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ALARM

The Public Risk Management Association

RE: Accountability and Reparation for victims and survivors of abuse issues paper number 1

Alarm is a Member organisation, supporting professionals who manage risk and insurance within public service and community organisations that serve our citizens and communities. Our principal membership is local authorities, blue light and housing providers, many of whom will be defendants in claims where there have been incidences of abuse within residential institutions and have first-hand experience of handling historical sexual abuse claims. This response to the Accountability and Reparation issues paper number 1 is compiled on behalf of our Members. It responds to those questions where our Members have experience.

Alarm would welcome the opportunity to respond to further queries and take part in future seminars, as the representing body for public sector risk and insurance professionals.

Our Members are experiencing, in some areas, a significant increase in the number of reported cases of sexual abuse which has occurred within institutions run and managed by the local authority. In some areas these reports have converted to claims for compensation.

As requested, our response answers those sections which are relevant to our Members experience and expertise.

Reparation generally

1. Our Members and their respective authorities are of the view that the wellbeing of victim and survivors, and their current needs must be the primary concern for the defendant. Reparation within the civil claim process should not overlook the victim's and survivor's current needs,

and where the individual lives within the jurisdiction of the defendant local authority they may also be clients able to access adult services.

Any system going forward must address the need for support services either as part of the compensation package or in place of it. While current compensation awards may allow for a sum for, say counselling, is this always used appropriately by the claimant and are the services always readily available?

Our Members view is that the primary objective of any system for compensation should address the following:

- a) The ability for the defendant to properly and quickly investigate the allegations made.
 - b) For the defendant to ensure without hindrance that any current safeguarding concerns are identified and addressed.
 - c) For support services to be in place for victims and survivors wanting to access their social care files.
 - d) A better use of mediation/ADR where there is an opportunity for the victim to voice their experiences.
 - e) Compensation that is directed towards improving the wellbeing of the victim and providing them with the opportunity for a better future.
2. The existing civil claims process is not always the most appropriate process for supporting victims and survivors, and entering into honest and open dialogue about events of the past.
 3. For most victims and survivors the most important aspect is for their voices to be heard, and for them to be able to share experiences. While their interests need to be properly represented, does this need to be provided by a legal professional? The right to truth and accountability, and access to support services may not be sourced through the civil claim process and through making a claim it does not always follow that victims and survivors are made aware of what support can be accessed.

4. While the defendant may be the employer of the abuser, it is our Members' experience that investigations made following receipt of a claim are done thoroughly and properly and with no evidence of bias.

The civil claims process

9. The current system, while it provides an element of recognition to victims and survivors of failings and provides them with financial settlements that reflects their pain and suffering, it is the view of our Members that there are practice rules within the current adversarial process that can be an impediment or cause delays to achieving what it is the victim actually wants.

a) With a protracted criminal investigation that may run alongside a civil claim process, those handling the civil claim are very mindful not to take any action which may prejudice the criminal investigation. There are cases where a long stay is required in the proceedings awaiting the completion of the criminal matter. This does lead to delays in being able to progress the investigation into allegations made in a civil matter and may ultimately lead to delays in settling a claim.

b) In our Members' experience there is a good range of qualified and experienced lawyers working within this field of expertise.

c) Our Members will often have good records of changes to local government structure and arrangements in place to refer matters incorrectly served onto the correct defendant.

d) Limitation is well established within the civil justice system and statute. However the passage of time sometimes hinders the ability to investigate and gather evidence due to the fact that files and documents have been destroyed in accordance with retention and disposal policies of the day.

e) Our Members experience of the assessment and quantification of damages is that the current process is expensive, time consuming and adversarial. There is often a need for

numerous medical expert opinions. There is also a feeling that some claimant experts are claimant biased and some defendant biased. It is appreciated they are often faced with a complex range of medical conditions, but the use of multiple experts does prolong the process.

f) Whatever process is in place with regard to future reparation the need to gather evidence; determine veracity and assess the factual context of each allegation is vital to the process.

g) There should be no fear of making an admission or apology where there has been a proven failure. The current fear of taking this course of action can stem from the fear of reputational damage and becoming a target for claims farmers. Each complaint and case should be treated individually and any admission to a failing should relate to the facts and circumstances of that case and not influence the outcome of other claims; or to extrapolate from one case that the service as a whole is failing.

h) Our Members report there is some use of ADR in the settlement of cases, however this is an area where there may be the potential to implement improvements. With the primary concern being with victim's and survivor's wellbeing and collating sufficient evidence to properly understand the facts, the opportunity to listen and acknowledge victim and survivor experience would be welcomed. A process for understanding and discussing where care standards may have failed; for both claimants and defendants to understand the standards applicable for the relevant time periods, and an honest dialogue about impacts and reparation is not utilised as much as it maybe should be. At the present time victims and survivors may not always be present at roundtable discussions so it may be more beneficial for the victim to have a more central role in the process.

i) Claimant legal costs often far exceed damages awarded and hourly rates are high. Defendant lawyer's rates, which are negotiated directly by local authorities or their insurers, are usually significantly under the guideline hourly rates awarded by the courts. Collectively much of the public funds spent on compensation are not for the benefit of the victims or survivors, or improving today's services.

10. The experience of our Members is that where insurance is in place most Members work collaboratively with insurers and enjoy good relations. Competing interests are well managed in a measured way.

Changes, alternatives or additional routes for redress

Taking point **13**, **14** and **15** together, in general our Members' view is that it is important for victims and survivors to access legal support where this is needed, but for the process to be less adversarial, with less delay and with less legal costs incurred. Importantly is the need to treat each victim and survivor fairly and with equality; for there to be an opportunity to gather evidence on the historical events; acknowledge any failings; have an honest dialogue with victims and survivors and provide proportionate redress which goes to support their future wellbeing and be assured that practices have improved to mitigate future risk of re-occurrence.

While there will be circumstances where it is right and proper for the courts to arbitrate a case there could be a less adversarial process that supports a fair outcome based on the evidence of each case.

This concludes the response from Alarm on behalf of our Members. We trust that our responses have been helpful and welcome the opportunity to be consulted further.

Yours faithfully,

Jane O'Leary
Vice Chair, Alarm (since June 2016)

