



# ALARM

embrace risk



# WORKING TOGETHER

## ALARM CONFERENCE 2019

#alarmrisk2019





# Historic abuse, ambulance chasers and the run away Government

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**Kennedys**



## What will we cover?

- The history of historic abuse in Scotland
- Barriers to claims
- The response of the Scottish Government
- The current landscape
- A VPAP?
- The redress scheme
- Conclusions

The usual disclaimer!

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# The history of historic abuse in Scotland

## Examples:

- Religious Organisations
- Sports clubs
- Institutions/Charities providing care
- Local Authorities

Attempts to quantify: 400 to 4,000 potential pursuers (Financial Memorandum) so worked on basis of 2,200 claims

Police Scotland: Identified 5,000 files – 2,200 ‘a conservative estimate’

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# Claims being pursued

- Claims were made but numerous problems
  - Limitation due to Prescription and Limitation (Scotland) Act 1973
    - Three years from date of abuse
    - Three years from age of majority (16)
    - If equitable to do so
  - Lack of records
  - Problems of ‘proving’ ‘abuse’
  - Calculation of loss

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# The response of the Scottish Government

- The Limitation (Childhood Abuse)(Scotland) ASP
  - Removes limitation period for ‘abuse’ back to 26 September 1964
  - “Abuse” defined as sexual abuse, physical abuse, emotional abuse and abuse which takes the form of neglect
  - Importantly, allows previously settled matters to be raised again in certain circumstances
  - Defenders can object;
    - Impossible to have a fair hearing
    - Substantial prejudice to defender and regard had to pursuer’s interest

Intended to allow claims and give survivors a voice



# The response of the Scottish Government

- The Scottish Child Abuse Inquiry
  - Terms of Reference:
    - Looking at the abuse of children in care in Scotland, what happened, why and where abuse took place, the effects of abuse on children and their families and whether the organisations responsible for children in care failed in their duties.
    - Looking at whether any failures have been corrected and if changes to the law, policies or procedures are needed.
  - Activities:
    - Public and Private Hearings to gather evidence (130 days of evidence and counting)
    - Obtaining Witness Statements, Records and other documents and doing own research
    - Obtain own expert reports

Intended to allow claims and give survivors a voice



## The current landscape

- Pursuer firms advertising
- Potential defenders waiting
- Complex issues of who is funding being considered
- Changes to Costs arrangements coming...

Perhaps the quiet before the storm

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# A Voluntary Pre-Action Protocol

- Initiative commenced by Law Society of Scotland
- Progressing
- Challenges for drafting

Is the alternative better?

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# The Redress Scheme

- Intended to provide financial redress to those abused in care as a child.
- Access to justice for those who were abuse before 1964
- Combination Payments
- Who is responsible for the cost of the scheme?

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## Advanced Payment Scheme

- Advance Payment Scheme was set up on 25/04/2019
- Abuse must have been suffered prior to 2004, and the applicant must be at least 70 years old or terminally ill.
- Set figure of £10,000, regardless of the extent of abuse suffered.

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## Conclusions

- Looking back and looking forward
- Mini Industry on claims coming
- Increase in volume of claims?
- Increase in cost of claims?

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