

Redress For Survivors (Historical Child Abuse In Care) (Scotland) Act 2021: Statutory Guidance – Evidential Requirements and Determinations by Redress Scotland

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Riaghaltas na h-Alba
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Evidential Requirements and Determinations by Redress Scotland

Status of this Guidance

1. This guidance is issued under section 106 of the Redress for Survivors (Historical Abuse in Care) (Scotland) Act 2021 (“the Act”).
2. Applicants must submit with their application such information and evidence as the Scottish Ministers require (section 29(1)(e) of the Act).
3. This guidance applies to all those with an interest in connection with the making, or consideration of an application for redress. This includes applicants to the redress scheme, their legal representatives and Redress Scotland. This guidance relates to matters connected with evidence and in particular addresses the following issues:
 - The sources and types of such information and evidence and additional evidence that an application must contain;
 - The types of circumstances where it might be appropriate for Redress Scotland to seek information or evidence in determining an application.
4. This guidance also covers:
 - The determination of applications by panels of Redress Scotland under section 36 of the Act, including the standard of proof to be applied and the operation of the presumption in section 36(3).
5. Both applicants and Redress Scotland must have regard to this guidance.
6. Separate guidance is available for [next of kin applicants](#).

Challenges

7. Survivors may face challenges in obtaining evidence both of being in care in the settings covered by the redress scheme, and of abuse that happened a long time ago. Many survivors will not have told anyone what happened to them at the time, or if they did, that it may not have been recorded or acted upon.
8. It is also understood that record keeping was often inconsistent or inadequate in the past, and that for a variety of reasons, records which were kept may no longer be available.
9. This understanding and knowledge has been applied in setting evidential requirements and care has been taken not to create barriers or burdens which are simply too high, or unachievable.

10. The main care providers and all local authorities are aware of Scotland's Redress Scheme and their role in helping applicants find supporting documents.

Principles and Presumption of Truth and Accuracy

11. The redress scheme is an alternative to court and does not seek to establish fault or liability. The evidence required to support a redress application is different to that required to support an action in the civil courts or a prosecution in the criminal courts.

12. Section 36(3) of the Act provides that, in determining an application, the panel members must start with the presumption that any information provided by the applicant in respect of the application is true and accurate to the best of the applicant's knowledge and belief.

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

14. The standard of proof for eligibility is the balance of probabilities. This means that Redress Scotland must be satisfied it is more likely than not that the applicant is eligible for redress. Further guidance on the standard of proof is found later in this guidance.

Roles and Responsibilities

15. Redress Scotland (which is independent of the Scottish Government) is solely responsible for determining the eligibility of an applicant and the level of redress payment to be offered. Decisions and determinations about applications will be made by panels of members of Redress Scotland, appointed by the Chair. A minimum of two panel members will consider a fixed rate application and a minimum of three panel members will consider an individually assessed application.

16. Case workers from the Scottish Government will support and communicate with applicants. The Scottish Government also provides other business and administrative support; but it is not involved in making decisions on applications.

17. Case workers are available to assist applicants, if the applicant wishes, to obtain documents which must be provided with the application or which may support the application.

18. Where required documentation is missing from the application, case workers may contact the applicant (or their chosen point of contact) in advance of submitting the application to Redress Scotland.

19. However, it will be the applicant's choice as to whether the application is complete enough to be sent to Redress Scotland.

20. Once Redress Scotland has received the application and supporting documents, they may wish to request that the applicant provides further information in relation to the application. If so, they will ask a case worker to contact the applicant to request this information.

Support to Apply

21. Scotland's Redress Scheme has been designed and developed to offer applicants support at every stage of the process.

22. The kind of information needed to accompany an application for redress may come from diverse sources. In some cases it may already be in the applicant's possession, or in the possession of others who were in the same establishment that they have kept in touch with.

23. Case workers are able to provide advice about how to obtain the information required and can be contacted on 0808 175 0808.

24. More information about the right to ask for personal information from those who may hold relevant records about an applicant's time in care, and how that process works, can be found at the [Information Commissioner's website](#).

25. Written requests for personal information are called 'Subject Access Requests'. The main care providers and all local authorities are aware of Scotland's Redress Scheme and their role in helping survivors find supporting documents, so it may be helpful to highlight that this is the purpose of a request.

26. There are limitations to what information will be provided through Subject Access Requests as those who hold the records must disclose information in a manner compliant with data protection legislation. In some circumstances, this may mean that requested information is withheld or redacted (i.e. blanked out).

27. A conversation with a case worker is often the best first step to exploring the most likely and effective routes to obtaining documents to support applications for redress. Case workers have undergone extensive training and are sensitive to the needs of applicants. Their knowledge builds on the experience and learning gained from working with hundreds of successful applicants to the Advance Payment Scheme.

28. Some people may feel they would benefit from additional support to access records and supporting documentation or may require practical or emotional support. In these circumstances, case workers will be able to refer applicants to the Redress Support Service. Again, applicants are encouraged to speak with case workers to explore the assistance available.

29. Funding for advice and assistance from solicitors is available to applicants. Solicitors have valuable experience in collecting and collating evidence to support actions in court, many of the same types of evidence will be relevant to applications for redress. Further information on this can be found in the [payment of legal fees guidance](#).

30. Section 79 of the Act gives the Scottish Government the power to issue notices to individuals (other than the applicant) or organisations to compel them to provide specified evidence. It is likely that these notices will only be issued when attempts made by the applicant or their representative have failed (for example where an organisation relies on an exemption under Schedule 3 of the Data Protection Act 2018 and declines to release information). It is not anticipated that this power will need to be used very often given the experience of operating the Advance Payment Scheme has been that evidence requested by survivors has been provided willingly by those who hold it. As exercising this power would mean the Scottish Government may receive information about the applicant which they themselves are not aware of (or which they would not choose for the Scottish Government to have), it will only be exercised with the agreement of the applicant or if instructed by Redress Scotland.

31. The Scottish Government has engaged with the organisations most likely to hold records relevant to an application for redress (including local authorities, care providers and Police Scotland) and will continue to do so throughout the life of the scheme. Opportunities for improving or streamlining the processes for applicants accessing records are being fully explored.

Information and evidence to be submitted by applicants for fixed rate and individually assessed redress payments (requirements under section 29)

32. The information and evidence required to be submitted by applicants for fixed rate or individually assessed payments, under section 29(1)(e) of the Act is noted below.

33. Applicants are required to submit:

- A completed and signed application form, including a written statement which can be included or attached to the application form.
- Evidence of identification.
- A supporting document to confirm that the applicant was resident in a relevant care setting as a child before 1 December 2004.¹
- Where the application is for an Individually Assessed Payment and relates to abuse that occurred whilst the applicant was resident in multiple relevant care settings, the applicant should, where possible, provide supporting documentation to confirm residency in each relevant care setting.

¹ Further information on the eligibility criteria of the redress scheme, including the definition of a relevant care setting, can be found in [the eligibility guidance](#).

- If an applicant was resident in a private boarding school when the abuse took place, the applicant must submit documentary evidence of who organised and paid for the placement.
- Where the application is for an Individually Assessed Payment, supporting documentation to establish the abuse to which the application relates, must also be submitted.
- If an applicant, or the person in respect of whom an application is made, has received or has become entitled to a relevant payment in terms of section 42 of the Act, supporting documentation in relation to that relevant payment is required.

34. Notwithstanding these general requirements, there may be circumstances where one or more of the above is not submitted by the applicant, further guidance on this is set out below.

Verification of documents submitted

35. Case workers will seek to verify supporting documents submitted.

36. This will normally be carried out by contacting the organisation that produced the document, or otherwise provided it to the applicant, to confirm that it is a true copy of an original document. Where the document is to establish that the applicant was resident in a relevant care setting, this may also be carried out by verifying with the care setting that the applicant was a resident. More information is contained within the [Privacy Notice](#).

37. If an applicant, or the person in respect of whom an application is made, has received or has become entitled to a relevant payment in terms of section 42 of the Act, that information will also be verified, and further guidance is provided at paragraphs 94-95.

38. The outcome of this verification process will be confirmed to Redress Scotland when the application is passed to them for determination.

Guidance on Sources and Types of Information and Evidence to Accompany a Redress Application

Evidence of identity

39. Applicants are required to provide evidence of identity by providing a certified copy of one of these documents:

- passport
- full or provisional driving licence (with a photo)
- European Economic Area (EEA) national identity card
- biometric residence permit (BRP)

40. Information for applicants on how to have documents certified and what alternatives can be provided if they do not have one of the documents in the list above, is contained within the [Help to Apply guidance](#).

Evidence of being resident in a relevant care setting as a child

41. Applicants are required to provide a supporting document, to show that they were resident in a relevant care setting when they were under 18 years of age and that this was before 1 December 2004.

42. Given the varying nature of the care settings that are eligible under the redress scheme and the arrangements by which children were placed in them, a great deal of flexibility is required as to what might constitute satisfactory documentary evidence or supporting information. It is well documented that in some care settings, record keeping was inconsistent or inadequate and there are a number of relevant care settings which no longer exist. A pragmatic approach must be taken to identifying potential sources of information.

43. Examples include (but are not limited to):

- a copy of a document from care records held by the care provider, such as an entry in an admission/discharge register, log book, punishment book or disciplinary log. These may be held by the care provider or local authority archivists;
- local authority records, including social work and education records;
- letter from a local authority archivist confirming the applicant appears in their records as being resident in an relevant care setting as a child;
- records that show the applicant's 'in care' address at the time, such as:
 - school records;
 - a baptism record;
 - court or police records; or

- health records including primary medical records (e.g. GP, dental, ophthalmic, or pharmacy) as well as secondary care records (e.g. hospital or clinic).
- where an applicant was migrated whilst they were a child in care in Scotland, passenger listings or other migration documents which contain reference to the relevant care setting in Scotland from where the migration took place.

44. The supporting document should, if possible, indicate the date or time period the applicant was in care although it is recognised that some documents may not show this. If it is not clear from the document and the other information provided in the application form, further investigation may be required and, after the application has been submitted, the case worker may be instructed by Redress Scotland to seek further information from the applicant.

45. In relation to applications for Fixed Rate Payments, one record demonstrating residence in a relevant care setting before 1 December 2004 while the applicant was a child, is to be considered sufficient by Redress Scotland. Where possible, that record should relate to the setting at which the abuse occurred. Where this has not been possible, and the supporting document relates to another relevant care setting, Redress Scotland may wish to seek further information from the applicant (see below). Where there is a reasonable explanation for the absence of the evidence, this should not affect Redress Scotland's consideration of the application.

46. In relation to applications for Individually Assessed Payments, where the applicant suffered abuse whilst resident in more than one relevant care setting, the applicant should as far as possible submit supporting documentation for each relevant care setting to which the application relates. This information is important to assist Redress Scotland to be satisfied that the application relates to abuse that occurred whilst the applicant was resident in relevant care settings.

47. Where this has not been possible, and supporting documents for some but not all relevant care settings to which the application relates have been submitted, Redress Scotland may ask case workers to seek further information from the applicant as to why (see paragraphs 55-58 below).

48. For some applicants who were abused whilst resident in more than one relevant care setting, those settings may have been the responsibility of a single organisation, for example, where an organisation ran multiple children's homes. In those circumstances, in the absence of supporting documentation relating to each of those individual settings, applicants may be able to obtain documentation relating to the relevant responsible organisation.

Private fee-paying boarding schools

49. The general approach is that these settings do not fall within the scope of the redress scheme. However, where a local authority or care provider arranged an individual's placement in a private fee-paying boarding school and paid their fees in full, abuse the individual suffered while a resident in the care of that setting, will be eligible for redress (if all the other eligibility criteria of the redress scheme are met).

50. Therefore the applicant must in those circumstances provide documentary evidence which confirms who arranged the placement in the relevant private fee-paying boarding school and paid the fees.

51. Further information on the eligibility criteria of the redress scheme can be found in [the eligibility guidance](#).

Short-term holiday or respite care

52. [Regulations](#) have been made by the Scottish Ministers under section 23 of the Act to provide that an application for a redress payment may not be made to the extent that it relates to abuse that occurred when a person was resident in a relevant care setting for the purpose of being provided with short term respite or holiday care, under arrangements made between their parent or guardian and another person.

53. If however there is evidence of abuse in a relevant care setting where the exclusion does not apply, then the application can be considered at least to that extent.

54. Where the information provided in an application submitted to Redress Scotland is unclear or indicates that abuse may have occurred whilst an applicant was resident in a relevant care setting for the purpose of being provided with short term respite or holiday care, under arrangements made between their parent or guardian and another person, Redress Scotland may ask case workers to seek further information from the applicant.

Exceptional circumstances

55. In exceptional circumstances, Redress Scotland may use its discretion as to whether the panel can be satisfied that the applicant was resident in a relevant care setting as a child without the production of supporting documents, or where case workers have been unable to verify the documents submitted. Redress Scotland may also use its discretion where, in an application for an Individually Assessed Payment, supporting documents have been produced for some but not all of the relevant care settings to which the application relates.

56. Redress Scotland may exercise its discretion in cases where it is satisfied that all reasonable endeavours have been made to obtain the documentary evidence generally required to support an application, that further inquiries are unlikely to be productive and that this is consistent with any other information or evidence in respect of the particular care setting or arrangements in question.

57. Before exercising its discretion, Redress Scotland may ask case workers to request further information from the applicant and / or may ask the Scottish Government to require the provision of specified information, documents, objects, or other items of evidence from any other relevant person or body. Where the absence of documentation relates to who arranged and paid for the applicant's placement at a

private fee-paying boarding school, Redress Scotland must seek further information about this aspect of eligibility.

58. Redress Scotland may also, if it considers it necessary to do so, invite the applicant to provide oral evidence on this aspect of their application in order to be satisfied, in the absence of supporting documentation, that the applicant was resident in a relevant care setting as a child.

Evidence of abuse

Applications for Fixed Rate Payments

Statement

59. The principle underpinning the fixed rate application process is that independent or documentary evidence to support the applicant's account of being abused is not required. The information from the applicant within the application form alone will be assessed by Redress Scotland in order to determine eligibility. However, if an applicant wishes to provide supporting information then Redress Scotland will also take this into account.

60. Part two of the application form includes a section for the applicant to include a statement on the abuse they suffered. Applicants for fixed rate redress payments are not required to provide a detailed description of the abuse they suffered but must provide sufficient information to allow Redress Scotland to determine that the facts described amount to abuse for the purposes of the Act and that the applicant is therefore eligible under the redress scheme. Some applicants may have previously made a statement about their abuse, for example to the police or in connection with civil court proceedings. Applicants may attach a certified true copy of that statement to the application form instead of writing a new statement in Part Two of the application form.

61. Where the statement within, or attached to, the application form is for any reason incomplete, unclear or otherwise does not allow Redress Scotland to make a determination of eligibility to be offered a redress payment, Redress Scotland may instruct case workers to request further information from the applicant.

Statements and evidence given by survivors to the Scottish Child Abuse Inquiry

62. Some applicants to Scotland's Redress Scheme may have previously given a statement to the Scottish Child Abuse Inquiry ("the Inquiry"). When they did so, they may have chosen to receive and/or retain a copy of their un-redacted statement. Anyone applying for a redress payment **cannot**, attach that un-redacted statement, or a copy of it, to their application for redress.

63. If applicants were to share their copy of their un-redacted Inquiry statement for the purposes of their redress application, it could result in persons who are

protected by the Chair's General Restriction Order, or a bespoke Restriction Order, being identified.

64. If an applicant for redress submits their un-redacted Inquiry statement, or a copy of that, with their application for redress, it will be returned to the applicant.

65. The Inquiry does however publish redacted witness statements and transcripts of evidence given at hearings on its website. These published statements and transcripts have been redacted so that the identities of anyone protected by the Chair's General Restriction Order or by a bespoke Restriction Order are protected.

66. If an applicant has waived their anonymity in Inquiry proceedings, their name will not be redacted from the statement or transcript published (but appropriate redactions to protect the identities of other people referred to will have been made). A copy of that redacted statement and/or transcript can be attached to the application for redress.

67. However, where an applicant has not waived their anonymity in Inquiry proceedings, the statement or transcript of evidence published by the Inquiry, will not be in their name as that too will be redacted. The redress scheme cannot accept that anonymised statement and applicants should not attach a copy of that to their application for redress.

Applications for Individually Assessed Payments

68. The evidence of abuse required to support an application for an Individually Assessed Payments differs from that required to support an application for a Fixed Rate Payment in two important ways: firstly a more detailed statement is required and secondly, supporting documentation to establish the abuse to which the application relates, must also be submitted.

Statement

69. Redress Scotland must consider the nature, severity, frequency and duration of the abuse to which the application relates and will require a detailed description of the abuse.

70. Part three of the application form includes a section for the applicant to include information about the abuse they experienced.

71. Again, some applicants may have previously made a statement about their abuse, for example to the police or in connection with civil court proceedings. Applicants may attach a certified true copy of that statement to the application form instead of writing a new statement in Part three of the application form.

72. The position on statements or evidence previously given to the Inquiry is the same as set out in paragraphs 62-67 above.

73. Where the statement within, or attached to, the application form is for any reason incomplete, unclear or otherwise does not allow Redress Scotland to make a determination of eligibility to be offered a redress payment, Redress Scotland may ask case workers to request further information from the applicant.

Supporting documents

74. Applicants for individually assessed payments must also provide documentary evidence or other supplementary information to support their account of being abused. Redress Scotland should not consider itself satisfied that the applicant's individual circumstances meet the threshold for a Level 1 – 5 payment on the basis of the survivor's statement within the application form alone.

75. Every application will be considered on its own merits and ultimately the value and weight to be attached to any piece of evidence is a matter for Redress Scotland.

76. Applicants are encouraged, in so far as possible, to fully consider and submit all the potential sources of evidence available in their particular circumstances to support their application and assist Redress Scotland in making its determination.

77. Applicants may seek assistance from a solicitor to obtain supporting documents to submit with their application form. Fees for legal work reasonably undertaken by the solicitor will be paid in accordance with the framework that has been put in place for the redress scheme. Further information about legal fees can be found in [the relevant guidance](#).

78. Where an applicant has suffered multiple types of abuse or where abuse was suffered at multiple relevant care settings, documentary evidence or other supplementary information is not required to be submitted for each incident of abuse that occurred at each care setting. However, where such evidence is available, applicants ought to consider obtaining and submitting it with their application. As above, applicants ought to consider the overall ability of their application and supporting evidence to assist Redress Scotland to determine whether, on the balance of probabilities, the applicant is eligible for the type of redress payment sought.

79. Applicants, and their legal representatives (if any), should ensure that their application is accompanied by the best evidence available to support it.

80. There are many types of information that could support an applicant's account of abuse contained within their application. These might include, but are not limited to:

- Medical, social care or school records of the applicant from the period the applicant was in care;
- Medical records since leaving care, for example where an applicant has made reference to childhood abuse in relation to treatment for physical injury or psychological or psychiatric harm;

- Evidence of physical injury or psychological or psychiatric harm;
- Relevant medical, psychiatric or psychological assessments;
- Previous reports or disclosures to the police or to others;
- Previous statements or evidence given in other proceedings;
- Statements obtained by the applicant from third parties such as siblings or friends who were resident in the same care setting at the same time. (witnesses to the abuse, or to disclosure of abuse by the applicant or potentially other survivors from the same care setting);
- Information relating to the criminal conviction(s) of perpetrator(s).

81. In considering potential sources of evidence available to support their application, applicants should consider their particular circumstances. Some forms of evidence will be of such value that it is unlikely that any further evidence would materially strengthen the application, e.g. evidence of a criminal conviction in relation to the abuse against the applicant.

82. Other forms of evidence however may not, on their own, allow Redress Scotland to reach a determination, and may result in Redress Scotland asking for further information.

Confidentiality

83. Section 87 of the Act sets out the responsibility of Redress Scotland and its members, the Scottish Ministers, their respective staff and others, to ensure confidentiality when handling information related to the redress scheme which is not otherwise in the public domain. Disclosure is prohibited other than in the following circumstances:

- within certain limits, for the purpose of carrying out any of the functions conferred upon the Scottish Ministers or Redress Scotland in terms of the Act (e.g. to allow evidence submitted to be verified);
- where the person who supplied the information has given their consent to its disclosure;
- the disclosure is reasonably required by and done in accordance with a provision of, or made under, the Act;
- where, in the opinion of a person to whom section 87(1) of the Act applies, acting in good faith, considers that disclosure is reasonably necessary to enable the police to carry out the investigation of a criminal offence involving the abuse of a child and then disclosure is in the public interest. If a person applying for redress names a perpetrator of abuse within their application, the Scottish Ministers will pass the name of the alleged perpetrator and the applicant's details to Police Scotland, in order that Police Scotland can assess any risk that the alleged perpetrator may currently pose to children and/or vulnerable adults. That risk needs to be assessed but it is not for the Scottish Ministers to assess it; or
- under a court order in relation to civil or criminal proceedings.

Evidence relating to previous payments

84. Section 42 of the Act provides that where a survivor has received a payment, or a number of payments, from another source in respect of abuse that is eligible for redress (or where it has been agreed that they will receive such a payment), that amount will be deducted from any redress payment offered (whether that is the fixed rate redress payment or an individually assessed redress payment).

85. Only payments made in terms of abuse eligible for redress under the redress scheme will be deducted from the redress payment.

86. Payments made in respect of other matters will not be taken into account – e.g. payments made under the UK Government’s scheme for former British child migrants; or, depending on the facts and circumstances, payments made in relation to specific incidents of negligence which resulted in injury to the survivor where this could not reasonably be held to have been an episode of abuse. These will have to be considered on a case by case basis.

87. Payments to be deducted are:

- court awarded damages (these will generally be from care providers or local authorities)
- out of court settlements (as above, these will generally be from care providers or local authorities)
- payments from the Criminal Injuries Compensation Authority (CICA)
- payments from the Advance Payment scheme,
- and other ex-gratia payments.

88. Section 42(3) provides that any element of a payment which relates to legal fees or other costs incurred in relation to the process under which the payment was obtained, will not be deducted.

89. Section 42(5) provides that, where the relevant payment was received before 7 December 2021 the amount that is to be deducted is to be adjusted for inflation by reference to the Gross Domestic Product deflator with reference to the period beginning with the date the payment was made and ending on 7 December 2021. However, payments under the Advance Payment Scheme will not be adjusted in this way (Section 43(6)).

90. Section 42(5) provides that where the applicant has only an entitlement to a payment, but where it has not yet been paid, Redress Scotland need not make any deduction. This is to account for situations in which it is unlikely that the applicant will ever receive the payment to which they are entitled, for example, because of the financial situation of the organisation required to make the payment.

91. Applicants are required to declare within the application form details of any relevant previous payment that they have received and, where possible, should provide supporting documents to establish this. Such supporting documents should include the following details:

- The amount of the payment;
- The date of the payment;
- If applicable, that an element of the payment related to legal fees or other costs incurred in relation to obtaining that payment and therefore should not be deducted from any redress payment offered (evidence of this could include a copy of an invoice or letter from the solicitor); and
- If applicable, that despite being entitled to receive a relevant payment, the applicant has not received any payment and is unlikely to receive any payment.

92. Sources of such information may include a copy of a court judgement or interlocutor, correspondence from a solicitor, care provider, local authority or other third party in relation to a previous payment, or correspondence with CICA.

93. Section 45 of the Act ensures that, where the applicant has entered into a settlement or other agreement relating to a previous payment that forbids them from disclosing the information sought (often referred to as non-disclosure agreements), disclosure of that information in connection with their application for redress will not be treated as a breach of that original settlement or other agreement.

Verification of information provided

94. Case workers will seek to verify the information provided by the applicant in relation to previous payments. This will be done by:

- Confirming whether an Advance Payment has been paid to the survivor;
- Confirming with care providers and local authorities, where they are named in the application as a relevant care setting at which the survivor resided at the time they were abused, if they have made a relevant payment to the survivor;
- Confirming with CICA, where a relevant payment from CICA has been disclosed in the application but the documentation has not been provided by the applicant, if they have made a relevant payment to the survivor;
- Verifying other documents submitted in relation to previous payments (e.g. such as those establishing the extent that the payment related to legal fees incurred and therefore should not be deducted from the redress payment). This will normally be done by verifying this with the individual or organisation that provided the document.

95. The outcome of this verification process will be confirmed to Redress Scotland when the application is passed to them for determination.

[Guidance on requests from Redress Scotland for further information](#)

96. In determining applications for redress, Redress Scotland may request additional information or evidence.

97. Instances where this would be appropriate have been highlighted above and may include, but are not limited to: where the applicant has not submitted any

supporting documentation to establish that they were resident in a relevant care setting; or that the documentation that they have produced does not apply to each relevant care setting named within their application for an individually assessed payment; or where they have been unable to submit any supporting documentation to establish who arranged and paid for their placement at a private fee-paying boarding school.

98. More generally, the circumstances in which it would be appropriate for Redress Scotland to request further information include, but are not limited to:

- Clarification of matters arising from their consideration of the application and evidence submitted;
- Resolution of any queries arising from that consideration; or
- Obtaining further information where it is required in order to fully assess the application and reach a determination.

99. There are a number of ways in which Redress Scotland may obtain further information:

- In most circumstances, where further information or supporting documentation is sought, it will be sufficient for Redress Scotland to ask case workers to request this from the applicant.
- In some circumstances, Redress Scotland may wish to invite the applicant to make oral representations. More information can be found in the [guidance on making oral representations](#).
- Redress Scotland may ask the Scottish Government to request additional information from a third party.
- Redress Scotland may instruct the Scottish Government to issue a notice under section 79 or 80 of the Act to compel another person or body (other than the applicant) to provide such information. It is anticipated that this will only be instructed where Redress Scotland is satisfied that previous attempts to obtain the information have been unsuccessful. Those previous attempts may have been made by the applicant, their representative or by the Scottish Government.
- Redress Scotland may ask the Scottish Government itself to provide specified information or evidence to the panel under section 81(1)(c) of the Act.
- Redress Scotland may request the Scottish Government to seek the agreement of the applicant for the commissioning of a report, such as a psychological assessment, under section 83 of the Act. To ensure that the applicant makes an informed choice, Redress Scotland must indicate, within their request, the matters to be addressed in the report to be commissioned. The applicant is free to withhold agreement (albeit if they choose to do so, this may mean that Redress Scotland lacks all the information that it requires to complete its determination of the redress application in accordance with section 36 of the Act). In those circumstances, no report will be commissioned.

Guidance on determinations by Redress Scotland

Determinations

100. Section 36(2) of the Act sets out that Redress Scotland will assess the application based on:

- the information provided in or with the completed application submitted to Redress Scotland;
- any further information requested by and provided to Redress Scotland; and
- anything further Redress Scotland considers relevant.

101. It is important that survivors, organisations and others have confidence in the redress scheme. In determining an application, Redress Scotland can consider any available information it considers relevant. This may include publicly available sources of information, for example, in relation to the relevant care setting:

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

Standard of Proof

102. Section 36(1) of the Act sets out the standard of proof against which an applicant's eligibility for a redress payment will be determined. This is the "balance of probabilities". Something is established on the balance of probabilities if the evidence presented is sufficient for the decision-maker to conclude that it is more likely than not to be true.

103. The effect of section 36(1) is that the eligibility criteria will be met if it is determined that the applicant has sufficiently demonstrated that it was "more likely than not" that the applicant was abused, prior to 1 December 2004, as a child whilst resident in an eligible care setting.

104. Where the applicant is a next of kin applicant, the same standard of proof would also apply to any questions as to their eligibility to apply as next of kin (for example, any question as to whether they had cohabited with the survivor, in a relationship that was akin to that of spouses/civil partners, for the 6 months immediately prior to the survivor's death).

105. Whilst the civil standard of proof applies, redress operates in fundamentally different ways to traditional civil legal action. For example, the redress scheme is not bound by rules of evidence or procedure as found in the civil or indeed the criminal courts and support will be offered to applicants, including practical support to assist

with information and evidence gathering. Moreover, the redress scheme uses non-adversarial processes, and there is no need to establish civil or criminal liability in order for a redress payment to be determined as appropriate (section 36(4) of the Act). The redress scheme presents a more accessible, trauma-informed, survivor-focussed approach whilst offering elements of justice through recognition and acknowledgement.

Presumption of truth and accuracy in relation to applications

106. Section 36(3) of the Act ensures that when determining an application, Redress Scotland are to start with the presumption that any information provided by the applicant is true and accurate to the best of the applicant's knowledge and belief. This key message is reinforced within [the application form and the Help to Apply guidance](#) and when submitting applications, applicants will be required to make a declaration to this effect.

107. There is no conflict between the standard of proof and the presumption of truth and accuracy. Redress Scotland must determine whether, on the balance of probabilities, the applicant is eligible for the type of redress payment sought. Redress Scotland must robustly assess what the applicant has said and the supporting information. These must be of sufficient weight to allow Redress Scotland to be satisfied, on the balance of probabilities, that the applicant is eligible for redress.

108. The presumption of truth and accuracy means that applicants are presumed, as a starting point, to be applying for redress in good faith, to the best of their knowledge and belief. In some circumstances, following consideration of the application and the evidence submitted it will be appropriate to rebut or overturn that presumption (e.g. in the case of fraud or in the event of contrary evidence coming to light).

109. In other cases, even though the information provided was true and accurate to the best of the applicant's knowledge and belief, Redress Scotland may not be satisfied that, on the balance of probabilities, the applicant is eligible for redress. This may be because the supporting evidence is not sufficient, or the events described are not eligible, or the information is not sufficiently robust to allow Redress Scotland to be satisfied to the required standard of proof. In other words, the presumption does not displace the requirements set out in this guidance for supporting evidence or the requirement for Redress Scotland to robustly assess all the evidence to be satisfied on the balance of probabilities that the applicant is eligible.

110. The presumption of truth and accuracy is consistent with the non-adversarial approach to all aspects of the redress scheme and recognises the challenges for individuals having to disclose abuse and underlines our commitment to a trauma informed approach. The redress scheme has been designed to support applicants throughout these challenges.



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