

STRICTLY CONFIDENTIAL

The Bishop of Durham
Bishop's Office
Auckland Castle
Bishop Auckland
County Durham
DL14 7NR

25th September 2017

The Rt Revd Tim Thornton
Bishop at Lambeth
Lambeth Palace
London, SE17JU

The Rt Revd Alan Wilson
Sheridan
Grimms Hill
Great Missenden, HP16 9BG

Dear Bishop Paul, Bishop Tim and Bishop Alan,

Thank you for your letter of 14 September drawing attention to your concerns about the way survivors of historic abuse are treated - survivors who, in some instances, have incurred shocking abuse over many years by those for whom the Church is responsible.

Your concerns resonate with our own. Our ethical principles are deep, genuine and inform every aspect of how we conduct our business – particularly in relation to the insurance of abuse. We share your desire to see all survivors treated with sensitivity, fairness, compassion and respect, and to achieve reconciliation – with insurance being a step on that journey. To this end I, and my colleagues who have been dealing with this matter, would welcome an opportunity to discuss these matters with you and I am asking my PA to liaise with your office to find a suitable date.

In the meantime, there are aspects of your letter that require a response; we feel it only right to clarify some points, which I hope we can expand on and discuss when we meet.

EIG's Guiding Principles

Thank you for welcoming our Guiding Principles. We are disappointed that other insurers have not followed our lead in this area and hope that the Accountability and Reparations Investigation forming part of IICSA will encourage this in due course.

In your letter, you mentioned that IICSA has welcomed our Guiding Principles. In fact, to the best of our knowledge, the Inquiry has so far made no comment about them. It was solicitors who represent survivors who have made complimentary remarks in their evidence to IICSA. They advise on many abuse claims, and bring claims against many insurers, and so can compare between them. David Greenwood, (who represented Mr [REDACTED]), was one who gave evidence. A comment he made in his testimony (which is on the IICSA website) illustrates the point:

"For my part, EIG and BLM who represent them stand out as being the most progressive insurers to deal with. I can say that with certainty. It's been my experience. I have just finished a three-week trial backed by RSA in which every last point was taken, every last point on limitation, on credibility, absolutely everything was taken.So certainly the approach of EIG, in my experience, is not echoed across the board".

We welcome feedback on the Guiding Principles from all, especially survivors and those insured. We have said publicly that the Guiding Principles will be updated regularly. This is part of our journey of learning and understanding about abuse and its aftermath. We plan to publish a new edition later this year. If you have any thoughts and suggestions on them, I would welcome hearing them when we meet.

Our Guiding Principles are not new, but a reiteration of guidance provided historically in a less formal way to customers and staff. Our purpose in publishing them was to introduce transparency, so that the role of insurance was clearer and more understandable to both insureds and would-be claimants, to reassure them that claims are conducted with care and sensitivity, and to highlight that pastoral care and counselling can continue while the claim is resolved. By doing so, we hope to temper the stress and trauma of bringing and receiving a claim for financial compensation for abuse. Their purpose is not to change or dilute the rights and duties of the parties, which in practice are defined by the civil justice system and the law of contract.

The role of Insurance and the Legal System

It is important to see insurance of abuse for what it is: a contract of indemnity of legal liability for the criminal acts of those for whom the Church was responsible, often perpetrated years, or as in the case of Mr [REDACTED], decades earlier.

We have always been clear that the handling of claims for financial compensation is and should be seen as part of the healing process for survivors. Such claims are in practice brought for financial compensation, the vast majority through solicitors, usually specialists in the field, as was the case with Mr [REDACTED].

The role of a survivor's solicitor is critical - collecting evidence on which to base the claim, pursuing survivor rights and protecting their interests, and advising on what financial compensation is available. Liability, and the monetary value of the damage caused, are determined by reference to the civil justice system. Ultimately, the claim is judged by a Court. More usually, the parties will conclude a settlement before reaching Court, based on their respective solicitors' advice on the evidence and precedents for damages. Subject to certain safeguards, which it is the role of the solicitors to provide, it is a fundamental principle of the legal system that the settlement reached is full and final.

The practice of insurance, outlined above, is fundamentally and profoundly different from the pastoral care of a survivor. Views differ on the extent to which money is or can be palliative in these circumstances. Certainly, a survivor has every right to legal representation and to use it to seek financial compensation. Our Guiding Principles seek to address this and to ensure the process is conducted with care for and sensitivity to the survivor. Whilst we have sympathy with the Church in its journey of learning and understanding about the long term impact of historic abuse, the limitations of compensation as a financial transaction become obvious in comparison to pastoral care and counselling, and so reveal the limits of what insurance alone can hope to achieve in the reconciliation process between the Church and individual survivors.

[REDACTED] and the Elliott Review

Concerning Mr [REDACTED] settlement, we note that you have had a mediation with him. We assume this concerned his pastoral care and his continuing relationship with the Church, as we have not been advised previously about it. Nor has his solicitor, David Greenwood, contacted us about his claim since its full and final settlement and payment of the agreed sum.

We are troubled by your suggestion to re-open the settlement, or that Mr ██████ claim for financial compensation was in some way defective. These are matters to raise with Mr Greenwood, as they could be construed as allegations against him of professional negligence. We should stress that we have no reason whatsoever to believe this to be the case. We have very carefully reviewed this claim. All the abusers you refer to in your letter were named in the claim notified and settled. To be clear, there is no basis to revisit the settlement agreed with him on a full and final basis.

We are, of course, aware of the long history of both private and public remonstrance by Mr ██████ about his abuse, and his pursuit of acknowledgement by the Church over a period of decades. We are also aware of the Elliott Review, and have read with interest the progress report published in March this year. We are supportive of the broad aims of the Elliott Review but it remains a source of considerable disappointment that we were not invited to contribute, despite being liberally referred to in it, and did not have the opportunity to set the record straight. The misconceptions it contains have, we believe, contributed to the continuing misunderstanding of the fundamental issues involved in handling historic abuse insurance claims, potentially to the detriment of survivors.

We have raised previously with William Nye and the National Safeguarding team our investigation into the notification of Mr ██████ claim. This found that we did not advise the Church to withdraw pastoral support from Mr ██████. When our solicitor discovered the Church's misunderstanding about pastoral support, written clarification was provided, 13 days following notification of the legal claim, that pastoral support was unaffected by the claim process.

The Elliott Review is not only factually inaccurate in its description of these events, but states multiple times that the Church placed too much reliance on financial advisers, and makes this a central finding. Given that Mr ██████ evidence is that he tried to raise his abuse with the Church over a period of decades, this is a surprising amount of emphasis. We believe this is particularly regrettable as it has misled Mr ██████ about the true circumstances surrounding what happened to his claim when, after many years of trying to raise his abuse, he brought legal proceedings as a way of making his voice heard and his case was handed to us as the Church's insurer to investigate and respond to. It was entirely foreseeable that he would form an adverse opinion of Ecclesiastical as a result.

The consequences of this are clear. Since the settlement, we have had numerous representations from Mr ██████ to our offices and staff about his claim and the Church's response. We have consistently sought to respond to these representations – some of them voiced with considerable anger and distress – with patience and sensitivity.

We would welcome the opportunity to get to the bottom of the evidential matters in the Elliott report. We have written to its author saying as much, though recognising that we have mutual duties of confidentiality preventing a discussion. Perhaps one way of proceeding would be to investigate if such a meeting could take place. We would welcome it.

Our approach to insurance coverage for historic abuse

Ecclesiastical is one of many insurers of the Church in the UK. While we have insured a large proportion of Church of England risks in recent years, this was not the case many years ago in the 1950-1970s when incidences of abuse were more prevalent. In many historic abuse claims, there is no evidence of insurance coverage. We deal with issues such as this in the spirit of the Guiding Principles, and, even in cases where there is no documentary evidence that Ecclesiastical was the insurer, have chosen to accept liability. Mr ██████ claim is such an example.