

## **Issues paper number 1**

### **Civil justice system**

#### **Background**

The Accountability and Reparations investigation is one of 13 investigations announced by the Chair of the Independent Inquiry into Child Sexual Abuse in November 2015. The Inquiry seeks to understand what victims and survivors consider adequate reparation, and the extent to which this can be delivered through the process of bringing a civil claim against an abuser and/or responsible institution. The Inquiry acknowledges that many victims and survivors of child sexual abuse may seek broader outcomes from any reparations process than those delivered through a civil claim for damages. Whilst the focus of this paper is on the civil claims process, the Inquiry hopes that the views provided will feed into any wider investigation into possible reforms and/or alternatives to this process.

In the Chair's statement on 27th November 2015, she explained that the Inquiry would investigate the extent to which existing services and legal remedies available to victims and survivors of child sexual abuse effectively deliver reparations for the harm they have suffered. She stated that the Inquiry would consider the extent to which such mechanisms for support and compensation help or hinder the delivery of the right to truth, accountability, compensation, and guarantees of non-recurrence. It is important to note, in accordance with the Inquiry's terms of reference, that this issues paper only addresses sexual abuse claims where there has been institutional failure.

#### **Making a civil claim for compensation**

The civil claims process is an adversarial process, whereby the claimant has to prove his/her case according to the balance of probabilities. That means, whether it is more likely than not that the abuse occurred. Claims are tried in court by judges and will usually involve hearing witness evidence and evidence from medical experts. However, many cases settle before they get to court, even though this will not necessarily mean that an admission of liability is made.

An injured party ("the claimant") may bring a civil claim against the party they allege is liable for their injury ("the defendant"). If the context of a civil claim for damages is child sexual abuse the defendant may be the abuser him/herself. If there has been an institutional failure, the defendant may be the responsible institution. The claimant will have to show that the abuser and/or the institution is legally liable for the abuse. The claimant also has to show that the sexual abuse caused the claimant's injuries (physical or psychological), which may

lead to particular difficulties in the context of psychological injuries and quantification of compensation.

Many claims of child sexual abuse arise out of incidents which took place years or even decades earlier. The passage of time between the abuse and a legal claim can cause difficulties bringing a claim. As a form of personal injury claim, child sexual abuse claims are governed by sections 11, 14 and 33 of the Limitation Act 1980. The general rule (leaving aside minors and those with a disability), is that a claim must be brought within three years of the date of the injury or the “date of knowledge”, although the court has a general discretion to allow late claims. The extent to which the existing law of limitation is suitable for child sexual abuse claims has been a subject of discussion for many years.

### **The Inquiry**

The Inquiry seeks to understand what people with experience of civil claims in England and Wales, whether in a personal or professional capacity, consider to be the most important elements of an effective civil justice system. The Inquiry also wishes to understand the reasons why victims and survivors may not have brought legal proceedings, either because they were unable to do so or because they chose not to do so.

The Inquiry seeks views on whether the existing process for bringing a civil claim is effective, which may include whether:

- The process is accessible for all victims and survivors;
- An apology and/or admission of liability (i.e. legal wrongdoing) is made;
- An appropriate amount of compensation is awarded;
- Cases are concluded in as timely a manner as possible;
- Claims are investigated fairly and claimants are treated equally;
- Claimants are treated with sensitivity.

Submissions are sought on the effectiveness of the civil claims process and possible reforms. The Inquiry would welcome your views on the following issues. You should not feel that you need to answer every section, only those that are relevant to your experience and expertise.

#### *Reparation generally*

1. What results should a civil claims process aim to deliver for victims and survivors of child sexual abuse?
2. In your experience, how far does the existing civil claims process deliver those results for victims and survivors?

3. How important are the following: the right to independent legal representation; the right to an independent and impartial investigation; the right to truth and accountability; compensation; guarantees of non-recurrence; and support services?
4. Which of the above has the existing civil claims process successfully delivered?
5. If there are elements you have identified as not always successfully delivered, what, in your experience, has been the reasons for this?
6. In your experience, why have you/some victims and survivors chosen not to pursue civil claims?
7. In your experience, why were you, or why are some victims and survivors unable to pursue civil claims despite wanting to do so?
8. What are the advantages and disadvantages of civil claims as a means of delivering reparation, when compared to existing procedures for criminal compensation (Criminal Injuries Compensation Schemes and compensation orders made by criminal courts)?

#### *The civil claims process*

The following section deals explicitly with some of the legal issues relevant to the civil claims process.

9. Are there elements of the civil claims process which may obstruct the delivery of accountability and reparation to victims and survivors, and if so in what way? In particular, submissions are sought on the following issues:
  - a. The interaction between any criminal investigations/proceedings and civil claims;
  - b. The availability of independent legal advice and representation;
  - c. Identifying the correct defendant to any proceedings, for example where an institution no longer exists or has undergone reorganisation;
  - d. The scope of any direct duty of care owed by institutions;
  - e. The circumstances in which institutions may be held liable for the criminal acts of their employees or other individuals, including joint liability, vicarious liability and non-delegable duties;
  - f. Limitation periods for bringing a claim;

- g. Defences to child sexual abuse claims (for example, consent and the Compensation Act 2006);
  - h. Causation of injuries and the assessment and quantification of damages, including general, aggravated and special damages;
  - i. Evidence (including disclosure of documents and expert evidence);
  - j. Admissions of liability and/or apologies;
  - k. Settlement and Alternative Dispute Resolution (ADR);
  - l. The process of giving evidence and being cross-examined;
  - m. Funding (including the availability of public and other funding);
  - n. Costs and proportionality;
  - o. The duration of civil proceedings;
  - p. Where individual or institutional defendants are uninsured and do not have significant assets does this prevent civil claims from being pursued or civil judgments enforced?
10. To what extent does the model of insurance and/or the practice of insurance companies obstruct the delivery of some or all elements of reparation? In particular submissions are sought on the following issues:
- a. The role of insurers in inquiries or reviews, including the publication of reports;
  - b. The role of insurers in civil claims;
  - c. The types of insurance policy that may be relevant to claims of child sexual abuse;
  - d. Lack of insurance and mandatory public liability insurance;
  - e. Confidentiality clauses;
  - f. Exclusion clauses.
11. Are there other elements of the civil claims process which may obstruct the delivery of accountability and reparation to victims and survivors? If so what are they?
12. To what extent have any of the issues raised above obstructed the implementation of effective safeguarding measures by institutions?

*Changes, alternatives or additional routes for redress*

13. In your experience, is there anything that has made it more difficult for victims and survivors to achieve accountability and reparation through the civil justice system? If so, what? What could be done to help people overcome these barriers?

14. What changes could be made to the civil claims process in order to make it easier for victims and survivors to achieve accountability and reparation? What would the implications of such changes be for defendants, defendant institutions and insurers?
15. Are there alternatives to the civil claims process that could better deliver accountability and reparation to victims and survivors, either on their own or in conjunction with the civil claims process? If so, what are they?

### *Support*

16. What information, support and resources are you aware of to help victims and survivors (and/or their families) to access reparation through the civil justice system?
17. In your experience, have people who needed these services and support been able to access them? If not, why not?
18. How do you think the current provision of support could be improved?

In addition to the issues set out above, submissions are encouraged on any aspect of the civil justice system insofar as they relate to accountability and reparations for victims and survivors.

In making your submission you do not need to address every question. We encourage you to address those specifically relevant to your experience or expertise, both personal and professional. In your submission, please separate out responses to different questions, and indicate clearly which question(s) you are responding to.

Please include the following information on the attached questionnaire as part of your submission:

- Your age and gender;
- Whether you are responding on behalf of an organisation or as an individual;
- Which, if any, organisation do you represent;
- What is your job title and how long have you held this position;
- Whether you would like your response or personal details to be treated as confidential, and the reason for this.

Submissions will be publicly available on the Inquiry's website. The Inquiry will also publish a report summarising the key themes from the submissions received. This report will help inform seminars which will take place when the submission process has closed. A range of

contributors will be invited to these seminars to consider in detail the themes identified from the submissions received.

The submission process will close at **noon on the 29th September 2016**.

Submissions can be made in English or Welsh and submitted either:

- Electronically to [civilcomp@iicsa.org.uk](mailto:civilcomp@iicsa.org.uk), or
- In writing: **Civil Justice System Issues Paper, PO Box 72289, London, SW1P 9LF**

Please contact the Inquiry if you require this information in any other format, such as Braille, large font or an alternative language. The Inquiry is able to receive MP3 files should you wish to make an audio submission. Please send your audio file to the email address above.

Please note the Inquiry intends to publish all relevant submissions. Please state on the attached questionnaire if you do not wish your name to appear in any Inquiry publication. We will consider any request for anonymity in accordance with our statutory obligations.

If you have any queries regarding the issues paper or your proposed response, please contact the Inquiry at the e-mail address above.