



Independent Inquiry into Child Sexual Abuse
PO Box 72289
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4 May 2022

ACCOUNTABILITY AND REPARATIONS REPORT AND SEXUAL ABUSE OF CHILDREN IN CUSTODIAL INSTITUTIONS REPORT – UPDATE

Thank you for your letter of 7 April requesting updates on the steps that the Ministry of Justice (MoJ) has taken to respond to recommendations 3,4 and 6 from the Accountability and Reparations Investigation Report ('Accountability and Reparations Report') and recommendations 3, 4 and 6 from the Sexual Abuse of Children in Custodial Institutions: 2009 – 2017 Investigation Report ('Custodial Institutions Report'). I am pleased to update the Inquiry that progress continues to be made on each of these recommendations and the Government remains committed to addressing the important issues highlighted in the two reports.

In respect of recommendation 3 from the 'Accountability and Reparations Report', we intend to consult on the role of apologies in the civil justice system. This will include the issues raised in the Inquiry's recommendations. We currently intend that the consultation should run through the summer with a response before the New Year, and the Government would then consider necessary substantive reform.

In respect of recommendation 4, work on this recommendation has had to be paused due to the MoJ's need to focus on other delivery priorities and essential Covid-related work. With the easing of some of these pressures, we will engage the Association of British Insurers (ABI) on the feasibility and benefits of establishing a public liability register.

In respect of recommendation 6, in our initial response to the Inquiry we committed to undertake further work to explore and better understand the reasons why courts make low numbers of CCOs in cases of Child Sexual Abuse. A substantive response on our conclusions is attached to this letter.

You also asked for updates on recommendations from the 'Custodial Institutions Report'. In respect of recommendations 3 and 6, the Youth Custody Service is drafting 'Keeping Children Safe in Secure Settings' (KCSSS) guidance. This will sit alongside the Department for Education's 'Keeping Children Safe in Education' (KCSIE) guidance and set out requirements for sites that hold children on remand and custodial sentences to protect children from abuse, respond appropriately to their complaints and set the same safeguarding expectations as all other agencies providing a service to children.

The guidance will go out for targeted public consultation with a view to publishing it in 2023. The guidance will complement mandatory safeguarding training for all new staff that has already been developed in response to recommendation 3 of the IICSA report. The YCS also intends to publish a Safeguarding Strategy which will outline longer term plans for safeguarding training. In the meantime, the YCS continues to develop relationships with Local Safeguarding Children's Partnerships to strengthen shared

understanding and accountability for safeguarding children and routinely collects data from all sites about safeguarding referrals, allowing scrutiny and analysis.

Early work has started on producing the 'Care and Management of Young People' policy framework which will replace PSI 08/2012. The intention is to publish this in 2023.

In respect of recommendation 4, we have concluded our review of the evidence collected through targeted consultation with stakeholders. We are currently considering the review and will subsequently publish our response to the recommendation.

I thank the Inquiry for its work on these important issues.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Tom Pursglove', is centered on the page. The signature is written in a cursive style with a blue underline beneath the first name.

TOM PURSGLOVE MP

Response to IICSA Accountability and Reparations recommendation 6

In IICSA's Accountability and Reparations Final Report (published September 2019), IICSA concluded that:

Criminal Compensation Orders (CCOs) are a valuable form of reparation. However, they are not being made in sufficient numbers following successful prosecutions for child sexual abuse. The precise reasons for this are unclear from the case studies, not least because many of the events under consideration occurred many years ago, and many perpetrators received long prison sentences. Further investigation of the present position by the Ministry of Justice is required so that the use of CCOs can be improved.

The Report therefore made the following recommendation:

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.

In response, we (the MoJ) consulted with the Crown Prosecution Service, the Sentencing Council, and Judicial College. We undertook a comprehensive review of the current guidance for both sentencers and prosecutors and, after careful consideration, collectively concluded that existing guidance was sufficient. Our response can be found here: [Government AR response \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).

In recognition of the concerns raised by IICSA about the uptake of CCOs in CSA cases, we proposed to undertake further work to explore and better understand the reasons why courts make low numbers of CCOs in cases of CSA. We committed to provide a substantive response on our conclusions. This is provided below.

Update: April 2022

We are clear that CCOs serve an important role within our justice system. They are a valuable sentencing disposal available to the courts, requiring an offender to make financial reparation to the victim for any personal injury, loss or damage resulting from the offence. As such, CCOs meet one of the five purposes of sentencing: the making of reparation by offenders to persons affected by their offences.

To better understand the reasons why courts make low numbers of CCOs in cases of CSA, we have sought views from the judiciary and from prosecutors.

We are grateful for the general reflections they have provided, which include:

- **The level of financial recompense provided by a CCO is unlikely to reflect the damage and trauma suffered by the victim.** There is no statutory limit on the amount of compensation that may be imposed in respect of offences for an offender aged 18 or over. Where the offender is under 18, the CCO must not exceed £5000.

However, the Sentencing Code is clear that CCOs must have regard to the means of the offender, so far as they appear or are known to the court. Additionally, Sentencing Guidelines

provide that where the offender has little money, the order may have to be scaled down or additional time allowed to pay; the court may allow compensation to be paid over a period of up to three years in appropriate cases. Accordingly, in 2019, the average value of a CCO imposed on an adult offender convicted of a sexual offence was £284 and the highest value was £2500; the average value of a CCO imposed on a child convicted of a sexual offence was £214 and the highest value was £1000.

There is concern that the typically low value of CCOs is inadequate to compensate any victim and may be considered to de-value the offence and the harm caused or may be offensive to a victim who has suffered such emotional trauma. This contributes to the low number of CCOs imposed.

- **The payment process for financial impositions may deter pursuit of a CCO.** Section 75 of the Magistrates' Courts Act 1980 sets out that offenders can be given time to pay financial impositions, which includes CCOs, or can pay by instalments. This is also set out in Sentencing Guidelines. This is intended to ensure offenders have an opportunity to pay the full amount of the imposition in circumstances when they cannot pay immediately. In addition, where an offender is sentenced to custody, repayment of any accompanying financial penalties can be delayed so that repayment is only commenced on release.

Where the perpetrator is significantly older than the child, a CSA case will usually result in a long custodial sentence. The fact that a custodial sentence is imposed does not, in itself, make it inappropriate to order compensation; however, it may be relevant to whether the offender has the means to satisfy the order. If a custodial sentence is imposed on the offender, the CCO may not be repaid for many years. There is therefore a concern that the payment process for CCOs may unnecessarily prolong the contact between the victim and the perpetrator, adding to the emotional trauma of the offence and causing further distress.

Sentencing Guidelines are clear that compensation should benefit, not inflict further harm on, the victim. If, after understanding that the offender's ability to pay will ultimately determine whether, and how much, compensation is ordered and whether the compensation will be paid in one lump sum or by instalments, or the victim does not want compensation, this should be made known to the court and respected.

- **Quantification of compensation in cases of CSA is often extremely difficult and complex.** Determining the extent of any injury, loss, or damage, to inform the decision to impose a CCO and also the value of that CCO, may require a detailed inquiry. Case law provides that CCOs are appropriate in the more straightforward cases where the amount of compensation can be easily calculated, and that in more complex cases a more detailed inquiry is best done through the civil courts (R v Stapylton). Criminal courts should not embark on a detailed inquiry as to the extent of any injury, loss, or damage. This is likely to be relevant for some cases of CSA.

The above sets out some possible reasons why courts may decide not to make CCOs in cases of CSA. It should be noted however that there are other routes to receive compensation within the justice system:

- Civil Courts – victims can claim damages from perpetrators through the civil courts. This can include claims for compensation in cases of child sexual abuse.

- Criminal Injuries Compensation Scheme – a Government funded compensation scheme available to victims of violent crime. Claims must be made within 2 years of the offence – except for applicants who were under 18 years of age at the time of the incident, or where exceptional circumstances prevented an earlier claim. Compensation is not dependent on the offender’s means or ability to pay and is thus likely to lead to a higher value of compensation than a CCO.

We recognise however that there may be misunderstandings and misconceptions about the various compensation routes. To raise public awareness, set appropriate expectations, and ensure victims can access information about the compensation they may be eligible for, we will publish updated pages on GOV.UK to clarify the different types of compensation.

It may also be of interest to note that both the CPS and Sentencing Council have proactively taken steps to further strengthen their guidance relating to CCOs, since our initial response in April 2020:

- The CPS has updated its Instructions for Prosecuting Advocates guidance. This links into the Victims’ Code and the prosecutors pledge, that prosecutors will always consider whether there should be an application for compensation.
- In addition, the Sentencing Council has consulted on proposed wording to add into all relevant guidelines regarding the statutory duty on the court to give reasons if it decides not to award compensation. This is not intended to affect the number of CCOs but to further strengthen judicial awareness.

Information about the various routes of compensation can also be found in the Victims’ Code - [MoJ Victims’ Code 2020 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).

We are grateful to IICSA for highlighting their findings and subsequent concerns about CCOs in cases of CSA and welcome the opportunity through this response to set out the measures being taken across the system to improve understanding and raise awareness in respect of this important issue.