Ministry of Justice

Reforming the Law of Apologies in Civil Proceedings in England and Wales

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Response to consultation carried out by the Ministry of Justice.

This information is also available at https://consult.justice.gov.uk/

Contents

Introduction and contact details

This document is the post-consultation report for the consultation paper *Reforming the Law of Apologies in Civil Proceedings in England and Wales*.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

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Alternative format versions of this publication can be requested from declan.murray@justice.gov.uk.

Complaints or comments

If you have any complaints or comments about the consultation process, you should contact the Ministry of Justice at the above address.

Background

1. The consultation paper *Reforming the Law of Apologies in Civil Proceedings in England and Wales* was published on 8 April 2024. It invited comments on the role of apologies in civil proceedings in England and Wales generally, and whether any alternative or additional legislative provisions to clarify or amend the current law would be useful.

2. The background for this consultation was the previous Government having accepted the concerns of the Independent Inquiry on Child Sexual Abuse in September 2019 on the position of apologies with respect to the vicarious liability[1] of organisations under the Compensation Act 2006. The Compensation Act 2006 affords defendants the opportunity to make apologies without necessarily compromising their defence of personal injury claims. However, it only refers to negligence or breach of statutory duty, and not to vicarious liability, which is the main basis upon which child sexual abuse claims are now brought. Therefore, it was agreed to consult on amending the legislation to make clear that statutory provision on apologies extended to cases involving vicarious liability for child sexual abuse.

3. The consultation invited views on how the existing legislation could be clarified to reflect the recommendations of the Inquiry.

4. The previous Government also sought views on whether there should be wider legislative reform to the law of apologies, such as whether the approach taken in Scotland in the Apologies (Scotland) Act 2016 (which gives legal protection to an apology, deals with the effect of an apology in legal proceedings, and provides a definition of an apology) should be adopted in England and Wales. The consultation also summarised the approach taken in Hong Kong and invited views on whether it would offer an appropriate model law. In Hong Kong, an apology will not constitute an admission of fault or liability even if it includes such an admission; any statement of fact included in an apology will also, in most cases, be inadmissible in evidence against those making an apology.

5. The consultation period closed on 3 June 2024 and this report summarises the responses, including how the consultation will inform the further development of the policy and reforms.

[1] Vicarious liability is a legal doctrine that is applied when one person (or organisation) is held liable for the wrongful act or omission of another, even if the specific act or omission was unknown to that person at the time it occurred. It commonly occurs when an employer is held liable for the actions of an employee.

6. A Welsh language summary can be found at https://www.gov.uk/government/consultations/reforming-the-law-of-apologies-in-civil-proceedings.

7. A list of respondents is at Annex A.

Summary of responses

8. A total of 36 responses to the consultation paper were received. Of these, the majority were received from claimant or defendant interests, including clinical negligence specialists, plus legal professional bodies, charities, and academics.

9. All respondents believed that the use of apologies in civil litigation is intrinsically a good thing and saw it as having potential benefits. There was general support for additional guidance and communications on the use of apologies in legal terms, as well as an interest in more being done via pre-action procedures and utilising alternative dispute resolution (ADR).

10. A majority of respondents supported some degree of amendment to the current legislation for apologies. They pointed to a number of factors, such as the lack of empirical evidence about the degree to which the existing legislation has assisted, if at all, in the resolution of disputes. There was broad support for any such reform to be introduced through primary legislation rather than through secondary legislation or rule changes.

11. There were mixed views on using the Apologies (Scotland) Act 2016 as a model for amended legislation in England and Wales and on the value of a statutory definition of an apology. However, there was broad support overall for an apology to be defined regardless of the type of legislation adopted.

12. A large number of respondents showed strong support for vicarious liability to be added on the face of the Compensation Act 2006, as a form of litigation to be covered by the legislation. This would implement a recommendation from the Independent Inquiry on Child Sexual Abuse.

13. There was, however, strong opposition by all respondents on legislation being retrospective in effect, with the general view that this would lead to uncertainty and ambiguity on cases already settled or determined.

14. More detailed comments on the various topics and themes can be found below in the section on the responses to individual questions.

Responses to specific questions

Question 1: Do you consider that there would be merit in the Government introducing primary legislation to reform the law on apologies in civil proceedings? Please provide reasons for your answer.

15. All claimant respondents except one agreed that there would be merit in the Government introducing primary legislation to reform the current law. It was widely suggested by this sector that apologies are under-utilised as defendant organisations remained reluctant to issue an apology, fearing that it would undermine their ability to defend civil claims. Claimant and clinical negligence/medical respondents also argued that more needs to be done by the Government to encourage the use of apologies.

16. One claimant respondent argued that it would be faster and more efficient if secondary legislation could be introduced as it would add the same clarity as primary legislation without being delayed by the full parliamentary process involved (a Bill passing through both Houses of Parliament). However, most claimant respondents, and a majority of charities, academic and medical bodies agreed that primary legislation would be more suitable as it could create specific provisions for facilitating apologies to victims/survivors of child sexual abuse by institutions that may be vicariously liable without undermining their ability to defend civil claims**.**

17. A majority of the claimant respondents as well as some defendant respondents emphasised the importance of introducing primary legislation as the best means of signalling that apologies can be transformative and act as a pivotal moment of validation and healing for victims. Primary legislation would reinforce the importance of defendants making apologies and promote the benefits of apologies. These respondents believed that current legislation on apologies was unclear and did not facilitate apologies for survivors of abuse by organisations who are alleged to be vicariously liable for the actions or omissions of perpetrators. This is because it is not explicitly stated on the face of the statute.

18. Despite some defendant and claimant respondents mentioning there being little to no evidence of the Apologies (Scotland) Act 2016 having been used, it was suggested that—as a model law—it could significantly impact early dispute resolution and settlement. One charity respondent argued that despite the lack of supporting data, such an enhanced statutory clarity on apologies would provide comfort to public bodies who are concerned that an apology, as currently framed in law, may still implicate them in other civil proceedings.

19. Amongst defendant respondents, there were mixed views on whether primary legislation should be introduced. The broad consensus was that whether by amendments made to Section 2 of the Compensation Act 2006 or through other primary legislation, it needed to be clear that an apology should not amount to an admission of vicarious liability, negligence, or a breach of statutory duty. An academic respondent highlighted that the current law is limited to just two torts and should be extended, while providing exceptions. Some claimant, defendant and independent respondents believed that the exceptions should reflect those in Scotland, where apologies apply to all civil proceedings, apart from specified exceptions such as defamation and public inquiries. However, one defendant respondent (an insurer) did state that they interpret Section 2 of the Act as already applying to cases of vicarious liability.

20. All clinical negligence/medical respondents except one believed that there was merit in reform by primary legislation but emphasised that any reform must work in the unique setting of healthcare. This included work to understand why there is uncertainty amongst healthcare professionals about the law as well as guidance and training on how an apology of this type would not be admissible and would not prejudice a claim.

21. One such respondent argued that legislative reforms like the Scotland (Apologies) Act 2016 would be no more effective than the existing Compensation Act 2006 in reducing litigation. They believed that proper investigations, which acknowledged any failings in the care provided and properly addressed change to prevent or minimise the same failings recurring, were more likely to be effective in heading off litigation.

22. It was suggested by one medical body that extending the apology provisions in the Pre–Action Protocol for the Resolution of Clinical Disputes would be a potential alternative to primary legislation, with the comment that health professionals do not currently feel confident in making an apology, and that this amendment would increase the prospect.

23. As a separate point, some charity and academic respondents suggested that the most compelling reason for introducing primarily legislation is the lack of guidance currently available and the need for clarification of Section 2 of the Compensation Act. Such respondents believed that primary legislation would promote fairness and efficiency in civil proceedings, promote early settlements, reduce litigation costs and foster a more empathetic legal environment by further encouraging apologies in disputes.

24. A majority of the academics responding believed that introducing primary legislation would raise awareness of, and the profile of, apologies in civil litigation. One respondent did argue that it would not make any practical difference from a legal perspective as there no is research showing that the existing legislation had changed behaviour in litigation.

25. An academic respondent and an independent respondent both suggested that, in the absence of evidence of why the current law is not being used, reforms should not be pursued. Instead, they argued, the government should focus its efforts on establishing why the current law is not working as Parliament had intended.

26. Despite agreeing that there would be merit in reform, a few respondents suggested that such reforms could lead to a greater propensity for insincere apologies, which could potentially have a negative effect at later stages of negotiation or litigation.

Q2: Do you agree that this legislation should broadly reflect the approach taken in the Scotland Apologies Act 2016? Please provide reasons for your answer.

27. Respondents varied in the degree to which they thought that the legislative approach to the law of apologies taken in Scotland should be followed in England and Wales. However, there was a broad consensus that the Scottish legislation provided clarity and was a helpful model and comparator in considering reform in this jurisdiction.

28. Some respondents argued that while following Scotland's apologies laws would be a positive step, the ambition for reform might be broader and clearer. For example, one respondent suggested that the protected status of an apology should be extended to include proceedings of a professional regulatory body and to address insurance concerns where an apology can invalidate any insurance that an institution/organisation has.

29. The majority of all respondents, from different sectors, agreed the Scotland Apologies Act is more definitive than Section 2 of the Compensation Act as it provides a definition, as well as clear exceptions of where the law can be used. It is believed that litigants and organisations would be more willing to provide an apology if the law expressly states that an apology cannot be used as evidence in civil proceedings. However, a few claimants and defendant respondents argued that this concept should not be adopted in England and Wales, as they believed that there are circumstances under which an apology should be used as evidence or an admission of fault could breach "non-admission" clauses within a contract of insurance and, in some cases, may be sufficient for insurers to refuse to indemnify.

30. Aligning English and Welsh apologies legislation with Scotland was considered by a number of respondents as a means of removing any remaining perceived barrier to offering apologies—namely, prejudicing the offeror's position or insurance cover by claimant and academic respondents. However, some clinical negligence

respondents argued that the Apologies (Scotland) Act 2016 definition is silent on the question of responsibility and accountability. Therefore, they suggested that the Government should instead reinforce the importance of investigation mechanisms already in place which are believed to reduce costs and to encourage collaborative investigations and a consistent approach for patients.

31. A defendant respondent argued that it would be very helpful for companies which operate across the United Kingdom if there were similar legislation in both jurisdictions. Conversely, however, some respondents argued that any new legislation should meet the needs of consumers and consider England and Wales's unique legal landscape and cultural considerations. Therefore, adjustments may be necessary to ensure compatibility with the legal framework and practices in this jurisdiction.

32. A defendant respondent argued that the scope of any proposed Act needs to be broader in scope than the Scottish legislation in order to cover recommendations of the Independent Inquiry on Child Sexual Abuse, including the recommendation that any immediate redress offered intended to mitigate loss should not be taken as an admission of liability. However, an independent respondent stated that there is no proven reduction in length of time of child sexual abuse legal cases in Scotland as a result of their apologies legislation. Nonetheless, they were not aware of any negative implications arising from the reform.

33. Some respondents did not agree that legislation should broadly reflect the Scottish legislation on the basis that its wording would not add anything to existing legislation, especially in healthcare. These respondents considered Section 2 of the Compensation Act to already be clear and unequivocal in stating that an apology does not amount to an admission of negligence. Instead, they suggested that the Compensation Act could be amended to include a definition that applied to all adverse healthcare outcomes; however, there was no pressing need for it.

34. Independent respondents highlighted provisions in the Scottish legislation that might be perceived as unclear. For example, while Section 1 of the Scotland Apologies Act is seen as a helpful extension of Section 2 of the Compensation Act (on the distinction between an admission of liability, and an apology made when proceedings are not afoot), there is potential for ambiguity or additional confusion on the impact of the apology.

35. A few charities, clinical negligence, and academic respondents considered the Scottish legislation to be an imperfect model and opined that the Government's focus should be on the role of an apology in properly acknowledging the impact on the victim/claimant. For example, they suggested that this may necessitate a defendant or public body listening to a victim who is willing to explain the effect of the negligence or breach of statutory duty on their lives. It is believed that principles and practices of restorative justice could enable this type of encounter and may make the apology more grounded and genuine. However, they understood the risk in trying to legislate for what an apology is to the extent that it becomes over

prescriptive, too legalistic, and meaningless to an individual even when the apology is genuinely expressed. As a result, one academic suggested that this is a question the Law Commission of England and Wales could research, producing recommendations that seek to facilitate greater use of apologies in practice, based on empirical research.

36. One academic respondent was opposed to new legislation that broadly reflected Scottish legislation due to the historical context of the legislation. Section 2 of the Compensation Act is not applicable to Scotland. It was argued that while the Scottish legislation is broader than the Compensation Act, it is also narrower in its definition of an apology. This is because it excludes both statements of fact and fault, which may well be two key elements that a claimant who has suffered harm expects from a meaningful apology.

Q3: What do you believe the impacts and potential consequences would be on claimants or defendants should a Scottish style Apologies Act be introduced in England and Wales?

37. Respondents believed that careful consideration of the legal, psychological, and cultural implications was essential to ensure that such legislation effectively balanced the interests of both claimants and defendants. For example, respondents understood that the timing of apologies, particularly in sensitive cases such as sexual abuse, must be carefully considered to avoid undermining their sincerity or effectiveness.

38. A majority of respondents identified positive potential impacts if a Scottish-style Apologies Act were to be introduced in England and Wales, especially having a definition which would provide greater certainty about the status of apologies in civil proceedings. Independent and charity respondents emphasised that such legislation would make the concept of apologies in legal contexts more widely known, encouraging both practitioners and the public to consider using apologies more frequently. Over time, it was believed that apologies could become an accepted part of pre-action conduct, particularly in mediation and clinical disputes, where they have been shown to transform relationships between disputing parties.

39. An early apology was believed by many respondents to potentially be seen as insincere if followed by contentious litigation disputing liability. There was a concern from clinical negligence respondents that more legislating of apologies could lead to them becoming prescriptive and legalistic, which might result in even genuine apologies appearing formulaic and insincere. This could diminish the emotional and

psychological benefits that a heartfelt apology is supposed to provide. Furthermore, implementing such legislation might initially cause confusion and upset among claimants who might expect that an apology indicates an admission of liability. Therefore, they have suggested that the transition period could potentially require extensive explanation to avoid misunderstandings.

40. Claimant and insurer respondents suggested that if a reform like the Scotland Apologies Act were introduced and widely publicised, a sincere and early apology may result in fewer claims being brought by survivors because they would not feel driven to seek justice through the court system. Therefore, it could potentially reduce the need for lengthy and protracted litigation but also represent a significant step forward in promoting a culture of openness, reconciliation, and meaningful apologies within civil proceedings and improving access to justice. This was highlighted in case law examples cited by academics. However, some respondents suggested that broader changes within the legal framework—beyond clear guidelines and legal definitions—might be necessary to achieve these desired outcomes. But it was argued that the positive effect of Scottish apologies legislation in fostering a more cooperative and conciliatory approach to resolving civil disputes has been recognised in Scotland.

41. Clinical negligence respondents suggested that such reform could help in decreasing claimant distress and streamline the resolution process. It may also encourage more cases to be resolved through ADR. Many respondents, including professional bodies and academics, suggested that this would shorten the time taken to resolve claims and reduce litigation costs for both parties. This may lead defendants, especially in healthcare, to feel more comfortable offering apologies without fear of admitting liability. This could lead, in turn, to more open and honest conversations between clinicians, patients, and their families, potentially alleviating pressure on clinicians.

42. However, one claimant respondent argued that although there may have been positive and negative outcomes in Scotland, the law and legal process differs from the law in England and Wales, so the impact on claims and claimant may not be the same. Various respondents noted that despite the intention to reduce litigation, claimants might still pursue legal action if they perceive the apologies as insufficient or if they require financial compensation that an apology alone cannot provide. This means that the overall reduction in litigation might be minimal.

43. A range of respondents have emphasised that receiving a meaningful apology can be crucial for the emotional and psychological healing of claimants, particularly those who have suffered significant harm or abuse. Insurers noted that for claimants whose primary concern was non-monetary (e.g., seeking acknowledgment or preventing recurrence), an apology could provide a valuable alternative remedy to pursuing damages through court proceedings. This could potentially offer emotional or psychological relief and a sense of justice without the need for litigation.

44. However, some respondents highlighted a few potential issues that could arise, one of the main criticisms being that apologies made under such legislation may not be admissible as evidence of liability in civil proceedings. This could be distressing for claimants who receive detailed apologies only to find that these cannot then be used in their legal case, potentially undermining the apology's value and leading to increased ill feeling. There is also a risk that claimants may feel that the apologies are hollow, reducing their trust in the process and potentially leading to increased dissatisfaction and continued litigation.

45. It was argued that if claimants perceive the apology as meaningless (because it cannot be used as evidence), this might lead to further psychological harm rather than healing. The ambiguity regarding the legal status of apologies and their potential impact on liability and insurance policies was identified by respondents as an area that needs to be addressed to avoid confusion and would determine the effectiveness of the legislation. Claimant and defendant respondents highlighted that any legislative reform introduced must clearly define what constituted an apology and ensure that such apologies did not impact liability or insurance coverage. This clarity would help defendants and organisations feel more confident in offering apologies without fear of legal repercussions or prejudice.

46. Insurer respondents also emphasised that clear and effective drafting of the legislation would be crucial. The contents of apologies would need to be broad enough to be adaptable to reflect the facts of each claim, ensuring that they are meaningful and context specific. It is believed that any new law should provide unambiguous protections to ensure that apologies do not void insurance policies or create unintended legal liabilities. However, clinical negligence respondents argued that if such legislation included promises to conduct thorough investigations as part of the apology process, it could place additional pressure on clinicians and other professionals. This would be problematic if such investigations were not proportionate to the injury, potentially creating more stress rather than alleviating it.

47. Insurer and academic respondents identified a potential positive impact on public confidence, as people may perceive organisations as more willing to acknowledge wrongdoing and take responsibility. This could enhance the reputation of organisations that are seen to be doing the right thing as apology legislation could encourage defendants to be more accountable.

Q4: Should the legislation provide a definition of an apology? Please provide reasons for your answer.

48. Many respondents suggested that providing a clear definition could help both claimants and defendants understand what constitutes a protected apology under

the law. This clarity could reduce uncertainty and encourage the use of apologies in dispute resolution. However, they felt that any definition of an apology should be aligned with existing legal provisions, such as the duty of candour in the Health and Social Care Act 2008, to avoid confusion and ensure consistency across different areas of law.

49. Academic respondents felt that adopting a definition similar to those used in other jurisdictions, like the Apologies (Scotland) Act 2016, could use a tested legal framework. The Scottish Act defines an apology comprehensively, ensuring that statements of regret and steps to prevent recurrence are included without admitting fault, and this could serve as a model for effective legislation.

50. Claimant respondents suggested that a statutory definition could be included within a broader framework or guidance that set out what should be included in an apology. This was to ensure that apologies were meaningful and included remedial actions without being overly prescriptive. It was felt that a clear definition would remove the hesitancy to offer apologies often felt by defendants and their advisors . This reluctance was suggested to stem from the current lack of clarity on whether a statement was protected under the Compensation Act.

51. To prevent meaningless apologies, charity respondents suggested that instead of adopting a rigid template, the legislation should outline principles of what constituted a good apology. These principles should include authenticity, sincerity, unconditional acceptance of harm, and a commitment to prevent future occurrences. This approach would ensure that apologies were meaningful and tailored to the specific circumstances, which would greatly help the victim’s healing process.

52. Charity respondents noted that consumers prefer legal frameworks that are clear and consistent and that, therefore, a defined apology would help consumers understand their rights and seek redress for grievances more confidently. There was a broad view that the introduction of a statutory definition would reduce the likelihood of satellite litigation and promote better legal practices in dispute resolution.

53. Academic respondents suggested that a statutory definition would ensure consistency in how apologies were treated across different contexts and cases. This uniformity could help maintain fairness and provide a clear framework within which all parties could operate, thus empowering consumers and affected individuals to assert their rights confidently.

54. Academic respondents also referred to research which indicated that full apologies, which include expressions of regret and admissions of fault, have a more significant positive impact on the recipient's perception and the likelihood of accepting a settlement than partial apologies, which include expressions of regret but not admissions of fault. By defining apologies to include both elements, the legislation

could ensure that apologies are more meaningful and effective in resolving disputes.

55. The majority of respondents emphasised that apologies must be meaningful but may vary significantly depending on the context and the individuals involved. Therefore, the method of delivery, timing, and whether the injured party wants an apology are all individual, case-specific factors. There was a fear that a statutory definition, if overly prescriptive, would limit this flexibility and make apologies less meaningful. It was emphasised that apologies need to be heartfelt and genuine to be effective. Clinical negligence responses emphasised that legislation cannot convey genuine emotion where over-defining an apology through legislation risks making it a matter of mere legal compliance rather than a genuine expression of regret.

56. Some respondents considered that there is no evidence to suggest that defining an apology would make it more likely that apologies would be given. As a result, a statutory definition may not have the desired effect of increasing the frequency of apologies. However, they noted that the Compensation Act already reflects the common law position that an apology does not equate to an admission of liability. Adding a statutory definition is not believed to significantly increase the likelihood of apologies being given, as observed anecdotally in jurisdictions with such definitions. Furthermore, defendant respondents suggested that introducing a legislative definition could instead lead to disputes over whether a statement met the prescribed definition of an apology, potentially resulting in satellite litigation. This was believed to add complexity and could deter individuals and organisations from making apologies due to fear of legal challenges.

57. An alternative to a definition suggested by some defendant respondents was providing statutory or non-statutory guidance on what an apology might include, as this could be more beneficial. They suggested that this guidance could offer examples of effective apologies without constraining defendents' choice of language too tightly.

Q5: Should the legislation apply to all types of civil proceeding, apart from defamation and public inquiries? If not, what other types of civil proceeding should be excluded? Please provide reasons for your answer.

58. Nearly all respondents felt that applying the legislation to all types of civil proceedings would ensure consistent and equitable treatment across the legal system. This broad application was believed to help avoid inequalities in access to

justice and enhance consumer trust in the legal system. A number of respondents also suggested that the extension of this litigation should mirror the Scottish model, which covered all civil disputes except for certain defined exceptions, e.g., defamation claims.

59. Claimant respondents argued that there was support for the legislation to include provisions related to vicarious liability, following the approach taken in the Scottish legislation. They argued that this would ensure that the legislation was comprehensive and applicable to all relevant cases.

60. Claimant respondents further suggested that legislation should generally apply to all types of civil proceedings. The underlying belief was that this would encourage early resolution of disputes and promote a less adversarial approach to litigation. However, it was argued that there was a need for clear guidelines to specify the types of proceedings the legislation would cover, if it is not to apply across the board.

61. Clinical negligence respondents stated that the legislation should extend to professional regulatory proceedings. They argued that this would help ensure that apologies can be made without fear of legal consequences, fostering a more open and sincere approach to dispute resolution. However, a professional body noted that the Apologies (Scotland) Act does not apply to proceedings before regulatory bodies. Academic respondents thought there was a different focus for regulators—on maintaining professional standards rather than determining civil liability—and therefore the applicability of apologies could be less relevant. As regulatory proceedings are designed to address professional conduct rather than civil disputes, it was argued that their exclusion was appropriate.

62. Respondents from different sectors agreed that defamation and public inquiries should be excluded from the scope of the legislation. This exclusion was seen as appropriate in order to maintain the integrity and focus of these specific types of proceedings. The valuable role apologies already play in mitigating defamation claims is acknowledged and the exclusion of defamation cases and public inquiries from this legislation was deemed appropriate and beneficial. In both defamation cases and public inquiries, apologies can be crucial in resolving disputes and reducing reputational harm without legal repercussions in complex and sensitive issues. Respondents who mentioned defamation and public inquires thought that the dynamics of apologies may differ significantly in these cases from those of other civil proceedings.

63. However, some respondents said that while it may seem counterintuitive to exclude defamation cases from the legislation aimed at facilitating apologies, there was value in allowing the option of an apology to exist within defamation cases. Apologies are believed to help resolve disputes and improve the dynamics between parties, even though they are not obligatory and do not create legal consequences. As such, these respondents argued against any exceptions being necessary.

64. Academics also stressed that if exclusions are to be made, they should be clearly defined and coherent to avoid undermining the objectives of the legislation. This includes ensuring that any exclusions are justified based on the specific nature and purpose of those proceedings.

65. Many clinical negligence respondents felt there was a need to avoid making apologies overly legalistic, which could undermine their sincerity and intended impacts, particularly in areas like healthcare (clinical negligence).

66. A few independent respondents suggested that the legislation should clarify its application to arbitrations governed by the Arbitration Act 1996 or common law in England and Wales. They also noted that it is sensible to include breach of contract claims under the scope of the legislation, as these often involve disputes where apologies could facilitate resolution.

Q6: Would there be any merit in the legislation making specific reference to vicarious liability (on the basis it would clarify the position on apologies in historic child sexual abuse claims)?

67. The majority of respondents stated that there would be significant merit in the legislation making specific reference to vicarious liability, particularly to clarify the position on apologies in historic child sexual abuse claims. They also noted that organisations would have a clearer understanding of whether an apology might be seen as an admission of liability, helping them navigate the legal landscape with more confidence. However, one respondent emphasised that the legislation should ensure that apologies legislation is not conflated with admissions of liability.

68. A number of respondents emphasised that, for survivors of historic child sexual abuse, receiving an apology can be a crucial part of the healing process and significantly help in alleviating some of the victim's pain and distress. Therefore, ensuring that the law supports and facilitates the offering of apologies can provide significant benefits to victims, who often seek acknowledgment and accountability from the institutions responsible for their suffering.

69. Respondents highlighted that the current legislation does not explicitly state that Section 2 of the Compensation Act applies to abuse claims involving vicarious liability. It is believed that the lack of clarity may result in a reluctance among defendant organisations to offer apologies, as they worry that it could undermine their defence in civil claims. As a result, making specific reference to vicarious liability would remove this ambiguity, making it clear that apologies can be offered

without implying liability. This was a recommendation made by the Independent Inquiry into Child Sexual Abuse, a point made by respondents.

70. Furthermore, many respondents stated that the principle of vicarious liability also applied to other areas of civil litigation, such as workplace injury claims. So, clarifying the legislation would ensure that early apologies could be made in various contexts, potentially improving relationships and aiding in rehabilitation, especially in cases involving serious injuries.

71. Some defendant and independent respondents also made the point that an explicit reference to vicarious liability could encourage earlier and more meaningful apologies, potentially reducing the need for litigation and helping victims and survivors receive the acknowledgment they seek. Moreover, some clinical negligence respondents stated that it would provide clarity to those involved in clinical vicarious liability claims, ensuring that apologies can be issued more confidently.

72. A variety of respondents noted that in cases of abuse within institutional settings, it is appropriate for the institution to offer apologies. This is believed to reflect a recognition of the harm and a commitment to addressing past wrongs. As a result, this legislation should support institutions in making vicarious apologies, particularly when individual perpetrators are unwilling or unable to do so themselves.

73. For example, claimant respondents mentioned the significance of institutional accountability. They stated that many survivors of childhood sexual abuse seek apologies not just from the individual perpetrators but also from the institutions that failed them. Therefore, clarifying the legal status of vicarious liability in the legislation would acknowledge the role of these institutions and provide survivors with the recognition they seek.

74. Many respondents, including claimants and defendants, suggested that insurance concerns are one of the main reasons institutions hesitate to offer apologies. Their fear is that doing so might void their insurance contracts. Specific legislative reference to vicarious liability would address this concern, encouraging institutions to offer apologies.

75. International experience, including practices in Ireland, Northern Ireland, Australia, and Canada, was cited by charity and academic respondents to demonstrate how vicarious apologies can play a meaningful role in the redress process for institutional abuse victims. These countries were said to demonstrate the positive impact of such apologies; therefore, they suggested similar provisions in England and Wales would help align with these best practices.

Q7: Should the legislation be clear that it would not be retrospective?

76. All claimants who responded to this question believe that the legislation should be clear that it would **not** be retrospective, to avoid uncertainty and ambiguity in its application. For example, it was stated that it would be unjust for a defendant to argue that a claimant can no longer rely on an apology provided before the legislation was amended. Clinical negligence and professional bodies' respondents suggested mirroring the approach of the Apologies (Scotland) Act 2016, which is not retrospective.

77. A few claimant respondents argued, however, that the legislation could be backdated to the date when the Compensation Act 2006 took effect. This was because consideration would need to be given to how it would apply to ongoing claims, some of which will have been long-standing. By contrast, defendant and academic respondents argued that retrospective legislation would disrupt settled legal expectations and undermine the principle of legal certainty.

78. A few defendant and clinical negligence respondents felt that retrospective changes could unfairly penalise those who had acted in good faith under previous legal conditions, and expose them to unexpected liabilities.

79. A defendant respondent also suggested that while the general principle should be to avoid retrospective laws, there should be clarity on specific terms, such as whether the application was based on the date of the cause of action or date of the apology. This was supported by clinical negligence and academic respondents who stated that clear, non-retrospective application would ensure that apologies given before the enactment of the new legislation were judged on the legal context and intentions at the time they were made. Another factor was that such actions could increase costs and prolong the resolution of claims.

80. However, charity respondents presented arguments in favour of making the legislation retrospective, particularly to address issues such as uncertainty and barriers to justice for historic abuse cases. They argued that retrospective applications could potentially help survivors by removing limitations on apologies being made for past events.

Q8: Are there any non-legislative steps, e.g., Pre-Action Protocols, that the Government should take to improve awareness of the law in this area? If so, what should these

be, and should they be instead of – or in addition to – primary legislation?

81. Nearly all respondents felt that steps should be taken to improve awareness of the law regarding apologies. For example, an academic respondent stated that while new legislation may be beneficial, it may not achieve its aims given the widespread perception of apologies being construed as admissions of liability.

82. It was emphasised by claimant respondents that primary legislation was essential to establish clarity and provide a formal framework for the use of apologies within legal proceedings. Amended primary legislation would set out a clear criterion to ensure that apologies are not considered admissions of liability.

83. In addition to primary legislation, statutory guidance was recommended by claimants, academics, and charity responds as it would provide clarify as to what constitutes an apology and set out the benefits to defendants of making one. It was suggested that such guidance should be informed by survivors and tailored to reflect their needs and perspectives. This would ensure that apologies were both meaningful and beneficial to those receiving them, and delivered appropriately (considering factors such as timing, method of delivery, and the recipient's willingness to accept an apology).

84. Charity respondents suggested that such guidance should include examples of effective apologies, drawing from best practice. The guidance would be designed for use by survivors, defendants, and legal professionals alike to ensure clarity on how apologies should be framed, made, and received.

85. Nearly all respondents stated that amending existing Pre-Action Protocols, or introducing new ones, could potentially enhance the awareness and use of apologies in legal disputes. It was suggested that these protocols could encourage early apologies, clarify that an apology does not equate to an admission of liability, and facilitate early information exchange and transparency. However, they recognised that pre-action protocols alone may not be sufficient without accompanying legislation, as they may be overlooked.

86. Some clinical negligence respondents suggested enhancing Pre-Action Protocols, such as the one for clinical disputes, to specifically reference and encourage the use of apologies where appropriate. They understood that the current protocol implies the possibility of apologies through a "cards on the table" approach, and references the duty of candour. Making explicit mention of the Compensation Act 2006 would provide clearer guidance and reinforce the importance of making an apology early in the dispute resolution process.

87. A few respondents endorsed the use of apologies as part of mediation and other forms of ADR. They believed that incorporating guidance on apologies within these processes could facilitate their use as a tool for resolving disputes amicably and efficiently, thereby minimising the need for formal litigation. They suggested that

these non-legislative measures would complement primary legislation. Together, they believed that it would foster a more integrated approach to dispute resolution, where apologies were considered early on and used effectively to prevent unnecessary litigation. This is because mediation allows parties to craft apologies and resolutions that can facilitate innovative remedies that a court hearing might not provide and, therefore, help parties address grievances in a more constructive and less adversarial manner.

88. Charity respondents highlighted the importance of facilitating opportunities for survivors to discuss the actions taken or planned by defendants as part of the apology process. It is believed that such dialogue can help ensure that the apology is perceived as sincere and meaningful, even if the survivor does not formally accept it. This sector also noted that references and resources on meaningful apologies should be easily accessible to all relevant parties, including online resources, toolkits, or workshops to educate about the new requirements and best practices for apologies.

89. Academic respondents stressed the importance of educating public bodies, insurers, and the legal community about the new legislation and best practices for apologies. This could involve targeted outreach and training programmes to ensure that all stakeholders understand the implications of the law and how to apply it effectively.

90. Some respondents suggested that there would be merit in building on successful models like the NHS's "Saying Sorry" guidance, and that similar guidelines should be developed by other sectors. It was suggested that these guidelines should clearly state that giving an apology would not invalidate insurance coverage, addressing a key concern that has historically discouraged the use of apologies.

91. Beyond legal frameworks, it was suggested the Government could facilitate broader public awareness through media campaigns or by issuing guides that explain the intent and application of the law on apologies. They believe that it would help ensure that both the public and relevant organisations are informed about the benefits and limitations of offering apologies within legal contexts.

92. Some respondents suggested promoting awareness by working with professional bodies and associations, such as by updating training programmes and distributing materials that emphasised the role and benefits of apologies in dispute resolution. Meanwhile, independent respondents acknowledged and supported the use of apologies within ad-hoc redress schemes by including them in relevant guidance documents. It is believed that such schemes often operate outside formal litigation, so clear guidance on apologies could help manage expectations and improve the efficacy of these informal resolutions.

Q9: Do you have any evidence or data to support how widely the existing legislative provisions in the Compensation Act are used?

93. More than 40% of respondents provided no statistical data or formal evidence. One academic respondent noted that there is little evidence in any jurisdiction to support how widely the existing legislative provisions, such as in the Compensation Act, are used.

94. A range of respondents observed that while there is no formal data to quantify the use of the current legislation, there is significant anecdotal evidence suggesting that the provisions are not widely utilised, particularly in cases involving personal injury, clinical negligence, and abuse. For example, claimant respondents reported they have never received a statutory referenced apology for their clients, suggesting that the provisions of the Compensation Act 2006 are not widely relied upon. This is believed to be because defendants choose not to offer apologies, even though they are legally permitted to do so once a case is settled. This reluctance is particularly noted in the clinical negligence sphere, where apologies are often only provided late in the litigation process, making them appear insincere and failing to have a meaningful impact on the claimant's decision to proceed with litigation.

95. However, clinical negligence respondents stated that they are aware of the provisions in the Compensation Act and promote their use, particularly in the context of making apologies and adhering to the duty of candour. Despite publicising the use of apologies, they do not have direct evidence or data available to support how widely the existing legislative provisions in the Compensation Act are used.

96. Claimant respondents concluded that the lack of widespread use of the existing legislation may be attributed to a combination of legal ambiguity, strategic decisions by defendants, and the timing and nature of apologies offered. For example, in cases involving physical and sexual abuse, apologies are particularly rare, partly due to the lack of clarity in the current legislation regarding vicarious liability and whether the Compensation Act applies to such claims. This further limits the use of the provisions in these sensitive cases.

97. It was estimated that apologies are issued in less than 10% of vicarious liability abuse cases. The constraints on the existing legislation potentially contributed to individuals feeling compelled to pursue a civil claim in the absence of an adequate or meaningful apology.

98. One professional body conducted a survey among its civil and personal injury specialist reference groups regarding the law of apologies and received an exceptionally low response rate. This suggests that many members are either unfamiliar with the Compensation Act's provisions or do not use them regularly in their practice. Among those members who did respond to the survey, 29% reported

having used or received an apology in civil proceedings within the last 12 months. Therefore, this data suggested that while some practitioners do engage with the provisions, their overall usage is relatively limited.

99. There is believed to be a general lack of awareness among survivors about their legal options, including both criminal and civil law by charity respondents. They suggested that the provisions of the Compensation Act may not be widely known or understood by those who could potentially benefit from them. This sector noted that survivors often confuse different legal provisions, indicating a need for clear information and independent advice. This could imply that even when the legislative provisions are available, they may not be effectively utilised due to this confusion.

100. If legislative reform were to be considered, academics argued that there was a strong case for commissioning empirical research to assess the effect of apologies in judicial proceedings. Such research would help policymakers and other stakeholders to understand the actual impact of the Compensation Act's provisions before any changes were made. Therefore, any future legislation should address the current limitations by providing statutory requirements for defendants to acknowledge fault, investigate within a regulated timeline, and ensure best practices and quality assurance in their investigations.

Q10: What is your assessment of the likely financial implications (if any) of the proposals to you or your organisation?

101. A third of respondents across a variety of sectors answered either that this question was not applicable to them, or that they had no information.

102. 86% of claimant respondents indicated that there are minimal to no significant financial impacts expected for claimants or the organisations involved. The general consensus for this sector is that the proposals, particularly the introduction of a statutory apology, are unlikely to deter claimants from pursuing compensation claims; meanwhile, for individuals who have suffered serious or life-altering injuries, financial compensation remains crucial to meeting their long-term needs. As such, while an apology might assist in the healing process or influence the tone of negotiations, it is typically insufficient on its own to resolve the claims. Therefore, no significant financial implications for claimants are anticipated.

103. Most organisations do not foresee any direct financial implications from the proposals. For firms that operate on a Conditional Fee Agreement (CFA) or Legal Aid basis, funding is contingent on the pursuit of financial compensation. If the reforms lead to an increase in individuals seeking only an apology without financial compensation, these firms would not offer funding on the current basis. Instead, they might need to refer these individuals elsewhere or explore private funding

arrangements, which could result in unrecoverable costs for the survivor. Nonetheless, this scenario is not expected to significantly impact the overall financial operations of these organisations, as they primarily handle cases focused on financial compensation.

104. However, it was believed by claimant respondents that the primary impact of reforms might be on defendants if costs are influenced by the absence of an apology. For example, if the absence of an apology is deemed a relevant factor in determining costs, there could be adverse consequences in terms of costs for defendants. However, they understand that this remains speculative and would depend on how the reforms were implemented in practice.

105. Defendant respondents suggested that the likely financial implications would be relatively minimal but stated a few key considerations. For example, for insurers to feel more comfortable with promoting apologies to insured parties, there may be a need for significant investment, in terms of time and financial resources, in amending policy wordings. Insurers may need to revise their policies to clarify that making an apology does not constitute an admission of liability, which would protect the insured from potential legal consequences. This sector highlighted that this investment could be justified if there were data demonstrating that apologies helped reduce costs or damages awards.

106. The defendant sector noted that clarification of the relevant legislation to explicitly state that apologies do not constitute admissions of vicarious liability could reduce uninsured costs for organisations. This is because organisations would be less likely to need legal advice on the specific wording of apologies to avoid prejudicing their insurance coverage. In this sense, the proposals could lead to cost savings for organisations by reducing the need for legal consultation on this matter. However, defendants do understand that while it is currently uncertain, the proposals might lead to a scenario where some claimants, who primarily seek an apology rather than monetary compensation, could have their needs satisfied without pursuing compensation. If this happens, it could reduce the number of cases that proceed to compensation claims, potentially leading to cost savings for insurers and organisations alike.

107. This view was also reflected in the responses from wider respondents who suggested that reforms and the promotion of ADR might further reduce costs. Academics specifically mentioned that the possibility of mandatory Non-Disclosure Agreements and early reconciliation efforts might help manage disputes internally and avoid the financial and reputational damage associated with public legal battles.

108. Clinical negligence and professional body respondents emphasised that the financial implications of the proposals are contingent on the way in which they are implemented. For example, with suitable guidance, there could be an increase in both the costs and duration of claims. They argued that this might happen because claimants may wrongly assume that liability does not need to be established, leading to mistrust and extended legal processes to clarify misunderstandings. Conversely, if

clear explanations were provided and claimants perceived clinicians as transparent and forthcoming, the length of claims could decrease, potentially lowering costs.

109. In contrast, professional body respondents suggested that there could be increased costs due to continued ambiguity. For example, if the proposals lead to disputes over whether a statement qualifies as an apology or over the definition of an apology, this could result in increased legal costs for all parties involved. The extent of these costs would depend on the specific wording of the proposed legislation, which could create complexities in interpreting and applying the law.

110. This sector also highlighted the potential for increased legal work without a corresponding increase in compensation. It is suggested that, should apologies become more common in pre-action proceedings or civil litigation, this could generate additional work for legal practitioners. However, if these practitioners are subject to fixed costs, the increase in workload would not necessarily be matched by an increase in revenue, potentially straining resources. As a result, they have expressed concerns that changes to the law of apologies might lead to an increase in subrogated claims being defended and a rise in satellite litigation, which could further elevate costs and complicate case management.

111. Charity respondents suggested that they could require additional funding and staffing to develop and distribute these resources effectively to ensure that harder-to-reach and minority groups were adequately informed. As a result, there could be an increase in operational costs as organisations would need to invest in targeted communications in suitable formats. Therefore, while the proposals could enhance the support offered, they may necessitate a careful reassessment of resource allocation and budgeting to meet the expanded needs of service users.

Q11: What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Please give reasons.

112. 42% (rounded figure) of respondents either did not respond to this question or stated that they do not collect appropriate data that will help them provide an informed response to this question, indicating a potential gap in understanding the full scope of equalities impacts.

113. A majority of clinical respondents noted that proposed options for reform in the context of individuals with protected characteristics appear to be generally positive and unlikely to inadvertently cause harm. Defendant respondents, on the other hand, provided a range of perspectives on the potential equalities' impacts.

114. For example, some defendant respondents acknowledged that the accessibility and comprehension of specific legislative provisions and non-legislative guidance may

disproportionately affect individuals with certain protected characteristics. Meanwhile, others expressed uncertainty and suggested that a full equality impact assessment would be necessary to fully understand the implications.

115. Claimant respondents suggested that the reforms (which are expected to encourage early apologies) could particularly benefit individuals with disabilities. This is because many claims for personal injury or clinical negligence involve individuals who are left disabled as a result of the incidents. By fostering a culture of early dispute resolution and apologies, this sector understood that the reforms may lead to quicker settlements, reducing the stress and length of litigation for these individuals. The recognition of the potential benefits for disabled individuals was emphasised, as it aligned with the need for a more empathetic and responsive legal process for those who may already face significant challenges due to their disabilities.

116. It is also believed that the importance of tailoring the method and timing of apologies to the needs of vulnerable parties, including those with protected characteristics, should be acknowledged. For example, some respondents said that apologies should be delivered in a manner that is understandable and accessible to the injured party, such as using their native language or simplifying explanations for children or individuals with cognitive impairments.

117. Claimant respondents also recognised the risk of a potential negative impact on individuals with mental health conditions. The absence of an apology or the retraction of an apology is believed to have detrimental effects on claimants with mental health issues, potentially exacerbating their conditions. An insincere apology followed by aggressive litigation is understood as particularly damaging; therefore, claimant respondents highlighted the necessity for apologies to be handled with care and sincerity to avoid further harm to vulnerable individuals. Charity respondents suggested that survivors, including those with protected characteristics, would greatly benefit from specialised and independent emotional support and emphasised the importance of actively reaching out to minority groups.

118. A number of respondents acknowledged that impacts may arise in specific cases where an individual’s protected characteristics are directly relevant to the claim, such as in instances of discrimination or employment rights. In these situations, the protected characteristics of individuals could become a central element of the legal proceedings, potentially influencing the outcome. Therefore, the proposed reforms are believed to help facilitate apologies that acknowledge this, thereby providing more meaningful redress to claimants and potentially improving the overall sense of justice and satisfaction with the legal process.

119. Clinical negligence respondents suggested that the reforms were expected to benefit families, particularly those without disposable income, by providing them with better access to legal guidance. It was believed that this improved access could help these families receive the explanations and clarifications they needed to understand and move forward from their situations. When families feel they have been treated with transparency and their questions have been fully addressed, they are more likely to

accept the information provided and make informed decisions about their next steps, rather than feeling excluded or left with unresolved issues.

120. However, academic respondents understood the complexity and significance of apologies in the context of historical institutional abuse and saw their use as potentially having varied effects on different survivors. For example, their research indicated that there may be gendered and cultural dimensions that influence how individuals perceive and respond to apologies, suggesting that the impact of the proposed reforms might differ based on these factors. Therefore, this sector argued that it was necessary to acknowledge and address the specific vulnerabilities and contexts that may affect how individuals with protected characteristics respond to apologies.

121. As a result, academic respondents suggested that further consideration is needed to fully understand and mitigate any potential differential effects, particularly in relation to the complex dynamics of apologies in cases of historical abuse and the diverse experiences of survivors.

Q12: Do you agree that we have correctly identified the range and extent of the equalities impacts under each of these proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts as appropriate.

122. Just over half of respondents did not answer this question. Around a fifth either could not identify any further areas of consideration or believed that relevant equalities impacts have been duly considered. A few respondents referred to their answers to question 11 as covering this question too.

123. The minority of respondents who answered this question believed that the Government had correctly identified the key equalities impacts associated with the proposed reforms. However, they did set out additional concerns and considerations that should be addressed to ensure a comprehensive understanding of these impacts.

124. For example, independent respondents noted that there was a significant concern that reforming the Compensation Act as recommended might lead defendants to make tactical or empty apologies without admitting fault or addressing underlying wrongdoing. This could be perceived by prospective claimants as an attempt to close off potential claims, thereby disadvantaging them. Overall, however, it was felt that the reforms would not prevent claimants from bringing their cases forward.

125. These respondents regarded the proposals as a strong starting point but advised that there should be deeper engagement with seldom-heard communities and their

networks. It was emphasised that these communities may have unique perspectives and needs that were not fully captured in the current analysis, particularly regarding those who choose not to report. Therefore, understanding the physical, emotional, and legal needs of these groups is believed to be crucial for ensuring that the reforms are truly inclusive and equitable.

126. Due to the lack of evidence to support this question, independent respondents suggested that there should be a call for further evidence and analysis to gain a more comprehensive understanding of these impacts. This was because ongoing monitoring and evaluation are necessary to identify and address any unintended consequences or disparities that may arise from the implementation of the reforms. This continuous process was believed to help ensure that the reforms promote equality and fairness for all individuals, particularly those with protected characteristics.

127. One respondent suggested that the range of equalities impacts appear to be naturally limited to those who have come forward as claimants and survivors. It is likely that there were many undisclosed survivors, particularly within marginalised communities, who have not yet accessed support or who may have undiagnosed complex needs. It is believed that these individuals were often less visible to statutory services, making it difficult to fully capture the extent of the equalities' impacts.

128. This respondent also suggested that it was essential that independent support and advice were proactively offered to all survivors, regardless of their ability to self-advocate, given that they are at a high risk of re-traumatisation. They believed that this was particularly important for those with complex needs, which may include the physical, mental, and emotional impacts of trauma. Many survivors do not have formal or complete diagnoses, and some may avoid medical examinations due to a distrust of authority, further complicating their situations.

Impact Assessment, Equalities and Welsh Language

Impact Assessment

129. While the consultation responses have provided helpful insights, there is very little hard data to inform an impact assessment. However, one will be prepared for any legislative reform arising from this consultation paper.

Equalities

130. Following our initial assessment, the reforms in this consultation are still not believed to be directly or indirectly discriminatory within the meaning of the Equality Act as they apply equally to all people, whatever their protected characteristics. We do not consider that the proposals would result in people being treated less favourably because of any protected characteristic.

131. Reform proposals arising from this consultation are not expected to result in any differential treatment between claimants, defendants, or individuals with protected characteristics. The proposals are also unlikely to result in unlawful discrimination, harassment, or victimisation, and could potentially advance equality of opportunity.

132. Offering apologies may lead to more settlements without formal litigation, benefiting all court users. However, there is a lack of data on civil court users and the use of the Compensation Act, particularly concerning protected characteristics and apologies.

133. The impact of the proposals will be reviewed as part of ongoing duties and a revised Equalities Statement will be prepared for any subsequent legislation.

134. The equality impacts of these reforms are also addressed in the Summary of Responses section of this paper, under Questions 11 and 12.

Welsh Language Impact Test

135. There were no issues raised by respondents relating to Wales or the Welsh language. A summary of this consultation has been published in Welsh which can be found here: https://www.gov.uk/government/consultations/reforming-the-law-of-apologies-in-civil-proceedings.

Conclusion and next steps

136. Although there is a lack of empirical data on the use of Section 2 of the Compensation Act (on the use of apologies in civil litigation), the Government believes that it would be reasonable and sensible to make some modest reforms to encourage greater use of apologies. This is because the use of apologies can have a positive effect on the civil dispute process, and this was a theme supported by responses to the consultation.

137. Section 2 of the Compensation Act expressly states that an apology shall not of itself amount to an admission of negligence or breach of statutory duty. However, the Government has decided to pursue reform by means of primary legislation, as amending the law affords the opportunity to provide additional clarity that offering an apology does not represent admitting liability in a wider range of cases, and also represents a chance to foster a legal environment that encourages genuine apologies. We agree with respondents who believed apologies to be especially beneficial in cases involving child sexual abuse, where validation and healing are very important.

138. As part of the reforms, the Government will include a clear definition of an apology which will reduce uncertainty over the distinction between apology and admission of liability. However, we recognise that care will be needed when drafting the legislation to avoid the risk of over-defining apologies.

139. The Government will also implement the recommendation from the Independent Inquiry into Child Sexual Abuse by making it explicit that vicarious liability is covered in the amendments to the legislation to clarify the legal risks for organisations. However, legislative reform will not extend the law of apologies to apply to all types of civil litigation or regulatory disputes, reflecting the need for exceptions (such as in defamation cases).

140. The Government has decided new legislation on the law of apologies will not be retrospective, as a belated apology may ring hollow and is unlikely to be offered.

141. The Government sees merit in further guidance being produced following implementation and believes that further work should be undertaken on the use of apologies in pre-action protocols.

142. The implementation of reform will be through primary legislation when parliamentary time allows it.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Annex A – List of respondents

Association of British Insurers
Association of Consumer Support Organisations
Association of Personal Injury Lawyers
AvMA (Action Against Medical Accidents)
Bolt Burden Kemp
British Transport Police
Bryan Cave Leighton Paisner LLP
Chartered Institute of Legal Executives
Civil Justice Council
Forum of Complex Injury Solicitors
Forum of Insurance Lawyers
Hodge Jones & Allen
IICSA changemakers
Jordans
Keoghs
King's College London (Professor James Lee)
Lancaster University (Dr Michael Lambert)
Lloyd's Market Association
Local Government & Social Care Ombudsman
Dr R D Lowe
Luba McPherson
Medical and Dental Defence Union of Scotland
Medical Protection Society
National Association for People Abused in Childhood
NHS Resolution
Patient Safety Commissioner
Rouse
Simpson Millar
Stewarts
ThirtyOneEight
University of Bristol (Professor Paul Giliker)
University of Hong Kong (Dr James Chiu)
University of Reading (Dr Sau Wai and Mike Crone)
University of Western Australia (Professor Robyn Carroll)
Weightmans
Zurich

Alternative format versions of this report are available on request from declan.murray@justice.gov.uk.