

<p>1 Wednesday, 30 November 2016 2 (10.00 am) 3 Session 1 4 Welcome by Chair and opening comments 5 THE CHAIR: Good morning, everyone, and welcome to Day 2 of 6 this seminar. For the benefit of people who weren't 7 here yesterday, my name is Alexis Jay and I'm the chair 8 of the independent inquiry into child sexual abuse. 9 Other panel members present, Drusilla Sharpling, 10 Ivor Frank and Professor Sir Malcolm Evans. 11 I would particularly like to welcome those of you in 12 the audience who have travelled a long way to be here 13 and have stayed over. We are very pleased so many of 14 you are here for a second day. Thank you very much. 15 Today, we are continuing our discussions of course 16 about the civil justice system. As with yesterday, the 17 process will be facilitated by Peter Skelton QC. 18 Finally, a big reminder to everybody around this 19 table: please, please speak up. Don't let the volume of 20 your voice drop, because we are mindful that people at 21 the back of the room have to hear you. We can hear you 22 here, but please keep your voice up. Thank you very 23 much. 24 25</p> <p style="text-align: center;">Page 1</p>	<p>1 ourselves of who you are. 2 Introductions 3 MS STOREY: I'm Tracey Storey from Irwin Mitchell and 4 I represent claimants. 5 MS MACKENZIE: Carolyn Mackenzie from RSA Insurance Company. 6 MS JEFFERSON: Paula Jefferson from BLM Solicitors. 7 MR GARSDEN: Peter Garsden, Simpson & Millar Solicitors and 8 president of the Association of Child Abuse Lawyers. 9 MR SCORER: Richard Scorer, Slater & Gordon. 10 MR LUCK: Rod Luck Municipal Mutual Insurance. 11 MR GREENWOOD: David Greenwood of Switalskis representing 12 claimants. 13 MR NICOLSON: Mark Nicolson from the London Borough of 14 Lambeth. 15 Open discussion 16 MR SKELTON: Thank you. The focus of our fifth seminar is 17 compensation in the civil justice system. The next 18 seminar, you will probably be aware, is looking more 19 broadly at ideas of reparation and accountability, but 20 before we got to that point, we wanted to understand the 21 problems that may arise when it comes to compensating 22 victims of child sexual abuse. I anticipate we will 23 need to discuss general damages, which is clearly 24 a contentious area, damages for pain, suffering, loss of 25 amenity. Aggravated damages. Human Rights Act damages,</p> <p style="text-align: center;">Page 3</p>
<p>1 Opening comments by Facilitator 2 MR SKELTON: Thank you. Before we get into our discussion 3 today, I would just like to say a few words echoing what 4 I said yesterday about participation of those who are 5 not around the table. Obviously, the focus for the 6 panel today is to listen to the experts or expertise of 7 those who are sat at the table, all of whom are 8 experienced in the civil justice system, but we are also 9 concerned, the panel is concerned, to capture the views 10 and information available from those who aren't around 11 the table, those who are in the room and those who are 12 outside the room either reading the transcript or 13 watching the live feed. 14 For those of you who are in the room, please would 15 you contact Mr Regis if you have any views you would 16 like to articulate, he can communicate them to me and 17 I can make sure they are ventilated within the context 18 of this room. I will invite those who are in the room 19 to make known their views, but please bear in mind the 20 time restriction we are under today. We have a lot to 21 cover today, so I'm afraid it will be only over a fairly 22 short period of time. 23 With that introduction, may I ask those present to 24 give their names? I know most of you were here 25 yesterday, but it is always helpful I think to remind</p> <p style="text-align: center;">Page 2</p>	<p>1 which hasn't featured a lot in our discussions over the 2 last day and indeed doesn't feature that much in the 3 response in the issues papers but may be a topic for the 4 future development of the law. Then key issues for 5 claimants for loss of earnings and treatment costs, and 6 there may be other losses or treatments and therapies 7 which we can discuss during the final stages of our 8 discussion. 9 Can I start, then, with general damages. Arguably, 10 it may be said there are two forms of injury for the 11 person who suffered child sexual abuse: the abuse 12 itself, the experience of the abuse at the time, and 13 then the effect on that person's life, whether it is 14 psychiatric or the effect on all aspects of their 15 relationships, working life, et cetera. 16 David, perhaps you could give your views on those 17 issues first of all? 18 MR GREENWOOD: Presently, we have a system that's really 19 centred around a couple of cases, North Wales cases, 20 I think, the Bryn Alyn and Flintshire cases, which set 21 out the issue of the two types of damages, the damages 22 for the abuse itself and the discomfort and pain that 23 must have had to have been endured at the time, and then 24 the general damages, the psychological effect. 25 I think I'm right in saying that the range of those</p> <p style="text-align: center;">Page 4</p>

<p>1 damages in those cases range from about zero to maybe 2 GBP5,000 to GBP70,000, so that's general damages. 3 A lot of my clients have said that, you know, it's 4 very difficult for them to quantify the damage that's 5 been done to them, how can we quantify based solely on 6 what a psychologist or psychiatrist would say is 7 a recognised psychological illness, which currently is 8 the case with the compensation system that we have 9 through the civil courts. 10 I have certainly taken on board what my claimants 11 have said, and they are saying to me that this doesn't 12 just affect you in a recognised psychiatric way, it 13 harms you in all sorts of aspects of your life: maybe 14 the inability to speak to parents about the abuse, so 15 that aspect of your life is closed off; the inability to 16 go down to the shops on some occasions because you feel 17 you have these anxiety issues; the inability to push 18 yourself forward to apply for the next job because you 19 have this anxiety and worry about what could happen if 20 you were to apply. So those slightly unquantifiable 21 pieces of harm that cause a deterioration in quality of 22 life are not reflected at present in the way in which 23 the courts quantify damages. 24 MR SKELTON: Presumably, the types of things you have 25 mentioned, the effect on someone's life, their</p> <p style="text-align: center;">Page 5</p>	<p>1 differently? 2 MR SCORER: I think David's captured it quite well in the 3 way he's explained it. There is something -- in my 4 experience of dealing with quite a wide range of 5 different types of personal injury over my career, there 6 is something particularly toxic and nasty and 7 all encompassing about the impact of child sexual abuse, 8 something which I don't think is captured by the level 9 of general damages awards. As David was talking and 10 mentioned the North Wales awards, which I think were 11 made in cases around 2001/2002, what was really going on 12 with the courts at that stage is that, in the late '90s, 13 and at that stage they were starting to award damages 14 for child sexual abuse really for the first time on any 15 scale. There had been awards prior to that, but in 16 terms of litigation of this kind coming before the 17 courts, that was when it came before the courts. 18 Victims started to come before the courts in more 19 significant numbers. 20 So they were looking to make awards for those sorts 21 of injuries, and, really, they didn't start from first 22 principles and say, "What does child sexual abuse do to 23 a person and how do we properly compensate that?" They 24 looked back at previous awards for psychiatric injury, 25 or nervous shock as it was described in the '80s and</p> <p style="text-align: center;">Page 7</p>
<p>1 relationships with their family, their relationships 2 with loved ones, et cetera, have been put before the 3 judges as part of the general damages argument by their 4 barristers or solicitors, but the judges have not valued 5 them in the way in which you think is appropriate. Is 6 that what you are saying? 7 MR GREENWOOD: Yes, that's really what I'm saying, because 8 to get to a judge having enough evidence before him or 9 her to decide that it should sound in damages, he has to 10 have a recognised psychiatric opinion that, you know, 11 this is a recognised illness and, you know, ticks a box 12 on the DSM4 or DSM5 way of measuring psychiatric 13 illness. 14 There is a whole list of other ways in which 15 people's lives can be really seriously affected, but we 16 just don't -- may not reach the level of a psychiatric 17 diagnosis. 18 MR SKELTON: Richard, can I ask you, in what way is the 19 effect of child sexual abuse on victims and survivors 20 different from other personal injury cases which may 21 have had psychiatric effect? Some people involved in 22 serious car accidents will have a physical injury and 23 they may have psychiatric illnesses. Is there something 24 different about child sexual abuse survivors and their 25 experiences which justifies them being treated</p> <p style="text-align: center;">Page 6</p>	<p>1 '90s, so it was -- the approach that they took was 2 derived from that, rather than starting from first 3 principles and saying, "What does child sexual abuse do 4 to a person and how do we compensate it?" 5 MR SKELTON: Is there a misplaced focus on psychiatry and 6 diagnosis? David referred to the Diagnostic and 7 Statistical Manual, which the judges are familiar with 8 looking at and listening to evidence from. Is there 9 a misplaced focus on psychiatry and one should be 10 looking more widely at the effects on someone's life? 11 MR SCORER: I think that is a very good point. That almost 12 obsessive focus of the courts on, you know, which box 13 does this fit into, comes out of the fact that they were 14 simply trying to extend the law in relation to 15 psychiatric injury generally and seeing it as part of 16 that continuum. 17 MR GARDEN: If I could just chip in, I do agree with what 18 David and Richard have said. About the middle 2000s, we 19 dealt with a lot of Irish redress cases. I don't know 20 whether the panel are familiar with that scheme. It was 21 a scheme set up in Ireland to compensate the victims of 22 abuse in Ireland by the church and institutions. It was 23 a very well crafted scheme which had a number of 24 weighting factors enabling you to calculate how much 25 your award was. It was very cleverly set up. But that</p> <p style="text-align: center;">Page 8</p>

<p>1 scheme, unlike British damages, recognised exactly what 2 Richard and David are saying. In other words, it was 3 quite an eye-opener for me. They recognised that 4 victims of child abuse are unable to function, usually, 5 in the conventional way; in other words, they have 6 problems with housing, they have problems with 7 employment, they have problems with relationships with 8 other people, and interaction generally in life. It is 9 an all-encompassing, lifelong problem. Not only was 10 there compensation for that aspect, which was quite 11 important, they also set up outreach workers at the 12 Irish centres all over the UK to assist people with 13 their way of life. So it was an all-singing, 14 all-dancing, convivial way of looking after victims 15 which is totally absent in the British damages system 16 and something that I have been talking about in the 17 context of helping claimants go through the process and 18 stopping them falling off the process, the healing 19 process, halfway through by having support workers, 20 something, you know, I would argue for.</p> <p>21 MR SKELTON: Can I move on to another aspect, Peter, if that 22 is okay? 23 Tracey, is there a difficulty, in that the courts 24 need some evidential purchase on the assessment process, 25 and actually the effects of child abuse over the long</p> <p style="text-align: center;">Page 9</p>	<p>1 MR SCORER: I suppose, of course, the courts would say that 2 they do do that where they have evidence, but the 3 reality is that the monetary recognition that they 4 attach to that is really very insubstantial.</p> <p>5 MR GARDEN: Part of the problem is that we have lived 6 through two world wars and there's a stiff-upper-lip 7 mentality in Britain, and a lot of cases about nervous 8 shock arise out of that history, where, you know, it 9 was -- you bloody well just got on with it and didn't 10 complain, and the concept of nervous shock arises from 11 that sort of way of looking at things. That's why you 12 can't compensate for the natural effects of an accident. 13 It has to be a recognised psychiatric disorder.</p> <p>14 MR SKELTON: Can I ask some of the defendants, I appreciate 15 you are in a difficult position because, by definition, 16 you are wanting to keep the damages down and 17 proportionate to injury. But do you have a view on 18 this, whether child sexual abuse injuries are 19 exceptional compared to other personal injuries, in the 20 way which our speakers have identified? Carolyn?</p> <p>21 MS MACKENZIE: Yes, I absolutely recognise what everybody 22 around the room has said about loss of enjoyment of life 23 in so many aspects and how wide-reaching that is, those 24 effects are. 25 I think the first thing I'd want to say is that we</p> <p style="text-align: center;">Page 11</p>
<p>1 term may vary a great deal, so what they are looking for 2 is assistance from psychiatrists or an expert of some 3 kind to try to give them an idea of the actual impact, 4 which may not necessarily be predictable, on a person's 5 life?</p> <p>6 MS STOREY: I think the expert evidence is helpful here, but 7 the fundamental problem which has been alluded to is the 8 failure to properly compensate those matters that are 9 intangible. So the lost intimacy, the loss of 10 enjoyment, the loss of fun, and the lost childhood. 11 These are really difficult areas, but these are the 12 kind of things that survivors will talk about wanting 13 compensation for. I don't think the English system 14 necessarily reflects -- the ability to be light-hearted, 15 to have fun, to trust people, they are not psychiatric 16 problems -- they are not a psychiatric diagnosis, but 17 they affect all aspects of life. So coming back to what 18 Peter was saying about the deterioration of quality of 19 life, there should be a way of marking that. At the 20 moment, our case law and our guidelines don't really 21 assist us with that. 22 It is hard to get a handle on. I think that it 23 varies from survivor to survivor. But at the moment, 24 I don't think the English system is actually reflecting 25 those parts in life that have been affected.</p> <p style="text-align: center;">Page 10</p>	<p>1 absolutely see the importance of victims and survivors 2 receiving compensation that compensates them for all the 3 effects of abuse and all of the harm and what flows from 4 that harm. I think under pain, suffering and loss of 5 amenity, the loss of amenity element is designed in 6 principle to cover for loss of enjoyment of life, I mean 7 in real terms. It's more definable, it's not being able 8 to pursue your hobbies for six months when you've 9 suffered an injury. It's not ever really, I suppose, 10 been considered in the context of abuse cases like this 11 or, if it has, not in any, I think, really meaningful 12 way. I think that is something for the judiciary. They 13 have that open to them to consider a loss of amenity 14 award in abuse cases and what that should be. I think 15 that is something we would like to see more widely 16 considered.</p> <p>17 MR SKELTON: Mark, can I ask you as a defendant institution 18 for your views on those issues?</p> <p>19 MR NICOLSON: Yes, I would agree with what's been said by 20 everyone so far, really. I think there definitely ought 21 to be a review in relation to the general level of 22 awards that are made available for this category of 23 claim. Of course it is quite difficult, how do you 24 place a financial value on some of these aspects? So 25 I think what needs to happen is learning lessons from</p> <p style="text-align: center;">Page 12</p>

1 similar schemes that have been implemented elsewhere.
 2 Because those schemes have started to try and put into
 3 bands or tariffs -- that recognise the unique
 4 experiences that some of these individuals have been
 5 through.
 6 I think that is fundamentally important. The
 7 current system really I think struggles to offer awards
 8 based upon the full extent of the experiences.
 9 MR SKELTON: Can I go back to some of the claimant
 10 representatives and ask, really, about this variability
 11 point, because we have heard that there may be
 12 a variation of the effect, the same type of abuse may
 13 have a long-term effect on different people in a very
 14 different way. Is that going to create problems when
 15 you present it to the court of having really to prove
 16 that you have had an effect, which may not be assumed,
 17 or should one assume it?
 18 MS STOREY: I think people have varying degrees of
 19 resilience, and that will be from birth, and so we do
 20 see so many different outcomes.
 21 I think the pattern we see with more recent cases is
 22 that people have carried around this harm with them for
 23 an awful long time. It is only recently that
 24 psychiatrists have really understood why that makes such
 25 a difference to people and how complex the problems will

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1 be when somebody has tried to manage over a long period
 2 of time.
 3 The longer somebody has struggled with that, often
 4 the worse the effects, but it is only recently --
 5 I mean, I remember seeing psychiatric reports 20 years
 6 ago that really didn't get behind that or understand
 7 that, and I think that it is an evolving -- it is
 8 evolving, really, how people understand what Richard
 9 called the toxic nature of abuse.
 10 MR GARDEN: This is where causation comes in, really, and
 11 arguments about causation and what are the effects of
 12 abuse. Because this is where the different expert
 13 reports are diametrically opposed. You know, the
 14 defendant psychiatrists will say, "Oh, it was all
 15 because of their childhood that they are suffering these
 16 problems. They went into the care home damaged, they
 17 came out a bit more damaged, so what's the difference?"
 18 The claimant experts will say, "No, I'm sorry, you take
 19 a claimant as you find them. They go into the care home
 20 damaged. They are abused and the effect of that damage
 21 is a multiplier, so they come out a lot more damaged
 22 than they would have done, and what should have happened
 23 in the care home is they should have been looked after
 24 and cared for and made a more rounded individual".
 25 So what I would like to see is a recognition that,

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1 where there are two causative factors to an outcome,
 2 that it isn't excluded just because there is another
 3 causative effect that could have created that, if that
 4 makes sense, and it is the burden of proof on causation
 5 that causes the judges the difficulty, and trying to
 6 isolate what caused -- what effects were of the abuse
 7 for the expert is almost an impossible task.
 8 MR SKELTON: Paula, can I ask you how you grapple with that
 9 problem, which is the different opinions about the
 10 causative effects on someone's life, particularly for
 11 those who have come from a background which is pretty
 12 negative already?
 13 MS JEFFERSON: It is a real challenge in any case. From
 14 a defendant's perspective, we don't have the opportunity
 15 to hear directly from the claimant until either possibly
 16 at a settlement meeting or in those very few cases that
 17 go to trial. So we are very much reliant upon the
 18 information that is given to us by the claimant's legal
 19 representatives.
 20 We have the challenges here not just about what may
 21 or may not have happened in this individual -- in an
 22 individual's life prior to the abuse, subsequent to the
 23 abuse, and we have a system whereby we are expected to
 24 look at what other factors may or may not have been
 25 relevant and then to somehow apply that to very crude

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1 levels of compensation. What we have is, we have case
 2 law and all the points that have been raised about the
 3 challenges in where we have got to today. We then have
 4 the judicial college guidelines, which don't really
 5 address sexual abuse. They mention it in passing as
 6 part of psychiatric damage, but there is no separate
 7 head of loss, and that may be one relatively
 8 straightforward recommendation, is to take a separate
 9 guidance there.
 10 But it is very, very challenging to put together
 11 what can be incomplete evidence. We know that people
 12 respond differently, and there is an argument about,
 13 just because someone has, as it were, maintained the
 14 stiff upper lip that Peter mentioned, should they
 15 receive more or less damages than someone who, because
 16 of their resilience or lack of it, has had a very
 17 different life? Trying to put all of those things
 18 together in a way that also ensures consistency --
 19 because the other thing is that, from a defendant
 20 perspective, you want to be consistently paying damages
 21 that is not dependent upon how vociferous the
 22 representation of that individual is, so that you know
 23 that it doesn't matter whether or not it is Tracey,
 24 Peter, Richard or David who is representing that
 25 claimant, there is a degree of consistency, but getting

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

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

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

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

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<p>1 said -- in cases involving serious physical injuries and 2 catastrophic injuries, the focus of the court's 3 assessment of what the general damages is, is very much 4 based around deterioration in quality of life. That is 5 a key issue which feeds into the assessment of damages. 6 I think what we are saying is, when it comes to 7 child abuse, there isn't anything like the same level of 8 focus on what Tracey called the intangibles and the 9 impact of those on quality of life. 10 MR SKELTON: I think Paula's point was, to focus too much on 11 those in an individual case each time requires a vast 12 amount of evidence and analysis and potentially gives 13 rise to contentious issues which have to be litigated. 14 So it is a question of striking a balance, isn't it, 15 between presumed level of injury or compensation and 16 a tailored -- 17 MS STOREY: I think the difficulty is, in a lot of personal 18 injury cases, and I do serious injury cases and child 19 abuse as well. In serious injury cases, where somebody 20 has a physical injury, often their psychological 21 recovery goes hand in hand with their physical recovery, 22 and it is very treatable in that respect. So a lot of 23 the time the courts are assuming that there will be 24 a good recovery. I think it is a distinction between 25 acute psychological problems, as opposed to chronic</p> <p style="text-align: center;">Page 21</p>	<p>1 person's brain to work out actually what they are 2 suffering that they may not want to talk about. That is 3 extraordinarily difficult. But I would argue it should 4 start at top-end, lifelong physical injuries from which 5 you don't recover, for that reason. 6 MR SKELTON: Before we move on from general damages, can 7 I just ask about whether all of you capture any data on 8 the amounts that get paid to your clients for the types 9 of injuries that they have suffered? Is that something 10 which the inquiry could research or ask more questions 11 about in detail? Richard? 12 MR SCORER: We certainly have access to that data. I mean, 13 we obviously have records of settlements that we have 14 achieved in the past. So in principle, yes, we do have 15 access to that data. 16 MR GREENWOOD: Likewise, I can put that together. I think 17 it varies between different groups and different types 18 of abuse, different abusers. But, yes, we can pass that 19 on to you. 20 MR LUCK: Our information on this is actually quite poor. 21 It is not that long ongoing and it doesn't differentiate 22 purely for general damages. 23 MR SCORER: I was going to say, I think it would be 24 difficult, probably practically impossible, to go back 25 and work out the general damages elements of the cases</p> <p style="text-align: center;">Page 23</p>
<p>1 psychological problems that have lasted for many years. 2 It is trying to sort of -- I think we have to look at 3 the function and the loss of amenity. So somebody who 4 has to use a wheelchair, who is disabled, may not be 5 able to access a community anymore, but somebody who has 6 survived child abuse may also not be able to access 7 a community for psychological reasons, so the effects 8 are very similar. So I think it would be wrong to place 9 it with your general psychological injury, because the 10 impact, the disability, that the person carries with 11 them is more chronic and has to be recognised. 12 MR GARDSEN: What I was going to say is, the big difference 13 between most physical injuries and child abuse is that 14 child abuse is a life sentence, and it has enduring 15 consequences forever. 16 You don't recover from abuse and it stays with you 17 for the rest of your life. So it should be equated 18 with, maybe, physical injuries that do last forever -- 19 I'm talking about head injuries, top level injury head 20 injuries and other physical injuries from which you 21 don't recover which disable you. The problem is, with 22 these types of cases, we are trying to evaluate 23 something which the client doesn't tell us, because they 24 don't want to tell us because they are ashamed of it. 25 So the psychiatrist has to somehow delve into the</p> <p style="text-align: center;">Page 22</p>	<p>1 where we've achieved settlement or differentiate between 2 different heads of awards. 3 MR GARDSEN: On the ACAL website in the members area there 4 are quite a few unreported quantum-only judgments that 5 members have submitted to which we can give you access. 6 I think I have suggested that. It might be useful. 7 They do break down -- I can't say we have done it in 8 a table, but I know years ago, I think this is probably 9 four or five years out of date, Malcolm Johnson, our 10 past president, produced a chart which is in our notes 11 of different awards and different levels, which will be 12 readily available to you as well. 13 MR SKELTON: Thank you. 14 MS MACKENZIE: I think in the industry we could come 15 together and look at our data. We probably collectively 16 all have data going back at least three, five years, if 17 not a bit longer. Again, we might face the same 18 challenges with splitting out the different heads of 19 damages. It may even be possible to do some sampling to 20 try to give an average view of how the damages numbers 21 are made up. 22 MR GARDSEN: I think you will find it's not gone up at all 23 over the last 10/15 years as it should have done, 24 although best efforts. We do lag behind. We are still 25 settling cases at awards that we were settling them at</p> <p style="text-align: center;">Page 24</p>

1 10 years ago, and we shouldn't be. There is no doubt
2 English damages are way below American damages
3 generally, and we have got members of ACAL who came
4 across from America and are absolutely appalled at how
5 little we award in this country.
6 MR GREENWOOD: Can I just mention, sorry to go back to the
7 redress scheme in the Republic of Ireland, but I think
8 the average level of damages was around about
9 GBP60,000-odd that they were awarding. That was for bad
10 treatment, bad physical treatment overall in these
11 institutions in Ireland.
12 If that is the type of level that was acceptable for
13 the physical abuse and hard work that these kids had had
14 to go through, having stayed there for two or three
15 years, sexual abuse is obviously going to be at a higher
16 level than that, to be something that is palatable to
17 most survivors.
18 MR GARS DEN: Ireland looks at America rather than England
19 for its levels.
20 MR SKELTON: Its tariffs?
21 MR GARS DEN: Yes.
22 MR SKELTON: That was quite a long discussion about general
23 damages, so I am going to have to truncate some of the
24 discussion about the other topics. I think aggravated
25 damages we may be able to deal with relatively shortly,

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1 I hope.
2 Aggravated damages, broadly speaking, are for
3 high-handed or oppressive or insulting conduct by
4 a defendant. That can be the original perpetrator or,
5 indeed, the litigator during the course of
6 the litigation. So far as the former is concerned,
7 isn't it, by definition, part of child abuse that it is
8 an oppressive, malevolent act, so do you need aggravated
9 damages? Can I ask the claimants first whether or not
10 they think they are appropriate to whether in fact it is
11 general damages that need to be the focus?
12 MR SCORER: General damages certainly need to be the focus,
13 for all the reasons we have discussed. We typically do
14 argue for aggravated damages for the simple reason we
15 think they are absolutely appropriate for child abuse
16 cases.
17 MR SKELTON: But if your general damages encompass that
18 oppressive, insulting, malevolent element, wouldn't it
19 make aggravated damages redundant?
20 MR SCORER: Yes, it would. That is obviously not where we
21 are now, but yes it would.
22 MR SKELTON: Do others share that view?
23 MR GARS DEN: I think you should retain aggravated damages,
24 for the simple reason that it helps judges award more
25 money for these cases. I think if you mix them in with

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1 general damages, the judge, who has probably little idea
2 what to award, thinks of a figure and gives it. But if
3 you add up the different types of damage, there is (a)
4 a recognition, a separate recognition, for the client
5 that this is a particularly nasty case, and there are
6 different types of abuse. Some abusers are a lot more
7 aggressive and unpleasant than others. Some abusers are
8 much less supervised and the systems that they work in
9 are open to infiltration in a much greater way than
10 others. There has to be a recognition of that.
11 It becomes a bit of a punitive award, but I think it
12 is a recognition for the client that something very
13 unpleasant happened to him. So I would argue for the
14 retention and enlargement of aggravated damages.
15 MR SKELTON: Paula, I think you made the point in your
16 response that, where an organisation is effectively
17 liable for someone else, an abuser, but is not, itself,
18 culpable, it hasn't done anything wrong as an
19 organisation, but the abuser has and they are liable for
20 that abuser, it isn't appropriate effectively to punish
21 the organisation by aggravated damages?
22 MS JEFFERSON: I find aggravated damages as a separate, as
23 it were, head of loss challenging, partly for that
24 reason, because I do have organisations who will say to
25 me, "We did everything that we possibly could and this

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1 has still happened, and we are really, really sorry and
2 tell us what more we could have done?", and it seems to
3 me that the aggravated damages are there to punish the
4 abuser who, of their own free will, made the decision to
5 abuse.
6 For me, I would prefer it is all encompassed as part
7 of general damages and, as I have said, we have more
8 focus either from judicial college guidelines or
9 elsewhere that allows for that greater issue.
10 The other thing around aggravated damages is that
11 quite a large number of insurance policies may exclude
12 aggravated damages, and we then get into a difficult
13 challenge for a claimant that a large part of their
14 claim may be covered by the insurance, but there may be
15 part that isn't, and that is just another area that, to
16 me, seems to be complicating. So I'm not saying do away
17 with aggravated damages, but actually I think an easier
18 route is to look at general damages than to have this as
19 a separate head.
20 MS MACKENZIE: I would agree with that. We have looked at
21 coverage for aggravated damages and it has certainly not
22 been our practice to exclude aggravated damages in more
23 recent policy years. But if we go back historically,
24 potentially 10/15 years, not in all policies, but there
25 are exceptions and certainly aggravated damages are

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<p>1 excluded from some. So I think that is a very valid 2 point. 3 MR SKELTON: I am going to move on to human rights damages 4 and claims. It may be said that the personal injury 5 side of civil litigation has been slow to embrace the 6 Human Rights Act as a mechanism for achieving 7 compensation for people who have suffered injuries of 8 any kind, not just child sexual abuse. Is it something 9 which is going to become more important, assuming we 10 remain Convention-bound, if I am able to put it that 11 way, which isn't clear, but assuming we do, Tracey, do 12 you think the Human Rights Act is a mechanism for the 13 future? 14 MS STOREY: It is not something that's formed part of my 15 practice particularly. We routinely sue -- the 16 limitation period makes it difficult. We routinely sue 17 in negligence for assault. So, no, I don't see it as 18 a growing area, personally. 19 MR GARSDEN: The limitation. There is a two-year fix, 20 period. 21 MR SCORER: One year. 22 MR GARSDEN: Sorry, one year. 23 MR SCORER: Obviously, where it has arisen in this context 24 is situations where public authorities, particularly the 25 police, have failed to investigate allegations of abuse</p> <p style="text-align: center;">Page 29</p>	<p>1 I understand that, you know, those damages in that 2 type of case are likely to be at least GBP20,000 each, 3 so I shouldn't forget Human Rights Act claims at all. 4 MR SKELTON: Just to be clear, I didn't explain at the start 5 what one would be thinking about article 3 of 6 the Convention, which is inhuman and degrading 7 treatment, and article 8, potentially, which is the 8 right to respect for private and family life. But the 9 problem is your 12-month period, which is extendable, 10 but is a much tighter period of time. 11 MR SCORER: Yes. It is extendable in theory, but there is 12 very little case law as to the circumstance in which 13 extensions would be granted. So it's -- you know, one 14 cannot be at all certain that one would be able to 15 secure an extension for the limitation period. 16 MR SKELTON: Do those on the defendants' side feel this is 17 an area which has been explored? 18 MR LUCK: Obviously, I have no experience of a claim where 19 human rights damages in these circumstances has been 20 raised. 21 MS MACKENZIE: No. 22 MR SKELTON: Likewise? 23 MS MACKENZIE: Yes. 24 MR SKELTON: Mark? 25 MR NICOLSON: No, no experience from us either. Obviously</p> <p style="text-align: center;">Page 31</p>
<p>1 properly. This was the John Worboys situation, where 2 women were raped by a London taxi driver and the police 3 failed to undertake proper investigation of 4 the allegations and the women were compensated under the 5 Human Rights Act. So that is an area which is relevant 6 to this -- an area of compensation that is relevant to 7 this area of work. 8 As others have said, there are a number of practical 9 difficulties with it. The limitation period is 10 a significant problem, and there are funding issues 11 associated with it as well, and difficulties in 12 obtaining "after the event" insurance in order to 13 litigate. It is not a personal injury claim, therefore 14 it doesn't attract qualified, one-way cost shifting, 15 therefore there is a financial risk to the claimant in 16 bringing a claim and it is difficult to insure against 17 that risk. 18 MR SKELTON: David? 19 MR GREENWOOD: In the right case, I would say that, as 20 lawyers, we need to look at human rights situations. 21 The Rotherham cases being one. The police were involved 22 there, and my understanding is that, you know, that head 23 of damages will be completely separate from negligence 24 or vicarious liability. It is something that I would be 25 negligent if I omitted to look at.</p> <p style="text-align: center;">Page 30</p>	<p>1 in the context of -- we're looking at historic child 2 abuse claims here, so my understanding is there is no 3 retrospective application of the Human Rights Act. So 4 certainly, for all the claims that we are dealing with 5 now, that relate historically, this is never anything 6 that's been an issue. Clearly, going forward, it may 7 well be something that does start to emerge. 8 MR SKELTON: Thank you. The next topic I would like to 9 discuss, please, is loss of earnings. We have already, 10 I think, set the groundwork for that, in that it has 11 a similar complexity on causation issues as general 12 damages does, in that some of the people who are 13 claiming loss of earnings may have got other issues in 14 their life which may contribute to their inability to 15 fulfil their potential socioeconomic circumstances: 16 other abuse that is unrelated to the abuse that you are 17 claiming for; family factors and the like. 18 How can the system be improved in that regard, or 19 are the judges already equipped actually to look at that 20 kind of thing? 21 MR LUCK: I think this is another very difficult area of 22 damages. As we have already talked about in what the 23 consequences of the abuse are and how they affect the 24 person's overall lifestyle, and then to try and assess 25 what that person may or may not have lost by way of</p> <p style="text-align: center;">Page 32</p>

<p>1 income because of that abuse, taking into account all of 2 the factors, does make it very, very difficult. 3 A lot of claims, I would say we don't see loss of 4 use claims being presented and where they are assessed 5 quite often it is on a more lump-sum basis that 6 valuations are made. 7 MR SKELTON: Is there any data -- taking perhaps a group of 8 people in care who have not been abused, who come out 9 and earn and may earn less than others, because of 10 the difficult circumstances they have had in their 11 upbringing, compared to those that have been in care who 12 have been abused. Does anyone capture any of that kind 13 of data and make that comparison? 14 MS STOREY: We routinely face -- I don't think that data 15 exists, but we routinely face arguments that the 16 outcomes for people in care are pretty rubbish anyway, 17 which is a pretty horrible argument to run. When we are 18 trying to put together a loss of earnings claim, I think 19 we do need to look very closely at the individual and 20 what their actual potential is. 21 Like, in a lot of personal injury cases, we don't 22 necessarily have a comparator, we don't necessarily have 23 a sibling who has done well, who has gone on to do well. 24 It might be that those siblings have gone through the 25 care system as well, but it is a very tricky exercise.</p> <p style="text-align: center;">Page 33</p>	<p>1 actually, because of course -- I mean, not all or even 2 the majority of abuse claimants have been in the care 3 system. A lot of them have, but many haven't. But, in 4 a sense, the issue is a bit more fundamental than that. 5 The issue is, at least in part, that abuse happens when 6 the claimant is a child and, therefore, they don't have 7 an established track record of earnings at the point at 8 which the injury is committed. 9 Applying sort of normal logic of personal injury 10 claims and the application of that being done by judges 11 who are used to dealing with a claimant who has broken 12 a leg and was earning X before they broke a leg and is 13 earning Y afterwards and they can make a simple 14 arithmetical calculation of the loss means that 15 claimants in this area lose out, I think. 16 MR SKELTON: Can I ask Carolyn, from the defendants' 17 perspective, do you feel the courts adequately grapple 18 with this issue? 19 MS MACKENZIE: I absolutely agree with what's just been 20 said. I think where -- I'm involved in quite a few 21 injury cases, injuries to children in motor accidents, 22 and so on, and it is absolutely that difficulty in 23 assessing the loss of earnings when someone hasn't had 24 the opportunity to establish an earnings record -- an 25 employment record, let alone complete their education,</p> <p style="text-align: center;">Page 35</p>
<p>1 MR GARDEN: We often use occupation psychologists or 2 psychologists with occupational talents to tell us what 3 sort of job they would have done had they not been 4 abused. It is sometimes possible to isolate it to 5 a type of work, maybe manual or semi-skilled or skilled, 6 but really nothing more than that. The way the courts 7 work out the damages is either by something called loss 8 of status on the open labour market, which is -- there 9 is some precedent, but it is really plucking a figure 10 out of the air, or loss of a chance, something called 11 loss of a chance of employment, and it is a fairly 12 nebulous concept and it is difficult to quantify, but if 13 we go before the court and produce some figures and 14 statistics and data, it is often not listened to and 15 rejected. It is an extraordinarily difficult thing to 16 quantify. 17 MR SKELTON: Judges, day in and day out, deal with arguments 18 for personal injury claimants about loss of earnings 19 where there may be a multitude of physical factors or 20 other mental health factors. Aren't they properly 21 equipped to do that, difficult as it is, or is there 22 a problem with these cases again? 23 MR SCORER: I think, as with so much we've discussed today, 24 the fact that judges are coming at this from 25 a traditional personal injury background is a problem,</p> <p style="text-align: center;">Page 34</p>	<p>1 and the challenges of comparing to siblings, looking at 2 educational achievements up to that point of 3 the accident, these are all things that judges have to 4 consider, and that's why, in injuries involving 5 children, it is so often that the compensation for loss 6 of earnings is valued as a disadvantage on the labour 7 market, what's been described, or a loss of opportunity 8 simply because there are too many unknowns in 9 quantifying it. I think the same and even more complex 10 challenges arise in abuse cases. 11 MR SKELTON: Carolyn mentioned education. A lot of these 12 cases are, by definition, during people's childhood and 13 often in institutions which are meant to be educating 14 them and in fact are exposing them to abuse. So at the 15 same time as being abused, they have also lost their 16 education. How do the courts go about assessing the 17 effect of that? 18 MR GREENWOOD: In the ways that have been described so far, 19 the judges have to be presented with evidence, they have 20 to be presented -- try and work out from the witness 21 statements and psychological evidence whether there's 22 enough evidence for a judge to decide that there has 23 been a loss attributed to all this. 24 In some of the cases, forgive me for saying this, 25 I think judges are wary of being appealed. They don't</p> <p style="text-align: center;">Page 36</p>

<p>1 want to stick their necks out to give someone 2 a seriously significant award of loss of earnings when 3 they may be appealed on that. 4 We were talking earlier about readjusting the way in 5 which general damages could be assessed, and if we were 6 to do that, factoring in the ability of a judge without 7 the prospect of being appealed to be able to award 8 something for this nebulous concept of loss of earnings 9 would be a step forward. Because I think that would 10 probably empower judges to be able to stick their necks 11 out and say, "Look, this person obviously would have 12 earned more, would have done better in life on the 13 earnings front, if it hadn't been for this abuse." 14 MR GARS DEN: There are some clues in the redress scheme 15 weighting factors that the Irish produce, because that 16 recognises this problem, and produces a way of 17 calculating this nebulous concept, which includes 18 inability to work and inability to progress in life. 19 MS STOREY: The thing is, in personal injury, generally, 20 20 years ago the approach was pretty broad brush. There 21 has been an increasing recognition that you can use 22 actuarial evidence to draw conclusions about what are 23 the chances in life for somebody with a disability, and 24 so we become more and more sophisticated when we look at 25 physical injury.</p> <p style="text-align: center;">Page 37</p>	<p>1 MS STOREY: I think the way in which we schedule our lost 2 earnings on a mathematical approach year on year, 3 looking at it on that basis, is the right approach. We 4 are entitled to put the case at its highest. It is our 5 professional duty to do that. There might then be 6 causation arguments that will knock that case down. So, 7 "What was the chance of your client actually achieving 8 that but for the abuse?" Those are the kinds of 9 arguments we have in the negotiation. 10 I have seen in some of the submissions that the 11 defendants are uncomfortable with the schedules being so 12 high and then the cases settling down, but you are 13 putting forward a hypothesis of what that person's life 14 would have been like but for the abuse and nobody really 15 knows the answer to that question. So we then have to 16 look at the evidence we have brought to bear and have 17 those negotiations where we try to assess how strong our 18 case is. 19 That is why they settle for a lot less. But I think 20 we wouldn't be doing our job properly if we didn't 21 actually try to calculate the impact in that way. 22 MR SKELTON: Thank you. Last point, Richard, and then 23 I have to move on. 24 MR SCORER: I agree with all of that. I think one of 25 the difficulties in this area is, it is one thing to put</p> <p style="text-align: center;">Page 39</p>
<p>1 It was starting to be recognised from a labour 2 economist that if you just sort of say, "Well, we will 3 give you a lump sum to reflect your disadvantage", we 4 were short changing those people who were going to 5 retire earlier, going to be in and out of work, going to 6 have broken careers. We have done that on the personal 7 injury side, but when it comes to abuse, I don't think 8 we have embraced that kind of sophistication yet. 9 I think that when we do look at it on a broad brush 10 basis, we short change our clients. I think we need to 11 have more data to examine what the lost chance was and 12 actually look at it a bit more mathematically so that we 13 don't short change claimants. 14 MR SKELTON: You articulate the claim in a schedule of 15 damages which goes to the other side and goes to the 16 court. Often, loss of earnings claims, personal injury 17 claims, can be the biggest bulk of the damages because 18 you are often looking at a lifetime of yearly earnings 19 that have been lost. 20 Do you, on the claimants' side, ultimately find that 21 those damages have to be settled at much less than you 22 actually originally claimed for? And is that because 23 you have gone in with a higher figure, knowing that is 24 going to happen, or is it because you haven't managed 25 your client's expectations about the system?</p> <p style="text-align: center;">Page 38</p>	<p>1 forward an arithmetical calculation as Tracey has 2 described, a year-on-year multiplier of lost earnings, 3 but where cases are assessed on the basis of a lump sum 4 award, there is a wide variation from courts and judges 5 as to how those lump sum awards are calculated and not 6 a lot of science behind them, in my view. That makes it 7 difficult for us to advise our clients on what they are 8 likely to get if the award is calculated -- is assessed 9 on that basis. 10 MS JEFFERSON: I think the Irish redress scheme has been 11 mentioned a few times, but they worked on a points 12 basis. So it was up to 25 points, if I remember 13 correctly, for the actual acts of abuse and then there 14 was up to 50 points, which was taking into account all 15 the things that we have talked about today. So the 16 impact on life, whether that be earnings or day-to-day 17 life. I think that probably gives greater certainty for 18 everyone. 19 The other really important thing they did, in part 20 of that process, was looking about not just the payment 21 of a sum of money, but, "How can we support you through 22 education now, how can we help you to put you back into 23 the position?". So I think the system that we have now 24 is challenging, and looking elsewhere, rather than 25 saying, "Let's reform loss of earnings" --</p> <p style="text-align: center;">Page 40</p>

<p>1 MR SKELTON: Can I move on to that support issue? That is 2 the next thing I was going to ask you about. To what 3 extent is the provision -- a claim for support therapy 4 treatment controversial in most cases? Is it just 5 a question of getting the quantification right and then 6 it is generally agreed because it is not a lot of money 7 or is that a source of controversy? 8 MR SCORER: I think in terms of the different -- as 9 comparing the different heads of loss, I think in most 10 cases it is probably the least controversial one. There 11 can obviously be arguments about the amount and medical 12 experts on either side might disagree about the cost and 13 nature of the therapy that's required, but by and large 14 the figures involved are at a level that they can be 15 resolved by negotiation on the whole. 16 MR SKELTON: Before I ask the defendant stakeholders to 17 address this issue, has any thought been given to the 18 provision of support during the litigation in order to 19 see if treatment can be given which may make someone's 20 earning prospects, for example, better and therefore 21 actually ultimately create a saving? 22 MS STOREY: We have been borrowing concepts from brain 23 injury cases where we have instructed case managers to 24 assess the needs of the claimant and to sort of set out 25 a plan of support that we have then gone to -- I think</p> <p style="text-align: center;">Page 41</p>	<p>1 type of counselling or other therapy that they need. 2 MR SKELTON: From the claimants' side, obviously you are 3 claiming the damages, and then, as a lawyer, your 4 relationship with your client may come to an end at the 5 conclusion of the case, with them being given a lump sum 6 payment. Do you know if your clients take up the 7 support that they have claimed? 8 MR GARSDEN: No. 9 MR SCORER: I coordinated a group action a number of years 10 ago where we ringfenced damages for therapy, so those 11 went into a separate fund which claimants could draw on 12 after the end of the litigation. The take-up, it has to 13 be said, was reasonable but not universal. 14 We did everything we were able to do to try to 15 facilitate it by, you know, making sure that people had 16 details of where to go, and so on. But, as solicitors, 17 we are not really particularly well equipped to provide 18 post-settlement support services. We will do what we 19 can, but there is a limit to what we can realistically 20 do. 21 I think, just another point I wanted to go back to, 22 the issue of rehabilitation, in cases involving serious 23 physical injuries, catastrophic injuries, insurers are 24 very, very engaged with issues around rehabilitation, 25 and part of the reason, I think, why they are engaged</p> <p style="text-align: center;">Page 43</p>
<p>1 RSA have been involved in cases like this, where we have 2 said, you know, "Could we have interim funding for these 3 issues?" That works in cases where we don't have a huge 4 limitation argument. So where we have relatively young 5 claimants. And the opportunity to get some good 6 rehabilitation in early is there and everyone can see it 7 and we have had -- that's been very successful. 8 But I think for the non-recent cases, where 9 claimants have been carrying around their damage for 10 a lot longer and there is a limitation argument and 11 there is a lot more causation, a lot more life to 12 examine, that's been more difficult to factor in. 13 MR NICOLSON: I think the issue of support is a really 14 important one. Something that my organisation has done 15 is made available support and counselling regardless of 16 whether an individual has brought a claim or is thinking 17 of bringing a claim to us. So we have separated it out 18 from the existing civil litigation process. So any 19 child that was in a home, looked after, has these 20 services available to them. 21 As part of any claim that we are dealing with, we 22 would also look at funding of any ongoing therapy or 23 counselling that was required, but I do think it is 24 important that civil justice and bringing a claim 25 shouldn't be a barrier to an individual obtaining any</p> <p style="text-align: center;">Page 42</p>	<p>1 with it is that rehabilitation of a claimant during the 2 lifetime of a case will improve their prospects and thus 3 affect -- and hopefully reduce -- the overall bill to 4 the insurers. 5 In abuse cases, where the damages are much more 6 modest, there isn't that same potential gain for the 7 defendant in being actively involved in rehabilitation, 8 but conversely, if the damages were higher, there might 9 be more, I think, engagement by insurers in the whole 10 issue of rehabilitation of abuse victims. 11 MR GARSDEN: I, too, have attempted to set up trust schemes 12 in group actions, and they have always failed. The 13 reason they failed the first time was because there 14 wasn't enough consensus in the group that they all 15 wanted it. The second time it failed was because it was 16 a case against a council and there was something 17 unhelpful about the council that employed their abuser 18 controlling the compensation and controlling their life 19 going forward. I said that this would only work if they 20 remained at arm's-length to this counselling process and 21 engaged another body that was independent of the council 22 to run it, because then they weren't being still 23 controlled by their own abuser and his connections. 24 MR SKELTON: Thank you. We are close to the conclusion, I'm 25 afraid, of a very interesting discussion. I'm going to</p> <p style="text-align: center;">Page 44</p>

<p>1 ask those who are here if they have anything they would 2 like to address? 3 MR ENRIGHT: Thank you very much. David Enright from 4 Howe & Co solicitors. The survivor core participants in 5 the room are experts in these issues through experience, 6 and they have three contributions to make. 7 Mr Peter Robson from the Stanhope Castle Survivors 8 Group. 9 CORE PARTICIPANT: I have a brother, we both went to the 10 same place. Now luckily, there but for the grace of 11 God, because he has suffered a lot less than I have. 12 I have never seen him for 20 years, but when he -- we 13 spoke every day, and I miss him, and one of the worst 14 things I've done in my life -- one of the worst things 15 I ever done in my life was, my brother, he wanted to 16 speak up about this in a court, and because of what 17 I read -- I'm sorry, but this is upsetting. Because of 18 what I read -- I had this piece of paper in my hand, the 19 social worker gave me it, put me and my little brother 20 in a room and left me to read it. My mother was 21 outside, and I just grabbed him by the throat and rammed 22 him against the wall, because I could have killed him 23 that day. He'd put in what had happened. This is 24 40-odd years ago. And I regret that. He's my brother. 25 I should have been there for him. I couldn't. It's</p> <p style="text-align: center;">Page 45</p>	<p>1 I lost my education through my abuse. I submit to you 2 that if I hadn't lost my education, I wouldn't be on 3 this side of the table, I would be over there as an 4 expert. 5 I have worked with victims of sexual abuse for 6 30 years. I have seen the effect of the loss of 7 education. Loss of education means that you can't 8 interact with employers in the correct way, you can't 9 get on with your life, and it is something that's 10 quantifiable and it is something that's remediable. It 11 is something that, if you can give people the chances to 12 retake up education, I have done it myself. Just this 13 year, I have just passed a qualification myself for the 14 first time in my life. So it is something that can be 15 changed. It is very important that survivors get that 16 second opportunity for an education. 17 The reason I haven't been able to take it up for the 18 last 30 years is because I couldn't get the funding. 19 I'm talking about less than GBP1,000. That is 20 outrageous. 21 MR SKELTON: Thank you very much. 22 MR ENRIGHT: Finally, we have Karen Gray from the Bryn Alyn 23 community. 24 CORE PARTICIPANT: Good morning. Thank you for having me 25 back. After my time in Bryn Alyn and my rape and the</p> <p style="text-align: center;">Page 47</p>
<p>1 happened to me as well, but all I thought of was my 2 mother at the time. I had to protect her. Because 3 I said, "If you damn well read this, I'll kill you, son, 4 and that's a promise. If this hurts my mother, I'll 5 kill you". That's one of the reasons people keep quiet. 6 They have others to protect. I have suffered for 50-odd 7 years and it's only when I have just recently opened up 8 about these things that happened. 9 The other thing is, as to compensation, now, because 10 we are from poor families, we are assessed different as 11 well. An example I can give you is, just last year 12 there was a bit in the papers about somebody slipping 13 over and hurting their wrist, spraining their wrist. 14 Now, if that was me, GBP500 to GBP1,500, if I'm lucky, 15 you know, for suing the shop or whatever it was. This 16 lady, because she works in the City of London, 17 GBP140,000 for the same suffering that somebody else 18 gets for a slip. Now, these rich people won't have 19 their children in situations like I am. I'm sorry, but 20 I could go on all day. 21 MR SKELTON: Thank you very much. 22 CORE PARTICIPANT: I'm sorry, I can't. 23 MR ENRIGHT: There are two more. Nigel O'Mara from 24 Survivors of Organised and Institutional Abuse. 25 CORE PARTICIPANT: I really want to speak about education.</p> <p style="text-align: center;">Page 46</p>	<p>1 resulting pregnancy, the birth of my son, whom I haven't 2 seen for the last 21 years, he went to adopted parents 3 when he was 4, Criminal Injuries Compensation Scheme 4 asked me to provide them with a copy of his birth 5 certificate, despite his birth having been recorded in 6 my Social Services records, not in my medical notes, 7 which had been tampered with. Is this kind of 8 questioning and this mental abuse of survivors 9 considered appropriate, when we are wanting these people 10 to move on, to better themselves, to put that abuse 11 behind them? 12 Quickly, if I may, back to the question of 13 education. When I was in Skircoat Lodge at Halifax, 14 there was myself and one of the residents that were both 15 in grammar school. She wasn't abused in care, she went 16 on to become a chartered accountant, and one day she 17 walked past me in Leeds while I was selling the Big 18 Issue. Thank you. 19 CORE PARTICIPANT: I have another friend who went to 20 Stanhope. We overlapped. It is what the lady was on 21 about earlier on, about getting help. Like myself -- 22 I'm crying out for help now. I'm crying out for people 23 to -- so I can open up to find out what happened to me, 24 you know. But this man is laid up in bed, begging and 25 pleading to get somebody to give him counselling and he</p> <p style="text-align: center;">Page 48</p>

<p>1 is still begging and pleading to this day now and he's 2 getting nothing. Colin Watson. I think -- as I said to 3 you, there, but for the grace of God, go I, and there, 4 but for the grace of God, go you as well. 5 THE CHAIR: I have one question I want to address that was 6 raised by Mr Luck around the assessment of the impact of 7 abuse. We talked of the assaults themselves and the 8 consequences, but I wonder in particular in relation to 9 child sexual exploitation where children have been 10 groomed in the process and often through the use of 11 drugs and alcohol, where they end up with a lifelong 12 addiction. Is any of that taken into account in the 13 circumstances of assessing the impact on life experience 14 and life chances and education? 15 MR LUCK: Certainly I think these elements are taken into 16 account. From our position, because the claims we deal 17 with are historic, we are not involved in the current 18 areas of sexual exploitation, but we do see cases where 19 clearly abusers were using alcohol and other 20 enticements. Clearly, a lot of the victims and 21 survivors did go on to have alcohol abuse and drug 22 abuse. These elements are taken into account but, 23 undoubtedly, I would anticipate that the views from the 24 claimant support here would be that perhaps not 25 sufficiently. Again, it comes down to this causation</p> <p style="text-align: center;">Page 49</p>	<p>1 MR GREENWOOD: For my part, Madam Chair, the issue of 2 alcohol dependence or drug dependence only really comes 3 up if we are able to demonstrate it with evidence. This 4 is the problem with the system we have at the moment. 5 Unless we have a psychiatrist or a psychologist saying, 6 "There is alcohol dependence disorder" or some other 7 kind of disorder, then we really can't convince our 8 opponent that this person should receive, you know, 9 GBP10,000 or GBP20,000 for that disorder. So it only 10 sounds really in persuading our opponents that the 11 overall level of distress is slightly greater. That's 12 as far as we can take it. 13 THE CHAIR: Okay. Thank you. 14 MR FRANK: On the question of evidence, I think I have heard 15 from a number of you that in calculating loss of 16 earnings, particularly for people who have had a care 17 background, is the assumption that their life trajectory 18 must necessarily be poorer than someone who has not been 19 in care. Is there any statistical or actuarial or 20 evidential basis for that assumption? I ask that 21 particularly in the light of the evidence we have just 22 heard, or comment we have just heard, from the back of 23 the room in relation to someone who was in care, who has 24 apparently had a very successful life. 25 MR GREENWOOD: This is what I am told by the psychologists</p> <p style="text-align: center;">Page 51</p>
<p>1 about whether there was drug abuse prior to going into 2 care, et cetera. So it does become a very, very 3 complicated area. 4 THE CHAIR: Specifically I'm interested in the grooming 5 process where they have been induced into assaults, 6 sexual assaults, by the use of -- 7 MR LUCK: Most of the cases were not such a degree of 8 grooming. They were more, I think, blatant acts of 9 abuse by people within the institutions. 10 MR SCORER: I think it is worth mentioning on that that the 11 cases certainly -- this may be true for David as well -- 12 the civil cases that I have brought in relation to child 13 sexual exploitation, for example, in places like 14 Rochdale, they are cases where the civil cases against 15 Social Services for failure to protect the child, that's 16 the allegation is that there is a Social Services 17 failure. 18 In the majority of those cases, at the point at 19 which we are saying Social Services should have known to 20 intervene and protect the child, there has already been 21 some abuse. Obviously, without that prior history of 22 abuse, there wouldn't be a reason for Social Services to 23 become involved. So you have situations where victims 24 are being compensated for part of the abuse they have 25 suffered, but not all of it, if that makes sense.</p> <p style="text-align: center;">Page 50</p>	<p>1 I speak to on a fairly daily basis. I will have to 2 trawl through their evidence and their citations in 3 their reports for the evidence. I can certainly pass 4 that through to the panel. 5 MR FRANK: Thank you. 6 MR GARDEN: Expert psychologists I think are better placed 7 to give that type of information. 8 MR SCORER: In terms of your question about whether the 9 courts are looking at that statistical evidence, to the 10 extent that it is there, I don't think they are. 11 I think there are prejudices about this which pervade 12 the way courts look at this. 13 THE CHAIR: There is considerable evidence available on the 14 outcomes for children in care -- 15 MR SCORER: Of course, yes. 16 MR SKELTON: Thank you. Shall we conclude there? I think 17 we are running a little bit behind. May I suggest we 18 come back at 11.35. 19 (11.20 am) 20 (A short break) 21 (11.36 am) 22 Session 2 23 MR SKELTON: Thank you. We have had a slight change of 24 personnel. Some of you were here yesterday. May I ask 25 those who have arrived today to introduce themselves</p> <p style="text-align: center;">Page 52</p>

<p>1 again, for the sake of the transcript? 2 Introductions 3 MR LATTER: John Latter. I work for Zurich Insurance in the 4 UK. 5 MR ENRIGHT: David Enright from Howe & Co Solicitors. 6 I represent the Stanhope Castle Survivor Group, the 7 Forde Park Survivor Group and Survivors of Organised and 8 Institutional abuse. 9 MS MILLAR: Alison Millar. I am from Leigh Day & Co and 10 I represent claimants. 11 MR BONEHILL: David Bonehill, UK claims director for 12 Ecclesiastical Insurance Company. 13 Open session 14 MR SKELTON: The last session about was compensation in the 15 civil justice system and all the various issues that 16 surround that, which is obviously the focus of the civil 17 justice system ultimately, compensation. This session 18 is looking more broadly at what accountability and 19 reparation might be for survivors and victims of child 20 sexual abuse, so not simply compensation but other 21 aspects of accountability, other aspects of reparation. 22 Broadly speaking, I would like to touch upon what 23 does the civil justice system provide, so damages, but 24 what else can it provide, either through settlement 25 process or ultimately getting to trial. Secondly, what</p> <p style="text-align: center;">Page 53</p>	<p>1 awarding damages in cases which fit a certain set of 2 legal criteria. 3 MR SKELTON: David, do you find that some of your clients 4 actually want the vindication of a judge's judgment, so 5 in fact they do want to push right through to the end of 6 the process and get the judge to say openly and publicly 7 and impartially what has happened? 8 MR ENRIGHT: That is a very good question. You often hear 9 people say they want their day in court. That can mean 10 a number of things, it can mean your day in actual 11 court, but what it also means is the opportunity to 12 confront those who abused you or confront those who 13 guided, employed and were responsible for your abuse. 14 We have heard this morning, for example, about 15 face-to-face meetings with representatives of defendants 16 which can be a way forward. 17 But, yes, people want to be heard in public and we 18 have seen this this morning in the last session where 19 a number of survivor core participants had the 20 opportunity to speak, you could see how much it meant to 21 them to have that opportunity to speak in public before 22 a panel of experts, so their voices could be heard. 23 That is the big thing. For almost all survivors, they 24 feel that their voice has never been heard and they want 25 it to be heard.</p> <p style="text-align: center;">Page 55</p>
<p>1 does it not automatically provide? What other things do 2 victims and survivors need which they cannot get from 3 the civil justice system and need to find elsewhere? 4 Lastly, the idea of settlement which affects both of 5 those things, what can settlement meaningfully achieve 6 for victims and survivors going forward, what does it 7 achieve now and what can it achieve going forward? 8 The first issue is really what does it presently 9 provide other than damages? Richard, do you want to 10 introduce some of the factors? 11 MR SCORER: The civil justice system is clearly 12 overwhelmingly focused and designed for delivering 13 damages in cases where particular legal criteria are 14 satisfied. 15 There are other things that survivors of abuse are 16 frequently looking for and hope that the process will 17 deliver. I think there are three obvious ones: an 18 acknowledgement that the abuse happened, where that 19 hasn't already been determined in criminal proceedings; 20 a commitment to learn lessons from whatever has been 21 revealed by the particular case; and, perhaps most 22 importantly, an apology. So I suppose those are the 23 three things that survivors often come to the process 24 looking for, but the process is not really geared around 25 any of those, the process is geared around assessing and</p> <p style="text-align: center;">Page 54</p>	<p>1 MR SKELTON: Alison, can I ask you about this idea of 2 the confrontation? Do you find that many cases go to 3 trial and people actually get that confrontation and it 4 provides a form of closure or meaningful reparation for 5 them. 6 MS MILLAR: I think the overwhelming majority of cases do 7 not go to trial. They are resolved out of court by some 8 kind of settlement process or they don't continue. The 9 court process is not set up to provide the kind of 10 confrontation and listening that survivors of abuse 11 really need. It is an adversarial and confrontational 12 process in which a survivor will be cross-examined, 13 questioned closely, about their experience and, often, 14 if a case does go to court, it can be very revictimising 15 for the client. They can feel that they are on trial 16 rather than the institution or the individual. So 17 currently, I think there is a mismatch between what 18 a survivor might want from the civil justice process and 19 what the rather crude instruments of the civil justice 20 process actually deliver. 21 MR SKELTON: Do you find in cases that do go to trial that 22 people giving evidence on the defendants' side are 23 actually people who were involved with the index events 24 at the time? Are there that many people around to give 25 evidence on that side?</p> <p style="text-align: center;">Page 56</p>

<p>1 MR SCORER: There can be, but it is important to remember, 2 of course, that even where cases go to trial, the issues 3 that are focused on in trial may not even necessarily 4 include whether the abuse actually happened. That may 5 have already been proved in criminal proceedings or it 6 may have been accepted. 7 Sometimes it can be a live issue. 8 In many cases, and I think this is often quite 9 bewildering for survivors, much of the questioning and 10 legal argument at trial involves legal issues, vicarious 11 liability, negligence, particularly in failure to remove 12 cases. So those issues are all at one remove from the 13 survivor's direct experience of the abuse, which they 14 expect that the trial will fundamentally be about, and 15 often it isn't. 16 MR SKELTON: Can I ask about the issue of closure? I don't 17 want to use the word inadvisedly, because one has to be 18 careful about that as a concept and as a possibility for 19 people to achieve in any easy way, even through the 20 civil justice system. But do people get closure through 21 a trial or through settlement, or at all, through the 22 civil justice system? 23 MS STOREY: I think there is an element that taking civil 24 action does give people the feeling that they're taking 25 control and they're taking back control that was taken</p> <p style="text-align: center;">Page 57</p>	<p>1 deliver and I think most people are quite disappointed 2 when I say, "Well, it is not going to result in that 3 kind of justice. This is not what the civil courts are 4 about". 5 MR ENRIGHT: What has been said to me often by clients 6 I represent is that the civil justice system is 7 incorrectly named insofar as they can't achieve justice. 8 They can achieve damages, but not justice. So that's 9 a difficulty. 10 MR NICOLSON: I think there is a bit at the front end that 11 perhaps is missing in the current civil justice process, 12 and that is, quite often survivors just want somebody to 13 listen to their story, acknowledge what happened, and 14 take responsibility and accept the circumstances and 15 offer an apology. Quite often, that is kind of missing 16 from the current process. We kind of dive straight into 17 the very adversarial process that we have been 18 discussing over the past few days or so. So I think 19 there is an acknowledgement, a stopping, a listening, 20 undertaking the next steps, which may include an 21 investigation. All of that doesn't really happen 22 automatically at the front end. 23 MR SKELTON: Do you think that the civil justice system is 24 sometimes used in order to get that form of 25 reconciliation, get that meeting, because it may not be</p> <p style="text-align: center;">Page 59</p>
<p>1 from them. So from that point of view, there is that 2 sense of, it's part of being empowered, it's part of 3 moving forward. There may be some healing, there may be 4 some learning that goes on through that process. But it 5 is not built into the system. It is something that you 6 have to manage very carefully. 7 At the outset of cases, I will say to people -- 8 I will ask people what their agenda is and why they want 9 to go forward, and often I will have to say to them, 10 "Well, that is not going to happen and that is not going 11 to happen and that is not going to happen", just so they 12 understand in an informed way what they are letting 13 themselves in for. 14 They may gain special insight into their mental 15 health condition, they may get a better understanding of 16 the difficulties they face, they may find out that there 17 is treatment out there that will help them, but on the 18 other hand, they are not going to see the people who let 19 them down punished. There are not going to be 20 disciplinary proceedings arising from anything. There 21 is not going to be that level of accountability. 22 I think people generally find that quite strange, 23 that, if they win their case, no heads are going to 24 roll. I think there is an expectation there which is -- 25 you know, I explain what the criminal justice system can</p> <p style="text-align: center;">Page 58</p>	<p>1 otherwise available, except by initiating it and 2 demanding it? 3 MR NICOLSON: I certainly think there is an attempt for the 4 system to be used for that, but often it falls away, 5 back into the arguments around the actual money side of 6 things and all of these other aspects, the apology, the 7 acknowledgement. It isn't all as forthcoming as it 8 could be if it were achieved outside of that process. 9 MR SCORER: There is no question that the survivors often 10 look to the civil justice system simply because it is 11 the only instrument that is available. If institutions 12 and organisations were a lot more imaginative, and 13 I think it is fair to say actually your institution has 14 been in some ways more imaginative, then actually they 15 would probably face less civil litigation. Because if 16 institutions looked at how they could deliver some of 17 the other things that survivors want, then perhaps civil 18 litigation might not necessarily be the route that 19 people would pursue. They may do, but institutions have 20 to be imaginative in thinking about alternatives. 21 MR SKELTON: Would your clients accept -- the other things, 22 we will come on to them -- the price of lower damages or 23 do you think, ultimately, they have to sit alongside 24 proper compensation, fair compensation? 25 MR ENRIGHT: It is not an either/or. If you have suffered</p> <p style="text-align: center;">Page 60</p>

<p>1 damage, if you have suffered harm, if it is possible to 2 quantify, you should be put right. 3 The additional thing, which is about justice, 4 accountability and reparations -- 5 MR SCORER: I don't see in principle why an institution 6 apologising for what's happened should come at the price 7 of lower damages. It doesn't cost money to apologise. 8 MR BONEHILL: I think one of the issues we have seen with 9 regard to apologies, and indeed providing other support 10 in terms of counselling or pastoral care, is the 11 misconception sometimes that the institution or the 12 policyholder believes that may affect adversely the 13 insurance position by -- you know, almost deemed to be 14 admitting liability, which is clearly not the case. You 15 know, we make that very clear in our guidelines. We 16 actually support that. The Compensation Act supports 17 that. Okay, it is silent on vicarious liability, but we 18 look at it in the spirit that it was designed for. 19 So, yes, technically, you could say, well, vicarious 20 liability, you know, it doesn't allow for it, but, as 21 I say, I think the spirit is absolutely there for it. 22 MR SKELTON: How do you square giving an apology for some 23 abuse and then saying, "Actually, we are fighting you in 24 court", on the grounds of limitation, for example? 25 MR BONEHILL: That is a really good point. The apology has</p> <p style="text-align: center;">Page 61</p>	<p>1 policyholders to do that, I should say. I think it 2 should be survivor led, because you can make an apology 3 which is actually seen -- I think in the responses it 4 was called a "mealy-mouthed apology", which actually is 5 a detriment to the claimant. Because they feel you're 6 just throwing these apologies -- if we make it too 7 simple to apologise without any consequences to their 8 apology, everyone would just go around apologising for 9 everything, and then the poor claimant will feel that 10 they're not really receiving a meaningful apology. So 11 I think it has to be claimant led and we have to engage 12 around that process. 13 MR SKELTON: Tracey, could you define what a meaningful 14 apology is for your clients? 15 MS STOREY: What we tend to do is try and avoid lawyers when 16 we put -- sort out apologies. So I tend to sort of say, 17 well, if I'm involved and my opponent is involved, it's 18 all going to get a bit silly. So let's have 19 a face-to-face meeting with the institution, where you 20 can sensibly bring up anything you want to do without 21 the defendant lawyer or the claimant lawyer breathing 22 down anyone's neck, and, you know, we try to write these 23 apologies, we try to agree apologies, that goes wrong. 24 So I always encourage face-to-face meetings, say, with 25 the local authority, where the client can talk about</p> <p style="text-align: center;">Page 63</p>
<p>1 to come from the institution. It is not the insurance 2 company that gives that apology. I think we need to 3 make that quite clear. But we do encourage, where it is 4 appropriate, for the institution to give a meaningful 5 apology. Now, whether that is at the JSM, the joint 6 settlement meeting, when liability has been dealt with 7 or whether it is early on in the process, that's 8 something for the institution to consider, and they have 9 to work in collaboration with us on that. 10 MR SKELTON: John, is your view similar? 11 MR LATTER: It is. I think it is an important point that 12 David makes. It is actually not the insurer's apology 13 to make. So we do encourage our policyholders to make 14 appropriate and meaningful apologies. 15 I think, Peter, really we need to look to the 16 claimant. Because if we try "one size fits all" here, 17 we are in danger of demeaning an apology. I think it 18 has to be led by the claimant. We have to have an idea 19 of who they want the apology from, in cases of vicarious 20 liability -- often the abuser, themselves, isn't in the 21 picture -- and we need to engage with them and 22 understand what that meaningful apology will look like 23 for them, and where it is appropriate and where we can 24 make a meaningful apology on the facts we see no reason 25 why we shouldn't do that, or we encourage our</p> <p style="text-align: center;">Page 62</p>	<p>1 their life, how it's gone, what their issues are now, 2 what -- they usually want to know a bit more about how 3 the organisation safeguards children now, because that's 4 really important to understand, whether lessons have 5 been learnt from their past. 6 So I kind of try to facilitate it without lawyers, 7 to be honest. So I don't actually know. But a lot of 8 clients come back very happy that they have had that 9 conversation, that communication. 10 MR SKELTON: Roughly how many people want an apology? John 11 used the phrase "one size fits all". One has to be 12 careful. For some people, an apology may not be what 13 they want. They may want some form of vindication or 14 punishment or simply their day in court. Roughly how 15 many people, percentage-wise, want an apology? 16 MS STOREY: I would say 50/50. Some people will feel they 17 are not getting the apology from the people who were 18 responsible at the time, so it is not worth it. Some 19 people will feel it really doesn't add anything to it, 20 it is not the perpetrator. 21 Other people have very strong opinions that they 22 need to hear it from the organisation. 23 But it is something that we raise at the beginning 24 of cases for people, and sometimes it changes throughout 25 the course of the case. It may change if the litigation</p> <p style="text-align: center;">Page 64</p>

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

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

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

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

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

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

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

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

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<p>1 prevent future deaths, and that is a statutory power he 2 or she has at the end based on the evidence heard. 3 That then has to generate a response. The coroner 4 obviously can't police the implementation of 5 the response, but a response is required and it is 6 designed to improve the future. Is there scope for that 7 in civil litigation? Can I ask you, Tracey, and then 8 I will ask the defendants what the problems might be. 9 MS STOREY: The difficulty is that so few cases actually 10 come to trial. The majority of cases are negotiated and 11 settled out of court. So we wouldn't get to that stage. 12 The way the law has developed so that we are suing 13 in vicarious liability, so the institution is stepping 14 in the shoes of the perpetrator, makes it easier to be 15 successful in a case for claimants, so it helps to bring 16 a successful action, but what it doesn't help is that we 17 don't have an inquiry into the negligence, what went 18 wrong. We don't have: what are the answers here, what 19 were the failures? We are not having that detailed 20 analysis of what led to that set of circumstances which 21 led to the abuse. Those are the things that my clients 22 really want to know and they don't get the answers in 23 the current system. 24 So I can see where you are going with that, Peter, 25 the narrative verdict, which might help them have</p> <p style="text-align: center;">Page 73</p>	<p>1 MR SCORER: Failed to remove them from harm or failed to 2 protect them in some way, so that they have suffered 3 additional abuse. Typically, those cases emerge out of 4 evidence that arises in family proceedings, and then the 5 case is referred on to the Official Solicitor, and then 6 lawyers are engaged to look at a civil claim. I think 7 the key point is that, in those cases, the failings are 8 likely to be recent and, when those cases go to trial, 9 the social workers who come in to give evidence are, in 10 fact, often the social workers who have been involved in 11 making the relevant decisions that are under 12 examination. 13 So in that type of scenario, I think actually there 14 is potentially quite a lot of scope for the kind of 15 narrative verdict or narrative -- coroner's narrative 16 that you talk of. It is more difficult in the 17 non-recent cases simply because the people involved in 18 making those mistakes in the institution may no longer 19 actually be there, and institutional practice will 20 probably have changed significantly, in any event, 21 although maybe not enough. 22 MS STOREY: I think it is also fair to say that in those 23 professional negligence cases that we run, the experts 24 that we use will see common threads and common themes, 25 but it's not entirely clear what one does with those</p> <p style="text-align: center;">Page 75</p>
<p>1 findings in -- when we are settling so many cases out of 2 court, I am not quite sure -- 3 MR SKELTON: Perhaps this is a point, Richard, you may want 4 to develop in your answer. Might it be possible to have 5 it as part of a settlement agreement, that there is 6 a report to be made to the institution and the response 7 that needs to be made? 8 MR SCORER: Yes. Tracey is right in what she said, although 9 of course -- and of course an additional problem is that 10 many abuse cases are non-recent. So the failings by the 11 institution may have happened 30 or 40 years ago and 12 things may have moved on since then. 13 There is, however, a category of abuse case where 14 I think this is potentially very relevant and 15 applicable, which is the failure-to-remove type case, 16 because many of these cases are brought on behalf of 17 claimants who are still children now. Tracey and I have 18 both been instructed by the Official Solicitor on these 19 cases. So the failings of the institution are very 20 recent. 21 MR SKELTON: Just to summarise what those cases are for 22 those that are -- so those are people where the local 23 authority has arguably failed to remove them from their 24 own family or from another place in order to safeguard 25 them?</p> <p style="text-align: center;">Page 74</p>	<p>1 problems that are identified as trends in local 2 authority safeguarding. 3 MR SCORER: But if you had a specialist court dealing with 4 these issues, we would be better able to bring those 5 sort of learnings from those cases together, and 6 actually make use of them for wider benefit. But at the 7 moment, those learnings are obviously dispersed through 8 a series of discrete pieces of civil litigation. 9 MR SKELTON: Mark, can I ask you, the NHS has a system where 10 it investigates adverse incidents or serious untoward 11 incidents with a view to learning from those incidents 12 and disseminating better practice for those locally who 13 may be involved, and indeed sometimes nationally. Do 14 local authorities do a similar thing when it comes to 15 incidents like this, where you have a learning process? 16 MR NICOLSON: Absolutely. On a number of levels this 17 happens. So we will have social workers, for example, 18 that will learn from examples that have happened 19 elsewhere. Quite often, that results in some sort 20 of best practice guidance being issued that other local 21 authorities are required to follow. 22 We also watch quite closely, in terms of litigation 23 that may be happening to other organisations, and, 24 again, working quite closely with our defendant 25 solicitors, we will often organise workshops and issue</p> <p style="text-align: center;">Page 76</p>

<p>1 guidance to local authorities around how similar 2 incidents can be avoided. So I think there is quite 3 a lot of work does actually take place. 4 In relation to recent safeguarding issues, I think 5 the point Richard made was that there's probably little 6 that we can learn or do from incidents that took place 7 decades ago, because processes have significantly moved 8 on since then. But I would say, certainly from my own 9 experience within my own organisation, there is an awful 10 lot of work that goes on at the moment to ensure that 11 safeguarding is as up to date as possible and lessons 12 are learnt from whatever source, if it is available. 13 MR SKELTON: Can I ask Carolyn about the report issue, and, 14 really, whether or not that is an appropriate form of 15 order that a judge could make or something that could be 16 agreed in a settlement process, and workable from 17 a defendant insurer perspective? 18 MS MACKENZIE: So a report in what context? 19 MR SKELTON: In the sense of "This is what's gone wrong. 20 This person was abused. This is how it happened. 21 Please will you now improve your processes or explain 22 what has happened and provide an account or a guarantee 23 that this won't happen in the future, so far as you can 24 give that". 25 MS MACKENZIE: I think, insofar as cases run to trial, and</p> <p style="text-align: center;">Page 77</p>	<p>1 have been learnt and those changes have been 2 implemented, as you say, to stop any similar incident 3 occurring again? Where would that responsibility sit? 4 I guess that to me would be a question that would need 5 to be answered. 6 MR ENRIGHT: I might have an answer. Yes, there are very 7 few cases that go to court, but there are very many 8 cases that are settled pre court and are the subject of 9 an order which is seen and approved by the court. So 10 that is your opportunity to gather information. 11 If, as I suggested earlier, there was an individual 12 of the calibre and type of an equality assessor, any 13 case involving child abuse would have to go before 14 a senior judge to be sealed, the quality assessor is 15 advised, and the court service could have a central 16 individual who draws in those. There may be significant 17 statistical lessons to be learned about different claims 18 arising from an institution from different parts of 19 the country. That person could then flag up to a judge 20 or whomever else that there is an issue here and perhaps 21 a narrative report or a request for a report that you 22 suggest could be identified. 23 MR BONEHILL: Just a question, would that be 24 a responsibility for the CQC in the care sector, for 25 example?</p> <p style="text-align: center;">Page 79</p>
<p>1 I know that in the last seven years we have had five 2 cases go to trial, so they are few and far between, 3 that's definitely a possibility. I could see the 4 benefit of doing that. 5 If I may, I wouldn't mind coming back to the point 6 of failure-to-remove cases, because we have seen some of 7 these cases that are in progress at the moment. Quite 8 often, when those cases come to us, in this case a local 9 authority has already had an inquiry, has already done 10 an investigation, and it is often off the back of that 11 and from that that the civil cases are then brought and 12 you have the benefit of that information in order to 13 progress those civil cases quickly, and so that kind of 14 analysis and inquiry around the issues there and how 15 that was allowed to happen and what steps have been 16 taken to ensure that the safeguards are improved and 17 reoccurrences are prevented have already been addressed 18 at the point at which we see the civil claims come in. 19 But back to your question, yes, I think in those 20 limited cases that do go to trial it is certainly 21 a possibility. 22 MR SKELTON: Do you have a view on that? 23 MR BONEHILL: I agree entirely with that. I guess the 24 question is, who polices the response -- whose 25 responsibility is it to make sure that those lessons</p> <p style="text-align: center;">Page 78</p>	<p>1 MR ENRIGHT: The issue was, how can you draw in -- how can 2 you know this is going on if it is going on around the 3 country? If all child abuse cases that are settled in 4 the formal type of sense have to go before a judge who 5 then has to notify a central individual or office within 6 the court service nationally, you know, lessons can be 7 drawn in from there. That's an idea that can be fleshed 8 out further. But it may go somewhere down the line of 9 achieving what you are suggesting. 10 MR NICOLSON: The other thing we have to mention to you is 11 whistleblowing. There are opportunities for individuals 12 that have concerns to use confidential reporting 13 hotlines and those concerns are then picked up and 14 investigated by the authority or by an independent 15 agency, the police or whomever, if that is more 16 appropriate. 17 I think, you know, whistleblowing is a really 18 important part of this process that allows individuals 19 to report concerns anonymously. 20 MR SKELTON: Thank you. One of the things that was raised 21 this morning was support services for victims and 22 survivors, both before they come to the civil justice 23 system, during it and, indeed, long term afterwards if 24 they require it. 25 We discussed it in the context of compensation being</p> <p style="text-align: center;">Page 80</p>

<p>1 used to pay for it. But I would like to hear a little 2 bit more about access to services generally and whether 3 you, as lawyers, have any views on that and what, 4 meaningfully, the civil justice system could provide to 5 them that it doesn't presently provide, besides 6 compensation to pay for access to those services 7 privately. Can I ask you, Alison, first? 8 MS MILLAR: I think most of my clients' experiences are very 9 patchy in terms of access to support services. Some 10 people manage to find appropriate support, other people 11 bounce around through different services, perhaps going 12 to an initial service who can't give them the time 13 commitment they need or a service that is -- often they 14 will have -- some people who instruct us have accessed 15 support but it's been the wrong type of support, for 16 example. I don't think there is any easy answer in 17 terms of support services. It is a really complex area 18 and I think much work needs to be done probably by, 19 first and foremost, the medical professions in terms of 20 identifying and training and resourcing appropriate 21 support services. But the litigation process I think 22 could work much better in that regard as well. Really, 23 I think I echo what's been said this morning about early 24 support for people engaging in litigation. It is 25 a stressful process and the earlier people can tap in to</p> <p style="text-align: center;">Page 81</p>	<p>1 the support services, and they can be ordered to provide 2 a tailored package for a survivor that will meet their 3 needs. 4 MR SKELTON: Peter and Richard I think, Peter was here this 5 morning and you, Richard, have had experience of trying 6 to ringfence support services on an item of damages 7 which can be paid for possibly early on if settlement is 8 in the offing or possibly afterwards and then provide it 9 to claimants. 10 MR ENRIGHT: And potentially have some control over that 11 ringfenced funding for counselling and support services, 12 the person themselves has some control over this pot of 13 money that is put aside by the defendant for the 14 provision of their support which would include 15 counselling, it might include housing, et cetera, and 16 then they have control over how and where it is spent, 17 so you are not just dished out what the defendant will 18 give you, you are not put in the worst of housing, given 19 the most limited of counselling, or in the most 20 unsuitable housing. That you have control over that 21 part. 22 MR LATTER: You cannot fault that logic. It is absolutely 23 the right thing. 24 My one concern, Peter, is timing. I think this 25 takes us back to the early investigation of a claim and</p> <p style="text-align: center;">Page 83</p>
<p>1 support for needs which are often very great and long 2 term, the likelihood that the litigation process will 3 have a better outcome for them and a better outcome 4 really for everybody. 5 MR SKELTON: David, that was something we heard to some 6 extent this morning. I know you have strong views on 7 support services. How could the civil justice system 8 deliver them? 9 MR ENRIGHT: If you think of it this way, people who have 10 been the victim of abuse in an institutional setting run 11 by a local authority or the Home Office previously, 12 a central government, the defendant has control of all 13 support services, so the defendant could be ordered to 14 provide as part of a settlement package appropriate 15 support services, which they control. So in terms of 16 housing and in terms of counselling. Now, counselling 17 is a huge issue for the people I represent, access to 18 counselling, access to adequate counselling. What will 19 often happen is they might be offered eight sessions or 20 whatever. It is not enough. There is one particular 21 individual I represent who can't leave his home, and 22 there are no counselling facilities available to come to 23 his home. You have to go to them. 24 The point we are saying is, the defendant often is 25 the person who controls all the purse strings, all of</p> <p style="text-align: center;">Page 82</p>	<p>1 an early admission of liability. Because if we can get 2 to a process where we can drive both sides towards 3 a more open disclosure process and we can get to that 4 admission of liability, then the whole support structure 5 opens up. 6 My concern would be, would an organisation -- 7 because it is not the insurers, at the end of the day, 8 because until there is a liability admission, that 9 organisation has got to provide that support in the 10 absence of that liability determination. 11 So the one bit I can't quite square in my mind at 12 the moment is that timing, and that worries me, in that 13 these individuals need the support early, and if we wait 14 for an admission of liability, months are wasted. So we 15 have to think of a way of trying to get that access as 16 quickly as possible within the current process. 17 MR SKELTON: Do you need an admission to provide 18 rehabilitation or support? 19 MR BONEHILL: The legislation is already there to provide 20 that, so you can provide counselling, you can provide -- 21 without admitting liability. So that facility is 22 already there. That's, you know, what we encourage our 23 policyholders to do, from exactly that point, from the 24 very early outset, to respond positively and provide 25 whatever support they can.</p> <p style="text-align: center;">Page 84</p>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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<p>1 very careful.</p> <p>2 Ultimately, a client with capacity, and that could</p> <p>3 be a very vulnerable client, if they say, "I don't want</p> <p>4 a trust, I just want my money", you have to give it to</p> <p>5 them. So you have to sort of balance these things out.</p> <p>6 MR LATTER: It strikes me that we kind of have a "one size</p> <p>7 fits all" process which you have articulated. What we</p> <p>8 should do is think about the bouquet of options that we</p> <p>9 can present to the claimant and allow him or her to make</p> <p>10 their own choices around their own circumstances in</p> <p>11 conjunction with their claimant lawyers.</p> <p>12 I think it is providing choice and providing</p> <p>13 a framework where that choice can be clearly articulated</p> <p>14 to the claimant, and trust them to make their own</p> <p>15 choices with expert advice from their legal providers</p> <p>16 and medical experts.</p> <p>17 MR SKELTON: Thank you. I think we will have to leave it</p> <p>18 there, in terms of internal discussion. I am going to</p> <p>19 ask if anyone not at the table has anything they would</p> <p>20 like to say.</p> <p>21 CORE PARTICIPANT: Karen Gray. During my CICA, my Criminal</p> <p>22 Injuries Compensation Award claim, I had varying</p> <p>23 conflicting reports, including the fact that, three</p> <p>24 years later, it is still ongoing and they are requesting</p> <p>25 repeated reports and copies of my records, which I don't</p> <p style="text-align: center;">Page 93</p>	<p>1 afraid. One of the things that survivors have always</p> <p>2 said to me is what they most want is for this not to</p> <p>3 happen again. That is the overarching reason that most</p> <p>4 survivors even come forward just to talk, is to</p> <p>5 highlight the problems, make them open in public, to</p> <p>6 make sure that this can't happen to someone else. That</p> <p>7 is their first and overriding concern.</p> <p>8 If there can be a way that can be achieved of</p> <p>9 obtaining that without going through expensive civil</p> <p>10 litigation cases, then survivors would choose it,</p> <p>11 believe me.</p> <p>12 There was a mention earlier about a reduction in</p> <p>13 payments as a quid pro quo for that. I don't see why</p> <p>14 that would be necessary, because, actually, you have</p> <p>15 already reduced their payments because they are not</p> <p>16 going through the civil litigation, so actually making</p> <p>17 more money -- or spending less money, anyway.</p> <p>18 The only other point was, Mr Latter, there have been</p> <p>19 a few times when you have said during the course of</p> <p>20 the two days that you haven't got this information</p> <p>21 because you don't have contact with clients. There is</p> <p>22 nothing to stop you contacting my organisation and many</p> <p>23 others and asking, sir. I would be happy to help you.</p> <p>24 MR LATTER: And thank you for that invitation.</p> <p>25 CORE PARTICIPANT: I'm sorry I came in late on this one, but</p> <p style="text-align: center;">Page 95</p>
<p>1 understand. But the actual process is only meant to</p> <p>2 take 12 to 18 months. Like I said, three years on.</p> <p>3 This money that they are saying I will one day</p> <p>4 eventually receive, probably, of GBP27,000 for</p> <p>5 everything I've been through, will not include anything</p> <p>6 for counselling, and that, if I want counselling, I am</p> <p>7 going to have to go through the NHS, through whom</p> <p>8 I cannot find any counselling in my local area. My last</p> <p>9 assessment for counselling with KRASACC, Kirklees Rape</p> <p>10 and Sexual Assault Counselling Centre, they advised me</p> <p>11 that my needs were too complex for them to handle and</p> <p>12 that their 20 hours in a year would not even touch the</p> <p>13 surface of my needs, and I would have to go back to the</p> <p>14 NHS, who, as I say, have nothing in my local area.</p> <p>15 When I put this to my CICA solicitor, her response</p> <p>16 was, well, okay, criminal injuries will sometimes, very</p> <p>17 rarely, sometimes, pay for private counselling. That</p> <p>18 money would be ringfenced for that specific purpose.</p> <p>19 Surely, in certain claims where the claimant has the</p> <p>20 lack of wherewithal to manage their money, it could be</p> <p>21 ringfenced for set purposes, so that it was released</p> <p>22 over the course of its needed use and could not be</p> <p>23 misappropriated? Thank you.</p> <p>24 CORE PARTICIPANT: Because we have had quite a long session,</p> <p>25 I would like to go right back to the very beginning, I'm</p> <p style="text-align: center;">Page 94</p>	<p>1 on the matter of compensation, as I said, I have got</p> <p>2 a brother. I haven't seen him for 20 years, but I do</p> <p>3 know he's an alcoholic. If you suddenly give him or</p> <p>4 somebody who is a drug addict a load of money, how long</p> <p>5 is it going to last? Now, this was mentioned by our</p> <p>6 solicitors as well earlier on. You have got to be</p> <p>7 careful. You can't just go and say to a drug addict,</p> <p>8 "There is GBP100,000", because next week they could be</p> <p>9 dead on one overdose, so if you don't mind me mentioning</p> <p>10 that. The individual needs to be looked at.</p> <p>11 MR SKELTON: Thank you very much. That concludes our</p> <p>12 session. Again, very interesting indeed. We will start</p> <p>13 promptly at 1.30. Thank you.</p> <p>14 (12.34 pm)</p> <p>15 (The short adjournment)</p> <p>16 (1.30 pm)</p> <p>17 Session 3</p> <p>18 MR SKELTON: Welcome to our penultimate seminar. This one</p> <p>19 is on reform of the civil litigation system or process.</p> <p>20 I think we have two new people to the table today. If</p> <p>21 you would like to both introduce yourselves to the</p> <p>22 panel.</p> <p>23 Introductions</p> <p>24 MR COLLINS: Yes, good afternoon. My name is Alan Collins.</p> <p>25 I am a partner at Hugh James Solicitors. I have been</p> <p style="text-align: center;">Page 96</p>

<p>1 representing victims of child abuse, or survivors of 2 child abuse, for a number of years. I have been 3 involved in litigation in the UK but also overseas and 4 a particular interest of mine is the redress scheme that 5 operated in Jersey. So that is my background. 6 MR GILLESPIE: Alastair Gillespie from Hill Dickinson. 7 I took part in one of the sessions yesterday. 8 Open discussion 9 MR SKELTON: Thank you. We have to be careful, I think, in 10 this session, not to reinvent or readdress all of 11 the things we have already discussed. The first thing 12 I really want to do is to see the degree to which we 13 have consensus about the need for reform and which areas 14 they are. 15 I would like to talk about the existing initiatives, 16 so things that are already in train; for example, 17 Ecclesiastical's guiding principles; future initiatives, 18 such as Master McCloud's initiative to produce 19 a pre-action protocol and to produce model directions; 20 and then to look finally at the kind of changes which 21 could be implemented that may be a little bit more 22 radical, changes to the whole rule system of civil 23 justice and changes to certain areas where the law might 24 need to be changed, picking up on some of the themes we 25 have heard earlier today and indeed yesterday.</p> <p style="text-align: center;">Page 97</p>	<p>1 the guidelines. 2 Fundamentally, it didn't change the way we were 3 handling claims. That wasn't the purpose of it. The 4 purpose of it really was just to explain and be open in 5 terms of what our processes and procedures are. 6 We looked at a number of areas of particular 7 interest, some of which, many of which, we have 8 discussed over the last couple of days. So the 9 appropriateness of apologies was looked at; the offer of 10 support and counselling was looked at. Those two areas 11 were looked at specifically because there was a concern 12 by our policyholders that those two areas may well 13 jeopardise the insurance position if they take action. 14 So we addressed those specifically in there to give 15 reassurance to our policyholders that they can give 16 apologies and they can offer pastoral care and 17 counselling without adversely affecting the insurance 18 position. 19 We then described what our approach was to 20 investigations. We know these are extremely sensitive 21 matters and therefore require quite a different approach 22 to be taken in the investigation process. Sensitivity 23 is key. Empathy is important as well as integrity in 24 the way we handle these matters. It is in everybody's 25 interest to settle these claims as quickly as we can.</p> <p style="text-align: center;">Page 99</p>
<p>1 The first thing is whether there is a consensus that 2 perhaps there is a lack of consistency in the way in 3 which claimants and defendants approach the civil 4 litigation process which results in longer, more costly 5 cases, and in some cases in injustice and might be 6 harmful for both parties, both claimants and defendants. 7 Does anyone think the civil justice system doesn't 8 create that problem? 9 MR COLLINS: Sounds like you have a consensus already. 10 MR SKELTON: Good. Can I ask, really, just to get the 11 discussion going, about Ecclesiastical's approach, 12 because you have created some guidelines. I would like 13 you to explain, if you would, the principal areas which 14 that has improved and whether or not you have seen 15 a change with those that you deal with? 16 MR BONEHILL: Okay. I think, just to give some context 17 around the guidelines, the purpose we did it, really, 18 was to make transparent our claims processes and 19 procedures, so we are trying to be very open and, as 20 I say, transparent in terms of the way we handle these 21 types of very sensitive claims. 22 The guidelines were devised with input from other 23 parties, so claimant and defendant lawyers, victims and 24 survivors as well as our own policyholders. So we had 25 quite a range of input into the formation of</p> <p style="text-align: center;">Page 98</p>	<p>1 Again, we have discussed that at some length in previous 2 sessions. 3 Joint medical experts was looked at and commented on 4 and our approach to joint medical experts, and 5 I commented on that in one of our previous sessions, in 6 terms of reaching out to claimant lawyers with a view to 7 trying to secure agreement to a joint expert. 8 Limitation and consent is specifically mentioned, 9 and, again, that is something I have commented on 10 already. 11 Fairness to the claims process is really important. 12 What that means is, you know, it is part of our approach 13 to claims handling, we don't deliberately put barriers 14 in the way to the victim and survivor getting access to 15 justice. That is not what our process is about. 16 MR SKELTON: What's an example of a barrier that could be -- 17 MR BONEHILL: It could be use of defences inappropriately, 18 for example. That's the sort of thing I mean there. 19 The final area, really, was around transparency to 20 settlements and the way we do it. What I mean by that 21 is, we do not use confidentiality clauses unless the 22 victim and survivor specifically asks us to. Otherwise, 23 we do not use them. 24 So that's hopefully given an overview of what the 25 guiding principles are. They are in the public domain.</p> <p style="text-align: center;">Page 100</p>

<p>1 They are on our website. 2 We have also created an email link for feedback on 3 those guidelines. What we don't want to do is create 4 these guidelines, put them on the shelf and they gather 5 dust. It is a living document. We are looking to 6 continually improve our processes and procedures. So we 7 have set up a confidential email address so anybody 8 that's experienced the claims handling process with 9 Ecclesiastical can give us feedback on that, and we take 10 that into account as part of our ongoing review of those 11 procedures. 12 MR SKELTON: To clarify, you said at the start that it 13 reflected existing practice. So all of the things you 14 have mentioned, from transparency to the attitude to 15 defences, are already in place? 16 MR BONEHILL: There is nothing new in there in terms of what 17 we did previously. It is more about being transparent. 18 MR SKELTON: How have you seen it work in practice, both 19 with your policyholders and with the claimants? 20 MR BONEHILL: I think in terms of our policyholders, it 21 gives them confidence, that's the first thing, so they 22 can respond very early on in a positive way to any 23 complaints of abuse. I think that is really important. 24 Because there are sensitivities around, you know, 25 anything they do might jeopardise the insurance</p> <p style="text-align: center;">Page 101</p>	<p>1 MR GARDEN: When you said there was a good reaction across 2 the market, do you mean the insurance market? I'm very 3 interested to know what your fellow insurers think of 4 your guidelines. Sorry, you're meant to be asking 5 questions. 6 MR SKELTON: Thank you, Peter, it is a question I was going 7 to ask, as we have the benefit of John here. 8 MR LATTER: I can answer that. The approach that David's 9 organisation has taken is almost the same as Zurich's. 10 There are slight differences. We didn't as publicly 11 publish them as Ecclesiastical did. There are a couple 12 of things that I would add that are probably in place at 13 Ecclesiastical as well, but just to go through them. 14 As I said yesterday, we have a team of designated 15 individuals that manage these claims and all claims 16 within Zurich of a child sexual abuse nature go into 17 that team. 18 We have very much focused around the training 19 element. So we make sure there is ongoing training. So 20 people's knowledge and awareness of how to manage these 21 claims is up to date. 22 We very much focus, as David mentioned, around tone 23 of our correspondence. You know, we are dealing with 24 people who need to be treated sensitively, and we 25 actually encourage our people to think about that every</p> <p style="text-align: center;">Page 103</p>
<p>1 position. Therefore, if that is the case, they are more 2 inclined not to take more positive action. 3 So it gives them the confidence to actually do the 4 right things at the right time. 5 MR SKELTON: Just to pause there, had it been a problem 6 previously, that your policyholders might take an action 7 which would effectively invalidate cover? 8 MR BONEHILL: I think there was a concern on their part that 9 it may, and, therefore, rather than taking the immediate 10 action, they would come to us seeking our advice and 11 guidance, which we gave them, but of course that takes 12 some time and it doesn't allow for that immediate 13 response that's needed. So I think that was the issue 14 there. 15 In terms of how it's been received, I think it's 16 been received well in the market. That's the feedback 17 I have had. I think we heard that yesterday from Peter 18 and claimant lawyers. 19 I think what we need to do now, that's just the 20 first stage. There is a natural progression that we 21 spoke about earlier on, and we will come on to it, is 22 potentially around pre-action protocols and trying to 23 bring the process to life and to speed up the claims 24 settlement. That will take engagement with claimant 25 lawyers, of course.</p> <p style="text-align: center;">Page 102</p>	<p>1 time they put pen to paper or they construct an email. 2 In fact, we rolled that guidance out to our panel 3 solicitors as well, so we set the bar very high around 4 how we expect our parties to correspond with claimants 5 and claimant solicitors. 6 We also have an audit process in place now that 7 specifically looks at that element of the claim. So we 8 are not looking at the pure nuts and bolts of 9 the technical, because we have always been very good at 10 that. We are looking now at making sure that our 11 practices are up to date and the tone of our 12 correspondence and the way we engage and the way that we 13 are trying to drive claims forward is appropriate in all 14 cases. So we have instigated an audit programme as 15 well. So pretty much a same, but with a new nuances. 16 MR SKELTON: I will ask Alastair in a moment to explain his 17 position from perhaps RSA's perspective, but for those 18 of you on the receiving end of contact, without wanting 19 to initiate any form of conflict or criticism, can I ask 20 you if your experience of the principles from both 21 insurers reflects the practice they have identified? 22 MR COLLINS: For my part, these principles and standards 23 I would have thought would be applicable to all injured 24 parties, but leaving that to one side. For my part, it 25 is fairly difficult to discern a change in practice</p> <p style="text-align: center;">Page 104</p>

1 because, from my perspective, the cases are such that
2 there didn't ought to be arguments anyway.
3 So I think we would need a much longer period to
4 assess whether there is actually a change in ethos on
5 the part of the defendant insurance industry when it
6 comes to treating survivors and the way that they
7 conduct the litigation or the pre-litigation process
8 towards them.
9 MR SKELTON: The way David had described it, Alan, was not
10 a change but an articulation of a change that had
11 previously been made, as I understood it. So it was
12 reflecting what is meant to be existing practice, no
13 more than that.
14 MR BONEHILL: Of course, it is not a market wording. This
15 is an Ecclesiastical guiding principle. It is the
16 principles to which we operate.
17 MR COLLINS: Sure. Don't misunderstand what I am saying.
18 I'm not criticising, far from it. I am just saying,
19 from practice, I have yet to say, "Yes, comparing 2016
20 with 2014, there has been some kind of sea change".
21 I can't see that sea change. Maybe if you ask me the
22 same question next year, I will have seen it.
23 MR GARS DEN: I echo what Alan says. I don't see a sea
24 change. I think the point is that there are a lot of
25 very good, very well-meaning insurance representatives

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1 here who are before a national panel, and what they say
2 I'm sure is true, and I believe what they say. However,
3 their attitude isn't reflective of the entire defendant
4 industry -- I hasten to call it that -- that we deal
5 with. For example, I know the gentleman here from
6 Lambeth Council the other day, and he seemed very well
7 meaning and very principled. However, that isn't
8 necessarily reflective of all the defendants we deal
9 with. I deal with Manchester City Council, for example,
10 who aren't really covered by insurance. They are
11 self-insured. There are other defendants all over the
12 country who adopt a very different approach and it is
13 quite litigious and sometimes quite insulting to
14 claimants, the things that are written in letters.
15 That's not generally true, but it sometimes happens.
16 MR SKELTON: Just to be specific. For example, one of
17 the things that was mentioned was not taking certain
18 defences in certain types of case. What you are saying
19 is, with other insurers, that isn't the case, they are
20 going to take it. Are you saying also with the tone of
21 correspondence, which may be an important thing for you
22 to be on the receiving end of, that sensitivity is not
23 a word which you would use to describe it?
24 MR GARS DEN: Exceptionally, it isn't. What I am saying is,
25 the intentions we have heard today have been new to me.

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1 I don't think they necessarily filter through to us
2 because they have to come through a lot of people, like
3 loss adjusters and solicitors and filter down across the
4 board. That's why I argue for this model litigation
5 policy that we ought to have accompanying the protocol.
6 Now, I wouldn't say that's typical. I am very glad
7 to hear it, but this is the first time I have heard it
8 today.
9 MR COLLINS: Can I make this point: Ecclesiastical, in my
10 experience, to be entirely frank, is one of the more --
11 how can I put it? -- have always adopted a more
12 professional approach, in my opinion, to these cases in
13 comparison to other insurers. That is just purely my
14 subjective, own opinion, and I suspect others would
15 share it as well.
16 As I said, I'm not criticising, but that is not the
17 point. The point is that any kind of suggestion that
18 there has been some sea change on the part of
19 defendants, whether specifically or generally, I have
20 yet to see that.
21 MR GARS DEN: There is only one example I can think of this,
22 and it is nearly 20 years ago. I once had a group
23 action against the Methodist Insurance Company and they
24 adopted a very similar approach to the one you are
25 articulating now. Whether there is a religious context

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1 to that or not, I don't know, but certainly that's the
2 only example I can think of.
3 MR GREENWOOD: For my part, EIG and BLM who represent them
4 stand out as being the most progressive insurers to deal
5 with. I can say that with certainty. It's been my
6 experience. I have just finished a three-week trial
7 backed by RSA in which every last point was taken, every
8 last point on limitation, on credibility, absolutely
9 everything was taken. I don't know whether there are
10 nuances there in terms of clients taking over
11 responsibility for pursuing it or not, I don't know, but
12 it was really dreadful to behold that trial, and it was,
13 you know, pretty disgraceful to have to be part of that
14 kind of thing in our legal system.
15 So certainly the approach of EIG, in my experience,
16 is not echoed across the board.
17 MR SKELTON: Have you had similar cases with different
18 insurers that were treated differently? So it is not
19 a case of it being a fact-specific approach litigation,
20 it is an insurance-specific approach?
21 MR GREENWOOD: I'm sorry, I can't speak for specific cases.
22 I often don't marry up an insurance company with
23 a particular defendant, so I can't really give you
24 a full answer to that.
25 MR COLLINS: You can see patterns. Well, I can see

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<p>1 patterns.</p> <p>2 MR GARDEN: I think you have maverick individuals in</p> <p>3 different organisations, definitely, because they are</p> <p>4 human beings. You could have a well-meaning insurance</p> <p>5 company and then a very litigious solicitor, or the</p> <p>6 other way around.</p> <p>7 MR SKELTON: So a lack of consistency even within the</p> <p>8 insurer and its --</p> <p>9 MR GARDEN: I think there is a lack of consistency, which</p> <p>10 is why I go back to this model litigation policy.</p> <p>11 MR SKELTON: Can I ask Alastair. You have heard what David</p> <p>12 and others have said. How would you respond?</p> <p>13 MR GILLESPIE: The case to which David's referred is</p> <p>14 a 250-claimant group action that is awaiting judgment at</p> <p>15 the moment and it wouldn't really be appropriate for me</p> <p>16 to say anything further about that.</p> <p>17 In terms of the reference to a sea change, I think</p> <p>18 it would be difficult to see a sea change over a period</p> <p>19 of one to two years in this area, in any event. The</p> <p>20 courts have been wrestling with these matters for over</p> <p>21 20 years now. I think it is fair to say that, from my</p> <p>22 perception, in the vast majority of claims they are</p> <p>23 actually treated a bit differently now to what they were</p> <p>24 at that time. We have been through some historical</p> <p>25 group actions, too, that have been selected as case</p> <p style="text-align: center;">Page 109</p>	<p>1 no.</p> <p>2 MR SKELTON: The difference might not necessarily be the</p> <p>3 approach of the law -- I think there are a couple of</p> <p>4 specific examples about the use of consent and possibly</p> <p>5 on limitation -- but more about the general approach</p> <p>6 about transparency, about treating people with</p> <p>7 sensitivity. Do you subscribe to those sorts of things?</p> <p>8 MR GILLESPIE: We do. We have examples of matters which,</p> <p>9 for example, arise from a group of convictions of</p> <p>10 a former teacher at a school, and we engage with</p> <p>11 claimant solicitors and talk to them about actually what</p> <p>12 is going to be the most effective way of meeting the</p> <p>13 requirements that the survivor or victim has and wants</p> <p>14 to achieve through their claim. It wouldn't necessarily</p> <p>15 just be a figure of compensation, it might be an</p> <p>16 expression of regret or apology or something similar,</p> <p>17 but we will work constructively with the claimant</p> <p>18 representatives to try to make sure they reach the end</p> <p>19 point they want to achieve as soon as possible.</p> <p>20 MR SKELTON: Moving on to the pre-action protocol issue, the</p> <p>21 basic position is, there isn't one at present within</p> <p>22 this field. Again, I think there is a consensus that</p> <p>23 there ought to be one. Does anyone disagree with that?</p> <p>24 Does anyone think the existing system is adequate? It</p> <p>25 should be a specialist one?</p> <p style="text-align: center;">Page 111</p>
<p>1 studies by this inquiry. Those case studies actually</p> <p>2 informed a great deal of the law with which everybody</p> <p>3 around this table now works.</p> <p>4 Apart from the group action to which David refers,</p> <p>5 in the last seven years, of 450 claims that we have</p> <p>6 resolved, we have only taken five to trial. In fact, we</p> <p>7 have only had just over 50 going to litigation. So</p> <p>8 there's approximately 90 per cent of the claims with</p> <p>9 which we deal from our experience actually come nowhere</p> <p>10 near the court, in any event, and that is as a result of</p> <p>11 us working with claimant solicitors in order to try to</p> <p>12 make sure we can resolve these claims as quickly as we</p> <p>13 can. The system is not perfect. We are happy to work</p> <p>14 with claimant lawyers and with other stakeholders to</p> <p>15 make sure a pre-action protocol delivers an even better</p> <p>16 process.</p> <p>17 MR SKELTON: Do you take a different approach to what we</p> <p>18 have heard from Ecclesiastical and indeed from Zurich</p> <p>19 and others?</p> <p>20 MR GILLESPIE: I wouldn't say materially, no. We don't. We</p> <p>21 are all working with the same law. We are all working</p> <p>22 with the same independent judiciary assessments of</p> <p>23 the merits of arguments and causation and quantum. So</p> <p>24 we are all working within the same rules. I wouldn't</p> <p>25 say the approach is necessarily materially different,</p> <p style="text-align: center;">Page 110</p>	<p>1 MR GILLESPIE: Yes. These cases deserve one.</p> <p>2 MR SKELTON: As we understand it, we have heard very</p> <p>3 recently from Master McCloud that the process has been</p> <p>4 initiated to start developing a pre-action protocol.</p> <p>5 Perhaps I will ask Paula, what kind of things would you</p> <p>6 hope to see result from that initiative in terms of the</p> <p>7 things to be included?</p> <p>8 MS JEFFERSON: I think we have touched on some of those</p> <p>9 already. What is really important is the collaborative</p> <p>10 working and sharing of information and trying to move</p> <p>11 away, where and whenever possible, from an adversarial</p> <p>12 approach towards each other. At the end of the day,</p> <p>13 whether we are a representative of an insurance company,</p> <p>14 an organisation that doesn't have insurance or a victim</p> <p>15 or survivor, we are either the legal representatives or</p> <p>16 the insurers, and this is about doing our job in a way</p> <p>17 that is sensitive and empathetic, taking the law as it</p> <p>18 stands, but being pragmatic about its application and</p> <p>19 about having discussions and about working together, and</p> <p>20 certainly, you know, Alan and I have worked together on</p> <p>21 many cases before, David and I have similarly, and there</p> <p>22 is a way in which we can be very collaborative.</p> <p>23 Yesterday, mention was made about the need for</p> <p>24 victims and survivors to have specialist legal advice,</p> <p>25 and it does concern me when we have lawyers who advise</p> <p style="text-align: center;">Page 112</p>

<p>1 clients who have never dealt with a claim of this nature 2 before, and that can be really challenging, and that is 3 something that I hope comes out of this protocol, is it 4 enables the individual who thinks, "I will advise on one 5 case", and is then, in a way, dazzled by the horror of 6 what they are seeing, which then ends up with 7 challenges, pre-action disclosure applications that 8 aren't necessary, and really doesn't help anybody. 9 MR SKELTON: So you anticipate that the non-specialist 10 lawyer may advise his client to go elsewhere? 11 MS JEFFERSON: Well, for me personally, I find it much 12 easier to be working with the likes of the people who 13 are around this table, who I know are advising their 14 clients properly and I can have a sensible conversation 15 with, than with someone who I end up having to help them 16 to understand how certain principles work. My 17 experience is that, where we have firms who are not used 18 to dealing with these claims, there is a rush to 19 litigation and matters are prolonged unnecessarily, and 20 less of a willingness to involve in some form of ADR at 21 an early stage because there is a feeling that they need 22 to go through all of the stages which one would maybe 23 deal with if you were dealing with a brain injury case, 24 that sort of thing, whereas often that's not necessary 25 here.</p> <p style="text-align: center;">Page 113</p>	<p>1 presumably, rather than the principle. 2 MR GARS DEN: There are a number of meetings organised with 3 key players, similar to a lot of people around this 4 table, and we have split it up into the various 5 different headings we are going to deal with that we 6 have talked about already and we are going to work on 7 this draft to see if we can iron out something that is 8 agreeable to all parties which hopefully will become the 9 abuse protocol. But in parallel with this committee. 10 I'm not trying to usurp, obviously, your function, 11 but just to help you to understand what process we are 12 going to be going through anyway. I think everybody is 13 aware of that, aren't they? 14 MR GILLESPIE: Yes, and the first full meetings are taking 15 place over the next two weeks as well. 16 MR GARS DEN: Yes, they are. 17 MR SKELTON: Have any of you been involved with the 18 development or implementation of pre-action protocols 19 within other areas of litigation? Industrial disease, 20 for example? 21 MR LATTER: I have some involvement under the umbrella of 22 the CJC at the moment looking at noise-induced hearing 23 loss, which is again a complex area because of the age 24 of the claims involved. We are working with claimant 25 solicitors and we have had a large degree of success in</p> <p style="text-align: center;">Page 115</p>
<p>1 MR SKELTON: The claimant representatives I presume accept 2 that their specialist expertise assists in the proper 3 resolution of these claims, by definition. 4 MR COLLINS: I would hope so. 5 MR GARS DEN: We have to deal with -- we deal with solicitors 6 acting on behalf of abusers sometimes who don't have 7 access to specialist lawyers like Paula and Alastair and 8 others, and they are enormously difficult. If they had 9 this model litigation policy that says, "This is the way 10 you do it and this is the way you behave", rather than 11 saying, "Behave", I think it would be far more likely 12 that -- you know, we will have cases against 13 inexperienced people, and that's why we need this 14 policy, really. I have got it here, the first draft of 15 it, anyway. It covers a lot of the things that are in 16 the Ecclesiastical thing. I can run through them, if 17 you like, but probably maybe now isn't -- 18 MR SKELTON: We need to touch upon a few of them. One is 19 things we discussed earlier, the early provision of 20 information by both sides. So the claimant needs to 21 know identity of defendant and things like that and 22 start to provide access to medical records and the 23 claimant, from the defendant's side, needs to have 24 access to Social Services records and the like. Really, 25 the argument is going to be about the timing of that,</p> <p style="text-align: center;">Page 114</p>	<p>1 agreeing what the steps pre action should look like and 2 those negotiations are ongoing. When you get both sides 3 willing to engage across the table, you can make 4 significant progress. 5 MR SKELTON: What about the issue of voluntary versus 6 compulsory, which is sometimes a vexed issue? 7 Pre-action protocols sometimes are routinely breached in 8 certain types of cases because, for whatever reason, the 9 defendant isn't bothered about the consequences and 10 would like to do it at its own pace but in the 11 traditional style. 12 MR COLLINS: That is a real issue and will continue to be an 13 ongoing issue, despite all the right noises being made. 14 When I start off with a case, as soon as I know who 15 the defendant is, I have a pretty shrewd idea as to who 16 the insurer might be and who the insurer's solicitors 17 might be. I will know subconsciously, "That's going to 18 be a straightforward case" and "That is not going to be 19 a straightforward case". From a survivor perspective, 20 we have to get away from that. So if we are going to 21 have protocols, and it is a no-brainer that there should 22 be, they are going to have to have teeth, because there 23 is absolutely no point in you, as an inquiry, and all 24 these very able and well-meaning people who are here 25 contributing to this exercise if we just end up with</p> <p style="text-align: center;">Page 116</p>

<p>1 a very grand piece of documentation that actually isn't 2 really going to change very much for survivors. 3 My own personal view, we have to go a lot further, 4 but maybe we can look at that later if we have time. 5 But protocols have to have teeth. Whilst I'm not an 6 expert on what exactly the various Australian states are 7 doing at the moment, it is quite clear that conduct is 8 changing and it is coming down -- being driven down from 9 the top to make sure that it happens and that there are 10 teeth. I think it would pay everybody to look to see 11 what is happening, for example, in New South Wales and 12 Victoria, so that where there are protocols in these 13 types of case and they are going to have an effect and 14 if people, whether it is the claimant or the defendant, 15 do not comply, there will be sanctions. That's the only 16 way you are going to get behaviours to change. 17 MR SKELTON: What sort of sanctions might one realistically 18 put in place? Costs? 19 MR COLLINS: It could be costs. It could also be parts of 20 a claim or parts of a defence. Because it is important, 21 if you are going to have a protocol that works, that 22 claimant and defendant abides by it. 23 So you can build into that the appropriate default 24 sanctions if people do not deliver. 25 MR GARSDEN: There is only one flaw in this protocol, in</p> <p style="text-align: center;">Page 117</p>	<p>1 between -- nobody wants to be engaged in a traditional 2 litigation in which every point is taken and fought very 3 adversarially in court. But there is a tension between 4 dealing with cases quickly and speedily and achieving an 5 early resolution in terms of a compensation settlement 6 and what the claimant may actually want to achieve by 7 the process. 8 I think one of the features of a pre-action 9 protocol, it is an opportunity to have an early 10 evaluation of what the claimant actually wants to get 11 out of this, you know, which may be a much more creative 12 and diverse range of remedies, ranging from an 13 acknowledgement, an apology, perhaps a meeting with the 14 defendant, particularly if the defendant is perhaps 15 a former corporate parent, can they offer things in 16 terms of ongoing support, not in a financial way but in 17 other ways, that would be meaningful for that claimant. 18 I think that there has to be -- there is a tension 19 between those two objectives, really, and it is making 20 sure that the process, whilst it doesn't involve lots of 21 money being spent on attritional litigation, also 22 delivers actually what the claimant wants and doesn't go 23 at too fast a speed for people who are very traumatised. 24 MR SKELTON: The general view in the last session I thought 25 was a lot of those things can be delivered in the very</p> <p style="text-align: center;">Page 119</p>
<p>1 this model litigation policy, and that is that it is 2 aimed at reducing stress and aggravation for the 3 claimant. However, the claimant often wants his right 4 to be heard, right to speak his truth, and to be 5 listened to and believed. If these protocols go 6 through, that defeats that object. 7 I only say that because in a recent email I got from 8 Master McCloud, she was advancing a very, very 9 innovative process whereby there is the right for the 10 claimant in the court process, who doesn't want 11 compensation but wants to be heard, to give evidence at 12 a hearing without any damages being the outcome. 13 I thought that was a very, very clever and innovative 14 thought. Whether there are any legs in that or not, 15 I don't know. But obviously it is the truth project, if 16 you like, that IICSA have, which is a marvellous and 17 very, very successful thing. Just having an equivalent 18 in the court process where lawyers can help them through 19 a hearing and the outcome is not paying them money, 20 which may be offensive to them, but, "Have you been 21 abused?", and a finding of fact. "Yes, you have been 22 abused", and, what's more, the lawyers fees will be paid 23 by those who cause the problem in the conventional way. 24 At least I think that is the proposal. 25 MS MILLAR: I wanted to pick up on that. There is a tension</p> <p style="text-align: center;">Page 118</p>	<p>1 early stages by a dialogue and communication -- I think 2 that was the general view -- but can sometimes be more 3 difficult to deliver as one gets further in and 4 entrenched. Is that fair? 5 MR GREENWOOD: Definitely. That's my experience. 6 MR SKELTON: Can I just go back to the point now, I wanted 7 to get a defendant view on the "should protocols have 8 teeth" point. Does that concern you, that there could 9 be a costs sanction, or is that -- 10 MR BONEHILL: It doesn't concern me at all, if I'm quite 11 honest with you. I think a pre-action protocol is 12 exactly what the system requires. My only concern would 13 be the time it would take to put that in place, how long 14 will that take to put in place, and, in advance of that, 15 you know, could we -- and there is no reason why we 16 couldn't -- have a voluntary agreement for like-minded 17 companies? Now, I realise not everybody would sign up 18 to that, but if you have got like-minded companies in 19 a room, you create the pre-action protocol, and some of 20 the work is already commenced, which is great to see, we 21 could implement that fairly quickly and then the inquiry 22 could actually look at what works well, what doesn't 23 work well and why it doesn't work well and use that for 24 lessons for the longer term. 25 So I'm fully supportive.</p> <p style="text-align: center;">Page 120</p>

<p>1 MR SKELTON: Alastair, do you have a view on that? 2 MR GILLESPIE: I endorse what David says in that respect. 3 It is, I suspect, good for the inquiry to hear that work 4 is already being undertaken collaboratively and 5 voluntarily by both sides of the industry, for want of 6 a better word, in relation to trying to make sure that 7 we deal with these matters as effectively as we can in 8 the interests of the survivor or victim who is right at 9 the heart of it. So hopefully something can be achieved 10 sooner rather than later in that respect. 11 MR LATTER: I absolutely agree. The only thought I have is, 12 sometimes -- if you look at the motor model, where it's 13 driven for a portal process for claims of less than 14 GBP25,000, not that these will be, there is a process 15 that sits around an admission of liability, which is 16 very, very quick, which is good in motor. My only 17 question, and it would need to be worked through with 18 both sides around the table, is, sometimes getting to 19 the evidence can be quite time consuming, so we just 20 need to think about how much time we would allow each 21 side to respond to the allegation -- or the defendants 22 to respond in cases where evidence is difficult to find 23 and whether we could have ongoing conversations about 24 that, or it would be a guillotine date and then, if you 25 are outside of that, there will be cost sanctions.</p> <p style="text-align: center;">Page 121</p>	<p>1 MR SKELTON: So it's, in theory, a form of sanction, but 2 doesn't actually apply in practice. 3 MR COLLINS: Because there are no teeth. It is -- current 4 practice directions on ADR and not complying with ADR in 5 my opinion, it is toothless. 6 MR GARDEN: It is a standard clause in our letter of claim 7 at the end, and nobody has ever taken it up. It has 8 been going for a few years. In fact it's been rejected 9 by some of the defendants. Nobody around this table. 10 MR GILLESPIE: It's also become a standard part of many 11 court orders that the parties are under an abrogation to 12 consider ADR and that a statement has to be provided on 13 a without prejudice basis if there is a good reason from 14 the defendant perspective as to why they won't engage in 15 ADR. Generally, what we find is that, where we don't 16 actually feel that we can engage in ADR at a particular 17 stage, it is usually because it is too early in the 18 process and we haven't got the information that we would 19 need in order to actually decide the appropriate 20 settlement value of the claim. 21 Where JSMs in particular work well is that both 22 sides work collaboratively and supply themselves with 23 sufficient information in advance of that meeting. That 24 actually can be a very effective way indeed of resolving 25 claims.</p> <p style="text-align: center;">Page 123</p>
<p>1 We don't live in a perfect world. Sometimes it is 2 difficult for organisations to find witnesses, find 3 evidence. We do need to speed that up. I just don't 4 know how practical that is in all cases. But certainly 5 for the majority we can do a lot of good. 6 MR GARDEN: The period of time in the protocol for you to 7 investigate is six months, which I thought was quite 8 generous. 9 MR LATTER: Peter, I haven't seen that. Apologies. 10 MR GARDEN: I'm just reassuring you. 11 MR SKELTON: That's a few months longer than might be 12 conventional in personal injury. 13 MR LATTER: Conventionally, three months. 14 MR GARDEN: I can share this with you. 15 MR SKELTON: In terms of the cost sanctions, in theory, 16 there are cost sanctions, for example, for not agreeing 17 to do ADR without a proper excuse. Do any of you have 18 experience of those cost sanctions actually being 19 enforced against a party that has been recalcitrant? 20 MR COLLINS: Never happened, in my experience. 21 MR GARDEN: No. 22 MR COLLINS: Not in these cases anyway. 23 MS MILLAR: Obviously, it is a problem, because most cases 24 settle. So you may have failures but they end up 25 getting then rolled up into a settlement.</p> <p style="text-align: center;">Page 122</p>	<p>1 MR SKELTON: I don't, again, want to go over the ground we 2 have already covered very helpfully in the earlier 3 sessions, but there will be cases that will inevitably 4 end up in court because, for whatever reason, the case 5 needs to be fought on the grounds that perhaps the 6 events didn't happen from the defendant's perspective. 7 How can that process, that litigation, the full-blown 8 litigation process, be improved? One example might be 9 specialist judges, which we have touched upon earlier. 10 Does anyone have a view? I know, Peter, you have 11 expressed a view previously. David, do you have a view 12 on whether specialist judges will create consistency of 13 procedure and result? 14 MR GREENWOOD: I think there is -- someone mentioned earlier 15 that there is a tendency or a worry that specialist 16 judges would become burned out, so I don't think it is 17 a good idea to have specialist judges working all the 18 time on these cases. 19 Improving the actual trial process will depend a lot 20 on what comes out of IICSA and what comes out of this 21 pre-action protocol and how we are able to work together 22 collaboratively. 23 For instance, if, you know, limitation as a factor 24 is taken off the table, then we won't have trials of 25 issues of the reasons why someone didn't come forward</p> <p style="text-align: center;">Page 124</p>

<p>1 for so long and we will be down to the bare facts of, 2 did it happen or didn't it? That will narrow down a lot 3 of the medical evidence that has to be trawled through 4 as well. 5 So the whole process can be much simpler. 6 I did, pre Hoare days, a series of trials as test 7 cases, again, back in the early -- I think it was 8 2003/2004, in which we assumed on a hypothetical basis 9 that the abuse happened, and all we were doing then was 10 testing, you know, why the person didn't come forward. 11 I suppose if you can strip out a big factor in the 12 case, such as limitation, then it narrows the whole 13 thing down and makes it slightly more palatable for the 14 claimants, but, honestly, my personal opinion is that 15 I wouldn't want anyone to go through the trial process, 16 I wouldn't want anyone to have to go through this 17 adversarial process, and a more inquisitorial process, 18 perhaps done by a panel of experts or a judge, is 19 probably the best way. We will come to that at 20 a different meeting that I think I'm invited to when we 21 speak about an alternative system. I don't advocate the 22 civil justice system as we have it at the moment, 23 I would like to see something different. 24 MR SKELTON: We will come back to that. We'll also come 25 back, I think, in a moment, to the limitation reform.</p> <p style="text-align: center;">Page 125</p>	<p>1 MR SKELTON: What are the kind of issues that routinely come 2 up. Experts might be one, presumably? 3 MR COLLINS: It can be arguments over disclosure, it can be 4 arguments over experts, it can be over limitation 5 issues, should limitation be dealt with, you know, as 6 a preliminary issue, we still see that being raised. 7 Yeah, it's a product of the adversarial system, parties 8 positioning themselves in order to gain the maximum 9 advantage, or potential maximum advantage, for their 10 respective client. 11 MR GARDSEN: We had an argument as to whether one of our 12 claimants should be forced to see the defendant's 13 expert. I'm ashamed to say that it was decided he 14 should be forced to do so. But that's one example. 15 MR SKELTON: Some of these things will be amenable to 16 streamlining on model directions and possibly training 17 of the judges. Others will always be determined on the 18 facts of the individual case. 19 MR GARDSEN: Yes. 20 MR COLLINS: All the time we have an adversarial system, 21 that tension is going to be there, that tension to 22 position. 23 MR SKELTON: Does anyone have experience in trial of ground 24 rules hearings and then an agreed approach between the 25 parties to the cross-examination of witnesses?</p> <p style="text-align: center;">Page 127</p>
<p>1 Because that is a radical change, potentially. I would 2 like to stay with the litigation process at the moment 3 and views on what could be improved. 4 MR GARDSEN: In terms of training, there are so few cases 5 that actually end up at trial that I think it is not the 6 judges that need the training but the district judges, 7 who routinely deal with interlocutory applications and 8 are far more involved in the abuse protocol thing we are 9 talking about. I think there is a need for specialist 10 district judges to be allocated, as there is obviously 11 at the moment at the RCJ with Master McCloud taking an 12 initiative because she has a lot of these cases. We 13 have a specialist judge, or two specialist judges, in 14 Manchester, but I'm not sure there are specialist judges 15 at every district registry, but there should be, and 16 there should be training for them about the subject 17 matter of abuse and how it affects people and, you know, 18 a more broad understanding of how claimants feel and 19 what it is like to go through the process and so on and 20 so forth. I know a former president of our association, 21 Lee Moore, is a specialist in this area and I know is 22 very keen to engage judges and help them with that. 23 MR SKELTON: How many procedural fights are there on the way 24 to trial in these sorts of cases? 25 MR GARDSEN: A lot.</p> <p style="text-align: center;">Page 126</p>	<p>1 MR COLLINS: Not in a civil context. 2 MR SKELTON: It is an initiative that's come through in the 3 criminal context but hasn't yet found its way into the 4 civil courts? 5 MR GARDSEN: Correct. But there is this paper that I think 6 David McClenaghan has prepared in partnership with the 7 Advocacy Project to roll out special measures in the 8 civil courts. 9 MR SKELTON: I do have experience of it myself but I don't 10 want to give evidence at this seminar. I think the 11 concern was -- but if you don't have the experience, you 12 won't be able to answer it -- that, actually, you can 13 disempower the advocate from asking difficult questions 14 by ground rules which effectively allow an easy ride for 15 claimants. I wonder if anyone has a view on that? 16 MR GILLESPIE: Certainly from our perspective as I mentioned 17 yesterday in the session in which I was involved, it is 18 actually very rare, from our experience, that a claimant 19 is actually cross-examined about the abuse itself, 20 because you would need the abuser and evidence from the 21 abuser in order to actually advance that case. 22 I suspect where it might actually arise as more of 23 a difficulty for the survivor or victim is where, for 24 example, you have the abuser in the proceedings as 25 a litigant in person, for example, and that's probably</p> <p style="text-align: center;">Page 128</p>

<p>1 a more acute situation where ground rules might need to 2 be applied. 3 MR SKELTON: What about the issue, though, that may be 4 litigated, which is about limitation, which is where 5 claimants say, "I was examined on why I haven't managed 6 to come forward sooner and why it's taken me a time to 7 articulate these problems and initiate a claim". 8 Presumably that is something that does get litigated? 9 MR GILLESPIE: Yes, limitation does get litigated but 10 actually not as often as I think, in our experience, as 11 you might expect. As I say, we have only actually taken 12 five matters to trial out of 450 in the last seven 13 years, and limitation is only a live issue in two of 14 them. 15 MR SKELTON: What were the live issues in the others, if you 16 can say? 17 MR GILLESPIE: One was vicarious liability, one was 18 credibility and the other was consent. 19 MR SKELTON: Thank you. Changes to the law more generally, 20 so beyond the procedural changes we talked about. 21 Limitation has clearly come up, it was the subject of 22 a whole session yesterday. Can it, should it be 23 implemented in the context of these claims, from the 24 claimants' perspective, Peter? 25 MR GARS DEN: First of all, I know physical and emotional</p> <p style="text-align: center;">Page 129</p>	<p>1 being recommended and what, if anything, comes in its 2 place. 3 The first point that I make is, a whole series of 4 Commonwealth jurisdictions that have modelled their own 5 limitation laws on our limitation laws are making 6 radical departures, whether it is Nova Scotia, that way, 7 or New South Wales, that way, they have, through their 8 legislatures, abandoned limitation for sexual abuse 9 cases. It would be worth reading the papers that the 10 state governments have published explaining why, and why 11 that policy consideration demands that limitation be 12 abolished for sexual abuse cases. 13 They have all gone about it in a slightly different 14 way, and one of the Australian states I believe has 15 allowed a sort of default position, where it could be 16 argued that if someone does bring a case out of time, so 17 to speak, there could be an abuse of process argument. 18 This is what used to occur 20-odd years ago in the 19 criminal context in this country. Judges would 20 routinely be horrified at seeing in their courtroom what 21 were considered to be cases from the '50s and '60s and 22 so on and just chuck them out as an abuse of process. 23 But in the 1990s, you did see a sea change amongst the 24 criminal bench because they realised the world had 25 changed and we know a lot more.</p> <p style="text-align: center;">Page 131</p>
<p>1 abuse isn't the subject of this inquiry, but because of 2 the way the law is, we now can't really bring physical 3 and emotional abuse cases out of time. But I appreciate 4 there is a flaw in the law of limitation which, if you 5 are amending it, you have to deal with that as well. 6 The law doesn't recognise the ignorance of 7 the claimant enough, so, in other words, the way in 8 which the claimant feels and the claimant behaves 9 subjectively cannot be taken into account because of 10 the state of the law because it is an objective test. 11 In my view, there should either be an abolition of 12 limitation in sexual abuse cases or, if that is going to 13 introduce a vacuum and make insurers fight cases on 14 different points all the time -- I mean, that would be 15 my favoured approach. Alternatively, this requirement 16 that limitation is only used sparingly and only run 17 sparingly, for the reasons that it will doubly punish 18 the claimant for not coming forward because he's ashamed 19 and doesn't want to talk about it, and that's insulting. 20 MR SKELTON: Alan, if limitation were removed, is there an 21 unwelcome consequence potentially of a new defence 22 coming up? 23 MR COLLINS: Potentially, and that is why there is 24 a recommendation to abolish limitation for sexual abuse 25 cases. Great care needs to be taken as to why it's</p> <p style="text-align: center;">Page 130</p>	<p>1 So you don't see those abuse arguments anymore. 2 From my own personal view, limitation of these cases 3 is an arcane piece of legislation from another era. We 4 know a lot more about sexual abuse, why it happens and 5 what the consequences are, to determine where justice 6 should fit without having to point to a piece of 7 legislation and look at section 33 to see whether the 8 claimant fits the criteria to enable limitation to be 9 disapplied. Do we really need that in the 21st century? 10 I don't think so. I think all parties, and in 11 particular the judges, have got the wisdom, the 12 background, the insight to arrive at a fair decision 13 without limitation. 14 We are going to keep to an adversarial system. 15 Either the case is made out or it isn't. Either it 16 happened and that defendant is responsible or he or she 17 is not. That is what it comes down to. 18 You will see that if you look at what's happened in 19 Canada and Australia, and the bulk of them have made it 20 quite clear what the law now is. We would be harking 21 back to another age if we don't follow suit. The world 22 has moved on from the 1930s and the 1939 Limitation Act 23 and subsequent fiddling around with the Act over the 24 years. We have moved on. 25 MR GARS DEN: I have an analysis of the limitation rules in</p> <p style="text-align: center;">Page 132</p>

<p>1 all these different states, because I had proposed 2 a debate on the abolition of limitation at the last ACAL 3 conference. So I have done an analysis of it. 4 MR SKELTON: Thank you. That would be very helpful. Can 5 I just get the defendants' perspective? What we heard 6 during the discussion of the law of limitation, or the 7 defence of limitation, was that, generally speaking, you 8 don't always take it, and if you do, it doesn't always 9 last all the way through the litigation because it is 10 something you may put down initially as marker but, on 11 analysis, it is not a point you are going to pursue. 12 Alastair said a short while ago, in fact at trial you 13 very rarely see it. 14 MR GILLESPIE: Very rarely indeed. 15 MR SKELTON: Should you be afraid of limitation being 16 abolished in those circumstances? 17 MR GILLESPIE: As Alan said, it is a matter of finding out 18 whether it happened and who was responsible. But we are 19 simply looking for a fair process through which that can 20 be established. The point is taken from our experience 21 only where we consider that the circumstances are such 22 that, actually, those decisions can't be reached fairly, 23 and that's ultimately the approach that we adopt. 24 MR SKELTON: If fairness is ultimately the problem, do any 25 of the claimant lawyers disagree that fairness has to be</p> <p style="text-align: center;">Page 133</p>	<p>1 abuser burnt all the documents in the children's home 2 and there is nothing left. 3 MS JEFFERSON: It is difficult when -- some of the hardest 4 cases are where there are allegations that are made 5 against someone who is dead and there is one person 6 making those allegations, and needless to say, in any 7 documentation that existed relevant to the organisation 8 and the victim and the employee or the individual who 9 was akin to employment, there is usually no reference to 10 help you either way as to whether or not what is said 11 has occurred. 12 Then, on the one hand, you may have the family of 13 the deceased saying, "You can't possibly believe what is 14 being said". Equally, you have the victim who has come 15 forward, often after many years of delay. These are the 16 really challenging cases, where you are looking at what 17 is the fairness to all. At the end of the day, there 18 probably isn't a way that you can find fairness for 19 everyone that is involved. 20 But I think -- I mean, limitation generally, as has 21 been said, is used very sparingly. 22 I think in the proposed protocol, the first draft 23 that's now been selected, in the letter of response 24 would be the appropriate time for a defendant to say 25 categorically, "We are going to run an argument about</p> <p style="text-align: center;">Page 135</p>
<p>1 a factor in any judicial assessment? 2 MR GARSDEN: No. 3 MR SKELTON: It doesn't? 4 MR GARSDEN: No, I agree, it has to be, sorry. It has to be 5 fair. It is often said in opposition to an argument on 6 limitation, well, if the abuser was alive and was here, 7 what would he say? He would say, "I didn't know this 8 person and it didn't happen". There wouldn't be 9 a sophisticated argument that he is prevented from 10 making in opposition, particularly if there is 11 a criminal conviction at some time or other. 12 I appreciate it probably wouldn't be taken if there is 13 a criminal conviction, but the disadvantage of -- the 14 advantage of limitation is dispelled by the lack of 15 unfairness even if the abuser is there. 16 MR SKELTON: What residual unfairness might you identify in 17 historic cases, if you were trying to look from the 18 defendant's perspective? 19 MR GARSDEN: I would be saying, particularly in 20 a failure-to-care case, you know, "The social workers 21 aren't here, the documents have gone, so how can we 22 determine whether they have been negligent or not?" And 23 I think that is probably a fair point. I would be 24 saying, the witness who was a vital witness in this case 25 has died partway through the trial. I could say the</p> <p style="text-align: center;">Page 134</p>	<p>1 limitation" and why that may be, or to make it entirely 2 clear. From what we said yesterday, there are concerns 3 where people believe that actually limitation is being 4 used as a tactical reason, and so I think in what is 5 stated it should be quite clear whether or not 6 limitation is an issue. 7 MR SKELTON: Would you be content for it to be reduced to 8 the issue of, can this trial fairly take place at this 9 time? Is that the fundamental issue which needs 10 preserving, rather than limitation in its broader sense, 11 which encompasses all sorts of other things, for 12 example, all the section 33 Limitation Act criteria? 13 MS JEFFERSON: In reality, that is the question that is 14 being asked when you are looking at an individual case. 15 MR GREENWOOD: It sounds like limitation in a different 16 guise to ask that question, if you ask me. 17 MR SKELTON: The reason I ask it is that fairness is 18 inherent to a limitation assessment, but it's not the be 19 all and the end all. There are other aspects of 20 limitation. I'm wondering whether or not you can 21 preserve fairness while getting rid of some of the -- 22 MS MILLAR: The issue is, it is fairness in the sense -- the 23 claimant -- under the current system, the claimant has 24 to discharge the burden of proof. So these issues about 25 fairness and proving the case and whether it is possible</p> <p style="text-align: center;">Page 136</p>

1 for a judge to reach a determination on whether it
 2 happened, I think the fairness of the trial and the
 3 actual burden of proof may collapse into the same thing,
 4 really. I think the issue really is looking at the
 5 other issues that are encompassed at the moment in
 6 fairness, in terms of the reasons for the delay and
 7 whether it is overall fair for a trial to take place
 8 now, these more nebulous issues which, even if they are
 9 not taken through to trial, if they are raised, as they
 10 often are, by the defendant, add enormously to the costs
 11 and the trauma of dealing with the case for the
 12 claimant.
 13 MR GARS DEN: I think you have got to factor in the effect on
 14 the claimant of all of this. He is not even allowed to
 15 have a hearing, he is being denied his right to be heard
 16 and he is being denied his right to be believed. That
 17 is fundamentally damaging to the psychology of your
 18 typical claimant. You mustn't lose sight of that.
 19 MR LAT TER: There is a reverse to that. If a trial is
 20 allowed to proceed on very thin evidence that, you know,
 21 may have not been allowed to proceed because of
 22 limitation, what satisfaction is it to put a claimant
 23 through that process and then basically be told by the
 24 court that you're not believed?
 25 I am consistent in my view here that, you know,

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1 limitation, removing it, does have attractions for
 2 survivors, but I just caution what will come in its
 3 place and the uncertainty and the delay that may arise
 4 out of satellite litigation, and as it is used in a very
 5 small number of cases, I think we can work with
 6 limitation and move forward. I just am concerned about
 7 what will come in its stead.
 8 MR GILLESPIE: I'm concerned to point out as well that
 9 simply running a defence of limitation is not an
 10 assertion that a survivor or victim is not telling the
 11 truth. We look at the picture more widely than that.
 12 The question is, can a fair trial take place? That is
 13 not just in relation to whether the abuse happened or
 14 not, but actually as to what an appropriate level of
 15 compensation might be as well.
 16 If, because of the lapse of time, it actually is not
 17 practically feasible to establish what that level of
 18 compensation would be, then that is inherently an
 19 example of why a fair trial can't take place.
 20 For example, if somebody claims that their education
 21 was somehow harmed as a result of the fact that they
 22 were assaulted whilst at a school, if all the education
 23 records have gone, if all their subsequent employment
 24 records have gone, if all their medical records are
 25 incomplete, then the court is not able to build an

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1 appropriate picture to enable them to assess the claim
 2 properly because of the delay that's occurred, and
 3 therefore a fair hearing isn't possible. But it is not
 4 to suggest that a survivor or victim is not telling the
 5 truth.
 6 MR COLLINS: May I make an important point? The
 7 Crown Courts cope, and where the burden is even higher
 8 and often people's liberty is at stake. Juries are
 9 entrusted with making findings of guilt or otherwise.
 10 Now, if the Crown Court can cope without
 11 a Limitation Act, I do not see why the civil system
 12 cannot cope -- why it needs a Limitation Act. It comes
 13 down to sheer -- again, staying in an adversarial
 14 system, it comes down to, is the case made out? You
 15 don't need to hide behind a Limitation Act or
 16 a substitute Limitation Act or something dressed up as
 17 something else, but is a Limitation Act. I think the
 18 inquiry would benefit from listening to some members of
 19 the judiciary who try these cases in the criminal courts
 20 and understand how they deal with these issues and maybe
 21 hear from some of the practitioners at the Bar who
 22 specialise, both from the prosecution perspective and
 23 the defendant perspective. There is a wealth of
 24 expertise out there and they will more than amply, I'm
 25 sure, be able to explain to you how they cope.

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1 Of course, we are seeing, more or less on a weekly
 2 basis, are we not, the criminal courts dealing with
 3 offences from 30, 40 years ago, where I doubt if there
 4 is a single shred of paper, teachers, social workers,
 5 all sorts of different people are coming before the
 6 criminal courts, often people in their 80s, and even
 7 their 90s, being tried in respect of offences that were
 8 committed decades ago. Now, if the Crown Court can cope
 9 with that and a jury can cope with that, why can't we?
 10 MR SKELTON: A lot of very useful suggestions there.
 11 I think there is quite a serious debate to be had about
 12 comparing it with the criminal justice system and
 13 probably not one for today, unless there is a burning
 14 point to be made.
 15 MS JEFFERSON: What I would say is, one key difference is
 16 that the criminal court is hearing from the individual
 17 who was accused. The point that I was making was around
 18 those challenging cases where that person is dead or, as
 19 we have seen in high-profile circumstances, where they
 20 are no longer in a fit state to give that evidence.
 21 I think -- I take your points, Alan, but that doesn't
 22 answer that difficulty.
 23 MR COLLINS: But of course, in criminal cases, very often
 24 the abuser or alleged abuser doesn't give evidence.
 25 Sometimes the defence is simply, "You prove it. I'm

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<p>1 going to sit here with my arms folded. You prove it". 2 Again, you know, it comes back to the point, we are in 3 2016, not 1816. 4 MR SKELTON: Thank you. Can I ask about the duty of 5 candour. Some of you may be aware that it's become 6 a key issue in the healthcare context. It was 7 investigated by Sir Robert Francis in the 8 Francis Inquiry and found its way into legislation 9 within the health service. 10 Obviously there are clear differences in the 11 operation of the health service in other areas of life. 12 There is a record keeping aspect. There were a lot of 13 professionals involved all the way through and the cases 14 are more recent. But it appears to have been a policy 15 which has been accepted by the health service. Its 16 implementation is still being rolled out. It is 17 imperfect. Could it work in this context? 18 MR LATTE: I have looked at elements of it. I printed some 19 off for the purposes of the inquiry. Actually, when you 20 look at it, it ties right back to the pre-action 21 protocol in a lot of ways. If you read some of 22 the things: 23 "In reality, candour is all about sharing accurate 24 information with patients or victims and should be 25 encouraged. The facts are the facts, and staff should</p> <p style="text-align: center;">Page 141</p>	<p>1 MR SKELTON: From the claimants' perspective, do you think 2 it would make any difference? There is a tension that 3 litigation is going to maybe be run by an insurer client 4 and therefore -- 5 MR GREENWOOD: I think an institution has to be really 6 careful in its interactions with claimants or people who 7 complain about their treatment at the hands of 8 the people in that institution. Because if they send 9 off the wrong signals, then that person may decide, 10 "Well, I'm not going to get anywhere with this 11 institution. It is pointless talking to them", and they 12 are scared to do anything about it and never see the 13 light of day again. So the institution has got to be 14 careful. As David says, I think at the right time, 15 wrapped up within the protocol, is probably a good way 16 to do it. It runs alongside an apology for me, I think. 17 MR GARSDEN: I have to say -- this is anecdotal -- we have 18 done a lot of cases against Manchester City Council, and 19 I think there is an element, when dealing with them -- 20 because I'm dealing with the actual institution 21 themselves, and their clients are the directors of 22 Social Services -- there is very much a willingness to 23 apologise and a shame and a guilt about what happened 24 that disappears when you deal with the filtration of 25 insurance companies. That's not meant to be critical,</p> <p style="text-align: center;">Page 143</p>
<p>1 be encouraged and supported to help victims understand 2 what has happened to them." 3 It goes on to say: 4 "Apologies are fine to make, but it can be more 5 damaging to a relationship with the victim to speculate 6 inaccurately than to investigate and find the facts and 7 then to provide the extra information." 8 I think a lot of what we have been saying over the 9 last few days is actually contained within the candour 10 that you are talking about. I think you can take 11 extracts of that and certainly weave it into the 12 pre-action protocol at the various stages. I think it 13 is a good starting place. Not perfect, as you say, but 14 a good starting place. 15 MR SKELTON: Do others agree with that? 16 MR BONEHILL: I just wonder whether it is the role of 17 insurance companies in this area or is it actually the 18 obligation of the institution themselves to admit 19 responsibility, to make apologies, et cetera, et cetera? 20 It's just the role that insurance companies play in it 21 that I am a little uncertain about. I mean, listening 22 to that, then it is absolutely what we weave into 23 protocols, but can we then enforce that? Can we make it 24 happen? That would be my question, I think. I don't 25 know the answer to that, incidentally.</p> <p style="text-align: center;">Page 142</p>	<p>1 but it amplifies exactly what you are saying, and that's 2 why, anecdotally, I have had a lot more success with 3 apologies and candour when dealing with the defendant 4 themselves, who aren't insured, than dealing with 5 insurers for other institutions. Anecdotal evidence. 6 MR COLLINS: It is an interesting concept. I have had cases 7 recently where local authorities are genuinely trying to 8 do the right thing. This is before solicitors become 9 involved, and they have expressed regret or remorse to 10 the survivor. The survivor has misunderstood what they 11 have been told, because they think they have actually 12 received an apology, when actually, when you look at 13 what's been written, it isn't an apology. 14 So, you know, that comes as a bit of a blow when 15 they discover that it wasn't an apology. 16 They have also -- there are examples of where they 17 believe they have received an admission of liability and 18 I have had to explain, "Well, actually, that's not what 19 this letter says". So there is a risk that candour, if 20 it is not exercised as it should be, that you could be 21 inflicting more pain on the survivor. So a great deal 22 of care needs to be taken there. As a concept, yes, and 23 I believe, in my own opinion, that it should extend to 24 all of those involved in working with survivors -- the 25 police, the courts -- because there are often issues</p> <p style="text-align: center;">Page 144</p>

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

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

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

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1 If we are going to go down that route, and I think
 2 it is something really worth exploring, there has to be
 3 a measure of the value of the claim other than, you
 4 know, the pounds and pence of the outcome.
 5 MR GARDSEN: I think you'd probably get Legal Aid for that
 6 as well.
 7 MR COLLINS: You might be interested in talking to the
 8 judiciary at the Supreme Court about this because, where
 9 I have had judgments handed down, some judges have gone
 10 out of their way to make the point that, having that
 11 declaration that you have been abused is an important
 12 part of why that particular claimant came to court. So
 13 some judges are very alive to what you are thinking and
 14 put themselves out to make that kind of declaration.
 15 I think it is important, and it is obviously something
 16 of interest to certain members of the judiciary.
 17 MR GARDSEN: It was Master McCloud that raised this in an
 18 email as being an addendum to these directions. So it
 19 is probably more in her mind than it is in mine.
 20 MR FRANK: Thank you. We can, I am sure, take more evidence
 21 about that in due course in different ways. I was just
 22 interested to see whether you actually had any
 23 experience of it, but maybe not. Thank you very much.
 24 MR SKELTON: Thank you very much. We are very much on time.
 25 (2.48 pm)

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<p>1 (A short break) 2 (3.11 pm) 3 Session 4 4 Opening comments by Facilitator 5 MR SKELTON: Thank you. Our final seminar of this session 6 of seminars is on redress schemes. It is a bold topic, 7 a proposal for radical change to replacing the civil 8 justice system with something else. This is an 9 exploratory seminar. We only have an hour or so to 10 discuss it. No final conclusions could conceivably be 11 reached in that time. It is really just testing models 12 in other jurisdictions, pros, cons, and whether or not 13 it is a realistic possibility in the United Kingdom. 14 Philippa, I think you are new to today's session. 15 Could you just briefly introduce yourself again, just 16 for the record? 17 Introductions 18 MS HANDYSIDE: I am Philippa Handyside. I work for the 19 Association of British Insurers, the ABI, which is the 20 trade association which represents insurance and 21 long-term savings companies in the UK. 22 MR SKELTON: Rod, I think you are back? 23 MR LUCK: Yes, from Municipal Mutual Insurance, Rod Luck. 24 25</p> <p style="text-align: center;">Page 149</p>	<p>1 independent redress system, a system that would 2 certainly command the support of survivors. 3 I deal with, at any one time, 10 or 20 people who 4 come to me and want to talk to me about it, want to dip 5 their toes in the water, find out what would happen from 6 some kind of complaint or report to the police or 7 starting a claim, and then they go away again and maybe 8 come back in a year's time and decide, well, can I ask 9 another few questions? 10 So there are a lot of people out there who don't 11 come forward because they don't have enough belief in 12 the current system. It is my firm belief that there are 13 a lot of people out there who don't want to come to 14 civil justice, don't want to put their heads above the 15 parapet, and lead really poor-quality lives. We just 16 need to look at Rotherham. 1,400 girls have been 17 affected there, where less than 100 girls have spoken to 18 the police and spoken to solicitors. So there are a lot 19 of people affected out there who don't want to show 20 their faces, don't want to trust the system, and their 21 quality of life could be improved. 22 We already have some of the building blocks for an 23 independent redress system. We have IICSA, we have the 24 truth project, they are taking evidence. In the same 25 way that the redress board across in Ireland in</p> <p style="text-align: center;">Page 151</p>
<p>1 Open discussion 2 MR SKELTON: The first question is, is the criminal justice 3 system fit for purpose? We don't want to revisit the 4 debate we have just had about how it might be improved, 5 it is a question of whether it can be improved 6 adequately and, if not, is a redress scheme appropriate 7 and workable? David, I know you have strong views on 8 this, do you want to start us off on this question? 9 MR GREENWOOD: Yes. I start from the perspective that 10 a very small number of claims or cases that come to me 11 are false. In fact, I think I remember two during my 12 whole 20-odd years looking at these cases where I have 13 thought, "Well, that person is just bandwagon jumping 14 and making it up". 15 So I start from that perspective. Obviously there 16 may be, as I think statistical evidence has shown, 17 between 2 and 5 per cent may be false allegations. But 18 that leaves a huge number that are true and did happen. 19 So my starting point is, why do we need an 20 adversarial process in the first place? Why do we need 21 the fact that it happened to be tested? Apart from some 22 enquiry into what happened and making sure that that 23 person has been harmed in some way and their quality of 24 life has been diminished, what more needs to be done? 25 So I think this type of case is absolutely suited to an</p> <p style="text-align: center;">Page 150</p>	<p>1 a parallel procedure, I think it was the 2 Murphy Commission, they took evidence at the same time 3 as dealing with people's compensation claims, an 4 independent body could take people's evidence, take 5 their complaints, assure the public of independence from 6 the police, from any institution, and would be able to, 7 you know, investigate, decide whether it happened, 8 advise people on whether or not they should go to the 9 police, advise people on whether they are getting a good 10 service from the police, point them in the direction of 11 good support services, make decisions on balance as to 12 whether it happened and award compensation and give them 13 the treatment that they deserve. So that's my dream for 14 a new system. 15 MR SKELTON: Many themes in your introductory remarks there, 16 which I think we are going to need to explore in detail. 17 The first thing is really to isolate the advantages of 18 it over the civil justice system. Greater certainty of 19 outcome. Perhaps greater access, I think was one of 20 the things you were emphasising, for those who may not 21 want to engage or who can engage with the civil justice 22 system. Presumably, reduced costs, which is not always 23 something lawyers advocate, particularly those who 24 represent claimants in the courts. And minimising the 25 trauma of the process, the litigation process.</p> <p style="text-align: center;">Page 152</p>

1 Certainly some of the headline differences. While also
 2 giving some form of redress, compensation and an
 3 impartial, independent tribunal providing
 4 accountability.
 5 MR GREENWOOD: Yes.
 6 MR SKELTON: So those are the advantages of the system.
 7 From a claimant perspective, before we move on to
 8 the defendant perspective, the potential disadvantages
 9 of the system, in terms of the right to get vindication
 10 in a civil court, not the same as a criminal court, but
 11 the civil court; the right to get full compensation to
 12 be put back in the position you would have been in but
 13 for the injury, which is something civil courts are
 14 explicitly designed to do, can that be factored into
 15 a redress scheme or are we sacrificing that to some
 16 extent?
 17 MR COLLINS: You are potentially depriving survivors of
 18 the justice that they might otherwise be entitled to.
 19 Redress schemes have, as we know, lots of potential
 20 advantages. If we look at the disadvantages, if you
 21 look at redress schemes historically, they have often
 22 differentiated between one group of survivors and
 23 another. There have been funding issues. Rules get
 24 rewritten when those running the schemes realise the
 25 scheme is turning out to be more expensive than they

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1 anticipated. That is primarily because it turns out
 2 that there were more survivors than planned for.
 3 So the potential disadvantages of a redress scheme
 4 are that survivors could be undercompensated. Some get
 5 excluded and some don't, so you have that division. And
 6 you have funding issues.
 7 If a redress scheme is to be recommended wherever,
 8 those are the factors that really, really have to be
 9 addressed. Otherwise, it makes a mockery, or
 10 potentially can make a mockery, of what is the object of
 11 the redress scheme.
 12 Very quickly, in my paper submitted on behalf of
 13 the core participants that I represent, we drew
 14 attention to what happened in Australia, where there is
 15 considerable experience of redress schemes and
 16 a national redress scheme is currently being advocated,
 17 as we speak, but has already been subjected to criticism
 18 because of some of the factors I have just identified.
 19 So there are examples there of what works and what
 20 perhaps doesn't necessarily work from a survivor
 21 perspective.
 22 You also have, much closer to home, the Jersey
 23 experience which, in my opinion, was a very good example
 24 of a successful redress scheme, but that had to do with
 25 a very small number of people, about 150 people, which

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1 is in stark contrast to what the Australian experience
 2 is, where they have had to deal with thousands. Of
 3 course, that is the position we would face here in the
 4 UK, potentially tens of thousands of survivors, and the
 5 challenge is going to be, well, are all the survivors
 6 going to be included or just some of them, and how are
 7 you going to justify that?
 8 The Jersey scheme was fully funded. No-one rewrote
 9 the rules. No-one withdrew money. Everyone knew where
 10 they stood. And I would say it was very successful,
 11 with the vast, vast majority of applicants receiving
 12 compensation. Only a handful of people didn't receive
 13 any compensation -- a very small handful of people. So
 14 that is what I would say.
 15 MR SKELTON: We will come back, again, to quite a few of
 16 the themes in detail, but on the Jersey scheme, was it
 17 dealing with historic and current or did it have just
 18 a remit for --
 19 MR COLLINS: The remit was children in the States of Jersey
 20 care from May 1945, when the German occupation ended, up
 21 to a date in 1994. So it covered a very lengthy period.
 22 But the remit was confined to a particular group of
 23 survivors.
 24 MR SKELTON: After that, for those more recent, it's the
 25 civil litigation system?

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1 MR COLLINS: Civil, but, as we speak, because there have
 2 been some people who have come forward late who were
 3 unaware of the scheme, the States of Jersey Government
 4 are considering, as I said, as we speak, whether these
 5 people should now be admitted to the scheme. What the
 6 decision will be, I don't know. But obviously, if they
 7 were not admitted, they would have to resort to civil
 8 litigation.
 9 MR SKELTON: David, before Peter, just on -- the pros of
 10 the scheme are obvious. What are they for your clients'
 11 perspective, what are the cons?
 12 MR ENRIGHT: Thank you for asking that question. I will
 13 have to take a couple of minutes now, I will not be
 14 overlong, because there is a range of views on this and
 15 I represent a range of groups of people who have
 16 different views.
 17 The redress schemes have an initial attraction, and
 18 many survivors think that they are a great idea, for all
 19 the reasons of access and diversion away from an
 20 adversarial system. Mr Collins has pointed out the
 21 problems that, in practice, redress schemes are often
 22 underfunded and could be wound up early. So survivors
 23 might initially feel this is a good thing and then
 24 realise three or four or five years down the line that
 25 the rug has been pulled from under their feet.

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1 Taking, for example, the Forde Park Group, their
2 approved school was run by the Home Office, it was run
3 by central government. It is very clear to them that
4 they do want a redress scheme, but they don't want an
5 Australian-style one, which gives regular payments.
6 They want to be free of control from government. They
7 have been very clear that they would like some kind of
8 life-changing reparation. That is their viewpoint.
9 Then we have the Stanhope Castle survivors who were
10 also in approved schools who have a slightly different
11 view in relation to a type of redress scheme they might
12 be interested in.
13 I represent a significant number of core
14 participants in the Catholic Church model, the Comboni
15 Survivors Group, and the worry about redress schemes is
16 it lets the abuser off the hook, that the taxpayer ends
17 up paying for, for example, abuse perpetrated by members
18 of the Catholic Church. We have seen this in Ireland,
19 where the Catholic Church has been let off the hook
20 insofar as a single order or a couple of orders have
21 been identified and they say, well, our assets are this,
22 and here they are, but that order is only a very small
23 part of an enormous multi-national conglomerate.
24 So if you take, say, the Post Office or Walmart,
25 there are offices in every single town and village in

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1 England and Wales, across Europe and across the world.
2 If people were abusing children in one of those offices
3 or supermarkets, and the board of directors knew about
4 it nationally and internationally and moved abusers
5 around, we would look at that organisation in its
6 totality for responsibility for what was perpetrated
7 here in England and Wales.
8 So the worry for redress schemes, for example, in
9 relation to religious orders is that they are able to
10 say, well, that religious order, or a few people within
11 it, did something and, yes, they must be punished and
12 they must pay, forgetting that the much bigger
13 organisation, that has very deep pockets, is directly
14 responsible for what happened in a particular school.
15 So it is a difficult conversation. The downside to
16 redress schemes are, as Mr Collins said, they can be
17 wound up later on because survivors have no control over
18 it, they can be severely underfunded. I do know that
19 some of the core participants here have some very
20 interesting points to make, which I am sure you will
21 give them time to do a little bit later on.
22 MR SKELTON: Thank you. Peter, staying on that topic, if we
23 can.
24 MR GARSDEN: Yes, a few small points. It is significant
25 that two schemes were mentioned in Ireland. Ireland

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1 scheme redressing was set up because it was said that
2 the civil courts in Ireland simply couldn't cope with
3 the number of cases that were going to come forward and
4 that, if all of them were litigated, it would last
5 forever.
6 So it was set up to cater for a lacuna, a gap, in
7 the civil justice system. It worked very well for
8 a while, until it became too expensive and then they
9 shut it down and now we are back to the courts. It has
10 dealt with a lot of cases from the past.
11 The Australian scheme, which is being ventilated at
12 the moment, has been rejected because they have worked
13 out it will cost \$47 billion, so it was unaffordable.
14 So is government, I suppose, going to pay for it?
15 I suggest not. Therefore, are the insurers going to all
16 contribute equally and pay for it? I suspect not.
17 The point I made yesterday is that there is
18 something about the adversarial process of litigation
19 that suits a litigant who has been overpowered in
20 childhood and wants a team to fight for him for some
21 justice. It is a process that, in my experience, is
22 better lasting two to three years because that is
23 a journey that we undergo -- this sounds a bit
24 melodramatic -- with our clients, which is one of
25 healing, and if it is over in three weeks, then I'm

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1 afraid that process of healing and trust -- regaining of
2 trust in authority doesn't happen.
3 So whilst I don't disagree with the redress scheme,
4 its concept, an ideal sense, I just don't think
5 practically it works and historically there isn't
6 a scheme which is enduring that has worked. We talk
7 about the CICA scheme which we have as an alternative
8 and we are all criticising that and saying that is wrong
9 and the reason it is wrong is because it is funded by
10 government and there are budgetary constraints to it.
11 MR SKELTON: Going back to the scheme you mentioned, I think
12 we need to explore in detail the Irish scheme and the
13 Australian one and possibly Jersey as well. Who is
14 funding the Australian scheme or who has funded it?
15 MR COLLINS: In the past, the state schemes, as I understand
16 it, have been funded by state governments. I believe
17 that's what the problem was in Western Australia. I can
18 provide you with the numbers and statistics and analysis
19 of what went wrong. It was just sheer weight of
20 numbers. In contrast, Jersey, a small, relatively
21 small, number of people.
22 With the scheme that the Australian Government, the
23 federal government, is currently talking about, they are
24 looking at parties opting in. My understanding is that
25 the Catholic Church, in a broad sense, in Australia is

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<p>1 very keen to opt in, and of course that has rightly or 2 wrongly attracted criticism because the argument is, 3 well, actually, they should be paying the compensation 4 anyway, and they don't need a redress scheme. So you 5 have got some conflicting arguments there. It will be 6 very interesting to see how the Australian Government 7 actually takes this forward, and I think their problem 8 is, it is going to be that it requires a voluntary 9 take-up rather than a compulsory take-up. But of course 10 you have got in the background the fact that it's been 11 identified that if everybody was compensated it would 12 run into billions of Australian dollars. 13 MR SKELTON: Going back to the funding issue, so it is 14 a state-funded issue or potentially a federal-funded 15 issue on another scheme. Has the state investigated the 16 possibility of itself seeking recovery from institutions 17 or individual abusers just as in England we might have 18 part 20 proceedings? 19 MR COLLINS: In some states, as I understand it, and I think 20 it is Queensland, convicted felons are subjected to, 21 effectively, a poll tax. They have to part with some 22 money if they get compensation, for example, in any 23 shape or form, I think that has to be handed over to the 24 state. 25 So there are, in the background, devices, in the</p> <p style="text-align: center;">Page 161</p>	<p>1 Scheme. That seems plainly morally wrong. 2 So I think we should be turning this about and 3 looking and asking ourselves, "Well, who should actually 4 be paying?" If there is a redress scheme, the starting 5 point is, who is going to pay? And then move it from 6 there. 7 MR SKELTON: May I turn to the potential payees in the room. 8 Rod, can I ask for your views, focusing first on this 9 issue of the funding. Obviously there is a potential 10 problem here that if there is a floodgate position, the 11 state will not be able to afford to run the scheme. Can 12 you afford to contribute to it if there is a flood of 13 claims? 14 MR LUCK: Well, from Municipal Mutual's point of view, we 15 are of course an insolvent organisation operating under 16 a scheme of arrangement. The majority of the scheme 17 creditors are local authorities, so what we have already 18 had to do is implement two levies claiming back monies 19 paid out on claims since 1993 at the rate of 20 25 per cent. We are now covering claims at a rate of 21 75p in the pound. 22 So ultimately, there are funds there amongst that 23 community, but in the end, once those funds have gone, 24 or once you get to a certain tipping point, the scheme 25 of arrangement will become unviable and the contribution</p> <p style="text-align: center;">Page 163</p>
<p>1 same way that we have in this country devices which, in 2 my own opinion, are not effectively used, for example, 3 the ability of the Crown Courts to make compensation 4 orders, which seems to be currently an issue for reasons 5 I don't understand. 6 The point that the core participants that 7 I represent make is, well, why shouldn't the polluter 8 pay? Why, if there was a redress scheme, which really 9 should be perhaps geared to those who are deprived of 10 compensation because, for whatever reason, they can't 11 pursue the civil route, cannot be put potentially in 12 a fair position and be compensated under a state-run 13 compensation scheme that is contributed to financially 14 by those who are responsible for the misery and the mess 15 in the first place, which is going to be a combination 16 of abusers, those responsible for abusers and, in 17 appropriate circumstances, institutions and maybe their 18 insurers. 19 I would argue that that has a very attractive point. 20 The burden should not fall on the taxpayer because it 21 would appear that, in many instances, the taxpayer is 22 subsidising abusers. 23 As I said in the submission paper, there are cases 24 where abusers should be paying the compensation, but 25 they are not, it is the Criminal Injuries Compensation</p> <p style="text-align: center;">Page 162</p>	<p>1 will ultimately come from our former customers, local 2 authorities. So it is coming back to the state-funded 3 system in some way. 4 So any of these redress schemes, yes. Where the 5 funding is kind of going to come from has to be 6 considered at the outset, to make sure that the monies 7 are there to meet the compensation awarded. 8 I mean, the situation is no different in respect of 9 claims going through the civil claims procedure, in any 10 event, so ultimately, there may not be any overall 11 difference to Municipal Mutual at the end of the day. 12 MR SKELTON: Would you be fearful, though, of the argument 13 that there might be a lot of people who suddenly come 14 forward because they are afraid of civil litigation and, 15 if so, is there anything fundamentally wrong with that 16 if they have a justified claim? 17 MR LUCK: I don't think there is an argument to say there is 18 anything wrong with that, and if the civil justice 19 system is preventing people coming forward and a redress 20 scheme would enable those people to feel better to come 21 forward, then I don't think that is a bad thing. 22 Ultimately, the money needs to come from somewhere, 23 and we have heard about the Australian concerns and the 24 Irish situation, whereby, when costs escalate, changes 25 are made to the redress scheme. You can't avoid finding</p> <p style="text-align: center;">Page 164</p>

<p>1 the money and making sure the money is there for one 2 area or another.</p> <p>3 MS HANDYSIDE: I think, with all the issues that have been 4 discussed over the last couple of days, it is really 5 right that the inquiry is looking into the possibility 6 of a redress scheme and how it might work and what the 7 challenges are. I think what I would say is that, 8 whatever a redress scheme would look like, it would need 9 to have some features of due process in establishing the 10 facts. David was insistent that it would need to have, 11 and I agree, an independent, impartial tribunal. That 12 is what the civil justice system currently provides, so 13 you replace one independent, impartial system with 14 another.</p> <p>15 At the moment, in the civil justice system, the 16 evidential burden is the balance of probabilities and 17 query what would it be? You have got to get that right.</p> <p>18 There are so many things that, if you look at the 19 existing precedent for redress schemes around the world 20 that have proved challenging, it's eligibility criteria 21 window, which is open, how awards interact with 22 benefits, how the process interacts with the criminal 23 justice system, whether it is in place with the civil 24 claim tariff for recovery, a tariff for costs, all those 25 things have to be done correctly, and I think, you know,</p> <p style="text-align: center;">Page 165</p>	<p>1 even a slightly lower level than one might get in the 2 courts because you're taking out the arbitrary element, 3 then ultimately the cost per person may be a lot less, 4 mightn't it, in which case, overall, isn't that a good 5 thing? Then the argument becomes, well, you've now got 6 too many people coming forward.</p> <p>7 MS HANDYSIDE: You are absolutely right. It would depend on 8 how the scheme was framed as to the comparative cost per 9 person. I think one of the problems is that, if you 10 play around with things like the evidential burden, you 11 can have a system where -- I think the scheme in 12 Nova Scotia is one you should look at where they didn't 13 address that issue appropriately and the scheme ended up 14 paying out compensation to alleged abusers for 15 defamation claims arising out of settlements from the 16 scheme.</p> <p>17 So without the proper checks and balances in any 18 redress scheme, you have the problems that arise if 19 there isn't a proper fair process.</p> <p>20 So you're right about the finances. Delivering 21 better, more efficient compensation has to be the 22 ultimate goal.</p> <p>23 MR NICOLSON: I think a redress scheme may be an appropriate 24 option at a local level for a particular organisation, 25 such as a scheme such as the Jersey scheme that was open</p> <p style="text-align: center;">Page 167</p>
<p>1 you should look at all those things and we will assist 2 in every way we can.</p> <p>3 I think one of the things I would say is that some 4 really helpful suggestions have come forward in the last 5 few days about ways that there could be improvements to 6 the existing system and it seems it will be sensible to 7 look at those first, and I think people will go away and 8 do that, as well as working with the inquiry to do so.</p> <p>9 So I think the picture is, what the problems are 10 with the civil justice system in this context are the 11 problems with the very difficult context of claims for 12 sexual abuse, and those problems exist whether you have 13 a redress scheme or a civil justice system. It is 14 really finding the best way of making sure that victims 15 and survivors have appropriate access to the right kinds 16 of redress in a way that is consistent with establishing 17 the facts and making sure that the interests of 18 potential accuseds and things like that are catered for 19 as well.</p> <p>20 MR SKELTON: Trying to work out the ultimate commercial 21 value of the scheme, if the process of going through 22 a redress scheme is ultimately cheaper than litigation, 23 which it is probably going to be, the idea -- if it is 24 an inquisitorial process with less need for legal 25 engagement, and the damages are more certain, possibly</p> <p style="text-align: center;">Page 166</p>	<p>1 for a finite period and was open to a relatively small 2 number of individuals.</p> <p>3 Particularly where the funding is within the control 4 of the organisation or a single or a couple of insurers 5 that are responsible, or would be responsible, for the 6 settlement of those claims through the existing civil 7 process. So I think a redress scheme is an option at 8 a local level.</p> <p>9 I think for the reasons that have been outlined, the 10 biggest issue would be funding a national scheme. It is 11 highly likely that a large percentage of the types of 12 abuse claims would fall from public authorities, which 13 is potentially placing a financial burden which is 14 already on the, quite frankly, stretched finances of 15 a public authority. So I think the funding of such 16 a national scheme would really need to be carefully 17 thought through.</p> <p>18 I also wonder about the time it would take to 19 implement a scheme as well, and we have heard some 20 comments around the Australian proposals that are still 21 I don't think anywhere close to being implemented. Then 22 there is the issue about, what about transitional claims 23 that have been dealt with through the existing process, 24 how do they then get dealt with, do they stay in the 25 existing process or do they transfer to a new scheme?</p> <p style="text-align: center;">Page 168</p>

<p>1 What if there is a disparity between what's on offer 2 through the new scheme versus what's on offer through 3 the existing schemes? I think there are lots of issues 4 that need to be worked out. 5 MR SKELTON: There are a lot of practical issues. I'm still 6 interested in the financial side of things. I can see 7 from a defendant perspective that actually 8 disincentivising people to litigate is commercially 9 better for you. 10 MR NICOLSON: Absolutely. But it is not just about the 11 financial side. It is about speeding up the entire 12 process. A scheme potentially could see a swifter 13 resolution for a survivor, in terms of obtaining 14 compensation, a settlement, certainly along a much 15 quicker timeline than would ordinarily be the case. 16 MR SKELTON: Were you postulating the possibility of local 17 schemes for particular local authorities? 18 MR NICOLSON: I think that is possible. I think it is an 19 option available to local authorities or indeed any 20 organisation. Where they are potentially faced with 21 a sizeable volume of claims coming forward, it is 22 certainly an option worth exploring rather than 23 traditional litigation. 24 MR SKELTON: Paula, isn't that what you might already advise 25 your clients to do, in some form or another?</p> <p style="text-align: center;">Page 169</p>	<p>1 actually saves costs. If you think about it, the victim 2 will engage his lawyers to make an application to the 3 scheme. The scheme will have to consider whether that 4 is a valid application. So you replace defendant 5 insurance representatives and solicitors with people 6 working for the scheme who still have to look at the 7 claims in the same sort of a way, and then you have to 8 have a hearing by the scheme with adjudicators, judges, 9 whomever it is, who will decide how much they get. 10 Don't think that a redress scheme is not adversarial, 11 because it is, because you have to prove whether or not 12 the application satisfies the scheme's criteria. 13 So it is still adversarial and it is still 14 controversial and there are still winners and losers, 15 just as there are with the CICA. 16 MR SKELTON: Peter, when you say that, do you know that from 17 data or are you saying that in terms of just your 18 general knowledge of how these schemes tend to work? 19 MR GARDEN: Coming right out of the top of my head. 20 MR SKELTON: The reason I ask is we heard a lot yesterday 21 about issue fees, GBP10,000, for example, getting your 22 own expert, a lot of money, getting all the documents 23 and having lawyers investigate all of that stuff. Now, 24 inquisitorial processes presumably can avoid some of 25 that work, which is quite expensive. But you're saying</p> <p style="text-align: center;">Page 171</p>
<p>1 MS JEFFERSON: Indeed. It is something that we have done on 2 a number of occasions, not just in terms of local 3 authorities, but obviously it happened with 4 Jimmy Savile, with the BBC and the NHS and with the 5 estate, a number of other organisations whom I'm working 6 with to develop those more informal schemes working with 7 claimant firms who are used to dealing with this. 8 For me, all the challenges that have been mentioned, 9 particularly about funding and delay of getting an 10 all-encompassing scheme up and running, and if you look 11 at the Irish scheme, I think, at the end of the day, 12 it's been praised in many ways, but just the numbers 13 were so much greater than was anticipated. The length 14 of time was so much greater. But actually, you could 15 almost develop some scheme guidelines, so a scheme 16 pre-action protocol. So if you had a series of claims 17 which involved one organisation or one abuser, rather 18 than, every time we get a series of claims that involve 19 one organisation or one abuser, we reinvent the wheel to 20 rewrite that scheme. 21 So I think a full-blown redress scheme is going to 22 face lots of challenges, but there is something that we 23 can do that moves us towards having these schemes in 24 place. 25 MR GARDEN: I think it is a bit of an illusion that it</p> <p style="text-align: center;">Page 170</p>	<p>1 there's still a residual adversarial element which is 2 going to cost money? 3 MR GARDEN: Yes, there is. With the Irish redress scheme 4 there were arguments as to whether or not a particular 5 application was entitled to come before the scheme. For 6 example, whether it was in the particular home or not, 7 whether the home should be added. If you look at 8 a civil jurisdiction scheme where not many cases go to 9 court and it is not really that adversarial, there isn't 10 much difference between a civil justice system and 11 a redress scheme, in my experience. It's just the civil 12 justice scheme is more enduring because it's been around 13 hundreds of years and the best redress schemes are 14 ad hoc schemes that cope with a specific problem, like 15 the BBC, like Jersey, like Ireland. Ireland was meant 16 to be enduring and it didn't last. 17 MR ENRIGHT: I'm not sure the local schemes could work. 18 Local authorities just couldn't bear the burden of 19 operating a scheme. But there are distinct groups that 20 can be seen. Why should local authority bear the cost 21 of a Home Office responsibility, for example, for the 22 approved school system? That is a sort of category of 23 person, you can see them, there are substantial records. 24 It would not be a difficult thing for people who have 25 been through the approved school system to be able to</p> <p style="text-align: center;">Page 172</p>

<p>1 demonstrate a case. The central government is 2 responsible for that. 3 Secondly, a redress scheme would be expensive. But 4 it is not expensive forever. Because take, for example, 5 men who were boys in the approved school system. In 6 a general way, they are in their very late 40s, more 7 likely late 50s and 60s, and I can say, very sadly, 8 a number of my clients who are core participants in this 9 inquiry are unlikely to live long enough to see this 10 inquiry out. So the thing is -- so it does need to be 11 done quite quickly to help people who are now quite 12 advanced in age and have suffered for a long time, 13 because they will not be around long, that quite large 14 category of them. 15 MR NICOLSON: A redress scheme could also include the option 16 to seek recoveries from other organisations. It is 17 a way of dealing with all claims in one rather than 18 having different categories of claim go to different 19 organisations. 20 That is something that I think is part of a scheme 21 you would need to look at recovery certainly from the 22 perpetrators of any abuse, but also from other -- 23 Home Office or anybody else as well. 24 MR GREENWOOD: They would be able to concentrate evidence 25 gained from all sorts of different investigations, too,</p> <p style="text-align: center;">Page 173</p>	<p>1 where some insurers may no longer be operating. So 2 understanding how you would go about establishing a levy 3 I think could be very difficult in this case. 4 MR SKELTON: Do you have a view on -- I know your position 5 generally is that redress scheme is not the appropriate 6 thing to recommend for policy change, it should be 7 improving the civil justice system. But the hybrid 8 option, if I can call it that, of having a scheme which 9 is appropriate for particular events or places, could 10 that work? 11 MS MACKENZIE: Yes. I think we have seen that work, where 12 we have had group litigation orders and settlement 13 schemes specific to that. But once the facts are 14 established, a large group -- that could be 250 victims 15 and survivors of abuse, you can establish a scheme, work 16 through that very quickly and ensure that the 17 reparations are delivered very quickly. I think that 18 definitely can work. 19 MR SKELTON: In terms of the arbitration of the findings, 20 was that done by the judge within the context of 21 the scheme or was that not necessary? Was there no 22 person making a finding? 23 MS MACKENZIE: I don't think that was necessary in that 24 case. If the facts are clearly established and 25 understood and liabilities are clear, then you can move</p> <p style="text-align: center;">Page 175</p>
<p>1 so we wouldn't be reinventing the wheel with different 2 lawyers time and time again. 3 MS MACKENZIE: I was going to comment on the levy, because 4 we have talked about how one might fund a scheme and 5 whether there is the opportunity to in part fund that 6 through a levy from insurers. There is experience in 7 the insurance industry of levy, for example, in motor 8 insurance. People who write -- companies who write 9 motor insurance pay a levy based on their current market 10 share. But that is a compulsory class of insurance, and 11 it is also based on the current market share, and that 12 funds the Motor Insurers' Bureau for uninsured losses 13 and so on. 14 I think the difficulty here with claims of this 15 nature falling on public liability policies and historic 16 public liability policies is, how do you determine what 17 the market share of various insurers was at the time, if 18 that is the way indeed that you did it? If you did it 19 on current basis of market shares of public liability, 20 would that be the right reflection? Because different 21 companies tended to write more business around 22 children's homes, independent schools, charities, local 23 authorities, than others who might have written a lot of 24 public liability business but not in that sector, and 25 then to Rod's earlier point, you have the situation</p> <p style="text-align: center;">Page 174</p>	<p>1 quickly to the establishment of a scheme. 2 MR SKELTON: So it is really a quantification process rather 3 than a liability assessment process? 4 MS JEFFERSON: Yes. You can obviously set it up however you 5 want to set it up between the various parties, but the 6 most straightforward would be, from a claimant's 7 perspective, what evidence they are going to put forward 8 and then the defendant will consider that and either 9 that individual has passed that threshold, in which case 10 you move straight on to the assessment of quantum and 11 the schemes can then vary -- you may have a tariff of 12 damages that may be crudely linked to what happened to 13 the individual or how long they were at the 14 organisation, but you can vary it according to what is 15 the appropriate scheme. 16 Your point on costs, once you set the scheme up, and 17 this is where I think guidance on -- you could say this 18 is the standard thing -- the expenses in setting the 19 scheme up, then for the majority of people who 20 participate in this scheme, the experience is that 21 matters can move on swiftly and with relatively minimal 22 costs. Yes, you will always potentially get one or two 23 people who don't fit, but I think that is a lower number 24 than you get through the civil claims process. 25 MR SKELTON: So the initial setup cost of a scheme, which is</p> <p style="text-align: center;">Page 176</p>

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

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

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

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

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1 viable model that the state runs the scheme but then has
2 a statutory right to seek recovery, which presumably
3 would have to be litigated, if necessary, from the
4 institution or its insurer?
5 MS HANDYSIDE: I think you're suggesting there a structure
6 and different structures would need to be looked into.
7 I think the underlying challenge is how you develop
8 fair contributions. I mean, for instance, this is an
9 area of law that is evolving and new contexts of abuse,
10 and possibly in the future new types of claims, may
11 evolve. You could set a funding model now that would
12 leave out, you know, a whole raft of defendants.
13 So I think you're right to look at different
14 structures of how a redress scheme might be funded, but
15 the civil litigation system, you have on the hook the
16 people who ought to pay.
17 MR SKELTON: From your perspective, from the ABI's
18 perspective, sceptical of it being workable, sceptical
19 of funding and the existing system is probably the
20 better position?
21 MS HANDYSIDE: I think I would make two points. I think the
22 biggest challenge of a redress scheme, of a large-scale
23 redress scheme, is finding a model of sustainable
24 funding. I think the other big challenges of it are the
25 same as exist for the civil justice system in terms of

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1 a fair process around establishing facts.
2 Sorry, I have forgotten what the question was?
3 MR SKELTON: Really, just to elicit your ultimate view on
4 a scheme.
5 MS HANDYSIDE: Sorry, I have remembered my second point.
6 MR GARDEN: I did that yesterday.
7 MR ENRIGHT: She did a Peter.
8 MS HANDYSIDE: It is just that those challenges are immense
9 and ought to be explored, but I think in the last two
10 days we have established some real areas of potential
11 reform and improvement in the civil litigation system
12 which strike me as lower-hanging fruit and, you know,
13 around a structure that does deliver impartiality and
14 independence and can deliver accountability in cases,
15 so, yes, there are lots of improvements that we have
16 discussed in the last few days that ought to be
17 explored, and I think the position of the insurance
18 industry is that those ought to be explored as
19 a priority.
20 MR SKELTON: Carolyn, can I ask a similar question really to
21 you. If the scheme is economically viable and the state
22 funds it to start with and it results in far less being
23 paid to the lawyers, so thereby generating the saving
24 that Paula has identified and would recommend her
25 clients to opt for, why is that not a useful model for

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1 going forward, if it is then funded by the actual
2 abusing institution, the polluters, as someone put it?
3 MS MACKENZIE: I can see the advantages in that process.
4 I would echo some of Philippa's points around a process
5 which is fair to all parties, and in that we need to
6 think about the policyholders and the defendant
7 institutions that we support, so that is an issue. So
8 that issue, just to repeat that, of the process that
9 ensures fairness on all sides. That would be a concern.
10 I think as well, reflecting on some of the things we
11 have talked about over the last two days about the
12 process of accountability and reparation that is sought,
13 which is what different victims and survivors need --
14 what victims and survivors need differ in that regard.
15 I do worry a little that this, being a bit
16 formulaic, might make the process of receiving
17 compensation easier, but deny the opportunity of some of
18 those other things that we've talked about as very
19 important as part of this process. So that slightly
20 concerns me to the point, if it reduced cost, it
21 potentially increases frequency, and we wouldn't know
22 where those claims would come from. We simply couldn't
23 know.
24 But insofar as they were insured institutions and
25 defendants who were responsible and some of that funding

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1 then subsequently came back, I think in principle that
2 is sound, that makes sense. So to that specific point,
3 I could see how that could be possible. But I think
4 understanding how all of that pieces together, I'm not
5 quite clear yet.
6 MR LUCK: I think some of the elements we have talked about
7 over the last couple of days about changes to the civil
8 claims procedures, the system. From what is also being
9 said, though, that is not necessarily going to help
10 those survivors and victims who are not able to get into
11 that system. Therefore, it does seem sensible that some
12 other sort of methodology or redress system should at
13 least be considered, and how that is funded, clearly it
14 is appropriate that defendants are involved in that
15 funding.
16 So if that would do that, then I think it is an
17 element that needs to be considered, because otherwise
18 it seems that improvements to the existing system would
19 still not include a lot of victims and survivors.
20 MR SKELTON: David, at the start, mentioned the potential
21 for many, many people to come forward. Do others on the
22 claimants' side have a view that that might be the case?
23 Obviously there are some people who have tried and
24 failed with the civil justice system, for whatever
25 reason, and they may want to seek redress elsewhere, but

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1 is there a sense of people there wanting to come
 2 forward? Compared to Ireland -- obviously, there was
 3 a very particular national scandal in Ireland involving
 4 a very major state institution. Do we have the same
 5 sort of issue in England and Wales?
 6 MR GARS DEN: I think we have less of a problem in the sense
 7 that a lot of cases have been through the system already
 8 and have been going through the system for the last
 9 20 years. Do we have the same problem? Are we just
 10 scratching the tip of the iceberg? Yes, definitely.
 11 There are many more people who have never come forward.
 12 So what a redress scheme will achieve is almost
 13 difficult to assess in a vacuum because we don't know
 14 what the redress scheme will look like. If we knew what
 15 the proposed redress scheme would look like, it would be
 16 a lot easier to evaluate. What we do know is the civil
 17 justice system back to front and we can evaluate that.
 18 That is my problem, that I don't quite know what the
 19 proposal is. If I knew what the proposal was, in theory
 20 it might be less adversarial, but would it save costs?
 21 Well, you go through the redress board and they speak to
 22 the insurers and the insurers still have to do the
 23 investigation, it has to go back to the redress board
 24 and back to us. Does that slow down the process or does
 25 it speed it up, as opposed to dealing direct with the

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1 horse's mouth? I don't know.
 2 I'm suspicious and I'm wary and I suppose it is what
 3 I don't know rather than -- assessing what I don't know,
 4 that's my problem.
 5 MR SKELTON: The devil is in the detail. I think that is
 6 a point you made, Philippa. We are assessing these
 7 things as hypotheses rather than practical propositions.
 8 One thing I would like to test with you and David is,
 9 could this scheme sit alongside the civil justice
 10 system? So you can opt into a redress scheme with
 11 certain consequences or you could go down the
 12 traditional route?
 13 MR ENRIGHT: I see no reason why that shouldn't be the case
 14 at all. I do echo Alan's comment and I think the truth
 15 of the matter is that there will only ever be the tip of
 16 the iceberg who come forward. So although -- on the
 17 very first day of the inquiry, we had huge numbers
 18 quoted of estimates of victims of child sexual abuse,
 19 but we also know an infinitesimally small fraction of
 20 those come forward and make claims. So we actually
 21 know, going forward, that there will not be a torrent of
 22 claims or applications. There should be, but there
 23 won't be. So in terms of, when you're looking at costs
 24 of redress schemes, they are potentially exceptionally
 25 high, but we know, very sadly, that the overwhelming

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1 majority of people will not come forward.
 2 MR COLLINS: I think that's what happened in Jersey.
 3 I could be wrong about this, but I think the general
 4 consensus is that in Jersey, even though the scheme was
 5 accessible -- and you didn't need a lawyer and lots of
 6 people made successful claims without the input of
 7 a lawyer -- the numbers were lower than anticipated and
 8 we all know why people will not come forward, no matter
 9 how straightforward the process may well be.
 10 Yes, it's difficult, and all you can do is look at
 11 what's happened elsewhere. You can see what's worked,
 12 what hasn't worked, and try to understand why certain
 13 schemes have been more successful than others. But we
 14 can't avoid the facts of life that there are large
 15 numbers out there, large numbers of survivors who are
 16 outside the civil justice system, no matter how reformed
 17 it may well be, as things currently stand, who are
 18 equally deserving of a little bit of justice, no matter
 19 how late that might be in the day.
 20 I'm not sure what the right phrase is, but for me,
 21 to speak frankly, it is also a public health issue. The
 22 consequences of people being abused as children, the
 23 cost to this country is, I don't know how we would even
 24 begin to calculate it. The cost to the NHS, the cost to
 25 Social Services, the cost to the education system, the

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1 cost to the prison system, you know, the numbers of
 2 individuals apparently in the prison system who were
 3 abused as youngsters is significant. I don't think we
 4 can ignore the price that this country is paying and is
 5 going to continue to pay for all the failings and the
 6 misery of the past as well as the present. So I think,
 7 as an inquiry, that's got to be at the forefront of your
 8 consciousness in thinking about, "Well, what are we
 9 going to do?"
 10 MR GARS DEN: I do know that the cost to the country has been
 11 evaluated by various survivor groups. One figure that
 12 the survivors in Manchester produces was, for every
 13 person they helped, they save the taxpayer GBP65,000 per
 14 individual per year because that was the cost to public
 15 services that they use, and there's similar research
 16 been done in the State of Florida, and it was something
 17 staggering likes \$250 million per year, something of
 18 that magnitude.
 19 MS JEFFERSON: There is a report that has looked at just
 20 that point. I think it may be the NSPCC that has
 21 published a report on just those issues.
 22 MR GARS DEN: That as well, yes.
 23 MR GREENWOOD: There's an academic study from 2014 that puts
 24 it at 3.2 billion per year.
 25 MR SKELTON: David, I'm going to give you an opportunity to

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<p>1 say some final comments on it and then I'm going to ask 2 if those in the room have anything to say? 3 MR GREENWOOD: I just wanted to pick up on the 4 interrelationship between the civil justice system and 5 a proposed redress system. I know we have got great 6 intentions around the room, but obviously protocols and 7 improving the civil justice system will only take us so 8 far. There are still bound to be a lot of people who 9 don't want to engage with that process. It is 10 adversarial, it is offputting. 11 A redress system that we discussed is bound to be 12 expensive at the outset, and it is bound to have some 13 issues with education and implementation at the outset, 14 but it is certainly not impossible. The people in this 15 room could probably work together for the next week and 16 put something together, actually. 17 But once it is up and running, why would a person 18 want to go to the civil justice system as opposed to 19 a redress system? I think it would be almost 20 unmanageable that someone would want to do that. 21 Obviously the civil justice system will still be 22 open, will still be there, even if a redress system is 23 set up, and individuals, claimants and defendants, could 24 insist on a civil justice system being the option. 25 There may be some kind of cost penalty or some kind of</p> <p style="text-align: center;">Page 189</p>	<p>1 we are doing today in this meeting. Help us to help 2 them come forward. 3 But in that same role, we can then be there for the 4 kids who are still in the children's home, who are 5 having a problem with that children's home or their 6 social worker, and then, over the period of time, we 7 could then start to build up a picture of the problem 8 social workers, the problem homes, before it actually 9 becomes an issue, and it would become a prevention 10 measure as well as a redress system. It is just 11 a thought. 12 On funding for it, initially, yes, it would be under 13 the local authority, because each authority has 14 different services available for their residents. So it 15 would have to be on a local authority basis. In each 16 home, you've got your children's homes, 75 per cent of 17 which are privately operated. It costs minimum 18 GBP250,000 per year for a child in a private residential 19 place. GBP35,000 a year for Eton with 12 weeks off and 20 a better education. I don't quite see what the extra 21 12 weeks costs so much over. Take a little portion of 22 that from each children's home to help pay for the 23 scheme that is actually going to cover them and work as 24 a safety net for them. Let them pay for their cover. 25 Thank you.</p> <p style="text-align: center;">Page 191</p>
<p>1 penalty for the losing party or the electing party, even 2 win or lose, I suppose, but I don't see why the two 3 shouldn't be -- shouldn't rule each other out. 4 MR SKELTON: Thank you. Much more to discuss in that area 5 and lots of practical consequences and, of course, I'm 6 very conscious that central government aren't 7 represented around this table and we have been talking 8 merrily about public funding. 9 Can I ask if those in the room have anything they 10 would like to say? 11 CORE PARTICIPANT: Karen Gray. I will try to keep this 12 brief, but it is a brief outline of the total redress 13 system that I believe could work. In my local 14 authority, which is Kirklees, Huddersfield, I drafted 15 a proposal for my local Police and Crime Commissioner. 16 After years of running a blog to outline my efforts to 17 get redress and having so many people come to me and say 18 to me, "I would come forward, but I don't want to speak 19 to the police, I don't want to speak to them, I don't 20 trust the system, but I'll tell you, because you're one 21 of me, you're like me", help survivors get the 22 qualifications needed to sit with the victims coming 23 forward. Let us help survivors become just that, 24 survivors and not victims. Let us be that buffer that 25 is so much needed between you guys and the victims, as</p> <p style="text-align: center;">Page 190</p>	<p>1 CORE PARTICIPANT: One of the things I think about is, 2 I have suffered 50-odd years. Now, I've got younger 3 children in here, so excuse the expression, but because 4 of what's happened to me, and what's going to happen and 5 what could possibly happen, these youngsters are going 6 to pay for it in their taxes, their insurances; right? 7 When insurance companies have to pay out, they have got 8 to get it back. How do they get it back? I pay GBP30, 9 GBP40 every year extra on my car insurance because of 10 people who aren't insured. As we mentioned, 11 Jimmy Savile, his money, as far as I know now, has been 12 frozen and is going to be used to give to the people he 13 did it to. But there are the situations where -- 14 there's two, one was some famous star, before he went to 15 court, he signed everything over to his wife. He went 16 to court, found guilty, sent to gaol, and it was to his 17 wife. 18 Then you've got Janner, GBP300 a day for going to 19 the House of Lords, and then coming up with some excuse. 20 That's all it is to me, just some excuse. If he can be 21 paid every day for going to House of Lords, and then 22 we're told he's senile or something -- he's guilty. 23 Curb my language. 24 He's signed his assets over to his family as well. 25 Them assets should be grabbed back for the people until</p> <p style="text-align: center;">Page 192</p>

1 it's sorted out, and frozen. That's just my personal
2 opinion. Otherwise, your children are going to pay for
3 what's happened to me in their taxes and their income.
4 More money having to be paid out for something that
5 never happened to them, and, again, to coin a phrase,
6 the innocents are suffering.
7 CORE PARTICIPANT: Which is what they would say about
8 Janner's family.
9 CORE PARTICIPANT: My opinion on redress systems is there is
10 not a lot of faith in them. I have contact with
11 survivors all over the world and I have heard about the
12 various schemes from the survivors' perspective that
13 have been mentioned today. None of them, not one of
14 them, has 100 per cent confidence. I think that is
15 mainly because what they do is, they try "one size fits
16 all". What it forgets about is the other piece, it
17 forgets about the survivor wanting that recognition and
18 wanting that individual report saying that they have
19 been through this situation and that it's acknowledged.
20 That's what gets lost in these redress systems, is the
21 other part. It is all very well talking about the money
22 side of it, but it is not just the money, it is also
23 about the emotion that the survivor feels at the end of
24 the process, and that is just as important. It may not
25 be just as important in all of our discussions, but

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1 believe me, to the survivors, it is just as important.
2 Thank you.
3 CORE PARTICIPANT: One comment on what he's just mentioned
4 there.
5 MR SKELTON: Can I stop you briefly? I have a small point
6 to mention. You may have picked up, Chair, that
7 Lord Janner was mentioned. There may be a concern about
8 sensitivities attaching to issues around Lord Janner.
9 Can I just suggest that the live feed is temporarily
10 suspended and then we can conclude matters and, if
11 necessary, revisit what was said and have a look.
12 THE CHAIR: Yes, I agree.
13 CORE PARTICIPANT: I apologise for that. I did that
14 intentionally, but I apologise for that on the basis of
15 what's going on. I apologise because of what the family
16 is doing now. This is another thing that annoys us.
17 THE CHAIR: It is absolutely fine. Would you like to
18 conclude what you were saying?
19 CORE PARTICIPANT: I had concluded.
20 The other thing I wanted to say though, the lad
21 I mentioned earlier on, Colin Watson, he's been offered
22 thousands and he's told them to go forth and multiply.
23 Right? He is not interested in the money. He doesn't
24 want the money. He wants an apology. He wants them to
25 say, "I'm sorry, we did this to you". All of us want

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1 that in the end as well, just somebody saying "Sorry".
2 The lady in front of us now who is doing a lot for us
3 and I fully support her and -- is it Peter?
4 MR SKELTON: Yes.
5 CORE PARTICIPANT: I think you're doing a brilliant job.
6 MR SKELTON: Thank you.
7 CORE PARTICIPANT: I would like a public apology from my
8 local authority that held my care order. It's the one
9 that held my care order.
10 MR SKELTON: Thank you. To end on that comment, I will
11 allow the chair ...
12 THE CHAIR: Thank you very much.
13 CORE PARTICIPANT: Thank you for having us.
14 THE CHAIR: Just a couple of comments. We are right at the
15 end of the day and everyone has been amazingly tolerant
16 and applied themselves to the discussions. On behalf of
17 myself and the panel, I would like to thank everyone for
18 their attendance and contributions. This was our first
19 inquiry seminar and we have all been very encouraged by
20 the quality of the participation, not just around the
21 table but also from the floor. Thank you very much
22 indeed.
23 We decided to separate criminal injuries
24 compensation from the civil justice system, and I think
25 that decision was the right one, given the amount of

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1 ground we have covered in these two days. We will be
2 holding the criminal injuries compensation seminar in
3 the new year.
4 A video recording of both days will be put on our
5 website. It will be available by the end of the week --
6 that's the inquiry website -- and the transcript from
7 yesterday of course is already available.
8 So I would like to thank everybody very much indeed,
9 and safe home. Thank you.
10 (4.21 pm)
11 (The hearing concluded)
12 I N D E X
13
14 Session 11
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16 Welcome by Chair and opening comments1
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