

Pre-Legislative Public Consultation on Financial Redress for Historical Child Abuse in Care

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MINISTERIAL FOREWORD

Survivors have told me that financial redress is an important part of acknowledging what happened to them in the past as children in care in Scotland. I have listened to those views and have committed to establishing a financial redress scheme. This will require legislation to be passed by the Scottish Parliament.

Getting the design of a financial redress scheme right is of the utmost importance if it is to give survivors the acknowledgement they need and deserve, and if it is to do so with compassion and sensitivity.

We heard the views of many survivors to an earlier consultation in 2017 on the potential provision of financial redress. Those views provide the starting point for this consultation. We now need to build on those with the level of detail required for scheme design and implementation.

This consultation asks questions about scheme design and also includes wider issues, including how those responsible should contribute to the scheme, the establishment of a public body to administer the scheme, and the potential alignment of financial redress with other elements of a reparation package for survivors of historical abuse in care.

The responses to this consultation will help shape the legislation which will be introduced to the Scottish Parliament during 2020.

I encourage survivors and other interested parties to take part in this consultation and look forward to hearing your views.

JOHN SWINNEY
Deputy First Minister and
Cabinet Secretary for Education and Skills

INTRODUCTION

This consultation

This consultation seeks your views on the detailed design of a statutory financial redress scheme in Scotland, scheme administration issues, and high level views on financial redress as part of a package of wider reparations for survivors of historical child abuse in care.

The Deputy First Minister committed to introducing a statutory financial redress scheme in October 2018, following the receipt of recommendations from a consultation with survivors which was carried out in 2017. Those recommendations form the starting point for this consultation and are referenced throughout this document.

The consultation paper is in two parts. Part 1 includes questions about the detailed design of the statutory financial redress scheme. Many of the recommendations from the 2017 survivor consultation highlighted that further consideration of the detail would be required. Part 2 includes wider questions related to the implementation of the statutory scheme and elements of a package of reparation, including acknowledgement, apology and support.

This consultation is a necessary part of the pre-legislative process for the Scottish Parliament to consider and approve draft legislation. It seeks further detail on the key findings from the 2017 consultation, covers a wider range of issues, and provides an opportunity for all interested parties to express their views now that there is a firm commitment to introduce a financial redress scheme in Scotland.

The consultation will run for 12 weeks and will close on 25 November 2019. Please see paragraph 17 for details about how to respond to this consultation. You do not need to answer every question in the consultation. Your responses will still be valid if you only answer some of the questions.

Once the consultation has closed, the results will be analysed independently by an external analyst, and a report published. The consultation findings will help shape the content of the draft legislation, which will be introduced to the Scottish Parliament during 2020. It is expected to be one of the final pieces of legislation considered before the end of this Parliamentary term in March 2021.

It should be noted that the Scottish Child Abuse Inquiry is independent of government and any other organisation and does not therefore form any part of this consultation.

Recent progress on financial redress

In November 2016, the Deputy First Minister made a statement to Parliament in which he acknowledged that, while elements of reparation were in place in Scotland, he wished to explore the specific matter of financial redress. He defined this as follows: *“By redress in this context I mean monetary payment to provide tangible recognition of the harm done, as part of a wider package of reparations which this Government is already delivering... I am therefore committing to a formal process of consultation and engagement on this specific issue with survivors and other relevant parties, to fully explore the issues and gather a wider range of views.”*

This was taken forward in partnership with the SHRC InterAction Action Plan Review Group and the Centre for Excellence for Looked After Children in Scotland (CELCIS). The Review Group monitors the implementation of the SHRC Action Plan on Justice for Historic Abuse of Victims of Children in Care. It is a national group that includes survivor representatives, representation from care providers, Social Work Scotland, the Scottish Human Rights Commission, the Scottish Government and CELCIS.

The consultation and engagement on redress involved three main activities which took place over the course of 2016-18. There was a survivor consultation in 2017, which received just over 180 responses, an engagement exercise to gather initial views from residential and foster care providers and other relevant professional groups, and a review of available information about financial redress schemes in other countries.

A set of recommendations were drawn from this work, in particular the information gained from the consultation with survivors. The recommendations were submitted to the Deputy First Minister in September 2018 and are summarised in Box A. The reports from each of these activities, along with the full recommendations, are available at <https://www.celcis.org/our-work/key-areas/historical-abuse/financial-redress/>.

Box A: Recommendations based on the 2017 survivor consultation

- A financial compensation/redress scheme for victims/survivors of abuse in care should be established.
- Approval of a financial compensation/redress scheme for victims/survivors of abuse in care should take place as soon as possible following detailed scheme design.
- The preferred approach to financial compensation/redress is a combination payment.
- Next-of-kin of deceased victims/survivors of historic abuse should be eligible to apply to a scheme.
- There should be arrangements for interim payments which would allow priority groups of victims/survivors to access payments prior to full payment.

- A range of written and verbal information, where available, should be used to assess individual applications.
- A range of support and guidance should be put in place for applicants to assist them through the process of the scheme.
- Victims/survivors should be represented in the administration and governance of a full financial compensation/redress scheme.
- A range of knowledge and understanding should be represented in any panel or board which will have a decision making role in the scheme.
- All those responsible should contribute to a financial compensation/redress scheme.
- Scheme design should take account of a number of key principles to ensure the integrity and effectiveness of a scheme.
- It is essential that any potential negative consequences are considered during scheme design.
- The Scottish Government should discuss next steps with the Review Group and other victims/survivors, particularly the process to take forward detailed scheme design and implementation.
- An 'advanced payment scheme' for the elderly and ill should be progressed as soon as possible and before the main financial compensation/redress scheme is established in statute.

In response to these recommendations, in October 2018, the Deputy First Minister committed to establish a statutory financial redress scheme for survivors of abuse in care. He also offered an unreserved and heartfelt apology on behalf of the Scottish Government to all those who were abused as children while in care. His statement to the Scottish Parliament can be accessed at

<https://www.gov.scot/publications/response-to-recommendations-on-financial-redress-for-survivors-of-child-abuse-in-care/>.

He also committed to make advance payments as soon as possible to survivors who may not live long enough to apply to the statutory scheme. The Advance Payment Scheme opened for applications six months later in April 2019. Advance Payments are being made on a discretionary basis to those who have a terminal illness, or who are age 70 or over. Further information and guidance on eligibility and how to apply for an Advance Payment can be found at <https://www.gov.scot/publications/financial-redress-for-survivors-of-child-abuse-in-care-advance-payment-scheme/>. The intention is that the Advance Payment Scheme will remain open until the statutory redress scheme is operational.

Overview of wider reparations

The Scottish Government has made good progress in taking forward a package of reparations for survivors of abuse in care in the context of the Action Plan on Justice for Victims of Historic Child Abuse (2014) and the SHRC Human Rights Framework for Justice and Remedies for Historic Child Abuse (2010).

A statutory financial redress scheme will form part of a wider package of measures identified in the Action Plan and already in place. These include:

- the Limitation (Childhood Abuse) Scotland Act 2017, which removes the three year time limit for bringing civil action for child abuse;
- the introduction of the Apologies (Scotland) Act 2016;
- the apology on behalf of the Scottish people made by the then First Minister on 1 December 2004, and the apology on behalf of the Scottish Government made by the Deputy First Minister on 23 October 2018
- the establishment of the Scottish Child Abuse Inquiry in 2015;
- the National Confidential Forum, which provides an acknowledgement function for survivors of abuse in care;
- Future Pathways, which provides personal outcomes focussed support to survivors of abuse in care.

One element of the Action Plan which has not yet received attention is the issue of commemoration. Some survivors have expressed the view that this should be turned to once the other key elements are in place.

How to respond to this consultation

We are inviting responses to this consultation by 25 November 2019.

Where possible, our preference is for responses to this consultation to be submitted using the Scottish Government's online consultation platform, Citizen Space. Citizen Space can be found at: <https://consult.gov.scot/redress-survivor-relations/financial-redress-historical-child-abuse-in-care>. You can save as you go along and return to the questions as many times as you wish. Please remember to submit your response before the closing date. You will receive a copy of your response by email if you submit it via Citizen Space.

If you would prefer to respond by post or email, you should download the Respondent Information Form which includes the list of consultation questions. If you wish, we can send you a hard copy by post for you to fill in. You can request this by contacting us by e-mail or post at the details shown. Please email the completed form to redress@gov.scot or send to:

*Redress and Survivor Relations Division
Scottish Government
2A South
Victoria Quay
Edinburgh*

EH6 6QQ

Whether you respond by Citizen Space or by post or email, you will need to indicate whether you are content for your response to be published online. This is normal practice for public consultations. Once the consultation has closed, individual responses from those who gave their consent, are published online at <https://consult.gov.scot/>. Citizen Space will ask for your permission to publish your response before you submit it. For postal/email responses, the Respondent Information Form will ask you about this.

If you ask for your response not to be published, we will regard it as confidential, and will treat it accordingly. All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Where respondents have given permission for their response to be made public, we will still check that the response does not contain any sensitive information of a personal nature, any potentially defamatory or offensive materials, or where publication would be contrary to copyright or data protection laws. Sensitive information will be redacted.

To find out more about how we handle your personal data, please see the Scottish Government privacy policy at <https://www.gov.scot/privacy/>.

If you have any comments or complaints about how this consultation exercise has been conducted, please send them by e-mail or post to the address at the bottom of page 6.

Please be aware that responses to a public consultation cannot be used as a way to address individual concerns and comments about your own circumstances.

If thinking about redress and this consultation is causing immediate distress Breathing Space and the Samaritans can provide help.

Breathing space: Call free of charge on 0800 83 85 87, Monday to Thursday from 6pm to 2am, weekend from Friday at 6pm to Monday morning at 6am.
<https://breathingspace.scot/>.

Samaritans: Call free of charge on 116 123 from the UK, any time of the day or night. <https://www.samaritans.org/scotland/samaritans-in-scotland/>.

PART 1: DESIGN OF THE REDRESS SCHEME

This part includes questions about the detailed design of the statutory financial redress scheme. It includes key issues from the 2017 consultation which were identified as requiring further detailed consideration.

Part 1.1 Purpose and Principles of the Financial Redress Scheme

Purpose

The introduction to this consultation paper (at pages 3 to 7) sets out the recent background to financial redress in Scotland, tracing its development from the *Action Plan on Justice for Victims of Historic Abuse of Children in Care* in 2014 to the statement in Parliament on 25 April this year launching the Advance Payment Scheme for survivors of abuse in care who are age 70 years or over or have a terminal illness.

It is clear that systemic failings existed in the past and the Deputy First Minister has made clear that the Scottish Government wholeheartedly accepts the need to provide acknowledgement and tangible recognition of the harm that was done to children in the past who were abused in care in Scotland, acknowledging at the same time that such recognition cannot in any way take away the pain that individuals have suffered.

Question 1

We are considering the following wording to describe the purpose of financial redress: “to acknowledge and respond to the harm that was done to children who were abused in care in the past in residential settings in Scotland where institutions and bodies had long-term responsibility for the care of the child in place of the parent”.

What are your thoughts on this? Do you agree?

Yes No

If no, what are your thoughts on purpose?

Principles

Views from the 2017 survivor consultation

- **Scheme design should take account of a number of key principles to ensure the integrity and effectiveness of a scheme.** Victims/survivors who answered this question noted that the scheme will need to address important principles of choice, fairness, respect, integrity and individual experience, needs and wishes. The integrity of the scheme is crucial and it must be robust and credible; the evidence required, and the scrutiny of it, must create a balance which will deter fraudulent claims, without putting off applicants or refusing genuine applications because of lack of evidence.

It is our intention that the financial redress scheme should be underpinned by guiding principles which respect these views. Expectations of the scheme will vary, as will the broad range of needs and interests sought by those applying. It will, nevertheless, be important to ensure that principles which reflect survivors' views are embedded within the scheme. The design of the scheme will also comply with our wider legal obligations, including those which arise from the European Convention on Human Rights.

We are considering the following as guiding principles:

- To ensure that redress is delivered with honesty, decency, trust and integrity;
- To make the scheme as accessible as possible;
- To treat applicants with fairness and respect and to offer them choice wherever possible;
- To ensure that the assessment and award process is robust and credible;
- To make every effort to minimise the potential for further harm through the process of applying for redress.

Question 2

Do you agree with these guiding principles?

Yes No Unsure

Would you suggest any additions or amendments to the proposed principles?

Part 1.2 Eligibility for the Financial Redress Scheme

The financial redress scheme is for survivors of historical child abuse in care in residential settings in Scotland where institutions and bodies had long term responsibility for the care of the child in place of the parent.

Defining ‘in care’

We intend that ‘in care’ for this redress scheme is based on two criteria. First, where an institution or body had long-term responsibility in place of the applicant’s parent, and secondly that the applicant was within an eligible residential setting.

By ‘long-term responsibility in place of the parent’ we mean where institutions/bodies took decisions about the child’s care and upbringing and were morally responsible for their physical, social and emotional needs in place of parents.

We know from survivors that the ways in which children found themselves in residential settings were many and varied in the past. Examples might include situations where families were unable to provide sufficient care for their children at a point in time, often because of the death or serious illness of one or both parents, or because a court order or other legal process placed the child in a setting.

As regards the second part (eligible residential setting) we propose using the Terms of Reference of the Scottish Child Abuse Inquiry which define ‘children in care’ as *‘children in institutional residential care such as children’s homes (including residential care provided by faith based groups); secure care units including List D schools; borstals; Young Offenders’ Institutions; places provided for Boarded Out children in the Highlands and Islands; state, private and independent boarding schools, including state funded school hostels; healthcare establishments providing long term care; and any similar establishments intended to provide children with long term residential care. The term also includes children in foster care.’*

As this financial redress scheme is for those in the circumstances set out above, not all those who are covered by the terms of reference of the Inquiry would be eligible for this scheme. For example, children who attended fee paying boarding schools, and who were sent there by their parents for the primary purpose of education, were not the long-term responsibility of the institution in place of the parent, and therefore would not be eligible under this financial redress scheme.

Similarly, those in hospital care primarily for the purposes of medical or surgical treatment, where parents retained the long-term responsibility, would not be eligible.

We recognise that abuse may have taken place in these settings and that other routes to justice and support are available to these groups.

We will ensure that eligibility for the scheme is consistent with its purpose as set out above, including through careful analysis of the rights of potential applicants under the European Convention on Human Rights.

Question 3

Do you agree with the proposed approach in relation to institutions and bodies having long term responsibility for the child in place of the parent?

Yes No Unsure

Please explain your answer.

Question 4

Subject to the institution or body having long term responsibility for the child, do you agree that the list of residential settings should be the same as used in the Scottish Child Abuse Inquiry's Terms of Reference?

Yes No Unsure

Please explain your answer.

Question 5

Where parents chose to send children to a fee paying boarding school for the primary purpose of education, the institution did not have long-term responsibility in place of the parent. Given the purpose of this redress scheme, applicants who were abused in such circumstances would not be eligible to apply to this scheme.

Do you agree?

Yes No Unsure

Please explain your answer.

Question 6

Where children spent time in hospital primarily for the purpose of medical or surgical treatment, parents retained the long-term responsibility for them. Given the purpose of this redress scheme, applicants who were abused in such circumstances would not be eligible to apply to this scheme.

Do you agree?

Yes No Unsure

Please explain your answer.

Defining ‘abuse’

We have considered two options for the definition of abuse for the purpose of this financial redress scheme. The Limitation (Childhood Abuse) (Scotland) Act 2017, which defines abuse as *‘sexual abuse, physical abuse, emotional abuse and abuse that takes the form of neglect’* and the Terms of Reference of the Scottish Child Abuse Inquiry which defines abuse as *‘primarily physical abuse and sexual abuse, with associated psychological and emotional abuse’*.

The Limitation (Childhood Abuse) (Scotland) Act 2017 changed the rules around the time limits within which a claim for compensation can be made in the civil courts. This change meant that there is no longer a time bar on childhood abuse claims in the civil courts (although cases cannot be pursued through the civil courts where the only incidents of abuse took place prior to 26 September 1964). In our view the definition in the Limitation Act 2017 is broader as it specifically includes neglect, and it also includes emotional abuse whether or not physical or sexual abuse also occurred.

Question 7

We intend to use the same definition of abuse as the Limitation (Childhood Abuse) (Scotland) Act 2017 for the purpose of the financial redress scheme. This includes sexual abuse, physical abuse, emotional abuse and abuse that takes the form of neglect. Do you agree?

Yes No

Please explain your answer.

A more detailed description of what constitutes emotional, physical and sexual abuse and neglect can be found in the National Guidance for Child Protection in Scotland (2014) <https://www.gov.scot/publications/national-guidance-child-protection-scotland/>.

Defining ‘historical’ abuse

Similar to financial redress schemes in some other countries, we need to define what we mean by ‘historical’ abuse.

On 1 December 2004 the then First Minister Jack McConnell made a public apology endorsed by the Scottish Parliament as a whole and Scotland began to face up to the harm done to children in care in the past. In his apology he said that Scotland would ensure that inspection, regulation and standards would be in place to prevent, detect and deal with abuse.

We propose therefore that this redress scheme defines ‘historical’ abuse as that which took place prior to 1 December 2004.

Rapid and substantial change in relation to the monitoring and regulation of the care system and its staffing in Scotland took place in the period immediately following the creation of the Scottish Parliament. This included legislative, policy, supervisory and regulatory change.

These changes included the Regulation of Care (Scotland) Act 2001, with the key aim of improving standards of care services, leading to the establishment of the Care Commission and the Scottish Social Services Council. Also in 2001, the Scottish Social Services Council was established for the mandatory registration and regulation of care services and social workers. In 2002, the Care Commission was established, with responsibility for the inspection of adult and children services, as was Disclosure Scotland, to provide criminal records disclosure services for employers and voluntary sector organisations.

As a result the regulation, inspection and child protection guidance and standards now in place are radically different to the past.

Question 8

In our view 1 December 2004 represents an appropriate date to define 'historical' abuse for this financial redress scheme. Do you agree?

Yes No Unsure

Please explain your answer.

Other eligibility issues

Child migrants

Survivors who suffered abuse in Scotland, meet all the eligibility criteria of the redress scheme, and who were also part of the UK Child Migration Programmes would be eligible to apply. In our view this would be the case even if they have already received a payment under the UK Government's payment scheme for former British child migrants, or are planning to apply to that scheme. The UK Government's scheme for British child migrants is for a different purpose and does not require the applicant to have suffered abuse.

Question 9

Do you have any comments you would like to make in relation to child migrants who also meet the eligibility requirements of this redress scheme?

Abuse in care that occurred in other countries

This redress scheme is for abuse that took place in Scotland. For abuse that occurred in any other country, it would be the responsibility of the other jurisdiction to provide redress for abuse that occurred there. Child migrants or others who meet the eligibility of this redress scheme would be eligible to apply even if they have already received a payment for any abuse they also suffered in another country.

(The position of individuals who have already received a payment for historical abuse that occurred in care in Scotland is provided at page 19).

Those with a criminal conviction

Redress schemes in other countries have taken different approaches to the eligibility of those with a criminal conviction. In our view, someone with a criminal conviction should not be excluded from applying for redress if they meet the eligibility requirements of the scheme.

Question 10

Do you have any comments about the eligibility of those with a criminal conviction?
--

Other

Question 11

Do you have any other comments on eligibility for the financial redress scheme?
--

Part 1.3 Payment Structure, Evidence and Assessment

Views from the 2017 survivor consultation

- **The preferred approach to financial compensation/redress is a combination payment.** The majority of victims/survivors who answered this question felt that the preferred approach is a combination payment which involves a flat-rate standard payment along with an individual experience payment which takes account of a range of factors such as: the nature of abuse; the severity of abuse; the period of abuse; and the life-long consequences of the abuse. The operational design and detail will need further consideration.
- **A range of written and verbal information, where available, should be used to assess individual applications.** Victims/survivors who answered this question considered that, where available, a range of written and verbal information should be used to assess applications, and this included: information about placement details; nature and severity of abuse experienced; information on impact of the abuse; testimony from a third party; police records of alleged or convicted perpetrators of abuse; previous or ongoing civil/criminal action; and, material prepared for another purpose. Challenges in the availability and securing of information, the impact on individuals through the process and the importance of choice were also noted.

Payment structure

In line with the views expressed in the 2017 survivor consultation, we intend to design a redress scheme with a combination payment approach which would have two possible stages.

Stage One would not attempt to assess individual experience of abuse or its impact. This stage may be viewed as more straightforward for applicants. Applicants could choose to apply for an additional payment over and above Stage One. This would assess their individual experience of abuse and the impact it has had on their life. By its nature, this Stage Two payment would require more information and supporting evidence than Stage One.

An assessment for a Stage Two payment, for those who chose to do so, would take account of a number of factors in a fair, consistent and transparent way.

Evidence Requirements

Supporting documentation which confirms in care status and in relation to abuse

To apply for a payment from this financial redress scheme we consider that documentary evidence of having been in care in Scotland will be required. Some form of verification of the documents submitted would be required.

Question 12

What options might be available for someone who has been unable to obtain a supporting document which shows they spent time in care in Scotland?

Many institutions and bodies have committed considerable resource to helping survivors to obtain access to historical records. Drawing on the approach to redress in Ireland, we are however considering whether there should be a power set out in legislation which requires bodies or organisations, subject to certain criteria, to release any documents they hold which relate to an applicant's identity, placement details, abuse or injury suffered as a consequence of that abuse.

Question 13

Do you think the redress scheme should have the power, subject to certain criteria, to require that bodies or organisations holding documentation which would support an application are required to make that available?

Yes No

Please explain your answer.

Question 14

For Stage One, what evidence do you think should be required about the abuse suffered?

	Yes	No
A signed declaration by the applicant that they suffered abuse, but no other supporting evidence	<input type="checkbox"/>	<input type="checkbox"/>
A short written description of the abuse and its impact	<input type="checkbox"/>	<input type="checkbox"/>
Any existing written statement from another source which details the abuse in care	<input type="checkbox"/>	<input type="checkbox"/>

Question 15

Do you have any additional comments on evidence requirements for a Stage One payment?

Question 16

For Stage Two, what additional evidence of the abuse, and of its impact, should be required for the individual assessment?

	Yes	No
Any existing written statement from another source which details the abuse	<input type="checkbox"/>	<input type="checkbox"/>
Oral testimony of abuse and its impact	<input type="checkbox"/>	<input type="checkbox"/>
Short written description of the abuse and its impact	<input type="checkbox"/>	<input type="checkbox"/>
Detailed written description of abuse suffered and its impact	<input type="checkbox"/>	<input type="checkbox"/>
Documentary evidence of impact of the abuse	<input type="checkbox"/>	<input type="checkbox"/>
– Existing medical and/or psychological records	<input type="checkbox"/>	<input type="checkbox"/>
– New medical and/or psychological assessment	<input type="checkbox"/>	<input type="checkbox"/>
Supporting evidence of the abuse/impact from a third party	<input type="checkbox"/>	<input type="checkbox"/>

Question 17

Do you have any comments on evidence requirements for a Stage Two payment?

Provision for oral testimony

The majority view from the survivor consultation in 2017 was that an applicant should be able to give oral testimony of abuse and its impact if they are unable to provide documentary evidence. In some redress schemes in other countries, oral hearings have only been used in some circumstances, for example when a case was complex and could not be resolved based on documentary evidence or when a payment offer was rejected by the applicant.

Question 18

Do you think applicants should be able to give oral evidence to support their application?

Yes No

If yes, under what circumstances might it be available?

Stage Two Assessment

As described above, the additional Stage Two payment would require an assessment of an individual's experience of abuse and the impact it has had. It is inherently difficult to assess this given that individuals can have very different responses to similar abuse experiences and the impact of the abuse on their life can manifest in very different ways. We will therefore take account of a range of factors in a consistent, fair and transparent way.

From the survivor consultation in 2017, the types of factors considered relevant for an individual assessment were length of time in care, the type of abuse, the frequency and severity of abuse, the impact of abuse, and loss of opportunity as a result of the abuse and its impact.

Question 19

Do you have any views on whether the length of time in care should be factored into the Stage Two assessment?

Yes No

If so how?

Question 20

Do you have any views on the balance the assessment should give to different types of abuse (physical, emotional, sexual, neglect)?

Question 21

What are your views on which factors in relation to the abuse and its impact might lead to higher levels of payment?

Question 22

Do you think:

- **the redress payment is primarily for the abuse suffered** yes/no
- **the redress payment is primarily for the impact the abuse has had** yes/no
- **both the abuse suffered and the impact it has had should be treated equally** yes/no

Please explain your answer.

Question 23

How do you think the scheme should ensure all parties are treated fairly and that the assessment and award process is sufficiently robust?

Consideration of other payments

Where an applicant has already received some form of compensation in respect of their abuse (for example a court award following a civil court action, or an out of court settlement) most redress schemes in other countries have dealt with this by deducting an appropriate amount from the redress payment. The principle underlying this is that a person should not be compensated twice for the same matter.

Some other schemes have taken a different approach, and have excluded people who have already received damages or settlements in respect of the same abuse from applying to their redress scheme.

We intend that those who have received a payment from another source should still be eligible to apply for redress, but that the corresponding amount should be deducted from the redress payment. Consideration would need to be given to how to adjust any previous payment to take account of inflation and any other relevant factors.

Question 24

Do you agree that anyone who has received a payment from another source for the abuse they suffered in care in Scotland should still be eligible to apply to the redress scheme?

Yes No

Please explain your answer.

Question 25

Do you agree that any previous payments received by an applicant should be taken into account in assessing the amount of the redress payment from this scheme?

Yes No

Please explain your answer.

Choosing between accepting a redress payment and seeking a payment from another source

Many redress schemes in other countries have required applicants to choose between accepting a redress payment and pursuing remedies in the civil courts. We are proposing to take the same approach. In other words, an applicant should find out how much they would receive by way of a redress payment and take legal advice before deciding whether to accept it, or reject it and pursue an award in the civil courts instead. This will commonly require the signing of a waiver at the point of accepting a redress payment, which means the applicant would give up their right to raise an action in court in respect of their experience in care.

Question 26

Do you agree applicants should choose between accepting a redress payment or pursuing a civil court action?

Yes No

Please explain your answer.

Part 1.4 Making an Application

Time period for making an application

Question 27

We are proposing that the redress scheme will be open for applications for a period of five years. Do you agree this is a reasonable timescale?

Yes No

Please explain your answer.

Practical help making an application

The 2017 survivor consultation highlighted that different types of help might be required during the application process. For example practical support might include help filling out the application form, or with obtaining records.

Question 28

Should provision be made by the redress scheme administrators to assist survivors obtain documentary records required for the application process?

Yes No

Please explain your answer.

Legal advice

We are considering whether the redress scheme should address the cost of legal advice or representation in some form. We intend to explore all options for delivering this including Legal Aid. We propose at a minimum that independent legal advice should be provided at the point of accepting a redress payment if this were to require the signing of a waiver.

Question 29

In your view, which parts of the redress process might require independent legal advice? Please tick all that apply.

In making the decision to apply ☐

During the application process ☐

At the point of accepting a redress payment and signing a waiver? ☐

In redress schemes in some other countries the cost of providing legal advice has been significant and has been criticised by survivors. Possibilities for managing the costs of independent legal advice could include a set payment per application or a payment to take into account the time spent on an application capped at a certain level, including through Legal Aid.

Question 30

<p>How do you think the costs of independent legal advice could best be managed?</p>

Part 1.5 Next-of-Kin

Views from the 2017 survivor consultation

- **Next-of-kin of deceased victims/survivors of historic abuse should be eligible to apply to a scheme.** The majority of victims/survivors who answered this question indicate support that the next-of-kin of deceased victims/survivors should be eligible for compensation/redress. However, there were a number of cautions about the eligibility of next-of-kin, in terms of the definition of next-of-kin, personal relationships with the deceased victims/survivors while they were living, and practical operational issues. These matters require further consideration.

We intend that surviving spouses and children of those who meet all the eligibility criteria, including that they were abused in an eligible residential setting in Scotland, prior to 1 December 2004, should be able to apply to the financial redress scheme for a “next-of-kin payment”. The purpose of the next-of-kin payment is to acknowledge the fact that the survivor passed away before the financial redress scheme was in place. It may not always be straightforward to assess potential applications by surviving spouses and children, particularly where family circumstances were complex.

Question 31

What are your views on our proposed approach to allow surviving spouses and children to apply for a next-of-kin payment?

Some schemes in other countries have provided for next-of-kin applications. Where this is the case they have set a “cut-off” date to determine next-of-kin eligibility. This is the date **after** which a survivor must have died. For example, in the Republic of Ireland’s scheme a survivor had to have died after 12 May 1999 for their next-of-kin to be eligible. This was the date of the announcement of the inquiry in Ireland which led to the establishment of their redress scheme.

It may be appropriate for Scotland to take a similar approach and to use 17 December 2014, the date of the announcement of the Scottish Child Abuse Inquiry, as the cut-off date. It may also be appropriate to use 23 October 2018 as that was the date that the Deputy First Minister confirmed there would be a redress scheme for Scotland and that there would be some form of provision of next-of-kin. Our intended approach is to provide a cut-off date of 17 November 2016, the date on which the Deputy First Minister announced that he wanted to hear wider views on the potential provision of financial redress. That consultation led to the recommendation that next-of-kin of deceased victims/survivors should be eligible for redress.

Question 32

We are considering three options for the cut-off date for next-of-kin applications (meaning that a survivor would have had to have died *after* that date in order for a next-of-kin application to be made). Our proposal is to use 17 November 2016.

- **17 December 2014 - the announcement of the Scottish Child Abuse Inquiry** yes/no
- **17 November 2016 – the announcement of the earlier consultation and engagement work on the potential provision of financial redress** yes/no
- **23 October 2018 – the announcement that there would be a statutory financial redress scheme in Scotland** yes/no

What are your views on which date would be the most appropriate?

Given the next-of-kin payment makes no attempt to assess the individual experience of the deceased survivor, it will be a flat-rate payment. It is not an attempt to assess the impact of the deceased survivor's abuse experience on surviving family members. Instead it is intended to recognise and acknowledge the harm done to the deceased survivor while they were in care in Scotland.

Question 33

We propose that to apply for a next-of-kin payment, surviving spouses or children would have to provide supporting documentation to show that their family member met all the eligibility criteria.

What forms of evidence of abuse should next-of-kin be able to submit to support their application?

Question 34

What are your views on the proportion of the next-of-kin payment in relation to the level at which the redress Stage One payment will be set in due course?

- **25%** ☐
- **50%** ☐
- **75%** ☐
- **100%** ☐

Please explain your answer.

Part 1.6 Financial Contributions

Views from the 2017 survivor consultation

- **All those responsible should contribute to a financial compensation/redress scheme.** Victims/survivors who answered this question consider that all those responsible should contribute, including: Scottish Government, residential and foster care providers, local authorities which placed children in care and those which provided care placements, and religious bodies responsible for care services. The SHRC Framework also makes clear that institutions should contribute to reparation packages in a manner proportionate to the extent to which they are accountable.

Contributions to the redress scheme

In the previous survivor consultation, most respondents felt the particular provider/institution should contribute. The Scottish Human Rights Commission notes that, in line with international good practice, providers/institutions should contribute to reparations packages to the extent to which they are accountable. We expect all those responsible to make a meaningful contribution to the costs of delivering a financial redress scheme in Scotland. To ensure that this is done fairly we are building on existing information to understand the status of organisations and institutions over time as well as their relative roles and responsibilities.

In developing our scheme, we will learn from examples of funding models applied in redress schemes in other countries. Two examples are provided below which illustrate different approaches.

In Ireland, a funding arrangement was agreed at the outset based on a 50/50 split between the state and an umbrella organisation representing religious congregations. This was based on a forecast of costs for their redress scheme, a forecast which turned out to be greatly under-estimated. There were significant difficulties in obtaining the funds and property assets which were to have met these organisations' share of the costs.

The Australian National Redress Scheme follows the 'responsible entity pays' principle. The Australian Government bears the cost initially, and is then reimbursed by a funding contribution from participating institutions. Under the Australian scheme rules, applications for redress can only be processed from survivors whose institution has joined the scheme (it is not our intention to take this approach in Scotland).

In Scotland, earlier engagement with providers and other professional groups carried out by CELCIS suggested that the creation of a structured national financial redress scheme could achieve greater consistency of processes and outcomes for survivors. Providers also felt that there may be advantages to a national redress scheme rather than the existing legal process. A paper summarising the views expressed, including possible opportunities and barriers, is available at https://www.celcis.org/index.php/download_file/view/2854/1326/.

Question 35

We think those bearing responsibility for the abuse should be expected to provide financial contributions to the costs of redress. Do you agree?

Yes No

Please explain your answer.

Question 36

Please tell us about how you think contributions by those responsible should work. Should those responsible make:

- **an upfront contribution to the scheme** Yes/No
- **a contribution based on the number of applicants who come forward from their institution or service** Yes/No
- **Another approach to making a financial contribution to the redress scheme costs?** Please explain

Other comments?

Question 37

Are there any barriers to providing contributions, and if so how might these be overcome?

Question 38

Should the impact of making financial contributions on current services be taken into account and if so how?

Yes No

Please explain your answer.

Question 39

What other impacts might there be and how could those be addressed?

Question 40

How should circumstances where a responsible organisation no longer exists in the form it did at the time of the abuse, or where an organisation has no assets, be treated?

Question 41

What is a fair and meaningful financial contribution from those bearing responsibility for the abuse?

Question 42

What would be the most effective way of encouraging those responsible to make fair and meaningful contributions to the scheme?

Question 43

Should there be consequences for those responsible who do not make a fair and meaningful financial contribution?

Yes No

If yes, what might these be?

Contributions to wider reparations

In some other countries, the care provider representatives have funded support services, separate from any contribution to financial redress. In Ireland, a national counselling and support service is funded by the Catholic Church. The service aims to meet the support needs of survivors of religious, institutional and clerical abuse and their families. In Queensland, religious organisations contributed along with the Government to a trust fund to support former residents rebuild their lives.

Residential service providers and other professional groups in Scotland previously indicated that financial redress should be viewed in the context of a broader reparation package and outlined opportunities where they have or could contribute. This includes:

- Enabling supportive access to records;
- Financial support for counselling sessions;
- Signposting people to a range of relevant supports;
- Tracing and unifying families;
- Offering after-care support;
- Individual sessions to promote reconciliation;
- Individual apology;
- Ensuring that previous residents are aware of the scrutiny by current registration and inspection regimes.

Question 44

In addition to their financial contributions to the redress scheme, what other contributions should those responsible for abuse make to wider reparations?

PART 2: SCHEME ADMINISTRATION AND WIDER REPARATIONS

This part includes questions related to the implementation of the statutory financial redress scheme and the opportunity to bring together related elements of a package of reparations, including acknowledgment, apology and support.

Part 2.1: Decision-Making Panel for Redress

The financial redress scheme will be administered and governed independently of the Scottish Government. This will ensure that decisions on assessment of applications to the scheme will not be made by the Scottish Government.

Views from the 2017 survivor consultation

- **Victims/survivors should be represented in the administration and governance of a full financial compensation/redress scheme.** The value and insight offered by victim/survivor representation was highlighted by the consultation participants. Similar to the types of support, victims/survivors suggested a broad range of ways by which victim/survivors could be represented, either through the development and administration of the scheme or the individual application process. These views accord with a human rights based approach where participation is a recognised key component. Representation and participation should be significant and meaningful, involving appropriate information available in accessible formats, and the provision of necessary support and guidance.
- **A range of knowledge and understanding should be represented in any panel or board which will have a decision making role in the scheme.** Victims/survivors who answered this question noted a number of suggested professional backgrounds and specified services, and highlighted the value of lived experience. Key areas of knowledge and understanding included: advocacy, finance, health, human rights law, social care, and trauma.

We propose that decisions are made by a panel of three people drawn from a group of suitably qualified people appointed for this purpose. Panel members could come from a variety of backgrounds. We think the skills and knowledge appropriate for panel members to have include an understanding of human rights, legal knowledge, and knowledge of complex trauma and its impact.

We believe that service development is best informed by the individuals that will use it. However, in line with some of the concerns raised by survivors in the 2017 consultation regarding matters of confidentiality and potential impact or harm, we do not think it would be appropriate for survivors to form part of the decision-making panel itself. That panel will be considering individual redress applications, based on an objective set of criteria, and the evidence provided in support. Instead, we propose a survivor panel should be established to ensure survivors have a voice in the development and administration of the redress scheme.

Question 45

Do you agree that the decision making panel should consist of three members?

Yes No

Please explain your answer.

Question 46

Do you agree that the key skills and knowledge for panel members should be an understanding of human rights, legal knowledge, and knowledge of complex trauma and its impact?

Yes No

Are there other specific professional backgrounds or skills you feel are essential for the decision making panel?

Question 47

We propose that a Survivor Panel be established to advise and inform the redress scheme governance and administration, ensuring survivor experience of the application process is considered as part of a culture of continuous improvement.

Do you agree?

Yes No

Please explain your answer.

How do you think survivors should be recruited and selected for this panel?

Part 2.2 Public Body

We propose that the financial redress scheme will be administered and governed by a new public body which, although accountable to Scottish Ministers, will be operationally independent of them in particular in regards to the decision making panel and process.

Question 48

Do you agree that the financial redress scheme administration should be located in a new public body?

Yes No

Please explain your answer.

Question 49

Do you have any views as to where the public body should be located and what it should be called?

What factors should be taken into account when deciding where the public body should be?

The Chair and Chief Executive of the public body will be appointed through the public appointments process.

Question 50

How can survivors be involved in the recruitment process for these posts?

How should survivors be selected to take part in this process?

Part 2.3 Wider Reparations

Learning from other countries has highlighted the unique circumstances of individual survivors and that, whilst not every survivor will want or need any wider reparation, choice and access to a broad range of remedies is important. These remedies often include acknowledgment, apology and support.

The establishment of a new independent public body provides an opportunity to consider whether other elements of a reparation package could be provided in a more joined-up way. This may make it easier for survivors to access the support and information that they need, and may benefit services in relation to efficiencies in delivery, promotion and communication.

For background, we have outlined below the current provision in Scotland in relation to acknowledgement, apology and support.

Acknowledgment

The Scottish Government established the National Confidential Forum (NCF) through the Victims and Witnesses (Scotland) Act 2014 to listen to and acknowledge people's childhood experiences of institutional care in Scotland. There is no need for applicants to provide verification of their placement details and all the information gathered is anonymised. Unlike the Scottish Child Abuse Inquiry, the NCF does not investigate any abuse disclosed by the survivor. Instead the purpose is to receive and listen to testimony.

Apology

The Apologies (Scotland) Act 2016 gives legal protection to an apology, in certain circumstances. It provides that an apology (as defined in terms of the Act) is inadmissible in certain civil proceedings as evidence of anything relevant to the determination of liability, and cannot otherwise be used to the prejudice of the person making the apology (or on whose behalf it is made). The Act has the broader purpose of encouraging a cultural and social change in attitudes towards apologising.

For the purpose of the Act, an apology is defined as a statement (which could be written or oral) made either by the person who is apologising (whether a natural person, or a legal person such as a company), or by someone else on their behalf. The core element is an indication that the person is sorry about, or regrets, an act, omission or outcome.

On 1 December 2004 then First Minister Jack McConnell made an apology on behalf of the people of Scotland to victims of child abuse in Scotland. On 23 October 2018 Deputy First Minister John Swinney issued an apology on behalf of the Scottish Government and announced the establishment of a financial redress scheme.

Support

The Scottish Government currently provides funding to a number of organisations to deliver support services for survivors. Future Pathways was set up by the Scottish Government in 2016 and is governed by an alliance of organisations. Future Pathways works with individual survivors to identify personal outcomes and then signpost or commission services on the person's behalf. Examples of the support accessed through Future Pathways include assistance with tracing records, help accessing work and education opportunities, arranging housing and benefits advice, and arranging access to counselling and specialist psychological therapies.

Bringing services together

There may be an opportunity to bring together the administration of other services for survivors with financial redress. We think this could benefit survivors by providing a single entry point for the financial redress scheme and wider reparation. In terms of service provision it could provide integration, efficiency and effectiveness. Some survivors have expressed a view that there would be benefits to bringing together all these elements of reparation into the same physical location.

Question 51

What are your views on bringing together the administration of other elements of a reparation package such as support and acknowledgement with financial redress?

What would be the advantages?

Would there be any disadvantages, and if so, how might these be addressed?

Question 52

Do you agree that it would be beneficial if the administration of these elements were located in the same physical building?

What would be the advantages?

Would there be any disadvantages, and if so, how might these be addressed?

Question 53

Should wider reparation be available to everyone who meets the eligibility criteria for the financial redress scheme?

Yes No

Please explain your answer.

Question 54

Should there be priority access to wider reparation for certain groups, for example elderly and ill?

Yes No

Please explain your answer.

Question 55

If a person is eligible for redress, should they have the same or comparable access to other elements of reparation whether they live in Scotland or elsewhere?

Yes No

Please explain your answer.

Acknowledgment and Apology

Acknowledgment and apology have been identified as key components of reparation. In other countries this sometimes includes a face to face apology or letter of apology from different representatives, for example the Government, care provider or other organisations. Some have developed a framework for a direct personal response that also allows for other actions, including acknowledgment of regret and/or an opportunity to meet a senior official within the relevant institution.

When the NCF was established in Scotland in 2014, it was the only acknowledgment forum available to survivors. That position has changed. We now have the Scottish Child Abuse Inquiry and the Independent Care Review examining people's experiences in care. We will have a financial redress scheme to acknowledge and respond to the harm done to survivors of abuse in care. We want to look again at how survivors access acknowledgment and apology in Scotland.

Question 56

To allow us more flexibility in considering how acknowledgment is delivered in the future, we intend to include provision in the redress legislation to repeal the sections of the Victims and Witnesses (Scotland) Act 2014 which established the National Confidential Forum.

Do you have any views on this?

Question 57

Do you have any views on how acknowledgment should be provided in the future?

Question 58

Do you think a personal apology should be given alongside a redress payment?

Yes No

Please explain your answer.

If so, who should give the apology?

Support

Support is a key element of a wider reparation package and can typically include the following:

- emotional or psychological health and wellbeing;
- work and education;
- housing, benefits and financial advice;
- physical health and wellbeing;
- access to records – finding out about time in care;
- befriending.

Some countries have established a national counselling service or advocacy service rather than a wider support coordination service.

The creation of a statutory financial redress scheme provides the opportunity to look at how support for survivors might be delivered in the future. This will require further extensive engagement to consider current provision and consider other models.

Question 59

Do you think there is a need for a dedicated support service for in care survivors once the financial redress scheme is in place?

Yes No

Please explain your answer.

Question 60

Do you have any initial views on how support for in care survivors might be delivered in Scotland, alongside a redress scheme?



Pre-Legislative Public Consultation on Financial Redress for Historical Child Abuse in Care

RESPONDENT INFORMATION FORM

Where possible, we prefer that you take part using the Scottish Government's online consultation platform, Citizen Space. Citizen Space can be found at: <https://consult.gov.scot/>. If you are responding by post or email, please use this form to share your views. You can choose if you want to answer some or all of the questions. If you prefer you can write to us with your own comments.

Please Note we would appreciate that you complete all of the 'About you' section and return this with your response.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

About You

Are you responding as an individual or an organisation?

- ☐ Individual
☐ Organisation

Full name or organisation's name

If responding on behalf of an organisation, please indicate which category best describes your organisation. Please tick all that apply.

- | | |
|--|--|
| <input type="checkbox"/> Local Authority | <input type="checkbox"/> Other Public Sector |
| <input type="checkbox"/> Current Care Provider | <input type="checkbox"/> Academia/Education |
| <input type="checkbox"/> Previous Care Provider | <input type="checkbox"/> Private Sector |
| <input type="checkbox"/> Third Sector or Community Group | <input type="checkbox"/> Legal Sector |
| <input type="checkbox"/> Survivor Organisations | <input type="checkbox"/> Other |

If other, please specify.

If responding as an individual do you identify as a survivor of abuse in care?

☐ Yes

☐ No

☐ Prefer not to say

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

☐ Publish response with name

☐ Publish response only (without name)

☐ Do not publish response

Information for organisations only:

The option 'Publish response only (without name)' is available for individual respondents only. An organisation's name will still be published even if this option is selected.

If you choose the option 'Do not publish response', your organisation's name may still be listed as having responded to the consultation in, for example, the analysis report.

If you have identified as a survivor of abuse in care, the Scottish Government will not publish your name unless you confirm that you are happy for that to happen. Please tick this box if you are.

☐

Where respondents have given permission for their response to be made public, we will still check that the response does not contain any sensitive information of a personal nature, any potentially defamatory or offensive materials, or where publication would be contrary to copyright or data protection laws. All such information will be redacted.

If you provide information regarding a perpetrator of abuse, we will pass this information and your details to Police Scotland in order that an assessment can be made of any current risk posed by the perpetrator.

We may wish to contact you again in the future, but we require your permission. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

☐ Yes

☐ No

If you would like to join our mailing list for any further updates on the financial redress scheme, you will need to sign and return a form (privacy notice). Please tick the box below if you would like to join our mailing list (if you do we will send you a privacy notice by email or post).

☐ E-mail

☐ Post



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