Wednesday, 30 November 2016

(10.00 am)

Session 1

Welcome by Chair and opening comments

THE CHAIR: Good morning, everyone, and welcome to Day 2 of this seminar. For the benefit of people who weren't here yesterday, my name is Alexis Jay and I'm the chair of the independent inquiry into child sexual abuse. Other panel members present, Drusilla Sharpling, Ivor Frank and Professor Sir Malcolm Evans.

I would particularly like to welcome those of you in the audience who have travelled a long way to be here and have stayed over. We are very pleased so many of you are here for a second day. Thank you very much.

Today, we are continuing our discussions of course about the civil justice system. As with yesterday, the process will be facilitated by Peter Skelton QC.

Finally, a big reminder to everybody around this table: please, please speak up. Don't let the volume of your voice drop, because we are mindful that people at the back of the room have to hear you. We can hear you here, but please keep your voice up. Thank you very much.



Opening comments by Facilitator

MR SKELTON: Thank you. Before we get into our discussion today, I would just like to say a few words echoing what I said yesterday about participation of those who are not around the table. Obviously, the focus for the panel today is to listen to the experts or expertise of those who are sat at the table, all of whom are experienced in the civil justice system, but we are also concerned, the panel is concerned, to capture the views and information available from those who aren't around the table, those who are in the room and those who are outside the room either reading the transcript or watching the live feed.

For those of you who are in the room, please would you contact Mr Regis if you have any views you would like to articulate, he can communicate them to me and I can make sure they are ventilated within the context of this room. I will invite those who are in the room to make known their views, but please bear in mind the time restriction we are under today. We have a lot to cover today, so I'm afraid it will be only over a fairly short period of time.

With that introduction, may I ask those present to give their names? I know most of you were here yesterday, but it is always helpful I think to remind ourselves of who you are.



Introductions

MS STOREY: I'm Tracey Storey from Irwin Mitchell and I represent claimants.

MS MACKENZIE: Carolyn Mackenzie from RSA Insurance Company.

MS JEFFERSON: Paula Jefferson from BLM Solicitors.

MR GARSDEN: Peter Garsden, Simpson & Millar Solicitors and president of the Association of Child Abuse Lawyers.

MR SCORER: Richard Scorer, Slater & Gordon.

MR LUCK: Rod Luck Municipal Mutual Insurance.

MR GREENWOOD: David Greenwood of Switalskis representing claimants.

MR NICOLSON: Mark Nicolson from the London Borough of Lambeth.

Open discussion

MR SKELTON: Thank you. The focus of our fifth seminar is compensation in the civil justice system. The next seminar, you will probably be aware, is looking more broadly at ideas of reparation and accountability, but before we got to that point, we wanted to understand the problems that may arise when it comes to compensating victims of child sexual abuse. I anticipate we will need to discuss general damages, which is clearly a contentious area, damages for pain, suffering, loss of amenity. Aggravated damages. Human Rights Act damages,



which hasn't featured a lot in our discussions over the last day and indeed doesn't feature that much in the response in the issues papers but may be a topic for the future development of the law. Then key issues for claimants for loss of earnings and treatment costs, and there may be other losses or treatments and therapies which we can discuss during the final stages of our discussion.

Can I start, then, with general damages. Arguably, it may be said there are two forms of injury for the person who suffered child sexual abuse: the abuse itself, the experience of the abuse at the time, and then the effect on that person's life, whether it is psychiatric or the effect on all aspects of their relationships, working life, et cetera.

David, perhaps you could give your views on those issues first of all?

MR GREENWOOD: Presently, we have a system that's really centred around a couple of cases, North Wales cases, I think, the Bryn Alyn and Flintshire cases, which set out the issue of the two types of damages, the damages for the abuse itself and the discomfort and pain that must have had to have been endured at the time, and then the general damages, the psychological effect.

I think I'm right in saying that the range of those

damages in those cases range from about zero to maybe GBP5,000 to GBP70,000, so that's general damages.

A lot of my clients have said that, you know, it's very difficult for them to quantify the damage that's been done to them, how can we quantify based solely on what a psychologist or psychiatrist would say is a recognised psychological illness, which currently is the case with the compensation system that we have through the civil courts.

I have certainly taken on board what my claimants have said, and they are saying to me that this doesn't just affect you in a recognised psychiatric way, it harms you in all sorts of aspects of your life: maybe the inability to speak to parents about the abuse, so that aspect of your life is closed off; the inability to go down to the shops on some occasions because you feel you have these anxiety issues; the inability to push yourself forward to apply for the next job because you have this anxiety and worry about what could happen if you were to apply. So those slightly unquantifiable pieces of harm that cause a deterioration in quality of life are not reflected at present in the way in which the courts quantify damages.

MR SKELTON: Presumably, the types of things you have mentioned, the effect on someone's life, their



relationships with their family, their relationships with loved ones, et cetera, have been put before the judges as part of the general damages argument by their barristers or solicitors, but the judges have not valued them in the way in which you think is appropriate. Is that what you are saying?

MR GREENWOOD: Yes, that's really what I'm saying, because to get to a judge having enough evidence before him or her to decide that it should sound in damages, he has to have a recognised psychiatric opinion that, you know, this is a recognised illness and, you know, ticks a box on the DSM4 or DSM5 way of measuring psychiatric illness.

There is a whole list of other ways in which people's lives can be really seriously affected, but we just don't -- may not reach the level of a psychiatric diagnosis.

MR SKELTON: Richard, can I ask you, in what way is the effect of child sexual abuse on victims and survivors different from other personal injury cases which may have had psychiatric effect? Some people involved in serious car accidents will have a physical injury and they may have psychiatric illnesses. Is there something different about child sexual abuse survivors and their experiences which justifies them being treated



differently?

MR SCORER: I think David's captured it quite well in the way he's explained it. There is something -- in my experience of dealing with quite a wide range of different types of personal injury over my career, there is something particularly toxic and nasty and all encompassing about the impact of child sexual abuse, something which I don't think is captured by the level of general damages awards. As David was talking and mentioned the North Wales awards, which I think were made in cases around 2001/2002, what was really going on with the courts at that stage is that, in the late '90s, and at that stage they were starting to award damages for child sexual abuse really for the first time on any scale. There had been awards prior to that, but in terms of litigation of this kind coming before the courts, that was when it came before the courts. Victims started to come before the courts in more significant numbers.

So they were looking to make awards for those sorts of injuries, and, really, they didn't start from first principles and say, "What does child sexual abuse do to a person and how do we properly compensate that?" They looked back at previous awards for psychiatric injury, or nervous shock as it was described in the '80s and



'90s, so it was -- the approach that they took was derived from that, rather than starting from first principles and saying, "What does child sexual abuse do to a person and how do we compensate it?".

MR SKELTON: Is there a misplaced focus on psychiatry and diagnosis? David referred to the Diagnostic and Statistical Manual, which the judges are familiar with looking at and listening to evidence from. Is there a misplaced focus on psychiatry and one should be looking more widely at the effects on someone's life?

MR SCORER: I think that is a very good point. That almost obsessive focus of the courts on, you know, which box does this fit into, comes out of the fact that they were simply trying to extend the law in relation to psychiatric injury generally and seeing it as part of that continuum.

MR GARSDEN: If I could just chip in, I do agree with what David and Richard have said. About the middle 2000s, we dealt with a lot of Irish redress cases. I don't know whether the panel are familiar with that scheme. It was a scheme set up in Ireland to compensate the victims of abuse in Ireland by the church and institutions. It was a very well crafted scheme which had a number of weighting factors enabling you to calculate how much your award was. It was very cleverly set up. But that

scheme, unlike British damages, recognised exactly what Richard and David are saying. In other words, it was quite an eye-opener for me. They recognised that victims of child abuse are unable to function, usually, in the conventional way; in other words, they have problems with housing, they have problems with employment, they have problems with relationships with other people, and interaction generally in life. It is an all-encompassing, lifelong problem. Not only was there compensation for that aspect, which was quite important, they also set up outreach workers at the Irish centres all over the UK to assist people with their way of life. So it was an all-singing, all-dancing, convivial way of looking after victims which is totally absent in the British damages system and something that I have been talking about in the context of helping claimants go through the process and stopping them falling off the process, the healing process, halfway through by having support workers, something, you know, I would argue for.

MR SKELTON: Can I move on to another aspect, Peter, if that is okay?

Tracey, is there a difficulty, in that the courts need some evidential purchase on the assessment process, and actually the effects of child abuse over the long



term may vary a great deal, so what they are looking for is assistance from psychiatrists or an expert of some kind to try to give them an idea of the actual impact, which may not necessarily be predictable, on a person's life?

MS STOREY: I think the expert evidence is helpful here, but the fundamental problem which has been alluded to is the failure to properly compensate those matters that are intangible. So the lost intimacy, the loss of enjoyment, the loss of fun, and the lost childhood.

These are really difficult areas, but these are the kind of things that survivors will talk about wanting compensation for. I don't think the English system necessarily reflects -- the ability to be light-hearted, to have fun, to trust people, they are not psychiatric problems -- they are not a psychiatric diagnosis, but they affect all aspects of life. So coming back to what Peter was saying about the deterioration of quality of life, there should be a way of marking that. At the moment, our case law and our guidelines don't really assist us with that.

It is hard to get a handle on. I think that it varies from survivor to survivor. But at the moment, I don't think the English system is actually reflecting those parts in life that have been affected.



MR SCORER: I suppose, of course, the courts would say that they do do that where they have evidence, but the reality is that the monetary recognition that they attach to that is really very insubstantial.

MR GARSDEN: Part of the problem is that we have lived through two world wars and there's a stiff-upper-lip mentality in Britain, and a lot of cases about nervous shock arise out of that history, where, you know, it was -- you bloody well just got on with it and didn't complain, and the concept of nervous shock arises from that sort of way of looking at things. That's why you can't compensate for the natural effects of an accident. It has to be a recognised psychiatric disorder.

MR SKELTON: Can I ask some of the defendants, I appreciate you are in a difficult position because, by definition, you are wanting to keep the damages down and proportionate to injury. But do you have a view on this, whether child sexual abuse injuries are exceptional compared to other personal injuries, in the way which our speakers have identified? Carolyn?

MS MACKENZIE: Yes, I absolutely recognise what everybody around the room has said about loss of enjoyment of life in so many aspects and how wide-reaching that is, those effects are.

I think the first thing I'd want to say is that we



absolutely see the importance of victims and survivors receiving compensation that compensates them for all the effects of abuse and all of the harm and what flows from that harm. I think under pain, suffering and loss of amenity, the loss of amenity element is designed in principle to cover for loss of enjoyment of life, I mean in real terms. It's more definable, it's not being able to pursue your hobbies for six months when you've suffered an injury. It's not ever really, I suppose, been considered in the context of abuse cases like this or, if it has, not in any, I think, really meaningful way. I think that is something for the judiciary. They have that open to them to consider a loss of amenity award in abuse cases and what that should be. I think that is something we would like to see more widely considered.

MR SKELTON: Mark, can I ask you as a defendant institution for your views on those issues?

MR NICOLSON: Yes, I would agree with what's been said by everyone so far, really. I think there definitely ought to be a review in relation to the general level of awards that are made available for this category of claim. Of course it is quite difficult, how do you place a financial value on some of these aspects? So I think what needs to happen is learning lessons from

similar schemes that have been implemented elsewhere. Because those schemes have started to try and put into bands or tariffs -- that recognise the unique experiences that some of these individuals have been through.

I think that is fundamentally important. The current system really I think struggles to offer awards based upon the full extent of the experiences.

MR SKELTON: Can I go back to some of the claimant representatives and ask, really, about this variability point, because we have heard that there may be a variation of the effect, the same type of abuse may have a long-term effect on different people in a very different way. Is that going to create problems when you present it to the court of having really to prove that you have had an effect, which may not be assumed, or should one assume it?

MS STOREY: I think people have varying degrees of resilience, and that will be from birth, and so we do see so many different outcomes.

I think the pattern we see with more recent cases is that people have carried around this harm with them for an awful long time. It is only recently that psychiatrists have really understood why that makes such a difference to people and how complex the problems will



be when somebody has tried to manage over a long period of time.

The longer somebody has struggled with that, often the worse the effects, but it is only recently -- I mean, I remember seeing psychiatric reports 20 years ago that really didn't get behind that or understand that, and I think that it is an evolving -- it is evolving, really, how people understand what Richard called the toxic nature of abuse.

MR GARSDEN: This is where causation comes in, really, and arguments about causation and what are the effects of abuse. Because this is where the different expert reports are diametrically opposed. You know, the defendant psychiatrists will say, "Oh, it was all because of their childhood that they are suffering these problems. They went into the care home damaged, they came out a bit more damaged, so what's the difference?" The claimant experts will say, "No, I'm sorry, you take a claimant as you find them. They go into the care home damaged. They are abused and the effect of that damage is a multiplier, so they come out a lot more damaged than they would have done, and what should have happened in the care home is they should have been looked after and cared for and made a more rounded individual".

So what I would like to see is a recognition that,



where there are two causative factors to an outcome, that it isn't excluded just because there is another causative effect that could have created that, if that makes sense, and it is the burden of proof on causation that causes the judges the difficulty, and trying to isolate what caused -- what effects were of the abuse for the expert is almost an impossible task.

MR SKELTON: Paula, can I ask you how you grapple with that problem, which is the different opinions about the causative effects on someone's life, particularly for those who have come from a background which is pretty negative already?

MS JEFFERSON: It is a real challenge in any case. From a defendant's perspective, we don't have the opportunity to hear directly from the claimant until either possibly at a settlement meeting or in those very few cases that go to trial. So we are very much reliant upon the information that is given to us by the claimant's legal representatives.

We have the challenges here not just about what may or may not have happened in this individual -- in an individual's life prior to the abuse, subsequent to the abuse, and we have a system whereby we are expected to look at what other factors may or may not have been relevant and then to somehow apply that to very crude



levels of compensation. What we have is, we have case law and all the points that have been raised about the challenges in where we have got to today. We then have the judicial college guidelines, which don't really address sexual abuse. They mention it in passing as part of psychiatric damage, but there is no separate head of loss, and that may be one relatively straightforward recommendation, is to take a separate guidance there.

But it is very, very challenging to put together what can be incomplete evidence. We know that people respond differently, and there is an argument about, just because someone has, as it were, maintained the stiff upper lip that Peter mentioned, should they receive more or less damages than someone who, because of their resilience or lack of it, has had a very different life? Trying to put all of those things together in a way that also ensures consistency -- because the other thing is that, from a defendant perspective, you want to be consistently paying damages that is not dependent upon how vociferous the representation of that individual is, so that you know that it doesn't matter whether or not it is Tracey, Peter, Richard or David who is representing that claimant, there is a degree of consistency, but getting

that right is really difficult.
MR SKELTON: Presumably, there are other variables. I mean, the degree of expert evidence or quality of expert evidence and, indeed, the variations between judges. After all, they have to make up their individual minds and they may have different views.
MS JEFFERSON: Yes. I think the fact that judges -- I don't know if there is anyone who has ever asked how many civil claims have come before certain judges, but, actually, I think -- I know it has been suggested that there needs to be more focus, because I think, and certainly I think we would all say from dealing with large numbers of these claims, whether it be against one organisation as part of a scheme or individual compensation, you begin to see the patterns, you begin to understand the things that have been said.
If you are a judge who this is the one and only case you have heard, you don't appreciate that.
MR SKELTON: Just on that point, is there also a problem, though, that judges can become battle weary.
MR GARSDEN: Yes.
MR SKELTON: That, actually, a specialist judge, day in day out doing child sexual abuse, will not be able to cope with the amount of anxiety, anguish, that he or she is facing, and ultimately you don't listen anymore and



properly compensate because of that.
MS JEFFERSON: I think you don't have just one person. But I think there is certainly guidance that can be given and you have a specialist group. Because I think you could apply that same battle weary argument, then, to all of us sitting around the table, and I would hope that we would all say that that isn't what happens.
MR GARSDEN: I was told that the judge who dealt with the North Wales tribunal case, Mr Justice Coulson, had heard so much he never wanted to hear another child abuse case again.
MR LUCK: I don't disagree with anything which has been said. I think with regard to the assessment of damages, we are dealing with the claims, we are looking to get settlements and, in essence, you do tend to look at the effects of the assaults themselves and you look for the psychiatric injury.
Maybe there is not sufficient attention paid to these other elements which are difficult to understand. They are difficult to assess. Ultimately, claims come to a conclusion which may or may not be necessarily the right figures with all the other variables coming into play.
So I don't think that, you know, we would be opposed to consideration of these additional elements and



reviews of damages awards if that is necessary to bring in these factors of these people's lives.
MR SKELTON: Can I ask where on the spectrum of personal injuries these damages should start to sit, from the claimants' perspective? Obviously the spectrum ranges from a broken tooth or a broken finger to a catastrophic physical injury such as tetraplegia or a complete loss of sight or hearing, and the damages at the top end are in excess of GBP200,000, the damages at the bottom end are GBP1,000. There is a system which the judges have to calibrate between all claimants across the judicial system. Where do these sorts of injuries sit within that spectrum? Can I ask you, David, and then Peter?
MR GREENWOOD: For my part, I think the answer to that question lies in an assessment of the deterioration in quality of life. I think that's really what my focus is. And my focus will be going forward. I am very much looking at how a person's quality of life has increased or deteriorated as a result of this type of harm. Many times, I have reports which, you know, set out the fact that a person has been in a vulnerable position, has been in a care home, et cetera, and perhaps wouldn't have had a great life trajectory in the first place, but that life trajectory is made much worse by the intervention of abuse.



So I would like to see an assessment of deterioration in life. We are all entitled, I would say, to a decent quality of life. We are all entitled, as Tracey says, to feel fun, to have fulfilled lives.
Some of us start out with fewer opportunities than others, but we really need to be aiming for the whole system, the whole country, the whole education/care system to be promoting quality of life.
So I think it really depends on the quality of life. How we assess that, I don't know. But I echo what Peter says about the redress system and the way in which that was really well tuned to assess quality of life.
I would echo his sentiments, and I will certainly dig out that chart that they were working with and pass it through to the inquiry.
MR SKELTON: I think what I'm interested in, really, is a moderate psychiatric injury might get GBP10,000 or GBP15,000, something like that, as a broad figure, and that seems a very low amount, considering someone who breaks a leg and then takes a few years to recover might get a similar amount of money. How much more actual brass tacks would one be looking at in order to start to feel that it was a fair compensation?
MR SCORER: That will depend on the individual case, but the point I think is that -- going back to what David

said -- in cases involving serious physical injuries and catastrophic injuries, the focus of the court's assessment of what the general damages is, is very much based around deterioration in quality of life. That is a key issue which feeds into the assessment of damages.

I think what we are saying is, when it comes to child abuse, there isn't anything like the same level of focus on what Tracey called the intangibles and the impact of those on quality of life.

MR SKELTON: I think Paula's point was, to focus too much on those in an individual case each time requires a vast amount of evidence and analysis and potentially gives rise to contentious issues which have to be litigated. So it is a question of striking a balance, isn't it, between presumed level of injury or compensation and a tailored --

MS STOREY: I think the difficulty is, in a lot of personal injury cases, and I do serious injury cases and child abuse as well. In serious injury cases, where somebody has a physical injury, often their psychological recovery goes hand in hand with their physical recovery, and it is very treatable in that respect. So a lot of the time the courts are assuming that there will be a good recovery. I think it is a distinction between acute psychological problems, as opposed to chronic



psychological problems that have lasted for many years. It is trying to sort of -- I think we have to look at the function and the loss of amenity. So somebody who has to use a wheelchair, who is disabled, may not be able to access a community anymore, but somebody who has survived child abuse may also not be able to access a community for psychological reasons, so the effects are very similar. So I think it would be wrong to place it with your general psychological injury, because the impact, the disability, that the person carries with them is more chronic and has to be recognised.

MR GARSDEN: What I was going to say is, the big difference between most physical injuries and child abuse is that child abuse is a life sentence, and it has enduring consequences forever.

You don't recover from abuse and it stays with you for the rest of your life. So it should be equated with, maybe, physical injuries that do last forever -- I'm talking about head injuries, top level injury head injuries and other physical injuries from which you don't recover which disable you. The problem is, with these types of cases, we are trying to evaluate something which the client doesn't tell us, because they don't want to tell us because they are ashamed of it. So the psychiatrist has to somehow delve into the



person's brain to work out actually what they are suffering that they may not want to talk about. That is extraordinarily difficult. But I would argue it should start at top-end, lifelong physical injuries from which you don't recover, for that reason.

MR SKELTON: Before we move on from general damages, can I just ask about whether all of you capture any data on the amounts that get paid to your clients for the types of injuries that they have suffered? Is that something which the inquiry could research or ask more questions about in detail? Richard?

MR SCORER: We certainly have access to that data. I mean, we obviously have records of settlements that we have achieved in the past. So in principle, yes, we do have access to that data.

MR GREENWOOD: Likewise, I can put that together. I think it varies between different groups and different types of abuse, different abusers. But, yes, we can pass that on to you.

MR LUCK: Our information on this is actually quite poor. It is not that long ongoing and it doesn't differentiate purely for general damages.

MR SCORER: I was going to say, I think it would be difficult, probably practically impossible, to go back and work out the general damages elements of the cases



where we've achieved settlement or differentiate between different heads of awards.

MR GARSDEN: On the ACAL website in the members area there are quite a few unreported quantum-only judgments that members have submitted to which we can give you access. I think I have suggested that. It might be useful. They do break down -- I can't say we have done it in a table, but I know years ago, I think this is probably four or five years out of date, Malcolm Johnson, our past president, produced a chart which is in our notes of different awards and different levels, which will be readily available to you as well.

MR SKELTON: Thank you.

MS MACKENZIE: I think in the industry we could come together and look at our data. We probably collectively all have data going back at least three, five years, if not a bit longer. Again, we might face the same challenges with splitting out the different heads of damages. It may even be possible to do some sampling to try to give an average view of how the damages numbers are made up.

MR GARSDEN: I think you will find it's not gone up at all over the last 10/15 years as it should have done, although best efforts. We do lag behind. We are still settling cases at awards that we were settling them at

10 years ago, and we shouldn't be. There is no doubt English damages are way below American damages generally, and we have got members of ACAL who came across from America and are absolutely appalled at how little we award in this country.

MR GREENWOOD: Can I just mention, sorry to go back to the redress scheme in the Republic of Ireland, but I think the average level of damages was around about GBP60,000-odd that they were awarding. That was for bad treatment, bad physical treatment overall in these institutions in Ireland.

If that is the type of level that was acceptable for the physical abuse and hard work that these kids had had to go through, having stayed there for two or three years, sexual abuse is obviously going to be at a higher level than that, to be something that is palatable to most survivors.

MR GARSDEN: Ireland looks at America rather than England for its levels.

MR SKELTON: Its tariffs?

MR GARSDEN: Yes.

MR SKELTON: That was quite a long discussion about general damages, so I am going to have to truncate some of the discussion about the other topics. I think aggravated damages we may be able to deal with relatively shortly,



I hope.

Aggravated damages, broadly speaking, are for high-handed or oppressive or insulting conduct by a defendant. That can be the original perpetrator or, indeed, the litigator during the course of the litigation. So far as the former is concerned, isn't it, by definition, part of child abuse that it is an oppressive, malevolent act, so do you need aggravated damages? Can I ask the claimants first whether or not they think they are appropriate to whether in fact it is general damages that need to be the focus?

MR SCORER: General damages certainly need to be the focus, for all the reasons we have discussed. We typically do argue for aggravated damages for the simple reason we think they are absolutely appropriate for child abuse cases.

MR SKELTON: But if your general damages encompass that oppressive, insulting, malevolent element, wouldn't it make aggravated damages redundant?

MR SCORER: Yes, it would. That is obviously not where we are now, but yes it would.

MR SKELTON: Do others share that view?

MR GARSDEN: I think you should retain aggravated damages, for the simple reason that it helps judges award more money for these cases. I think if you mix them in with



general damages, the judge, who has probably little idea what to award, thinks of a figure and gives it. But if you add up the different types of damage, there is (a) a recognition, a separate recognition, for the client that this is a particularly nasty case, and there are different types of abuse. Some abusers are a lot more aggressive and unpleasant than others. Some abusers are much less supervised and the systems that they work in are open to infiltration in a much greater way than others. There has to be a recognition of that.

It becomes a bit of a punitive award, but I think it is a recognition for the client that something very unpleasant happened to him. So I would argue for the retention and enlargement of aggravated damages.

MR SKELTON: Paula, I think you made the point in your response that, where an organisation is effectively liable for someone else, an abuser, but is not, itself, culpable, it hasn't done anything wrong as an organisation, but the abuser has and they are liable for that abuser, it isn't appropriate effectively to punish the organisation by aggravated damages?

MS JEFFERSON: I find aggravated damages as a separate, as it were, head of loss challenging, partly for that reason, because I do have organisations who will say to me, "We did everything that we possibly could and this



has still happened, and we are really, really sorry and tell us what more we could have done?", and it seems to me that the aggravated damages are there to punish the abuser who, of their own free will, made the decision to abuse.

For me, I would prefer it is all encompassed as part of general damages and, as I have said, we have more focus either from judicial college guidelines or elsewhere that allows for that greater issue.

The other thing around aggravated damages is that quite a large number of insurance policies may exclude aggravated damages, and we then get into a difficult challenge for a claimant that a large part of their claim may be covered by the insurance, but there may be part that isn't, and that is just another area that, to me, seems to be complicating. So I'm not saying do away with aggravated damages, but actually I think an easier route is to look at general damages than to have this as a separate head.

MS MACKENZIE: I would agree with that. We have looked at coverage for aggravated damages and it has certainly not been our practice to exclude aggravated damages in more recent policy years. But if we go back historically, potentially 10/15 years, not in all policies, but there are exceptions and certainly aggravated damages are

excluded from some. So I think that is a very valid point.
MR SKELTON: I am going to move on to human rights damages and claims. It may be said that the personal injury side of civil litigation has been slow to embrace the Human Rights Act as a mechanism for achieving compensation for people who have suffered injuries of any kind, not just child sexual abuse. Is it something which is going to become more important, assuming we remain Convention-bound, if I am able to put it that way, which isn't clear, but assuming we do, Tracey, do you think the Human Rights Act is a mechanism for the future?
MS STOREY: It is not something that's formed part of my practice particularly. We routinely sue -- the limitation period makes it difficult. We routinely sue in negligence for assault. So, no, I don't see it as a growing area, personally.
MR GARSDEN: The limitation. There is a two-year fix, period.
MR SCORER: One year.
MR GARSDEN: Sorry, one year.
MR SCORER: Obviously, where it has arisen in this context is situations where public authorities, particularly the police, have failed to investigate allegations of abuse



properly. This was the John Worboys situation, where women were raped by a London taxi driver and the police failed to undertake proper investigation of the allegations and the women were compensated under the Human Rights Act. So that is an area which is relevant to this -- an area of compensation that is relevant to this area of work.
As others have said, there are a number of practical difficulties with it. The limitation period is a significant problem, and there are funding issues associated with it as well, and difficulties in obtaining "after the event" insurance in order to litigate. It is not a personal injury claim, therefore it doesn't attract qualified, one-way cost shifting, therefore there is a financial risk to the claimant in bringing a claim and it is difficult to insure against that risk.
MR SKELTON: David?
MR GREENWOOD: In the right case, I would say that, as lawyers, we need to look at human rights situations. The Rotherham cases being one. The police were involved there, and my understanding is that, you know, that head of damages will be completely separate from negligence or vicarious liability. It is something that I would be negligent if I omitted to look at.



I understand that, you know, those damages in that type of case are likely to be at least GBP20,000 each, so I shouldn't forget Human Rights Act claims at all.
MR SKELTON: Just to be clear, I didn't explain at the start what one would be thinking about article 3 of the Convention, which is inhuman and degrading treatment, and article 8, potentially, which is the right to respect for private and family life. But the problem is your 12-month period, which is extendable, but is a much tighter period of time.
MR SCORER: Yes. It is extendable in theory, but there is very little case law as to the circumstance in which extensions would be granted. So it's -- you know, one cannot be at all certain that one would be able to secure an extension for the limitation period.
MR SKELTON: Do those on the defendants' side feel this is an area which has been explored?
MR LUCK: Obviously, I have no experience of a claim where human rights damages in these circumstances has been raised.
MS MACKENZIE: No.
MR SKELTON: Likewise?
MS MACKENZIE: Yes.
MR SKELTON: Mark?
MR NICOLSON: No, no experience from us either. Obviously



in the context of -- we're looking at historic child abuse claims here, so my understanding is there is no retrospective application of the Human Rights Act. So certainly, for all the claims that we are dealing with now, that relate historically, this is never anything that's been an issue. Clearly, going forward, it may well be something that does start to emerge.
MR SKELTON: Thank you. The next topic I would like to discuss, please, is loss of earnings. We have already, I think, set the groundwork for that, in that it has a similar complexity on causation issues as general damages does, in that some of the people who are claiming loss of earnings may have got other issues in their life which may contribute to their inability to fulfil their potential socioeconomic circumstances: other abuse that is unrelated to the abuse that you are claiming for; family factors and the like.
How can the system be improved in that regard, or are the judges already equipped actually to look at that kind of thing?
MR LUCK: I think this is another very difficult area of damages. As we have already talked about in what the consequences of the abuse are and how they affect the person's overall lifestyle, and then to try and assess what that person may or may not have lost by way of

income because of that abuse, taking into account all of the factors, does make it very, very difficult.

A lot of claims, I would say we don't see loss of use claims being presented and where they are assessed quite often it is on a more lump-sum basis that valuations are made.

MR SKELTON: Is there any data -- taking perhaps a group of people in care who have not been abused, who come out and earn and may earn less than others, because of the difficult circumstances they have had in their upbringing, compared to those that have been in care who have been abused. Does anyone capture any of that kind of data and make that comparison?

MS STOREY: We routinely face -- I don't think that data exists, but we routinely face arguments that the outcomes for people in care are pretty rubbish anyway, which is a pretty horrible argument to run. When we are trying to put together a loss of earnings claim, I think we do need to look very closely at the individual and what their actual potential is.

Like, in a lot of personal injury cases, we don't necessarily have a comparator, we don't necessarily have a sibling who has done well, who has gone on to do well. It might be that those siblings have gone through the care system as well, but it is a very tricky exercise.



MR GARSDEN: We often use occupation psychologists or psychologists with occupational talents to tell us what sort of job they would have done had they not been abused. It is sometimes possible to isolate it to a type of work, maybe manual or semi-skilled or skilled, but really nothing more than that. The way the courts work out the damages is either by something called loss of status on the open labour market, which is -- there is some precedent, but it is really plucking a figure out of the air, or loss of a chance, something called loss of a chance of employment, and it is a fairly nebulous concept and it is difficult to quantify, but if we go before the court and produce some figures and statistics and data, it is often not listened to and rejected. It is an extraordinarily difficult thing to quantify.

MR SKELTON: Judges, day in and day out, deal with arguments for personal injury claimants about loss of earnings where there may be a multitude of physical factors or other mental health factors. Aren't they properly equipped to do that, difficult as it is, or is there a problem with these cases again?

MR SCORER: I think, as with so much we've discussed today, the fact that judges are coming at this from a traditional personal injury background is a problem,



actually, because of course -- I mean, not all or even the majority of abuse claimants have been in the care system. A lot of them have, but many haven't. But, in a sense, the issue is a bit more fundamental than that. The issue is, at least in part, that abuse happens when the claimant is a child and, therefore, they don't have an established track record of earnings at the point at which the injury is committed.

Applying sort of normal logic of personal injury claims and the application of that being done by judges who are used to dealing with a claimant who has broken a leg and was earning X before they broke a leg and is earning Y afterwards and they can make a simple arithmetical calculation of the loss means that claimants in this area lose out, I think.

MR SKELTON: Can I ask Carolyn, from the defendants' perspective, do you feel the courts adequately grapple with this issue?

MS MACKENZIE: I absolutely agree with what's just been said. I think where -- I'm involved in quite a few injury cases, injuries to children in motor accidents, and so on, and it is absolutely that difficulty in assessing the loss of earnings when someone hasn't had the opportunity to establish an earnings record -- an employment record, let alone complete their education,



and the challenges of comparing to siblings, looking at educational achievements up to that point of the accident, these are all things that judges have to consider, and that's why, in injuries involving children, it is so often that the compensation for loss of earnings is valued as a disadvantage on the labour market, what's been described, or a loss of opportunity simply because there are too many unknowns in quantifying it. I think the same and even more complex challenges arise in abuse cases.

MR SKELTON: Carolyn mentioned education. A lot of these cases are, by definition, during people's childhood and often in institutions which are meant to be educating them and in fact are exposing them to abuse. So at the same time as being abused, they have also lost their education. How do the courts go about assessing the effect of that?

MR GREENWOOD: In the ways that have been described so far, the judges have to be presented with evidence, they have to be presented -- try and work out from the witness statements and psychological evidence whether there's enough evidence for a judge to decide that there has been a loss attributed to all this.

In some of the cases, forgive me for saying this, I think judges are wary of being appealed. They don't

want to stick their necks out to give someone a seriously significant award of loss of earnings when they may be appealed on that.

We were talking earlier about readjusting the way in which general damages could be assessed, and if we were to do that, factoring in the ability of a judge without the prospect of being appealed to be able to award something for this nebulous concept of loss of earnings would be a step forward. Because I think that would probably empower judges to be able to stick their necks out and say, "Look, this person obviously would have earned more, would have done better in life on the earnings front, if it hadn't been for this abuse."

MR GARSDEN: There are some clues in the redress scheme weighting factors that the Irish produce, because that recognises this problem, and produces a way of calculating this nebulous concept, which includes inability to work and inability to progress in life.

MS STOREY: The thing is, in personal injury, generally, 20 years ago the approach was pretty broad brush. There has been an increasing recognition that you can use actuarial evidence to draw conclusions about what are the chances in life for somebody with a disability, and so we become more and more sophisticated when we look at physical injury.



It was starting to be recognised from a labour economist that if you just sort of say, "Well, we will give you a lump sum to reflect your disadvantage", we were short changing those people who were going to retire earlier, going to be in and out of work, going to have broken careers. We have done that on the personal injury side, but when it comes to abuse, I don't think we have embraced that kind of sophistication yet.

I think that when we do look at it on a broad brush basis, we short change our clients. I think we need to have more data to examine what the lost chance was and actually look at it a bit more mathematically so that we don't short change claimants.

MR SKELTON: You articulate the claim in a schedule of damages which goes to the other side and goes to the court. Often, loss of earnings claims, personal injury claims, can be the biggest bulk of the damages because you are often looking at a lifetime of yearly earnings that have been lost.

Do you, on the claimants' side, ultimately find that those damages have to be settled at much less than you actually originally claimed for? And is that because you have gone in with a higher figure, knowing that is going to happen, or is it because you haven't managed your client's expectations about the system?



MS STOREY: I think the way in which we schedule our lost earnings on a mathematical approach year on year, looking at it on that basis, is the right approach. We are entitled to put the case at its highest. It is our professional duty to do that. There might then be causation arguments that will knock that case down. So, "What was the chance of your client actually achieving that but for the abuse?" Those are the kinds of arguments we have in the negotiation.

I have seen in some of the submissions that the defendants are uncomfortable with the schedules being so high and then the cases settling down, but you are putting forward a hypothesis of what that person's life would have been like but for the abuse and nobody really knows the answer to that question. So we then have to look at the evidence we have brought to bear and have those negotiations where we try to assess how strong our case is.

That is why they settle for a lot less. But I think we wouldn't be doing our job properly if we didn't actually try to calculate the impact in that way.

MR SKELTON: Thank you. Last point, Richard, and then I have to move on.

MR SCORER: I agree with all of that. I think one of the difficulties in this area is, it is one thing to put



forward an arithmetical calculation as Tracey has described, a year-on-year multiplier of lost earnings, but where cases are assessed on the basis of a lump sum award, there is a wide variation from courts and judges as to how those lump sum awards are calculated and not a lot of science behind them, in my view. That makes it difficult for us to advise our clients on what they are likely to get if the award is calculated -- is assessed on that basis.

MS JEFFERSON: I think the Irish redress scheme has been mentioned a few times, but they worked on a points basis. So it was up to 25 points, if I remember correctly, for the actual acts of abuse and then there was up to 50 points, which was taking into account all the things that we have talked about today. So the impact on life, whether that be earnings or day-to-day life. I think that probably gives greater certainty for everyone.

The other really important thing they did, in part of that process, was looking about not just the payment of a sum of money, but, "How can we support you through education now, how can we help you to put you back into the position?". So I think the system that we have now is challenging, and looking elsewhere, rather than saying, "Let's reform loss of earnings" --

MR SKELTON: Can I move on to that support issue? That is the next thing I was going to ask you about. To what extent is the provision -- a claim for support therapy treatment controversial in most cases? Is it just a question of getting the quantification right and then it is generally agreed because it is not a lot of money or is that a source of controversy?
MR SCORER: I think in terms of the different -- as comparing the different heads of loss, I think in most cases it is probably the least controversial one. There can obviously be arguments about the amount and medical experts on either side might disagree about the cost and nature of the therapy that's required, but by and large the figures involved are at a level that they can be resolved by negotiation on the whole.
MR SKELTON: Before I ask the defendant stakeholders to address this issue, has any thought been given to the provision of support during the litigation in order to see if treatment can be given which may make someone's earning prospects, for example, better and therefore actually ultimately create a saving?
MS STOREY: We have been borrowing concepts from brain injury cases where we have instructed case managers to assess the needs of the claimant and to sort of set out a plan of support that we have then gone to -- I think



RSA have been involved in cases like this, where we have said, you know, "Could we have interim funding for these issues?" That works in cases where we don't have a huge limitation argument. So where we have relatively young claimants. And the opportunity to get some good rehabilitation in early is there and everyone can see it and we have had -- that's been very successful.
But I think for the non-recent cases, where claimants have been carrying around their damage for a lot longer and there is a limitation argument and there is a lot more causation, a lot more life to examine, that's been more difficult to factor in.
MR NICOLSON: I think the issue of support is a really important one. Something that my organisation has done is made available support and counselling regardless of whether an individual has brought a claim or is thinking of bringing a claim to us. So we have separated it out from the existing civil litigation process. So any child that was in a home, looked after, has these services available to them.
As part of any claim that we are dealing with, we would also look at funding of any ongoing therapy or counselling that was required, but I do think it is important that civil justice and bringing a claim shouldn't be a barrier to an individual obtaining any



type of counselling or other therapy that they need.
MR SKELTON: From the claimants' side, obviously you are claiming the damages, and then, as a lawyer, your relationship with your client may come to an end at the conclusion of the case, with them being given a lump sum payment. Do you know if your clients take up the support that they have claimed?
MR GARSDEN: No.
MR SCORER: I coordinated a group action a number of years ago where we ringfenced damages for therapy, so those went into a separate fund which claimants could draw on after the end of the litigation. The take-up, it has to be said, was reasonable but not universal.
We did everything we were able to do to try to facilitate it by, you know, making sure that people had details of where to go, and so on. But, as solicitors, we are not really particularly well equipped to provide post-settlement support services. We will do what we can, but there is a limit to what we can realistically do.
I think, just another point I wanted to go back to, the issue of rehabilitation, in cases involving serious physical injuries, catastrophic injuries, insurers are very, very engaged with issues around rehabilitation, and part of the reason, I think, why they are engaged



with it is that rehabilitation of a claimant during the lifetime of a case will improve their prospects and thus affect -- and hopefully reduce -- the overall bill to the insurers.
In abuse cases, where the damages are much more modest, there isn't that same potential gain for the defendant in being actively involved in rehabilitation, but conversely, if the damages were higher, there might be more, I think, engagement by insurers in the whole issue of rehabilitation of abuse victims.
MR GARSDEN: I, too, have attempted to set up trust schemes in group actions, and they have always failed. The reason they failed the first time was because there wasn't enough consensus in the group that they all wanted it. The second time it failed was because it was a case against a council and there was something unhelpful about the council that employed their abuser controlling the compensation and controlling their life going forward. I said that this would only work if they remained at arm's-length to this counselling process and engaged another body that was independent of the council to run it, because then they weren't being still controlled by their own abuser and his connections.
MR SKELTON: Thank you. We are close to the conclusion, I'm afraid, of a very interesting discussion. I'm going to

ask those who are here if they have anything they would like to address?
MR ENRIGHT: Thank you very much. David Enright from Howe & Co solicitors. The survivor core participants in the room are experts in these issues through experience, and they have three contributions to make.
Mr Peter Robson from the Stanhope Castle Survivors Group.
CORE PARTICIPANT: I have a brother, we both went to the same place. Now luckily, there but for the grace of God, because he has suffered a lot less than I have. I have never seen him for 20 years, but when he -- we spoke every day, and I miss him, and one of the worst things I've done in my life -- one of the worst things I ever done in my life was, my brother, he wanted to speak up about this in a court, and because of what I read -- I'm sorry, but this is upsetting. Because of what I read -- I had this piece of paper in my hand, the social worker gave me it, put me and my little brother in a room and left me to read it. My mother was outside, and I just grabbed him by the throat and rammed him against the wall, because I could have killed him that day. He'd put in what had happened. This is 40-odd years ago. And I regret that. He's my brother. I should have been there for him. I couldn't. It's



happened to me as well, but all I thought of was my mother at the time. I had to protect her. Because I said, "If you damn well read this, I'll kill you, son, and that's a promise. If this hurts my mother, I'll kill you". That's one of the reasons people keep quiet. They have others to protect. I have suffered for 50-odd years and it's only when I have just recently opened up about these things that happened.
The other thing is, as to compensation, now, because we are from poor families, we are assessed different as well. An example I can give you is, just last year there was a bit in the papers about somebody slipping over and hurting their wrist, spraining their wrist. Now, if that was me, GBP500 to GBP1,500, if I'm lucky, you know, for suing the shop or whatever it was. This lady, because she works in the City of London, GBP140,000 for the same suffering that somebody else gets for a slip. Now, these rich people won't have their children in situations like I am. I'm sorry, but I could go on all day.
MR SKELTON: Thank you very much.
CORE PARTICIPANT: I'm sorry, I can't.
MR ENRIGHT: There are two more. Nigel O'Mara from Survivors of Organised and Institutional Abuse.
CORE PARTICIPANT: I really want to speak about education.



I lost my education through my abuse. I submit to you that if I hadn't lost my education, I wouldn't be on this side of the table, I would be over there as an expert.
I have worked with victims of sexual abuse for 30 years. I have seen the effect of the loss of education. Loss of education means that you can't interact with employers in the correct way, you can't get on with your life, and it is something that's quantifiable and it is something that's remediable. It is something that, if you can give people the chances to retake up education, I have done it myself. Just this year, I have just passed a qualification myself for the first time in my life. So it is something that can be changed. It is very important that survivors get that second opportunity for an education.
The reason I haven't been able to take it up for the last 30 years is because I couldn't get the funding. I'm talking about less than GBP1,000. That is outrageous.
MR SKELTON: Thank you very much.
MR ENRIGHT: Finally, we have Karen Gray from the Bryn Alyn community.
CORE PARTICIPANT: Good morning. Thank you for having me back. After my time in Bryn Alyn and my rape and the



resulting pregnancy, the birth of my son, whom I haven't seen for the last 21 years, he went to adopted parents when he was 4, Criminal Injuries Compensation Scheme asked me to provide them with a copy of his birth certificate, despite his birth having been recorded in my Social Services records, not in my medical notes, which had been tampered with. Is this kind of questioning and this mental abuse of survivors considered appropriate, when we are wanting these people to move on, to better themselves, to put that abuse behind them?
Quickly, if I may, back to the question of education. When I was in Skircoat Lodge at Halifax, there was myself and one of the residents that were both in grammar school. She wasn't abused in care, she went on to become a chartered accountant, and one day she walked past me in Leeds while I was selling the Big Issue. Thank you.
CORE PARTICIPANT: I have another friend who went to Stanhope. We overlapped. It is what the lady was on about earlier on, about getting help. Like myself -- I'm crying out for help now. I'm crying out for people to -- so I can open up to find out what happened to me, you know. But this man is laid up in bed, begging and pleading to get somebody to give him counselling and he

is still begging and pleading to this day now and he's getting nothing. Colin Watson. I think -- as I said to you, there, but for the grace of God, go I, and there, but for the grace of God, go you as well.

THE CHAIR: I have one question I want to address that was raised by Mr Luck around the assessment of the impact of abuse. We talked of the assaults themselves and the consequences, but I wonder in particular in relation to child sexual exploitation where children have been groomed in the process and often through the use of drugs and alcohol, where they end up with a lifelong addiction. Is any of that taken into account in the circumstances of assessing the impact on life experience and life chances and education?

MR LUCK: Certainly I think these elements are taken into account. From our position, because the claims we deal with are historic, we are not involved in the current areas of sexual exploitation, but we do see cases where clearly abusers were using alcohol and other enticements. Clearly, a lot of the victims and survivors did go on to have alcohol abuse and drug abuse. These elements are taken into account but, undoubtedly, I would anticipate that the views from the claimant support here would be that perhaps not sufficiently. Again, it comes down to this causation



about whether there was drug abuse prior to going into care, et cetera. So it does become a very, very complicated area.

THE CHAIR: Specifically I'm interested in the grooming process where they have been induced into assaults, sexual assaults, by the use of --

MR LUCK: Most of the cases were not such a degree of grooming. They were more, I think, blatant acts of abuse by people within the institutions.

MR SCORER: I think it is worth mentioning on that that the cases certainly -- this may be true for David as well -- the civil cases that I have brought in relation to child sexual exploitation, for example, in places like Rochdale, they are cases where the civil cases against Social Services for failure to protect the child, that's the allegation is that there is a Social Services failure.

In the majority of those cases, at the point at which we are saying Social Services should have known to intervene and protect the child, there has already been some abuse. Obviously, without that prior history of abuse, there wouldn't be a reason for Social Services to become involved. So you have situations where victims are being compensated for part of the abuse they have suffered, but not all of it, if that makes sense.



MR GREENWOOD: For my part, Madam Chair, the issue of alcohol dependence or drug dependence only really comes up if we are able to demonstrate it with evidence. This is the problem with the system we have at the moment. Unless we have a psychiatrist or a psychologist saying, "There is alcohol dependence disorder" or some other kind of disorder, then we really can't convince our opponent that this person should receive, you know, GBP10,000 or GBP20,000 for that disorder. So it only sounds really in persuading our opponents that the overall level of distress is slightly greater. That's as far as we can take it.

THE CHAIR: Okay. Thank you.

MR FRANK: On the question of evidence, I think I have heard from a number of you that in calculating loss of earnings, particularly for people who have had a care background, is the assumption that their life trajectory must necessarily be poorer than someone who has not been in care. Is there any statistical or actuarial or evidential basis for that assumption? I ask that particularly in the light of the evidence we have just heard, or comment we have just heard, from the back of the room in relation to someone who was in care, who has apparently had a very successful life.

MR GREENWOOD: This is what I am told by the psychologists



I speak to on a fairly daily basis. I will have to trawl through their evidence and their citations in their reports for the evidence. I can certainly pass that through to the panel.

MR FRANK: Thank you.

MR GARSDEN: Expert psychologists I think are better placed to give that type of information.

MR SCORER: In terms of your question about whether the courts are looking at that statistical evidence, to the extent that it is there, I don't think they are.

I think there are prejudices about this which pervade the way courts look at this.

THE CHAIR: There is considerable evidence available on the outcomes for children in care --

MR SCORER: Of course, yes.

MR SKELTON: Thank you. Shall we conclude there? I think we are running a little bit behind. May I suggest we come back at 11.35.

(11.20 am )

(A short break)

(11.36 am)

Session 2

MR SKELTON: Thank you. We have had a slight change of personnel. Some of you were here yesterday. May I ask those who have arrived today to introduce themselves

again, for the sake of the transcript?

Introductions

MR LATTER: John Latter. I work for Zurich Insurance in the UK.

MR ENRIGHT: David Enright from Howe & Co Solicitors. I represent the Stanhope Castle Survivor Group, the Forde Park Survivor Group and Survivors of Organised and Institutional abuse.

MS MILLAR: Alison Millar. I am from Leigh Day & Co and I represent claimants.

MR BONEHILL: David Bonehill, UK claims director for Ecclesiastical Insurance Company.

Open session

MR SKELTON: The last session about was compensation in the civil justice system and all the various issues that surround that, which is obviously the focus of the civil justice system ultimately, compensation. This session is looking more broadly at what accountability and reparation might be for survivors and victims of child sexual abuse, so not simply compensation but other aspects of accountability, other aspects of reparation.

Broadly speaking, I would like to touch upon what does the civil justice system provide, so damages, but what else can it provide, either through settlement process or ultimately getting to trial. Secondly, what



does it not automatically provide? What other things do victims and survivors need which they cannot get from the civil justice system and need to find elsewhere? Lastly, the idea of settlement which affects both of those things, what can settlement meaningfully achieve for victims and survivors going forward, what does it achieve now and what can it achieve going forward?

The first issue is really what does it presently provide other than damages? Richard, do you want to introduce some of the factors?

MR SCORER: The civil justice system is clearly overwhelmingly focused and designed for delivering damages in cases where particular legal criteria are satisfied.

There are other things that survivors of abuse are frequently looking for and hope that the process will deliver. I think there are three obvious ones: an acknowledgement that the abuse happened, where that hasn't already been determined in criminal proceedings; a commitment to learn lessons from whatever has been revealed by the particular case; and, perhaps most importantly, an apology. So I suppose those are the three things that survivors often come to the process looking for, but the process is not really geared around any of those, the process is geared around assessing and



awarding damages in cases which fit a certain set of legal criteria.

MR SKELTON: David, do you find that some of your clients actually want the vindication of a judge's judgment, so in fact they do want to push right through to the end of the process and get the judge to say openly and publicly and impartially what has happened?

MR ENRIGHT: That is a very good question. You often hear people say they want their day in court. That can mean a number of things, it can mean your day in actual court, but what it also means is the opportunity to confront those who abused you or confront those who guided, employed and were responsible for your abuse. We have heard this morning, for example, about face-to-face meetings with representatives of defendants which can be a way forward.

But, yes, people want to be heard in public and we have seen this this morning in the last session where a number of survivor core participants had the opportunity to speak, you could see how much it meant to them to have that opportunity to speak in public before a panel of experts, so their voices could be heard. That is the big thing. For almost all survivors, they feel that their voice has never been heard and they want it to be heard.



MR SKELTON: Alison, can I ask you about this idea of the confrontation? Do you find that many cases go to trial and people actually get that confrontation and it provides a form of closure or meaningful reparation for them.

MS MILLAR: I think the overwhelming majority of cases do not go to trial. They are resolved out of court by some kind of settlement process or they don't continue. The court process is not set up to provide the kind of confrontation and listening that survivors of abuse really need. It is an adversarial and confrontational process in which a survivor will be cross-examined, questioned closely, about their experience and, often, if a case does go to court, it can be very revictimising for the client. They can feel that they are on trial rather than the institution or the individual. So currently, I think there is a mismatch between what a survivor might want from the civil justice process and what the rather crude instruments of the civil justice process actually deliver.

MR SKELTON: Do you find in cases that do go to trial that people giving evidence on the defendants' side are actually people who were involved with the index events at the time? Are there that many people around to give evidence on that side?

MR SCORER: There can be, but it is important to remember, of course, that even where cases go to trial, the issues that are focused on in trial may not even necessarily include whether the abuse actually happened. That may have already been proved in criminal proceedings or it may have been accepted.

Sometimes it can be a live issue.

In many cases, and I think this is often quite bewildering for survivors, much of the questioning and legal argument at trial involves legal issues, vicarious liability, negligence, particularly in failure to remove cases. So those issues are all at one remove from the survivor's direct experience of the abuse, which they expect that the trial will fundamentally be about, and often it isn't.

MR SKELTON: Can I ask about the issue of closure? I don't want to use the word inadvisedly, because one has to be careful about that as a concept and as a possibility for people to achieve in any easy way, even through the civil justice system. But do people get closure through a trial or through settlement, or at all, through the civil justice system?

MS STOREY: I think there is an element that taking civil action does give people the feeling that they're taking control and they're taking back control that was taken



from them. So from that point of view, there is that sense of, it's part of being empowered, it's part of moving forward. There may be some healing, there may be some learning that goes on through that process. But it is not built into the system. It is something that you have to manage very carefully.

At the outset of cases, I will say to people -- I will ask people what their agenda is and why they want to go forward, and often I will have to say to them, "Well, that is not going to happen and that is not going to happen and that is not going to happen", just so they understand in an informed way what they are letting themselves in for.

They may gain special insight into their mental health condition, they may get a better understanding of the difficulties they face, they may find out that there is treatment out there that will help them, but on the other hand, they are not going to see the people who let them down punished. There are not going to be disciplinary proceedings arising from anything. There is not going to be that level of accountability.

I think people generally find that quite strange, that, if they win their case, no heads are going to roll. I think there is an expectation there which is -- you know, I explain what the criminal justice system can



deliver and I think most people are quite disappointed when I say, "Well, it is not going to result in that kind of justice. This is not what the civil courts are about".

MR ENRIGHT: What has been said to me often by clients I represent is that the civil justice system is incorrectly named insofar as they can't achieve justice. They can achieve damages, but not justice. So that's a difficulty.

MR NICOLSON: I think there is a bit at the front end that perhaps is missing in the current civil justice process, and that is, quite often survivors just want somebody to listen to their story, acknowledge what happened, and take responsibility and accept the circumstances and offer an apology. Quite often, that is kind of missing from the current process. We kind of dive straight into the very adversarial process that we have been discussing over the past few days or so. So I think there is an acknowledgement, a stopping, a listening, undertaking the next steps, which may include an investigation. All of that doesn't really happen automatically at the front end.

MR SKELTON: Do you think that the civil justice system is sometimes used in order to get that form of reconciliation, get that meeting, because it may not be



otherwise available, except by initiating it and demanding it?

MR NICOLSON: I certainly think there is an attempt for the system to be used for that, but often it falls away, back into the arguments around the actual money side of things and all of these other aspects, the apology, the acknowledgement. It isn't all as forthcoming as it could be if it were achieved outside of that process.

MR SCORER: There is no question that the survivors often look to the civil justice system simply because it is the only instrument that is available. If institutions and organisations were a lot more imaginative, and I think it is fair to say actually your institution has been in some ways more imaginative, then actually they would probably face less civil litigation. Because if institutions looked at how they could deliver some of the other things that survivors want, then perhaps civil litigation might not necessarily be the route that people would pursue. They may do, but institutions have to be imaginative in thinking about alternatives.

MR SKELTON: Would your clients accept -- the other things, we will come on to them -- the price of lower damages or do you think, ultimately, they have to sit alongside proper compensation, fair compensation?

MR ENRIGHT: It is not an either/or. If you have suffered

damage, if you have suffered harm, if it is possible to quantify, you should be put right.

The additional thing, which is about justice, accountability and reparations --

MR SCORER: I don't see in principle why an institution apologising for what's happened should come at the price of lower damages. It doesn't cost money to apologise.

MR BONEHILL: I think one of the issues we have seen with regard to apologies, and indeed providing other support in terms of counselling or pastoral care, is the misconception sometimes that the institution or the policyholder believes that may affect adversely the insurance position by -- you know, almost deemed to be admitting liability, which is clearly not the case. You know, we make that very clear in our guidelines. We actually support that. The Compensation Act supports that. Okay, it is silent on vicarious liability, but we look at it in the spirit that it was designed for.

So, yes, technically, you could say, well, vicarious liability, you know, it doesn't allow for it, but, as I say, I think the spirit is absolutely there for it.

MR SKELTON: How do you square giving an apology for some abuse and then saying, "Actually, we are fighting you in court", on the grounds of limitation, for example?

MR BONEHILL: That is a really good point. The apology has



to come from the institution. It is not the insurance company that gives that apology. I think we need to make that quite clear. But we do encourage, where it is appropriate, for the institution to give a meaningful apology. Now, whether that is at the JSM, the joint settlement meeting, when liability has been dealt with or whether it is early on in the process, that's something for the institution to consider, and they have to work in collaboration with us on that.

MR SKELTON: John, is your view similar?

MR LATTER: It is. I think it is an important point that David makes. It is actually not the insurer's apology to make. So we do encourage our policyholders to make appropriate and meaningful apologies.

I think, Peter, really we need to look to the claimant. Because if we try "one size fits all" here, we are in danger of demeaning an apology. I think it has to be led by the claimant. We have to have an idea of who they want the apology from, in cases of vicarious liability -- often the abuser, themselves, isn't in the picture -- and we need to engage with them and understand what that meaningful apology will look like for them, and where it is appropriate and where we can make a meaningful apology on the facts we see no reason why we shouldn't do that, or we encourage our



policyholders to do that, I should say. I think it should be survivor led, because you can make an apology which is actually seen -- I think in the responses it was called a "mealy-mouthed apology", which actually is a detriment to the claimant. Because they feel you're just throwing these apologies -- if we make it too simple to apologise without any consequences to their apology, everyone would just go around apologising for everything, and then the poor claimant will feel that they're not really receiving a meaningful apology. So I think it has to be claimant led and we have to engage around that process.

MR SKELTON: Tracey, could you define what a meaningful apology is for your clients?

MS STOREY: What we tend to do is try and avoid lawyers when we put -- sort out apologies. So I tend to sort of say, well, if I'm involved and my opponent is involved, it's all going to get a bit silly. So let's have a face-to-face meeting with the institution, where you can sensibly bring up anything you want to do without the defendant lawyer or the claimant lawyer breathing down anyone's neck, and, you know, we try to write these apologies, we try to agree apologies, that goes wrong. So I always encourage face-to-face meetings, say, with the local authority, where the client can talk about



their life, how it's gone, what their issues are now, what -- they usually want to know a bit more about how the organisation safeguards children now, because that's really important to understand, whether lessons have been learnt from their past.

So I kind of try to facilitate it without lawyers, to be honest. So I don't actually know. But a lot of clients come back very happy that they have had that conversation, that communication.

MR SKELTON: Roughly how many people want an apology? John used the phrase "one size fits all". One has to be careful. For some people, an apology may not be what they want. They may want some form of vindication or punishment or simply their day in court. Roughly how many people, percentage-wise, want an apology?

MS STOREY: I would say 50/50. Some people will feel they are not getting the apology from the people who were responsible at the time, so it is not worth it. Some people will feel it really doesn't add anything to it, it is not the perpetrator.

Other people have very strong opinions that they need to hear it from the organisation.

But it is something that we raise at the beginning of cases for people, and sometimes it changes throughout the course of the case. It may change if the litigation

is particularly fraught. Over time, it changes from claimant to claimant as well.
MR SKELTON: Is it the experience of other people that the delivery of the apology, by whom and in what way and what kind of person is delivering it is critical?
MR SCORER: It is my experience, absolutely, that it is critical. There is nothing worse than a sort of heavily caveated apology. It is worse than no apology at all.
In the early days of dealing with the Catholic Church, they seemed to pioneer these sort of heavily caveated apologies. You know, "We understand you're upset about something and we are sorry to hear you're upset", and it doesn't really take the issue much further. In fact, it can seem very offensive.
So it has to be clear. It has to be meaningful. Ideally, it needs to come from people with some responsibility or involvement with what occurred. Although that is often not possible.
MR LATTER: I think picking up on something Tracey said, it is about transparency in the process. I mean, you can't actually make an apology early doors in many cases because you are not sure what you are apologising for. You are facing allegations. You need to carry out an investigation. But if you could be clear via a face-to-face meeting or correspondence with the



claimant to say, "We acknowledge your allegations. We acknowledge what you are saying happened. We will carry out a thorough investigation and at an appropriate time we will sit down with you and explain the outcome of that investigation and make an apology", at least that will set in the mind of the claimant the process that sits around this. I think that may -- we need to defer to those guys who have access to these claimants, because we don't. Maybe that is something we could work on, in terms of encouraging that engagement around the process and the transparency that might bring along.
MR SKELTON: Carolyn, do you have anything to add to those remarks?
MS MACKENZIE: I think really just to agree with what's been said about apologies need to be meaningful, it needs to be claimant led and it needs to be at the right time. I think we talked quite a lot yesterday about a pre-action protocol, and I think, in the way that John's just articulated, something that encouraged the early engagement of the parties to come together would give you that opportunity to explore what was wanted in terms of an apology, and how you got to that point.
MR SKELTON: Another issue which has been mentioned I think is change within the institution, if it is still providing care for children, an education institution,



et cetera. How do you, as defendant stakeholder -- how can an insurer ensure that that takes place beyond saying that your premiums are going to go up if you don't improve?
MR BONEHILL: If I could pick that up, in terms of safeguarding, it is a real expertise in its own right, and that's not an expertise we have within our organisation. Having said that, we do put in various checks and balances, so we ask the questions: "Do you have a safeguarding policy? What is that safeguarding policy? How effective is it?", et cetera, et cetera. Based on the responses to that, we can make a judgment in terms of the likely risk within that organisation. We then get the opportunity to say, "Well, that risk is too great for us", or, "That risk is acceptable to us". But the safeguarding itself, I think the organisation itself has to have accountability for it.
MR SKELTON: See, we have a commercial interest in fact in risk management, so that you can assess the likelihood of having to pay out, because they are not safeguarding properly. That is something you are actively managing?
MR LATTER: Zurich have appointed a safeguarding expert in the area of risk to work with our policyholders. But at the end of the day, David is right: we can advise and we can select those risks that we think have good



safeguarding processes and procedures in place, but ultimately it is for that organisation to manage its own affairs. We can only really underwrite the moral risk that sits around that organisation.
Also, many organisations move from insurer to insurer based upon various reasons. So you don't often get that consistency of a relationship with an insured over many years. Some areas you do, but in the commercial books, policies will move from insurer to insurer.
MR SKELTON: The theory, that sounds very positive in terms of the theory. In practice, have you had a situation where you have said, "Your safeguarding isn't good enough", in light of something that has occurred, some litigation, for example, and you have actually had to make a difference and say, "You are now going to have to pay more because we assess your risk as being greater than it should be"?
MR BONEHILL: I think with regard to physical and sexual abuse, it is not about premium, it is about the moral risk and whether that is a risk that you are prepared to accept. There are some risks that are so poor that no amount of premium would allow you to underwrite it. So it is not just about the price.
If the risk is morally a poor risk, the likelihood

is, we would walk away from that. We would not want to be associated with that type of organisation.
MR LATTER: Regardless of the processes and procedures an organisation puts in place, you can't do anything about the individual that wants to hide what they are from public view, and these people are devious and they will carry out their activities hidden from their employer, hidden from public, and even with the best processes in the world, some people will slip through the net. Unfortunately, that is just a fact.
MR SKELTON: Mark, can I ask you for your views? You are the only defendant institution here?
MR NICOLSON: We work with our insurers very closely, and we quite often have inspections from insurers in relation to how we manage risk as an organisation. But also we work in partnership with other London Boroughs. We are part of a consortium and we share best practice between each other. So we know that if one authority has got something in place in relation to safeguarding that works really well, then we will learn from that. But of course, there are Ofsted options that we have as well and improvement plans that are put in place. I think the whole management of risk around that area is fairly well controlled from a number of different sources. As I say, we do get support from our insurers.



MR SKELTON: Alison, can I ask you about change, as an issue for claimants. Presumably, some of your clients do want positive change. Do you think there is any realistic possibility the civil justice system can enforce such changes or is it something that has to be done voluntarily by defendants?
MS MILLAR: I think more could be done. Many cases nowadays are settled on the basis of vicarious liability because of the close connection between a perpetrator of abuse and their employment or engagement. But, obviously, for the clients who want to know that lessons have been learned, that can mean that they don't find out about basically what the potential -- whether there are any potential failures by the institution in terms of supervision and safeguarding and they also don't find out from the institution perhaps what has been done to avoid those things happening again.
So I think that the legal process perhaps -- I know you are going to be talking this afternoon about a duty of candour. Perhaps through the legal process there could be more information for claimants about what's happened, about what lessons have been learnt by the institution, and obviously the greater -- that greater transparency, I would suggest, would also be positive force in terms of wider improvements.



MR BONEHILL: I think that's quite right. I think the point of the personal apology does pick up this as well, because one of the questions that will be asked by a victim/survivor is, "What have you, as an organisation, done to prevent this happening again?" So it is not just about the individuals, but they are very concerned, I find, about the future and reducing any future risks.
MR SKELTON: David, can you pick up on the point of what the court can meaningfully do? Apologies -- judges don't order apologies --
MR ENRIGHT: Just before I come to that, the issue of reoccurrence and non-reoccurrence which is a little bit of -- we've been talking about it in terms of change going forward. That, for my clients, is almost a universal thing. It is not that they are asking for a non-reoccurrence of abuse to themselves, they are deeply worried about other children coming after them. They are also deeply worried that staff who were abusers themselves, but also those who were complicit with abusers, remain in positions where they can abuse or permit or facilitate the abuse of children. That is what they are deeply concerned about. The things you were talking about, about your insured -- that is a huge issue, non-reoccurrence, for other children.



In terms of -- your question was?
MR SKELTON: What can the court do, both about that recurrence issue and about the apology issue. Is it really something the court should be weighing in on?
MR ENRIGHT: There is no other mechanism currently. We have proposed to an extent in some of our submissions a potential alternative model. But what we can learn lessons from, for example, is the Equality Act, and in Equality Act cases there can be an equality assessor sitting alongside the judge. I cannot think of the title that could be used in child abuse type cases, but if a judge needs an expert in Equality Act cases to advise them about the particular issues that arise in equalities cases, there is no reason why a judge should not have an expert of similar calibre beside them advising them on the complexities of child abuse, which could provide them with an understanding of the complexity and the types of far more imaginative settlement.
MR SKELTON: A point raised in some of the responses we have received is a comparison with the Coroner's Court. Not all of you would probably do coroner's cases, but the coroner has the option, at the end of his or her inquest, to write a report to the government or to an institution directly or, indeed, an individual to

prevent future deaths, and that is a statutory power he or she has at the end based on the evidence heard.

That then has to generate a response. The coroner obviously can't police the implementation of the response, but a response is required and it is designed to improve the future. Is there scope for that in civil litigation? Can I ask you, Tracey, and then I will ask the defendants what the problems might be.

MS STOREY: The difficulty is that so few cases actually come to trial. The majority of cases are negotiated and settled out of court. So we wouldn't get to that stage.

The way the law has developed so that we are suing in vicarious liability, so the institution is stepping in the shoes of the perpetrator, makes it easier to be successful in a case for claimants, so it helps to bring a successful action, but what it doesn't help is that we don't have an inquiry into the negligence, what went wrong. We don't have: what are the answers here, what were the failures? We are not having that detailed analysis of what led to that set of circumstances which led to the abuse. Those are the things that my clients really want to know and they don't get the answers in the current system.

So I can see where you are going with that, Peter, the narrative verdict, which might help them have



findings in -- when we are settling so many cases out of court, I am not quite sure --

MR SKELTON: Perhaps this is a point, Richard, you may want to develop in your answer. Might it be possible to have it as part of a settlement agreement, that there is a report to be made to the institution and the response that needs to be made?

MR SCORER: Yes. Tracey is right in what she said, although of course -- and of course an additional problem is that many abuse cases are non-recent. So the failings by the institution may have happened 30 or 40 years ago and things may have moved on since then.

There is, however, a category of abuse case where I think this is potentially very relevant and applicable, which is the failure-to-remove type case, because many of these cases are brought on behalf of claimants who are still children now. Tracey and I have both been instructed by the Official Solicitor on these cases. So the failings of the institution are very recent.

MR SKELTON: Just to summarise what those cases are for those that are -- so those are people where the local authority has arguably failed to remove them from their own family or from another place in order to safeguard them?



MR SCORER: Failed to remove them from harm or failed to protect them in some way, so that they have suffered additional abuse. Typically, those cases emerge out of evidence that arises in family proceedings, and then the case is referred on to the Official Solicitor, and then lawyers are engaged to look at a civil claim. I think the key point is that, in those cases, the failings are likely to be recent and, when those cases go to trial, the social workers who come in to give evidence are, in fact, often the social workers who have been involved in making the relevant decisions that are under examination.

So in that type of scenario, I think actually there is potentially quite a lot of scope for the kind of narrative verdict or narrative -- coroner's narrative that you talk of. It is more difficult in the non-recent cases simply because the people involved in making those mistakes in the institution may no longer actually be there, and institutional practice will probably have changed significantly, in any event, although maybe not enough.

MS STOREY: I think it is also fair to say that in those professional negligence cases that we run, the experts that we use will see common threads and common themes, but it's not entirely clear what one does with those



problems that are identified as trends in local authority safeguarding.

MR SCORER: But if you had a specialist court dealing with these issues, we would be better able to bring those sort of learnings from those cases together, and actually make use of them for wider benefit. But at the moment, those learnings are obviously dispersed through a series of discrete pieces of civil litigation.

MR SKELTON: Mark, can I ask you, the NHS has a system where it investigates adverse incidents or serious untoward incidents with a view to learning from those incidents and disseminating better practice for those locally who may be involved, and indeed sometimes nationally. Do local authorities do a similar thing when it comes to incidents like this, where you have a learning process?

MR NICOLSON: Absolutely. On a number of levels this happens. So we will have social workers, for example, that will learn from examples that have happened elsewhere. Quite often, that results in some sort of best practice guidance being issued that other local authorities are required to follow.

We also watch quite closely, in terms of litigation that may be happening to other organisations, and, again, working quite closely with our defendant solicitors, we will often organise workshops and issue

guidance to local authorities around how similar incidents can be avoided. So I think there is quite a lot of work does actually take place.

In relation to recent safeguarding issues, I think the point Richard made was that there's probably little that we can learn or do from incidents that took place decades ago, because processes have significantly moved on since then. But I would say, certainly from my own experience within my own organisation, there is an awful lot of work that goes on at the moment to ensure that safeguarding is as up to date as possible and lessons are learnt from whatever source, if it is available.

MR SKELTON: Can I ask Carolyn about the report issue, and, really, whether or not that is an appropriate form of order that a judge could make or something that could be agreed in a settlement process, and workable from a defendant insurer perspective?

MS MACKENZIE: So a report in what context?

MR SKELTON: In the sense of "This is what's gone wrong. This person was abused. This is how it happened. Please will you now improve your processes or explain what has happened and provide an account or a guarantee that this won't happen in the future, so far as you can give that".

MS MACKENZIE: I think, insofar as cases run to trial, and



I know that in the last seven years we have had five cases go to trial, so they are few and far between, that's definitely a possibility. I could see the benefit of doing that.

If I may, I wouldn't mind coming back to the point of failure-to-remove cases, because we have seen some of these cases that are in progress at the moment. Quite often, when those cases come to us, in this case a local authority has already had an inquiry, has already done an investigation, and it is often off the back of that and from that that the civil cases are then brought and you have the benefit of that information in order to progress those civil cases quickly, and so that kind of analysis and inquiry around the issues there and how that was allowed to happen and what steps have been taken to ensure that the safeguards are improved and reoccurrences are prevented have already been addressed at the point at which we see the civil claims come in.

But back to your question, yes, I think in those limited cases that do go to trial it is certainly a possibility.

MR SKELTON: Do you have a view on that?

MR BONEHILL: I agree entirely with that. I guess the question is, who polices the response -- whose responsibility is it to make sure that those lessons



have been learnt and those changes have been implemented, as you say, to stop any similar incident occurring again? Where would that responsibility sit? I guess that to me would be a question that would need to be answered.

MR ENRIGHT: I might have an answer. Yes, there are very few cases that go to court, but there are very many cases that are settled pre court and are the subject of an order which is seen and approved by the court. So that is your opportunity to gather information.

If, as I suggested earlier, there was an individual of the calibre and type of an equality assessor, any case involving child abuse would have to go before a senior judge to be sealed, the quality assessor is advised, and the court service could have a central individual who draws in those. There may be significant statistical lessons to be learned about different claims arising from an institution from different parts of the country. That person could then flag up to a judge or whomever else that there is an issue here and perhaps a narrative report or a request for a report that you suggest could be identified.

MR BONEHILL: Just a question, would that be a responsibility for the CQC in the care sector, for example?



MR ENRIGHT: The issue was, how can you draw in -- how can you know this is going on if it is going on around the country? If all child abuse cases that are settled in the formal type of sense have to go before a judge who then has to notify a central individual or office within the court service nationally, you know, lessons can be drawn in from there. That's an idea that can be fleshed out further. But it may go somewhere down the line of achieving what you are suggesting.

MR NICOLSON: The other thing we have to mention to you is whistleblowing. There are opportunities for individuals that have concerns to use confidential reporting hotlines and those concerns are then picked up and investigated by the authority or by an independent agency, the police or whomever, if that is more appropriate.

I think, you know, whistleblowing is a really important part of this process that allows individuals to report concerns anonymously.

MR SKELTON: Thank you. One of the things that was raised this morning was support services for victims and survivors, both before they come to the civil justice system, during it and, indeed, long term afterwards if they require it.

We discussed it in the context of compensation being

used to pay for it. But I would like to hear a little bit more about access to services generally and whether you, as lawyers, have any views on that and what, meaningfully, the civil justice system could provide to them that it doesn't presently provide, besides compensation to pay for access to those services privately. Can I ask you, Alison, first?

MS MILLAR: I think most of my clients' experiences are very patchy in terms of access to support services. Some people manage to find appropriate support, other people bounce around through different services, perhaps going to an initial service who can't give them the time commitment they need or a service that is -- often they will have -- some people who instruct us have accessed support but it's been the wrong type of support, for example. I don't think there is any easy answer in terms of support services. It is a really complex area and I think much work needs to be done probably by, first and foremost, the medical professions in terms of identifying and training and resourcing appropriate support services. But the litigation process I think could work much better in that regard as well. Really, I think I echo what's been said this morning about early support for people engaging in litigation. It is a stressful process and the earlier people can tap in to



support for needs which are often very great and long term, the likelihood that the litigation process will have a better outcome for them and a better outcome really for everybody.

MR SKELTON: David, that was something we heard to some extent this morning. I know you have strong views on support services. How could the civil justice system deliver them?

MR ENRIGHT: If you think of it this way, people who have been the victim of abuse in an institutional setting run by a local authority or the Home Office previously, a central government, the defendant has control of all support services, so the defendant could be ordered to provide as part of a settlement package appropriate support services, which they control. So in terms of housing and in terms of counselling. Now, counselling is a huge issue for the people I represent, access to counselling, access to adequate counselling. What will often happen is they might be offered eight sessions or whatever. It is not enough. There is one particular individual I represent who can't leave his home, and there are no counselling facilities available to come to his home. You have to go to them.

The point we are saying is, the defendant often is the person who controls all the purse strings, all of



the support services, and they can be ordered to provide a tailored package for a survivor that will meet their needs.

MR SKELTON: Peter and Richard I think, Peter was here this morning and you, Richard, have had experience of trying to ringfence support services on an item of damages which can be paid for possibly early on if settlement is in the offing or possibly afterwards and then provide it to claimants.

MR ENRIGHT: And potentially have some control over that ringfenced funding for counselling and support services, the person themselves has some control over this pot of money that is put aside by the defendant for the provision of their support which would include counselling, it might include housing, et cetera, and then they have control over how and where it is spent, so you are not just dished out what the defendant will give you, you are not put in the worst of housing, given the most limited of counselling, or in the most unsuitable housing. That you have control over that part.

MR LATTER: You cannot fault that logic. It is absolutely the right thing.

My one concern, Peter, is timing. I think this takes us back to the early investigation of a claim and



an early admission of liability. Because if we can get to a process where we can drive both sides towards a more open disclosure process and we can get to that admission of liability, then the whole support structure opens up.

My concern would be, would an organisation -- because it is not the insurers, at the end of the day, because until there is a liability admission, that organisation has got to provide that support in the absence of that liability determination.

So the one bit I can't quite square in my mind at the moment is that timing, and that worries me, in that these individuals need the support early, and if we wait for an admission of liability, months are wasted. So we have to think of a way of trying to get that access as quickly as possible within the current process.

MR SKELTON: Do you need an admission to provide rehabilitation or support?

MR BONEHILL: The legislation is already there to provide that, so you can provide counselling, you can provide -- without admitting liability. So that facility is already there. That's, you know, what we encourage our policyholders to do, from exactly that point, from the very early outset, to respond positively and provide whatever support they can.

With regard to the civil claim, there is nothing to prevent interim payments being made to support this throughout the process. Maybe we don't make enough use of that. But that would be a positive step.

MR SCORER: I think that's right. We haven't applied in this area the rehab code that is so widely applied in catastrophic injury cases, and it is now normal to think in those terms. In those cases that hasn't been done to anything like the same extent here.

I agree with a lot of what David has said. I think it is just worth making the point, though, that certainly I have come across cases where my clients would not want to be receiving counselling delivered by the organisation that has injured them, and I think that's particularly the case in some of the cases involving religious organisations. And the Catholic Church and I think possibly the Anglican Church, in some instances, will offer counselling provision, but it is not an attractive proposition to have that delivered by the defendant.

MR ENRIGHT: Mr O'Mara just reminded me that that precisely is to have the choice, the control over who is delivering the counselling.

MR NICOLSON: It is possible to set up a counselling service that is wholly independent from the council. That is



what my organisation has done. It has set it up. It is not controlled by the council. It is funded by the council. But it is available to anyone that was in residential care to go along. They will be assessed by a professional counsellor. An important aspect is that an individual will have different requirements in relation to their counselling needs and it is really important that the counsellor listens to those requirements of an individual to prevent over-reliance upon counselling, which can be just as bad in the long run.

So it is possible for organisations to set something up that is completely independent and it is there for everyone before any admission of liability is made or before any claims are brought.

MR SCORER: I still think, Peter, to go back to the question you raised, although there is much more that we can collectively do, it is quite difficult to sort of fit consideration of the victim's holistic needs into this sort of framework of civil litigation, which is -- in which the case is just treated as another type of personal injury claim. The claimant brings the claim, then you get your money and you go away.

I think the sorts of things that need to be there as part of the support process would have to -- that would



require some quite sort of significant restructuring of the way civil litigation works.

MR SKELTON: Can I move lastly on to settlement. I think it encompasses as well the idea of support.

Cases may settle early because a defendant makes an offer, perhaps a low offer, perhaps a high offer, of an appropriate sum of damages to which you, as a lawyer, need to say to your clients, "I'm afraid you're unlikely to get better than this at trial. You're going to have to accept it" or "The risks are too great for us to continue". In that case, they get their damages and that's the end of it, the end of your involvement potentially and the end of their engagement with the defendant through the litigation process.

At the other end of the settlement process, we have the face-to-face meetings, the apologies, the commitments to change. What is the average settlement for most people? What happens to those cases where you do get the early settlement and can anything different be done about it? A big question, I know. I will ask Alison to address the start of it.

MS MILLAR: As we have heard earlier, it is difficult for us to know exactly what happens after settlement, because, inevitably, we then tend to lose contact with the majority of our clients.



We do try to propose more creative forms of settlement. Sometimes we will make a formal offer under the court rules but at the same time we will make an offer that doesn't have the same consequences but has other, for example, provisions in it in relation to lessons learned and transparency about those kind of things, or we ask for a meeting.

We tend to find, I have to say, the majority of defendants just don't understand that kind of approach. There tends to be more success if you can have a joint meeting and talk face to face, but for many defendants, they just seem to really want to deal with the claim where it is a meritorious one quickly and early and for as little money as possible, which may not be the ideal outcome for the claimant, for the individual.

Obviously, there is some feeling, therefore, of acknowledgement, but a lot of the opportunities, you know, for accountability and redress in the wider form of the litigation process is thereby lost.

MR SKELTON: Carolyn, can I ask you about that point? The early settlement is the classic example, where you have an early offer which is an accepted offer and then the process suddenly comes to an end, but the claimant may still need more from the process. Are you able to offer more once you have reached terms on the damages or do

they need to be wrapped up as a package?
MS MACKENZIE: I think it is very difficult. The whole system is tailored towards that full and final settlement whether you pay a lump sum that has within it reflected certain aspects of future need. So if the claim was assessed on the basis the claimant has future needs with regard to rehabilitation, therapies, or whatever other inputs, then that would be incorporated within that settlement and that would be a final settlement.
Or it can be as a periodical payment order, which I don't think we see in abuse cases really at all. We see them certainly in other serious injury cases, where there are future losses or future needs and that might be therapies. That can be very effective because that allows for a payment on a regular basis, for life or for a period of time, to be paid periodically and for that money to be guaranteed, ensured and ringfenced, but still available to the claimant to be used as they wish. It doesn't have to be used for that, but it is there and it is allocated and provided regularly for that.
I don't know whether the sums in the issues at hand in abuse cases tend to lend themselves that well to periodical payments but it is certainly something that could be considered.



I think really to your question, is it possible for us to settle a claim and then continue to provide support, I do see within the current systems that is quite difficult.
MR SKELTON: Can I ask you, David, would you be amenable -- periodical payments are classically used for seriously injured people, who have -- often, where there is a concern, they are quite young and there is a long-term payment to be made for loss of earnings, or for care or treatment, of a large sum of money. Do you think, if it were a matter of GBP5,000 or GBP2,000 a year, that's something that, as an insurer, you would want long term?
MR BONEHILL: I think it is a real option. At the moment we do bundle it up, so it is a full and final settlement payment that we make. I guess the question is, is there an allowance made in that settlement for the ongoing care of the victim and survivor and, if so, how is that then administrated, who is responsible for that?
At the moment, I guess it is the individual themselves. So I guess there is a question, you know, can the victim and survivor -- is it right that they're responsible for their own counselling, and it may well be, because it depends on a case-by-case basis or, actually, is it something that needs to be managed for them? I guess that is the question, how that would be



facilitated.
MR SCORER: That's absolutely right. Of course, the difficulty in serious injury cases is many claimants lack legal capacity. So they have that support. In abuse cases, it's much rarer for claimants to lack legal capacity. I have represented a number of young women who suffered child sexual exploitation in Rochdale and we achieved settlements for them, but because they have legal capacity, they don't have ongoing support into the future. They are still very vulnerable people and very vulnerable to potential exploitation in the future, and that's a real concern.
MS MILLAR: I think that is a really fundamental point, that all through the system it undervalues the severity and permanence of the injuries, the vulnerability of the survivors and the difficulties they have potentially post settlement. It is always a worry to me, when somebody gets an award of compensation, how they are going to manage it, if they do want to apply it towards counselling and support, whether they have the resources and wherewithal to do that. I imagine most people don't. They are also super-vulnerable to exploitation by others, not simply the perpetrators of abuse, but they may not have supportive family members, they often don't. It is a real worry. I think, ultimately, we are



coming back to the same endemic problems of the system just undervaluing the severity, permanence and damage caused by the very toxic nature of abuse.
MR SKELTON: Briefly, because we are coming towards the end of our time, that is an important point, but, also, how can you manage someone's damages where the system is set up to provide them with a lump sum or sometimes periodical payments without being patronising towards them in forcing them to use them for their own good, which is a form of patronisation? It may be for their own good, but ultimately, it isn't something that other claimants who have suffered injuries will expect to receive.
MS STOREY: In a lot of cases, we will encourage actively claimants to set up trusts to manage their damages, and it would be to ensure that they can continue to be -- to qualify for means-tested benefits. So there is a practical purpose in it. But at the same time, it also gives them pause when they are spending so that they aren't vulnerable to spontaneous or ill-considered -- they just have to think about it a little bit more carefully. Sometimes we will use the trust vehicle as a way of sort of protecting clients who are vulnerable. But at the end of the day, this process was about their taking back control. So you have to be

very careful.
Ultimately, a client with capacity, and that could be a very vulnerable client, if they say, "I don't want a trust, I just want my money", you have to give it to them. So you have to sort of balance these things out.
MR LATTER: It strikes me that we kind of have a "one size fits all" process which you have articulated. What we should do is think about the bouquet of options that we can present to the claimant and allow him or her to make their own choices around their own circumstances in conjunction with their claimant lawyers.
I think it is providing choice and providing a framework where that choice can be clearly articulated to the claimant, and trust them to make their own choices with expert advice from their legal providers and medical experts.
MR SKELTON: Thank you. I think we will have to leave it there, in terms of internal discussion. I am going to ask if anyone not at the table has anything they would like to say.
CORE PARTICIPANT: Karen Gray. During my CICA, my Criminal Injuries Compensation Award claim, I had varying conflicting reports, including the fact that, three years later, it is still ongoing and they are requesting repeated reports and copies of my records, which I don't



understand. But the actual process is only meant to take 12 to 18 months. Like I said, three years on.
This money that they are saying I will one day eventually receive, probably, of GBP27,000 for everything I've been through, will not include anything for counselling, and that, if I want counselling, I am going to have to go through the NHS, through whom I cannot find any counselling in my local area. My last assessment for counselling with KRASACC, Kirklees Rape and Sexual Assault Counselling Centre, they advised me that my needs were too complex for them to handle and that their 20 hours in a year would not even touch the surface of my needs, and I would have to go back to the NHS, who, as I say, have nothing in my local area.
When I put this to my CICA solicitor, her response was, well, okay, criminal injuries will sometimes, very rarely, sometimes, pay for private counselling. That money would be ringfenced for that specific purpose. Surely, in certain claims where the claimant has the lack of wherewithal to manage their money, it could be ringfenced for set purposes, so that it was released over the course of its needed use and could not be misappropriated? Thank you.
CORE PARTICIPANT: Because we have had quite a long session, I would like to go right back to the very beginning, I'm



afraid. One of the things that survivors have always said to me is what they most want is for this not to happen again. That is the overarching reason that most survivors even come forward just to talk, is to highlight the problems, make them open in public, to make sure that this can't happen to someone else. That is their first and overriding concern.
If there can be a way that can be achieved of obtaining that without going through expensive civil litigation cases, then survivors would choose it, believe me.
There was a mention earlier about a reduction in payments as a quid pro quo for that. I don't see why that would be necessary, because, actually, you have already reduced their payments because they are not going through the civil litigation, so actually making more money -- or spending less money, anyway.
The only other point was, Mr Latter, there have been a few times when you have said during the course of the two days that you haven't got this information because you don't have contact with clients. There is nothing to stop you contacting my organisation and many others and asking, sir. I would be happy to help you.
MR LATTER: And thank you for that invitation.
CORE PARTICIPANT: I'm sorry I came in late on this one, but



on the matter of compensation, as I said, I have got a brother. I haven't seen him for 20 years, but I do know he's an alcoholic. If you suddenly give him or somebody who is a drug addict a load of money, how long is it going to last? Now, this was mentioned by our solicitors as well earlier on. You have got to be careful. You can't just go and say to a drug addict, "There is GBP100,000", because next week they could be dead on one overdose, so if you don't mind me mentioning that. The individual needs to be looked at.
MR SKELTON: Thank you very much. That concludes our session. Again, very interesting indeed. We will start promptly at 1.30. Thank you.
(12.34 pm)
(The short adjournment)
(1.30 pm)
Session 3
MR SKELTON: Welcome to our penultimate seminar. This one is on reform of the civil litigation system or process. I think we have two new people to the table today. If you would like to both introduce yourselves to the panel.
Introductions
MR COLLINS: Yes, good afternoon. My name is Alan Collins. I am a partner at Hugh James Solicitors. I have been

representing victims of child abuse, or survivors of child abuse, for a number of years. I have been involved in litigation in the UK but also overseas and a particular interest of mine is the redress scheme that operated in Jersey. So that is my background.

MR GILLESPIE: Alastair Gillespie from Hill Dickinson. I took part in one of the sessions yesterday.

Open discussion

MR SKELTON: Thank you. We have to be careful, I think, in this session, not to reinvent or readdress all of the things we have already discussed. The first thing I really want to do is to see the degree to which we have consensus about the need for reform and which areas they are.

I would like to talk about the existing initiatives, so things that are already in train; for example, Ecclesiastical's guiding principles; future initiatives, such as Master McCloud's initiative to produce a pre-action protocol and to produce model directions; and then to look finally at the kind of changes which could be implemented that may be a little bit more radical, changes to the whole rule system of civil justice and changes to certain areas where the law might need to be changed, picking up on some of the themes we have heard earlier today and indeed yesterday.



The first thing is whether there is a consensus that perhaps there is a lack of consistency in the way in which claimants and defendants approach the civil litigation process which results in longer, more costly cases, and in some cases in injustice and might be harmful for both parties, both claimants and defendants. Does anyone think the civil justice system doesn't create that problem?

MR COLLINS: Sounds like you have a consensus already.

MR SKELTON: Good. Can I ask, really, just to get the discussion going, about Ecclesiastical's approach, because you have created some guidelines. I would like you to explain, if you would, the principal areas which that has improved and whether or not you have seen a change with those that you deal with?

MR BONEHILL: Okay. I think, just to give some context around the guidelines, the purpose we did it, really, was to make transparent our claims processes and procedures, so we are trying to be very open and, as I say, transparent in terms of the way we handle these types of very sensitive claims.

The guidelines were devised with input from other parties, so claimant and defendant lawyers, victims and survivors as well as our own policyholders. So we had quite a range of input into the formation of



the guidelines.

Fundamentally, it didn't change the way we were handling claims. That wasn't the purpose of it. The purpose of it really was just to explain and be open in terms of what our processes and procedures are.

We looked at a number of areas of particular interest, some of which, many of which, we have discussed over the last couple of days. So the appropriateness of apologies was looked at; the offer of support and counselling was looked at. Those two areas were looked at specifically because there was a concern by our policyholders that those two areas may well jeopardise the insurance position if they take action. So we addressed those specifically in there to give reassurance to our policyholders that they can give apologies and they can offer pastoral care and counselling without adversely affecting the insurance position.

We then described what our approach was to investigations. We know these are extremely sensitive matters and therefore require quite a different approach to be taken in the investigation process. Sensitivity is key. Empathy is important as well as integrity in the way we handle these matters. It is in everybody's interest to settle these claims as quickly as we can.



Again, we have discussed that at some length in previous sessions.

Joint medical experts was looked at and commented on and our approach to joint medical experts, and I commented on that in one of our previous sessions, in terms of reaching out to claimant lawyers with a view to trying to secure agreement to a joint expert.

Limitation and consent is specifically mentioned, and, again, that is something I have commented on already.

Fairness to the claims process is really important. What that means is, you know, it is part of our approach to claims handling, we don't deliberately put barriers in the way to the victim and survivor getting access to justice. That is not what our process is about.

MR SKELTON: What's an example of a barrier that could be --

MR BONEHILL: It could be use of defences inappropriately, for example. That's the sort of thing I mean there.

The final area, really, was around transparency to settlements and the way we do it. What I mean by that is, we do not use confidentiality clauses unless the victim and survivor specifically asks us to. Otherwise, we do not use them.

So that's hopefully given an overview of what the guiding principles are. They are in the public domain.

They are on our website.
We have also created an email link for feedback on those guidelines. What we don't want to do is create these guidelines, put them on the shelf and they gather dust. It is a living document. We are looking to continually improve our processes and procedures. So we have set up a confidential email address so anybody that's experienced the claims handling process with Ecclesiastical can give us feedback on that, and we take that into account as part of our ongoing review of those procedures.
MR SKELTON: To clarify, you said at the start that it reflected existing practice. So all of the things you have mentioned, from transparency to the attitude to defences, are already in place?
MR BONEHILL: There is nothing new in there in terms of what we did previously. It is more about being transparent.
MR SKELTON: How have you seen it work in practice, both with your policyholders and with the claimants?
MR BONEHILL: I think in terms of our policyholders, it gives them confidence, that's the first thing, so they can respond very early on in a positive way to any complaints of abuse. I think that is really important. Because there are sensitivities around, you know, anything they do might jeopardise the insurance



position. Therefore, if that is the case, they are more inclined not to take more positive action.
So it gives them the confidence to actually do the right things at the right time.
MR SKELTON: Just to pause there, had it been a problem previously, that your policyholders might take an action which would effectively invalidate cover?
MR BONEHILL: I think there was a concern on their part that it may, and, therefore, rather than taking the immediate action, they would come to us seeking our advice and guidance, which we gave them, but of course that takes some time and it doesn't allow for that immediate response that's needed. So I think that was the issue there.
In terms of how it's been received, I think it's been received well in the market. That's the feedback I have had. I think we heard that yesterday from Peter and claimant lawyers.
I think what we need to do now, that's just the first stage. There is a natural progression that we spoke about earlier on, and we will come on to it, is potentially around pre-action protocols and trying to bring the process to life and to speed up the claims settlement. That will take engagement with claimant lawyers, of course.



MR GARSDEN: When you said there was a good reaction across the market, do you mean the insurance market? I'm very interested to know what your fellow insurers think of your guidelines. Sorry, you're meant to be asking questions.
MR SKELTON: Thank you, Peter, it is a question I was going to ask, as we have the benefit of John here.
MR LATTER: I can answer that. The approach that David's organisation has taken is almost the same as Zurich's. There are slight differences. We didn't as publicly publish them as Ecclesiastical did. There are a couple of things that I would add that are probably in place at Ecclesiastical as well, but just to go through them.
As I said yesterday, we have a team of designated individuals that manage these claims and all claims within Zurich of a child sexual abuse nature go into that team.
We have very much focused around the training element. So we make sure there is ongoing training. So people's knowledge and awareness of how to manage these claims is up to date.
We very much focus, as David mentioned, around tone of our correspondence. You know, we are dealing with people who need to be treated sensitively, and we actually encourage our people to think about that every



time they put pen to paper or they construct an email. In fact, we rolled that guidance out to our panel solicitors as well, so we set the bar very high around how we expect our parties to correspond with claimants and claimant solicitors.
We also have an audit process in place now that specifically looks at that element of the claim. So we are not looking at the pure nuts and bolts of the technical, because we have always been very good at that. We are looking now at making sure that our practices are up to date and the tone of our correspondence and the way we engage and the way that we are trying to drive claims forward is appropriate in all cases. So we have instigated an audit programme as well. So pretty much a same, but with a new nuances.
MR SKELTON: I will ask Alastair in a moment to explain his position from perhaps RSA's perspective, but for those of you on the receiving end of contact, without wanting to initiate any form of conflict or criticism, can I ask you if your experience of the principles from both insurers reflects the practice they have identified?
MR COLLINS: For my part, these principles and standards I would have thought would be applicable to all injured parties, but leaving that to one side. For my part, it is fairly difficult to discern a change in practice

because, from my perspective, the cases are such that there didn't ought to be arguments anyway.

So I think we would need a much longer period to assess whether there is actually a change in ethos on the part of the defendant insurance industry when it comes to treating survivors and the way that they conduct the litigation or the pre-litigation process towards them.

MR SKELTON: The way David had described it, Alan, was not a change but an articulation of a change that had previously been made, as I understood it. So it was reflecting what is meant to be existing practice, no more than that.

MR BONEHILL: Of course, it is not a market wording. This is an Ecclesiastical guiding principle. It is the principles to which we operate.

MR COLLINS: Sure. Don't misunderstand what I am saying. I'm not criticising, far from it. I am just saying, from practice, I have yet to say, "Yes, comparing 2016 with 2014, there has been some kind of sea change". I can't see that sea change. Maybe if you ask me the same question next year, I will have seen it.

MR GARSDEN: I echo what Alan says. I don't see a sea change. I think the point is that there are a lot of very good, very well-meaning insurance representatives



here who are before a national panel, and what they say I'm sure is true, and I believe what they say. However, their attitude isn't reflective of the entire defendant industry -- I hasten to call it that -- that we deal with. For example, I know the gentleman here from Lambeth Council the other day, and he seemed very well meaning and very principled. However, that isn't necessarily reflective of all the defendants we deal with. I deal with Manchester City Council, for example, who aren't really covered by insurance. They are self-insured. There are other defendants all over the country who adopt a very different approach and it is quite litigious and sometimes quite insulting to claimants, the things that are written in letters.

That's not generally true, but it sometimes happens.

MR SKELTON: Just to be specific. For example, one of the things that was mentioned was not taking certain defences in certain types of case. What you are saying is, with other insurers, that isn't the case, they are going to take it. Are you saying also with the tone of correspondence, which may be an important thing for you to be on the receiving end of, that sensitivity is not a word which you would use to describe it?

MR GARSDEN: Exceptionally, it isn't. What I am saying is, the intentions we have heard today have been new to me.



I don't think they necessarily filter through to us because they have to come through a lot of people, like loss adjusters and solicitors and filter down across the board. That's why I argue for this model litigation policy that we ought to have accompanying the protocol.

Now, I wouldn't say that's typical. I am very glad to hear it, but this is the first time I have heard it today.

MR COLLINS: Can I make this point: Ecclesiastical, in my experience, to be entirely frank, is one of the more -- how can I put it? -- have always adopted a more professional approach, in my opinion, to these cases in comparison to other insurers. That is just purely my subjective, own opinion, and I suspect others would share it as well.

As I said, I'm not criticising, but that is not the point. The point is that any kind of suggestion that there has been some sea change on the part of defendants, whether specifically or generally, I have yet to see that.

MR GARSDEN: There is only one example I can think of this, and it is nearly 20 years ago. I once had a group action against the Methodist Insurance Company and they adopted a very similar approach to the one you are articulating now. Whether there is a religious context



to that or not, I don't know, but certainly that's the only example I can think of.

MR GREENWOOD: 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. I don't know whether there are nuances there in terms of clients taking over responsibility for pursuing it or not, I don't know, but it was really dreadful to behold that trial, and it was, you know, pretty disgraceful to have to be part of that kind of thing in our legal system.

So certainly the approach of EIG, in my experience, is not echoed across the board.

MR SKELTON: Have you had similar cases with different insurers that were treated differently? So it is not a case of it being a fact-specific approach litigation, it is an insurance-specific approach?

MR GREENWOOD: I'm sorry, I can't speak for specific cases. I often don't marry up an insurance company with a particular defendant, so I can't really give you a full answer to that.

MR COLLINS: You can see patterns. Well, I can see

patterns.
MR GARSDEN: I think you have maverick individuals in different organisations, definitely, because they are human beings. You could have a well-meaning insurance company and then a very litigious solicitor, or the other way around.
MR SKELTON: So a lack of consistency even within the insurer and its --
MR GARSDEN: I think there is a lack of consistency, which is why I go back to this model litigation policy.
MR SKELTON: Can I ask Alastair. You have heard what David and others have said. How would you respond?
MR GILLESPIE: The case to which David's referred is a 250-claimant group action that is awaiting judgment at the moment and it wouldn't really be appropriate for me to say anything further about that.
In terms of the reference to a sea change, I think it would be difficult to see a sea change over a period of one to two years in this area, in any event. The courts have been wrestling with these matters for over 20 years now. I think it is fair to say that, from my perception, in the vast majority of claims they are actually treated a bit differently now to what they were at that time. We have been through some historical group actions, too, that have been selected as case



studies by this inquiry. Those case studies actually informed a great deal of the law with which everybody around this table now works.
Apart from the group action to which David refers, in the last seven years, of 450 claims that we have resolved, we have only taken five to trial. In fact, we have only had just over 50 going to litigation. So there's approximately 90 per cent of the claims with which we deal from our experience actually come nowhere near the court, in any event, and that is as a result of us working with claimant solicitors in order to try to make sure we can resolve these claims as quickly as we can. The system is not perfect. We are happy to work with claimant lawyers and with other stakeholders to make sure a pre-action protocol delivers an even better process.
MR SKELTON: Do you take a different approach to what we have heard from Ecclesiastical and indeed from Zurich and others?
MR GILLESPIE: I wouldn't say materially, no. We don't. We are all working with the same law. We are all working with the same independent judiciary assessments of the merits of arguments and causation and quantum. So we are all working within the same rules. I wouldn't say the approach is necessarily materially different,



no.
MR SKELTON: The difference might not necessarily be the approach of the law -- I think there are a couple of specific examples about the use of consent and possibly on limitation -- but more about the general approach about transparency, about treating people with sensitivity. Do you subscribe to those sorts of things?
MR GILLESPIE: We do. We have examples of matters which, for example, arise from a group of convictions of a former teacher at a school, and we engage with claimant solicitors and talk to them about actually what is going to be the most effective way of meeting the requirements that the survivor or victim has and wants to achieve through their claim. It wouldn't necessarily just be a figure of compensation, it might be an expression of regret or apology or something similar, but we will work constructively with the claimant representatives to try to make sure they reach the end point they want to achieve as soon as possible.
MR SKELTON: Moving on to the pre-action protocol issue, the basic position is, there isn't one at present within this field. Again, I think there is a consensus that there ought to be one. Does anyone disagree with that? Does anyone think the existing system is adequate? It should be a specialist one?



MR GILLESPIE: Yes. These cases deserve one.
MR SKELTON: As we understand it, we have heard very recently from Master McCloud that the process has been initiated to start developing a pre-action protocol. Perhaps I will ask Paula, what kind of things would you hope to see result from that initiative in terms of the things to be included?
MS JEFFERSON: I think we have touched on some of those already. What is really important is the collaborative working and sharing of information and trying to move away, where and whenever possible, from an adversarial approach towards each other. At the end of the day, whether we are a representative of an insurance company, an organisation that doesn't have insurance or a victim or survivor, we are either the legal representatives or the insurers, and this is about doing our job in a way that is sensitive and empathetic, taking the law as it stands, but being pragmatic about its application and about having discussions and about working together, and certainly, you know, Alan and I have worked together on many cases before, David and I have similarly, and there is a way in which we can be very collaborative.
Yesterday, mention was made about the need for victims and survivors to have specialist legal advice, and it does concern me when we have lawyers who advise

clients who have never dealt with a claim of this nature before, and that can be really challenging, and that is something that I hope comes out of this protocol, is it enables the individual who thinks, "I will advise on one case", and is then, in a way, dazzled by the horror of what they are seeing, which then ends up with challenges, pre-action disclosure applications that aren't necessary, and really doesn't help anybody.

MR SKELTON: So you anticipate that the non-specialist lawyer may advise his client to go elsewhere?

MS JEFFERSON: Well, for me personally, I find it much easier to be working with the likes of the people who are around this table, who I know are advising their clients properly and I can have a sensible conversation with, than with someone who I end up having to help them to understand how certain principles work. My experience is that, where we have firms who are not used to dealing with these claims, there is a rush to litigation and matters are prolonged unnecessarily, and less of a willingness to involve in some form of ADR at an early stage because there is a feeling that they need to go through all of the stages which one would maybe deal with if you were dealing with a brain injury case, that sort of thing, whereas often that's not necessary here.



MR SKELTON: The claimant representatives I presume accept that their specialist expertise assists in the proper resolution of these claims, by definition.

MR COLLINS: I would hope so.

MR GARSDEN: We have to deal with -- we deal with solicitors acting on behalf of abusers sometimes who don't have access to specialist lawyers like Paula and Alastair and others, and they are enormously difficult. If they had this model litigation policy that says, "This is the way you do it and this is the way you behave", rather than saying, "Behave", I think it would be far more likely that -- you know, we will have cases against inexperienced people, and that's why we need this policy, really. I have got it here, the first draft of it, anyway. It covers a lot of the things that are in the Ecclesiastical thing. I can run through them, if you like, but probably maybe now isn't --

MR SKELTON: We need to touch upon a few of them. One is things we discussed earlier, the early provision of information by both sides. So the claimant needs to know identity of defendant and things like that and start to provide access to medical records and the claimant, from the defendant's side, needs to have access to Social Services records and the like. Really, the argument is going to be about the timing of that,



presumably, rather than the principle.

MR GARSDEN: There are a number of meetings organised with key players, similar to a lot of people around this table, and we have split it up into the various different headings we are going to deal with that we have talked about already and we are going to work on this draft to see if we can iron out something that is agreeable to all parties which hopefully will become the abuse protocol. But in parallel with this committee.

I'm not trying to usurp, obviously, your function, but just to help you to understand what process we are going to be going through anyway. I think everybody is aware of that, aren't they?

MR GILLESPIE: Yes, and the first full meetings are taking place over the next two weeks as well.

MR GARSDEN: Yes, they are.

MR SKELTON: Have any of you been involved with the development or implementation of pre-action protocols within other areas of litigation? Industrial disease, for example?

MR LATTER: I have some involvement under the umbrella of the CJC at the moment looking at noise-induced hearing loss, which is again a complex area because of the age of the claims involved. We are working with claimant solicitors and we have had a large degree of success in



agreeing what the steps pre action should look like and those negotiations are ongoing. When you get both sides willing to engage across the table, you can make significant progress.

MR SKELTON: What about the issue of voluntary versus compulsory, which is sometimes a vexed issue? Pre-action protocols sometimes are routinely breached in certain types of cases because, for whatever reason, the defendant isn't bothered about the consequences and would like to do it at its own pace but in the traditional style.

MR COLLINS: That is a real issue and will continue to be an ongoing issue, despite all the right noises being made.

When I start off with a case, as soon as I know who the defendant is, I have a pretty shrewd idea as to who the insurer might be and who the insurer's solicitors might be. I will know subconsciously, "That's going to be a straightforward case" and "That is not going to be a straightforward case". From a survivor perspective, we have to get away from that. So if we are going to have protocols, and it is a no-brainer that there should be, they are going to have to have teeth, because there is absolutely no point in you, as an inquiry, and all these very able and well-meaning people who are here contributing to this exercise if we just end up with

a very grand piece of documentation that actually isn't really going to change very much for survivors.

My own personal view, we have to go a lot further, but maybe we can look at that later if we have time.

But protocols have to have teeth. Whilst I'm not an expert on what exactly the various Australian states are doing at the moment, it is quite clear that conduct is changing and it is coming down -- being driven down from the top to make sure that it happens and that there are teeth. I think it would pay everybody to look to see what is happening, for example, in New South Wales and Victoria, so that where there are protocols in these types of case and they are going to have an effect and if people, whether it is the claimant or the defendant, do not comply, there will be sanctions. That's the only way you are going to get behaviours to change.

MR SKELTON: What sort of sanctions might one realistically put in place? Costs?

MR COLLINS: It could be costs. It could also be parts of a claim or parts of a defence. Because it is important, if you are going to have a protocol that works, that claimant and defendant abides by it.

So you can build into that the appropriate default sanctions if people do not deliver.

MR GARSDEN: There is only one flaw in this protocol, in



this model litigation policy, and that is that it is aimed at reducing stress and aggravation for the claimant. However, the claimant often wants his right to be heard, right to speak his truth, and to be listened to and believed. If these protocols go through, that defeats that object.

I only say that because in a recent email I got from Master McCloud, she was advancing a very, very innovative process whereby there is the right for the claimant in the court process, who doesn't want compensation but wants to be heard, to give evidence at a hearing without any damages being the outcome. I thought that was a very, very clever and innovative thought. Whether there are any legs in that or not, I don't know. But obviously it is the truth project, if you like, that IICSA have, which is a marvellous and very, very successful thing. Just having an equivalent in the court process where lawyers can help them through a hearing and the outcome is not paying them money, which may be offensive to them, but, "Have you been abused?", and a finding of fact. "Yes, you have been abused", and, what's more, the lawyers fees will be paid by those who cause the problem in the conventional way. At least I think that is the proposal.

MS MILLAR: I wanted to pick up on that. There is a tension



between -- nobody wants to be engaged in a traditional litigation in which every point is taken and fought very adversarially in court. But there is a tension between dealing with cases quickly and speedily and achieving an early resolution in terms of a compensation settlement and what the claimant may actually want to achieve by the process.

I think one of the features of a pre-action protocol, it is an opportunity to have an early evaluation of what the claimant actually wants to get out of this, you know, which may be a much more creative and diverse range of remedies, ranging from an acknowledgement, an apology, perhaps a meeting with the defendant, particularly if the defendant is perhaps a former corporate parent, can they offer things in terms of ongoing support, not in a financial way but in other ways, that would be meaningful for that claimant.

I think that there has to be -- there is a tension between those two objectives, really, and it is making sure that the process, whilst it doesn't involve lots of money being spent on attritional litigation, also delivers actually what the claimant wants and doesn't go at too fast a speed for people who are very traumatised.

MR SKELTON: The general view in the last session I thought was a lot of those things can be delivered in the very



early stages by a dialogue and communication -- I think that was the general view -- but can sometimes be more difficult to deliver as one gets further in and entrenched. Is that fair?

MR GREENWOOD: Definitely. That's my experience.

MR SKELTON: Can I just go back to the point now, I wanted to get a defendant view on the "should protocols have teeth" point. Does that concern you, that there could be a costs sanction, or is that --

MR BONEHILL: It doesn't concern me at all, if I'm quite honest with you. I think a pre-action protocol is exactly what the system requires. My only concern would be the time it would take to put that in place, how long will that take to put in place, and, in advance of that, you know, could we -- and there is no reason why we couldn't -- have a voluntary agreement for like-minded companies? Now, I realise not everybody would sign up to that, but if you have got like-minded companies in a room, you create the pre-action protocol, and some of the work is already commenced, which is great to see, we could implement that fairly quickly and then the inquiry could actually look at what works well, what doesn't work well and why it doesn't work well and use that for lessons for the longer term.

So I'm fully supportive.

MR SKELTON: Alastair, do you have a view on that?
MR GILLESPIE: I endorse what David says in that respect. It is, I suspect, good for the inquiry to hear that work is already being undertaken collaboratively and voluntarily by both sides of the industry, for want of a better word, in relation to trying to make sure that we deal with these matters as effectively as we can in the interests of the survivor or victim who is right at the heart of it. So hopefully something can be achieved sooner rather than later in that respect.
MR LATTER: I absolutely agree. The only thought I have is, sometimes -- if you look at the motor model, where it's driven for a portal process for claims of less than GBP25,000, not that these will be, there is a process that sits around an admission of liability, which is very, very quick, which is good in motor. My only question, and it would need to be worked through with both sides around the table, is, sometimes getting to the evidence can be quite time consuming, so we just need to think about how much time we would allow each side to respond to the allegation -- or the defendants to respond in cases where evidence is difficult to find and whether we could have ongoing conversations about that, or it would be a guillotine date and then, if you are outside of that, there will be cost sanctions.



We don't live in a perfect world. Sometimes it is difficult for organisations to find witnesses, find evidence. We do need to speed that up. I just don't know how practical that is in all cases. But certainly for the majority we can do a lot of good.
MR GARSDEN: The period of time in the protocol for you to investigate is six months, which I thought was quite generous.
MR LATTER: Peter, I haven't seen that. Apologies.
MR GARSDEN: I'm just reassuring you.
MR SKELTON: That's a few months longer than might be conventional in personal injury.
MR LATTER: Conventionally, three months.
MR GARSDEN: I can share this with you.
MR SKELTON: In terms of the cost sanctions, in theory, there are cost sanctions, for example, for not agreeing to do ADR without a proper excuse. Do any of you have experience of those cost sanctions actually being enforced against a party that has been recalcitrant?
MR COLLINS: Never happened, in my experience.
MR GARSDEN: No.
MR COLLINS: Not in these cases anyway.
MS MILLAR: Obviously, it is a problem, because most cases settle. So you may have failures but they end up getting then rolled up into a settlement.



MR SKELTON: So it's, in theory, a form of sanction, but doesn't actually apply in practice.
MR COLLINS: Because there are no teeth. It is -- current practice directions on ADR and not complying with ADR in my opinion, it is toothless.
MR GARSDEN: It is a standard clause in our letter of claim at the end, and nobody has ever taken it up. It has been going for a few years. In fact it's been rejected by some of the defendants. Nobody around this table.
MR GILLESPIE: It's also become a standard part of many court orders that the parties are under an abrogation to consider ADR and that a statement has to be provided on a without prejudice basis if there is a good reason from the defendant perspective as to why they won't engage in ADR. Generally, what we find is that, where we don't actually feel that we can engage in ADR at a particular stage, it is usually because it is too early in the process and we haven't got the information that we would need in order to actually decide the appropriate settlement value of the claim.
Where JSMs in particular work well is that both sides work collaboratively and supply themselves with sufficient information in advance of that meeting. That actually can be a very effective way indeed of resolving claims.



MR SKELTON: I don't, again, want to go over the ground we have already covered very helpfully in the earlier sessions, but there will be cases that will inevitably end up in court because, for whatever reason, the case needs to be fought on the grounds that perhaps the events didn't happen from the defendant's perspective. How can that process, that litigation, the full-blown litigation process, be improved? One example might be specialist judges, which we have touched upon earlier. Does anyone have a view? I know, Peter, you have expressed a view previously. David, do you have a view on whether specialist judges will create consistency of procedure and result?
MR GREENWOOD: I think there is -- someone mentioned earlier that there is a tendency or a worry that specialist judges would become burned out, so I don't think it is a good idea to have specialist judges working all the time on these cases.
Improving the actual trial process will depend a lot on what comes out of IICSA and what comes out of this pre-action protocol and how we are able to work together collaboratively.
For instance, if, you know, limitation as a factor is taken off the table, then we won't have trials of issues of the reasons why someone didn't come forward

for so long and we will be down to the bare facts of, did it happen or didn't it? That will narrow down a lot of the medical evidence that has to be trawled through as well.

So the whole process can be much simpler.

I did, pre Hoare days, a series of trials as test cases, again, back in the early -- I think it was 2003/2004, in which we assumed on a hypothetical basis that the abuse happened, and all we were doing then was testing, you know, why the person didn't come forward.

I suppose if you can strip out a big factor in the case, such as limitation, then it narrows the whole thing down and makes it slightly more palatable for the claimants, but, honestly, my personal opinion is that I wouldn't want anyone to go through the trial process, I wouldn't want anyone to have to go through this adversarial process, and a more inquisitorial process, perhaps done by a panel of experts or a judge, is probably the best way. We will come to that at a different meeting that I think I'm invited to when we speak about an alternative system. I don't advocate the civil justice system as we have it at the moment, I would like to see something different.

MR SKELTON: We will come back to that. We'll also come back, I think, in a moment, to the limitation reform.



Because that is a radical change, potentially. I would like to stay with the litigation process at the moment and views on what could be improved.

MR GARSDEN: In terms of training, there are so few cases that actually end up at trial that I think it is not the judges that need the training but the district judges, who routinely deal with interlocutory applications and are far more involved in the abuse protocol thing we are talking about. I think there is a need for specialist district judges to be allocated, as there is obviously at the moment at the RCJ with Master McCloud taking an initiative because she has a lot of these cases. We have a specialist judge, or two specialist judges, in Manchester, but I'm not sure there are specialist judges at every district registry, but there should be, and there should be training for them about the subject matter of abuse and how it affects people and, you know, a more broad understanding of how claimants feel and what it is like to go through the process and so on and so forth. I know a former president of our association, Lee Moore, is a specialist in this area and I know is very keen to engage judges and help them with that.

MR SKELTON: How many procedural fights are there on the way to trial in these sorts of cases?

MR GARSDEN: A lot.



MR SKELTON: What are the kind of issues that routinely come up. Experts might be one, presumably?

MR COLLINS: It can be arguments over disclosure, it can be arguments over experts, it can be over limitation issues, should limitation be dealt with, you know, as a preliminary issue, we still see that being raised. Yeah, it's a product of the adversarial system, parties positioning themselves in order to gain the maximum advantage, or potential maximum advantage, for their respective client.

MR GARSDEN: We had an argument as to whether one of our claimants should be forced to see the defendant's expert. I'm ashamed to say that it was decided he should be forced to do so. But that's one example.

MR SKELTON: Some of these things will be amenable to streamlining on model directions and possibly training of the judges. Others will always be determined on the facts of the individual case.

MR GARSDEN: Yes.

MR COLLINS: All the time we have an adversarial system, that tension is going to be there, that tension to position.

MR SKELTON: Does anyone have experience in trial of ground rules hearings and then an agreed approach between the parties to the cross-examination of witnesses?



MR COLLINS: Not in a civil context.

MR SKELTON: It is an initiative that's come through in the criminal context but hasn't yet found its way into the civil courts?

MR GARSDEN: Correct. But there is this paper that I think David McClenaghan has prepared in partnership with the Advocacy Project to roll out special measures in the civil courts.

MR SKELTON: I do have experience of it myself but I don't want to give evidence at this seminar. I think the concern was -- but if you don't have the experience, you won't be able to answer it -- that, actually, you can disempower the advocate from asking difficult questions by ground rules which effectively allow an easy ride for claimants. I wonder if anyone has a view on that?

MR GILLESPIE: Certainly from our perspective as I mentioned yesterday in the session in which I was involved, it is actually very rare, from our experience, that a claimant is actually cross-examined about the abuse itself, because you would need the abuser and evidence from the abuser in order to actually advance that case. I suspect where it might actually arise as more of a difficulty for the survivor or victim is where, for example, you have the abuser in the proceedings as a litigant in person, for example, and that's probably

a more acute situation where ground rules might need to be applied.
MR SKELTON: What about the issue, though, that may be litigated, which is about limitation, which is where claimants say, "I was examined on why I haven't managed to come forward sooner and why it's taken me a time to articulate these problems and initiate a claim".
Presumably that is something that does get litigated?
MR GILLESPIE: Yes, limitation does get litigated but actually not as often as I think, in our experience, as you might expect. As I say, we have only actually taken five matters to trial out of 450 in the last seven years, and limitation is only a live issue in two of them.
MR SKELTON: What were the live issues in the others, if you can say?
MR GILLESPIE: One was vicarious liability, one was credibility and the other was consent.
MR SKELTON: Thank you. Changes to the law more generally, so beyond the procedural changes we talked about. Limitation has clearly come up, it was the subject of a whole session yesterday. Can it, should it be implemented in the context of these claims, from the claimants' perspective, Peter?
MR GARSDEN: First of all, I know physical and emotional



abuse isn't the subject of this inquiry, but because of the way the law is, we now can't really bring physical and emotional abuse cases out of time. But I appreciate there is a flaw in the law of limitation which, if you are amending it, you have to deal with that as well.
The law doesn't recognise the ignorance of the claimant enough, so, in other words, the way in which the claimant feels and the claimant behaves subjectively cannot be taken into account because of the state of the law because it is an objective test.
In my view, there should either be an abolition of limitation in sexual abuse cases or, if that is going to introduce a vacuum and make insurers fight cases on different points all the time -- I mean, that would be my favoured approach. Alternatively, this requirement that limitation is only used sparingly and only run sparingly, for the reasons that it will doubly punish the claimant for not coming forward because he's ashamed and doesn't want to talk about it, and that's insulting.
MR SKELTON: Alan, if limitation were removed, is there an unwelcome consequence potentially of a new defence coming up?
MR COLLINS: Potentially, and that is why there is a recommendation to abolish limitation for sexual abuse cases. Great care needs to be taken as to why it's



being recommended and what, if anything, comes in its place.
The first point that I make is, a whole series of Commonwealth jurisdictions that have modelled their own limitation laws on our limitation laws are making radical departures, whether it is Nova Scotia, that way, or New South Wales, that way, they have, through their legislatures, abandoned limitation for sexual abuse cases. It would be worth reading the papers that the state governments have published explaining why, and why that policy consideration demands that limitation be abolished for sexual abuse cases.
They have all gone about it in a slightly different way, and one of the Australian states I believe has allowed a sort of default position, where it could be argued that if someone does bring a case out of time, so to speak, there could be an abuse of process argument. This is what used to occur 20-odd years ago in the criminal context in this country. Judges would routinely be horrified at seeing in their courtroom what were considered to be cases from the '50s and '60s and so on and just chuck them out as an abuse of process. But in the 1990s, you did see a sea change amongst the criminal bench because they realised the world had changed and we know a lot more.



So you don't see those abuse arguments anymore.
From my own personal view, limitation of these cases is an arcane piece of legislation from another era. We know a lot more about sexual abuse, why it happens and what the consequences are, to determine where justice should fit without having to point to a piece of legislation and look at section 33 to see whether the claimant fits the criteria to enable limitation to be disapplied. Do we really need that in the 21st century? I don't think so. I think all parties, and in particular the judges, have got the wisdom, the background, the insight to arrive at a fair decision without limitation.
We are going to keep to an adversarial system. Either the case is made out or it isn't. Either it happened and that defendant is responsible or he or she is not. That is what it comes down to.
You will see that if you look at what's happened in Canada and Australia, and the bulk of them have made it quite clear what the law now is. We would be harking back to another age if we don't follow suit. The world has moved on from the 1930s and the 1939 Limitation Act and subsequent fiddling around with the Act over the years. We have moved on.
MR GARSDEN: I have an analysis of the limitation rules in

all these different states, because I had proposed a debate on the abolition of limitation at the last ACAL conference. So I have done an analysis of it.
MR SKELTON: Thank you. That would be very helpful. Can I just get the defendants' perspective? What we heard during the discussion of the law of limitation, or the defence of limitation, was that, generally speaking, you don't always take it, and if you do, it doesn't always last all the way through the litigation because it is something you may put down initially as marker but, on analysis, it is not a point you are going to pursue. Alastair said a short while ago, in fact at trial you very rarely see it.
MR GILLESPIE: Very rarely indeed.
MR SKELTON: Should you be afraid of limitation being abolished in those circumstances?
MR GILLESPIE: As Alan said, it is a matter of finding out whether it happened and who was responsible. But we are simply looking for a fair process through which that can be established. The point is taken from our experience only where we consider that the circumstances are such that, actually, those decisions can't be reached fairly, and that's ultimately the approach that we adopt.
MR SKELTON: If fairness is ultimately the problem, do any of the claimant lawyers disagree that fairness has to be



a factor in any judicial assessment?
MR GARSDEN: No.
MR SKELTON: It doesn't?
MR GARSDEN: No, I agree, it has to be, sorry. It has to be fair. It is often said in opposition to an argument on limitation, well, if the abuser was alive and was here, what would he say? He would say, "I didn't know this person and it didn't happen". There wouldn't be a sophisticated argument that he is prevented from making in opposition, particularly if there is a criminal conviction at some time or other. I appreciate it probably wouldn't be taken if there is a criminal conviction, but the disadvantage of -- the advantage of limitation is dispelled by the lack of unfairness even if the abuser is there.
MR SKELTON: What residual unfairness might you identify in historic cases, if you were trying to look from the defendant's perspective?
MR GARSDEN: I would be saying, particularly in a failure-to-care case, you know, "The social workers aren't here, the documents have gone, so how can we determine whether they have been negligent or not?" And I think that is probably a fair point. I would be saying, the witness who was a vital witness in this case has died partway through the trial. I could say the



abuser burnt all the documents in the children's home and there is nothing left.
MS JEFFERSON: It is difficult when -- some of the hardest cases are where there are allegations that are made against someone who is dead and there is one person making those allegations, and needless to say, in any documentation that existed relevant to the organisation and the victim and the employee or the individual who was akin to employment, there is usually no reference to help you either way as to whether or not what is said has occurred.
Then, on the one hand, you may have the family of the deceased saying, "You can't possibly believe what is being said". Equally, you have the victim who has come forward, often after many years of delay. These are the really challenging cases, where you are looking at what is the fairness to all. At the end of the day, there probably isn't a way that you can find fairness for everyone that is involved.
But I think -- I mean, limitation generally, as has been said, is used very sparingly.
I think in the proposed protocol, the first draft that's now been selected, in the letter of response would be the appropriate time for a defendant to say categorically, "We are going to run an argument about



limitation" and why that may be, or to make it entirely clear. From what we said yesterday, there are concerns where people believe that actually limitation is being used as a tactical reason, and so I think in what is stated it should be quite clear whether or not limitation is an issue.
MR SKELTON: Would you be content for it to be reduced to the issue of, can this trial fairly take place at this time? Is that the fundamental issue which needs preserving, rather than limitation in its broader sense, which encompasses all sorts of other things, for example, all the section 33 Limitation Act criteria?
MS JEFFERSON: In reality, that is the question that is being asked when you are looking at an individual case.
MR GREENWOOD: It sounds like limitation in a different guise to ask that question, if you ask me.
MR SKELTON: The reason I ask it is that fairness is inherent to a limitation assessment, but it's not the be all and the end all. There are other aspects of limitation. I'm wondering whether or not you can preserve fairness while getting rid of some of the --
MS MILLAR: The issue is, it is fairness in the sense -- the claimant -- under the current system, the claimant has to discharge the burden of proof. So these issues about fairness and proving the case and whether it is possible

for a judge to reach a determination on whether it happened, I think the fairness of the trial and the actual burden of proof may collapse into the same thing, really. I think the issue really is looking at the other issues that are encompassed at the moment in fairness, in terms of the reasons for the delay and whether it is overall fair for a trial to take place now, these more nebulous issues which, even if they are not taken through to trial, if they are raised, as they often are, by the defendant, add enormously to the costs and the trauma of dealing with the case for the claimant.

MR GARSDEN: I think you have got to factor in the effect on the claimant of all of this. He is not even allowed to have a hearing, he is being denied his right to be heard and he is being denied his right to be believed. That is fundamentally damaging to the psychology of your typical claimant. You mustn't lose sight of that.

MR LATTER: There is a reverse to that. If a trial is allowed to proceed on very thin evidence that, you know, may have not been allowed to proceed because of limitation, what satisfaction is it to put a claimant through that process and then basically be told by the court that you're not believed?

I am consistent in my view here that, you know,



limitation, removing it, does have attractions for survivors, but I just caution what will come in its place and the uncertainty and the delay that may arise out of satellite litigation, and as it is used in a very small number of cases, I think we can work with limitation and move forward. I just am concerned about what will come in its stead.

MR GILLESPIE: I'm concerned to point out as well that simply running a defence of limitation is not an assertion that a survivor or victim is not telling the truth. We look at the picture more widely than that. The question is, can a fair trial take place? That is not just in relation to whether the abuse happened or not, but actually as to what an appropriate level of compensation might be as well.

If, because of the lapse of time, it actually is not practically feasible to establish what that level of compensation would be, then that is inherently an example of why a fair trial can't take place.

For example, if somebody claims that their education was somehow harmed as a result of the fact that they were assaulted whilst at a school, if all the education records have gone, if all their subsequent employment records have gone, if all their medical records are incomplete, then the court is not able to build an



appropriate picture to enable them to assess the claim properly because of the delay that's occurred, and therefore a fair hearing isn't possible. But it is not to suggest that a survivor or victim is not telling the truth.

MR COLLINS: May I make an important point? The Crown Courts cope, and where the burden is even higher and often people's liberty is at stake. Juries are entrusted with making findings of guilt or otherwise.

Now, if the Crown Court can cope without a Limitation Act, I do not see why the civil system cannot cope -- why it needs a Limitation Act. It comes down to sheer -- again, staying in an adversarial system, it comes down to, is the case made out? You don't need to hide behind a Limitation Act or a substitute Limitation Act or something dressed up as something else, but is a Limitation Act. I think the inquiry would benefit from listening to some members of the judiciary who try these cases in the criminal courts and understand how they deal with these issues and maybe hear from some of the practitioners at the Bar who specialise, both from the prosecution perspective and the defendant perspective. There is a wealth of expertise out there and they will more than amply, I'm sure, be able to explain to you how they cope.



Of course, we are seeing, more or less on a weekly basis, are we not, the criminal courts dealing with offences from 30, 40 years ago, where I doubt if there is a single shred of paper, teachers, social workers, all sorts of different people are coming before the criminal courts, often people in their 80s, and even their 90s, being tried in respect of offences that were committed decades ago. Now, if the Crown Court can cope with that and a jury can cope with that, why can't we?

MR SKELTON: A lot of very useful suggestions there. I think there is quite a serious debate to be had about comparing it with the criminal justice system and probably not one for today, unless there is a burning point to be made.

MS JEFFERSON: What I would say is, one key difference is that the criminal court is hearing from the individual who was accused. The point that I was making was around those challenging cases where that person is dead or, as we have seen in high-profile circumstances, where they are no longer in a fit state to give that evidence. I think -- I take your points, Alan, but that doesn't answer that difficulty.

MR COLLINS: But of course, in criminal cases, very often the abuser or alleged abuser doesn't give evidence. Sometimes the defence is simply, "You prove it. I'm

going to sit here with my arms folded. You prove it". Again, you know, it comes back to the point, we are in 2016, not 1816.

MR SKELTON: Thank you. Can I ask about the duty of candour. Some of you may be aware that it's become a key issue in the healthcare context. It was investigated by Sir Robert Francis in the Francis Inquiry and found its way into legislation within the health service.

Obviously there are clear differences in the operation of the health service in other areas of life. There is a record keeping aspect. There were a lot of professionals involved all the way through and the cases are more recent. But it appears to have been a policy which has been accepted by the health service. Its implementation is still being rolled out. It is imperfect. Could it work in this context?

MR LATTER: I have looked at elements of it. I printed some off for the purposes of the inquiry. Actually, when you look at it, it ties right back to the pre-action protocol in a lot of ways. If you read some of the things:

"In reality, candour is all about sharing accurate information with patients or victims and should be encouraged. The facts are the facts, and staff should



be encouraged and supported to help victims understand what has happened to them."

It goes on to say:

"Apologies are fine to make, but it can be more damaging to a relationship with the victim to speculate inaccurately than to investigate and find the facts and then to provide the extra information."

I think a lot of what we have been saying over the last few days is actually contained within the candour that you are talking about. I think you can take extracts of that and certainly weave it into the pre-action protocol at the various stages. I think it is a good starting place. Not perfect, as you say, but a good starting place.

MR SKELTON: Do others agree with that?

MR BONEHILL: I just wonder whether it is the role of insurance companies in this area or is it actually the obligation of the institution themselves to admit responsibility, to make apologies, et cetera, et cetera? It's just the role that insurance companies play in it that I am a little uncertain about. I mean, listening to that, then it is absolutely what we weave into protocols, but can we then enforce that? Can we make it happen? That would be my question, I think. I don't know the answer to that, incidentally.



MR SKELTON: From the claimants' perspective, do you think it would make any difference? There is a tension that litigation is going to maybe be run by an insurer client and therefore --

MR GREENWOOD: I think an institution has to be really careful in its interactions with claimants or people who complain about their treatment at the hands of the people in that institution. Because if they send off the wrong signals, then that person may decide, "Well, I'm not going to get anywhere with this institution. It is pointless talking to them", and they are scared to do anything about it and never see the light of day again. So the institution has got to be careful. As David says, I think at the right time, wrapped up within the protocol, is probably a good way to do it. It runs alongside an apology for me, I think.

MR GARSDEN: I have to say -- this is anecdotal -- we have done a lot of cases against Manchester City Council, and I think there is an element, when dealing with them -- because I'm dealing with the actual institution themselves, and their clients are the directors of Social Services -- there is very much a willingness to apologise and a shame and a guilt about what happened that disappears when you deal with the filtration of insurance companies. That's not meant to be critical,



but it amplifies exactly what you are saying, and that's why, anecdotally, I have had a lot more success with apologies and candour when dealing with the defendant themselves, who aren't insured, than dealing with insurers for other institutions. Anecdotal evidence.

MR COLLINS: It is an interesting concept. I have had cases recently where local authorities are genuinely trying to do the right thing. This is before solicitors become involved, and they have expressed regret or remorse to the survivor. The survivor has misunderstood what they have been told, because they think they have actually received an apology, when actually, when you look at what's been written, it isn't an apology.

So, you know, that comes as a bit of a blow when they discover that it wasn't an apology.

They have also -- there are examples of where they believe they have received an admission of liability and I have had to explain, "Well, actually, that's not what this letter says". So there is a risk that candour, if it is not exercised as it should be, that you could be inflicting more pain on the survivor. So a great deal of care needs to be taken there. As a concept, yes, and I believe, in my own opinion, that it should extend to all of those involved in working with survivors -- the police, the courts -- because there are often issues

there as well.
I think it deserves further consideration, but there is also, you know, potentially the flip side.
MR LATTER: Is there any evidence of how it's been received by claimants in the NHS environment?
MR SKELTON: There may well be. I think it's been the subject of some conferences recently, but I am not sure what the outcome of those was.
It is not the remit of the inquiry obviously to predict the future, but clearly there are issues going on at the moment about the use of the internet and "sexting", things like that. Do you, as insurers, see that as being a future area and a problem?
MS JEFFERSON: We have already seen some claims and working with organisations who are involved with care of children, it is a major challenge at the moment for them as to how they respond to the fast-moving world of social media and the issue of children who are in their care maybe for a short period of time because they are a youth organisation or they are a school or whatever it is, who have their own personal mobile phones, but then how they protect them.
I think this is an area that we are going to see a lot more about in the future.
MR GARSDEN: There is a big legal problem as to what tort it



is. I know one of our members, Bolt Burdon, had a sexting case, the judgment for which appears on our website that you can have a look at. And the problem was, is it a personal injury case --
MR SKELTON: Intentional harm.
MR GARSDEN: They used an archaic principle in the case of Wilkinson v Downton to get around the problem, because I'm not sure there is a tort to cover this type of civil wrong.
MR SKELTON: Would you be clear that it nevertheless might fall into the same protocols, model litigation policies and the like?
MR GARSDEN: It should do.
MR BONEHILL: It is quite interesting. We see that as exactly that, a new and emerging type of abuse we haven't seen before. We have seen some claims already. We are started now to track that to see exactly what is happening, because there is no doubt it is immensely complex and difficult to manage from an institutional perspective.
MR SKELTON: Thank you very much. Those were my principal areas for questions. Does anyone not at the table have anything to raise?
MR ENRIGHT: David Enright from Howe & Co. We have enjoyed this part and the points we were going to make were very



ably made by, for example, Mr Collins, thank you.
MR FRANK: I have just one question, if I may, Peter, about the situation where you have got a claimant who doesn't want damages but wants a statement. You do have the facility for declaratory judgment. Do you, or do you know of any other claimants who use the facility of getting a declaratory judgment for that purpose?
MR GARSDEN: You'll have to educate me on the law in that context, Mr Frank.
MR FRANK: Perhaps I won't do that this afternoon.
MR GARSDEN: The answer is no, the simple answer to your question. Are you talking about quasi Chancery --
MR FRANK: I think in any civil proceedings you can ask for a declaratory judgment.
MS MILLAR: I deal with some litigation under the Human Rights Act where obviously we would be looking at a declaration rather than necessarily compensation awarding just satisfaction. I think one of the problems is that if you start -- the system is so geared up at delivering financial compensation and valuing the complexity and the worth, if you like, of the claim by the financial remedy, that if you are asking for non-financial remedies there are all sorts of arguments about whether your costs are proportionate to what you are seeking.



If we are going to go down that route, and I think it is something really worth exploring, there has to be a measure of the value of the claim other than, you know, the pounds and pence of the outcome.
MR GARSDEN: I think you'd probably get Legal Aid for that as well.
MR COLLINS: You might be interested in talking to the judiciary at the Supreme Court about this because, where I have had judgments handed down, some judges have gone out of their way to make the point that, having that declaration that you have been abused is an important part of why that particular claimant came to court. So some judges are very alive to what you are thinking and put themselves out to make that kind of declaration. I think it is important, and it is obviously something of interest to certain members of the judiciary.
MR GARSDEN: It was Master McCloud that raised this in an email as being an addendum to these directions. So it is probably more in her mind than it is in mine.
MR FRANK: Thank you. We can, I am sure, take more evidence about that in due course in different ways. I was just interested to see whether you actually had any experience of it, but maybe not. Thank you very much.
MR SKELTON: Thank you very much. We are very much on time.
(2.48 pm)

(A short break)
(3.11 pm)
Session 4
Opening comments by Facilitator
MR SKELTON: Thank you. Our final seminar of this session of seminars is on redress schemes. It is a bold topic, a proposal for radical change to replacing the civil justice system with something else. This is an exploratory seminar. We only have an hour or so to discuss it. No final conclusions could conceivably be reached in that time. It is really just testing models in other jurisdictions, pros, cons, and whether or not it is a realistic possibility in the United Kingdom.
Philippa, I think you are new to today's session. Could you just briefly introduce yourself again, just for the record?
Introductions
MS HANDYSIDE: I am Philippa Handyside. I work for the Association of British Insurers, the ABI, which is the trade association which represents insurance and long-term savings companies in the UK.
MR SKELTON: Rod, I think you are back?
MR LUCK: Yes, from Municipal Mutual Insurance, Rod Luck.



Open discussion
MR SKELTON: The first question is, is the criminal justice system fit for purpose? We don't want to revisit the debate we have just had about how it might be improved, it is a question of whether it can be improved adequately and, if not, is a redress scheme appropriate and workable? David, I know you have strong views on this, do you want to start us off on this question?
MR GREENWOOD: Yes. I start from the perspective that a very small number of claims or cases that come to me are false. In fact, I think I remember two during my whole 20-odd years looking at these cases where I have thought, "Well, that person is just bandwagon jumping and making it up".
So I start from that perspective. Obviously there may be, as I think statistical evidence has shown, between 2 and 5 per cent may be false allegations. But that leaves a huge number that are true and did happen.
So my starting point is, why do we need an adversarial process in the first place? Why do we need the fact that it happened to be tested? Apart from some enquiry into what happened and making sure that that person has been harmed in some way and their quality of life has been diminished, what more needs to be done? So I think this type of case is absolutely suited to an



independent redress system, a system that would certainly command the support of survivors.
I deal with, at any one time, 10 or 20 people who come to me and want to talk to me about it, want to dip their toes in the water, find out what would happen from some kind of complaint or report to the police or starting a claim, and then they go away again and maybe come back in a year's time and decide, well, can I ask another few questions?
So there are a lot of people out there who don't come forward because they don't have enough belief in the current system. It is my firm belief that there are a lot of people out there who don't want to come to civil justice, don't want to put their heads above the parapet, and lead really poor-quality lives. We just need to look at Rotherham. 1,400 girls have been affected there, where less than 100 girls have spoken to the police and spoken to solicitors. So there are a lot of people affected out there who don't want to show their faces, don't want to trust the system, and their quality of life could be improved.
We already have some of the building blocks for an independent redress system. We have IICSA, we have the truth project, they are taking evidence. In the same way that the redress board across in Ireland in



a parallel procedure, I think it was the Murphy Commission, they took evidence at the same time as dealing with people's compensation claims, an independent body could take people's evidence, take their complaints, assure the public of independence from the police, from any institution, and would be able to, you know, investigate, decide whether it happened, advise people on whether or not they should go to the police, advise people on whether they are getting a good service from the police, point them in the direction of good support services, make decisions on balance as to whether it happened and award compensation and give them the treatment that they deserve. So that's my dream for a new system.
MR SKELTON: Many themes in your introductory remarks there, which I think we are going to need to explore in detail. The first thing is really to isolate the advantages of it over the civil justice system. Greater certainty of outcome. Perhaps greater access, I think was one of the things you were emphasising, for those who may not want to engage or who can engage with the civil justice system. Presumably, reduced costs, which is not always something lawyers advocate, particularly those who represent claimants in the courts. And minimising the trauma of the process, the litigation process.

Certainly some of the headline differences. While also giving some form of redress, compensation and an impartial, independent tribunal providing accountability.

MR GREENWOOD: Yes.

MR SKELTON: So those are the advantages of the system.

From a claimant perspective, before we move on to the defendant perspective, the potential disadvantages of the system, in terms of the right to get vindication in a civil court, not the same as a criminal court, but the civil court; the right to get full compensation to be put back in the position you would have been in but for the injury, which is something civil courts are explicitly designed to do, can that be factored into a redress scheme or are we sacrificing that to some extent?

MR COLLINS: You are potentially depriving survivors of the justice that they might otherwise be entitled to. Redress schemes have, as we know, lots of potential advantages. If we look at the disadvantages, if you look at redress schemes historically, they have often differentiated between one group of survivors and another. There have been funding issues. Rules get rewritten when those running the schemes realise the scheme is turning out to be more expensive than they



anticipated. That is primarily because it turns out that there were more survivors than planned for.

So the potential disadvantages of a redress scheme are that survivors could be undercompensated. Some get excluded and some don't, so you have that division. And you have funding issues.

If a redress scheme is to be recommended wherever, those are the factors that really, really have to be addressed. Otherwise, it makes a mockery, or potentially can make a mockery, of what is the object of the redress scheme.

Very quickly, in my paper submitted on behalf of the core participants that I represent, we drew attention to what happened in Australia, where there is considerable experience of redress schemes and a national redress scheme is currently being advocated, as we speak, but has already been subjected to criticism because of some of the factors I have just identified. So there are examples there of what works and what perhaps doesn't necessarily work from a survivor perspective.

You also have, much closer to home, the Jersey experience which, in my opinion, was a very good example of a successful redress scheme, but that had to do with a very small number of people, about 150 people, which



is in stark contrast to what the Australian experience is, where they have had to deal with thousands. Of course, that is the position we would face here in the UK, potentially tens of thousands of survivors, and the challenge is going to be, well, are all the survivors going to be included or just some of them, and how are you going to justify that?

The Jersey scheme was fully funded. No-one rewrote the rules. No-one withdrew money. Everyone knew where they stood. And I would say it was very successful, with the vast, vast majority of applicants receiving compensation. Only a handful of people didn't receive any compensation -- a very small handful of people. So that is what I would say.

MR SKELTON: We will come back, again, to quite a few of the themes in detail, but on the Jersey scheme, was it dealing with historic and current or did it have just a remit for --

MR COLLINS: The remit was children in the States of Jersey care from May 1945, when the German occupation ended, up to a date in 1994. So it covered a very lengthy period. But the remit was confined to a particular group of survivors.

MR SKELTON: After that, for those more recent, it's the civil litigation system?



MR COLLINS: Civil, but, as we speak, because there have been some people who have come forward late who were unaware of the scheme, the States of Jersey Government are considering, as I said, as we speak, whether these people should now be admitted to the scheme. What the decision will be, I don't know. But obviously, if they were not admitted, they would have to resort to civil litigation.

MR SKELTON: David, before Peter, just on -- the pros of the scheme are obvious. What are they for your clients' perspective, what are the cons?

MR ENRIGHT: Thank you for asking that question. I will have to take a couple of minutes now, I will not be overlong, because there is a range of views on this and I represent a range of groups of people who have different views.

The redress schemes have an initial attraction, and many survivors think that they are a great idea, for all the reasons of access and diversion away from an adversarial system. Mr Collins has pointed out the problems that, in practice, redress schemes are often underfunded and could be wound up early. So survivors might initially feel this is a good thing and then realise three or four or five years down the line that the rug has been pulled from under their feet.

Taking, for example, the Forde Park Group, their approved school was run by the Home Office, it was run by central government. It is very clear to them that they do want a redress scheme, but they don't want an Australian-style one, which gives regular payments. They want to be free of control from government. They have been very clear that they would like some kind of life-changing reparation. That is their viewpoint.

Then we have the Stanhope Castle survivors who were also in approved schools who have a slightly different view in relation to a type of redress scheme they might be interested in.

I represent a significant number of core participants in the Catholic Church model, the Comboni Survivors Group, and the worry about redress schemes is it lets the abuser off the hook, that the taxpayer ends up paying for, for example, abuse perpetrated by members of the Catholic Church. We have seen this in Ireland, where the Catholic Church has been let off the hook insofar as a single order or a couple of orders have been identified and they say, well, our assets are this, and here they are, but that order is only a very small part of an enormous multi-national conglomerate.

So if you take, say, the Post Office or Walmart, there are offices in every single town and village in



England and Wales, across Europe and across the world. If people were abusing children in one of those offices or supermarkets, and the board of directors knew about it nationally and internationally and moved abusers around, we would look at that organisation in its totality for responsibility for what was perpetrated here in England and Wales.

So the worry for redress schemes, for example, in relation to religious orders is that they are able to say, well, that religious order, or a few people within it, did something and, yes, they must be punished and they must pay, forgetting that the much bigger organisation, that has very deep pockets, is directly responsible for what happened in a particular school.

So it is a difficult conversation. The downside to redress schemes are, as Mr Collins said, they can be wound up later on because survivors have no control over it, they can be severely underfunded. I do know that some of the core participants here have some very interesting points to make, which I am sure you will give them time to do a little bit later on.

MR SKELTON: Thank you. Peter, staying on that topic, if we can.

MR GARSDEN: Yes, a few small points. It is significant that two schemes were mentioned in Ireland. Ireland



scheme redressing was set up because it was said that the civil courts in Ireland simply couldn't cope with the number of cases that were going to come forward and that, if all of them were litigated, it would last forever.

So it was set up to cater for a lacuna, a gap, in the civil justice system. It worked very well for a while, until it became too expensive and then they shut it down and now we are back to the courts. It has dealt with a lot of cases from the past.

The Australian scheme, which is being ventilated at the moment, has been rejected because they have worked out it will cost $47 billion, so it was unaffordable. So is government, I suppose, going to pay for it? I suggest not. Therefore, are the insurers going to all contribute equally and pay for it? I suspect not.

The point I made yesterday is that there is something about the adversarial process of litigation that suits a litigant who has been overpowered in childhood and wants a team to fight for him for some justice. It is a process that, in my experience, is better lasting two to three years because that is a journey that we undergo -- this sounds a bit melodramatic -- with our clients, which is one of healing, and if it is over in three weeks, then I'm



afraid that process of healing and trust -- regaining of trust in authority doesn't happen.

So whilst I don't disagree with the redress scheme, its concept, an ideal sense, I just don't think practically it works and historically there isn't a scheme which is enduring that has worked. We talk about the CICA scheme which we have as an alternative and we are all criticising that and saying that is wrong and the reason it is wrong is because it is funded by government and there are budgetary constraints to it.

MR SKELTON: Going back to the scheme you mentioned, I think we need to explore in detail the Irish scheme and the Australian one and possibly Jersey as well. Who is funding the Australian scheme or who has funded it?

MR COLLINS: In the past, the state schemes, as I understand it, have been funded by state governments. I believe that's what the problem was in Western Australia. I can provide you with the numbers and statistics and analysis of what went wrong. It was just sheer weight of numbers. In contrast, Jersey, a small, relatively small, number of people.

With the scheme that the Australian Government, the federal government, is currently talking about, they are looking at parties opting in. My understanding is that the Catholic Church, in a broad sense, in Australia is

very keen to opt in, and of course that has rightly or wrongly attracted criticism because the argument is, well, actually, they should be paying the compensation anyway, and they don't need a redress scheme. So you have got some conflicting arguments there. It will be very interesting to see how the Australian Government actually takes this forward, and I think their problem is, it is going to be that it requires a voluntary take-up rather than a compulsory take-up. But of course you have got in the background the fact that it's been identified that if everybody was compensated it would run into billions of Australian dollars.

MR SKELTON: Going back to the funding issue, so it is a state-funded issue or potentially a federal-funded issue on another scheme. Has the state investigated the possibility of itself seeking recovery from institutions or individual abusers just as in England we might have part 20 proceedings?

MR COLLINS: In some states, as I understand it, and I think it is Queensland, convicted felons are subjected to, effectively, a poll tax. They have to part with some money if they get compensation, for example, in any shape or form, I think that has to be handed over to the state.

So there are, in the background, devices, in the



same way that we have in this country devices which, in my own opinion, are not effectively used, for example, the ability of the Crown Courts to make compensation orders, which seems to be currently an issue for reasons I don't understand.

The point that the core participants that I represent make is, well, why shouldn't the polluter pay? Why, if there was a redress scheme, which really should be perhaps geared to those who are deprived of compensation because, for whatever reason, they can't pursue the civil route, cannot be put potentially in a fair position and be compensated under a state-run compensation scheme that is contributed to financially by those who are responsible for the misery and the mess in the first place, which is going to be a combination of abusers, those responsible for abusers and, in appropriate circumstances, institutions and maybe their insurers.

I would argue that that has a very attractive point. The burden should not fall on the taxpayer because it would appear that, in many instances, the taxpayer is subsidising abusers.

As I said in the submission paper, there are cases where abusers should be paying the compensation, but they are not, it is the Criminal Injuries Compensation



Scheme. That seems plainly morally wrong.

So I think we should be turning this about and looking and asking ourselves, "Well, who should actually be paying?" If there is a redress scheme, the starting point is, who is going to pay? And then move it from there.

MR SKELTON: May I turn to the potential payees in the room. Rod, can I ask for your views, focusing first on this issue of the funding. Obviously there is a potential problem here that if there is a floodgate position, the state will not be able to afford to run the scheme. Can you afford to contribute to it if there is a flood of claims?

MR LUCK: Well, from Municipal Mutual's point of view, we are of course an insolvent organisation operating under a scheme of arrangement. The majority of the scheme creditors are local authorities, so what we have already had to do is implement two levies claiming back monies paid out on claims since 1993 at the rate of 25 per cent. We are now covering claims at a rate of 75p in the pound.

So ultimately, there are funds there amongst that community, but in the end, once those funds have gone, or once you get to a certain tipping point, the scheme of arrangement will become unviable and the contribution



will ultimately come from our former customers, local authorities. So it is coming back to the state-funded system in some way.

So any of these redress schemes, yes. Where the funding is kind of going to come from has to be considered at the outset, to make sure that the monies are there to meet the compensation awarded.

I mean, the situation is no different in respect of claims going through the civil claims procedure, in any event, so ultimately, there may not be any overall difference to Municipal Mutual at the end of the day.

MR SKELTON: Would you be fearful, though, of the argument that there might be a lot of people who suddenly come forward because they are afraid of civil litigation and, if so, is there anything fundamentally wrong with that if they have a justified claim?

MR LUCK: I don't think there is an argument to say there is anything wrong with that, and if the civil justice system is preventing people coming forward and a redress scheme would enable those people to feel better to come forward, then I don't think that is a bad thing.

Ultimately, the money needs to come from somewhere, and we have heard about the Australian concerns and the Irish situation, whereby, when costs escalate, changes are made to the redress scheme. You can't avoid finding

the money and making sure the money is there for one area or another.

MS HANDYSIDE: I think, with all the issues that have been discussed over the last couple of days, it is really right that the inquiry is looking into the possibility of a redress scheme and how it might work and what the challenges are. I think what I would say is that, whatever a redress scheme would look like, it would need to have some features of due process in establishing the facts. David was insistent that it would need to have, and I agree, an independent, impartial tribunal. That is what the civil justice system currently provides, so you replace one independent, impartial system with another.

At the moment, in the civil justice system, the evidential burden is the balance of probabilities and query what would it be? You have got to get that right.

There are so many things that, if you look at the existing precedent for redress schemes around the world that have proved challenging, it's eligibility criteria window, which is open, how awards interact with benefits, how the process interacts with the criminal justice system, whether it is in place with the civil claim tariff for recovery, a tariff for costs, all those things have to be done correctly, and I think, you know,



you should look at all those things and we will assist in every way we can.

I think one of the things I would say is that some really helpful suggestions have come forward in the last few days about ways that there could be improvements to the existing system and it seems it will be sensible to look at those first, and I think people will go away and do that, as well as working with the inquiry to do so.

So I think the picture is, what the problems are with the civil justice system in this context are the problems with the very difficult context of claims for sexual abuse, and those problems exist whether you have a redress scheme or a civil justice system. It is really finding the best way of making sure that victims and survivors have appropriate access to the right kinds of redress in a way that is consistent with establishing the facts and making sure that the interests of potential accuseds and things like that are catered for as well.

MR SKELTON: Trying to work out the ultimate commercial value of the scheme, if the process of going through a redress scheme is ultimately cheaper than litigation, which it is probably going to be, the idea -- if it is an inquisitorial process with less need for legal engagement, and the damages are more certain, possibly



even a slightly lower level than one might get in the courts because you're taking out the arbitrary element, then ultimately the cost per person may be a lot less, mightn't it, in which case, overall, isn't that a good thing? Then the argument becomes, well, you've now got too many people coming forward.

MS HANDYSIDE: You are absolutely right. It would depend on how the scheme was framed as to the comparative cost per person. I think one of the problems is that, if you play around with things like the evidential burden, you can have a system where -- I think the scheme in Nova Scotia is one you should look at where they didn't address that issue appropriately and the scheme ended up paying out compensation to alleged abusers for defamation claims arising out of settlements from the scheme.

So without the proper checks and balances in any redress scheme, you have the problems that arise if there isn't a proper fair process.

So you're right about the finances. Delivering better, more efficient compensation has to be the ultimate goal.

MR NICOLSON: I think a redress scheme may be an appropriate option at a local level for a particular organisation, such as a scheme such as the Jersey scheme that was open



for a finite period and was open to a relatively small number of individuals.

Particularly where the funding is within the control of the organisation or a single or a couple of insurers that are responsible, or would be responsible, for the settlement of those claims through the existing civil process. So I think a redress scheme is an option at a local level.

I think for the reasons that have been outlined, the biggest issue would be funding a national scheme. It is highly likely that a large percentage of the types of abuse claims would fall from public authorities, which is potentially placing a financial burden which is already on the, quite frankly, stretched finances of a public authority. So I think the funding of such a national scheme would really need to be carefully thought through.

I also wonder about the time it would take to implement a scheme as well, and we have heard some comments around the Australian proposals that are still I don't think anywhere close to being implemented. Then there is the issue about, what about transitional claims that have been dealt with through the existing process, how do they then get dealt with, do they stay in the existing process or do they transfer to a new scheme?

What if there is a disparity between what's on offer through the new scheme versus what's on offer through the existing schemes? I think there are lots of issues that need to be worked out.

MR SKELTON: There are a lot of practical issues. I'm still interested in the financial side of things. I can see from a defendant perspective that actually disincentivising people to litigate is commercially better for you.

MR NICOLSON: Absolutely. But it is not just about the financial side. It is about speeding up the entire process. A scheme potentially could see a swifter resolution for a survivor, in terms of obtaining compensation, a settlement, certainly along a much quicker timeline than would ordinarily be the case.

MR SKELTON: Were you postulating the possibility of local schemes for particular local authorities?

MR NICOLSON: I think that is possible. I think it is an option available to local authorities or indeed any organisation. Where they are potentially faced with a sizeable volume of claims coming forward, it is certainly an option worth exploring rather than traditional litigation.

MR SKELTON: Paula, isn't that what you might already advise your clients to do, in some form or another?



MS JEFFERSON: Indeed. It is something that we have done on a number of occasions, not just in terms of local authorities, but obviously it happened with Jimmy Savile, with the BBC and the NHS and with the estate, a number of other organisations whom I'm working with to develop those more informal schemes working with claimant firms who are used to dealing with this.

For me, all the challenges that have been mentioned, particularly about funding and delay of getting an all-encompassing scheme up and running, and if you look at the Irish scheme, I think, at the end of the day, it's been praised in many ways, but just the numbers were so much greater than was anticipated. The length of time was so much greater. But actually, you could almost develop some scheme guidelines, so a scheme pre-action protocol. So if you had a series of claims which involved one organisation or one abuser, rather than, every time we get a series of claims that involve one organisation or one abuser, we reinvent the wheel to rewrite that scheme.

So I think a full-blown redress scheme is going to face lots of challenges, but there is something that we can do that moves us towards having these schemes in place.

MR GARSDEN: I think it is a bit of an illusion that it



actually saves costs. If you think about it, the victim will engage his lawyers to make an application to the scheme. The scheme will have to consider whether that is a valid application. So you replace defendant insurance representatives and solicitors with people working for the scheme who still have to look at the claims in the same sort of a way, and then you have to have a hearing by the scheme with adjudicators, judges, whomever it is, who will decide how much they get. Don't think that a redress scheme is not adversarial, because it is, because you have to prove whether or not the application satisfies the scheme's criteria.

So it is still adversarial and it is still controversial and there are still winners and losers, just as there are with the CICA.

MR SKELTON: Peter, when you say that, do you know that from data or are you saying that in terms of just your general knowledge of how these schemes tend to work?

MR GARSDEN: Coming right out of the top of my head.

MR SKELTON: The reason I ask is we heard a lot yesterday about issue fees, GBP10,000, for example, getting your own expert, a lot of money, getting all the documents and having lawyers investigate all of that stuff. Now, inquisitorial processes presumably can avoid some of that work, which is quite expensive. But you're saying



there's still a residual adversarial element which is going to cost money?

MR GARSDEN: Yes, there is. With the Irish redress scheme there were arguments as to whether or not a particular application was entitled to come before the scheme. For example, whether it was in the particular home or not, whether the home should be added. If you look at a civil jurisdiction scheme where not many cases go to court and it is not really that adversarial, there isn't much difference between a civil justice system and a redress scheme, in my experience. It's just the civil justice scheme is more enduring because it's been around hundreds of years and the best redress schemes are ad hoc schemes that cope with a specific problem, like the BBC, like Jersey, like Ireland. Ireland was meant to be enduring and it didn't last.

MR ENRIGHT: I'm not sure the local schemes could work. Local authorities just couldn't bear the burden of operating a scheme. But there are distinct groups that can be seen. Why should local authority bear the cost of a Home Office responsibility, for example, for the approved school system? That is a sort of category of person, you can see them, there are substantial records. It would not be a difficult thing for people who have been through the approved school system to be able to

demonstrate a case. The central government is responsible for that.

Secondly, a redress scheme would be expensive. But it is not expensive forever. Because take, for example, men who were boys in the approved school system. In a general way, they are in their very late 40s, more likely late 50s and 60s, and I can say, very sadly, a number of my clients who are core participants in this inquiry are unlikely to live long enough to see this inquiry out. So the thing is -- so it does need to be done quite quickly to help people who are now quite advanced in age and have suffered for a long time, because they will not be around long, that quite large category of them.

MR NICOLSON: A redress scheme could also include the option to seek recoveries from other organisations. It is a way of dealing with all claims in one rather than having different categories of claim go to different organisations.

That is something that I think is part of a scheme you would need to look at recovery certainly from the perpetrators of any abuse, but also from other -- Home Office or anybody else as well.

MR GREENWOOD: They would be able to concentrate evidence gained from all sorts of different investigations, too,



so we wouldn't be reinventing the wheel with different lawyers time and time again.

MS MACKENZIE: I was going to comment on the levy, because we have talked about how one might fund a scheme and whether there is the opportunity to in part fund that through a levy from insurers. There is experience in the insurance industry of levy, for example, in motor insurance. People who write -- companies who write motor insurance pay a levy based on their current market share. But that is a compulsory class of insurance, and it is also based on the current market share, and that funds the Motor Insurers' Bureau for uninsured losses and so on.

I think the difficulty here with claims of this nature falling on public liability policies and historic public liability policies is, how do you determine what the market share of various insurers was at the time, if that is the way indeed that you did it? If you did it on current basis of market shares of public liability, would that be the right reflection? Because different companies tended to write more business around children's homes, independent schools, charities, local authorities, than others who might have written a lot of public liability business but not in that sector, and then to Rod's earlier point, you have the situation



where some insurers may no longer be operating. So understanding how you would go about establishing a levy I think could be very difficult in this case.

MR SKELTON: Do you have a view on -- I know your position generally is that redress scheme is not the appropriate thing to recommend for policy change, it should be improving the civil justice system. But the hybrid option, if I can call it that, of having a scheme which is appropriate for particular events or places, could that work?

MS MACKENZIE: Yes. I think we have seen that work, where we have had group litigation orders and settlement schemes specific to that. But once the facts are established, a large group -- that could be 250 victims and survivors of abuse, you can establish a scheme, work through that very quickly and ensure that the reparations are delivered very quickly. I think that definitely can work.

MR SKELTON: In terms of the arbitration of the findings, was that done by the judge within the context of the scheme or was that not necessary? Was there no person making a finding?

MS MACKENZIE: I don't think that was necessary in that case. If the facts are clearly established and understood and liabilities are clear, then you can move



quickly to the establishment of a scheme.

MR SKELTON: So it is really a quantification process rather than a liability assessment process?

MS JEFFERSON: Yes. You can obviously set it up however you want to set it up between the various parties, but the most straightforward would be, from a claimant's perspective, what evidence they are going to put forward and then the defendant will consider that and either that individual has passed that threshold, in which case you move straight on to the assessment of quantum and the schemes can then vary -- you may have a tariff of damages that may be crudely linked to what happened to the individual or how long they were at the organisation, but you can vary it according to what is the appropriate scheme.

Your point on costs, once you set the scheme up, and this is where I think guidance on -- you could say this is the standard thing -- the expenses in setting the scheme up, then for the majority of people who participate in this scheme, the experience is that matters can move on swiftly and with relatively minimal costs. Yes, you will always potentially get one or two people who don't fit, but I think that is a lower number than you get through the civil claims process.

MR SKELTON: So the initial setup cost of a scheme, which is

voluntarily entered into, involves starting to look at the tariffs that you might apply and the process by which you might allocate people to that tariff, and that is contentious with lawyers on either side debating it?
MS JEFFERSON: Yes. It can be. But generally, I think, you know, if you are -- if you have a large number of people like this who are used to dealing with these situations, that consensus can be reached.
MR SKELTON: The advantage from your perspective, do you find that your client will save significant amounts not just in costs but also in damages, because ultimately people have traded risk for a slightly lower tariff that they might potentially get in court?
MS JEFFERSON: I don't think it is as much that it will be -- it is not seen as a trade-off. It is generally seen as the right thing to do, and this is going to be the more straightforward way to deal with these claims and it is also going to -- notwithstanding Peter's comments about the importance for some victims and survivors to see through the process and the process to take time, actually the constant criticism that is levied is that defendants and insurers delay matters, and so a scheme will usually help to move things forward.
MR GARSDEN: The Irish scheme was certainly set up not on



the basis that you would get less money than you would through the courts, but that you would get the same. So I think your hypothesis that any scheme should have lower damages I don't think is borne out by that particular scheme.
MR SKELTON: Isn't that a different scheme? That is a state-sponsored scheme. Whereas the type of scheme Paula is talking about is a voluntary scheme between litigants, where effectively it is a settlement scheme.
MR GARSDEN: Sorry, I misunderstood.
MS JEFFERSON: I think it is the same principle applies, in terms of, you will reach an agreement on, if you can, a tariff of damages. Where, from a defendant's perspective, there may be savings is savings on the costs both on paying the costs of the claimant's solicitors but also to their own legal representatives. I think I can say that most organisations, whether they are insured or insurers would prefer that any payments they are making are made to the individual and not to their legal representatives.
MR NICOLSON: I think that is exactly the point. That is part of the attractiveness of looking at setting up a scheme locally, that if you can negotiate the costs on both sides as part of the setup of the scheme, then potentially your tariffs within that scheme can be at



least at the level that an individual would obtain through the existing system, if not more.
It also offers you flexibility in relation to things like aggravated damages and including that built into the process.
However, if an individual still wished to pursue litigation in the existing civil justice system, there would be nothing potentially to stop them from taking that course of action. So a scheme would need to be attractive to all parties. It is designed to give a speedy resolution without resorting to litigation.
MR SKELTON: Alan, in your experience of entering into schemes, have you found that it will work for the majority of claimants but there are going to be some claims, perhaps the high-value claims, where the scheme proves more difficult?
MR COLLINS: No. On the contrary, where I have been involved in schemes they have always been highly successful because they have been contributed to by both sides, as it were, and designed to work.
They have a lot of attraction in that sense. I think an important point from the survivor perspective that must not be overlooked is that the vast majority of survivors of sexual abuse don't have access to the civil justice system or to a redress scheme or any of the sort



of schemes that we are talking about. So you have got this very large part of the population who are outside the justice system in total, and we can't ignore them, whether we are in a local scheme or whatever, a vast majority of survivors are going to be left out in the cold. That is the problem that somehow has got to be addressed. Otherwise, you're separating one set of survivors from another set, and I think, from a survivor perspective, they may say that's unjust.
MR SKELTON: Do you then favour a national scheme?
MR COLLINS: Yes, a national scheme from the stance that the vast majority of survivors do not have access to the civil justice system and never will, for all the reasons that we are familiar with.
As a society, as a country, if we say that that's wrong and it needs to be put right somehow, then I say the inquiry does have to look at a national redress scheme, and we have given some thought, or tried to give some thought, as to how that would work and how that would be funded, and there does seem to be an opportunity for that to be given serious consideration. It comes back to the point of, the polluter pays.
Yes, it is a challenge. It is a considerable challenge. That is why the inquiry is here.
MR SKELTON: Do you think, Philippa, it is a potential

viable model that the state runs the scheme but then has a statutory right to seek recovery, which presumably would have to be litigated, if necessary, from the institution or its insurer?

MS HANDYSIDE: I think you're suggesting there a structure and different structures would need to be looked into.

I think the underlying challenge is how you develop fair contributions. I mean, for instance, this is an area of law that is evolving and new contexts of abuse, and possibly in the future new types of claims, may evolve. You could set a funding model now that would leave out, you know, a whole raft of defendants.

So I think you're right to look at different structures of how a redress scheme might be funded, but the civil litigation system, you have on the hook the people who ought to pay.

MR SKELTON: From your perspective, from the ABI's perspective, sceptical of it being workable, sceptical of funding and the existing system is probably the better position?

MS HANDYSIDE: I think I would make two points. I think the biggest challenge of a redress scheme, of a large-scale redress scheme, is finding a model of sustainable funding. I think the other big challenges of it are the same as exist for the civil justice system in terms of



a fair process around establishing facts.

Sorry, I have forgotten what the question was?

MR SKELTON: Really, just to elicit your ultimate view on a scheme.

MS HANDYSIDE: Sorry, I have remembered my second point.

MR GARSDEN: I did that yesterday.

MR ENRIGHT: She did a Peter.

MS HANDYSIDE: It is just that those challenges are immense and ought to be explored, but I think in the last two days we have established some real areas of potential reform and improvement in the civil litigation system which strike me as lower-hanging fruit and, you know, around a structure that does deliver impartiality and independence and can deliver accountability in cases, so, yes, there are lots of improvements that we have discussed in the last few days that ought to be explored, and I think the position of the insurance industry is that those ought to be explored as a priority.

MR SKELTON: Carolyn, can I ask a similar question really to you. If the scheme is economically viable and the state funds it to start with and it results in far less being paid to the lawyers, so thereby generating the saving that Paula has identified and would recommend her clients to opt for, why is that not a useful model for



going forward, if it is then funded by the actual abusing institution, the polluters, as someone put it?

MS MACKENZIE: I can see the advantages in that process. I would echo some of Philippa's points around a process which is fair to all parties, and in that we need to think about the policyholders and the defendant institutions that we support, so that is an issue. So that issue, just to repeat that, of the process that ensures fairness on all sides. That would be a concern.

I think as well, reflecting on some of the things we have talked about over the last two days about the process of accountability and reparation that is sought, which is what different victims and survivors need -- what victims and survivors need differ in that regard.

I do worry a little that this, being a bit formulaic, might make the process of receiving compensation easier, but deny the opportunity of some of those other things that we've talked about as very important as part of this process. So that slightly concerns me to the point, if it reduced cost, it potentially increases frequency, and we wouldn't know where those claims would come from. We simply couldn't know.

But insofar as they were insured institutions and defendants who were responsible and some of that funding



then subsequently came back, I think in principle that is sound, that makes sense. So to that specific point, I could see how that could be possible. But I think understanding how all of that pieces together, I'm not quite clear yet.

MR LUCK: I think some of the elements we have talked about over the last couple of days about changes to the civil claims procedures, the system. From what is also being said, though, that is not necessarily going to help those survivors and victims who are not able to get into that system. Therefore, it does seem sensible that some other sort of methodology or redress system should at least be considered, and how that is funded, clearly it is appropriate that defendants are involved in that funding.

So if that would do that, then I think it is an element that needs to be considered, because otherwise it seems that improvements to the existing system would still not include a lot of victims and survivors.

MR SKELTON: David, at the start, mentioned the potential for many, many people to come forward. Do others on the claimants' side have a view that that might be the case? Obviously there are some people who have tried and failed with the civil justice system, for whatever reason, and they may want to seek redress elsewhere, but

is there a sense of people there wanting to come forward? Compared to Ireland -- obviously, there was a very particular national scandal in Ireland involving a very major state institution. Do we have the same sort of issue in England and Wales?

MR GARSDEN: I think we have less of a problem in the sense that a lot of cases have been through the system already and have been going through the system for the last 20 years. Do we have the same problem? Are we just scratching the tip of the iceberg? Yes, definitely. There are many more people who have never come forward.

So what a redress scheme will achieve is almost difficult to assess in a vacuum because we don't know what the redress scheme will look like. If we knew what the proposed redress scheme would look like, it would be a lot easier to evaluate. What we do know is the civil justice system back to front and we can evaluate that. That is my problem, that I don't quite know what the proposal is. If I knew what the proposal was, in theory it might be less adversarial, but would it save costs? Well, you go through the redress board and they speak to the insurers and the insurers still have to do the investigation, it has to go back to the redress board and back to us. Does that slow down the process or does it speed it up, as opposed to dealing direct with the



horse's mouth? I don't know.

I'm suspicious and I'm wary and I suppose it is what I don't know rather than -- assessing what I don't know, that's my problem.

MR SKELTON: The devil is in the detail. I think that is a point you made, Philippa. We are assessing these things as hypotheses rather than practical propositions. One thing I would like to test with you and David is, could this scheme sit alongside the civil justice system? So you can opt into a redress scheme with certain consequences or you could go down the traditional route?

MR ENRIGHT: I see no reason why that shouldn't be the case at all. I do echo Alan's comment and I think the truth of the matter is that there will only ever be the tip of the iceberg who come forward. So although -- on the very first day of the inquiry, we had huge numbers quoted of estimates of victims of child sexual abuse, but we also know an infinitesimally small fraction of those come forward and make claims. So we actually know, going forward, that there will not be a torrent of claims or applications. There should be, but there won't be. So in terms of, when you're looking at costs of redress schemes, they are potentially exceptionally high, but we know, very sadly, that the overwhelming



majority of people will not come forward.

MR COLLINS: I think that's what happened in Jersey. I could be wrong about this, but I think the general consensus is that in Jersey, even though the scheme was accessible -- and you didn't need a lawyer and lots of people made successful claims without the input of a lawyer -- the numbers were lower than anticipated and we all know why people will not come forward, no matter how straightforward the process may well be.

Yes, it's difficult, and all you can do is look at what's happened elsewhere. You can see what's worked, what hasn't worked, and try to understand why certain schemes have been more successful than others. But we can't avoid the facts of life that there are large numbers out there, large numbers of survivors who are outside the civil justice system, no matter how reformed it may well be, as things currently stand, who are equally deserving of a little bit of justice, no matter how late that might be in the day.

I'm not sure what the right phrase is, but for me, to speak frankly, it is also a public health issue. The consequences of people being abused as children, the cost to this country is, I don't know how we would even begin to calculate it. The cost to the NHS, the cost to Social Services, the cost to the education system, the



cost to the prison system, you know, the numbers of individuals apparently in the prison system who were abused as youngsters is significant. I don't think we can ignore the price that this country is paying and is going to continue to pay for all the failings and the misery of the past as well as the present. So I think, as an inquiry, that's got to be at the forefront of your consciousness in thinking about, "Well, what are we going to do?".

MR GARSDEN: I do know that the cost to the country has been evaluated by various survivor groups. One figure that the survivors in Manchester produces was, for every person they helped, they save the taxpayer GBP65,000 per individual per year because that was the cost to public services that they use, and there's similar research been done in the State of Florida, and it was something staggering likes $250 million per year, something of that magnitude.

MS JEFFERSON: There is a report that has looked at just that point. I think it may be the NSPCC that has published a report on just those issues.

MR GARSDEN: That as well, yes.

MR GREENWOOD: There's an academic study from 2014 that puts it at 3.2 billion per year.

MR SKELTON: David, I'm going to give you an opportunity to

say some final comments on it and then I'm going to ask if those in the room have anything to say?

MR GREENWOOD: I just wanted to pick up on the interrelationship between the civil justice system and a proposed redress system. I know we have got great intentions around the room, but obviously protocols and improving the civil justice system will only take us so far. There are still bound to be a lot of people who don't want to engage with that process. It is adversarial, it is offputting.

A redress system that we discussed is bound to be expensive at the outset, and it is bound to have some issues with education and implementation at the outset, but it is certainly not impossible. The people in this room could probably work together for the next week and put something together, actually.

But once it is up and running, why would a person want to go to the civil justice system as opposed to a redress system? I think it would be almost unmanageable that someone would want to do that.

Obviously the civil justice system will still be open, will still be there, even if a redress system is set up, and individuals, claimants and defendants, could insist on a civil justice system being the option. There may be some kind of cost penalty or some kind of



penalty for the losing party or the electing party, even win or lose, I suppose, but I don't see why the two shouldn't be -- shouldn't rule each other out.

MR SKELTON: Thank you. Much more to discuss in that area and lots of practical consequences and, of course, I'm very conscious that central government aren't represented around this table and we have been talking merrily about public funding.

Can I ask if those in the room have anything they would like to say?

CORE PARTICIPANT: Karen Gray. I will try to keep this brief, but it is a brief outline of the total redress system that I believe could work. In my local authority, which is Kirklees, Huddersfield, I drafted a proposal for my local Police and Crime Commissioner. After years of running a blog to outline my efforts to get redress and having so many people come to me and say to me, "I would come forward, but I don't want to speak to the police, I don't want to speak to them, I don't trust the system, but I'll tell you, because you're one of me, you're like me", help survivors get the qualifications needed to sit with the victims coming forward. Let us help survivors become just that, survivors and not victims. Let us be that buffer that is so much needed between you guys and the victims, as



we are doing today in this meeting. Help us to help them come forward.

But in that same role, we can then be there for the kids who are still in the children's home, who are having a problem with that children's home or their social worker, and then, over the period of time, we could then start to build up a picture of the problem social workers, the problem homes, before it actually becomes an issue, and it would become a prevention measure as well as a redress system. It is just a thought.

On funding for it, initially, yes, it would be under the local authority, because each authority has different services available for their residents. So it would have to be on a local authority basis. In each home, you've got your children's homes, 75 per cent of which are privately operated. It costs minimum GBP250,000 per year for a child in a private residential place. GBP35,000 a year for Eton with 12 weeks off and a better education. I don't quite see what the extra 12 weeks costs so much over. Take a little portion of that from each children's home to help pay for the scheme that is actually going to cover them and work as a safety net for them. Let them pay for their cover. Thank you.



CORE PARTICIPANT: One of the things I think about is, I have suffered 50-odd years. Now, I've got younger children in here, so excuse the expression, but because of what's happened to me, and what's going to happen and what could possibly happen, these youngsters are going to pay for it in their taxes, their insurances; right? When insurance companies have to pay out, they have got to get it back. How do they get it back? I pay GBP30, GBP40 every year extra on my car insurance because of people who aren't insured. As we mentioned, Jimmy Savile, his money, as far as I know now, has been frozen and is going to be used to give to the people he did it to. But there are the situations where -- there's two, one was some famous star, before he went to court, he signed everything over to his wife. He went to court, found guilty, sent to gaol, and it was to his wife.

Then you've got Janner, GBP300 a day for going to the House of Lords, and then coming up with some excuse. That's all it is to me, just some excuse. If he can be paid every day for going to House of Lords, and then we're told he's senile or something -- he's guilty. Curb my language.

He's signed his assets over to his family as well. Them assets should be grabbed back for the people until

it's sorted out, and frozen. That's just my personal opinion. Otherwise, your children are going to pay for what's happened to me in their taxes and their income. More money having to be paid out for something that never happened to them, and, again, to coin a phrase, the innocents are suffering.

CORE PARTICIPANT: Which is what they would say about Janner's family.

CORE PARTICIPANT: My opinion on redress systems is there is not a lot of faith in them. I have contact with survivors all over the world and I have heard about the various schemes from the survivors' perspective that have been mentioned today. None of them, not one of them, has 100 per cent confidence. I think that is mainly because what they do is, they try "one size fits all". What it forgets about is the other piece, it forgets about the survivor wanting that recognition and wanting that individual report saying that they have been through this situation and that it's acknowledged. That's what gets lost in these redress systems, is the other part. It is all very well talking about the money side of it, but it is not just the money, it is also about the emotion that the survivor feels at the end of the process, and that is just as important. It may not be just as important in all of our discussions, but



believe me, to the survivors, it is just as important. Thank you.

CORE PARTICIPANT: One comment on what he's just mentioned there.

MR SKELTON: Can I stop you briefly? I have a small point to mention. You may have picked up, Chair, that Lord Janner was mentioned. There may be a concern about sensitivities attaching to issues around Lord Janner. Can I just suggest that the live feed is temporarily suspended and then we can conclude matters and, if necessary, revisit what was said and have a look.

THE CHAIR: Yes, I agree.

CORE PARTICIPANT: I apologise for that. I did that intentionally, but I apologise for that on the basis of what's going on. I apologise because of what the family is doing now. This is another thing that annoys us.

THE CHAIR: It is absolutely fine. Would you like to conclude what you were saying?

CORE PARTICIPANT: I had concluded.

The other thing I wanted to say though, the lad I mentioned earlier on, Colin Watson, he's been offered thousands and he's told them to go forth and multiply. Right? He is not interested in the money. He doesn't want the money. He wants an apology. He wants them to say, "I'm sorry, we did this to you". All of us want



that in the end as well, just somebody saying "Sorry". The lady in front of us now who is doing a lot for us and I fully support her and -- is it Peter?

MR SKELTON: Yes.

CORE PARTICIPANT: I think you're doing a brilliant job.

MR SKELTON: Thank you.

CORE PARTICIPANT: I would like a public apology from my local authority that held my care order. It's the one that held my care order.

MR SKELTON: Thank you. To end on that comment, I will allow the chair ...

THE CHAIR: Thank you very much.

CORE PARTICIPANT: Thank you for having us.

THE CHAIR: Just a couple of comments. We are right at the end of the day and everyone has been amazingly tolerant and applied themselves to the discussions. On behalf of myself and the panel, I would like to thank everyone for their attendance and contributions. This was our first inquiry seminar and we have all been very encouraged by the quality of the participation, not just around the table but also from the floor. Thank you very much indeed.

We decided to separate criminal injuries compensation from the civil justice system, and I think that decision was the right one, given the amount of



ground we have covered in these two days. We will be holding the criminal injuries compensation seminar in the new year.

A video recording of both days will be put on our website. It will be available by the end of the week -- that's the inquiry website -- and the transcript from yesterday of course is already available.

So I would like to thank everybody very much indeed, and safe home. Thank you.

(4.21 pm)

(The hearing concluded)

I N D E X

Page 197

**B**

**F**

**N**