



The Scottish Parliament  
Pàrlamaid na h-Alba

**SPICe**

The Information Centre  
An t-Ionad Fiosrachaidh

**SPICe Briefing**

**Pàipear-ullachaidh SPICe**

# **Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill**

**Angus Evans and Andrew Feeney-Seale**

The Bill is aimed at setting up a scheme (open for five years) for providing financial and non-financial redress to survivors of historical child abuse in care settings in Scotland.



**16 September 2020**  
SB 20-62

# Contents

<b>Executive Summary</b>	<b>3</b>
<b>What is the background to the Bill?</b>	<b>6</b>
<b>What are the Bill's main objectives?</b>	<b>8</b>
<b>How long will the scheme last for?</b>	<b>9</b>
<b>How will Redress Scotland be structured?</b>	<b>10</b>
<b>What functions will Redress Scotland have?</b>	<b>11</b>
<b>What will the Scottish Government's role be in the scheme?</b>	<b>12</b>
<b>What care settings will be covered by the scheme?</b>	<b>14</b>
<b>Who will be eligible for financial redress payments?</b>	<b>16</b>
Children and next of kin	16
What is the historical cut-off point for the scheme?	17
What kind of abuse is covered by the Bill?	17
Applicants with convictions for serious criminal offences	19
<b>What financial payments can the scheme make?</b>	<b>21</b>
Deductions for prior payments	22
How will the waiver procedure work?	22
<b>How will applications be assessed and what sort of evidence will be needed?</b>	<b>24</b>
<b>Who will make financial contributions to the scheme and what is the "contributor list"?</b>	<b>29</b>
Changes to charity law	30
<b>How will the rules on non-financial redress work?</b>	<b>32</b>
<b>What will the scheme's potential costs be?</b>	<b>33</b>
Set up and operation of Redress Scotland	33
Costs of financial redress	34
Costs of non-financial redress	35
Costs incurred by other organisations	36
<b>Bibliography</b>	<b>38</b>

# Executive Summary

The Bill proposes setting up a time-limited scheme (open for five years after the relevant section in the Bill comes into force) for the provision of financial and non-financial redress to survivors of historical child abuse in care settings in Scotland.

The scheme is designed to provide survivors with a choice in how to pursue financial payment and is an alternative route to traditional adversarial civil litigation.

To be provided with financial redress payments, applicants would have to give up the right to bring court cases against bodies who were responsible in the past for the care of children at the time they were abused (i.e. religious bodies, charities, various arms of the state) and who have provided "fair and meaningful" financial contributions to the scheme.

The expectation is, therefore, that responsible bodies will pay in to the scheme so as to be protected from legal cases.

Although there is considerable uncertainty, the central scenario of the Scottish Government's modelling suggests that there could be 11,000 redress payments from survivors, and a further 1,000 from next of kin.

According to [the Policy Memorandum](#)<sup>2</sup> (paragraph 6), the main objective behind the scheme is to:

"... acknowledge and provide tangible recognition of harm as a result of historical child abuse in various care settings in Scotland."

[The Policy Memorandum](#) also states that:

"The scheme provides elements of accountability, justice, and financial and non-financial redress for those who wish to access it. The Bill seeks to put in place a scheme which treats survivors with dignity and respect and which faces up to the wrongs of the past with compassion."

The estimated total costs of the Bill are around £408m for the duration of the scheme (see the [section on the scheme's potential costs](#)).

Paragraph 49 of [the Policy Memorandum](#) summarises the main elements of the scheme. Rather than reworking this summary, it is reproduced below for ease of reference.

"49. Key aspects of the design and delivery of the financial redress scheme include:

- **Independent decision making:** a non-departmental public body, Redress Scotland, will be created to independently assess and make decisions on applications for redress.
- **Administration and processing:** A division of the Scottish Government will carry out the administration of the scheme, the processing of applications and the making of redress payments.
- **Eligibility:** the scheme is for survivors of historical child abuse in relevant care settings in Scotland. Historical in this context means abuse which took place before 1 December 2004.
- **Time period:** the scheme will be open to accept applications for five years, although the Scottish Ministers will have the power to extend that.
- **Payment structure:** the scheme will adopt a combination payment approach and offer survivors the choice to apply for a fixed rate redress payment or an individually assessed redress payment.

- **Payment levels:**

Fixed rate redress payment **£10,000**

Individually assessed redress payments

**Level 1 £20,000**

**Level 2 £40,000**

**Level 3 £80,000**

- **Assessment:** the level of each individually assessed redress payment will be determined following consideration of the nature, severity, frequency and duration of abuse along with all other relevant matters. An assessment framework will be published as guidance to provide transparency and consistency in decision making.
- **Evidence:** the scheme will be robust and credible to ensure that survivors, providers and others can have confidence in its processes and outcomes.
- **Waiver:** redress payments will be conditional upon the applicant signing a waiver, relinquishing their right to continue or raise civil actions in respect of the abuse, against the Scottish Government or those organisations that have made fair and meaningful financial contributions to the scheme.
- **Financial contributions:** fair and meaningful financial contributions to the redress scheme are sought from those organisations who were responsible for the care of children at the time of the abuse, whether providing care directly or otherwise involved in the decision making processes and arrangements by which the child came to be in care.

- **Legal costs:** subject to appropriate limits, the legal costs for applicants will be funded by the redress scheme.
- **Next-of-kin:** a restricted category of next of kin of deceased survivors will be eligible to apply for the fixed rate redress payment where the survivor died on or after 17 November 2016, the date on which the DFM made a statement to Parliament committing to consult on the provision of financial redress to survivors.
- **Non-financial redress:** the scheme will offer access to acknowledgment, apology and support in addition to redress payments."

It is important to note that any individually assessed redress payment includes the fixed rate redress payment. Consequently, maximum total payments cannot be higher than £20,000, £40,000 or £80,000.

# What is the background to the Bill?

As outlined in detail in [the Policy Memorandum](#),<sup>i</sup> in recent times there has been a growing recognition in Scotland about the child abuse that occurred in the past in residential care institutions such as children's homes and approved schools, as well as in foster care and where children were boarded out.

According to [the Policy Memorandum](#):

“ For too long, survivors of abuse were not acknowledged and the truth of their abuse neither accepted nor acted upon, for some compounding the effects of their childhood. The wrongs of the past must be addressed, financial redress is an important part of doing that. ”

Paragraph 5

Over the years, various inquiries have taken place. And most recently, the [Scottish Child Abuse Inquiry](#) which commenced in 2015 has published [case studies](#)<sup>3</sup> detailing many instances of physical, sexual and emotional abuse as well as neglect.

[The Policy Memorandum](#) summarises the issue of child abuse in care as follows:

“ Certain care establishments were often places of fear, hostility and confusion where feelings of isolation and vulnerability could be commonplace. Children who spoke up were often not believed. Many did not speak up because they were unable to, or they thought the abuse that they experienced was ‘normal’. For some, the abuse was part of a “regime of punishment and control that was at the core of the institution in which they lived”. For others, the conduct of individual perpetrators of abuse went undetected or unchecked. But for all who were abused, they were failed by the very systems in place to protect them.”

Paragraph 29

in recent times, there have been a range of public responses to this issue. These include:

- An apology from the Scottish Government on behalf of the people of Scotland by the then First Minister Jack McConnell on 1 December 2004
- Work by the [Scottish Human Rights Commission](#) in partnership with the Centre for Excellence for Children's Care and Protection (CELCIS) on the development of an [Action Plan on Justice for Historic Abuse of Victims of Children in Care](#)<sup>4</sup>
- [Future Pathways](#), established in 2016, which provides support to survivors of abuse in care
- Changes to legislation, for example
  - Regulations and improved standards for a range of children's care settings
  - the Limitation (Childhood Abuse) (Scotland) Act 2017, which removed the three year time limit on personal injury claims in respect of childhood abuse

---

<sup>i</sup> See paras 27-49

The Bill builds on these responses and proposes the setting up of a scheme which would provide financial redress to survivors of abuse in care.

It follows from:

- A consultation with survivors of abuse in care, commissioned by the Scottish Government and undertaken by the [Interaction Action Plan Review Group](#) in partnership with CELCIS which, in September 2018, [recommended a redress scheme](#)<sup>5</sup>
- An unreserved apology by the Deputy First Minister on behalf of the Scottish Government on 23 October 2018 which also committed to establish a financial redress scheme for survivors of abuse in care
- The Scottish Government setting up a non statutory [Advanced Payment Scheme](#) on 25 April 2019 which provides for an *ex gratia* payment of £10,000 to those who suffered abuse in care in Scotland before 1 December 2004, and who either have a terminal illness or are aged 68 or over (initially set at aged 70 or over)
- The Scottish Government carrying out a [consultation exercise in September 2019](#)<sup>6</sup> which sought views on proposals for a financial redress scheme. An analysis of the responses to the consultation, as well as responses submitted, can be found on the [website of the Scottish Government](#)

The Bill is also informed by redress schemes which have been set up elsewhere, most recently, for example, in Northern Ireland in the form of the [Historical Institutional Abuse Redress Board](#).

# What are the Bill's main objectives?

The Bill's objective is to provide financial redress to survivors of historical child abuse in relevant care settings in Scotland (these are defined in section 18 of the Bill). [The Policy Memorandum](#) summarises the Bill's aims as follows:

“ For too long, survivors of abuse were not acknowledged and the truth of their abuse neither accepted nor acted upon, for some compounding the effects of their childhood. The wrongs of the past must be addressed, financial redress is an important part of doing that. ”

Paragraph 5

To achieve these aims, the Bill proposes setting up an independent, non-departmental public body to be known as Redress Scotland, which would assess and make decisions on applications for financial redress.

The actual administration of the scheme - i.e. the processing of applications and the making of payments - would, however, be carried out by a division of the Scottish Government.

In addition to financial redress, the scheme would also offer access to non-financial redress such as acknowledgement, apology and therapeutic support.

Although not provided for in the Bill, the Scottish Government also intends to set up a body to be known as "the Survivor Forum". Its role will be to provide a mechanism to ensure the views of survivors are reflected in the implementation and delivery of the redress scheme. According to [the Policy Memorandum](#) (para. 26) it will not, however, "have any part in the independent decision-making process" nor involvement in individual applications.

The Bill would also dissolve the National Confidential Forum (NCF) which was set up by the Scottish Government in 2014 to listen to and collect the experiences of adults who were in institutional care as children.

## How long will the scheme last for?

**The scheme will be a temporary one. It will only be open to accept applications for five years after the relevant section of the Bill comes into force.**

The rationale behind this five year limit is that this should provide sufficient time for individuals to learn about the scheme and submit a claim, whilst providing for closure

The Bill does, however, give the Scottish Ministers the power to extend this period by regulations (which will be subject to the Scottish Parliament's approval under the affirmative procedure) .

# How will Redress Scotland be structured?

Section 3 of the Bill proposes setting up a separate body, Redress Scotland, whose main role would be to assess and make decisions on applications for financial redress.

It would be set up as a non-departmental public body (NDPB) which paragraph 50 of the Policy Memorandum states is, "to ensure that decision-making is independent of the Scottish Government".<sup>ii</sup>

The Bill also includes a separate section focused on Redress Scotland's independence - namely that, in performing its functions, it should not be subject to the direction or control of any member of the Scottish Government (section 6).

Redress Scotland would consist of a Chair and at least five other members appointed for terms of three to five years by the Scottish Ministers.

A small secretariat will support Redress Scotland, and the Bill gives the Scottish Ministers the power to dissolve the body once its work is complete (section 95).

There will be a public appointments process for Redress Scotland. Appointments will be made where applicants have the, "skills, knowledge and expertise which the Scottish Ministers consider relevant to the carrying out of the body's functions".<sup>iii</sup>

The intention is to, "appoint persons with relevant expertise in the fields of emotional and psychological trauma, law, social work and health" (Paragraph 52 of the Policy Memorandum).

Further details on Redress Scotland's structure can be found in Schedule 1 of the Bill.

---

ii For more details on NDPBs see [the Scottish Government's guide to public bodies](#)<sup>7</sup>

iii Paragraph 1 of Schedule 1 of the Bill

# What functions will Redress Scotland have?

## Decisions on applications for financial redress

Redress Scotland's core function will be to make decisions on applications for financial redress - both fixed rate payments and individually assessed payments (see section 34 of the Bill).

The [Policy Memorandum](#) states that:

“ Decisions in respect of fixed rate payments will be made by panels of at least two members. Decisions in respect of individually assessed payments will be made by panels of at least three members. This will involve assessing the eligibility of applicants, as well as determining the relevant payment level for an eligible claim for an individually assessed payment. It is intended that at least one legally qualified member will sit on each panel. ”

Paragraph 53

## Reviews

Separate panels will also have the role of reviewing Redress Scotland's decisions on applications for financial redress (for details see sections 52-57 of the Bill).

# What will the Scottish Government's role be in the scheme?

## Administration of the scheme

The Bill makes Redress Scotland independent of the Scottish Government and gives it the power to take decisions on applications for financial redress.

The actual administration of the scheme - i.e. the processing of applications and the making of payments - will, however, be carried out by a division of the Scottish Government.

To reflect this arrangement, the Bill contains the following provisions:

- A duty on the Scottish Ministers to provide administrative support to Redress Scotland (section 9)
- A duty on the Scottish Ministers and Redress Scotland to cooperate with each other when exercising their respective functions (section 10)
- The ability of the Scottish Ministers and Redress Scotland to share information with each other in connection with the scheme (section 11)

According to [the Policy Memorandum](#), the obligation to provide "administrative support" in section 9 of the Bill means that the Scottish Government will take on the following role:

“ This will include providing information and guidance to potential applicants, arranging any required support to make an application, receiving applications, transmitting applications to Redress Scotland for decision, liaising with applicants to request further information as the decision making panel require, exercising the power to obtain information from care providers and others to support a survivor’s application, and ultimately making payments as advised by Redress Scotland. ”

Paragraph 56

[The Policy Memorandum](#) explains that the reason for splitting up the decision-making role and administration of the scheme is as follows:

“ Of all the options, the ‘small NDPB and Scottish Government Division’ model clearly offered the best value for money and the lowest risk of delay to the scheme opening due to the ability to rely heavily on existing Scottish Government corporate resources. It also allowed for effective governance, with a suitable degree of independence from government for those making decisions on redress applications, and a strong survivor voice. The model is more straightforward than some of the other options, with a clear and easily-communicated division of responsibility between the two organisations.”

Paragraph 69

## Non-financial redress

Another crucial part of the scheme is the provision of non-financial redress to survivors of abuse.

The responsibility for this part of the scheme will lie with the Scottish Government as the Bill gives the Scottish Ministers a general power to fund emotional and psychological support and counselling (sections 85 and 86 of the Bill).

# What care settings will be covered by the scheme?

**Applications for redress payments can be made in relation to "one or more relevant care settings in which the abuse took place" (section 27(2) of the Bill).**

"Relevant care setting", which has to be in Scotland (section 16), is defined in section 18 of the Bill. It covers:

1. **Residential institutions** in which the day-to-day care of children was provided by or on behalf of a person other than a parent or guardian of the children resident there. "Residential institution" means:

- a. a children's home
- b. a penal institution
- c. a residential care facility
- d. school-related accommodation
- e. secure accommodation<sup>iv</sup>

(each of these individual categories is defined further in section 19 of the Bill)

2. **Places where a child resided while being fostered or boarded-out,**<sup>v</sup> but not including situations where this occurred:
  - a. with a relative or guardian, or
  - b. under arrangements between a parent or guardian of the child and another person unless that other person was a public authority or a voluntary organisation whose function was to safeguard or promote the welfare of the child or protect his/her interests.

**This is a broad definition which is designed to cover situations where the state takes responsibility for children under its care.** In other words both:

- children who were in an institutional or public care setting because their families were unable to look after them (e.g. a children's home or in foster care); and also
- children who were in care due to some sort of intervention by a body exercising public functions (e.g. a court order placing a child in an approved school).

---

<sup>iv</sup> I.e. Children and young people who are placed in secure accommodation through the Children's Hearings System, on welfare grounds or through the courts. See [the information on youth justice on the website of the Scottish Government](#).<sup>8</sup>

<sup>v</sup> The reference to boarding out includes arrangements for the placement of children with families whilst working in rural areas. Further details can be found in [Professor Kenneth Norrie's evidence to the Scottish Child Abuse Inquiry](#).<sup>9</sup>

**In addition, the Bill is also aimed at situations where a voluntary organisation (e.g. a charity, or a religious body running a children's home) had what we would now think of as a public function in caring for children.**

However, it is important to understand that the definition doesn't cover all settings where children were cared for by third parties.

For example, the focus on public functions means that the following wouldn't be covered by the scheme:

- arrangements where a child resided with their family/extended family (e.g. kinship care)
- care given as a result of private fostering or healthcare arrangements

In addition, the way in which section 19 of the Bill defines the individual categories of "residential institution" also provides certain limits on the Bill's scope (see paragraph 84 of [the Policy Memorandum](#) for more details).

For example, the definition of "school" in "school-related accommodation" does not include private or grant-aided schools unless the child's attendance at the school was arranged and paid for by or on behalf of a local or education authority, or a relevant voluntary organisation.

Most children who attended private boarding schools would, therefore, not be covered by the Bill and would not be able to use the scheme to obtain redress.

Abuse that occurred in local authority school-related accommodation would though be covered by the Bill. Boarding schools are a feature of the publicly funded education system in Scotland, particularly in rural and island communities.

# Who will be eligible for financial redress payments?

Part 3 of the Bill includes rules on eligibility for redress. These are outlined below.

## Children and next of kin

### Children - under 18s

The Bill only applies to abuse in relation to children - defined as a person under the age of 18 (section 16(3)). Applicants for redress will therefore have to have been under 18 at the time of the abuse.

The choice of 18 as the limit is in line with the default definition of "child" in the United Nations Convention on the Rights of the Child. Although there are cases where children have rights/responsibilities at a younger age (e.g. as regards the criminal law, marriage and elections to the Scottish Parliament), 18 also mirrors the "age of majority" in Scotland since 1969 (i.e. the point at which the law considers someone to have full legal control over their actions).<sup>vi</sup> The Limitation (Childhood Abuse) (Scotland) Act 2017 also defines children as individuals under 18. In its [Stage 1 Report on the Bill which led to the Act](#),<sup>10</sup> the Justice Committee summarised the arguments on this definition as follows:

“ The Bill defines a child as an individual under the age of 18 (section 17A(2)). The vast majority of evidence received by the Committee agreed with this definition. Those who did not agree, including the Glasgow Bar Association and the Forum of Scottish Claims Managers considered that the definition in the Bill was inconsistent with the Age of Legal Capacity (Scotland) Act 1991. This provides that from the age of 16, subject to certain safeguards, a young person can enter into "transactions", such as renting a property or taking out a credit card. Other evidence noted that there were a number of definitions of a "child" in existing legislation but went on to support the definition in the Bill. The Law Society, for example, argued that the definition in the Bill should be at the upper limit of the age range in existing legislation to "avoid any artificial barrier to action". The SHRC similarly argued that the broadest definition should apply, noting that the definition in the Bill was consistent with the UN Convention on the Rights of the Child. FOIL stated that it "recognises that a young person may remain in care until aged 18 and that it is appropriate for the Bill to extend its protection to those aged up to 18 years".”

Paragraphs 100-101

### Next of kin procedure

In principle, only children who were abused can apply for redress. However, the Bill also contains a special procedure which, under limited circumstances, allows defined next of kin of a deceased person who was abused (spouse, civil partner, cohabitant or surviving children) to apply for a fixed rate payment of £10,000 on their behalf (sections 22-23 of the Bill).

The next of kin procedure is intended to:

---

vi Age of Majority (Scotland) Act 1969, section 1

“ ... acknowledge the fact that the survivor died before having had the opportunity to apply for or receive a redress payment for which they would have been eligible under the redress scheme.”

Paragraph 257 of [the Policy Memorandum](#)

## What is the historical cut-off point for the scheme?

An important question is what the historical cut-off point will be for the scheme. In other words, to fall within the scheme, what is the date before which the abuse has to have occurred?

**The Policy Memorandum argues in paragraphs 71-72 that this should be 1 December 2004** as, "this was the date of the then First Minister Jack McConnell's public apology in Parliament, when Scotland began to face up to the harm done to children in care in the past" and also on the basis that the, "regulation, inspection and child protection guidance and standards now in place are radically different to those in the past."

It also states that the cut-off date for investigations by the Scottish Child Abuse Inquiry (17 December 2014) would not be appropriate given "changes and improvements made since 1 December 2004" as well as the fact that redress has a different context and purpose to the Inquiry's goals (paragraphs 74-75).

Under section 16(2) of the Bill, applications for redress would, therefore, only be possible where the abuse occurred before 1 December 2004.

## What kind of abuse is covered by the Bill?

Another key issue is the scope of abuse covered by the Bill - both in terms of the practical effect of the Bill (in other words who is provided with financial redress) and, more generally, whether the Bill actually succeeds in addressing the wrongs of the past.

Section 17(1) of the Bill defines "abuse" as meaning sexual, physical and emotional abuse and abuse which takes the form of neglect.

### Physical abuse

Physical abuse doesn't, however, cover corporal punishment to the extent it was "permitted by or under any enactment or rule of law at the time it was administered" (section 17(2)).

As a result, corporal punishment such as "the belt" which was in principle lawful when it was used wouldn't be covered, although corporal punishment which went beyond what the law permitted at the time (e.g. something amounting to an assault) would be. There could also be instances where behaviour which would amount to an assault now (for example as a result of the "smacking ban" in the Children (Equal Protection from Assault) (Scotland)

Act 2019) would have been lawful in the past on the basis that it was "reasonable chastisement" of a child.

## **Abuse by peers**

The [Explanatory Notes to the Bill](#) <sup>11</sup> state that the definition in section 17 also includes "abuse by peers within a relevant care setting." They explain that this is because the definition of abuse has to be read in conjunction with section 16 of the Bill which means that applications can be made where a child was abused in a relevant care setting. In other words, section 16 doesn't require the care setting to be directly responsible for the abuse. Evidence that abuse took place in a care setting is sufficient.

However, neither the Bill nor [the Explanatory Notes](#) provide details on how to distinguish between situations where an institution should be considered responsible for abuse by peers and particular incidents where the peers themselves may be viewed as responsible.

As with other aspects of the definition of abuse, there is scope for further interpretative guidance in relation to eligibility to apply for redress payments and related definitions under section 97(3)(b) of the Bill.

SPICe understands from contacts with the Scottish Government that such guidance could be used to show the types of behaviour by peers that the Scottish Ministers consider to fall within the scheme, (for example, an ongoing course of abusive conduct where the institution condoned it in some way or perhaps turned a blind eye to it). However, where a certain type of conduct by peers is not to fall within the scheme it would need to be excluded by way of regulations under section 21 of the Bill (see the following section).

## **Regulations on exceptions to eligibility**

It appears that the aim is to deal with the issue of abuse by peers (and potentially other areas of uncertainty) through the use of regulations which provide exceptions to eligibility (section 21 of the Bill). [The Explanatory Notes](#) to section 21 of the Bill state:

“ This section provides a power for the Scottish Ministers by regulations (subject to the affirmative procedure) to make provision about specific circumstances in which an applicant would not be eligible to apply to the redress scheme. This could, for example, be in relation to certain types of abuse (such as certain types of peer abuse – e.g. a one-off fight between peers which was not known about by the residential institution).”

## Applicants with convictions for serious criminal offences

[The Scottish Government's consultation](#) took the view that people with criminal convictions shouldn't be excluded from applying for redress if they meet the eligibility requirements of the scheme.

The Bill follows this approach. There is no general exception for applicants who have a criminal record.

Section 58 of the Bill would, however, give Redress Scotland the power not to offer a redress payment where, after consideration, it determines that this would be contrary to the public interest due to the applicant having being convicted of a serious criminal offence.

The serious criminal offences are defined in the Bill as convictions for:

- murder
- rape
- certain other defined violent or sexual offences for which the person is sentenced to imprisonment for a term of 5 years or more.

Redress Scotland panels have to take into account the following factors when deciding whether or not someone is precluded from being offered a redress payment because of a conviction for a serious criminal offence:

- the nature of the offence
- the sentence imposed (and, where the sentence is or includes imprisonment, the term imposed)
- the length of time since the offence was committed
- any rehabilitation activity undertaken by the person who committed the offence
- any other matter that the panel considers to be relevant

In addition, the panel would also have to have regard to any specific guidance issued by the Scottish Government under section 97 of the Bill.

[The Policy Memorandum](#) explains the rationale behind giving Redress Scotland this power as follows:

“ ... it is legitimate in the public interest to be able to restrict the use of public funding in relation to the making of redress payments under the scheme to or in respect of those who have been convicted of serious criminal offences, particularly involving serious levels of abusive conduct. This is consistent with the overall aim of the redress scheme which is redressing the harms of the past. It is considered that the provisions are a proportionate means of pursuing the legitimate aim of using most of the redress money towards blameless individuals so that the financial element of the redress scheme is potentially restricted for those with such types of serious criminal convictions. ”

Paragraph 174

# What financial payments can the scheme make?

The Bill allows applicants to choose whether to apply for:

1. a fixed rate redress payment of £10,000; or
2. an individually assessed redress payment of either £20,000, £40,000 or £80,000

Any individually assessed redress payment includes the fixed rate redress payment. Consequently, maximum total payments cannot be higher than £20,000, £40,000 or £80,000.

## Fixed rate redress payments

The rationale behind the fixed rate redress payment of £10,000 is that some survivors of child abuse will be looking for redress but will not want to "provide a detailed account of their abuse which, for some, would be an arduous and distressing process" (para. 95 of the Policy Memorandum).

The fixed rate redress payment system aims to solve this issue by providing a simplified application process where the applicant only has to show that they meet the basic eligibility criteria for the scheme.

## Individually assessed payment

In contrast, for some survivors, it will be important to give a full account of what happened to them to allow Redress Scotland to assess whether a further sum is appropriate, over and above the fixed rate payment.

If someone wants to apply for a (higher) individually assessed payment they will have to first show that they meet the basic eligibility criteria for the scheme **and** also provide additional evidence of the facts and circumstances of their experience as a survivor of abuse.

That process will involve the panel appointed considering the appropriate payment level based on the factors set out in the Bill, in other words:

“ the nature, severity, frequency, and duration of abuse together with all other relevant facts and circumstances ”

Section 38(4) of the Bill

Further guidance on assessment is also possible under section 97 of the Bill.

If the required threshold isn't met for an individually assessed payment, then applicants would only be entitled to a fixed rate redress payment of £10,000 (assuming they meet the other eligibility criteria).

## Deductions for prior payments

What happens if someone has already been compensated for historical abuse via another route - for example by being awarded damages in court? Do they still have the right to a redress payment from Redress Scotland?

The Bill's general approach is that prior payments for "relevant abuse" (i.e. abuse eligible for redress under the scheme) should be deducted from any redress payments made by Redress Scotland (sections 41-44).

Payments which can be deducted are defined in the Bill (section 41(2)) and include:

- court awarded damages
- out of court settlements
- payments from the Criminal Injuries Compensation Authority (CICA)
- payments from the advance payment scheme
- payments from other ex-gratia payments.

However, payments reimbursing legal fees, or other costs incurred in relation to the process under which the payment was obtained, will not be deducted. Payments which aren't linked to "relevant abuse", e.g. damages paid out due to other negligent actions, will also not be deducted.

[The Policy Memorandum](#) explains that the reasons for deducting prior payments is as follows:

“ It is considered that this approach to payments for the same abuse fairly and effectively respects the principle that a person should not be compensated twice for the same matter. However, crucially, it does not deny any survivor the right to apply for an enhancement on that payment, where it is less than that offered by the redress scheme, and it also allows applicants to apply to the scheme for access to non-financial redress which will be offered including apology and support.”

Paragraph 189

## How will the waiver procedure work?

One of the key elements in the Bill is the waiver procedure in section 45.

This procedure means that redress payments can only be made where applicants first sign a document in which they agree to give up their right to raise or continue civil actions in respect of the abuse against:

1. the Scottish Government; and
2. those organisations that have made fair and meaningful financial contributions to the scheme (i.e. those organisations on the "contributor list").

Simply put, to get redress payments under the scheme, applicants first have to give up the right to bring certain actions in the civil courts against those who have contributed to the funding of the scheme.

The main arguments which the Policy Memorandum puts forward for this approach are as follows:

- It will encourage financial contributions from those who were responsible for the care of children where the abuse occurred as they will have to proactively face up to the injustices of the past in return for a likely reduction in civil litigation in the courts
- Potential contributors will also be able to move away from an assessment of their potential future liabilities on an individual basis, which is by definition uncertain. This, "encourages commitments to be made to a unified, inclusive response to address systemic failure."
- By providing a degree of closure as regards financial reparations, it will provide a "swifter, non-adversarial, more trauma-informed process in response to historical child abuse."

The Policy Memorandum notes though that survivors of abuse will still have a choice and that there are valid reasons why some survivors will choose instead to bring or continue actions in the courts (paragraph 203). In that regard the Bill does not alter the existing rights of those survivors who wish to raise a civil action as they are still able to do so.

It is worth noting that applicants do not have to make the choice between redress or a civil action when applying to the redress scheme as waivers do not need to be signed until applications have been determined and a redress payment offered. The rationale is that, at that point, survivors will know what their redress payments will be and which bodies will be included in the waiver. Survivors can then discuss the implications of accepting the offer and signing the waiver with a solicitor.

# How will applications be assessed and what sort of evidence will be needed?

The Bill doesn't exhaustively lay down how the application process will work, the detailed evidence which applicants will have to provide, or how Redress Scotland should decide on the appropriate payment.

Instead, it provides a framework for the assessment of applications for redress which will be filled in by further guidance and procedures once the Bill has come into force.

The main elements of the assessment process are outlined in brief below.

## **Apply to the Scottish Government using an application form**

The start of the process for all applications will be an application form (section 27 of the Bill) which applicants have to send to the Scottish Government division responsible for the scheme.

In principle, only one application can be made, although there are exceptions. For example it will be possible to make an application for a fixed rate redress payment and then for an individually assessed redress payment at a later date. One application can also relate to multiple residential settings.

The contents of this application form and the information and the evidence which applicants need to include will be determined by the Scottish Ministers under section 27 of the Bill.

## **Support when applying and reimbursement of costs**

It is the intention that applicants will be given support and advice when applying. Section 87 of the Bill allows regulations to provide for the reimbursement of costs and expenses reasonably incurred in the making of an application. The Policy Memorandum also indicates that the relevant Scottish Government division:

“ ... will work with applicants to ensure that applications are as complete as the applicant believes they can be, and accompanied by the required supporting information, before passing the applications to Redress Scotland for assessment and decision. ”

Paragraph 135

Further details on the support and advice envisaged, include the use of Scottish Government case-workers to help applicants, can be found at paragraphs 308-312 of [the Policy Memorandum](#).

## **Legal advice and payment of legal fees**

Legal advice isn't formally required in order to apply to the scheme. However, [the Policy Memorandum](#) recognises that people may benefit from it and states that independent legal advice is to be "strongly encouraged" before applicants sign the [waiver](#) required for payment under the scheme.

When it comes to the payment of fees, the Bill places a duty on the Scottish Ministers to pay legal fees, "reasonably incurred" by applicants to the scheme (section 88). [The Policy Memorandum](#) states that this may include. "advice on eligibility, types of redress payments, the application process and matters in connection with waiver and reviews" (paragraph 239). Legal fees linked to assessing whether to pursue litigation in the courts would, however, not be covered.

A key point to note is that legal fees will be capped with the maximum fee levels set out in regulations (section 88 and 89 of the Bill) although, in exceptional or unexpected circumstances, permission can be sought to recover fees in excess of the relevant maximum.

[The Policy Memorandum](#) explains that a fee cap is needed as other redress schemes (e.g. those in Ireland and Jersey) have been confronted with very high legal costs.

### **Assessment by a panel of members of Redress Scotland**

Applications will be assessed by a panel of members of Redress Scotland appointed by the chair (section 33). The chair is required to decide the order of priority of applications based on the age and health of applicants (section 32). Assessment procedures will be laid down by Redress Scotland.

In the case of applications for a fixed rate redress payment, panels will be made up of at least two members of Redress Scotland

For applications for individually assessed payments, panels will be made up of at least three members.

Under section 34 of the Bill, the panel's role is to determine

1. whether the applicant is eligible for the type of redress sought; and
2. if so, the payment to be made.

The Bill expressly prevents panels considering matters of fault or negligence and the Policy Memorandum stresses that, "the role of Redress Scotland is not that of an investigative body (unlike the Scottish Child Abuse Inquiry) or a court" (paragraph 220).

Once the panel has made a decision on the application, Redress Scotland has to inform the relevant Scottish Government division who have to notify the applicant "as soon as reasonably practicable" and provide a summary of the decision.

### **Review procedure**

Applicants will have the right to seek a review of a panel's decision, including on:

- lack of eligibility for a redress payment
- the amount of the individually assessed payment granted
- [the amount to deducted from the redress payment under section 41.](#)<sup>vii</sup>

vii See section 52

Reviews will be carried out by a panel of at least three members who were not on the original panels. Review panels are not permitted to determine that an applicant is not eligible for redress, and also cannot reduce the amount of an individually assessed payment or increase the amount to be deducted from a redress payment. Other than these restrictions, they may otherwise uphold, reverse or vary any part of a panel's decision.

The review panel's decision is final. There is no further appeal, other than the possibility of bringing an action for judicial review in the courts.

### **Evidence to be taken into account by panels**

Section 34 of the Bill doesn't include details on the evidence which Redress Scotland panels will look at when considering applications. It simply states that panels have to have regard to information provided by the applicant, information provided in response to a request by the panel and other relevant information (section 34(2)).

Instead, the Scottish Ministers will provide guidance under section 97 of the Bill on the evidence which panels must have regard to when making decisions.

Much will depend on this guidance and the scope of the application form (determined by the Scottish Ministers under section 27 of the Bill). As outlined below though, the Policy Memorandum provides an indication of the likely direction of travel.

### **Evidence - eligibility and relevant care settings**

[The Policy Memorandum](#) provides an indication of the evidence which may to be needed to prove eligibility under the scheme.

It states that, in all but exceptional cases (which will be covered by the section 97 guidance), applicants for both fixed rate and individually assessed payments will have to provide documentary evidence showing that they lived in a relevant care setting prior to their 18th birthday (paragraph 141).

It also explains that a pragmatic and creative approach will be taken to this evidence, noting that:

“ Examples of evidence that has been submitted in support of applications to the advance payment scheme includes extracts from school registers which list the address of the applicant as an eligible setting and documents from the courts which show that an applicant was remanded to a relevant setting.”

Paragraph 142

### **Fixed rate redress payments - eligibility and evidence of abuse**

Applicants will also have to demonstrate abuse to show eligibility under the scheme.

As regards fixed rate payments, the aim appears to be to only require applicants to provide a statement of the abuse they suffered. Applicants will not be required to provide any further evidence about the abuse or its impact on them. ([Policy Memorandum](#) paragraph 143).

### **Individually assessed redress payments - evidence of abuse**

The Bill doesn't provide details on the evidence of abuse which the panel will look to when considering an application for an individually assessed redress payment.

Details will be included in guidance. However, [the Policy Memorandum](#) indicates that it would include information relating to the applicant such as:

- Previous statements or evidence given in other proceedings
- Medical and social care records
- Evidence of physical injury or psychological or psychiatric harm
- Previous reports or disclosures to the police or to others
- Statements from third parties
- Criminal convictions of perpetrators.

Information relating to the care setting will also be relevant such as:

- Criminal convictions relating to abuse which occurred there
- Findings of liability in previous civil cases
- Relevant findings published by the Scottish Child Abuse Inquiry
- Relevant inspection reports or other records noting concerns regarding the care setting.

### **Individually assessed redress payments - assessment framework**

The Bill also doesn't include details on how panels should determine what level of payment is justified based on the factors set out in section 38(4) of the Bill, i.e:

“ the nature, severity, frequency, and duration of abuse together with all other relevant facts and circumstances.”

[The Policy Memorandum](#) indicates that the Scottish Government will publish guidance on the assessment framework in consultation with relevant experts. It also explains that the framework won't be rigidly prescriptive, or use a points-based system, noting that, "every application will require a holistic assessment of the facts and circumstances of the survivor's experience" (paragraph 114).

It also suggests that relevant factors for considering an application would include:

“ ... the age of the applicant at the time of the abuse, relationship to the perpetrator, number of perpetrators, number of eligible care settings in which the applicant was abused, experience of multiple types of abuse, the personal circumstances of the applicant (for example, disability), the length of time spent in care settings while being abused, and the extent to which allegations of abuse made by the applicant, at the time or subsequently, were not given proper consideration (and other aspects of institutional betrayal). It will also be important for decision-makers to consider the combination of abusive behaviour that some children were subjected to.”

Paragraph 116

The [Policy Memorandum](#) also stresses that the assessment framework will not focus on the impact of the abuse on the individual. It notes that this would have:

“ ... the potential to penalise a survivor, or at least treat them differently, if they are not able to demonstrate a psychological impact in the way that others can.”

Paragraph 131

### **Oral evidence**

Although the Bill doesn't specifically require this, [the Policy Memorandum](#) makes it clear that Redress Scotland will largely consider documentary evidence rather than information provided in person (i.e. oral evidence) (see paragraphs 148-152).

Panels will, however, be granted the right (set out in guidance) to hear an applicant in person, although they will not be given the power to compel applicants to provide oral evidence.

### **Fraud and recovery of payments**

The application form will include a declaration of truth which applicants will have to sign. The Bill's aim is to rely on this and the general criminal law on fraud to deal with potentially fraudulent applications. The Scottish Ministers are, however, given a specific power in section 71 of the Bill to recover payments made in error, which would also cover fraudulent applications.

### **Powers to compel parties to provide information**

The default approach in the Bill is that Redress Scotland will seek the cooperation of third parties (e.g. "relevant care settings") who hold information relevant to an application .

However, the Bill also gives the Scottish Ministers, potentially acting on behalf of Redress Scotland, the power to issue a notice requiring parties, other than the applicant, to provide documents, objects or other evidence, including a witness statement (section 76). It will be an offence to fail to comply with such a notice without reasonable excuse or to tamper with evidence (section 80).

# Who will make financial contributions to the scheme and what is the "contributor list"?

To what extent will the public authorities and voluntary organisations who were responsible for abused children in the past pay for the scheme?

The way the Bill answers this question is to put the Scottish Ministers under a duty to draw up a list of responsible bodies (i.e. religious bodies, charities, various arms of the state) <sup>viii</sup> who in their opinion:

“ ... are making or have agreed to make a fair and meaningful financial contribution towards the funding of redress payments under this Act.”

Section 12 of the Bill

This will be known as the "contributor list" with the bodies who pay in known as "scheme contributors". The contributor list will be published by the Scottish Government.

The broad aim behind the contributor list is to get relevant bodies to contribute to the financing of the scheme and to proactively face up to the harms of the past.

However, it is important to note that there will be no legal obligation on public authorities and voluntary organisations to contribute.

Instead, if organisations are considered by the Scottish Government to be offering a "fair and meaningful contribution" to the scheme (which needs to be established in advance), they will benefit from the waiver procedure (and so won't be able to be sued in court by survivors of abuse who have accepted redress payments).

In contrast, if organisations choose not to contribute, they will not benefit from the waiver procedure and will remain open to financial liabilities from future court cases.

In that respect, the Bill takes more of a carrot than a stick approach, with the Scottish Government actively engaging with organisations who have potential liabilities and who wish to contribute, rather than trying to compel the payment of contributions.

When it comes to who the Scottish Government will engage with, the Policy Memorandum indicates that:

“ ...the initial focus to seek participation has been on those organisations which have been selected for investigation by the independent Scottish Child Abuse Inquiry so far and which were responsible for relevant care settings in the context of the redress scheme.”

Paragraph 223

---

<sup>viii</sup> Section 12(1) refers to public authorities, voluntary organisations and other persons (other than individuals) which were responsible for the "safeguarding or promotion of the welfare of children or the protection or furthering of their interests"

The Bill requires the Scottish Ministers to publish a list of principles before the scheme launches which will set out how it will assess whether an organisation has provided a fair and meaningful contribution. These will cover the methods for establishing the amount of contributions which bodies need to pay to the scheme and also the process to be followed in assessing if a contribution is fair and meaningful.

Much will ultimately depend on what is included in the list of principles. However, [the Policy Memorandum](#) gives a flavour of the some of the issues which will be relevant. It states that:

“ Organisations will be asked to consider a financial contribution to the scheme based on an exercise modelling the potential number of applications relevant to them and the potential redress payments which may follow. Given the uncertainty surrounding potential applications, a review mechanism will be proposed as part of the agreement to contribute in order to reflect redress payments determined during the lifetime of the scheme. For organisations where there is insufficient data to apply financial modelling, the approach to contributions will centre on the payment of the accumulated costs of all determined applications where the organisation is named. ”

Paragraph 225

Organisations included on the contributor list will be required to pay the fair and meaningful contribution which they agreed to. If they do not pay, the sum will be due as a debt and the Scottish Government can pursue this debt in the courts (section 12(8)). They will also be removed from the contributor list for failure to pay and therefore not benefit from any waivers granted from that point.

### **Reporting duty on bodies contributing to the redress scheme in a fair and meaningful way**

Organisations which have agreed to make a fair and meaningful financial contribution to the scheme will also have to report annually to the Scottish Ministers on their non-financial redress activities, e.g. support for people who were abused as children; assistance in accessing records and tracing and reuniting families; and providing apologies (section 91).

The aim behind the reporting duty is to:

“ ...provide an opportunity for organisations to demonstrate all that they have done to acknowledge and address their role in the context of historical child abuse – on the basis that redress involves taking a range of actions to meaningfully respond to the harms of the past, not just making financial payments to survivors.”

[Policy Memorandum](#) - paragraph 295

## **Changes to charity law**

Many of the organisations which were involved in the care of the children at the time of the abuse are charities.

According to [the Policy Memorandum](#) (paragraphs 286-7), one of the problems this poses is that there are legal barriers which could prevent charities from contributing to the scheme. For example:

- Some charities' constitutions may not include powers which allow for contributions to be made to the redress fund

- Contributions to the redress fund might be seen as outwith [the charity test](#) in section 7 of the Charities and Trustee Investment (Scotland) Act 2005<sup>ix</sup>

Section 14 of the Bill deals with this issue by simply providing that contribution to the redress scheme falls within the powers exercisable by charity trustees and the scope of the charity test.

Another problem is that some charities have funds tied up in "restricted funds" (i.e. funds which can only be used for a particular purpose specified by the donor and hence not for contribution to the scheme).

[The Policy Memorandum](#) indicates that this is a complex and sensitive issue noting that

“ On the one hand, if charities are allowed to use funds which were specifically donated for a certain purpose in order to contribute to the redress scheme, this could undermine confidence in charitable giving. On the other hand, many charities face the possibility of having significant damages claims awarded against them in the civil courts to the extent that this may impact on the charity’s ability to provide ongoing services and perhaps even challenge the charity’s continued existence. Many survivors of historical abuse also consider charities to be under a moral obligation to contribute to the redress scheme. ”

Paragraph 292

[The Policy Memorandum](#) does take the view though that allowing charities to use restricted funds would be a "proportionate intervention".

This power isn't, however, included in the Bill itself.

Instead, section 15 of the Bill provides that the Scottish Ministers may make regulations to do this after consultation with the Office of the Scottish Charity Regulator. The regulations will be subject to the affirmative procedure (i.e. subject to approval by Parliament) and also include the power to amend the Act itself or any other primary legislation under the terms of section 15. In other words they include what are known as "[Henry VIII powers](#)".

---

ix The "charity test" is the set of legal requirements which need to be met to become a charity in Scotland

# How will the rules on non-financial redress work?

Another crucial part of the scheme is the provision of non-financial redress to survivors of abuse.

[The Policy Memorandum](#) stresses that, "access to therapeutic support and counselling, personal and public acknowledgement, and apology" has typically been a part of redress schemes used in other countries and that, "financial redress on its own will not fully meet survivor needs" (paragraph 313).

## Scottish Government's role

The scope of this support isn't defined in detail in the Bill. Instead, the Bill gives the Scottish Ministers a general power to fund:

1. emotional, psychological or practical support to those applying or considering applying to the redress scheme (section 85); and
2. emotional or psychological support to:
  - a. those receiving a redress payment under the scheme;
  - b. survivors who have previously received an advance payment; and
  - c. survivors who meet the eligibility criteria for a financial payments but who will not receive one due to deductions of previous payments or previous criminal conduct.

Although the Bill doesn't include details, [the Policy Memorandum](#) emphasises that a priority area for support will be for therapeutic support and counselling (paragraphs 316-318).

It also explains that personal apologies will be part of the scheme, but that the principles surrounding this will be drawn up with survivors taking into account how other redress schemes deal with this issue (paragraph 326).

[The Policy Memorandum](#) also notes that a form of commemoration, "is the only outstanding commitment from the Action Plan on Justice for Victims of Historical Abuse of Children in Care that is still to be implemented by the Scottish Government" (paragraph 325). It indicates that work on this, in conjunction with survivors, will be taken forward once the redress scheme has been established.

# What will the scheme's potential costs be?

There are broadly four areas of costs associated with the Bill;

1. [the costs of setting up Redress Scotland, the supporting government department and the administration of the redress scheme](#);
2. [the costs of providing financial redress](#);
3. [the costs of providing non-financial redress](#); and
4. [the costs which will be incurred by other organisations](#) due to requests for information and support, and processing actions related to the proposals contained in the Bill

The [Financial Memorandum](#) <sup>12</sup> sets out a range for the estimated total costs of the Bill at slightly over £408m for the duration of the operation of the Redress scheme, or £80.96m per year. Of this total, £387m is the cost that the Scottish Administration is set to bear, although there is scope for this cost to be considerably higher or lower. There is considerable uncertainty which affects many aspects of these estimated costs including; the total number of claims for redress as the numbers of children who passed through care or experienced abuse are not known, the average level of awards made, and the uptake of non-financial redress such as counselling. The costs on other public bodies will also vary depending on the volume of applications and demand for services offered as forms of non-financial redress.

The Bill enables the Scottish Ministers to accept financial contributions to the redress scheme from third parties. In exchange for contributions, third parties will be protected from civil actions in the courts by applicants to the scheme. The total amount of financial redress payments will not be dependent on voluntary contributions being received. In preparing the Financial Memorandum, the Scottish Government has not assumed any level of voluntary contributions and has assumed that the Government will have to meet the full cost of financial redress. This introduces considerable uncertainty as to the costs which will fall on the Scottish Administration. Further information on [contributions to the redress scheme](#) and [the waiver procedure](#) are provided elsewhere in this briefing. The Scottish Government have committed to keep Parliament informed of developments in relation to the contributions throughout the passage of the Bill.

## Set up and operation of Redress Scotland

As explained [earlier in this briefing](#), the redress scheme will be delivered through two bodies - the decision-making body Redress Scotland and a government department for processing applications and making redress payments.

The Financial Memorandum envisages that Redress Scotland will require a staff of between 16-20 people, the majority of which will be public appointees. The proposed staffing model will have one chair and between 8 and 12 board members, who will all be paid in line with the current [Scottish Government public sector pay rates for senior](#)

[appointment](#),<sup>13</sup> which is limited to up to £307 per day per person. The chair and board will be supported by 7 secretariat staff who will not be civil servants (to preserve independence), but will be employed on broadly similar terms and conditions. The Scottish Government assume an annual 3% increase in staff costs to reflect progression.

One-off costs are expected to be from £2.1m to £2.7m, and are largely related to the recruitment of staff, and necessary digital and physical infrastructure. Recruitment and staffing is projected to cost between £1.15m and £1.28m depending on the number of staff recruited. ICT costs are expected to be £150,000 to £210,000, based on standard Scottish Government IT equipment and depending on the number of staff employed. The estimated cost of securing an office has been projected at between £0.6m and £1.0m. A site has not yet been identified, and opportunities to co-locate with existing public bodies are being explored. The estimate is based on a standard 10 year lease with a 5 year break clause, so it should offer the flexibility if the redress scheme is required to run on beyond the 5 years currently planned for operation. Between £40,000 and £70,000 is expected to be spent on developing branding and the website, and another £70,000 to £90,000 is expected to be spent on corporate services. The Scottish Government expect to be able to share some corporate services such as HR with existing public bodies, which should reduce the costs.

There is a further £450,000 budget for an advertising campaign. The Financial Memorandum describes this as robust. A Freedom of Information request<sup>14</sup> shows that the most expensive Scottish Government digital marketing campaigns from 2016-17 to mid 2018 cost £120,000 and £113,000 for between 6 and 9 months of activity, so this budget suggests that the marketing campaign could run in advance of and for the duration of the redress scheme's years of operation.

Some applicants to the scheme are likely to require specialist support to access and understand the social work and care records that they need to support their applications. The Scottish Government intends to offer this support, and is working to understand the best way to deliver this. Some specialist agencies exist which help survivors for the advance payment scheme. An annual spend of approximately £90,000 would fund three FTE staff to undertake records work across the lifespan of the scheme. The Financial Memorandum assumes an average annual cost of £135,000.

Total recurring costs of the delivery scheme range from £21.5m to £30.7m over the lifetime of the scheme, with the highest costs expected in 2025/26 due to an increase in staff and estate costs.

## Costs of financial redress

There are two significant variables in the overall costs of the financial redress provided by the scheme: the number of claimants who receive an award, and the level of award sought. The Scottish Government commissioned the [Government Actuary's Department](#) (GAD) to refine estimates for the number of possible applicants to the scheme. The model produced a range of 3,000 to 11,000 applicants, but in preparing the Financial Memorandum the Scottish Government has opted for a range of 10,000 to 12,000, with the central figure of 11,000 used to inform the central scenario calculations of the cost.

As [described earlier in this briefing](#), the Bill proposes four levels of award for survivors, or their next of kin. The Scottish Government anticipate that the vast majority of applicants will apply for an individually assessed award, with the average award used in the central scenario being £30,000 per applicant. The forecast is that 80% of applicants will be individually assessed, which is consistent with the applicants to the [Lambeth Redress scheme](#). Within the individually assessed awards, the central scenario expects 5,500 applicants to receive the level one award, 2,200 to receive level two and 1,100 to receive level 3. These forecasts are not a target, but are used to inform the costings of the redress scheme only. If the central scenario is accurate, then the total costs of the financial redress will be £308m. The Scottish Government have conducted sensitivity analysis<sup>x</sup> on this forecast given the uncertainty, and costed three further scenarios. If applicants are 30% lower or higher than expected, then the financial redress will cost £216m or £400m respectively. The fourth scenario considers higher average payments, and would cost £407m.

GAD analysis suggests that there could be between 370 and 1,270 next of kin who qualify for a fixed rate payment. The central scenario assumes a figure of 1,000 which would cost £10m, but if the actual number is closer to the upper range of the estimate then it could be around £13m.

The redress scheme will be open to those who have already received a settlement or court payout in relation to the abuse that they suffered. Any financial reward under this scheme will be reduced by the amount of that previous payment, which could potentially reduce the estimated costs outlined in the Financial Memorandum. However, given the considerable uncertainty surrounding this, the Scottish Government have not modelled any impact of awards being reduced to reflect a previous settlement.

The Bill also provides for applicants to receive funding to cover legal fees incurred in relation to their applications for redress, and the scheme will proactively encourage applicants to utilise this. This funding for legal fees will be subject to limits which are still under consideration pending engagement with relevant bodies. The Financial Memorandum includes anticipated costs: £350 plus VAT for all next of kin, fixed rate payment and for those who apply for an individually assessed payment, but do not meet the criteria for level one. Fees for those applicants who do meet the criteria for an individually assessed payment are capped at £1,000 plus VAT. The financial modelling also allows for a further £250 plus VAT to cover the cost of reviews. Using the distribution of awards from the central forecast with an assumed 100% uptake of support with legal fees results in a cost of £13m.

The total cost of financial redress (redress payments and applicants' legal costs) is expected to be £300m to £350m.

## Costs of non-financial redress

While the non-financial redress to be offered through the scheme is still being developed, the Scottish Government cite evidence from other schemes that the costs associated in providing this non-financial redress can be significant.

---

<sup>x</sup> This is where you model uncertainty by adjusting input variables - so in this case increasing the number of applicants, and increasing the average level of financial award made

One form of non-financial redress that the scheme might offer is access to counselling and therapeutic support. Some survivors may already be accessing this type of support, but the evidence from other redress schemes suggests that take-up is likely to be between 50% and 75% of eligible applicants. Based on the central forecast for applicant numbers and the costs of providing these services through the Future Pathways, the cost of this over the lifetime of the scheme could be between £14m and £24m.

Applicants to the scheme will also be able to access psychological assessment as a form of supporting evidence. The cost of providing this service is estimated at a total of £3.63m, which is based on 50% of applicants taking up the offer of the assessment. This could rise to in excess of £5 million if 70% or more applicants take up the offer of an assessment.

The [National Confidential Forum](#) which was established by the Victims and Witnesses (Scotland) Act 2014 will be closed, which will save the Scottish Government £875,000 in the year 2021/22.

The total estimated costs associated with non-financial redress are not known while the details of this are still to be finalised.

## Costs incurred by other organisations

Local authorities, Police Scotland and the Crown Office and Procurator Fiscal Service are identified as public bodies who will face costs due to the operation of the redress scheme. Outside of the public sector, care providers (both past and present) and insurance companies could be impacted by any contributions made to the redress payments, and care providers will also face indirect costs stemming from requests for information to support applicants. The Financial Memorandum does not set out projected costs due to the uncertainty around these contributions.

COSLA and the Scottish Government are currently discussing how local authorities might contribute to the redress scheme, so there is considerable uncertainty about the costs they will face. The Financial Memorandum does note that contributions could reduce the liability local authorities face in terms of civil actions related to abuse in care settings.

Social Work Scotland anticipates that local authorities will see a significant rise in demand for their services in general due to the establishment of the redress scheme. The workloads for a range of professional and administrative staff may increase due to providing support for those applying to the scheme, particularly in relation to requests for records. This is in the context of demands already increasing due to the Limitation (Childhood Abuse) (Scotland) Act 2017. The delivery of non-financial redress is likely to have resource implications for local authority services. The majority of applications for personal information, known as "[subject access requests](#)", (7,700, or 70% of expected applications) are expected to be made to local authorities, which will cost in the region of £10m to £17m in total. This figure was arrived at using estimated cost for staff time for simple and complex requests, across a range of local authorities. The expected costs for local authorities will be discussed by the Scottish Government and COSLA.

Police Scotland expect financial implications to arise from providing risk assessments, subject access requests and legal requests for documents. Details of any perpetrators provided by applicants will be shared with Police Scotland, which is the same procedure that has been in place for the advance payment scheme. However, the expectation is that

this will increase demand significantly compared to that experienced under the advance payment scheme due to the different approach taken with individually assessed payments (which are expected to account for the majority of redress applicants). In addition to this, the advance payment scheme was only open to applicants aged 68 or over, while this redress scheme is open to all adult survivors. It is possible, therefore, that younger perpetrators will be disclosed who could pose more of a risk, and require increased police time. Police Scotland estimate that they will receive notification requests from 75% of applications, which will lead to a total cost of £1.24m. Previous experience suggests that each subject area request will cost £65 in terms of staff time. If 50% of applicants make a subject access request to Police Scotland, then this would imply a total cost of £375,500. Legal requests for documents will occur where next of kin request information from organisations in relation to historic abuse. Police Scotland estimate that each order takes 18 hours of work to complete at a cost of £486. If 50% of next of kin applicants used legal requests to support their application, then this will have a cost of £243,000 over the five years the scheme operates. Including a contingency of 20%, this puts total costs for Police Scotland at £2.2m

The Crown Office and Procurator Fiscal Service (COPFS) expect financial implications to arise as a result of reports received from the police of fraudulent applications, as a result of the new statutory offence for failing to comply with a request for information, and due to receiving requests for information where the abuse suffered by an applicant has been subject to a crime report.

The number of fraudulent cases has not been modelled, and so the costs associated with this are not known. These will be reviewed during the first year of operation of the scheme, and should they be significant then COPFS will request additional funding from the Scottish Government. The same is true for the number of organisations which do not comply with a request for information, and therefore commit an offence which is reported to COPFS. In terms of managing requests for information, COPFS estimate that it will be necessary to hire a new member of staff at management grade, and two administrative staff to process these. This will come at a total cost of approximately £475,000 over the lifespan of the scheme.

# Bibliography

- 1 thart2009. (n.d.) polaroid 104 land camera with zone plate. Retrieved from <https://search.creativecommons.org/photos/58cfd53-dc1e-41f4-9fea-1c397203114a> [accessed 14 September 2020]
- 2 Scottish Parliament. (2020, August 13). Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill - Policy Memorandum. Retrieved from <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/redress-for-survivors-historical-child-abuse-in-care-scotland-bill/introduced/policy-memorandum-redress-for-survivors-historical-child-abuse-in-care-scotland-bill.pdf> [accessed 11 August 2020]
- 3 Scottish Child Abuse Inquiry. (2020). Case Study Findings. Retrieved from <https://www.childabuseinquiry.scot/case-study-findings/> [accessed 11 September 2020]
- 4 CELCIS and Scottish Human Rights Commission. (2013). SHRC InterAction on Historic Abuse of Children in Care Action Plan on Justice for Victims of Historic Abuse of Children in Care. Retrieved from [https://www.celcis.org/files/6615/9649/4700/7.\\_ii\\_-\\_Action-Plan-on-Historic-Abuse-of-Children-in-Care-Nov-2013.pdf](https://www.celcis.org/files/6615/9649/4700/7._ii_-_Action-Plan-on-Historic-Abuse-of-Children-in-Care-Nov-2013.pdf)
- 5 CELCIS. (2018, September 6). Scottish review supports a financial compensation/ redress scheme for victims/survivors of abuse in care. Retrieved from <https://www.celcis.org/news/news-pages/scottish-review-supports-financial-compensationredress-scheme-victimssurvivors-abuse-care/> [accessed 11 September 2020]
- 6 Scottish Government. (2019, September 2). Financial redress for historical child abuse: consultation. Retrieved from <https://www.gov.scot/publications/pre-legislative-public-consultation-financial-redress-historical-child-abuse-care/> [accessed 11 September 2020]
- 7 Scottish Government. (2018, July 1). Public bodies in Scotland: guide. Retrieved from [https://www.gov.scot/publications/public-bodies-in-scotland-guide/#:~:text=Non%20Departmental%20Public%20Bodies%20\(NDPBs\)&text=They%20carry%20out%20administrative%2C%20commercial,NDPBs%20comprise%3A&text=They%20are%20independent%20of%20the%20Scottish%20Government.](https://www.gov.scot/publications/public-bodies-in-scotland-guide/#:~:text=Non%20Departmental%20Public%20Bodies%20(NDPBs)&text=They%20carry%20out%20administrative%2C%20commercial,NDPBs%20comprise%3A&text=They%20are%20independent%20of%20the%20Scottish%20Government.) [accessed 11 September 2020]
- 8 Scottish Government. (2020). Youth justice. Retrieved from <https://www.gov.scot/policies/youth-justice/secure-care/> [accessed 11 September 2020]
- 9 Norrie, K. (2017, November). LEGISLATIVE BACKGROUND TO THE TREATMENT OF CHILDREN AND YOUNG PEOPLE LIVING APART FROM THEIR PARENTS Report for the Scottish Child Abuse Inquiry. Retrieved from [https://childabuseinquiry.scot/media/1892/norrie\\_legislative-background-to-the-treatment-of-childrenyoungpeople-bmd-181017.pdf](https://childabuseinquiry.scot/media/1892/norrie_legislative-background-to-the-treatment-of-childrenyoungpeople-bmd-181017.pdf) [accessed 11 September 2020]
- 10 Scottish Parliament. (2017, April 20). Justice Committee - Stage 1 Report on the Limitation (Childhood Abuse) (Scotland) Bill. Retrieved from <https://sp-bpr-en-prod-cdnep.azureedge.net/published/J/2017/4/20/Stage-1-Report-on-the-Limitation--Childhood-Abuse---Scotland--Bill-1/7TH%20Report,%202017.pdf> [accessed 11 September 2020]

- 11 Scottish Parliament. (2020, August 13). Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill - Explanatory Notes. Retrieved from <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/redress-for-survivors-historical-child-abuse-in-care-scotland-bill/introduced/explanatory-notes-redress-for-survivors-historical-child-abuse-scotland-bill.pdf> [accessed 11 September 2020]
- 12 Scottish Government. (2020, August 13). Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill: Financial Memorandum. Retrieved from <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/redress-for-survivors-historical-child-abuse-in-care-scotland-bill/introduced/financial-memorandum-redress-for-survivors-historical-child-abuse-in-care-scotland-bill.pdf> [accessed 15 August 2020]
- 13 Scottish Government. (2020, April 14). Public sector pay policy 2020-2021: technical guide. Retrieved from <https://www.gov.scot/publications/2020-21-public-sector-pay-policy-technical-guide/> [accessed 27 August 2020]
- 14 Scottish Government. (2018, July 5). Digital marketing projects 2018-19: FOI release. Retrieved from <https://www.gov.scot/publications/foi-18-01635/> [accessed 26 August 2020]

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Andrew Feeney-Seale on telephone number 85380 or [Andrew.Feeney-Seale@parliament.scot](mailto:Andrew.Feeney-Seale@parliament.scot), Angus Evans on telephone number 85356 or [angus.evans@parliament.scot](mailto:angus.evans@parliament.scot).

Members of the public or external organisations may comment on this briefing by emailing us at [SPICe@parliament.scot](mailto:SPICe@parliament.scot). However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at [sp.info@parliament.scot](mailto:sp.info@parliament.scot). Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

