

1001021

Dear Professor Jay

Ref – Civil Justice and Compensation Issues Papers.

I am writing to you in my capacity as the National Police Chiefs' Council lead for Child Protection and Abuse Investigation, in response to the Inquiry's request for comment with respect to Civil Justice and Criminal Compensation.

I have decided that it would not be appropriate for the NPCC to respond directly to the question sets that you have published, simply because I believe that those who have personal experience, as either an individual or an institution, will more easily answer them.

There are four key issues that relate to the policing and the civil justice system that I would like to draw to the Inquiry's attention. These complement the questions that are contained within the issue papers.

1. The safeguarding of victims.

You will be aware that a primary objective of any police investigation is to consider and address any safeguarding needs that the victim or survivor may have. The police also recognise that victims and survivors, who initially present with low risk factors, may become upset and distressed through the process of recalling the events, describing them in detail or by other issues created by the criminal justice process. In some cases, this can dramatically change the initial risk factors.

The police will regularly carry out risk assessments during the course of the investigation. Investigators recognise the duty of care that they have towards a victim or survivor. That duty of care exists throughout the criminal justice process and investigators will invest time in managing such risks even after the conclusion of any court cases. The exit strategy, in particular, always requiring careful consideration.

I have concerns that civil lawyers will not always have the skill or experience to identify relevant risk factors. I also have concerns that they do not have the capability or resource to manage some of the risks that may exist. I can say that solicitors rarely share risks that they identify with the police. When a criminal investigation and civil process are running concurrently, the management of a victim's welfare can therefore become more challenging as a result.

2. The safeguarding of children and vulnerable adults.

Where a civil claim is pursued and the victim or survivor choose not to report a criminal complaint about their abuse I am concerned that the safeguarding risks presented by alleged perpetrators are not properly identified or referred into policing. It may be the case that such referrals are made to other statutory agencies, but it is rare for this type of referral to be made to police forces. This has the potential for any risk to other children or vulnerable adults to go unchecked which presents obvious dangers.

3. Victims and survivors will frequently give different accounts of material facts when providing evidence in civil proceedings.

The Criminal Procedures Investigators Act 1996 outlines the responsibilities of investigators to identify 'relevant' material to the criminal prosecution and to disclose it to the defence when it is assessed as undermining the prosecution case or supporting the defence case. When accounts differ, a suspect's defence team will look to cast doubt on the credibility of the account that has been given to the police. Suggesting that differences in a victim's account are evidence that they are fabricating what happened. The higher burden of proof that exists within a criminal court, inevitably means that doubt about the truth of a victim's account will be a significant factor when jury's reach a verdict. Of course, where a jury return a not guilty verdict, this may have an impact on any pending civil action.

I recognise that civil lawyers will have subtly different objectives when they take a victim's account. Similarly, research has demonstrated that a victim's recall of significant events will

often change during the passage of time. Therefore, inconsistencies are predictable and potentially inevitable.

This raises a number of questions. Is it appropriate to have a civil examination of the facts until the criminal processes are completed? If so, is there a need for civil lawyers to formally advise clients that the two concurrent legal processes may have damaging impact on each other? Alternatively, is there a need for wider understanding within the criminal justice system of the impact of trauma on memory recall, which, whilst based on significant academic research, is often not acknowledged or dismissed.

4. Disclosure to civil lawyers before the criminal process has concluded.

Civil lawyers will often request disclosure of relevant material before the criminal process has concluded. The police have to consider any such requests against the Civil Procedures Rules 1998. This will cause valuable resource to be diverted from investigations to servicing the disclosure request. If the processes are running concurrently, then the process of disclosure can allow a suspect to receive advanced disclosure of the prosecution case before they would otherwise have been entitled to receive it.

I am aware of a number of law firms, specialising in non-recent child abuse claims, that encourage clients to report to the police and complete that process before a civil claim is launched. This appears to be a sensible approach. I am aware however, that this may not be appropriate for many victims and survivors who, understandably, would not wish to engage with the police.

I trust that my observations add value and complement the wider debate.

I will look forward to reading the Inquiry's findings and considering any recommendations that are made in this important area of the Inquiry's work.

Yours sincerely,

Simon Bailey QPM

Chief Constable, Norfolk Constabulary

National Policing Lead for Child Protection & Abuse Investigation