

Submission 25/04/2016

**FBGA Proposed Historic Abuse Redress-Compensation Scheme For Pre 1964 and those former residents who do not wish to undertake a Civil Court proceeding route, but are seeking financial redress or compensation in an non adversarial process.**

- Who could apply for compensation, the criteria
- The Redress Schemes independent Assessors
- How is the assessed award calculated
- Redress Scheme Documents
- Assessment and Damages

The proposed Historic Abuse Redress Scheme is designed to deal with applications for redress and compensation for human rights abuses, sexual or unlawful physical, emotional, mental, spiritual abuse suffered by children when in residential care and where the State had a duty of care. It is designed to meet the needs of those abused who are considered pre: 1964 and those who do not wish to pursue a Civil Court proceeding.

### **Who could apply for compensation**

- Criteria, as per the UN child abuse definition and Scottish Child abuse Inquiry definition, based on the civil definition on the balance of probability.
- Those individuals who were subjected to human rights abuses, sexual and / or unlawful physical/mental emotional, or spiritual abuse whilst in residential care?
- It is not necessary for a person to have been prosecuted or convicted of any criminal offence in connection with the abuse in question.

If the criteria were met, then the application would proceed and be considered as part of the scheme.

The scheme may have to consider some matter that may not fall into the said criteria prior to considering awarding any financial compensation, such as:

- the person who was abused has died; may be considered if an immediate family member applies and it is determined that the abuse had been reported to the relevant authorities (Police) prior to death.

### **The Scheme independent assessors/panel may consist of the following:**

- An independent assessor expert in this field for assessing such claims and damages
- A jointly-instructed barrister representative
- An independent appointed, jointly instructed psychologist appointed by prior agreement between the claimants and the defenders in each case.

The Scheme independent assessors will be responsible for assessing the application/claims, recommending whether it is appropriate for a claim to be admitted under the scheme and then the amount of financial compensation to be paid to a claimant under the scheme.

The Scottish Government authorises each payment based on the Scheme assessors recommendations. The Scheme assessors work alongside (the Schemes lawyers) and the independent expert assessor in managing the applications and claims admitted under the scheme.

**How is the assessed award calculated?**

The Assessed Award will be a fair and reasonable sum having regard to individuals' personal circumstances, and takes into account:

1. Severity of the abuse and any harm caused based on the medical and other evidence supplied, the Schemes Assessor assess redress/compensation claims with reference to:-

- the nature, severity and frequency of the abuse suffered; and
- any physical or mental injuries or long-term effect

2. Medical Expenses

Any additional payment required for reasonable expenses incurred in respect of medical or psychiatric treatment for the effects of the injuries suffered as a result of the abuse.

3. Review Mechanism

A review mechanism will be established with a jointly-instructed barrister, expert in the field to assess each case if required and in the event where a dispute may arise as to the award or claim.

4. Other costs and expenses

In certain cases, a payment may be made for other costs and expenses reasonably incurred in making and processing your application for compensation. Typically, the cost of your reasonable legal fees incurred in making the application will be met as will any travel costs incurred by you for the purpose of undergoing a psychologist's assessment for the purposes of assessing your application.

**Redress Scheme documents**

*The Redress Scheme*

1. The "Historic Abuse Redress Scheme" (the "**Scheme**") has been established by the Scottish Government to enable financial compensation to be assessed and paid to the victims of historic abuse suffered when in residential care and where the State had a duty of care. It will address the pre:1964 issues and assist those former residents who do not wish to pursue an adversarial court proceeding.

2. The Scottish Minister ----- has been designated by the Scottish Government with responsibility for establishing and overseeing the administration of the Redress/Compensation Scheme.

*Redress Scheme Paperwork*

3. Scheme documents sets out the terms of the Scheme and its intended operation.

- A. Public Notice to be issued for publication from the Launch Date onwards and at regular intervals thereafter;
- B. a Leaflet entitled "Historic Abuse Redress Scheme: A Guide", will be published
- C. Core documents (the "**Core Document**") and should be reviewed by any person who applies to the Scheme (a "**Claimant**") at an early stage:
- D. the application form which will need to be completed by any Claimant (the "**Application Form**") is enabling and available from the Scheme Assessors;
- b. The standard settlement agreement (the "**Settlement Agreement**") setting out the terms which a Claimant will ultimately be asked to enter into when agreement is reached under the Scheme for the payment of redress/compensation.
- 6. The Core Documents will be provided to any Claimant upon application to join the Scheme.
  - a. the letter of engagement to jointly-instructed psychologists' ;
  - b. the letter of engagement to a jointly-instructed barrister, expert in the field, in respect of the review mechanism.
  - c. the letter of engagement for the appointment of the survivor independent representative

***The Redress Scheme timeframe***

- 7. The Scheme will be operative with effect from the parliamentary statement to be given by the Scottish Government Minister on the Launch Date.
- 8. Any application to join the Scheme must be received ----- (the "**Closing Date**").

***Scope of the Redress scheme***

- 9. In order to join the Scheme a Claimant will have to:
  - a. establish that they were resident in residential care at any time between -----and-----;
  - b. particularise the human rights abuses, emotional, spiritual, unlawful physical and/or sexual abuse they suffered whilst in such care; and within the child abuse definition of UN and the Scottish Government Child Abuse Inquiry definition
  - c. That they are considered to be pre: 1964 applicants
  - d. Waiver the right to raise a civil action once agreement and compensation/redress level has been reached with the claimant

**Apply for compensation under the Scheme as set out herein and be accepted into the Scheme.**

- 10. The Scheme specifically excludes:

- a. Abuse suffered whilst in foster care is therefore not included;
- b. An application in respect of a Claimant who is deceased; and who has no direct dependent relative.
- c. any claimant rejected from the Scheme by the Scheme Assessors (as defined below).

11. The Assessors are instructed to advise and revert to the Scottish Government designated Minister if there are any instances which arise which prevents a claim for historic abuse when in residential care or where the State had a duty of care from being resolved under the Scheme.

**Representation**

- 12. The Minister appoints (the "**Scheme Lawyers**") and their role is separate from the independent Assessors.
- 13. Survivor representatives or survivors independently submit proposals for the jointly appointed appointees (such appointees may have to represent designated interests and designated institutions).
- 14. A Claimant may represent him/herself in applying under the Scheme, or may:
  - a. appoint a independent lawyer to represent him or her and in such case the Claimant's reasonable legal costs will be met under the Scheme; or
  - b. elect to be assisted or represented by a family member, carer, appointee or other person. A written authorisation to deal with any such person will be required from the Claimant in such cases.

**Application to join the scheme**

16. All Claimants must complete an Application Form and provide all information and documentation set out therein in order to submit their claim (the "**Claim**").

- 17. A Claim should be submitted:
  - a. by post to the Scheme Assessors: All correspondence should be marked "Strictly Private & Confidential: To be opened by Historic Claims Team Only";
  - b. by e-mail to: -----; or
  - c. in such other manner as may be specifically agreed between the Scheme Assessors and a claimant or his/her representative.

18. Application Forms received after the Closing Date shall not be accepted. ( -----)

**Initial Review**

19. The Scheme Assessors shall conduct an initial review of the Application Form provided and will advise the Claimant on:

- a. whether the Claim falls within the Redress Scheme or not; and

b. if the Claim is to admitted and proceed under the Redress Scheme, confirm whether any further information is required in order to progress the Claim, explaining what that information is.

***Independent appointed survivor medical assessment***

20. In appropriate cases, the Claimant may be required to meet with a jointly-instructed psychologist for a non- inquisitorial evaluation (report) to be prepared. In each case, the Scheme Assessors and the claimant's legal adviser or appointee will discuss and agree whether such an assessment is required.

If allegations put forward in the Application Form are such that the Claim may fall within (namely rape and/or prolonged aggravated physical and/or sexual abuse) then there will be a presumption that a psychologist evaluation/report will be required.

21. In the event that a Claimant refuses to co-operate with any of the jointly-appointed Assessors, the barrister or the psychologist. Then the Claim may be rejected from the Scheme, or subject to independent review. It may be permitted to proceed but the level of compensation awarded may be adversely affected in light of the lack of any appointed barristers or psychologists supported report or assessment, additional verification of the facts and/or the effect of any abuse.

22. The Jointly appointed psychologist allocated to meet with any Claimant will be from a selection of psychologists agreed between the Scheme Assessors and will acting on behalf for claimants generally. A claimant may specify if they particularly wish to see a male or female psychologist. A claimant may appoint their own qualified psychologist in agreement with the Assessors of the Scheme.

23. The costs of the medical assessment, report and any travel expenses reasonably incurred in relation to the assessment will be met under the Scheme.

***Material Review***

24. The material reviewed by the Scheme Assessors as part of the assessment of a Claim may include the following, however the Assessors and the Schemes lawyers will not have access to any material without the express written consent and permission of the claimant:

a. any historic records held by the State or Institution in relation to the Claimant and clarifies their time in care;

b. any records held by State or Institution pertaining to the Claimant or any facts which may be relevant to the Claim,

c. including any medical records, mental health records and social services records that the claimant may wish to submit;

d. all records held by or on behalf of the State and Institution in relation to the running of any establishment at the time the Claim relates to and information held which is considered relevant to the Claim or the alleged abuse or abusers;

e. documentation provided by the claimant relating to any Police investigation or testimony given to the Scheme Assessors in respect of the subject matter of the allegations set out in the Claim, which may comprise restricted information;

f. to the extent relevant, any information held by other bodies, Civil Court proceedings in respect of any claim submitted by the Claimant

g. where prepared, the report of the jointly-instructed psychologist

25. The Claimant may be required to the disclosure of relevant information to the Scheme Assessors as required to assist and assess the claim. The Redress Scheme process should not adversarial. It should be sensitive and enabling for all claimants.

**Assessment - Damages**

26. The Scheme Assessors, together with any claimant's appointee will consider the Claim and make an assessment of the appropriate amount which should be awarded. The Claimant's legal adviser will be consulted during and throughout this process.

27. The basis of any compensation to be offered will be assessed with reference to:

- a. the nature, severity and frequency of abuse suffered; and
- b. any physical and mental injuries or long-term effects.
- c. Any evidence provided by the claimant to support the claim
- d. Any additional facts that the survivor deems relevant and wishes to submit.

28. With reference to the above-mentioned factors, a Claim will fall into one of Six "Compensation Bands" and the factors above will, taken together, also determine where within a Compensation Band a Claim falls:

<b>Band</b>	<b>Description</b>	<b>Band Ranges between and up to</b>
1	Physical and/or sexual abuse	Up to £
2	Aggravated physical and/or sexual abuse	£
3	Prolonged physical abuse:	£
4	Prolonged Rape and/or sexual abuse:	£
5	Human Rights Abuses	£
6	Emotional/Spiritual/ Mental abuse	£