

Law of Apologies Consultation

May 2024

IICSA Changemakers
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IICSA Changemakers

IICSA
changemakers

Taking action. Creating change.
Preventing child sexual abuse.

Introduction

The Changemakers group has come together as an informal coalition.

They are a range of individuals, charities and survivor organisations that support those who have been subjected to child sexual abuse and those that work on the frontline and have experience of preventing and tackling child sexual abuse.

*IICSA Changemakers are all committed to
inspiring a national mission to prevent child sexual abuse and
ensuring support is provided to victims and survivors.*

Each organisation or individual member of the group may not necessarily agree with all the Independent Inquiry into Child Sexual Abuse's recommendations, but recognises the importance of working collectively to bring about change so the protection of children from sexual abuse and support for all victims and survivors is given a much greater priority in public life.

This submission includes areas of focus which members of the IICSA Changemaker group have highlighted as important for Government to consider during this consultation.

Submission

Q1: 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.

Organisations involved in child sexual abuses cases have and do continue to state that abuse is regrettable therefore there should be no difficulty in establishing an apology, where appropriate. However as the MoJ indicates in their consultation papers apologies are not widely common. We know the power that this acknowledgement and offer of an apology can have for survivors. Therefore it is only right that we do all we can to facilitate this element of justice for survivors of child sexual abuse and this would be best supported through primary legislation.

We understand that agency and choice are important for survivors¹. Emma Barrow a solicitor at law firm Bolt Burdon Kemp describes the options open to survivors in the following way "whilst a criminal complaint can lead to a

¹ IICSA Final report 2022 Professor Jay Section A3 Common themes

conviction and jail time for the abuser, a civil claim can help obtain funds, which can be vital for rebuilding a survivor's life and assisting their recovery process.

Our legal system allows survivors to bring claims against their abuser for compensation. In addition, where possible, survivors are also able to bring claims against the institutions that are responsible for the actions of their abuser where that abuser was an employee and the abuse occurred in close connection to their employment. This is important, as most abusers will not have the assets to pay compensation whereas their employer will have insurance in place.”²

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.

The introduction of the Apologies (Scotland) Act 2016, was intended to encourage a change in social and cultural attitudes towards apologising.

On the passing of the Bill Margaret Mitchell stated that Scotland is now “leading the way in the United Kingdom on this issue”.³ However we must remain alive to the different context in Scotland to England and Wales and this legislation is not widely tested or evaluated.

Dino Nocivelli a lawyer who specialises in representing victims and survivors of child abuse and sexual abuse explains that an apology can take a lot of emotion out of a legal case and this can in turn help matters progress quicker and reduce the impact on victims and survivors.⁴ The reduction of length of time Noicvelli suggests is not yet proven in Scotland but IICSA Changemakers are not aware of any negative implications due to the change but would welcome a focus of evaluation to understand this even more.

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?

IICSA Changemakers NAPAC explain in their individual submission to this consultation that Sexual violence in general and non-recent abuse especially can be hard to prove in criminal law but civil law can present as a remaining option. That being said it will be key to focus on ensuring the language of this

² Blog post, [Emma Barrow](#), *an abuse solicitor at law firm Bolt Burdon Kemp 2023*

³ Mitchell, Scottish Parliament Official Report 19 January 2016

⁴ Dino Nocivelli Why an apology for abuse is so important May 2022

area is as appropriate as can be for victims and survivors. For example using complainants instead of claimants takes out the emphasis on a financial element. This again is important for the cultural change needed in the area receiving the original complaint.

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

Instead of a bespoke definition, this area could be best used to clarify the purpose and objectives of an apology. “Survivors deserve an authentic apology from the institutions where harm was caused to them. This simple act has the potential to communicate to the survivor that they are being taken seriously.” (Keith IICSA Changemaker Survivor Advisor)

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.

The compensation act 2006 defines an apology as “an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty.”⁵ This should be clear that organisations would not face legal redress on their statutory duties yet we know this is a very underused tool. IICSA Changemakers support the legislation applying to all civil proceedings.

⁵ Compensation Act 2006 [Compensation Act 2006 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2006/19/section/1)

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)?

When we look at cases such as that of a survivor that went through a legal case with Devon Council they said *“I wanted an apology. I want bloody Devon County Council and the Home Office to say sorry for what they’ve done to me, and mean it; not just say the word. Anybody can say the word, but really mean it. Really, really mean it. Not falsely.”*⁶ This survivor didn’t get the apology and it’s difficult to say if making specific reference to vicarious liability in legislation would have changed this or not. However what was made clear during the independent inquiry was that many insurers state they “don’t have a problem with their clients making an apology they wanted to fully manage the process and would highlight risks.

For example Philippa Handyside, General Counsel at the Association of British Insurers (ABI), stated that “ABI’s guidance made clear that if an organisation wanted to do or say something that might amount to an admission of liability, they should liaise with their insurers. She acknowledged it was a difficult issue for organisations but thought it should be possible for them “to agree a sensible way forward that gives as much as can be given”. She accepted that a conditional apology was far from ideal; “A lawyer’s apology is not welcome”.⁷

The question then puts focus on culture, where the nature in this space has become so risk averse that no matter how clear legislation is, guidance urges against offering apologies.

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

Clarification for the cultural elements spoken to in question six would be of benefit.

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?

For many survivors understanding what an organization or institution will do, as in what steps they will take to ensure prevention of child sexual abuse is prioritised can be as important as the apology. Therefore, statutory guidance to

complement the legislation which highlights how the apology could be detailed with those planned steps would be welcome.

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

We would urge focus to the IICSA Changemaker member organisation NAPAC whom can provide evidence from research undertaken using their longitudinal data (Bond, K. 2023. Survivors as Stakeholders: A Longitudinal Study of Self-identified Positive Outcomes of Adult Survivors of Childhood Abuse, and their Proactive Engagement with Support and Civil Law. Doctoral thesis, Apsley Business School, UK. This research is exclusive to NAPAC, the National Association for People abuse in Childhood. The author can be contacted via email kim.bond@napac.org.uk).

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

Not applicable

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. Reforming the Law of Apologies in Civil Proceedings 18

Specific and independent support is important to all survivors but especially to those who are seldom heard. A truly trauma informed response would include the focus to support those who are seldom heard in this space. Especially those without recourse to public funds.

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.

The proposals are in a good starting position, but IICSA Changemakers would advise engaging with seldom heard communities and their by and for networks who would have a greater understanding of the needs of those who choose not to report. Only then will the full understanding of needs covering, physical, emotional, and legal will be understood.

⁶ <https://www.iicsa.org.uk/key-documents/7849/view/public-hearing-transcript-30th-november.pdf>

⁷ <https://www.iicsa.org.uk/key-documents/8591/view/public-hearing-transcript-12-december-2018.pdf>

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