

5th November 2021 14.53pm; Copy of email Received from Donald Henderson

Deputy Director – Scottish Government; Redress, Survivor Relations and Abuse Inquiry Response

Good afternoon David.

We discussed at the meeting of Review Group members this week, and you kindly agreed that our responses to your questions on legal fees could be shared with others. I've therefore copied them into this.

You have of course been concerned about the provision we have made for the payment of legal fees in connection with applications to the redress scheme, and have been in touch with the Convenor of the Education Committee about this. We have since shared a copy of the draft statutory guidance on legal fees with you, which should provide further clarity and, I hope, some reassurance. We are working to finalise this guidance which will be published when the scheme opens for applications next month.

To broadly summarise the approach, the primary legislation places the Scottish Ministers under a duty to pay a prescribed sum (what we have called fixed fees in our discussions with you) to a solicitor in respect of the legal work reasonably undertaken in making an application for redress.

The Regulations we recently laid in Parliament, set out what those fixed fees are in respect of the different paths an application may take. The principal fees are £450 + VAT in respect of an application for a fixed rate payment, and £2,000 + VAT in respect of an application for an individually assessed payment.

In addition to the fixed fees set out in the Regulations, in any case where there are exceptional or unexpected circumstances to justify it, a solicitor can apply to Redress Scotland for an additional sum over and above the fixed fee. That process could be used to seek authorisation to instruct Counsel, or to cover additional work incurred in the preparation for, or the attendance at, if Redress Scotland have asked for an oral hearing.

We do not however believe it would be appropriate for an additional sum to be available to carry out a detailed assessment of the prospects of success of a civil court action. Where an applicant wants such an assessment, we would encourage them to speak to their solicitor, who will be able to advise on funding mechanisms which exist already. I know you disagree about this, but it is better that I set out the Government's position plainly.

You also ask what would happen should an applicant change their solicitor during the application process. The original solicitor would be paid the fee they were entitled to up to the point in the process they had reached. That would determine the fixed fee available for the new solicitor, however the new solicitor would always have the ability to apply for additional funding because of the unexpected and exceptional circumstances. We can look to illustrate this point in the guidance.

We continue to prepare for launch of the scheme which includes finalising that guidance. We will use your feedback to ensure that it is as clear and comprehensive as it can be.

We have another meeting with Review Group members in 10 days. We can pick up then if you need more, or of course we can be in further touch in the meantime.

Kind regards

Donald, **Donald Henderson**

Deputy Director – Scottish Government

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