

## Contents

Ministerial Foreword.....	2
Introduction.....	3
Assessing impact and effectiveness .....	4
Impact on applications to the Scheme .....	6
Engagement with survivors.....	8
Key principles.....	9
Equalities monitoring .....	9
Impact on contributors to the Scheme .....	11
What is a contributor?.....	11
Applications linked to organisations .....	12
Factors which influence contributions .....	13
Next steps.....	15
Actions to help victims and survivors of historical child abuse in care.....	16
Applying for redress .....	17
Share your views on Scotland's Redress Scheme .....	17
Support for survivors.....	17
Redress Emotional Support Helpline .....	17
More support.....	17
Appendix A: Waiver .....	19
Appendix B: Contributors .....	20
Appendix C: Equalities Monitoring Form .....	21
Appendix D: Provider Survey .....	22
Appendix E: Privacy Notice .....	23

## Ministerial Foreword

For decades, some children in residential care in Scotland were failed by those entrusted to look after them. Scotland has taken steps to face up to the failings of the past by establishing Scotland's Redress Scheme.

Since Scotland's Redress Scheme launched in December 2021 it has delivered tangible redress in the form of acknowledgement, payment, apology and support to survivors who suffered abuse as children while in the care of the state. The Scheme is designed to be swifter and less adversarial than court action. While nothing can ever make up for the sufferings survivors have endured, the Scheme is making a real difference to many survivors as it goes some way to providing acknowledgement and recognition of the harm caused.

The Scheme is underpinned by three principles – dignity, compassion and respect – and these principles remain as relevant today as they were when the Scheme was designed. The Scheme is designed to be survivor led, trauma informed and responsive to feedback from survivors. Survivors are at the heart of everything we do, and I am personally committed to ensuring that survivor feedback on the Scheme is heard and acted upon.

The Scottish Government is committed to seeking financial contributions from those organisations which were responsible for the care of children at the time of abuse, whether providing care directly or otherwise involved in the decision-making processes and arrangements by which the children came to be in care in the place where the abuse took place. There are currently 17 entries on the live contributions list with contributions to the Scheme totalling over £122 million.

Inclusion of the waiver is a core component of Scotland's Redress Scheme, and in redress schemes operating around the world. It is used to encourage financial contributions from those organisations who were responsible for the care setting, or for placing children in those care settings, where they suffered abuse. The waiver provides contributors with the certainty that civil litigation will not be raised, thereby meaning that costs associated with potential litigation can be redirected by way of redress payments to survivors of the abuse, and goes some way in recognising the harm caused.

This report sets out the Scottish Government's assessment of the impact of the waiver on applications for redress and the effectiveness of the waiver in encouraging public authorities, voluntary organisations, and others, to become Scheme contributors.

I am grateful to all the contributors to Scotland's Redress Scheme for participating meaningfully in this national collective endeavour to recognise the harms of the past.

**Shona Robison, Deputy First Minister and Cabinet Secretary for Finance**

## Introduction

Scotland's Redress Scheme ("the Scheme") provides tangible redress in the form of acknowledgement, payment, apology, and support to survivors who suffered abuse as children while in the care of the state. Scotland's Redress Scheme launched in December 2021 following passage of the [Redress for Survivors \(Historical Child Abuse in Care\) Act 2021 \("the Act"\)](#).

The Scheme is designed to be an alternative to civil litigation. Redress payments are therefore conditional upon the applicant signing a waiver<sup>1</sup> (Appendix A) relinquishing their right to continue or raise civil actions in respect of the abuse, against the Scottish Government and those organisations that have made fair and meaningful financial contributions to the Scheme, at the point of signing.

Scottish Ministers are required to establish and maintain a list of public authorities, voluntary organisations and others who, amongst other things, in the opinion of Ministers, are making or have agreed to make a fair and meaningful contribution towards the funding of redress payments under the Act. There are now 17 entries on the live contributions list with contributions totalling over £122 million (Appendix B).

The waiver is a core component of redress schemes around the world. Inclusion of the waiver in Scotland's Redress Scheme as per section 46 ([Waiver](#)) of the Act is to encourage financial contributions from those who were responsible for the care of children where and when the abuse occurred. The waiver supports third parties to proactively, publicly, and as part of a national endeavour, face up to the profound injustices of the past by crystallising their potential exposure to civil litigation for historical abuse and in return for that, avoid the financial and reputational risks of costly, lengthy and adversarial litigation.

By signing the waiver, the applicant to Scotland's Redress Scheme agrees not to continue or raise civil actions, such as actions for damages, in respect of abuse eligible under the Act, against the Scottish Ministers and those on the contributor list at the time their application was determined by Redress Scotland. Only organisations who are included on the contributor list when an application is determined are covered by the waiver.

The waiver only becomes binding when the individual accepting the redress payment has signed it. Applicants are encouraged to obtain independent legal advice before accepting a redress payment under the Scheme and signing a waiver. Funding for applicants to obtain independent legal advice is available from the Scheme.

As required by section 48 ([Report on effect of waiver on participation in redress scheme](#)) of the Act this report sets out Scottish Minister's assessment of the impact of the waiver on applications for a redress payment, and the effectiveness of the waiver in encouraging public authorities, voluntary organisations and others to become contributors to the Scheme.

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<sup>1</sup> The waiver is sent to survivors and next of kin applicants as part of a larger determination pack.

## Assessing impact and effectiveness

When considering how to assess the impact and effectiveness on the waiver, it is important to consider the three 'key purposes' for its inclusion within the Scheme, these are detailed below. Scottish Ministers made their assessment on the impact and effectiveness of the waiver by considering each of the three reasons, and determined, as far as possible, whether or not the waiver has achieved those ambitions.

### **1. To encourage 'those responsible' for abuse to make meaningful financial contributions to the Scheme.**

During the passing of the Bill, it was recognised that the inclusion of such a waiver was a significant incentive for providers to commit to making financial contributions. This in turn is important not only for the funding of the Scheme, but for survivors to see that 'those responsible' are paying for redress.

As set out further below (see 'Key Principles'), the Scheme is not designed to provide financial redress on the basis of findings or acceptance of liability. Consequently our approach to 'those responsible' for contributions is similarly not based on findings or acceptance of liability. Instead we have identified, and approached, those responsible for contributions, because they had been identified by the Scottish Child Abuse Inquiry (SCAI) or have otherwise been linked to the historical abuse of children in care in Scotland (e.g., through the Advance Payment Scheme, current applications, or the criminal courts).

We have no basis to compel contributions from those responsible, therefore the waiver is intended to encourage contributions by offering protection from ongoing and future litigation in exchange for a fair and meaningful contribution.

### **2. To design a financial redress Scheme which combines fair processes and fair outcomes to facilitate a degree of closure for:**

- survivors who choose to accept awards under the Scheme;
- 'those responsible' who choose to contribute fairly and meaningfully to the Scheme; and
- the Scottish Government.

In this respect, it is important to look at financial redress in the context of wider activity in delivering redress for survivors, including non-financial redress. Whilst financial redress is undoubtedly an important element, it is just one of a number of elements of the Government's overall approach to support survivors of historical child abuse in care (see 'Actions to help victims and survivors of historical child abuse in care').

One objective of the Scheme is to deal with the issue of *financial* redress fairly and, where possible, finally, in order for the Scottish Government and others to face up to

the profound injustices of the past. The Scheme was therefore designed as an alternative to litigation. To achieve this, awards under the Scheme are conditional on the applicant granting a waiver which brings to an end all current claims and prohibits all future claims against the Scottish Government and contributors that arise from abuse that falls within the scope of the Scheme.

**3. To fairly manage the financial risk inherent in establishing and funding a financial redress Scheme.**

It was important to ensure that in designing a financial redress Scheme, the needs and interests of survivors were fairly balanced with the interests of the Scottish Government and providers, many of whom are still in operation today delivering vital services to children and adults. One important aspect of this balance is ensuring that, insofar as possible, the Scheme provides survivors with redress, whilst simultaneously achieving a degree of closure for those responsible, and limiting ongoing exposure to costly and uncertain litigation<sup>2</sup>.

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<sup>2</sup> Applications to the Scheme are voluntary so there will remain survivors who choose to pursue litigation against those responsible for historic abuse they experienced as a child.

## Impact on applications to the Scheme

The inclusion of the waiver is not at odds with a survivor centred approach. Fairly balancing the interests of survivors with the interests of the Government is important for a number of reasons which do not in themselves conflict with the interests of survivors: managing costs and ensuring sustainability of the Scheme; and maintaining the credibility and integrity of the Scheme.

However, in order to understand what effect the waiver may have had on applications to the Scheme, a number of solicitors who work with applicants were approached to gather feedback. The Scottish Government have not approached survivors directly to ask for their feedback at this time, as the survivors that we routinely engage with are those who have taken the decision to apply to the Scheme and will be aware of the waiver requirements.

It would not be appropriate for the Scottish Government to contact individual survivors who have not applied to the Scheme to ask for their views on the waiver. This could be potentially confusing and re-traumatising for survivors, and may lead some to believe that the waiver requirement was to be changed.

Applicants to the Scheme are continuously supported throughout the process, and are strongly advised to seek independent legal advice when they are asked to sign the waiver. The solicitors working with applicants are therefore well placed to provide feedback on how the waiver is perceived by both potential applicants as well as those who are considering a payment offer from Redress Scotland.

A total of 6 questions were asked and responses were received from 4 law firms. The Scottish Government do not know how many survivors each firm represents. Therefore, while the feedback provides valuable qualitative information on the impact the waiver may have, it is not possible to say how many people it applies to. The answers received to each questions have been summarised below:

Q1 - When talking with survivors about applying to the Redress Scheme, or other options available to them, how big a factor is the waiver in influencing their decision?

- One firm highlighted that they continually provide advice and assess the viability of a civil claim while they work with a client. This reduces the negative impact of the waiver should the survivor accept a redress payment, as a positive outcome will have been achieved.
- Survivors may not be aware that they have a viable civil claim before they speak with a solicitor, and may not be fully aware of the impact of the waiver.
- One firm noted that they represent some survivors (less than 5) who are fundamentally opposed to signing a waiver and would rather apply to the Criminal Injuries Compensation Authority.
- Some survivors find the waiver overly legalistic and it can be seen as a form of “hush” money.
- One firm commented that the waiver is not a big factor for the survivors they represent, and that those who apply to the redress Scheme do so because they do not want to proceed through the courts.

Q2 - In your experience are survivors aware of the existence of the waiver and its' impact when they initially contact you about applying to the Redress Scheme?

- 2 firms commented on the limited awareness of the waiver and the impact it may have when survivors first speak with a solicitor.
- 1 firm commented that clients were more aware of the waiver when the Scheme first launched, while some of their more recent clients heard about the waiver for the first time from the solicitor.
- 1 firm believed that the majority of survivors they dealt with were aware of the waiver to some extent.

Q3 - Are you contacted by survivors, whom you've not provided with any other support throughout the application process, to provide advice on the waiver once they have received an offer from the Redress Scheme?

- 3 firms noted that they do have some survivors asking them for advice on the waiver after they have received an offer from Redress Scotland, however, the numbers are low.
- 1 firm had the opposite experience, stating that they regularly have survivors seeking advice on the waiver and what alternative options are available to them.
- A small number of survivors have approached one firm after signing the waiver, as they discovered they may have had a viable civil claim which they are now prohibited from bringing.

Q4 - In your experience has the existence of the waiver prevented any survivors from applying to the Redress Scheme?

- Responses summarised below.

Q5 - If so, are you able to elaborate on the rationale behind this/these decision(s) and whether this was the sole or major factor in the decision?

- 2 firms commented that the waiver has prevented some survivors from applying to the Scheme. They said that survivors do not want to forfeit their civil claims and that some are committed to waiting to see if a civil claim becomes viable.
- 1 firm noted that they do not believe the waiver prevents a survivor from applying when a civil claim is not available to them.
- 1 firm did not believe the waiver prevented survivors from applying.
- Some survivors see the waiver as too legalistic and restricts the options available to them.
- The waiver may invoke feelings of confidentiality.

Q6 - Thinking about any negative impact of the waiver on the number of applications to the Scheme, please provide any views on how these could be reduced.

- Payments made through the redress Scheme could be offset by any successful civil claims.
- Ensure survivors understand exactly what the waiver is and the impact it may have for them, and that is properly explained to them.
- Provide survivors with information on the alternatives that are available to them so they are able to make informed choices.

- The language of the waiver could be updated to use less strict legal language and to focus more on recognition.

This feedback shows that some survivors are not fully aware of the waiver and the implications it could have on potential civil claims should they choose to sign it. Whilst this may have impacted on the number of applications made to the Scheme, it has not translated into individuals refusing to sign the waiver. Indeed, as of 31st May 2023, 644 offers of financial redress had been made with 614 of those being accepted and waivers subsequently signed. Of the remaining 30 offers, 3 had an outstanding review ongoing and there were 27 offers still awaiting a response. These are all still within the legislative timescale to accept the offer.

Of note is the differing experiences of firms where survivors contact them to ask for advice on the signing of the waiver. The Scottish Government strongly recommends that each survivor takes independent legal advice before signing the waiver, and one firm has noted that they regularly have survivors contacting them for this, while three have stated they receive very few such queries.

There was no consensus among respondents on whether the waiver acted as a deterrent for survivors from applying to the redress Scheme. The Scheme has been designed to be an alternative to existing avenues for financial redress rather than a replacement, giving survivors the choice to pursue whichever remedy is most appropriate for them. It is not intended to replicate the payments that survivors may receive by pursuing civil litigation, rather it is a swifter and less adversarial alternative, with a lower evidential burden than a civil court process would require.

The comments provided under question 6 will be examined further by the Scottish Government as part of ongoing review of the redress Scheme and appropriate actions taken forward.

### Engagement with survivors

As set out in section 102 ([The Survivor Forum](#)) of the Act, a Survivor Forum (the Forum) has been established as part of the Scheme. This is open to all applicants and their representatives, and as of 31<sup>st</sup> May 2023, there are around 200 members. The Forum provides a mechanism for survivors to give feedback on the delivery and operation of the scheme, and this feedback is used to ensure the Scheme's continuous improvement.

The primary purpose of the Forum is not to act as an evaluation tool for Scottish Government, rather it is survivor led and ensures that their voice is heard and responded to. The anonymous feedback that is gathered through the Forum is shared with Scottish Ministers and senior management, and is used to improve the service.

Every survivor who applies to the scheme is given the opportunity to join the Forum, however, not all choose to do so for a variety of reasons. Survivors who are not members of the Forum are still able to provide feedback on their experience of the Scheme at any time through their case worker. This feedback is also shared with



Scottish Ministers and senior management to support ongoing improvements to the Scheme.

## Key principles

Redress Scotland will apply the key principles of *the presumption of truth* and *balance of probabilities* when they are tasked with the determination of an application to the Scheme. The panel members must start with the presumption that any information provided by the applicant in respect of the application is true and accurate to the best of the applicant's knowledge and belief. This presumption of truth is supportive of a non-adversarial and trauma informed approach to redress and recognises the challenges for individuals having to disclose personal and sensitive information about abuse.

The Act sets out the standard of proof against which an applicant's eligibility for a redress payment will be determined. This is the civil court standard of "balance of probabilities". Something is established on the balance of probabilities if the evidence presented is sufficient for the decision-maker to conclude that it is more likely than not to be true. All applications, either for fixed rate, individually assessed or next of kin redress payments are subject to the same standard of proof.

The presumption of truth is the starting point, but it is a presumption and not an absolute. In some circumstances, having considered the application, and any evidence submitted, it will be appropriate to rebut or overturn the presumption. In other cases, despite the presumption, the supporting evidence may not allow Redress Scotland to be satisfied to the required standard of proof.

The Scheme must be robust and credible to ensure survivors, contributing organisations and others, have confidence that the appropriate levels of redress payments are being paid to those eligible to receive them. The Scheme must treat all applicants with compassion, dignity and respect, whilst having adequate checks and balances to deter and detect fraudulent applications.

## Equalities monitoring

All public bodies, including the Scottish Government, have an obligation to eliminate discrimination, harassment, and victimisation relating to protected characteristics. Public bodies also have a duty to advance equality of opportunity between all people, ensuring that everyone is treated fairly regardless of these characteristics.

The Equalities Act 2010 designates the following aspects of personal identity as 'protected characteristics':

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership

- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

One way to ensure we are treating people fairly is to collect and analyse equalities monitoring data with a view to implementing improvements.

Therefore, Scotland's Redress Scheme offers applicants the opportunity to complete an Equalities Monitoring Form (Appendix C) when they make an application to the Scheme. Completing the Equalities Monitoring Form is entirely voluntary, as we recognise that not everyone will feel comfortable sharing this kind of sensitive information. The Form also asks for feedback on experiences of applying to the Scheme and work is on-going to capture additional feedback on different aspects of the Scheme. The information provided on the equalities monitoring form is held anonymously.

The way in which applicants receive the equalities monitoring form will depend on the way they choose to apply to the Scheme. Applicants who ask for a postal application form will receive the Equalities Monitoring Form in the application pack that is sent out to them. Applicants who apply via email will be sent an acknowledgement email or letter containing a link to an online equalities monitoring form, along with the instructions on how to access the form.

It is not possible to share a breakdown of data gathered via the equalities monitoring form, as this would be in conflict with the Privacy Notice signed by applicants. However, this data is kept under continuous review to satisfy ourselves that there is no detrimental impact on any group with a protected characteristic from applying to the Scheme, including where the inclusion of the waiver has resulted in any form of direct or indirect discrimination. Currently, there is no evidence to suggest any particular group is adversely affected by the waiver, or in being able to apply.

## Impact on contributors to the Scheme

### What is a contributor?

The Scottish Government believes that organisations which were responsible for the care of children at the time of the abuse should meaningfully participate in this national collective endeavour to recognise the harms of the past, by contributing to the Scheme both financially and in acting consistently with its' spirit and ethos. Seeking contributions from those organisations is consistent with the views expressed by survivors when the scheme was being designed.

Organisations which may be included as contributors to the Scheme include public authorities, voluntary organisations and other persons (other than individuals) who exercise or have exercised functions in relation to safeguarding or promoting the welfare of children or protecting or furthering their interests ("relevant organisations") as described in section 14 ([Scheme contributors](#)) of the Act. This would include, for example, an organisation which owned, managed or was otherwise connected to relevant care settings as described in section 20 ([Meaning of "relevant care setting"](#)) of the Act) or an organisation which placed children in a relevant care setting(s) it was responsible for. A broad range of organisations are therefore potential contributors to the Scheme

Organisations that were responsible for the care of children at the time of the abuse have been asked to participate in Scotland's Redress Scheme. This is what survivors said that they wanted in successive consultations. An organisation can only become a Scheme contributor, if, in the opinion of the Scottish Ministers, it has made, or has agreed to make a fair and meaningful financial contribution, and which, in agreeing to make such a contribution, acknowledges the wrongfulness of, and the harm caused by, the historical child abuse which took place (see section 14 of the Act).

When an organisation makes a fair and meaningful financial contribution, and acknowledges the harms of the past, they are known as a 'Scheme contributor'. All other organisations who do not become a contributor, may be referred to as a non-contributor or provider (of in-care provision) depending on the context they are being mentioned.

The Act requires the Scottish Ministers to maintain a public list of all contributors to the Scheme, and this includes the date they were added to the list, the financial contribution they are making or has agreed to make, and if relevant, a note which confirms if a contributor has been removed from the list and the date that this removal takes effect from. As of 31<sup>st</sup> May, there were [17 organisations participating in the redress Scheme](#) and to date, no contributor has been removed from the list.

The purpose of the contributor list is to show the organisations that are eligible for inclusion on the waiver as a result of them making a fair and meaningful contribution to the redress Scheme. The waiver applies to the organisation named as the contributor on the list, and not to any individual care setting.

In particular circumstances, Scheme contributors will be removed from the contributor list. Scheme contributors which fail to make the financial contribution which they had agreed to make may be removed from the contributor list in accordance with sections 15 ([Statement of principles in relation to contributor list](#)) and 16 ([Retrospective removal of scheme contributor from contributor list](#)) of the Act (including with retrospective effect where appropriate). In accordance with section 46 of the Act, where retrospective removal occurs, rights to pursue legal action against the Scheme contributor will be restored to applicants who signed waivers from the date that the Scheme contributor was retrospectively removed from the list.

### Applications linked to organisations

The amount of redress paid to survivors will not be affected by whether any particular organisation has contributed to the Scheme. An applicant will receive the redress payment that Redress Scotland determines they are entitled to, whether or not the organisation responsible for their care has contributed. Where an organisation does not contribute, the Scottish Government will meet any shortfall in Individually Assessment Payments (IAP), including in circumstances where this may mean paying the full redress payment. In addition, Scottish Government will fund the total value of any redress payments made in relation to Next of Kin (NoK) and Fixed Rate Payments (FRP).

As of 31 May 2023, Scotland's Redress Scheme had received 2445 applications since the Scheme opened 8 December 2021. Of those, 614 applicants have accepted a redress payment offer, as determined by Redress Scotland. At the time of publication, redress payments of more than £30,000,000 have been made.

Within the applications that have resulted in a determination from Redress Scotland, as of 31<sup>st</sup> May 2023, they have been allocated to organisations as follows:

- 468 applications have been linked to at least 1 contributor
  - This breaks down as follows: 39 NOK, 121 FRP, and 308 IAP
  - 251 of those IAP applications only named contributors
- 3 contributors have not been named in an application which has led to a determination
- 208 applications have been linked to at least 1 organisation not listed as a contributor to the Scheme
  - This breaks down as follows: 9 NOK, 46 FRP and 153 IAP
  - 99 of those 153 IAP applications only named a non-contributor
- 24 non-contributors have been named in at least 1 application which led to a determination

In monetary terms, the total value of IAP applications where only a contributor was named is c. £11,300,000, c. £2,900,000 for IAP payments where both contributors and non-contributors are named (where approximately 1/3 of the value of each

payment was unfunded) and c. £13,500,000 for IAPs where only a non-contributor was named (where approximately 2/3 of the value of each payment was unfunded).

At the time of publication, the majority of all application types were linked to one or more contributors to the Scheme.

### Factors which influence contributions

During the passage of the Bill, some potential contributors expressed initial support for the waiver, but as scrutiny of the Bill proceeded, it became clear that other factors were affecting their decision-making on whether they would become a Scheme contributor. For some of those organisations, despite their general support for the waiver to be included in the Bill, the waiver may not have proved to be essential or an overwhelming incentive for them to join. It is not possible to quantify this as those who have chosen not to participate as a contributor do not disclose their rationale and, in most circumstances, have taken legal advice before confirming their decision and as such, choose to keep their considerations private.

The Redress, Relations and Response Division of the Scottish Government issued a survey<sup>3</sup> (Appendix D) with accompanying Privacy Notice (Appendix E) to all organisations who had engaged with the Scheme in some capacity, to better understand the impact the waiver had had on their decision to become a contributor. A total of 7 responses (6 contributors, 1 non-contributor) were received.

The contributor response rate of 6/16 (excluding Scottish Ministers) enables a good assessment of the impact of the waiver on their decision whether or not to join the Scheme, however, each contributor's circumstances will be unique to them and we should not infer that their views are generalisable or in alignment with those who did not participate in the survey. The same limitation exists for the views of the 1 non-contributor that participated, and considered in light of the 24 non-contributors we know to have been named in at least 1 application to the Scheme which resulted in a redress payment determination by 31<sup>st</sup> May.

In response to questions 2, 5, 9 and 10, the survey found:

- 6 responders said the waiver was 'very' or 'somewhat' important in reaching their decision on whether or not to become a contributor, with 1 saying it was 'not very important'.
- 5 responders said they would have been 'likely' to join the Scheme, had the waiver not been included, and 2 said they would have been 'unlikely' – nobody said they would have been 'very likely'.
- All 7 responders confirmed they are not aware of any attempts by an applicant who had received a redress payment attempting to pursue civil action against them.
- 4 responders knew about the provisions within the Act to seek information about a waiver (section 88 ([Power to share information with third parties](#))).

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<sup>3</sup> the survey closed 30<sup>th</sup> April 2023 at 5 p.m

In response to various questions within the survey, responders shared the following factors as influencers in their decision to participate in the Scheme, in addition to the waiver:

- Access to relevant insurance which may apply in the event of civil action being raised by a survivor
- Financial sustainability of their organisation, and impact on ability to deliver current and future services
- Whether or not their charitable aims/ activities make it possible for them to use funds for this purpose
- Their assessment of the likelihood of applications being made where they are named, the number of applications, and the severity of abuse (which affect total value of redress payments linked to them)
- Consideration of their moral or ethical obligation to survivors, a commitment to 'making amends' for their past and acknowledging this as 'the right thing to do'
- Awareness of previous relevant payments over £100,000 being made to potential applicants which would mean they would not receive a redress payment in the event of applying to the Scheme<sup>4</sup>
- Whether or not they could agree what a 'fair and meaningful' contribution was, and whether or not either of the contribution models, 'Payments Determined' or 'Defined Contributions', were suitable for them
- The impact the waiver may have on survivors and whether this represented as a barrier to them in joining the Scheme, with some saying the Scheme was a positive as it was less adversarial and more likely to result in financial redress than other options available to survivors

From their views, it is clear that the waiver was an important factor in all considerations, to a greater or lesser extent for some, depending on other circumstances affecting their organisation. For some, their over-arching obligation to make amends was paramount, but this had to be considered alongside the financial realities of making and sustaining contributions to the Scheme, and consequently, on their ability to maintain current services. For others, the waiver was of less significance where they felt they had adequate insurance to cover them in the event of a claim being raised against them in court. For many, the uncertainty of numbers of applications and value of payments was a serious consideration, and the inclusion of the waiver was in some circumstances, seen as of critical importance to their deliberations.

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<sup>4</sup> the relevant payment will be deducted from the Gross redress payment determined and the remaining Net figure is then allocated in line with the [Statement of Principles](#).

## Next steps

By considering the contributor list and financial contributions pledged, statistics in relation to applications received and redress payment allocations, alongside the views of providers and legal representatives of survivors, it is our assessment that the waiver has delivered on the three key purposes for which it was included in the Scheme. However, there is more that can be done to continually build on the effectiveness of the Scheme, in relation to the waiver. The following set of actions have risen from the work undertaken to prepare this report:

- It is evident that not all organisations are aware that, were they to join the Scheme as a contributor, they would be able to request information under s.88 of the Act. Work will take place across 2023 and beyond the lifetime of the Scheme to better promote this provision to ensure survivors and providers are aware of this.
- Continue to promote both models of participation with the Scheme, enabling potential contributors to decide which, if any, represents the best approach for them to make a fair and meaningful contribution to the Scheme.
- Ensure non-contributors are kept informed of the number of applications which names a setting they were responsible for as a place of abuse, to enable full and proper consideration of their participation in the Scheme as a contributor.
- Improve engagement and communication with non-contributors who operated settings which may be eligible under the Scheme to ensure they are aware of and are giving consideration to joining the Scheme, in the event of being named in a successful application for redress.
- Continue to promote understanding of the waiver amongst survivors, and at key points during the application process, and continue to emphasise the importance of seeking independent legal advice.
- Whilst the waiver is by its nature a legal document which does need to contain specific information, we will explore whether or not an accompanying information note would improve understanding of the waiver.

## Actions to help victims and survivors of historical child abuse in care

Since 2014 the Scottish Government has continued to work with survivors and others to take steps to address a number of issues faced by survivors of historical child abuse in care, as part of their wider approach to non-financial redress. The steps that have been taken have included:

- establishing the [National Confidential Forum](#) and the independent [Scottish Child Abuse Inquiry](#) in 2015;
- [SurvivorScotland's](#) strategic outcomes and priorities were updated in 2015;
- launching the [In Care Survivor Support Fund](#) in 2015, which was renamed [Future Pathways](#) in 2017, to better enable survivors of abuse in care to choose services tailored to their individual needs and offer access to a discretionary fund;
- supporting the passage of the [Apologies \(Scotland\) Act 2016](#)
- introducing the Bill that became the [Limitation \(Childhood Abuse\) \(Scotland\) Act 2017](#), removing the three year limitation period;
- launching a new Survivor Support Innovation and Development Fund for survivor services in 2017, which from April 2020, was replaced by a new four year funded initiative, the [Survivors of Childhood Abuse Support Fund](#);
- announcing the National Trauma Training Programme in 2018;
- [giving an apology](#) “on behalf of the Scottish Government” to survivors of abuse in care in Scotland, by the Deputy First Minister before Parliament in 2018; and
- launching an [Advance Payment Scheme](#) in 2019 to enable certain survivors to begin receiving financial redress. The Advance Payment Scheme is now closed and is replaced by [Scotland's Redress Scheme](#)
- establishing the ‘Redress Support Service’ in 2021 to support applicants throughout the application process – delivering emotional support, practical support and support to access relevant records.
- initiating the individual apology process in 2021 - to provide applicants the opportunity to request an apology from any of the organisations named in their application – including the option to request an individual apology from the Scottish Government.
- establishing the Survivor Forum in 2021 as set out in section 102 of the [Redress for Survivors \(Historical Child Abuse in Care\) \(Scotland\) Act 2021 \(legislation.gov.uk\)](#)



## Applying for redress

Find out more about Scotland's Redress Scheme, including who is eligible, how to apply and where to access support at the [mygov.scot website](https://mygov.scot) - or call 0808 175 0808.

For a [list of relevant care settings](#) see the statutory guidance on eligibility.

## Share your views on Scotland's Redress Scheme

If you are an applicant you can share your views on the Scheme through a new survivor forum being set up. Email [redress@gov.scot](mailto:redress@gov.scot) for more information.

## Support for survivors

We recognise that the content of this report may be distressing and that it may bring back difficult or traumatic experiences. This can be particularly difficult if you do not have someone to talk to about your feelings.

Support is available from a number of sources.

### Redress Emotional Support Helpline

You can contact the Redress Emotional Support Helpline on 0800 211 8403. Calls to the helpline are usually free.

You'll be asked to leave a message and someone will call you back.

If you call before 5 pm someone will call you back on the same day. If you call after 5 pm or at the weekend, someone will call you back on the next working day.

The helpline has been set up to support people applying for Scotland's Redress Scheme. It offers non-specialist emotional support for worries you may have when completing your redress application. You can also call the helpline even if you haven't yet made an application.

Workers on the helpline are not employed by the Scottish Government and do not have access to your redress application. If you need an update on your application please contact a caseworker on 0808 175 0808.

### More support

There are other organisations you can contact for support:

#### Samaritans

Call free on 116 123 - 24 hours a day

Breathing Space

Call free on 0800 83 85 87

Weekdays: Monday to Thursday, 6pm to 2am

Weekend: Friday 6pm to Monday 6am

NHS 24

Call free on 111 - 24 hours a day

**REDRESS FOR SURVIVORS (HISTORICAL CHILD ABUSE IN CARE)  
(SCOTLAND) ACT 2021**

**WAIVER**

This waiver relates to the redress scheme established by the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (“the Act”).

I [full name of applicant]

living at [address of applicant]

Agree that:

(1) I have been given a list of relevant scheme contributors. “Relevant scheme contributors” are the scheme contributors on the contributor list on the date that it was determined by a panel of Redress Scotland that I am eligible for the redress payment to which this waiver relates (“the relevant date”). If a scheme contributor is later removed from the contributor list with retrospective effect, the question of whether they were on the list on the relevant date is to be based on the list as retrospectively amended. “Scheme contributor” and “contributor list” have the meanings set out in section 14(2) of the Act.

(2) I have been given the information specified in regulation 3 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Form and Content of Waiver etc.) Regulations 2021.

(3) If I have already commenced civil proceedings, I will abandon them to the extent that they are relevant civil proceedings (within the meaning of section 46(6) of the Act).

(4) Where I have already commenced relevant civil proceedings, I acknowledge that under section 50(2)(b) of the Act my right to a redress payment will not arise until the Scottish Ministers are satisfied that I have abandoned or will abandon such relevant civil proceedings, and that they will require a copy of the order of the court which dismisses the case or such other document as they may specify in order to be satisfied of this.

(5) I waive and forever discharge any claim or right to bring any relevant civil proceedings against relevant scheme contributors and the Scottish Ministers in any jurisdiction. This applies whether or not any right of action currently exists or may exist in future (whether under common law, statute, contract, or otherwise). It also applies whether such claims or rights are, or could be, known to me or in my contemplation at the time I sign this waiver. However, it does not prevent me from bringing future civil proceedings against a scheme contributor who has been removed from the contributor list with retrospective effect, with the result that they are no longer a relevant scheme contributor.

Signed -----

Dated -----

## Appendix B: Contributors

- [The Scottish Ministers](#)
- [Scottish local authorities](#)
- [Aberlour Child Care Trust](#)
- [Barnardo's](#)
- [The Charity Trustees of the Church of Scotland \(the Unincorporated Entities\), \(Scottish Charity No SC011353\), including the Church of Scotland Social Care Council \(also known as Crossreach\) and its predecessors in connection with the relevant care settings operated on behalf of the General Assembly of the Church of Scotland by CrossReach](#)
- [The Daughters of Charity of St Vincent de Paul](#)
- [East Park School, Glasgow](#)
- [Harmeny Education Trust Limited](#)
- [NHS Scotland Boards](#)
- [Poor Servants of the Mother of God](#)
- [Rossie Young People's Trust](#)
- [The Royal Blind Asylum and School Edinburgh, Known as Sight Scotland](#)
- [The Royal Scottish Society for the Prevention of Cruelty to Children \(known as Children 1st\)](#)
- [The Salesians of Don Bosco](#)
- [Save the Children UK](#)
- [Scottish Prison Service](#)
- [The Sisters of Nazareth](#)

# Appendix C: Equalities Monitoring Form

1. What is your age?

- under 18     18 to 29     30 to 39     40 to 49  
 50 to 59     60 to 69     70 to 79     80+  
 Prefer not to say

2. What is your ethnic group?

Choose ONE section from A to G, then choose ONE box which best describes your ethnic group or background.

**A – White**

- Scottish     Irish     Polish  
 Other British     Gypsy/Traveller  
 Other (please write in) \_\_\_\_\_

**B – Mixed or multiple ethnic groups**

- Mixed or multiple ethnic (please write in) \_\_\_\_\_

**C – Asian, Asian Scottish or Asian British**

- Pakistani, Pakistani Scottish, or Pakistani British  
 Indian, Indian Scottish, or Indian British  
 Bangladeshi, Bangladeshi Scottish, or Bangladeshi British  
 Chinese, Chinese Scottish, or Chinese British  
 Other (please write in) \_\_\_\_\_

**D – African**

- African, African Scottish or African British  
 Other (please write in) \_\_\_\_\_

**E – Caribbean or Black**

- Caribbean, Caribbean Scottish, or Caribbean British  
 Black, Black Scottish, or Black British  
 Other (please write in) \_\_\_\_\_

**F – Other ethnic group**

- Arab, Arab Scottish or Arab British  
 Other (please write in) \_\_\_\_\_

**G – Prefer not to say**

- Prefer not to say

7. Which of the following best describes how you think of yourself?

- Heterosexual/Straight     Gay/Lesbian  
 Bisexual  
 In another way (please write in) \_\_\_\_\_  
 Prefer not to say

8. What religion, religious denomination or body do you belong to?

- None     Church of Scotland  
 Roman Catholic     Other Christian  
 Muslim     Buddhist  
 Sikh     Jewish  
 Hindu     Pagan  
 Another religion (please write in) \_\_\_\_\_  
 Prefer not to say

**About your experience with Scotland's Redress Scheme**

It would help Scotland's Redress Scheme if you could let the scheme know about your experience so far.

9. How would you rate your experience of applying?

- Very good     Good     Neither poor nor good     Poor     Very poor

10. If you have any other feedback about Scotland's Redress Scheme, you can write it in the box below.

3. How would you describe your gender identity?

- Man     Woman  
 In another way (if you would like to, please write what other words you would use)  
 \_\_\_\_\_  
 Prefer not to say

4. Do you consider yourself to be a trans person?

- ("Trans" is a term used to describe people whose gender is not the same as the sex they were assigned at birth.)  
 Yes     No     Prefer not to say

5. Do you have a physical or mental health condition or illness lasting or expected to last 12 months or more?

- Yes     No     Prefer not to say

6. If yes, does this condition or illness affect you in any of the following areas? (select all that apply):

- Vision (for example blindness or partial sight)  
 Hearing (for example deafness or partial hearing)  
 Mobility (for example walking short distances or climbing stairs)  
 Dexterity (for example lifting or carrying objects, using a keyboard)  
 Learning or understanding or concentrating  
 Memory  
 Stamina or breathing or fatigue  
 Socially or behaviourally (for example associated with Autism, Attention Deficit Disorder or Asperger's Syndrome)  
 None of the above  
 Other (please write in) \_\_\_\_\_  
 Prefer not to say



Equalities survey (optional)

## Scotland's Redress Scheme Equalities Survey (optional)

This survey asks you information about yourself. Your answers to these questions will not affect any decisions about your application and will not be seen by your case worker or anyone making decisions about your application.

**The survey is optional.**

You can choose whether or not to complete it. If you complete it, you should return it with your application.

The information that you give in the survey will be used to help Scotland's Redress Scheme understand who is applying to the scheme. It will also be used to find out if any groups of people have a different experience with the scheme. If they are, Scotland's Redress Scheme can make changes to the application process to make sure that everyone who applies is treated equally.

Please remember that you should answer the questions about yourself and not anyone you are applying on behalf of. You can respond "prefer not to say" at any time, for any question in this survey.

For each question, please place a cross in the box next to the answer that is most accurate for you.

Scotland's Redress Scheme is committed to protecting and respecting your privacy. To find out more about how Scotland's Redress Scheme uses your data you can read the privacy notice on [mygov.scot/redress](http://mygov.scot/redress)



Appendix D: Provider Survey

1. Are you responding on behalf of an organisation [listed as a Scheme contributor](#)?  
Yes – No
2. How significant was/is the waiver in reaching your decision on whether or not to become a contributor to the Scheme?  
- Very important - somewhat important – not very important - Not at all important
3. Please explain your answer  
Open text box
4. What other factors were significant, other than the waiver, in deciding whether or not to become a contributor to the Scheme?  
Open text box
5. Had the waiver not been included within the Scheme, how likely would it have been for your organisation to decide to become a contributor?  
Very likely – fairly likely – not very likely – not at all likely
6. Please explain your answer  
Open text box
7. When considering whether or not to become a contributor to the Scheme, did you consider what, if any, impact the waiver may have on applications to the Scheme and how did this effect your considerations?  
Open text box
8. Thinking about any negative impact of the waiver on the number of applications to the Scheme, please provide any views on how these could be reduced.  
- Open text box
9. Since becoming a contributor, to your knowledge, have any applicants who received a redress payment attempted to pursue civil action against you despite the existence of the waiver?  
Not a Scheme contributor – Yes – No
10. Are you aware you can section 88 of the Act provides provisions to discover whether an applicant has signed a waiver and, if so, the information contained in that waiver?  
Yes – no
11. If you have made use of those provisions, can you describe your experience of the process of identifying the existence of a signed waiver and how it could be improved  
Open text box
12. Please provide any other comments you may have on the impact of the waiver on either applications to the Scheme, or in encouraging public authorities, voluntary organisations and other persons to become Scheme contributors.

## **Waiver Report**

Section 48 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 requires Scottish Ministers to publish a report on their assessment of the impact and effectiveness of the waiver under section 46 of the Act, and the steps they intend to take as a result of that assessment. The report must be published 18 months after section 46 came into force. The report must set out the effectiveness of the waiver in encouraging public authorities, voluntary organisations and other persons to become Scheme contributors.

We are inviting all Scheme contributors and non-contributors who have engaged with the Scheme to participate in this survey.

The survey consists of 12 questions and should take no more than 10 minutes to complete.

### **How will Scottish Government use survey responses you provide?**

Responses provided within the survey will be accessed by relevant officials in the Redress, Relations and Response Division for the purposes of preparing the Waiver Report.

### **Will personal data be collected?**

Scottish Government will not be using your personal data in any of the analysis. No personal data will be collected, the responses to the survey will not be linked to your email address and all results will be fully anonymous.

It will not be possible to withdraw your responses after they have been submitted as it will not be possible for us to identify them within the survey.

### **What is the Scottish Government's legal basis for processing your personal data?**

The collecting and processing of this information is a proportionate response to perform a task in the public interest (GDPR article 6(1) (e)).

### **Is my organisation required to complete the survey?**

Participation in this survey is entirely voluntary and all questions can be skipped.