

# Protocols for Catholic Dioceses and Religious Orders responding to Civil Claims for Child Sexual Abuse

## Context and Purpose

Dioceses and religious orders recognise that they cannot take away the pain and suffering of abuse, but they are committed to continuing to learn how to respond in a compassionate and consistent way to individuals who report child sexual abuse.

A claim for compensation may not initially be intimated by a victim or survivor, particularly because the effects of the abuse may make it difficult for them to disclose the abuse and to initiate a claim, but at some stage compensation could be sought and legal action pursued. It is the right of anyone who has suffered child sexual abuse to seek compensation if they so wish. The civil claims process is challenging for all involved and can be distressing for victims and survivors.

The purpose of this document is to help ensure that victims and survivors of child sexual abuse who pursue claims for compensation against dioceses and religious orders are treated fairly, sensitively and with respect by setting out:

- the protocols which dioceses and religious orders are expected to follow when responding to child sexual abuse claims made against their organisations; and
- the protocols which dioceses and religious orders expect their insurers and solicitors to follow when handling child sexual abuse claims.

These Protocols specifically address the conduct of dioceses/religious orders and their insurers/solicitors when responding to civil claims for compensation. For an explanation of the insurance position relating to child sexual abuse claims, please see Appendix I. Where a diocese/religious order has direct contact with a victim or survivor before a civil claim is made, it is expected that the diocese/religious order will comply with the guidance set out at Appendix 2 as well as with the national policies on Responding to Allegations (<https://www.csas.uk.net/procedures-manual/#cat-2>).

## **Scope**

These Protocols form part of the national safeguarding policies and procedures for the Catholic Church in England and Wales. As dioceses and religious orders in England and Wales subscribe to the national safeguarding procedures, they are expected to follow the protocols set out in Part I and to ask their insurers and solicitors to follow the protocols set out in Part II. Dioceses, religious orders and their insurers and solicitors are encouraged to proactively review their own policies and practices in light of these Protocols.

## **Review**

The Protocols have been developed by the Catholic Insurance Service Ltd and the Catholic Safeguarding Advisory Service in consultation with the National Catholic Safeguarding Commission and the Survivor Advisory Panel; representatives from dioceses and religious orders; and insurers and solicitors. They are also informed by the work of the Independent Inquiry into Child Sexual Abuse ('IICSA') and will be updated periodically, including when any relevant findings or recommendations are made by IICSA.

## **Part I: Protocols for Dioceses and Religious Orders**

When a claim is received, the diocese/religious order is expected to act honestly, fairly and compassionately and to comply with the following protocols:

### **1. Ensure appropriate separation of duties**

Dioceses and religious orders have legal and regulatory duties to comply with, which include reporting to the Charity Commission and providing information and cooperation to insurers and lawyers handling claims. Such matters should be the responsibility of the Financial Secretary or equivalent. Safeguarding personnel should be responsible for any communication with claimants (see no. 11 below) but should not be involved in the management of claims.

### **2. Identify the relevant insurers without delay**

This can be difficult and time-consuming because it will be the diocese/religious order's Public Liability insurers at the time of the abuse (not their current insurers) which are responsible for dealing with the claim. It is recommended that efforts are made to prepare and maintain a full Public Liability insurance register back to 1954<sup>1</sup> for the diocese/religious order so that this process does not delay any claims.

### **3. Notify insurers of the claim as soon as practicable**

As explained above, it is a condition of Public Liability insurance policies that claims are notified to insurers immediately. When notifying insurers of a new claim (either directly or via brokers), dioceses/religious orders should ensure that the insurers are provided with a copy of these Protocols and are asked to adhere to them.

### **4. Acknowledge receipt of the claim promptly**

All claims should be acknowledged promptly. An acknowledgment can be sent by the diocese/religious order directly or by their insurers, brokers or solicitors.

### **5. Continue to facilitate support for claimants, if requested**

The making of a claim should not prevent a diocese/religious order from continuing to facilitate pastoral, spiritual and/or other support for a victim or survivor, but this should be done after consultation with insurers.

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<sup>1</sup> Claims relating to abuse pre-1954 are statute-barred under the Limitation Acts.

**6. Report to the Charity Commission**

The Trustees of dioceses/religious orders, which are registered charities, must consider whether allegations and claims made against their charity need to be reported to the Charity Commission under the serious incident reporting requirements.

**7. Assist in identifying the correct defendant to the claim**

The legal structures of dioceses/religious orders, and the relationships between dioceses and religious orders, are complicated. Moreover, given that claims generally relate to events which occurred many years ago, sometimes at institutions long since closed, it can be very difficult to identify the correct defendant to a claim. The diocese/religious order will be best placed to help their solicitors and insurers to identify the correct defendant(s) and should use their best endeavours to do so.

**8. Provide copies of and/or facilitate access to all relevant records**

Records may be accessed under data protection legislation or as part of the claims process. Legal advice should always be sought before disclosing records to allow consideration of the privacy entitlements of third parties and identification of any documents which may be legally privileged.

**9. Provide full cooperation to the diocese/religious order's insurers/solicitors throughout the claims process**

For example, in tracing potential witnesses or evidence, checking and signing documents or disclosing relevant documents. Any searches made should be thorough and documented so that a record is kept of who searched for what records, where and when, and what was found.

**10. Offer an acknowledgment and/or apology when appropriate, after consultation with insurers**

Many victims and survivors want to receive an acknowledgment of what they have suffered and an apology from the diocese/religious order which is responsible for the person who abused them. When appropriate, dioceses and religious orders can and should acknowledge suffering caused and make apologies. However, it is important for the facts to be properly examined first. Premature apologies may be perceived as an admission of liability by victims and survivors and could cause confusion and disaffection if at a later stage liability cannot be established and a claim is rejected. Expressions of regret for an individual's distress and admiration for their courage in reporting their allegations can be made, however, in order to avoid prejudicing the diocese or religious order's insurance cover it is strongly advised that acknowledgements and apologies are considered only after having consulted insurers.

**11. Ensure all communication about a claim takes place between the parties' solicitors**

The normal rule when one party is suing another is that they do not communicate directly, and all communication takes place via solicitors. Where one party is unrepresented, they should nonetheless always communicate with the other party's solicitors. This is to protect all parties.

Where a diocese/religious order has been in prior contact with a claimant directly and there is a need for ongoing communication (e.g. to make arrangements for counselling facilitated or funded by the diocese/religious order or to assist in accessing other support services), it may be appropriate for that communication to continue for that specific purpose. It is always advisable, however, for both parties to check the position with their solicitors first. Representatives of the diocese/religious order must not discuss the subject matter or progress of a claim with a claimant, or with a claimant's family members, friends or representatives.

## **Part II: Protocols for Dioceses/Religious Orders' Insurers and/or Solicitors**

Each diocese or religious order may have been insured by several different insurance companies over the years, and there may be periods in relation to which a diocese or religious order cannot trace their insurers. It is recommended that dioceses/religious orders share the following protocols with their insurers and/or with the solicitors appointed to deal with each individual claim.

All insurance companies and law firms are independent, regulated entities which employ professionals who are experienced in handling child sexual abuse claims. They recognise that child sexual abuse claims require careful handling and it is therefore anticipated that insurers and solicitors will readily agree to comply with the following protocols:

1. To act with the highest professional integrity, fairly and in accordance with the overriding objective of the Civil Procedure Rules, which is to enable the court to deal with cases justly, having regard to any welfare issues involved.
2. To assist dioceses and religious orders to prepare a register of their Public Liability policies back to 1954 by undertaking searches and confirming relevant information about any policies underwritten.
3. To acknowledge receipt of claims promptly and to deal with claims expeditiously.
4. To be mindful of the potential for litigation to be distressing for claimants and to seek to work with claimant solicitors to avoid the need for litigation where possible, entering into meaningful negotiations and early settlements where appropriate.
5. To take especial care when dealing with an unrepresented claimant (Litigant in Person) and refer them to, for example, the Association of Child Abuse Lawyers ([www.childabuselawyers.com](http://www.childabuselawyers.com)) and the Truth Project ([www.truthproject.co.uk](http://www.truthproject.co.uk)).
6. Not to prevent or delay dioceses or religious orders facilitating support for claimants, including counselling and spiritual support.
7. Not to put a claimant to proof of abuse which an abuser has admitted and/or for which s/he has been convicted.
8. To inform and explain to the insured diocese/religious order how insurers intend to approach a claim before any material steps are taken.

9. To set out clearly, transparently and as early as possible the defendant's position in respect of a claim, including any defences relied upon.
10. Always to consider whether it is appropriate to seek to agree the instruction of a single joint medical expert with the claimant[solicitors] to minimise the number of assessments a claimant has to undergo.
11. To review each claim regularly and update the insured diocese/religious order and the claimant[solicitors], particularly if material new evidence emerges or a defence is no longer to be relied upon.
12. For claims in respect of which judicial discretion to disapply the limitation period may apply, only to rely on a limitation defence where it appears, following reasonable enquiries, that the delay has prejudiced the diocese/religious order and a fair trial is no longer possible. A decision to raise a limitation defence must be considered and approved in each case at a suitably senior level.
13. Not to rely on consent as a defence where a claimant was under the age of 16 years at the time of the abuse. The Catholic Church does not support reliance on consent as a defence to child sexual abuse claims and requires its insurers to apply the current age of consent in criminal law when handling civil claims for child sexual abuse.
14. Not to require a confidentiality agreement unless a claimant or their solicitor requests one.
15. Not to pursue appeals unless counsel advises there are reasonable prospects of success.

## Appendix 1: The Insurance Position

Each diocese/religious order is likely to be covered by a Public Liability insurance policy. If an individual pursues a civil claim for compensation against a diocese/religious order in respect of child sexual abuse, the diocese/religious order may be entitled to an indemnity under the terms of that policy. This means that the insurers will be responsible for payment of the diocese/religious order's costs in defending the civil claim and for payment of any costs and/or damages awarded to the claimant.

The insurance policy will invariably contain conditions which must be complied with before an indemnity will be provided. If these are not complied with, insurers are likely to be entitled to refuse indemnity. These conditions will usually include:

- The diocese/religious order must notify its insurers in writing as soon as practicable after it has become clear that an event may give rise to a claim.
- The diocese/religious order must notify its insurers as soon as practicable after receiving verbal or written intimation or notification of a claim.
- The diocese/religious order must provide full information and assistance to enable its insurers to deal with, settle or resist any claim as the insurers think fit.
- The insurers shall have absolute conduct and control of all proceedings and the diocese/religious order shall not take any steps to compromise or settle any claim or admit liability without specific instructions in writing from the insurers, nor give any information about or assistance with a claim to any person claiming against them.

If an indemnity is refused, the diocese/religious order may be responsible for dealing with, and funding, any civil claim and for payment of any costs and damages awarded to the claimant. Dioceses and religious orders need to ensure that they are able to discharge their pastoral responsibility to respond quickly and effectively to any claim made in a way that does not compromise their legal or insurance position so that, where there is a legal liability, damages and costs will be paid by insurers. The best way to achieve this is to have early, open and continuing dialogue with insurers about any steps the diocese/religious order wants to take in response to a report of child sexual abuse or a claim.

Where a diocese or religious order cannot identify its insurers for a particular claim, in accordance with their duty to act prudently and in the best interests of the charity, the diocese/religious order should seek immediate legal advice. The protocols set out in Parts I and II above apply equally where no insurers are involved in a claim, but where the diocese/religious order responds to the claim directly or instructs solicitors to do so.



## Appendix 2: Where a claim has not been made

These Protocols set out the practices which dioceses and religious orders (Part 1) and their insurers and solicitors (Part 2) are expected to follow when responding to civil claims for compensation for child sexual abuse. In some cases, the first communication that a diocese/religious order receives is a letter of claim from solicitors. In other cases, a victim or survivor will first approach the diocese/religious order directly to report the abuse and it may not be until a later time that they decide they wish to seek compensation. Where a diocese/religious order has direct contact with a victim or survivor before a civil claim is made, it is expected that the diocese/religious order will comply with the national safeguarding policies on responding to victims and survivors (see: <https://www.csas.uk.net/procedures-manual/#cat-2>) and will:

- Facilitate pastoral and/or spiritual support.
- Signpost victims and survivors to suitable support services and organisations.
- Report the abuse to the statutory authorities in compliance with the mandatory reporting policy of the Catholic Church in England and Wales.
- Inform victims and survivors that they can report their experiences to IICSA's Truth Project ([www.truthproject.org.uk](http://www.truthproject.org.uk)).
- Inform victims and survivors that they may be entitled to seek criminal injuries compensation ([www.gov.uk/guidance/criminal-injuries-compensation-a-guide](http://www.gov.uk/guidance/criminal-injuries-compensation-a-guide)).
- Inform those wishing to make a claim for compensation that they should seek independent legal advice and provide details of the Association of Child Abuse Lawyers as a source of information and assistance ([www.childabuselawyers.com](http://www.childabuselawyers.com)).
- Notify their brokers or insurers of all reports of abuse received and consider whether a serious incident report needs to be made to the Charity Commission.
- After consulting insurers, consider requests for financial support (e.g. to fund counselling/therapeutic support) or to meet with the relevant bishop/religious leader.

In terms of support for victims and survivors, it is the responsibility of the diocese's or religious order's safeguarding personnel to facilitate pastoral and/or spiritual support and to signpost victims and survivors to suitable support services according to their needs (e.g. counselling or advocacy services). Where any support requested will involve expenditure by the diocese or religious order, the request must be referred to the diocese's or religious order's trustees. The Financial Secretary or equivalent should be responsible for legal and regulatory matters including liaising with trustees, insurers/brokers, the Charity Commission and lawyers (as necessary) before a claim has been made as well as after.

## Appendix 3: Further Reading

<https://www.truthproject.org.uk/i-will-be-heard>

<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide>

<https://www.victimsupport.org.uk/help-and-support/what-you-can-do/compensation>

<https://www.childabuselawyers.com/>