

**Redress for survivors of institutional child sexual abuse
following the Independent Inquiry into Child Sexual
Abuse: Has IICSA made a difference?**



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Redress for survivors of institutional child sexual abuse following the Independent Inquiry into Child Sexual Abuse: Has IICSA made a difference?

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Abstract: This paper examines access to redress for survivors of institutional child sexual abuse in England and Wales in the light of the 2022 final report of the Independent Inquiry into Child Sexual Abuse (IICSA). Despite the strong recommendations of the IICSA report and the positive response of the UK government to its findings, it will be seen that survivors of institutional child sexual abuse continue to experience difficulties in obtaining redress. It will also examine to what extent recent UK Supreme Court case-law in tort decisions such as *Trustees of the Barry Congregation of Jehovah's Witnesses v BXB* and *X v Lord Advocate* fill the gap left by the non-implementation of IICSA's redress recommendations.

1. Introduction

Institutional child sexual abuse is a global problem which has been addressed in national and institutional inquiries across the world – including in the United States, Australia, Ireland, Germany, France, Spain and Japan. This paper will address the position in England and Wales five years after a major independent inquiry into institutional child sexual abuse (ICSA) but, in so doing, it will explore questions which go far beyond this jurisdiction. It will examine to what extent we can find pathways to justice that offer a route to recovery of redress for child sexual abuse claims that meets the needs of survivors of institutional abuse. Such claims, it will be argued, cannot simply be equated with that of a victim of a road traffic accident or workplace injury. ICSA claims involve a breach of trust by an individual working for the institution into whose care the abuse survivor had been placed. Injuries go beyond the physical and, because of this, are difficult to prove and ill-fit a justice process that favours evidence of physical injury over trauma. One further hurdle is time itself. This takes two forms. First, we know that survivors of childhood abuse often report the abuse many years after the fact.¹ This raises difficulties in finding witnesses, lost records, and flawed memories which again do not fare well in a justice system where litigants must satisfy a burden of proof. A second dimension, however, is the harm done by the time taken to obtain redress and the difficulties abuse survivors face in re-opening old wounds and creating new ones due to the stress of navigating the redress process.² Is it possible, then, to construct a justice system that empowers and includes victims and survivors and hears their voices?

This paper will discuss the efforts of politicians, judges and national enquiries to provide pathways to justice for victims and survivors of institutional child sexual abuse. It will assess two routes to recovery from the perspective of England and Wales.³ First, it will examine the

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¹ This is well documented. The Australian Royal Commission noted that some victims take up to 22 years to speak publicly about the abuse they have experienced: see Royal Commission, *Interim Report Vol 1: What We Are Learning about Responding to Child Sexual Abuse* (Commonwealth of Australia, 2014) ch 5, p 158.

² On the impact of delays due to the bureaucracy of redress schemes, see N Cortis and I Katz 'Waiting for redress: child sexual abuse survivors' experiences of Australia's National Redress Scheme' (2022) 129 *Child Abuse & Neglect* epub: 105657.

³ This paper will not address the limited redress offered by the criminal justice system whose practical utility, by seeking compensation orders from the perpetrators whose funds are generally limited, is minimal. It will also not cover Scots law. It should be noted that, due to devolution, Scotland (2016) and

redress recommendations in the final report of the Independent Inquiry into Child Sexual Abuse (IICSA) in England and Wales, delivered in October 2022,⁴ and the extent to which they have triggered statutory reform from the, then, Conservative and later Labour government.⁵ The IICSA inquiry was set up in 2015 under the Inquiries Act 2005. It took evidence from 7,000 victims at a total cost of around £188m.⁶ It proposed a state-based redress scheme. This paper will examine, half a decade after the publication of the recommendations, to what extent government promises have translated into government actions. Secondly, this paper will examine the current common law response to abuse claims and the extent, if any, to which the IICSA inquiry has encouraged a private law response that is more responsive to victim and survivors claims, easing the pathway to justice.

As we will see, progress has been made. However, despite the best efforts of politicians, lobbyists and judges, survivors of institutional child sexual abuse still face numerous barriers to justice and must continue to fight for access to redress. In this paper, I will try to find ways in which obstacles can be overcome and determine how we can stimulate change. It will be suggested that while State-based reforms will usually be most effective, we must recognise that in the light of political short-termism and an unwillingness to embrace the financial burden of no-fault redress, the State response will be limited. Like it or not, private law reform may present the most viable pathway to justice despite the difficulties that litigation (not least its costs, both financial and personal) presents to victims and survivors of institutional child sexual abuse.

2. IICSA Recommendations for Reform of Redress and Reparation

The final IICSA report of October 2022 highlighted the difficulties that victims and survivors of non-recent⁷ institutional child sexual abuse continue to face in obtaining reparation. The report made 20 key recommendations, including the introduction of a time-limited State-based redress scheme, 19 of which were accepted by the then UK government in 2023.⁸ In the foreword to the Report, Chair, Professor Alexis Jay OBE urged the UK government, the Welsh Government and all other relevant institutions to implement promptly the Inquiry's recommendations.

Northern Ireland (2012) instituted their own public inquiries into claims of non-recent institutional child sexual abuse.

⁴ IICSA, *The Report of the Independent Inquiry into Child Sexual Abuse* (HC 720, 2022). See, generally, <<https://www.iicsa.org.uk/>>.

⁵ The Labour government was elected in July 2024.

⁶ Catherine Baksi, 'Failed State' *Law Society Gazette*, 22 October 2024: <https://www.lawgazette.co.uk/features/failed-state/5121272.article>.

⁷ Terminology is important in this context. The IICSA prefers use of the term 'victims and survivors' given that not all persons suffering sexual abuse wish to be labelled as victims. Equally, the term 'non-recent' is now generally preferred to that of 'historic'. The latter potentially gives the misleading impression that abuse no longer happens in today's society. The former more accurately reflects that time has passed since the abuse happened but does not diminish its impact. For a discussion, see IICSA, *Independent Inquiry into Child Sexual Abuse (IICSA) VSCP Terms and Phrases* (2017): see <<https://www.iicsa.org.uk/document/independent-inquiry-child-sexual-abuse-iicsa-vscp-terms-and-phrases>>.

⁸ The UK government in 2023 ruled out calls for a minister for children in the Cabinet (recommendation 3). A full list of the recommendations is set out at page 354 (section K.10) of the Report.

Three recommendations in the 2022 report relate to redress and reparation and will be examined below. Redress, in the abuse context, is particularly important in that it goes beyond financial compensation (reparation) and engages with additional ways of remedying a wrong committed against the abuse survivor such as apologies and access to counselling and support services.⁹ The recommendations can be divided into two categories. The first category (recommendation 15) deals with improvements to the civil justice system. In this category also falls recommendations on the use of apologies found in an earlier 2019 IICSA Report.¹⁰ These reforms must be borne in mind when we examine the operation of private law later in this paper. The second category is entitled ‘making amends’ and recommendations 18 and 19 relate to State-based redress funds for victims and survivors of institutional child sexual abuse. As will be seen, these reforms are potentially far-reaching in providing alternative avenues for redress via an administrative pathway to justice.

2.1 Improving civil litigation: Limitation and Apologies

2.1.1. Recommendation 15: Removal of the three-year limitation period for personal injury claims brought by victims and survivors of child sexual abuse

Limitation periods are an obvious problem in the context of child sexual abuse where the events in question often took place decades before the survivor felt able to bring a claim. Research by the All-Party Parliamentary Group (APPG) on Adult Survivors of Childhood Sexual Abuse in 2019 found that the average male survivor waited for 26 years before disclosing abuse.¹¹ If we look at a leading private law ICSA case, in *Lister v Hesley Hall Ltd*¹² the events took place between 1979 and 1982 and the case was first heard in Dewsbury County Court on 21st January 1999. In the leading Australian case of *Prince Alfred College v ADC*,¹³ the alleged abuse took place in 1962, but was only brought to the Supreme Court of South Australia in February 2015. This, it should be stressed, is not the fault of the claimants but a result of the very nature of child sexual abuse. The power imbalance that facilitates the abuse makes it difficult for survivors to confront their assailants until many years after the event.¹⁴ Burton notes that, due to a plethora of social and psychological factors, claims are nearly always brought out of time.¹⁵ Moran regards limitation periods as the most challenging threshold problem for non-recent sexual abuse claims (which she calls the ‘time’s up’ approach), but identifies a willingness in many common law jurisdictions to amend limitations legislation.¹⁶

Recognising this, IICSA sought to address the difficulties that many survivors of non-recent sexual abuse face in bringing claims based on events that happened many years earlier.

⁹ IICSA (n 4) 126 reported that inadequate provision of support and counselling for those who experienced sexual abuse remained a serious concern for ICSA survivors. Equally it found that the quality and authenticity of apologies from institutions was extremely variable and frequently added to the trauma experienced by victims.

¹⁰ IICSA, *Accountability and Reparations: Investigation Report* (Crown copyright 2019).

¹¹ Hansard HC Deb Vol 660 col 400, 22 May 2019. See APPG, *Can Adult Survivors of Childhood Sexual Abuse Access Justice and Support?* (APPG, 2019).

¹² [2001] UKHL 22; [2002] 1 AC 215.

¹³ [2016] HCA 37; 258 CLR 134.

¹⁴ IICSA (n 4) 254 which acknowledges that very few victims and survivors of child sexual abuse bring their claims before the expiration of the limitation period.

¹⁵ Frank Burton, ‘Limitation, vicarious liability and historic actions for abuse: A changing legal landscape’ [2013] JPI Law 95.

¹⁶ Mayo Moran, *Making Amends for Historic Wrongs* (Oxford University Press, 2025) 58-63.

Limitation rules exist for a reason – they remove stale claims where evidence and witness recollections may be of less evidential value due to the passage of time. They seek to strike a balance between the rights of victims to bring claims and the interests of defendants where it may be unfair or impossible to defend cases long after the events in question have taken place. Section 33 of the Limitation 1980 Act does provide courts in England and Wales with the ability to extend the limitation period in personal injury cases, but a significant number of ICSA claims fall at this hurdle.¹⁷ For survivors of non-recent child sexual abuse, the imposition of limitation periods was, in the view of IICSA, one of the most challenging legal issues they face:¹⁸

... it is clear that the current regime was not designed with the needs of victims and survivors of child sexual abuse in mind.¹⁹

The Inquiry therefore recommended that the limitation period should be removed in all cases involving child sexual abuse, other than those that have been dismissed or settled, while preserving the right to a fair trial.²⁰ This would require changes to the Limitation Act 1980. These provisions should, however, only apply to claims brought by survivors, not claims brought on behalf of survivors' estates.²¹ In May 2023, the Conservative government committed to publishing a consultation paper setting out options for the reform of limitation law in ICSA cases.²²

In May 2024, the Ministry of Justice launched a consultation on the IICSA recommendation and asked whether the three-year limitation period for personal injury claims should be removed for claims brought by survivors of child sexual abuse.²³ It also sought views on options, other than removal of the limitation period, for reform of limitation law in child sexual abuse cases. In February 2025, the Labour government announced that it:

... accepts the overwhelmingly expressed view that the limitation period should be removed for claims brought by victims and survivors of child sexual abuse in respect of their abuse. We agree that this is a special category of case that merits a different approach and its own time limit regime for bringing civil claims, with safeguards to ensure the interests of justice are met. In addition, the Government also believes that the burden of proof should be reversed in child sexual abuse cases so that an action can proceed unless the defendant can satisfy the court that it is not possible for a fair hearing to take place.²⁴

¹⁷ Section 33 was also only found to be applicable to sexual abuse claims after *A v Hoare* [2008] UKHL 6; [2008] 1 AC 844. For guidance as to the application of s 33 to non-recent sexual abuse claims: see *B v Nugent Care Society* [2009] EWCA Civ 827; [2010] 1 WLR 516.

¹⁸ Accountability and Reparations Investigation Report (n 10), Part C.6, Part C.8 paras 79–87.

¹⁹ IICSA (n 4) 257.

²⁰ The burden of proof would be on the defendant to show that the removal of the limitation period would mean that a fair trial would not be possible.

²¹ IICSA (n 4) 345.

²² Home Office Policy Paper, *Government response to the final report of the Independent Inquiry into Child Sexual Abuse* (Crown copyright 2023) [12].

²³ Ministry of Justice, *Limitation Law in Child Sexual Abuse Cases* (Crown Copyright, 2024).

²⁴ Ministry of Justice, *Limitation Law in Child Sexual Abuse Cases – Government Response to Consultation* (Crown Copyright, 2025) 3. The Government also agreed with IICSA's recommendation that this reform should not apply where a case has already been determined or settled in court. It would not have retrospective effect.

It is worth remarking that this decision was made despite the fact that, as indicated in the Government response, all respondents from the Insurance group and local government sector were against removal of the limitation period.

On 29 June 2026, the Crime and Policing Act 2026, section 96 came into force. This inserts new sections 11ZA and 11ZB into the Limitation Act 1980:

11ZA Actions in respect of personal injuries attributable to child sexual abuse

(1) None of the time limits given in the preceding provisions of this Act apply to an action to which this section applies.

(2) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) which meets conditions 1 to 3.

(3) Condition 1 is that the damages claimed by the claimant consist of or include damages in respect of personal injuries to the claimant.

(4) Condition 2 is that the claimant was under 18 on the date on which the cause of action accrued.

(5) Condition 3 is that the act or omission to which the claimant's personal injuries were attributable constituted sexual abuse.

(6) This section applies in relation to actions brought, and causes of action accrued, before (as well as after) this section comes into force.

(7) But it does not apply in relation to a claim which, before this section comes into force, was settled by agreement between the parties or determined by a court (whether or not the determination is subject to appeal).

(8) This section does not apply to any action brought for damages under section 3 of the Protection from Harassment Act 1997.

11ZB Dismissal of actions in respect of personal injuries attributable to child sexual abuse

(1) This section applies where an action to which section 11ZA applies is brought after the expiration of the time limit that would apply but for that section (disregarding the possibility of the time limit being disapplied under section 33).

(2) The court must dismiss the action if the defendant satisfies the court that it is not possible for a fair hearing to take place.

Finally, four years after the IICSA report, the limitation procedural hurdle has been addressed.²⁵ There are still, of course, points of contention. How willing will the courts be to find that it is not possible for a fair hearing to take place? Is there a danger of the courts reverting back to their earlier practice under s 33 Limitation Act 1980? How broad will be the definition of 'sexual abuse' (compare the very broad definition adopted in Scotland in its Limitation (Childhood Abuse) (Scotland) Act 2017)²⁶? Nevertheless, this is a victory for survivors of abuse, despite the opposition of insurers and local government.

²⁵ The operation of these sections has already been addressed in *KHX v Isle of Wight Council* [2026] EWHC 1949 (KB), [91]-[98]: the fact that distinct allegations of physical assault are pursued in the same proceedings as allegations of sexual abuse does not of itself satisfy Condition 3 of section 11ZA. Parliament did not intend to remove limitation from distinct allegations of physical abuse merely because they are pursued within the same proceedings as allegations of sexual abuse. See also *TWG v Scout Association* [2026] EWHC 2192 (KB).

²⁶ In October 2017 Scotland abolished the limitation period for non-recent ICOSA cases, but with two defences that can be raised by the defender - that a fair trial is not possible or that they will be substantially prejudiced by the retrospective application of the legislation: s 17D, Prescription and Limitation (Scotland) Act 1973, as inserted by the Limitation (Childhood Abuse) (Scotland) Act 2017). See Kim Leslie, 'Limitation (Child Abuse) (Scotland) Act' [2017] JPI Law 247. The broad definition of abuse is non-exhaustive and covers a wide range of abusive behaviour; sexual abuse, physical abuse, and emotional abuse. There is to date limited case-law under the Act, but see *B v Congregation of the Sisters of Nazareth* [2022] CSIH 52, reported by Ronnie Conway [2023] JPI Law C37.

One further IICSA recommendation concerning civil litigation needs to be examined. This relates to apologies. IICSA found that victims and survivors wanted institutional defendants to apologise as a way of showing that they acknowledged that the abuse had occurred. In practice, however, many institutions have been guarded and slow to apologise, and, indeed, acknowledge any fault. Vines has observed that an unwillingness to apologise triggers frustration and, at times, litigation. She argues that people often sue wrongdoers because they are so enraged by the lack of an apology that a wrong which they would otherwise suffer without recourse to law becomes intolerable and litigation follows.²⁷ In IICSA's view more should be done to facilitate redress outside the course of ordinary litigation.

2.1.2. 2019 Recommendation: *Revise the Compensation Act 2006 to facilitate apologies, offers of treatment or other redress*

In its 2019 *Accountability and Reparations Investigation Report*,²⁸ IICSA highlighted that apologies are a valuable form of reparation for victims and survivors. They must, however, be genuine, meaningful and, if requested, face-to-face. Insincere apologies and the inadequate provision of support and counselling will compound the harm suffered.²⁹ The 2019 Report found evidence that claimants had been left disappointed by the terms of their settlements, particularly where claims were settled without admissions of liability, acceptance of responsibility or apologies. For some, this acknowledgement may be more important than financial compensation.³⁰ Apologies that are accompanied by significant change are likely to have the most impact.³¹ An apology can thus be transformative and serve as a pivotal moment of validation and healing. However, IICSA found that some institutions were reluctant to apologise due to concerns that an apology may amount to an admission of liability and be relied upon in civil litigation. In particular, it was believed to be unclear to insurers whether the wording of section 2, Compensation Act 2006 would apply to claims involving allegations of vicarious liability for the actions of individual abusers.³²

It therefore recommended that:

The government should introduce legislation revising the Compensation Act 2006 to clarify that section 2³³ allows apologies or offers of treatment or other compensation to victims and survivors of child sexual abuse by institutions that may be partly responsible for the actions or failure to act of other people, including the perpetrators.³⁴

²⁷ Prue Vines, 'Apologising to avoid liability: Cynical civility or practical morality?' (2005) 27 Syd L Rev 483.

²⁸ IICSA, *Accountability and Reparations: Investigation Report* (n 10).

²⁹ IICSA (n 4), Executive Summary, 12.

³⁰ 2019 Report (n 10) Part C 9 [110]–[125] and Part C 11 [151]–[152].

³¹ See also Vines (n 27) who argues that the law needs to deal coherently with the real nature of an effective apology.

³² Although in practice some defendants have interpreted it as doing so.

³³ Section 2 provides that 'an apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty.'

³⁴ *Accountability and Reparations Investigation Report* (n 10), recommendation 3.

In March 2021, the government made a commitment to consult on the issue of apologies.³⁵ This actually occurred in April 2024.³⁶ In a general review of the role of apologies in civil proceedings in England and Wales, it considered the IICSA recommendation relating to child sexual abuse. Its report, in February 2025,³⁷ noted that the majority of respondents had 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.³⁸ It was suggested that insurance concerns are one of the main reasons institutions hesitate to offer apologies in that there is the fear that apologising might void their insurance contracts. Specific legislative reference to vicarious liability would address this concern, encouraging institutions to offer apologies.³⁹

In April 2025, the Home Office in its *Tackling Child Sexual Abuse: Progress Update* made a commitment to amend the law of apologies to encourage organisations to apologise for actions by current or former employees, including in cases of child sexual abuse.⁴⁰

In recognition of the importance of genuine and meaningful apologies to victims and survivors, we will also amend the Compensation Act to better facilitate the offering of apologies by organisations.

We are, however, still awaiting this legislation. We might also have some concerns whether it will address the difficult question of what we mean by a ‘genuine and meaningful apology’. Gabrielle Shaw, Chief Executive of the National Association for People Abused in Childhood (NAPAC) notes that a sincere apology, when freely given and supported by meaningful action, is invaluable – especially as part of wider efforts to ensure accountability and prevent future harm.⁴¹ But it can also be grudging and phrased in legalese (‘I am sorry for any distress that you may believe you have suffered.’) These reforms do not address such concerns but rely on the goodwill of defendants (and their insurers) to provide the sincere apologies that IICSA was hoping for. The Government merely promised that:

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.⁴²

While it might be argued that some response is better than nothing, we might question whether this is good enough. Delays in implementing reform of section 2 evidence the problematic nature of defining an apology and introducing meaningful reform, and the

³⁵ IICSA (n 4), 349. Note that Scotland has its own law on apologies: Apologies (Scotland) Act 2016. Section 1 provides that ‘In any legal proceedings to which this Act applies, an apology made (outside the proceedings) in connection with any matter—(a) is not admissible as evidence of anything relevant to the determination of liability in connection with that matter; and (b) cannot be used in any other way to the prejudice of the person by or on behalf of whom the apology was made.’

³⁶ Ministry of Justice, *Reforming the Law of Apologies in Civil Proceedings in England and Wales: Consultation* (Crown Copyright, 2024).

³⁷ Ministry of Justice, *Reforming the Law of Apologies in Civil Proceedings in England and Wales* (Crown Copyright 2025).

³⁸ *ibid.*, [67].

³⁹ *ibid.*, [74]. The amended legislation would not apply to public inquiries and defamation cases.

⁴⁰ Home Office Policy Paper, *Tackling Child Sexual Abuse: Progress Update* (Crown Copyright 2025), [80].

⁴¹ <<https://napac.org.uk/new-reforms-to-support-victims-of-child-sexual-abuse>>.

⁴² Ministry of Justice 2025 Response (n 37), [138].

continued opposition of certain stakeholders. At the very least, the UK government is taking its time to respond to reforms first proposed by IICSA in 2019.

We might also question whether technical reforms of civil litigation go far enough. IICSA recommendations 18 and 19 go further. IICSA proposed to ‘make amends’, that is, to make it easier for ICSA victims and survivors to claim from the Criminal Injuries Compensation Scheme and to establish a redress scheme, taking victims and survivors out of the stress of litigation. The proposals and the Government response to these recommendations are outlined below.

2.2 Making amends

2.2.1. Recommendation 18: Changes to the Criminal Injuries Compensation Scheme.

The Criminal Injuries Compensation Scheme (CICS)⁴³ is a state-based compensation scheme for victims of violent crime. Claims are capped with a maximum award of £500,000. In 2021–2022 payments to support the recovery of victims totalled more than £158 million.⁴⁴ Victims of abuse are able to apply to this fund without the stress of litigation.

Yet, as IICSA noted,⁴⁵ the eligibility criteria have in practice proved problematic for abuse survivors. The crime must have been reported to the police and no award will be made to applicants who have unspent criminal convictions for offences that resulted in certain sentences.⁴⁶ Time limits may also be an issue.⁴⁷ Claims made outside of the two-year limit can be considered by the Criminal Injuries Compensation Authority (CICA) in ‘exceptional circumstances’ and where the evidence provided means that CICA will not have to make further extensive enquiries to resolve the claim. IICSA was also critical of the focus on ‘crimes of violence’ which it found to be an outdated way of considering how child sexual abuse often works given that much abuse, particularly online sexual abuse, occurs without physical contact.⁴⁸

The Inquiry recommended that changes were needed, notably that the UK government should amend the rule on unspent convictions so that applicants with unspent convictions are not automatically excluded where offences are likely to be linked to the circumstances of their sexual abuse as a child. The time limit for child sexual abuse applications should also be increased so that applicants have seven years to apply from (a) the date the offence was reported to the police or (b) the age of 18, where the offence was reported whilst the victim was a child and (c) in either circumstance, the claims officer’s discretion to extend the time

⁴³ See, generally, Peter Cane and James Goudkamp, *Atiyah’s Accidents, Compensation and the Law* (Cambridge University Press, 9th ed, 2018) 12.4. The CICS was established in 1964. Ministry of Justice data shows that only around 0.02% of criminal compensation orders relate to child sexual abuse cases.

⁴⁴ Foreword to the *Criminal Injuries Compensation Scheme Review* (Crown Copyright, 2023).

⁴⁵ IICSA (n 4), 288.

⁴⁶ See David Miers, ‘Compensating Deserving Victims of Violent Crime: The Criminal Injuries Compensation Scheme’ (2014) 34 *Legal Studies* 242.

⁴⁷ Applicants are expected to apply for compensation as soon as it is reasonably practicable for them to do so, normally not later than two years after the crime occurred, although special provisions are made for child sexual abuse cases.

⁴⁸ IICSA (n 4) 349.

limit should remain. The Scheme should also include other forms of child sexual abuse, including online-facilitated sexual abuse.⁴⁹

The advantage of the proposed reforms is that they would respond to the particular needs of ICOSA survivors. Indeed, personal injury lawyers have commented that, if enacted by Parliament, these reforms would make a huge difference to child sexual abuse survivors by widening the categories of those who could successfully claim under the scheme.⁵⁰ It was hoped that they would be implemented without delay. The Government committed in its response to the Inquiry (published in May 2023) to consult on these recommendations.⁵¹

The UK government indeed consulted on reform of CICS in July 2023.⁵² In so doing, it emphasised that the Criminal Injuries Compensation Scheme 2012 is a route of last resort for those unable to seek or obtain compensation for their injuries by other means and that it will seek to strike a balance of maintaining the sustainability and integrity of the scheme, whilst bringing about improvements.⁵³ Its response in April 2025 was not to take the recommendations any further. Its conclusions were:

... based on what is right for the Scheme as a whole, considering **all** the victims of crime it supports. A core principle of the scheme is its universality. It ensures all victims can equally access the scheme, regardless of the nature of the violent crime they were injured by ... Expanding the scheme's scope and making changes to its time limits and unspent convictions rule as the Inquiry recommends would undermine this principle given that these changes would only apply to victims of child sexual abuse. That could, in my view, be detrimental to other deserving victims of crime.⁵⁴ (Emphasis in original).

Put bluntly, the Impact Assessment which accompanied the consultation indicated that applying the Inquiry recommendations to all victims would incur significant additional costs. These were stated to be unaffordable without reducing current provision from elsewhere in the Scheme.⁵⁵ This conclusion was reached in spite of the consultation giving rise to calls for change e.g. of the 49 responses received 41 (83%) responses disagreed with the scope of the Scheme remaining unchanged. 'Resource demand' is, however, a consistent part of the Government's response and it would seem that (lack of) funding lies at the heart of this decision. CICS is funded by the Ministry of Justice (MoJ) and the MoJ has long been concerned at its costs.⁵⁶ In contrast, changing the civil litigation limitation rules for personal injury claims (discussed 2.1.1. above) places the litigation cost at the feet of defendants (hence why it was

⁴⁹ ICOSA (n 4) 350.

⁵⁰ Kim Harrison, 'ICOSA report – Key takeaways on civil redress' *Law Society Gazette* 28 October 2022: (<<https://www.lawgazette.co.uk/practice-points/icos-report-key-takeaways-on-civil-redress/5114106.article>>).

⁵¹ Home Office Policy Paper 2023 (n 22) [14].

⁵² Ministry of Justice, *Criminal Injuries Compensation Scheme Review: Additional Consultation 2023* (Crown Copyright, 2023).

⁵³ *ibid.*, [11].

⁵⁴ Ministry of Justice, *Criminal Injuries Compensation Scheme Review: 2022 and 2023 consultations Government Response* CP 1292 (Crown Copyright, April 2025) 4.

⁵⁵ *ibid.*, [14]. It also noted that demand for the Scheme has been steadily increasing, with more applications for compensation each year. This has implications for the Scheme's sustainability: Impact Assessment [17]. (<https://consult.justice.gov.uk/digital-communications/cics-review-supplementary-consultation/supporting_documents/cicssupplementaryconsultationimpactassessment.pdf>).

⁵⁶ Cane and Goudkamp (n 43) 289.

so strongly opposed by the insurance industry and local government). On this basis, despite 40 (82%) of the responses disagreeing with the option of retaining the Scheme's time limits unchanged, the Government took the view that there was no clear consensus among respondents on what the new time limits should be and that the time limits as they stand allow sufficient time for most abuse victims to make a claim, and to have explored other routes for compensation. All options other than no change would lead to increased costs.⁵⁷ We are left therefore with a commitment to consider suggestions how to increase awareness of the Scheme and to ensure that there is proper awareness of the arrangements for exceptional circumstances, if appropriate, in cases of child sexual abuse. This is far from an adequate response to the concerns raised by IICSA.

2.2.2. Recommendation 19: A tiered redress scheme

Yet it is recommendation 19 that represented the most significant recommendation for ICSA survivors: that the UK government establishes a single tiered redress scheme in England and Wales. State-funded schemes have indeed been set up in a number of other jurisdictions, including Ireland,⁵⁸ Northern Ireland,⁵⁹ Jersey,⁶⁰ Australia⁶¹ and Scotland.⁶² The UK Government established in 2019 a State-funded scheme for surviving former child migrants, following IICSA's earlier recommendation.⁶³ IICSA concluded that no amount of money could fully compensate survivors for the child sexual abuse that they had experienced. Nevertheless, the provision of monetary awards with access to support and therapy would help survivors to deal with the abuse and its consequences.⁶⁴ Such redress goes beyond tort damages⁶⁵ and focuses on the wider needs of the abuse survivor.⁶⁶

IICSA's recommended approach encompasses the following key components:

- the scheme should be for victims and survivors of child sexual abuse and exploitation that occurred in England and Wales;
- there should be a clear connection between an institution in England and Wales (whether State or non-State) and the sexual abuse experienced by the individual;

⁵⁷ Government 2025 response (n 54) [124].

⁵⁸ Residential Institutions Redress Act 2002.

⁵⁹ Historical Institutional Abuse (Northern Ireland) Act 2019.

⁶⁰ The most recent Jersey Redress Scheme closed to applications on 31 August 2020.

⁶¹ National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (Cth).

⁶² Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021.

⁶³ Eligible former British child migrants receive a payment of £20,000 in respect of harm done to them by being separated from their families and sent overseas as part of the UK government's historic participation in child migration programmes, regardless of whether they suffered abuse: <<https://www.gov.uk/government/publications/payment-scheme-for-former-british-child-migrants-guidelines/payment-scheme-for-former-british-child-migrants-guidelines>>.

⁶⁴ IICSA, *Executive Summary: Part II, Part 1 (Making Amends)* (n 4) [29].

⁶⁵ Tort damages seek a financial sum that puts the injured party in the same position as they would have been in if the tort had not occurred: *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25 at 39 per Lord Blackburn.

⁶⁶ For the advantages of redress schemes in this context, see Paula Giliker, 'Reparation for non-recent institutional child sexual abuse in England and Wales and Australia: A matter for private law or the State?' (2024) 21 *Legal Studies* 591; Hildur J Antonsdóttir, 'Compensation as a means of justice? Sexual violence survivors' views on the tort law option in Iceland' (2020) 28 *Feminist Legal Studies* 277, 296.

- the scheme should apply to child sexual abuse that took place prior to its establishment and be open for a period of five years;⁶⁷
- the scheme should comprise a two-tier system, the first being a modest, fixed flat-rate recognition payment with the option for applicants who wish to provide more details and evidence to apply for a second-tier payment; and
- the scheme should be funded by central and local government, in accordance with devolved funding principles, with voluntary contributions sought from non-State institutions.⁶⁸

The aim, therefore, is to provide a simple and accessible scheme which provides redress with speed, simplicity, and certainty that the civil litigation system does not provide.⁶⁹ An applicant may still pursue a civil law claim, but credit would have to be given for any redress payment to avoid double recovery.⁷⁰

The advantages of such a scheme are self-evident. They provide a non-adversarial process by which not only financial redress but potentially other forms of redress such as counselling and various forms of therapy may be provided to applicants. As IICSA noted, civil litigation is expensive to access and some of its rules may deter or prevent survivors from pursuing their claims. The process can also be protracted and re-traumatising. More fundamentally, a redress scheme would be centred around the survivor and the specific injury they have suffered and thus address the accountability, recognition and reparation sought by survivors of institutional child sexual abuse. A state-based scheme also acknowledges the role of the State in protecting the vulnerable in our society.⁷¹

In May 2023, the Conservative government agreed to launch an extensive engagement exercise to listen to the views and concerns of a wide range of stakeholders – particularly survivors – on how best to acknowledge revelations of abuse in the IICSA report through a redress scheme:

No apology or compensation is enough to put right the abuse these victims and survivors suffered, but it is incumbent on government to address past failures in child protection, and provide victims and survivors with justice and compensation.⁷²

These are powerful words. However, by December 2023, Kim Harrison, Vice-President of the Association of Personal Injury Lawyers (APIL), was expressing her concern that there seemed to be little sense of urgency and a growing concern among survivors and representatives that

⁶⁷ It should be noted that this is half the period of 10 years adopted in Australia: see National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (Cth). The implementation of the Australian Scheme strongly suggests that 5 years, given the need to encourage applications and sort out bureaucratic hurdles, is not long enough to make meaningful change: see Giliker (n 66) 610. In contrast, IICSA (n 4) 304-5 takes the view that a period of five years, given the intention that the application process will be accessible, and straightforward, will allow sufficient time for eligible individuals to apply and for the applications to be processed.

⁶⁸ Unless they have already (or intend to) set up their own redress schemes: IICSA (n 4) 307.

⁶⁹ IICSA (n 4) 304.

⁷⁰ IICSA resolved, however, that applicants who had previously brought civil claims which had been rejected by the court would be excluded from applying to the scheme, save where their cases had been rejected due to limitation.

⁷¹ IICSA (n 4) 298.

⁷² Home Office Policy Paper 2023 (n 22) [11].

the can was being kicked down the road. 'If there have been any developments behind the scenes,' she commented, 'they certainly have not been made public.'⁷³ There was also nervousness at the prospect of an 'extensive engagement exercise' which would determine the details of the scheme given the work already undertaken over seven years by IICSA. The commitment was essentially one of consulting on a redress scheme, not strictly a commitment to its establishment. One week after the government's response, Alexis Jay and the other IICSA panel members wrote to the *Times* newspaper expressing their 'deep concern at the Government's inadequate response' to their recommendations and predicting that action may be deferred indefinitely 'for the sake of other political priorities'.⁷⁴

Hopes that a new Labour government in July 2024 might improve matters were at first unfounded. However, in January 2025, then Labour Home Secretary Yvette Cooper made a commitment to lay out a clear timetable by Easter for implementing the IICSA recommendations, alongside plans for a nationwide review (or audit) of grooming gang evidence and five government-backed local inquiries into grooming.⁷⁵ The Casey Report was delivered in June 2025 with shocking findings, not least at the appalling treatment of grooming survivors by statutory agencies.⁷⁶ The government has accepted all 12 recommendations of the Casey Report. These are, however, not redress-based.

2.2.3 A National Redress Scheme?

On 9 April 2025, the Home Office in its 25 page *Tackling Child Sexual Abuse: Progress Update* report set out the steps that the government would take to act on the recommendations in IICSA's 2022 report.⁷⁷ These included introducing, in the Crime and Policing Bill (now the Crime and Policing Act 2026), a new mandatory reporting duty for individuals undertaking key roles with responsibility for children in England to report sexual abuse and creating a new criminal offence of obstructing an individual from making a report under the duty.⁷⁸ These exist alongside broader measures to tackle the evolving threat from child sexual abuse and exploitation. However, it announced (at [79]) that:

⁷³ Kim Harrison, 'Child sexual abuse inquiry: survivors have waited long enough' *Law Society Gazette* 20 December 2023: (<<https://www.lawgazette.co.uk/commentary-and-opinion/child-sexual-abuse-inquiry-survivors-have-waited-long-enough/5118259.article>>).

⁷⁴ Aine Fox, 'Government response weak and at times disingenuous – abuse inquiry chairwoman' *The Independent* 30 May 2023: (<<https://www.independent.co.uk/news/uk/alexis-jay-suella-braverman-government-iicsa-education-secretary-b2348096.html>>).

⁷⁵ BBC News, 'Cooper announces inquiries into grooming gangs' 16 January 2025: (<<https://www.bbc.co.uk/news/articles/c9w5l4vxy2qo>>).

⁷⁶ Baroness Casey, *National Audit on Group-Based Child Sexual Exploitation and Abuse* (Crown Copyright, 2025). The report made 12 recommendations to: • Tighten the law and to make clear that children cannot consent when they have been raped. • Implement a more vigorous approach to right the wrongs of the past, bringing more perpetrators to justice, holding agencies to account for past failings and delivering justice for victims. • Improve the information and intelligence we collect and use to inform our approaches to tackling child sexual exploitation. • Ensure we share information more effectively, use information smartly, and apply the best operational approaches across safeguarding agencies.

⁷⁷ Home Office 2025 (n 40).

⁷⁸ With criminal sanctions for both the concealment of, and failure to report, child sexual abuse. See <<https://www.gov.uk/government/publications/crime-and-policing-act-2026-factsheets/crime-and-policing-act-2026-independent-inquiry-into-child-sexual-abuse-recommendations-factsheet>>.

The Government is not currently taking forward any further steps on the IICSA proposal for a separate, national financial redress scheme for all victims and survivors of child sexual abuse with a connection to state or non state institutions. We have considered the huge challenges in establishing the scope of such a redress scheme given the varied and widespread nature of child sexual abuse in different settings. We also recognise that in the current fiscal environment, this recommendation is very difficult to take forward, and we believe that the first priority for investment should be to provide greater support and care - including therapeutic support - for victims and survivors of child sexual abuse.

Instead, the government emphasised that survivors could still sue individual institutions where there has been fault. This would be supported by the two measures discussed above, namely reform to the limitation period and amendments to the Compensation Act 2006 to 'better facilitate the offering of apologies by organisations.'⁷⁹

Again cost seems to be the overriding concern (or to use the government's phrase, 'the current fiscal environment').⁸⁰ Here, it is submitted, IICSA made a fatal error. The Report places the burden of funding primarily on the State with funding coming from central and local government. While it argues that contributions should be sought from non-State institutions, this would be voluntary. IICSA seems to have taken the pragmatic view that while it is desirable that non-State institutions contribute to the scheme giving survivors the sense of 'justice' that many require, the State is better able to ensure that the scheme is securely and adequately funded throughout its duration, so that successful applicants receive awards whether or not a contribution is made by the relevant institution.⁸¹ It rejected as too complex any global 'levy' on insurers which provide cover for institutions.

The Report therefore relies on the expectation that non-State institutions will voluntarily contribute to the funding of the scheme while not being required to do so. Australia equally relied on an 'opt in' element in its Scheme, and Cortis and Katz have recorded the painful experience of survivors waiting to see which institutions signed up for the Scheme.⁸² In Australia, large organisations such as the Jehovah's Witnesses were initially reluctant to join the Scheme, and the Australian government was forced to resort to threats such as loss of charitable status and the withholding of government grants to incentivise such organisations to join the Scheme.⁸³ The Australian experience indicates that IICSA's suggestion of shaming institutions – publishing a list of institutions which refrain from contributing or from contributing sufficiently⁸⁴ - is unlikely to be adequate by itself.

A primarily State-funded redress scheme has also provoked criticism from those supporting abuse survivors.⁸⁵ Why, asked the APIL Vice-President, should the taxpayer pick up the full cost when many of the institutional defendants are wealthy and powerful and/or covered by

⁷⁹ Home Office 2025 (n 40), [80].

⁸⁰ The Scheme would have been likely to cost billions of pounds: see BBC News, 'The 20 child abuse inquiry recommendations – what has happened so far?' 9 January 2025: (<<https://www.bbc.co.uk/news/articles/c0mvmv3dwe1o>>).

⁸¹ IICSA (n 4), 306-7.

⁸² Cortis and Katz (n 2) 5.2.

⁸³ See < <https://www.nationalredress.gov.au/institutions/institutions-have-not-yet-joined>>.

⁸⁴ IICSA recommended that where institutions did not respond or their contributions were considered insufficient, further action might be considered, such as publication of a list of these institutions: (n 4) 307. This was, as seen in footnote 82 above, done in Australia but did not prove adequate.

⁸⁵ The proposal was similar, however, to models introduced in the (albeit much smaller) jurisdictions of Scotland, Northern Ireland and Jersey.

insurance for this kind of claim?⁸⁶ Harrison expressed the additional fear that a focus on public funds would put pressure on any scheme to keep damages low. In Parliament, the Bishop of Manchester (Vice Chair of the Church of England Redress Board) commented that the Church of England believed it important that it paid sexual abuse survivors itself in order to demonstrate that it was taking responsibility for what had happened. It should not, in his view, be simply something the taxpayer picks up.⁸⁷ Who pays therefore raises a basic question of accountability. We might also speculate to what extent the existing financial commitments of the Government to pay redress to victims of harms caused by its *own* institutions, such as the Post Office⁸⁸ and NHS, have influenced its decision not to proceed. By April 2025, for example, the UK government was already paying out approximately £1 billion to over 7,300 claimants in relation to the Post Office Horizon IT Scandal alone, across the four schemes set up by the Government.⁸⁹

In sum, the momentum for a State-based redress scheme in England and Wales seems to have gone. The Labour government has focussed instead on responding via criminal law, regulatory reform and amendments to the civil litigation process.

In the absence of State-based redress schemes, abuse survivors must turn to civil litigation for redress, albeit now in the light of reformed limitation rules. The next section will address to what extent tort law provides accessible routes to compensation in England and Wales.

3. Institutional Liability in Private Law

Institutional liability at common law is essentially three-fold. Either it can be fault-based (negligence or, exceptionally, due to a non-delegable duty to ensure that reasonable care is taken of vulnerable individuals for whom the institution has assumed responsibility) or by attributing the liability of the abuser to the institution (vicarious liability). Moran regards the opening up of the rules of institutional liability as one of the most profound changes to private law as a result of the abuse scandals.⁹⁰ These will be examined below. As will be seen, even with the barrier of limitation taken away (subject, of course, to the defendant proving that it is not possible for a fair hearing to take place), obstacles remain to private law claims. There is, however, some cause for hope. The UK (and Canada), in contrast to Australia, has favoured vicarious liability.⁹¹ Australia, in its recent decision in

⁸⁶ Harrison (n 73).

⁸⁷ Hansard HL Deb vol 845 col 628, 22 April 2025.

⁸⁸ The Post Office is owned by the government. Oversight of Post Office Limited is assigned to the Department for Business and Trade (DBT).

⁸⁹ At the Autumn Budget 2024, the Government set aside £1.8 billion of funding for redress payments from 2024-25 in addition to around £200 million that had already been distributed. The Infected Blood Compensation Authority is also currently processing compensation claims by people who were infected by HIV, Hepatitis B and C through NHS treatment with contaminated blood, blood products or tissue (including armed forces treatment overseas). This followed the final report in May 2024 of the Infected Blood Inquiry which investigated the circumstances which led to and were caused by people being given infected blood (or blood products) by the UK's National Health Services, most notably between 1970 to 1998. See <<https://www.infectedbloodinquiry.org.uk/reports/inquiry-report>> and Cabinet Office, *Policy paper: Explainer: Infected Blood Compensation Scheme* (Crown Copyright, 2026).

⁹⁰ Moran (n 16) 68.

⁹¹ Australia in *Bird v DP (A Pseudonym)* [2024] HCA 41; 98 ALJR 1349 refused, unlike the UK and Canada, to extend vicarious liability to workers “akin to employees”, thereby excluding claims involving abuse by priests, volunteers and other non-employees even when they were integrated into the workplace.

AA v The Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle (AA),⁹² prefers an approach based on non-delegable duties. As we will see, recent UK authority on vicarious liability (*Trustees of the Barry Congregation of Jehovah's Witnesses v BXB (BXB)*)⁹³ and non-delegable duties (*Armes v Nottinghamshire CC*)⁹⁴ highlights both the untapped potential in UK law for a non-delegable duty on institutions to protect survivors from child sexual abuse and concern that the courts have adopted an overly generous approach to vicarious liability due to policy concerns seeking to protect survivors of abuse.

3.1 Negligence

Organisational liability in negligence arises where the institution is found to have breached its duty of care to the survivor of abuse. In many institutional settings e.g. school, care home, prison, there will be a duty of care and so the challenge for the claimant is to establish breach of this duty by producing evidence of a failure to take reasonable care. Hoyano and Keenan identify four main sources of organisational liability in negligence: negligence in employing and continuing to employ staff whom the institution knew or should have known were abusers; failing to take reasonable steps to prevent or stop physical and sexual assaults; failing to exercise reasonable supervision and direction of employees; and failing to investigate abuse following reports by the victim.⁹⁵ The problem, perhaps inevitably in non-recent cases but also in the context of abuse itself which is often committed in secret rendering corroboration difficult, is proof. Can the claimant establish that, *at the time of the abuse*, the institution failed to meet the standard of care expected of an institution of that kind? One key obstacle for non-recent claims is that, in the past, institutions had less awareness of the possibility of the abuse – hence the need for public inquiries to highlight the scale and magnitude of the problem. The tort of negligence requires the court to judge the conduct of the institution by the standards which prevailed at the time of the tort and not those applied today.⁹⁶ McLachlin CJ in the Canadian abuse case of *Blackwater v Plint*⁹⁷ contrasted contemporary standards where a court, in the light of abuse scandals, might view the measures taken to be clearly inadequate and the environment unsafe with the standards of a more trusting past where constructive knowledge of a foreseeable risk of sexual assault to the children could not be established. This was also an issue in the Australian case of *Prince Alfred College v ADC*⁹⁸ where the abuse took place in 1962 and the lower court inferred that despite rumours circulating, the absence of concrete allegations and the fact that the school immediately dismissed the housemaster once an allegation was made, indicated that the school had been unaware of the abuse.⁹⁹ Additional difficulties in cases of non-recent ICSA include missing evidence, faded memories, absent or deceased witnesses and records lost, mislaid or destroyed.¹⁰⁰ A negligence claim is therefore far from straightforward in the abuse context.

⁹² [2026] HCA 2; 100 ALJR 170.

⁹³ [2023] UKSC 15, [2024] AC 567.

⁹⁴ [2017] UKSC 60; [2018] AC 355.

⁹⁵ Laura CH Hoyano and Caroline Keenan, *Child Abuse* (Oxford University Press, 2007) 286–298.

⁹⁶ *Roe v Minister of Health* [1954] 2 QB 66, 84.

⁹⁷ [2005] 3 SCR 3, [14]–[15].

⁹⁸ [2016] 258 CLR 134.

⁹⁹ *A, DC v Prince Alfred College Inc* [2015] SASC 12, [146], per Vanstone J.

¹⁰⁰ In *Barclays Bank v Various Claimants* [2020] UKSC 13, [2020] AC 973, for example, following the death of the alleged abuser, his family destroyed all his old paperwork. In *AA* (n 92), the courts noted conflicting witness testimony, confusion as to dates, and missing witnesses.

3.2 Vicarious Liability for Intentional Torts

In contrast, vicarious liability does not require proof of fault by the institution. The leading UK case of *Various Claimants v Catholic Child Welfare Society (CCWS)*¹⁰¹ sets out a two-stage test. The claimant must establish:

- Stage 1: A relationship giving rise to vicarious liability, usually that of employment;
- Stage 2: A tort committed in the course of employment, that is, one that is closely connected to the tasks the employee is engaged to do.

From *Lister v Hesley Hall Ltd* in 2001,¹⁰² it has been clear that the UK courts have been prepared to interpret the doctrine of vicarious liability generously in abuse cases. In *Lister* itself, the 'course of employment' test for a carer of children was interpreted to extend to sexual abuse of those very children on the basis that 'the warden's torts were so closely connected with his employment that it would be fair and just to hold the employers vicariously liable.'¹⁰³ In the later case of *CCWS* in 2012,¹⁰⁴ lay brother teachers affiliated to (but not employed by) a religious institution were held to be 'akin' to its employees and thus covered by vicarious liability. A relationship 'akin' to employment would thus arise where the tortfeasor has carried on activities as an integral part of the business activities carried on by a defendant and for its benefit.¹⁰⁵ In so doing, the UK courts have provided a pathway to justice for abuse survivors, provided that they could navigate the limitation rules (and are financially able to sue). Even the non-incorporation of many religious institutions did not prove a barrier or require legislation as we have seen in Australia.¹⁰⁶ In *CCWS*, the UK Supreme Court (UKSC) merely stated in relation to an unincorporated body that:

Because of the manner in which the Institute carried on its affairs it is appropriate to approach this case as if the Institute were a corporate body existing to perform the function of providing a Christian education to boys, able to own property and, in fact, possessing substantial assets.¹⁰⁷

While the Supreme Court of Ireland has rightly questioned the validity of this assumption,¹⁰⁸ the UK courts have not wavered from this position.

However, the UKSC's decision in *BXB*¹⁰⁹ does suggest that the UK courts are now adopting a less generous approach to vicarious liability, and moving away from the flexibility shown in past cases such as *Mohamud v Morrison Supermarkets plc*¹¹⁰ where the physical abuse of a customer by a racist kiosk attendant was accepted to be sufficiently close to his duties as a kiosk attendant to give rise to vicarious liability. In *BXB*, the UKSC (at [58]) summarised the

¹⁰¹ [2012] UKSC 56; [2013] 2 AC 1, [21].

¹⁰² [2001] UKHL 22; [2002] 1 AC 215.

¹⁰³ *ibid.*, [28] per Lord Steyn.

¹⁰⁴ *CCWS* (n 101).

¹⁰⁵ *Cox v Ministry of Justice* [2016] UKSC 10; [2016] AC 660, [24]. See, further, *Armes* (n 94).

¹⁰⁶ See e.g. Civil Liability Act 2002 (NSW) section 6K (Child abuse proceedings may be commenced against unincorporated organisation).

¹⁰⁷ *ibid.*, [33].

¹⁰⁸ *Hickey v McGowan* [2017] IESC 6, [52].

¹⁰⁹ *BXB* (n 93).

¹¹⁰ [2016] UKSC 11; [2016] AC 677.

ratio of two key rulings on the Stage 1 relationship test (*Various Claimants v Barclays Bank plc*¹¹¹) and the Stage 2 close connection test (*Various Claimants v Wm Morrison Supermarkets plc*¹¹²) as follows:

(ii) The test at stage 1 is whether the relationship between the defendant and the tortfeasor was one of employment or akin to employment ... But in applying the “akin to employment” aspect of this test, a court needs to consider carefully features of the relationship that are similar to, or different from, a contract of employment.

(iii) The test at stage 2 (the “close connection” test) is whether the wrongful conduct was so closely connected with acts that the tortfeasor was authorised to do that it can fairly and properly be regarded as done by the tortfeasor while acting in the course of the tortfeasor’s employment or quasi-employment ... Cases such as *Lister* ... show that sexual abuse of a child by someone who is employed or authorised to look after the child will, at least generally, satisfy the test. But ... the carrying out of the wrongful act in pursuance of a personal vendetta against the employer, designed to harm the employer, will mean that this test is not satisfied.

In *Barclays Bank*, the UKSC emphasised that the ‘akin to employment’ extension to Stage 1 must be examined carefully on the facts and not simply on the basis of policy decisions.¹¹³ In *Barclays*, a doctor performing medical checks for the bank was not, in the court’s view, anything close to an employee. He was in business on his own account and not ‘akin’ to a Bank employee. Equally in *X v Lord Advocate*,¹¹⁴ a sheriff¹¹⁵ was not akin to an employee of the Scottish government. Despite government involvement in his appointment and the payment of salaries from the Scottish Consolidated Fund, the Scottish Government did not control the sheriff’s performance of their judicial function, and ‘most crucially’,¹¹⁶ the separation of powers constitutional principle dictated that the judiciary was independent of government. In contrast in *BXB*, an elder of the church, who was carrying out work on behalf of, and assigned to him by, the organisation and was performing duties which were in furtherance of and integral to its aims and objectives, would factually satisfy the test for ‘akin’ to employment.

The UKSC in the 2020 *Morrison*s case equally adopted a more cautious approach to the course of employment test. It refused to accept that a data breach by the internal auditor, which was an act of revenge for perceived ill-treatment by his employer, was so closely connected with acts that the employee was authorised to do as to render the defendant vicariously liable. The employee was not engaged in furthering his employer’s business when he committed the wrongdoing in question. On the contrary, he was pursuing a personal vendetta. In *BXB*, Lord Burrows also failed to find a close connection between the rape and acts that the abuser was ‘authorised’ to do. On this basis, a Jehovah’s Witness elder who had abused a congregation member who was also a close friend during a social afternoon was not acting in the course of his (akin to) employment. In contrast in *Bethel v AG of the Bahamas*,¹¹⁷ Lord Burrows found:

... the facts of this case are plainly distinguishable from those in *BXB* ... [I]n *BXB* the rape was not committed while the tortfeasor was carrying out, or purporting to carry out, any activities as an Elder on behalf of the

¹¹¹ [2020] UKSC 13; [2020] AC 973

¹¹² [2020] UKSC 12; [2020] AC 989.

¹¹³ Policy would in fact be confined to borderline cases: *Barclays Bank* (n 111), [27] per Baroness Hale.

¹¹⁴ [2025] UKSC 44; [2026] 2 WLR 43.

¹¹⁵ It was common ground that as a judicial office-holder, the sheriff was not an employee.

¹¹⁶ *X* *ibid* [60]. It might be questioned whether this factor alone should have blocked the suggestion of a relationship ‘akin to employment’.

¹¹⁷ [2026] UKPC 26.

Jehovah's Witnesses. In contrast in this case, the rapes were committed while Mr Bastian was detaining Mrs Bethel in the purported exercise of the powers he had as an immigration officer.¹¹⁸

Post-*BXB*, the courts have taken on board the UKSC's message in favour of a more fact-based approach to vicarious liability. Notably in the context of 'akin to employment', the approach advocated in *Barclays* and *BXB* does seem to be slowing down claims.¹¹⁹ Even where vicarious liability is found, the court reasons carefully and seeks to justify its findings.¹²⁰ While the Court of Appeal was prepared to regard work experience training in a school as 'akin' to employment in *MXX v A Secondary School*,¹²¹ it found that the grooming which had led to the sexual offending was not inextricably woven into the tortfeasor's work during his week at the school such that it would be fair and just to hold the school vicariously liable for his acts. As seen above, the issue was what the abuser had been authorised to do. Given the limited nature of his duties - he had no caring or pastoral responsibility for the pupils and held no position of authority over the pupils in the school - the facts, in the court's view, did not begin to satisfy the requirements of the close connection test.¹²²

One final blow for abuse victims is the rejection in *BXB* that sexual abuse cases merited special treatment in vicarious liability.¹²³ The idea that the law still needs tailoring to deal with sexual abuse cases, stated Lord Burrows, is misleading: 'The necessary tailoring is already reflected in, and embraced by, the modern tests.'¹²⁴

3.3 Non-delegable duties (NDDs)

While the UK has favoured reliance on vicarious liability in institutional abuse cases, the UKSC decision in *Woodland*¹²⁵ has opened up the possibility of using non-delegable duties (NDDs) as a basis for liability. As previously stated, this is the favoured position of the High Court of Australia, as stated in *AA*¹²⁶. In *Woodland*, the UKSC found that a school owed a NDD in circumstances where it could not be held vicariously liable for the negligence of independent contractors whom it had hired to teach its pupils how to swim. A non-delegable duty of care is a duty to *ensure* that reasonable care is taken by another, rendering the institution primarily liable on proof that the person to whom the duty has been delegated has failed to take that care.¹²⁷ Lord Sumption in *Woodland* identified three critical characteristics of the assumption of responsibility NDD:

¹¹⁸ *ibid.*, [47]. Lord Burrows gave the lead judgment in both cases.

¹¹⁹ See e.g. *TVZ v Manchester CFC Ltd* [2022] EWHC 7 (QB), *Blackpool FC Ltd v DSN* [2021] EWCA Civ 1352, *Burger v Risk Solutions BG Ltd* [2026] EWCA Civ 804; [2026] 4 WLR 53.

¹²⁰ See *DJ v Barnsley MBC* [2024] EWCA Civ 841; [2025] 1 WLR 148 which followed the UKSC in *Armes* but expressly stated that it was not laying down a general rule that a local authority would always be vicariously liable for torts committed by foster carers who were related to the child.

¹²¹ [2023] EWCA Civ 996; [2024] IRLR 45.

¹²² *MXX* *ibid.*[86]-[88]. See also *JXH v Holcombe Rogus Parish Church* [2023] EWHC 3221 (KB): sexual assaults committed by incumbent vicar were not so closely connected with his authorised activities in his quasi-employment as vicar of the parish to be fairly and properly regarded as having been done in the course of that quasi-employment.

¹²³ This had earlier been suggested by Lord Reed in the *Morrison* case (n 110), [36].

¹²⁴ *BXB* (n 93) [58(v)].

¹²⁵ *Woodland v Essex CC* [2013] UKSC 66; [2014] AC 537.

¹²⁶ *AA* (n 92),

¹²⁷ *The Pass of Ballater* [1942] P 112, 117.

- (i) There is an antecedent relationship between the defendant and the claimant.
- (ii) It imposes a positive or affirmative duty to protect a particular class of persons against a particular class of risks and is not simply a duty to refrain from acting in a way that foreseeably causes injury.
- (iii) The duty is by virtue of that relationship personal to the defendant.¹²⁸

As commentators have indicated,¹²⁹ the non-delegable duty works particularly well in the abuse context. It focuses on the relationship between the institution and the abuse survivor and the positive duty it undertook in caring for the survivor. It does not rely on stretching common law concepts such as 'employment relationship' or 'course of employment' but finds the institution primarily liable for failing to prevent the tortious harm caused to the survivor. It does not require proof of fault by the institution itself.

However, at present, there is no direct authority in favour of a non-delegable duty for intentional harm in UK law. Stevens asks why not, arguing that liability for deliberate abuse follows a fortiori from liability for want of care.¹³⁰ Lord Reed in *Armes* offered, however, obiter support:

Nor am I able to agree that a non-delegable duty cannot be breached by a deliberate wrong ... [To argue to the contrary means] the local authority would seemingly be liable if the foster parents negligently enabled a third party to abuse the child, but not if they abused her themselves. That can hardly be right.¹³¹

The High Court of Australia, in contrast, in *AA*, has accepted that non-delegable duties cover both negligent and intentional harm, overturning its earlier decision in *Lepore*¹³². In the majority's view, where a NDD arises by virtue of the duty-holder undertaking the care, supervision or control of the person or property of another, or is so placed with that person or property to have assumed responsibility for their safety, it may be breached by the intentional conduct of the duty-holder or their delegate.¹³³ The New South Wales Court of Appeal characterised *AA* as representing a fundamental shift in the liability of defendants who owe a NDD and whose delegates inflict harm on a claimant in circumstances within the scope of the duty. Liability is now, in its view, effectively strict.¹³⁴ It remarked that:

These aspects of the reasoning in *AA* have profound consequences for the potential liability of school authorities with respect to abuse of students by those for whom the authorities are responsible. If a claimant establishes that they were sexually or physically abused by (say) a teacher at a time and place when the claimant was in the care of the school, such as to fall within the scope of the school's non-delegable duty of care, then the school authority is liable for any compensable harm suffered by the claimant as a result of the abuse.¹³⁵

¹²⁸ *Woodland* (n 125), [7].

¹²⁹ Stelios Tofaris, 'Vicarious Liability and Non-Delegable Duty for Child Abuse in Foster Care: A Step Too Far?' (2016) 79 *Modern Law Review* 884; Simon Deakin, 'Organisational torts: Vicarious liability versus non-delegable duty' (2018) 77 *Cambridge Law Journal* 15.

¹³⁰ Robert Stevens, 'Non-Delegable Duties and Vicarious Liability' in Jason W Neyers et al (eds), *Emerging Issues in Tort Law* (Hart, 2007) 361.

¹³¹ *Armes* (n 94), [51].

¹³² *NSW v Lepore* (2003) 212 CLR 511 where the majority held that there cannot be a non-delegable duty in respect of the intentional criminal act of one person causing harm to another.

¹³³ *AA* (n 92), [6].

¹³⁴ *St Paul's College Ltd v Allan* [2026] NSWCA 22, [9] per Kirk JA. This has a knock-on effect on how plaintiffs should now plead their cases in Australia.

¹³⁵ *ibid.*, [83].

Will the UK follow this path? As we have seen, the current approach has been to expand vicarious liability rather than rely on NDDs. *Lister v Hesley Hall Ltd* in 2001 chose the vicarious liability route, for, it must be stated, good reasons given that pre-*Woodland*, non-delegable duties were generally regarded as an ill-conceptualised historical aberration in UK law.¹³⁶ The post-*Lister* generous treatment of vicarious liability by the UK courts has rendered any resort to NDDs until recently unnecessary.

The key question for the UK courts is whether the current more restrictive approach to vicarious liability will provoke discussion of NDDs in this context. While there is no express authority supporting the extension of the *Woodland* NDD to intentional harm, the UKSC in *Armes* refused to rule out the possibility of extending common law non-delegable duties to intentional harm. *Armes* did, however, indicate that any such liability would be dependent on the statutory framework under which any institution operated.

The post-*Barclays* case of *Hughes v Rattan* highlights the possibility of relying on NDDs as a fall-back to vicarious liability (albeit in the negligence context).¹³⁷ Associate dentists¹³⁸ working for the defendant dental practice were not found to be ‘akin to employees’ but rather to work for their own account. This did not, however, prevent the claimant successfully arguing that, given they were a patient at the practice under a Personal Dental Treatment Plan with no choice which dentist treated them, they were owed a NDD.¹³⁹ *Hughes* is a negligence case, but does indicate a willingness of the court (and Counsel) to rely on NDDs in case the vicarious liability argument fails.

The NDD argument therefore opens a possibility of further extension of the private law to assist abuse survivors, but only if the courts are prepared to extend the doctrine to intentional harm. It is currently not clear whether the UK courts would be prepared to follow the example of Australia and take this step.

4. Conclusions: Navigating Pathways to Redress for Institutional Child Sexual Abuse

The paper has shown that the paths to redress in England and Wales are far from straightforward. Despite a multi-million pound inquiry whose recommendations were to a great extent accepted by government in 2022, it was only in January 2025 that, stimulated by external political pressure to act in relation to grooming gangs,¹⁴⁰ the Labour Government committed to responding to the IICSA recommendations in concrete form. As we have seen, this has led to a change to limitation periods for child sexual abuse (in force: 2026) and proposed reform of the law on apologies (not yet drafted), but, for financial reasons, the national redress scheme and reforms to the CICS have been put into cold storage. Other regulatory measures have been introduced to prevent future abuse which is, of course, *a good*

¹³⁶ See Glanville Williams, ‘Liability for Independent Contractors’ (1956) 14 *Cambridge Law Journal* 180; John G Fleming, *The Law of Torts* (Law Book Company, 9th ed, 1998) 570-71.

¹³⁷ [2022] EWCA Civ 107; [2022] 1 WLR 1680.

¹³⁸ These were dentists granted non-exclusive licences by the Practice to practice dentistry at the premises.

¹³⁹ Contrast *Mabey v Kulkarni CC* (Cardiff), 9 November 2022: patient aware that the orthopaedic surgeon was not an agent or employee of the hospital, and had control as to who he wished to see for the appointments. There was no antecedent history consistent with the hospital owing a non-delegable duty.

¹⁴⁰ BBC News 16 January 2025, ‘Cooper announces “rapid national audit” into grooming gangs, plus new local inquiries’: (<<https://www.bbc.co.uk/news/live/cyv43zpr4pit>>).

thing, but from the perspective of redress for survivors of non-recent abuse, the picture is less positive. Essentially, the UK government's approach has been one to limit the cost to the taxpayer, while putting in place criminal sanctions and regulatory measures to prevent future abuse. Reform to limitation and apologies (if and when it happens) is to be welcomed, but, as this paper has indicated, these should not be regarded as solutions given that they still require survivors to litigate which creates additional barriers to access to redress.

What, then, can be done? The most obvious option is to push again for the national redress scheme. Not proceeding with the scheme has obviously caused the Labour government some embarrassment. This decision has not been widely publicised but rather inserted into parliamentary debates describing what the Government *is* doing for abuse victims. There has been no press release stating that it will not proceed. However, as this paper has identified, given the objection is primarily one of cost, such a scheme is only likely to be regarded as feasible if a key weakness in the IICSA report is addressed – who pays? A mere hope for voluntary contributions by non-State institutions will not, as the Australian experience tells us, suffice. The political reality is that the UK government is already over-extended with its commitment to provide redress in relation to the Post Office Horizon scandal (by June 2025, the Department for Business and Trade (DBT) had paid out more £1bn in compensation¹⁴¹) and to the infected blood scandal where the government has set aside £11.8bn to pay compensation to victims infected with HIV and hepatitis B or C in the 1970s, 1980s and early 1990s after being given contaminated blood products by the NHS.¹⁴² Given budgetary restraints, governmental support for a redress scheme for non-recent institutional child sexual abuse appears unlikely unless serious measures are taken to involve non-state institutions in its funding. Even if funding can be secured, the short period recommended for its operation (5 years) signifies that, at the very least, additional funding will need to be allocated to raise awareness of its existence and assist abuse survivors in making claims.¹⁴³

In the absence of any scheme, the focus inevitably reverts to civil litigation. Limitation rules have been changed. In terms of apologies legislation, it is not clear whether a simple statement that it includes vicarious liability will make much difference in practice. Previous experience indicates that section 2 of the Compensation Act 2006 (and even its Scottish equivalent) has not been relied on much in practice. Can the reforms change a practitioner culture that is nervous of apologies in case that they are construed as concessions giving rise to future litigation?

Even if limitation is no longer a problem, we have seen that institutional negligence is difficult to establish. The main pathways for survivors will be vicarious liability and non-delegable duties which remove the requirement to prove the fault of the institution. Yet, the option of constructing a particular form of vicarious liability that focuses on the needs of abuse victims was rejected by the UKSC in *BXB* and the current law suggests a more restrictive approach is

¹⁴¹ As of 2 June 2025, about £1.039 bn has been awarded to just over 7,300 sub-postmasters across all four redress schemes: M. Race, 'Post Office scandal: Government didn't want victims to feel harassed' BBC News 25 June 2025: (<<https://www.bbc.co.uk/news/articles/c3d15z9zrxdo>>). The Public Accounts Committee of MPs, which had scrutinised payments in June 2025, found that many of the wrongly-accused or convicted sub-postmasters were yet to receive 'fair and timely' redress.

¹⁴² Infected Blood Compensation Authority: see <<https://ibca.org.uk>>.

¹⁴³ There have been concerns, for example, about a lack of awareness of the Post Office schemes, as reported by the BBC (n 141).

being adopted. A more positive step would be to accept that the *Woodland* non-delegable duty can extend to intentional harm. This was not argued in *BXB* with the first instance decision indicating that only negligence and vicarious liability were raised.¹⁴⁴ This is entirely understandable given the state of the law in 2020. Subsequent cases such as *Hughes v Rattan* have suggested, however, relying on the non-delegable duty (NDD) when vicarious liability fails. There is no firm authority against this option and indeed obiter dicta in favour. Yet such a step is far from straightforward. Existing authority confines the NDD to negligent harm. A generous approach to NDDs would also seem at odds with the UKSC's currently restrictive approach towards vicarious liability, as demonstrated in *BXB*. Further the conditions that provoked the use of the NDD in *AA* in Australia (the refusal of the High Court in *DP v Bird*¹⁴⁵ to extend vicarious liability to relationships akin to employment/strong lobbying by stakeholders/the public support of legislators of the need to respond to abuse survivors' calls for change) are not replicated in the UK.

We are left therefore with the unsatisfactory conclusion that despite the high hopes of change following the IICSA report, the only concrete result for redress has been change to the limitation periods for child sexual abuse victims. Given the obvious unwillingness of the UK legislator to intervene further, change will have to come from the courts themselves. What, then, might incentivise the UK Supreme Court to reform the law? In Australia, one harsh case (*Bird*), which excluded vicarious liability claims when the abuse was committed by a non-employee such as a priest or scout-master, gave rise to a public outcry and calls for change. The courts responded. It is suggested that similar conditions would be needed in England and Wales. Given a case where child sexual abuse had been committed by an independent contractor, integrated into the institution's operations, into whose care the child had been entrusted, would the UK Supreme Court refuse to extend *Woodland* to respond to calls for liability? The High Court of Australia in *AA*, faced with such a dilemma, extended its non-delegable duty of care to cover intentional harm. The challenge for private lawyers is to persuade the UK Supreme Court to do the same.

¹⁴⁴ [2020] EWHC 156 (QB); [2020] 4 WLR 42.

¹⁴⁵ *Bird* (n 91).