislation would **not** allow re-opening of claims:

- Settled by agreement
- Dismissed by court

New provision would **not** apply to claims brought by victims’ and survivors’ estates.



# Limitation

- Would the proposed reform make any significant difference?
- Might it have unintended consequences?
- Will it happen?
  - Reform previously rejected by Law Commission in 2001
  - Ministry of Justice: “willing to consider the merits of such a change ...”



# Apologies

## **Compensation Act 2006:**

Section 2: currently provides that an apology, offer of treatment or other redress does not of itself amount to an admission of negligence.

## **Recommendation** (made in September 2019):

To extend section 2 to cover apologies for abuse by institutions for which they are vicariously liable.

# Criminal Injuries Compensation Scheme

- Applies to victims of “violent crime” which:
  - includes a non-consensual sexual assault
  - Does not include online grooming/criminal conduct
- Intended to be a scheme of “last resort”
- Tariff based
- Excludes applicants with unspent criminal convictions for offences resulting in certain sentences or orders, including custodial sentences, community orders and youth rehabilitation orders.
- Time limit of 2 years from when abuse first reported to the police
- Where abuse first reported to police when applicant a child, claim can be made until day of applicant’s 20<sup>th</sup> birthday
- Time limit may be extended “in exceptional circumstances”



# ICCSA Recommendations Re CICS

- Extension of scheme to cover online abuse.
- No automatic rejection for criminal convictions where these are likely to linked to childhood sexual abuse of the applicant
- Longer primary time limit of 7 years with provision for extension



# Redress Schemes

- Defined as a “**non-adversarial process by which financial redress (and potentially other forms of redress) may be provided to applicants.**”
- Distinguished from a **litigation settlement schemes**, which may be used to compensate groups of claimants who have initiated civil claims.
- Redress schemes sit outside the civil justice system

# Redress Schemes:

## Existing Examples:

- Scotland
- Northern Ireland
- Jersey
- Ireland
- Australia
- Lambeth
- Manchester City FC Survivors' Scheme



# Recommended: A Single Redress Scheme for England and Wales

- An alternative to Civil Litigation and Criminal Compensation
- Recommended “Core elements”
  - Child sexual abuse occurred in England and Wales
  - Clear connection to a State or non-State institutions in England and Wales
  - Abuse took place before the scheme’s establishment
  - Deduction of any previous award
  - Two-tier payment system:
    - A fixed flat-rate recognition payment;
    - Option to apply for a 2<sup>nd</sup> tier payment.
- Exclusion where a civil claim rejected for non-limitation reasons

# Redress

- Levels of award: *“sufficient to recognise the experiences ... but may not be as high as awards involved in civil claims”*
- Details to be worked out by Government after further consultation (if recommendation accepted)

# Summary of all Recommendations:

- A single core data set;
- Child protection Authorities for England and Wales;
- A Cabinet Minister for Children;
- Increasing public awareness;
- Prohibiting pain compliance;
- Amendments to Children Act 1989;
- Registration of care staff in children's homes;
- Registration of staff in care roles in young offender institutions and secure training centres;
- Greater use of the barred list;
- Improving compliance with the statutory duty to notify the Disclosure and barring service;



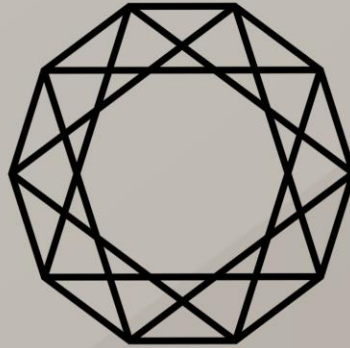
- Extending disclosure regime to those working with children overseas;
- Pre-screening;
- Mandatory reporting;
- Compliance with the Victims' code
- Limitation;
- Specialist therapeutic support for child victims of sexual abuse;
- A Code of Practice on access to records about child sexual abuse;
- Further changes to the CICS;
- Redress Scheme;
- Age verification.



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**Thank you for your attention.**

Questions?



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[www.dekachambers.com](http://www.dekachambers.com)

**Andrew Warnock KC**

[AWarnock@dekachambers.com](mailto:AWarnock@dekachambers.com)

**Lisa Dobie**

[LDobie@dekachambers.com](mailto:LDobie@dekachambers.com)