



## Our guiding principles for the handling of civil claims involving allegations of sexual and physical abuse

### **What is the purpose of these guiding principles?**

- To identify and document the fundamental principles which Ecclesiastical as an insurance company adopts and implements when handling civil actions brought against policyholders of Ecclesiastical where such civil actions include allegations of sexual or physical abuse.
- To aid policyholders to understand the principles Ecclesiastical will adhere to when handling such claims as the insurer of the defendant organisation.
- To aid policyholders to understand what actions they can take without such actions prejudicing their insurance position.
- To help victims and survivors of sexual or physical abuse who decide to bring a civil action against a policyholder of Ecclesiastical understand the principles which Ecclesiastical applies when handling civil actions for compensation.

### **Applicability & Scope**

Ecclesiastical will apply the principles set out in this document to all civil claims against an insured policyholder where the civil action includes allegations that sexual or physical abuse has taken place. Sexual abuse includes any action by a perpetrator that sexualises the claimant. Such actions could be a onetime incident but in many cases may constitute multiple events of abuse.

The applicable law and legal system for redress differs across the U.K. These guiding principles will be applied to all UK jurisdictions, subject to the law governing a claim.

These guiding principles will apply where Ecclesiastical is the only defendant insurer concerned. This document cannot comment on the policy position or principles of claims handling adopted by other insurance companies.

Additionally, each case will need to be considered on an individual basis with a view to fairness to all parties and apply the appropriate insurance and contractual provisions in place at the relevant time.

Ecclesiastical expects all third party organisations engaged by Ecclesiastical in connection with such claims to adhere to the principles set out in this document.

### **Review**

These guiding principles will be reviewed periodically. Ecclesiastical undertakes a continuing assessment of its claims handling practices of which this document forms a part. Ecclesiastical may review, amend and update this document from time to time without notice.

### **Feedback on these guiding principles and/or Ecclesiastical's claims process**

Ecclesiastical welcomes feedback from any individual or organisation who wishes to comment upon the claims process they have experienced. Any such feedback should be sent in writing to: The Claims Director, Ecclesiastical Insurance Office Plc, Beaufort House, Brunswick Road, Gloucester

GL1 1JZ or email [sensitiveclaims@ecclesiastical.com](mailto:sensitiveclaims@ecclesiastical.com). All feedback received will be duly considered as part of Ecclesiastical's continuing review of claims handling best practice and will always be treated with the utmost confidence.

Please note that Ecclesiastical is regulated by the Financial Conduct Authority and the Prudential Regulation Authority. Any contact from an individual which constitutes a "complaint" in accordance with the Financial Conduct Authority's definition will be dealt with in accordance with the rules for Complaint handling in the FCA Handbook under Redress - DISP Dispute Resolution: Complaints which is available to view at: <https://www.handbook.fca.org.uk/handbook/DISP/>

### **An overview of the claims process**

- The main parties involved in the claims process are:
  - The claimant/plaintiff – the victim or survivor of abuse who is making the claim.
  - The defendant – the insured or policy-holding organisation with potential liability for the actions of its employee(s) or representative(s) who are accused of perpetrating the abuse.
- Specifically in England and Wales, both claimants and defendants are obliged to act in certain ways by the provisions of the Pre-Action Protocol which forms part of the Civil Procedure Rules. In Scotland and Northern Ireland it is best practice to follow the same principles wherever possible.
- To fail to comply with the provisions of the Pre-Action Protocol allows the aggrieved party to bring such behaviour to the attention of the court in litigation and if accepted by the judge can lead to cost penalties. The following can thus be expected from the claims process:
- A compliant Letter of Claim in England and Wales must be issued by the claimant or their solicitor to the proposed defendant. This letter has to include (to make it Pre-Action Protocol compliant) the following:
  - A chronology of the alleged abuse so that the defendant can quickly establish the period of injury;
  - The allegation of where fault lies with specific details as to who the alleged abuser is;
  - The claimant's present medical condition, details of the injury sustained (often psychological in nature) and the financial loss that has been incurred (in general terms);
  - The way the case is being funded.
- Upon receipt of the Letter of Claim the defendant or their insurer has 21 days (from the date the letter was posted) to acknowledge receipt. Letters of Claim must be passed by policyholders to Ecclesiastical immediately because it is a policy condition of liability insurance cover that if a claim is made against a policyholder, the insurer has the right to take over the conduct of any claim in the insured's name and generally does so. This includes full discretion for the insurer to negotiate, agree or defend the settlement of claims. Ecclesiastical will therefore take over the conduct of the formal civil claim from the policyholder (acting in the policyholder's name) and it is therefore vital that Ecclesiastical has time to act within the prescribed timescales of the Pre-Action Protocol. Where there has been no reply by the defendant or insurer within 21 days, the claimant will be entitled to issue proceedings.
- A further 90 days (beyond the 21 days) is allowed for the defendant to investigate legal liability and inform the claimant of their decision, i.e. is legal liability admitted or disputed and if disputed the reasons why, with suitable documents to support that view (usually witness statements).
- Cases of abuse are often complex and sometimes extra time is needed beyond the 90 days. It is Ecclesiastical's experience that most claimant solicitors will extend the time period so long as they are kept informed of progress and there are legitimate reasons why extra time is needed.

When Ecclesiastical receives a Letter of Claim from a policyholder which includes an allegation of sexual abuse, this is passed to Ecclesiastical's specialist physical and sexual abuse claims handling team. Ecclesiastical will firstly need to ascertain that cover is in place for the policyholder. Assuming cover is in place, the claim will be allocated to a senior specialist handler.

The appointed specialist claims handler will investigate the claim, and in doing so, will need to:

- Be careful to ensure Ecclesiastical's actions in relation to the civil claim do not impinge or compromise any criminal investigation;
- Appreciate that the policyholder, in conjunction with statutory agencies, may be running a safeguarding investigation in parallel to any civil and/or criminal action.

The abuser will have been identified in the Letter of Claim. Ecclesiastical will then need to consider whether the insured policyholder is liable for the actions of the abuser. That will involve consideration of the link between the abuser and the insured policyholder.

In many cases there will have been a previous conviction which will usually make the investigation quicker and simpler. The duration of the investigation is usually much reduced where solicitors acting for the claimant have provided a detailed and thorough Letter of Claim.

Where there has been a conviction and it is clear the insured policyholder would be found liable (bearing in mind the test in civil liability is on the "balance of probability" as opposed to "beyond all reasonable doubt" in criminal matters) then there is little doubt that liability for the abuser's actions should be accepted. In those cases where the liability of the policyholder is clear it is in everyone's interest for an early admission of liability to be made once this is determined. Early admission of liability usually quickens the claims process for the claimant and also helps to keep legal costs to a minimum.

Ecclesiastical will need to have sight of, or obtain medical evidence, to fully understand the impact of the abuse on the claimant in order to be able to assess the financial value of the civil claim. Sometimes claimants will have already obtained their own medical evidence from an expert by the time a formal claim is made, but in other cases there may be an opportunity to appoint a joint expert. The lack of availability of expert medical evidence will not prevent Ecclesiastical in appropriate cases from making an early settlement offer if Ecclesiastical is able to value the claim before such evidence is obtained.

Where liability has been established and Ecclesiastical has been able to assess the financial value of the claim, Ecclesiastical will usually make an offer to settle the claim. Ecclesiastical may propose a Joint Settlement Meeting ("JSM") with the claimant and his/her solicitors. A JSM is a meeting between the claimant and the defendant teams to try to secure an acceptable settlement, with the intention of resolving the claim as soon as possible. The claim may be settled without the claimant needing to commence formal legal action. Ecclesiastical may agree the inclusion of a therapy fund within the terms of a settlement agreement. If an acceptable settlement can not be reached, the Courts remain available to resolve disputed claims.

### **Ecclesiastical's principles of claims handling**

Claims arising from physical and sexual abuse can be challenging and traumatic for all concerned, regardless of how long ago the abuse occurred.

Ecclesiastical is often asked by policyholders what action should be taken where allegations of abuse are made against them and the claimant is asking for some assistance, short of making a formal legal claim. The concern policyholders have is that to take any action at all may imply legal liability and prejudice the position of their insurance company. Policyholders will have an obligation to comply with the terms of the policy in place at the relevant time.

It is important that policyholders understand that offering an apology or offering pastoral care and/or counselling sessions to the claimant can be extremely important steps to help the claimant and can be offered without prejudicing insurance cover.

Ecclesiastical supports an approach by policyholders as set out below:

1. Policyholders should respond constructively from the outset (including before a civil claim is made)

We believe the response given by policyholders to claimants should not be done in such a way that it is experienced as negative, resistant or unhelpful because this can create relationship difficulties and may worsen the claimant's wellbeing.

## 2. Policyholders should consider adopting these principles

Always acknowledge how difficult it must have been for the claimant to come forward and thank them for taking this step. Explain what will happen next. This document is intended to assist in that process. Policyholders should always inform Ecclesiastical of the situation on a timely basis. One of our specialist abuse case handlers will be able to assess the facts of a particular case with the policyholder and assist.

## 3. Policyholders should consider the appropriateness of an apology

Policyholders should consider whether they feel it is appropriate to offer an apology or an acknowledgement of what has happened to the claimant. Ecclesiastical will not prevent an apology, either oral or written, being made by a policyholder.

Generally, Part 1 (section 2) of the Compensation Act 2006 makes it very clear that “offering an apology, an offer of treatment and other redress [not defined] shall not in itself amount to an admission of negligence or a breach of statutory duty”. Therefore, to give an apology or simply acknowledge the abuse circumstances will not normally prejudice the position, but such action is best considered by policyholders in consultation with Ecclesiastical.

## 4. Policyholders should consider offering support or counselling

Policyholders should consider providing or offering pastoral care, counselling and/or other forms of available support to the claimant if it would aid the claimant’s well-being.

Offering to pay for some counselling or treatment would not in itself be deemed to be an admission of legal liability. The updated 2015 Rehabilitation Code specifically allows for this and is there to encourage both sides to seek early medical redress so as to mitigate the effects of any injury. Ecclesiastical is a strong supporter of the rehabilitation approach as we wish to assist where possible to achieve the best post trauma outcome for a claimant. Ecclesiastical is prepared to discuss supporting the policyholder’s provision of pastoral care/counselling on a case by case basis.

The making of a formal claim will usually result in communications between the claimant and the policyholder taking place between their respective legal advisers. This should not however prevent any policyholder continuing to support the claimant through the provision of pastoral care that is being provided or offering support/counselling as outlined above. Ecclesiastical recognises the importance of the continuance of pastoral care throughout the claims process.

## 5. Our commitment to empathetic claims investigation

Ecclesiastical will approach any claim investigation with sensitivity, empathy and integrity. Each case will be considered carefully and individually, recognising that it is in everyone’s interests and wellbeing to conclude matters as soon as possible.

## 6. Our commitment to appointing joint medical experts where appropriate

Ecclesiastical recognises that requiring claimants to undergo multiple medical evaluations may cause further distress. Ecclesiastical will always consider the appropriateness of agreeing with the claimant the instruction of a joint expert if the claimant, and his/her advisers, so wish.

## 7. Our commitment regarding the use of limitation as a defence

The Limitation Act 1980, in England and Wales with similar provisions in Scotland and Northern Ireland states that a personal injury claim must be pursued within three years of the claimant being aware they have been injured. The courts do have the power to extend the limitation period in accordance with Section 33 of the Limitation Act and frequently do so. Ecclesiastical acknowledges that limitation should be pleaded as a defence to a claim very sparingly in relation to sexual abuse claims. Ecclesiastical has an internal escalation procedure which requires the pleading of a limitation defence to be considered and approved before it is pleaded in any individual case.

8. Our commitment regarding the use of consent as a defence

Currently, there is no set age of consent in civil claims. Ecclesiastical recognises however that a claimant who was under 16 when the abuse took place should not be deemed to have consented to such abuse and this will not be raised as a possible defence.

Ecclesiastical will be mindful of the power imbalance that is often presented in such cases even where the claimant was over the age of 16 at the date of the abuse.

9. Our commitment to fairness in the claims process

Ecclesiastical is committed to acting fairly towards all parties who are affected by the claim. Ecclesiastical will apply an overriding principle of fairness to all aspects of the claims process.

10. Our commitment to transparency

Ecclesiastical will not insist or include a confidentiality requirement in a settlement agreement unless specifically requested by the claimant.

Ecclesiastical Insurance Office Plc

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