

# **Financial Redress for Survivors of Historical Child Abuse in Care**

## **Public Consultation** A Summary Version

**September 2019**



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## Introduction

In October 2018 the Deputy First Minister committed to introducing a financial redress scheme, based on recommendations from a consultation with survivors which was carried out in 2017. Those earlier survivor views are the starting point for this consultation.

Getting the design of a financial redress scheme right is really important to acknowledge what happened, and to do that with compassion and sensitivity. We know that nothing can make up for what happened. Financial redress needs to be part of a package, along with other measures to help survivors.

This consultation asks questions about:

- the design of a financial redress scheme;
- who will make financial contributions to the cost of delivering the scheme;
- how the scheme will be delivered, and
- how redress might fit alongside acknowledgement, apology and support.

This consultation will run for 12 weeks and will close on 25 November 2019. It is important we hear the views of as many people as possible, especially survivors. The information you provide will help us develop the law needed for the financial redress scheme, which will be introduced to the Scottish Parliament during 2020.

The Scottish Child Abuse Inquiry is independent of government and any other organisation and is not included in any part of this consultation.

This consultation cannot be used as a way to address any concerns or comments you might have about your own individual circumstances. If you have any questions about this, please contact us.

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/>.

## How to take part in this consultation

This is a summary of the key issues we would like to hear your views about. The issues are described in more detail in the full consultation paper. We want to hear what you think. There are three ways you can take part:

- Where possible, we prefer that you take part using the Scottish Government's online consultation platform, Citizen Space. This consultation 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. There are a lot of questions. You can choose if you want to answer some or all of them.
- If you would prefer to respond by post or email, you can use the Respondent Information Form which has a list of all the questions. Again you can choose to answer some or all of the questions. You can download the form using the link above. If you wish we can send you a paper copy by post for you to fill in, along with a prepaid envelope.
- Or you can write to us with your own general comments. If you are doing this you will also need to give us all the information in the 'About You' section of the Respondent Information Form.

Our contact details are given below. Please get in touch if you have any questions or if anything is unclear.

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## **Section 1: Purpose and principles of the redress scheme**

(Please see Questions 1 and 2 in the Respondent Information Form)

### **Purpose**

It is clear that in the past there were failings in the system of caring for children, when children were looked after by institutions or bodies instead of by their parents.

We would like to know what you think about the following wording to describe the purpose of the financial redress scheme:

“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”.

### **Principles**

We want to know what you think about the following principles to guide the design and delivery of the redress scheme:

- 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.

## Section 2: Eligibility issues

(Please see Questions 3 to 11 in the Respondent Information Form)

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.

We want to know what you think about a number of issues in relation to eligibility for the redress scheme. These are set out in the boxes below.

<p><b>Definition of ‘in care’.</b> We suggest there are two parts to this definition. First, that an institution or body had long-term responsibility for the child in place of the parent. Second, that the child spent time in an eligible residential setting, largely based on the terms of reference of the Scottish Child Abuse Inquiry. Examples of settings which would be included are children’s homes, secure care units, borstals, boarding schools, foster care.</p>	<p>We want to know what you think about our suggested approach to defining ‘in care’. It would mean that children who were sent to boarding schools by their parents for education would not be eligible to apply to the scheme. It would also mean that children who spent time in hospital for medical treatment would not be eligible. The detailed reasons for this are explained in the full consultation paper.</p>
<p><b>Definition of ‘abuse’.</b> We suggest that this includes sexual abuse, physical abuse, emotional abuse, and neglect. The definition is based on the one recently used in Scottish legislation on childhood abuse and the civil court claims.</p>	<p>We want to know what you think of this definition of abuse.</p>

<p><b>Defining ‘historical’ abuse.</b> We need to set a date to say what we mean by historical abuse. There were significant changes in the standards, regulation and monitoring of the care system in Scotland from 2001 onwards. We suggest setting the date of 1 December 2004 – this was when the then First Minister of Scotland made a public apology to survivors of historical child abuse in care.</p>	<p>We want to know what you think of 1 December 2004 as a suitable date for defining historical abuse.</p>
<p>Some survivors were also <b>child migrants</b>. They may have also applied to the UK Government’s redress scheme for former British child migrants. If they meet the eligibility of this redress scheme and were abused when in care in Scotland they will be able to apply to the redress scheme. This should be the case even if they have received a payment in relation to any abuse they might have suffered elsewhere, or because they were part of the UK migration programme.</p>	<p>We want to know what you think about our suggestion that child migrants who suffered abuse in care in Scotland should be eligible to apply for redress.</p>
<p>Redress schemes in other countries have taken different approaches to the eligibility of those with a <b>criminal conviction</b>. In our view, someone with a criminal conviction should not be excluded from applying if they meet the eligibility of the scheme.</p>	<p>We want to know what you think about this proposal.</p>



**Section 3: Approach to payments, evidence and assessment**  
(Please see Questions 12 to 23 in the Respondent Information Form)

**Approach to payments**

The consultation with survivors in 2017 asked about different options for payment structures. A combination payment was the preferred approach. This was described as a flat-rate standard payment along with an option to apply for an extra payment based on their individual experience. The assessment for the individual experience payment would take account of a range of factors such as: the type of abuse; the severity of abuse; how long the abuse went on for; and the lifelong consequences of the abuse.

Given these views have already been expressed by survivors, we have agreed to proceed with a combination payment approach. This would have two possible stages. Stage One would not attempt to assess an individual's experience of abuse or its impact. It could be considered more straightforward for applicants. It would be a flat-rate payment. Stage Two would be an additional payment over and above Stage One and applicants could choose whether or not to apply for that second part. Stage Two would require more information and supporting evidence than Stage One because it would look at a person's individual circumstances.

We want to know what you think about how this would work in practice in relation to the evidence needed for each stage and how the assessment would work.

## Evidence issues

We want to know what you think about the evidence needed to support an application to the financial redress scheme.

<p>Stage One would need written evidence of having been in care in Scotland.</p>	<p>We ask about options for someone who is unable to get a document which shows they were in care.</p>
<p>Many institutions have done a lot to improve access to records. However, we could consider a legal power that requires institutions to release relevant documents they might have.</p>	<p>We ask about whether we should consider this.</p>
<p>For the more straightforward approach to Stage One application, there will need to be some form of confirmation that abuse occurred in care in Scotland.</p>	<p>We ask about different choices for this, including a signed declaration by the applicant, a short written description of the abuse and its impact, an existing written statement, detailing the abuse in care, if available.</p>
<p>Stage Two will require additional information so an assessment can be made of the abuse and its impact on the individual applicant</p>	<p>We ask about different choices for Stage Two, including any existing written statements, spoken testimony, either a short written description or a longer detailed one, existing or new medical and/or psychological assessment.</p>

Views expressed in the earlier consultation were that spoken testimony of abuse and its impact should be an option if applicants are unable to provide written evidence.	We ask if there should be an option to give spoken evidence and if so when.
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## **Assessment issues for Stage Two**

We want to know what you think about the assessment for Stage Two which will look at an individual's experience of abuse and its impact. It is very difficult to assess this because individuals can have very different responses to abuse and the impact on their life can be very different. Remember the Stage Two assessment is optional. Not everyone will want to go through this, which is why we will have the two stage approach which provides choice.

We want to know your thoughts on:

- whether the length of time in care should be taken into account;
- what balance the assessment should give to different types of abuse (physical, sexual, emotional, neglect);
- which factors in relation to abuse and its impact might lead to higher levels of payment;
- whether you think the redress is mainly for the abuse suffered, mainly for the impact of the abuse, or that both abuse and impact should be treated equally;
- how to ensure that everyone is treated fairly.

## **Section 4: Other scheme design issues**

(Please see Questions 24 to 30 in the Respondent Information Form)

### **Other payments**

We think that a survivor should still be able to apply to the financial redress scheme even if they have already received a payment from another organisation, whether that was through a court process, an out-of-court settlement, or criminal injuries compensation.

A payment from the redress scheme would be reduced by the amount of any previous payment, taking account of any adjustments that need to be made e.g. for inflation. The principle here is that a person should not be compensated twice for the same matter. We want to know if you agree with this approach or not.

Many redress schemes in other countries require applicants to choose between accepting a payment from the scheme or taking any future action in the civil court for the same abuse. This will usually require the signing of a waiver at the point of accepting a redress payment. This means the individual will sign a document agreeing they will not seek damages in the civil court for the same issue. We think our redress scheme should follow this approach and we want to know what you think about that.

### **Making an application**

We are proposing that the redress scheme is open for applications for a period of five years and we want to know what you think about that.

### **Practical help making an application**

We want to know what you think about how survivors could be helped to get the documents or records needed to apply, and what other support they might need to apply to the redress scheme.

## **Legal advice**

We are thinking about whether the redress scheme should cover the cost of legal advice or representation. Options, such as Legal Aid, will be looked into. We think that, at the least, independent legal advice should be provided to the applicant before they accept a redress payment, if this means they have to sign a waiver (please see 'other payments' above). We want to know what you think about this.

We also want to know when else in the application process you think legal advice might be required.

In redress schemes in some other countries the cost of providing legal advice has been very expensive and has been criticised by survivors. We want to know how you think we could manage the costs of providing independent legal advice.

## **Section 5: Applications from next-of-kin**

(Please see Questions 31 to 34 in the Respondent Information Form)

We think that surviving spouses and children of survivors who have died and who met all the eligibility criteria should be able to apply to the redress scheme. This next-of-kin payment would acknowledge the fact that the survivor passed away before the financial redress scheme was in place. It would be a flat-rate payment. We want to know what you think about this approach.

Surviving spouses or children would need to provide supporting documents which show that their family member met all the eligibility criteria. We want to know what you think about the kinds of evidence needed for a next-of-kin application, particularly in relation to abuse.

### **A cut-off date**

Other schemes which have next-of-kin applications have set a “cut-off” date for people eligible to apply. This would be the date **after** which a survivor must have died. We want to know what you think about the following choices:

- 17 December 2014 - the date of the announcement of the Scottish Child Abuse Inquiry;
- 23 October 2018 - the date that the Deputy First Minister confirmed there would be a redress scheme in Scotland and that there would be some form of provision for next-of-kin;
- 17 November 2016 - the date that the Deputy First Minister announced that he wanted to hear wider views on the potential provision of financial redress. This is our preferred date.

### **Next-of-kin payment**

We ask what portion of the Stage One payment the next-of-kin payment should be. We give choices of 25%, 50%, 75% or 100% of the Stage One payment.

## **Section 6: Funding the financial redress scheme**

(Please see Questions 35 to 44 in the Respondent Information Form)

The consultation with survivors which was carried out in 2017 asked about how the redress scheme should be funded, and if those organisations which looked after children in the past, and where abuse took place, should cover some of the costs.

We agree with the view expressed then, that organisations which looked after children in care should make a financial contribution, as well as the Scottish Government.

We ask questions about the approach to funding the scheme to make sure it is fair and meaningful. This includes issues such as:

- how to decide how much organisations should pay;
- what problems some organisations might have, and how these can be dealt with. For example if paying money to the redress scheme would mean less money for children's services now and in the future;
- what to do about organisations that are no longer around;
- how to encourage relevant organisations to be part of the redress scheme and, if they choose not to be part of the scheme if anything should happen to them.

We also want to know what you think about organisations covering some of the cost of providing wider support and acknowledgement to survivors.

## **Section 7: Who should make decisions about redress**

(Please see Questions 45 to 47 in the Respondent Information Form)

We think that decisions on applications from individual survivors should be made by a panel of three people. The panel members should have suitable skills and experience, and be from different backgrounds. The panel should have an understanding of human rights, the law, and the impact of childhood trauma on individuals. We want to know what you think about these ideas.

We think that survivors have an essential part to play in developing and running the redress scheme and we want to make sure the survivor voice is strong.

We want to know what you think about setting up a Survivor Panel to give advice on running the redress scheme. This would ensure that the survivor experience is taken into account.

We also want to know how you think survivors should be recruited for this panel to ensure it is fair and open.

For a number of reasons, including issues of confidentiality, we do not think it would be appropriate for survivors to be involved in making decisions about individual applications from other survivors.



## **Section 8: A new public body**

(Please see Questions 48 to 50 in the Respondent Information Form)

The financial redress scheme will not be run by the Scottish Government. It will be independent. We think that a new public body should be set up to run the scheme.

We want to know if you agree with this and, if so, what you think the new public body should be called.

We also want to know where in Scotland the new public body should be located and what factors should be taken into account in deciding where it is located.

A new public body will need a Chair and a Chief Executive. These positions will need to be filled through a formal public appointments process, which applies to all public bodies in Scotland.

We want to know how you think survivors could be involved in the process of appointing a Chair and a Chief Executive, and how to select the survivors to be involved in doing that.

## **Section 9: Bringing services together**

(Please see Questions 51 to 55 in the Respondent Information Form)

The financial redress scheme gives us an opportunity to think about how wider support and acknowledgement for survivors of in care abuse could be provided. There could be benefits in bringing these services together – benefits for survivors, and for the delivery of the services.

Financial redress is an important part of a package of reparations for historical child abuse in care, along with acknowledgement, apology and wider support. At the moment, the following is in place for in care survivors:

- acknowledgement and apology - the National Confidential Forum was set up in 2014 to listen to and acknowledge individuals childhood experiences of institutional care in Scotland; public apologies were given in 2004 and 2018, and a law was introduced in 2016 to make it easier for organisations to apologise for what happened;
- wider support – Future Pathways was set up in 2016 and takes a person-centred approach to identify what individual survivors need then help them access that support. The Scottish Government also provides funding for other support services for survivors.

We want to know if you think there would be benefits in bringing together the delivery of financial redress, acknowledgement, personal apology and support into one organisation. And if you think it would be a good idea to bring these together in one place.

We would also like to know:

- if you think the eligibility for financial redress (see Section 2) should be the same for acknowledgement, apology and support;
- if certain groups should be prioritised e.g. the elderly and ill;
- if an individual is eligible to the redress scheme and lives outside Scotland, should they have the same access to wider support as someone living in Scotland.

## **Section 10: Acknowledgement, apology and support**

(Please see Questions 56 to 60 in the Respondent Information Form)

We want to know what you think acknowledgement, apology, and support might look like in the future.

Thinking about acknowledgment and learning from the past, some things have changed from when the National Confidential Form was originally set up. We now also have the Scottish Child Abuse Inquiry and the Independent Care Review. A redress scheme is also about acknowledging what happened.

In relation to apology, some other countries which have a redress scheme make the offer of some form of personal apology, if the individual wishes to have that.

Support can involve many things including emotional support, help with work and education, access to records, and more. We can learn a lot from Future Pathways' experience of providing in care survivors with person-centred support, what other organisations in Scotland are doing, and also how support for survivors is provided in other countries which have redress schemes.

We would like to know what you think about:

- how acknowledgement should be provided in the future;
- if a personal apology should be offered with a redress payment;
- how support can best be provided in the future, alongside the redress scheme.

## Reminder about taking part in the consultation

Please remember to send us your comments by **25 November 2019**.

The following papers are available as part of this consultation:

- the full consultation paper;
- a summary of the key issues in the consultation paper (this paper);
- the Respondent Information Form, which includes all the questions;
- an Information Note.

There are a lot of questions but please remember you do not need to answer them all. If you prefer, you can write or email us with your general comments on a financial redress scheme. You will still need to provide all the information in the 'About You' section of the Respondent Information Form if you are doing that.

Our contact details are below. If you have any questions about the consultation and how to take part, please get in touch. If you wish we can send you a prepaid envelope to return your response to this consultation.

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tel: 0300 244 2242

We are working with a number of partners to help raise awareness about this consultation and how to take part. If you are a survivor and a member of a survivor support organisation, your organisation might have further information about how they are doing that.



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