

## 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

Mental Welfare Commission for Scotland

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- Do not publish response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If you choose the option 'Do not publish response', your organisation's name may still be listed as having responded to the consultation in, for example, the analysis report.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

## Questionnaire

**Please refer to the full consultation paper or the summary version for further detail.**

### **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**

**Q1.** 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

We agree with this statement but would seek clarity on the issue of long term hospital care for those individuals placed in learning disability and psychiatric facilities. Initial discussion with the consultation team indicates that these will be included but this requires to be explicit.

Consideration also needs to be given to children placed in long term hospital settings with parental consent or directly by their parents. We still occasionally come across individuals placed in learning disability hospitals who have been placed there as young children by their families believing this to be a better long term option, usually

on the advice of health professionals. This group should not be excluded. There is also the issue of individual capacity and consent to consider in these instances and we will address this later in the document. See Question 11. Long term care requires definition in relation to how long an individual remained in such a setting. Would this also include those that spent time moving in and out of a mental health setting over a long period?

If no, what are your thoughts on purpose?

## Principles

It is our intention that the financial redress scheme should be underpinned by guiding principles.

**Q2.** 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.

Do you agree with these guiding principles?

Yes     No     Unsure

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

Yes, we are broadly in agreement with the principles, however, in relation to the principle 2: *to make the scheme as accessible as possible* we would suggest broadening this out to address issues of reasonable adjustment in the case of disability and other equality groups, and would suggest that reference is made to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

## Part 1.2: Eligibility for the Financial Redress Scheme

### 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.

**Q3.** 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.

We agree with this but would again want to be clear on the definition of long term responsibility. As above, we believe that children placed in long stay learning disability or psychiatric facilities, when their parents may have retained parental rights, should be included.

**Q4.** 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.

Yes we would agree with this but would again want to be clear on the definition of long term responsibility.

**Q5.** 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.

**Q6.** 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.

As per earlier responses, we are particularly concerned that people placed in learning disability or psychiatric hospitals with parental consent should not be denied redress, since the practical effect is little different from an admission to institutional child care

**Defining ‘abuse’**

**Q7.** 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     Unsure

Please explain your answer.

**Defining ‘historical’ abuse**

**Q8.** 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.

## Child migrants

**Q9.** 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?

## Those with a criminal conviction

**Q10.** Do you have any comments about the eligibility of those with a criminal conviction?

We support eligibility for those with a criminal conviction. A criminal history is often a consequence of neglect and trauma in childhood.

## Other

**Q11.** Do you have any other comments on eligibility for the financial redress scheme?

We would like to see the scheme ensure that people with current mental health difficulties or learning difficulties are eligible for financial redress. We feel this should be explicitly stated. This may require increased support for some individuals through the application process and would require specialist services to be employed in some instances. For example support with communication needs.

A guide as to what evidence is required to demonstrate that abuse has happened also needs to be determined and consideration given to whether those with additional needs require a differing threshold of evidence.

In presenting any evidence we would suggest that this could be given in either written or oral form. If oral evidence is required for more significant awards then it should be possible where necessary for this to be presented by another individual such as an advocate or welfare attorney or guardian.

The issue of incapacity and consent we feel are crucial as there may well be individuals who have welfare proxy decisions makers in place these being welfare powers of attorney and welfare guardianship orders under the Adults with Incapacity



(Scotland) Act 2000. They will act on an individual's behalf and make applications if they have certain powers to do so. They therefore should be included as eligible. The administration of this part of the scheme we feel would require staff with a knowledge in this area.

Likewise a system for monitoring proxies within this scheme and the monitoring of any large financial awards requires consideration and may benefit from discussion with ourselves and the Office of the Public Guardian.

Where an individual who lacks capacity has no welfare proxy or any one able to apply on their behalf, then this may give rise to a local authority application being made. This has wider term implications for local authorities in terms of resources and we would suggest discussion needs to take place with them in relation to this.

### **Part 1.3: Payment Structure, Evidence and Assessment**

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 (please see full consultation or the summary version for further details).

#### **Evidence Requirements**

**Q12.** 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?

**Q13.** 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.

We would be supportive of the suggestion that a legal power should be set in legislation to require organisations to allow access to records. This may be relevant to our organisation where records are held denoting that people have had stays in hospital, and we would require to discuss this issue further internally. However, this may be difficult for organisations that have committed not to share or even document such information, for example, the testimonies collected by the National Confidential Forum, and believe legislation should include specific criteria when issues around access become particularly difficult.

**Q14.** For Stage One, what evidence do you think should be required about the abuse suffered?

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

**Q15.** Do you have any additional comments on evidence requirements for a Stage One payment?

We think that for stage one applications the process should be as accessible and straight forward as possible and this should focus on documentary evidence. It should also cause a minimum trauma and impact to the individual. We would echo our earlier comments that specialist support should be available for those who cannot easily communicate if any oral evidence is required.

**Q16.** For Stage Two, what additional evidence of the abuse, and of its impact, should be required for the individual assessment?

Any existing written statement from another source which details the abuse	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
Oral testimony of abuse and its impact	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

Short written description of the abuse and its impact	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
Detailed written description of abuse suffered and its impact	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
Documentary evidence of impact of the abuse				
- Existing medical and/or psychological records	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
- New medical and/or psychological assessment	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
Supporting evidence of the abuse/impact from a third party	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

**Q17.** Do you have any comments on evidence requirements for a Stage Two payment?

**Provision for oral testimony**

**Q18.** 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?

We would support the view that oral testimony should be available to individuals to support applications, but that this should only be when necessary and in more complex situations. We believe that for those individuals with mental health issues and learning disabilities support should be made available to aid the giving of evidence. This support should encompass, before, during and post testimony. We would also suggest that those hearing evidence should have awareness and training in these areas if they are not familiar with mental health issues. The evidence being given on an adult's behalf by a welfare proxy may also be a possibility and how this evidence is collated and given should be carefully considered. Evidence of the proxy role should be requested by production of the orders themselves.

**Stage Two Assessment**

**Q19.** 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?

**Q20.** Do you have any views on the balance the assessment should give to different types of abuse (physical, emotional, sexual, neglect)?

**Q21.** What are your views on which factors in relation to the abuse and its impact might lead to higher levels of payment?

**Q22.** Do you think:

<ul style="list-style-type: none"><li>the redress payment is primarily for the abuse suffered</li></ul>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<ul style="list-style-type: none"><li>the redress payment is primarily for the impact the abuse has had</li></ul>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<ul style="list-style-type: none"><li>both the abuse suffered and the impact it has had should be treated equally</li></ul>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Please explain your answer.

**Q23.** 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**

**Q24.** 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.

**Q25.** 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**

**Q26.** 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**

**Q27.** 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.

We would support the period of a timescale, but feel that some caution might be applied. We are aware that to date the Advanced Payment scheme has had few applications from those placed in mental health and learning disability settings .With this in mind we would not wish these groups to be excluded from application by missing a timescale. We believe that awareness of the scheme should be heightened with particular emphasis placed on engaging with these groups so that applications can be made timeously.

**Practical help making an application**

**Q28.** 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.

We think that this would be a welcome addition to the scheme particularly for those that require support, have limited access to IT systems or limited or no literacy skills.

## Legal advice

**Q29.** In your view, which parts of the redress process might require independent legal advice? Please tick all that apply.

<ul style="list-style-type: none"><li>• In making the decision to apply</li></ul>	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"><li>• During the application process</li></ul>	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"><li>• At the point of accepting a redress payment and signing a waiver?</li></ul>	<input checked="" type="checkbox"/>

**Q30.** How do you think the costs of independent legal advice could best be managed?

### Part 1.5: Next-of-Kin

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”.

**Q31.** What are your views on our proposed approach to allow surviving spouses and children to apply for a next-of-kin payment?

**Q32.** 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.

<ul style="list-style-type: none"> <li>• 17 December 2014 - the announcement of the Scottish Child Abuse Inquiry</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<ul style="list-style-type: none"> <li>• 17 November 2016 – the announcement of the earlier consultation and engagement work on the potential provision of financial redress</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<ul style="list-style-type: none"> <li>• 23 October 2018 – the announcement that there would be a statutory financial redress scheme in Scotland</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

**Q33.** 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?

**Q34.** 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%	<input type="checkbox"/>
• 50%	<input type="checkbox"/>
• 75%	<input type="checkbox"/>
	<input type="checkbox"/>



- 100%

Please explain your answer.

**Part 1.6: Financial Contributions**

**Contributions to the redress scheme**

**Q35.** 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.

**Q36.** Please tell us about how you think contributions by those responsible should work. Should those responsible make:

• <b>an upfront contribution to the scheme</b>	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
• <b>a contribution based on the number of applicants who come forward from their institution or service</b>	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
• <b>another approach to making a financial contribution to the redress scheme costs?</b>	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

Please explain your answer.

Any other comments?

**Q37.** Are there any barriers to providing contributions, and if so how might these be overcome?

**Q38.** Should the impact of making financial contributions on current services be taken into account and if so how?

Yes       No

Please explain your answer.

**Q39.** What other impacts might there be and how could those be addressed?

**Q40.** 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?

**Q41.** What is a fair and meaningful financial contribution from those bearing responsibility for the abuse?

**Q42.** What would be the most effective way of encouraging those responsible to make fair and meaningful contributions to the scheme?

**Q43.** 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.

**Q44.** 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.

**Q45.** Do you agree that the decision making panel should consist of three members?

Yes       No

Please explain your answer.

Yes, we agree that the panel should follow existing examples such as Children's Panels and Mental Health Tribunals where decisions are made across three individuals.

**Q46.** 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?

Yes, we agree with the key skills proposed, but would add that emphasis is also placed on mental health issues in adulthood, particularly, transitions between childhood and adulthood. In addition, we would like to see use of specialist professions to aid communication at panels, notably in relation to individuals with a learning disability. Panel members should also reflect where possible a diverse section of Scottish society and be selected from across the country.

**Q47.** 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.

**Q48.** Do you agree that the financial redress scheme administration should be located in a new public body?

Yes     No

Please explain your answer.

**Q49.** 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?

**Q50.** How can survivors be involved in the recruitment process for these posts?

We have experience of this in recruiting for membership of the National Confidential Forum which we would be happy to share with the Government

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.

**Q51.** What are your views on bringing together the administration of other elements of a reparation package such as support and acknowledgement with financial redress?

We strongly support the bringing together of the different elements of the response to historical ill-treatment in child care into a coherent framework which provides a joined up and easy to navigate service to survivors, which allows them to enter at any point and be supported to consider and decide on which aspects of redress, acknowledgment, apology and support are most important to them and how they access them.

What would be the advantages?

Ease of access to survivors, continuing and co-ordinated support, reduction in duplication and confusion, efficiencies in sharing key areas including publicity and communications, back office administration, economies of scale and simplicity of governance.



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

Main issue is handling the transition from the current, imperfect but functioning system, and ensuring that existing skills and goodwill are retained.

**Q52.** Do you agree that it would be beneficial if the administration of these elements were located in the same physical building?

Potentially, although the issue is not the most important priority. Other forms of access and a co-ordinated presence online and for telephone contact may be as important.

What would be the advantages?

Visible presence, efficiency, ease of joined up working

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

Service may need to be visible in more than one place – could be addressed by having virtual presence in offices of other services

**Q53.** Should wider reparation be available to everyone who meets the eligibility criteria for the financial redress scheme?

Yes       No

Please explain your answer.

**Q54.** Should there be priority access to wider reparation for certain groups, for example elderly and ill?

Yes       No

Please explain your answer.

**Q55.** 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.

**Acknowledgement and apology**

**Q56.** 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?

The Commission strongly supports this. The current arrangements were established before the Inquiry, the Care Review, Future Pathways and the commitment to redress. The legislation contains highly complex governance arrangements which do not directly involve survivors and have created administrative difficulties. The legislation is also highly prescriptive about how the Forum operates, and restricts the possibility of providing Acknowledgment in other ways, or linking it to the other strands of the Survivor Strategy. It was also designed for a project with an end date, which has not proved to be appropriate. This is a positive opportunity to build on the achievements of the Forum and create a lasting legacy for the future.

**Q57.** Do you have any views on how acknowledgment should be provided in the future?

**Q58.** 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**

**Q59.** 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.

Yes, linked to the joined up structure we advocate above.

**Q60.** Do you have any initial views on how support for in care survivors might be delivered in Scotland, alongside a redress scheme?

**Thank you for taking the time to participate in this consultation.**