

Profile and Reason for Submission

I am an academic based at Lancaster University specialising in the history of the welfare state and social policy in twentieth century Britain and its Empire, focusing on governance and policy processes. In 2021 I contributed written and oral evidence to the Joint Committee on Human Rights (JCHR) inquiry into *The right to family life: adoption of children of unmarried women 1949-1976*.¹ In 2022 the inquiry report was published, drawing upon my evidence submissions along with those of other academics and, primarily, the lived experience of birth mothers and adopted adults affected by historic forced adoption practices.² In its conclusion and recommendations, the JCHR report identified that:

An apology by the Government and an official recognition that what happened to these mothers was dreadful and wrong, backed up by the other actions recommended in this Report, would go some way to mitigate the pain and suffering of those affected.³

Accordingly:

There are some things that only a government can do, and for that reason that falls to the Government to make this apology.⁴

On 6 March 2023 the UK Government formally responded to the JCHR report and its recommendation of a formal apology for historic forced adoption.⁵ The position taken was that:

The Government agrees with the [JCHR] that the treatment of women and their children in adoption practices during this period was wrong and should not have happened. Whilst we do not think it is appropriate for a formal Government apology to be given, since the state did not actively support these practices, we do wish to say we are sorry of behalf of society to all those affected.⁶

On 22 March 2023 the then First Minister of Scotland, Nicola Sturgeon MSP (Member of the Scottish Parliament), issued an apology on behalf of the Scottish Government.⁷ Her speech

¹ Michael Lambert, Written evidence submitted to the Joint Committee on Human Rights inquiry into the right to family life: adoption of children of unmarried women 1949-1976. ACU0024. Published 17 March 2022. Available: <https://committees.parliament.uk/writtenevidence/40260/pdf/>; Joint Committee on Human Rights, Oral evidence: The right to family life: adoption of children of unmarried women, 1949-1976. HC 748. Wednesday 15 December 2021. Available: <https://committees.parliament.uk/oralevidence/3219/pdf/>.

² Joint Committee on Human Rights, *The violation of family life: adoption of children of unmarried women 1949-1976* (London: House of Commons and House of Lords, 2022).

³ Joint Committee on Human Rights, *The violation of family life: adoption of children of unmarried women 1949-1976* (London: House of Commons and House of Lords, 2022), p. 38.

⁴ Joint Committee on Human Rights, *The violation of family life: adoption of children of unmarried women 1949-1976* (London: House of Commons and House of Lords, 2022), p. 38.

⁵ Joint Committee on Human Rights, *The violation of family life: adoption of children of unmarried women 1949-1976: government response to the Committee's third report* (London: House of Commons and House of Lords, 2023).

⁶ Joint Committee on Human Rights, *The violation of family life: adoption of children of unmarried women 1949-1976: government response to the Committee's third report* (London: House of Commons and House of Lords, 2023), p. 10.

⁷ Scottish Government, 'Apology for historical forced adoption practices: First Minister's speech – 22 March 2023', Scottish Government, 22 March 2023. Available: <https://www.gov.scot/publications/apology-historical-adoption-practices-first-ministers-speech-22-march-2023/>.

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echoed portions of the UK Government position acknowledging the harms inflicted upon women and their children:

The issuing of a formal apology is an action that governments reserve as a response to the worst injustices in our history.

Without doubt, the adoption practices that prevailed in this country – for decades, during the twentieth century – fit that description.

However, in issuing a formal apology despite the UK Government having legal and administrative responsibility for adoption policy during the time covered by the JCHR inquiry,⁸ Sturgeon spoke of the wider responsibilities of the state in acknowledging the contemporary consequences in apologising:

Now, there's a line of argument which says that because the government of the time did not support these practices, there's nothing to apologise for.

And that anyway, these events took place long ago – before this Parliament reconvened, and anyone in this Chamber held public office.

But these are not reasons to stay silent.

Ultimately, it is the state that is morally responsible for setting standards and protecting people.

So as modern representatives of the state, I believe we – amongst others – have a special responsibility to the people affected.

A similar apology was made by the Welsh Government which recognised the responsibility of the state and society on 25 April 2023,⁹ although as with Scotland, legal and administrative responsibility for adoption policy also rested historically with the UK Government during the period in question.

Despite repeated calls by groups representing birth mothers and adopted adults,¹⁰ and the succeeding chair of the JCHR who sat on the committee during the course of the inquiry Joanna Cherry MP (Member of Parliament),¹¹ the UK Government continues to deny its involvement and refuse to apologise for its role and responsibility in historic forced adoption practices. Based on research using archival sources from the UK Government's own legacy records, I have criticised

⁸ Michael Lambert, 'Scotland apologised in 2023 for historic forced adoptions – but this happened throughout the UK', *The Conversation*, 22 March 2024. Available: <https://theconversation.com/scotland-apologised-in-2023-for-historic-forced-adoptions-but-this-happened-throughout-the-uk-226267>.

⁹ Welsh Government, 'People affected by historic adoption practices welcomed to Senedd for Welsh Government apology', Welsh Government, 25 April 2023. Available: <https://www.gov.wales/people-affected-historic-adoption-practices-welcomed-senedd-welsh-government-apology>.

¹⁰ Movement for an Adoption Apology to the Prime Minister, 6 July 2023. Available: <https://movementforanadoptionapology.files.wordpress.com/2023/07/letter-to-prime-minister-requesting-public-formal-apology-6th-july-2023-1.pdf>; Adult Adoptee Movement to the Leader of the Opposition, 6 July 2023. Available: <https://drive.google.com/file/d/1Gg7m6oNdaD9jenvaa1Cq8riGJkpmIEb7/view>.

¹¹ Joint Committee on Human Rights, 'Government responds to JCHR call for adoption apology', UK Parliament, 3 March 2023. Available: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/186498/government-responds-to-jchr-call-for-adoption-apology/>.

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the unsustainable basis of their position in relation to state involvement and have also called for a formal apology to be made.¹²

This submission concerns the issue of vicarious liability in relation to the law on apologies outlined in Q6 of the consultation paper, namely:

Q6: Would there be any merit in the legislation making specific reference to vicarious liability (on the basis it would clarify the position on apologies in historic child sexual abuse claims)?

I am in a position to provide further written or oral evidence upon request.

¹² Michael Lambert, *A state apology for historic forced adoption in Britain* (Lancaster: Lancaster University, 2023).

1. Summary

1.1. There is a tension between expediency and sincerity in reforming the law of apologies in civil proceedings. This is evident in the 2023 Scottish Government apology for historic forced adoptions. Whilst this outlined some primary liability in terms of state responsibilities towards its citizens, it alluded to vicarious responsibility in relation to social attitudes, the treatment of mothers, and a range of other indirect harms. Yet there have been no further developments in terms of support or redress for either birth mothers or adult adoptees since the apology. Here, the terms of the 2016 Apologies (Scotland) Act have diluted the capacity for effective redress by enabling expediency, allowing an apology to be said but the appropriate actions remaining unfinished and without any means to hold the executive to account. Ensuring protection against litigation remains the primary concern.

1.2. Apologies for historic injustices raise the issue of individual versus institutional responsibility and associated forms of redress. Genuine apologies play a significant role in resolving disputes by reducing polarisation and creating common ground to develop forms of reconciliation and restitution. However, insincere or incomplete ones have the capacity to escalate the problem further. They serve to delay and deny justice. This is compounded in locating the source of historic injustices in a complex policy environment with multiple actors, stakeholders and relationships. Here, the preference for direct redress schemes is a means to overcome this complex fragmentation by recognising both individual responsibility, vicarious liability in terms of employing organisations, and primary institutional liability in relation to wider duties of care found in contemporary legislation. There must be a clearer mechanism to identify responsibility beyond those of direct perpetration in such complex circumstances.

1.3. There needs to be clearer mechanism of accountability to ensure that apologies are fulfilled to prevent them losing their significance and meaning. In political terms, apologies can often be associated with individual politicians and figures rather than governments. When they leave or move roles, this diminishes the associated will to implement or act upon the apologies appropriately. In the case of the JCHR inquiry into historic forced adoption there is no means to pursue the absence of an apology further with the UK Government beyond their dismissal and denial. Existing forms, such as the European Court of Human Rights (ECtHR) rely upon cases to interpret their responsibility and issue judgments, and there is no such case upon which to make such a claim currently. This serves to prolong and worsen the injustice.

2. Expediency vs Sincerity

2.1. The purpose of the 2016 Apologies (Scotland) Act was to expedite the making of apologies by rendering apologies inadmissible in civil proceedings in terms of determining liability. The consequence of this in relation to historic forced adoption has been to dilute the capacity for effective redress and remedial actions by the state and other stakeholders responsible for policies and practice.

2.2. The wording of the 2023 apology for historic forced adoption by the Scottish Government outlined some primary liability by the state in terms of responsibilities towards its citizens, alluded to vicarious responsibility in relation to social attitudes, the treatment of mothers – but not their children – and a range of other indirect harms. Whilst committed to acting upon the apology in conjunction with those affected, campaigning groups and contemporary

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stakeholders, there have been no further developments in support or redress for either birth mothers or adult adoptees since the apology. Many of the contemporary stakeholders were also involved in historic forced adoption practices at the institutional, with the actions of the Scottish Government shielding them from accountability. Here, ensuring protection against litigation remains the primary concern of the terms of such an apology, rather than as a means to offer forms of reconciliation and redress for historical injustice.

2.3. A clear comparative example of this can be seen in the current claim being prepared by Thompsons Solicitors and Quantum Claims for birth mothers in Scotland subjected to historical forced adoption following the apology. This claim mirrors similar ones being developed in Australia because of similar inaction following an apology made by the Prime Minister (PM) Julia Gillard for historic forced adoption practices there in 2013,¹³ following the findings of a Senate Community Affairs inquiry in 2012.¹⁴ There, responsibility for subsequent developments and redress has been with individual States, where responses have varied. Victoria has established a redress scheme with a financial payment, additional counselling and therapeutic support services, and signposting for additional relevant information.¹⁵ Other States have not instituted similar schemes or acknowledged their liability despite the national apology.

2.4. The issue of protecting against litigation in Scotland can be seen in the details of the claim being prepared by Thompsons Solicitors and Quantum Claims for birth mothers. Among the issues for which they are seeking compensation is the use of diethylstilbestrol (DES), a synthetic oestrogen drug used for lactation suppression in unmarried women following the birth of their child. The drug, which was also used to prevent recurrent miscarriages, treat perimenopausal women and accelerate the fattening of beef in agriculture,¹⁶ was also widely used for similar purposes regarding unmarried mothers in Australia and across North America. It has been recognised as carcinogenic, leading to its withdrawal in the United States of America in 1971,¹⁷ but not in the United Kingdom. Its harmful effects, also including blood clots and mastitis, were both recognised by the government and its medical advisers but the drug remained in use, although it was progressively replaced with Bromocriptine as an alternative from 1972.¹⁸ The use of DES is inextricable from the medical management of unmarried motherhood during the period. Despite issuing an apology for historic forced adoption practices, the Scottish Government is unwilling to countenance claims in relation to DES,

¹³ Australian Government, 'National apology for forced adoptions', Australian Government, 21 March 2013. Available: <https://www.ag.gov.au/sites/default/files/2020-03/Nationalapologyforforcedadoptions.PDF>.

¹⁴ Senate *Standing Committee on Community Affairs, Commonwealth contribution to former forced adoption policies and practices* (Canberra, ACT: Australian Government, 2012).

¹⁵ State Government of Victoria, 'Historic forced adoptions redress scheme', State Government of Victoria, 2 April 2024. Available: <https://www.vic.gov.au/redress-forced-adoptions>.

¹⁶ Alan I. Marcus, *Cancer from beef: DES, federal food regulation and consumer confidence* (Baltimore, MD: Johns Hopkins University Press, 1994).

¹⁷ Nancy Langston, *Toxic bodies: hormone disruptors and the legacy of DES* (New Haven, CT: Harvard University Press, 2010).

¹⁸ The National Archives (TNA), Kew: MH 156/114 A. C. Turnbull to G. E. Godber, 11 July 1967; TNA: TNA 156/115 E. M. Lewis to C. H. Foggitt, 13 October 1972. These files relate to inquiries by the Ministry of Health and the Chief Medical Officer to explore the effects of DES on the health of women following the availability of 1964 data relating to the Confidential Enquiries into Maternal Deaths released in 1967. See TNA: MH 156/105.

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noting that medical licencing is an issue of responsibility for the UK Government.¹⁹ Here, the issue of liability associated with a sincere, meaningful apology is being undermined in the interests of expediency.

3. Individual (Vicarious) vs Institutional Liability in Cases of Historical Injustice

3.1. The consultation document rightly identifies that '[t]hose defending claims have been nervous about making an apology as they fear that saying sorry is in some way an admission of liability and weakens their case'. The consultation continues to say that this is 'unfortunate as the giving and receiving of *genuine apologies* may play an important role in the dispute resolution'.²⁰

3.2. A key concern of the consultation is the issue of 'vicarious liability' under the 2006 Compensation Act, which has been instrumental in the Independent Inquiry into Child Sexual Abuse (IICSA) consideration of accountability and reparations published in 2019.²¹ This, rather than a breach or failure of statutory duty. The issue of an employing institution or organisational to properly safeguard those in its care is the core principle of vicarious liability used in the report.²² Given the fragmentation of statutory, voluntary and religious organisations providing care for children and the ultimate failure being one of the state, the establishment of specific redress schemes is a means to circumvent the proliferation of civil proceedings against a range of stakeholders and organisations involved. This has also been the case for the 2024 Infected Blood Inquiry, which also addressed the unwillingness of the state to apologise owing to the financial ramifications and other forms of redress involved.²³

3.3. This has salience in relation to historic forced adoption, where written and oral testimonies submitted by birth mothers to the JCHR inquiry demonstrate extensive individual acts of harm and abuse perpetrated by individual social workers, doctors, midwives, nurses, and other professionals responsible for their care. However, the larger issue relates to institutional liability and the question of statutory failings through omission and commission.

3.4. Historic forced adoption represents what is commonly termed a 'mixed economy' of care within the welfare state. That is, the state does not directly provide services on a statutory basis but uses other legislation, devolved responsibility and permissive powers to support these activities by other entities, primarily religious and voluntary organisations. These change over time as the state assumes and relinquishes responsibility for a range of welfare services, with the broad narrative being one of significant state involvement during the 'classic' welfare state

¹⁹ Marion Scott, 'Forced adoption victims plan legal battle for compensation', *Sunday Post*, 24 March 2024. Available from: <https://www.sundaypost.com/fp/forced-adoption-compensation/>.

²⁰ Ministry of Justice, *Reforming the law of apologies in civil proceedings in England and Wales* (London: Ministry of Justice, 2024), p. 7.

²¹ Independent Inquiry into Child Sexual Abuse, *Accountability and reparations: investigation report* (London: Independent Inquiry into Child Sexual Abuse, 2019)

²² Paul Giliker, 'Analysing institutional liability for child sexual abuse in England and Wales and Australia: vicarious liability, non-delegable duties and statutory intervention', *Cambridge Law Journal*, 77:3 (2018), pp. 506-535.

²³ Infected Blood Inquiry, *The report, volume 7: response of government* (London: Infected Blood Inquiry, 2024)

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from 1945 to 1974.²⁴ The submission by the UK Government to the JCHR inquiry does not recognise the role of government in managing policies and practices through this way, offering a crude and simple reading of legislation to understand their responsibilities.²⁵ This does not reflect historic reality and the concomitant issue of liability and responsibility bound up in an apology.

3.5. The main sources of state direction of historic forced adoption were managed under section 22 of the 1946 National Health Service Act in relation to the discharge of care for mothers and children,²⁶ circular RHB(48)19 concerning the contractual basis of arrangements between health authorities and organisations disclaimed from the nationalised hospital services,²⁷ circular 118/47 relating to the rights and responsibilities of local health authorities to fund certain services instead of providing them directly,²⁸ and associated rights of representation and inspection, and circular 2866/43 providing a framework to support a range of services concerned with illegitimate children and unmarried mothers.²⁹ This entailed a complex set of relationships within government between the Ministry of Health, regional and local health authorities, voluntary and religious organisations, as well as the Home Office which was responsible for registering and regulating adoption agencies under the provisions of the 1950 Adoption Act. These circulars, associated correspondence clarifying individual circumstances and existing precedents, and approval for financial arrangements with voluntary organisations providing both mother and baby homes and as adoption agencies, demonstrate the institutional, rather than individual, character of arrangements.

3.6. Whilst there were some forms of devolution in relation to certain policy areas in both Scotland and Wales during the period, as with medical licensing, these were ultimately the responsibility of the UK Government. Although there was primary legislation in place in Scotland concerning the National Health Service (NHS) and there were different circulars in place for each of these spheres of responsibility towards unmarried mothers and their children in Scotland and Wales, these were of style, rather than substance. Professor John Stewart characterises these differences being of degree rather than kind in terms of the abiding power of the central British state and this is mirrored within the surviving government files.³⁰

3.7. The purpose of apologies in terms of historical abuse and injustice is to enable victims or survivors to obtain redress and have those in power held accountable for their actions, as well as taking these lessons forward into the future. The 2019 report of IICSA identified this as a

²⁴ Rodney Lowe, 'Lessons from the past: the rise and fall of the classic welfare state in Britain', in Ann Oakley and A. Susan Williams (eds.) *The politics of welfare* (London: UCL Press, 1994), pp. 37-53; John Stewart, 'The mixed economy of welfare in historical context', in Martin Powell (ed.) *Understanding the mixed economy of welfare* (Bristol: Policy Press, 2019), pp. 21-40.

²⁵ Department for Education, Written evidence submitted to the Joint Committee on Human Rights inquiry into the right to family life: adoption of children of unmarried women 1949-1976. ACU0124. Published 26 May 2022. Available from:

<https://committees.parliament.uk/writtenevidence/108766/default/>.

²⁶ TNA: MH 134/67 Dr R. A. Elliott Minute for Dr A. Winner, 1 July 1948.

²⁷ TNA: MH 123/317 'Contractual arrangements with hospitals etc outside the service', RHB(48)19, 12 May 1948.

²⁸ TNA: MH 96/1387 'National Health Service Act, 1946: health services to be provided by local health authorities under Part III of the Act', 118/47, 10 July 1947.

²⁹ TNA: MH 55/1653 'The care of illegitimate children', 2866/43, 16 November 1943.

³⁰ John Stewart, 'The mixed economy of welfare in historical context', in Martin Powell (ed.) *Understanding the mixed economy of welfare* (Bristol: Policy Press, 2019), p. 26.

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specific outcome through its recommendations, highlighting the existing inadequacies of the 2006 Compensation Act for such purposes.³¹ The IICSA example is instructive because it mirrors the same organisational complexity and fluid boundaries between statutory and voluntary services found in forced adoption over the same period.

3.8. The consultation document notes that ‘the effect of an apology depends on the terms in which the apology is given’,³² highlighting that ‘receiving genuine and meaningful apologies’ in relation to child sexual abuse was significant in enabling healing and reconciliation through recognising institutional failures.³³ The same is true of forced adoption. Evidence from the inception of the post-war adoption system from the 1940s through internal discussions between civil servants and medical advisers,³⁴ to the oral and written evidence supplied to committees of inquiry into staffing in residential institutions in the 1960s,³⁵ demonstrate the extent of contemporary official knowledge of, and complicity with, widespread harms and abuses. This reflects vicarious responsibility for individual actions within the system, statutory failings given the lack of care given to mothers and their babies despite its legislative basis, and the ultimate institutional responsibility of the government in running and overseeing the larger system, even if much of it was provided by voluntary and religious organisations.

3.9. At present the partial apologies by Scotland and Wales, incomplete given many responsibilities for policy and practice rested with the UK Government and that there has not been associated developments in terms of redress or support, are inextricable from the complex circumstances in which forced adoption occurred. Here, the preference for direct redress schemes is a means to overcome this difficulty by recognising both individual responsibility, vicarious liability in terms of employing organisations, and primary institutional liability in relation to wider duties of care found in contemporary legislation has been the preferred method of statutory inquiries, associated apologies, and resulting forms of support. Embedding this into reform has the potential to reduce the volume of civil litigation and provide a simpler means for redress following an apology to be effected.

4. Accountability, the Civil Justice System and an Apology

4.1. In relation to historic forced adoption and other examples of historic injustice there needs to be a clearer mechanism of accountability to ensure that apologies are fulfilled to prevent them losing their significance and meaning for those impacted.

4.2. Giving an apology for historic actions of the state has been primarily associated with individual politicians rather than the wider governmental framework. Sometimes this can be positive in championing the continuation of an issue from a position of authority. For example, the former Labour PM, the Rt Hon Gordon Brown MP, made an apology to former child migrants

³¹ Independent Inquiry into Child Sexual Abuse, *Accountability and reparations: investigation report* (London: Independent Inquiry into Child Sexual Abuse, 2019), p. 105.

³² Ministry of Justice, *Reforming the law of apologies in civil proceedings in England and Wales* (London: Ministry of Justice, 2024), p. 9.

³³ Ministry of Justice, *Reforming the law of apologies in civil proceedings in England and Wales* (London: Ministry of Justice, 2024), p. 15.

³⁴ TNA: MH 55/1653 M H Hill, ‘Homes for mothers and babies’, 29 May 1945.

³⁵ TNA: BN 29/2663 Committee on Staffing of Residential Homes and Institutions (Williams), 2nd oral session, 7 April 1964.

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and established a financial redress scheme as a result, and whose experiences have also been taken forward in both IICSA and the Scottish Child Abuse Inquiry (SCAI) through separate, specific reports.³⁶ However, when they leave or move roles, this diminishes the associated political or institutional will to act appropriately upon the associated redress necessary in an apology being meaningful. This diminishes their utility in ‘promoting social healing’ and being ‘a powerful form of conflict resolution’ as outlined in the consultation.³⁷

4.3. The consultation here raises the position of the courts, noting:

If a full apology cannot be used in support of actual liability, it raises the question of the court’s role and the public’s faith in the civil justice system. Furthermore, it increases the potential to offer insincere apologies or may lead to poor settlement offers. This does have to be balanced against the fact that the courts are still able to find tortious liability despite a “protected” apology having been made.³⁸

4.4. Along with the Scottish and Welsh Governments, there has been recognition among the religious and voluntary organisations concerned with historic forced adoption of their complicity in the historical injustice. Although policy and funding were primarily determined by the state for historic forced adoption, provision was undertaken mostly by religious and voluntary organisations running mother and baby homes and adoption agencies. This was a conscious decision by civil servants as it was deemed a sphere or moral welfare handled by the Church rather than the state, although the state continued to finance, direct and determine the shape of the overall system.³⁹ This recognition has taken different forms in terms of an apology, whether or not such an apology has been meaningfully made, and associated liability.

4.5. In 2016 following an ITV documentary being aired,⁴⁰ the Catholic Church made a formal apology to birth mothers affected by historic practices.⁴¹ The Church of England expressed regret for the hurt felt by mothers but did not make a formal apology. Since the JCHR inquiry gathered pace, other organisations have made statements about the period, often distancing past practice from the present such as with Adoption UK,⁴² but apologies have not been made on a widespread basis. This is in contrast to historical child sexual abuse where many organisations and stakeholders, although often the same ones involved in historical forced

³⁶ UK Parliament, ‘Child migration’, House of Commons, Hansard, vol. 506, cols. 301-308, 24 February 2010. Available from: <https://hansard.parliament.uk/Commons/2010-02-24/debates/10022460000003/ChildMigration>; Independent Inquiry into Child Sexual Abuse, *Child migration programmes: investigation report* (London: Independent Inquiry into Child Sexual Abuse, 2018); Scottish Child Abuse Inquiry, *Case study no. 8. Volume 2: child migration schemes. Child migration schemes legal framework and organisational practices between the late 1800s and the early 1970s* (Edinburgh: Scottish Child Abuse Inquiry, 2010).

³⁷ Ministry of Justice, *Reforming the law of apologies in civil proceedings in England and Wales* (London: Ministry of Justice, 2024), p. 14.

³⁸ Ministry of Justice, *Reforming the law of apologies in civil proceedings in England and Wales* (London: Ministry of Justice, 2024), p. 14.

³⁹ TNA: MH 77/225 R. Gedling Minute for M. Brown, 6 February 1948.

⁴⁰ *Breaking the silence: Britain’s adoption scandal* (dir. Alice Perman, Ronachan Films), 9 November 2016

⁴¹ ‘Catholic Church apologises for hurt caused to mothers of adopted babies’, ITV News, 3 November 2016. Available: <https://www.itv.com/news/2016-11-03/catholic-church-apologises-for-forced-adoptions-as-mothers-speak-out-in-itv-documentary>.

⁴² Sue Armstrong Brown, ‘Time to say sorry’, Adoption UK, 26 May 2021. Available from: <https://www.adoptionuk.org/blog/time-to-say-sorry>.

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adoption, have made apologies once shielded by formal redress schemes stemming from the findings of independent inquiries. Any consideration of providing legal certainty to an adoption as outlined in the consultation,⁴³ needs to examine the wider ramifications of complex, institutional and systemic harms and apologies. Otherwise, as has happened for historic forced adoption, the process remains inconsistent, uneven, and anathema to promoting a culture of making meaningful apologies at an earlier stage.

4.6. In the case of the JCHR inquiry into historic forced adoption there is no means to pursue the absence of an apology further with the UK Government beyond their dismissal and denial. Existing forms, such as the European Court of Human Rights (ECtHR) rely upon cases to interpret their responsibility and issue judgments, and there is no such case upon which to make such a claim currently. This serves to undermine confidence in due process by those impacted and optimistic following the 2022 JCHR inquiry report. Delaying and denying justice, with no capacity or opportunity to re-examine the UK Government's refusal, and no sense of a necessary evidential threshold at which such a re-examination could occur despite apologies in Scotland and Wales, serve to prolong and worsen the injustice. Any commitment to expediency through legislative reform or otherwise must have due consideration for the potential loss of meaning in apologies and the necessary processes of redress, reconciliation and healing.

⁴³ Ministry of Justice, *Reforming the law of apologies in civil proceedings in England and Wales* (London: Ministry of Justice, 2024), p. 15.