

# THE GOVERNMENT RESPONSE TO THE INDEPENDENT INQUIRY INTO CHILD SEXUAL ABUSE'S ACCOUNTABILITY AND REPARATIONS INVESTIGATION REPORT

## Introduction

1. The Government is grateful to the Independent Inquiry into Child Sexual Abuse for its Accountability and Reparations phase one report, and for its insights into the various avenues for redress and support currently available for victims and survivors of non-recent child sexual abuse. We recognise the importance of effective redress for victims and survivors and will continue to work closely with the Inquiry to robustly address the issues highlighted in the recommendations.
2. The Government is committed to ensuring every victim and survivor gets the compensation to which they are entitled. In parallel to the work of the Inquiry, the Government is undertaking a review of the Criminal Injuries Compensation Scheme, which provides compensation to victims of violent crime for their mental and physical suffering, including victims and survivors of non-recent child sexual abuse. The review of the Scheme will allow us to assess whether it remains fit for purpose and meets the needs of victims.
3. It is also essential that the right care and support is available to victims and survivors of non – recent child sexual abuse when they seek it. In 2019/20, the Ministry of Justice awarded £8m to 94 rape support centres across England and Wales to provide independent, specialist support to female and male victims of sexual violence, including victims of child sexual abuse. The support is offered by specialist local organisations at a physical location, free of charge and regardless of whether a person reported the crime to police. This funding will increase to £12m per annum from 2020/21, with a commitment of £32m over three years till 2022.
4. Officials have worked closely together across Departments and with relevant bodies to consider carefully the Inquiry's recommendations. The Government's response to each is set out below in turn.

## Recommendation 1:

***The Ministry of Justice should revise the Victims' Code to make clear that victims and survivors of child sexual abuse must be advised by the police that:***

1. ***They are entitled to seek civil compensation through the civil courts and, if they wish to do so, should seek legal advice – they should be signposted to specialist lawyers identified by the Ministry of Justice.***
2. ***They are entitled to assistance completing any application to the CICA, should they require it. Such assistance should be provided by independent sexual violence advisers or other suitably qualified and trained persons.***
3. ***At the conclusion of any criminal proceedings, the court may make orders for the payment of criminal compensation by convicted offenders to their victims.***
4. ***They are entitled to be referred to organisations supporting victims of sexual abuse. They should be signposted to the support services available in their local area.***

**5. The College of Policing should make changes to its guidance (currently Authorised Professional Practice) to require police officers to provide oral and written information on each of these matters.**

**The Ministry of Justice should also provide further information on how the new compliance framework, and any other developments, will improve compliance with the Code for victims and survivors of child sexual abuse.**

The Ministry of Justice is in the process of updating the Victims' Code and the proposed changes, including about accessing support, seeking compensation and where to go for additional information and assistance in applying, are currently subject of a public consultation until 16 April. The College of Policing will review the guidance to police officers when the updated Code is introduced.

We agree that victims and survivors should be advised about making a civil claim for compensation, and we note the suggestion that victims should be signposted to specialist lawyers identified by the Ministry of Justice. However, we do not undertake an accreditation process of solicitors. Instead we believe that the Law Society is best placed to assist victims in identifying and instructing a suitable local solicitor through its "Find a Solicitor" service.

In relation to victims and survivors having assistance to complete an application for criminal injuries compensation, this is already available from Independent Sexual Violence Advisers (ISVAs) and certain other centres, such as law centres. Victims who require assistance in completing the Criminal Injuries Compensation Authority's online application form can contact its Customer Support Team, which will assist applicants to make a claim over the telephone.

ISVAs play an important role in providing specialist tailored support to victims and survivors of sexual violence. In September 2019, the Government announced an additional £1m investment in recruiting more ISVAs across England and Wales, and committed to exploring further measures to ensure consistent, high quality ISVA support is available for victims and survivors. Home Office guidance "Role of the Independent Sexual Violence Adviser: Essential Elements" published in September 2017 [<https://www.gov.uk/government/publications/the-role-of-the-independent-sexual-violence-adviser-isva>], provides that a key function of ISVAs is to provide support before, during and after criminal and civil court proceedings. The guidance suggests, at paragraph 4.15, that ISVAs should ensure that victims/survivors have access to independent advice and guidance on the Criminal Injuries Compensation Scheme and civil actions, and can assist them in making an application if they are eligible; this gives flexibility to ISVAs to act with the approval and in the best interests of the victims/survivors in engaging with the Criminal Injuries Compensation Authority and others seeking compensation through the avenues available.

The Criminal Injuries Compensation Authority (CICA) has committed to improving how it handles claims in particularly complex and sensitive cases, including from victims of child sexual abuse. Dedicated caseworkers have been introduced, as well as new staff guidance for dealing with applications from victims and survivors of child sexual abuse, taking account of grooming by offenders. The CICA has engaged with organisations including Samaritans, Women's Aid and Rape Crisis Scotland to provide specialist trauma informed training, to ensure that staff are better equipped to deal sensitively with those who have lived through traumatic periods of abuse, grooming and exploitation. Further, the CICA website now provides a specialised contact form for victims of historical child sexual assault, and allows victims to request a call back service from the CICA in order to make an application at an agreed time. These improvements have been introduced to give victims as much choice and agency as possible over how and when they apply to the Scheme.

In April 2019, the Ministry of Justice introduced an initial Victims' Code compliance framework, with Police and Crime Commissioners taking responsibility for working with their local criminal justice partnership to measure compliance against five key entitlements under the Victims' Code. We are currently considering the first returns received at the end of December.

We continue to work closely with the Association of Police and Crime Commissioners and other criminal justice agencies to refine the framework in advance of the publication of the revised Victims' Code later this year. We will be happy to share further details with the Inquiry as the framework continues to develop.

Improving compliance remains a priority for Government and forms part of the manifesto commitment to pass and implement a Victims' Law that guarantees victims' rights and the level of support they can expect. As mentioned above, we are currently consulting on a draft revised Victims' Code, with a consultation on a Victims' Law to follow after that.

### **Recommendation 3:**

***The government should introduce legislation revising the Compensation Act 2006 to clarify that section 2 facilitates apologies or offers of treatment or other redress to victims and survivors of child sexual abuse by institutions that may be vicariously liable for the actions or omissions of other persons, including the perpetrators.***

We recognise the positive impact that receipt of an apology can have for victims of child sexual abuse, and the desirability of encouraging institutions to give apologies in relation to such abuse wherever possible.

It should however be recognised that the terms in which apologies and surrounding statements are couched can vary widely, and it may be inevitable that a degree of caution is applied by defendants in relation to the wording used.

Section 2 of the Compensation Act 2006 provides that "an apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty." This provision was intended to reflect the existing law and encourage businesses, insurers and other organisations not to be deterred from offering apologies by a perception that doing so would necessarily constitute an admission of liability.

The focus of the 2006 Act on claims in negligence and breach of statutory duty is not intended to suggest that the provision is only of relevance to those proceedings (and under the common law it may equally be relevant elsewhere, including in cases involving vicarious liability). In light of the Inquiry's views, officials at the Ministry of Justice will explore further whether it would be helpful to amend the 2006 Act or take alternative action to clarify that this is the case, and we will update the Inquiry in due course.

### **Recommendation 4:**

***The Department for Work and Pensions should work with the Association of British Insurers to introduce a national register of public liability insurance policies. The register should provide details of the relevant organisation, the name of the insurer, all relevant contact details, the period of cover, and the insurance limit. These requirements should apply to policies issued and renewed after the commencement of the register, and those against which a claim has already been made.***

***The Financial Conduct Authority should make the necessary regulatory changes to compel insurers that provide public liability insurance to retain and publish details of all current policies.***

Public liability is a branch of tort law, where claims are brought for damage, injury or harm caused by one party to another, whether through a deliberate act, negligence, breach of duty or violation of a statutory duty. Legislation relating to public liability includes a range of health and safety and Occupier Liability Acts. There is, however, no statutory requirement for someone to have public liability insurance.

As such, public liability claims may be made against insurance companies where the defendant has public liability cover, but may equally be against an authority or organisation which employed the person accused of abusing the claimant.

The Government has begun and will continue discussions with the Association of British Insurers (ABI) on the feasibility of establishing a public liability register. It will also be important for this work to be co-ordinated with other reform proposals being considered arising from the Inquiry's recommendations so that the Government and others are able to take a holistic approach to achieving justice for those who have been subjected to child sexual abuse.

#### **Recommendation 6:**

***The Ministry of Justice should consult with the Sentencing Council, the Judicial College, the Crown Prosecution Service and other relevant bodies, in order to increase the use of CCOs, where appropriate, in cases involving child sexual abuse by, among other things, implementing guidance for the judiciary and prosecutors in the Crown Courts and Magistrates' Courts.***

Cases of child sexual abuse are some of the most challenging and complex cases that the Crown Prosecution Service (CPS) prosecutes. All child sexual abuse cases are dealt with by specially-trained prosecutors, who work closely with the police to gather evidence and build strong cases with a realistic prospect of conviction. It is for the independent courts to determine the sentence handed down to convicted offenders, based on the full circumstances of the offence and offender, and in considering relevant sentencing guidelines. The courts are under a statutory duty to follow the guidelines where relevant, unless it would be contrary to the interests of justice to do so.

Compensation orders are an important power. While no amount of compensation can ever repair the immense suffering victims of child sexual abuse have endured, for some victims it is important for offenders to make financial reparations to them, for the harm they have suffered.

Prosecutors are reminded of their role in applying for appropriate ancillary orders, including compensation orders, in the CPS legal guidance. In addition, the CPS provides instructions to advocates who appear on behalf of the CPS at court, specifically about their responsibilities to victim and witness. These are currently being updated and will be available on the CPS website when reviewed.

Sentencing guidelines contain detailed guidance about the making of compensation orders including the court's obligation to consider making a compensation order in any case where personal injury, loss or damage has resulted from the offence and that the court must give reasons if it decides not to make an award.

The Magistrates' Court Sentencing Guidelines include suggested starting points for compensating physical and mental injuries which are similar to the Criminal Injuries Compensation Authority (CICA) tariffs. All sentencing guidelines for sexual offences (for use in Magistrates' Courts and/or the Crown Court) follow a structure that directs the court to consider ancillary orders: courts are specifically directed to consider compensation orders.

The Ministry of Justice has consulted with the Judicial College and the Sentencing Council in respect of implementing guidance for the judiciary in the Crown Court and Magistrates' Courts, and with the CPS in respect of guidance for prosecutors. It is our collective view that the guidance referred to above is sufficient and that judges will already be aware of their sentencing powers, including the power to make a compensation order instead of, or in addition to, dealing with an offender in any other way. In addition, prosecutors will be ready to assist the court by drawing the court's attention to its powers to award compensation and inviting them to make an order where appropriate, and if they have the evidence to do so.

However, we believe it may be helpful to explore our understanding of the reasons why courts make low numbers of compensation orders in cases of child sexual abuse. For example, one reason may be that such cases are very complex and the Inquiry's report correctly identifies that "The courts have made clear that CCOs [criminal compensation orders] should only be used in simple and straightforward cases, where the amount of compensation can easily be calculated". As such we propose to undertake further exploration to better understand the reasons behind the low use of this power. Once we have completed this work, we will then consider what steps to take, including whether further guidance would assist. We will provide the Inquiry with a substantive response on our conclusions in due course.