

# **Redress For Survivors (Historical Child Abuse In Care) (Scotland) Act 2021: Statutory Guidance – Making Oral Representations**

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Scottish Government  
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# Making Oral Representations to Redress Scotland (Oral Evidence)

## 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. 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, who must have regard to the guidance.
3. This guidance relates to applicants being invited, by Redress Scotland, to attend a meeting to make oral representations in connection with their application.
4. This guidance covers:
  - The principles and intended purpose of oral representations
  - The circumstances in which oral representations may be necessary
  - The procedure for making oral representations
  - The reimbursement of costs and expenses related to attending a meeting with Redress Scotland
  - The support available to applicants attending a meeting with Redress Scotland

## Principles

5. It is anticipated that in most instances, Redress Scotland will consider and assess applications for redress payments and requests for review of determinations, by way of an assessment of documentary material. This includes, but is not limited to, the information contained within the application form, or request for review, and any associated supporting documents (either submitted with the application or request for review, or submitted in response to a subsequent request from Redress Scotland).
6. Measures are in place to ensure accessibility of the scheme and that the focus on written applications and statements, as well as the requirements for supporting documents, does not restrict the opportunity for all eligible applicants to apply for redress (e.g. to allow those with literacy difficulties or other vulnerabilities to access appropriate support to complete their application).
7. However, even as knowledge of records and different sources of documentary evidence, and the challenges in obtaining them, continues to improve, it is important to ensure that all possible avenues of supporting evidence can be considered by

Redress Scotland. This may include hearing from the applicant in person and there may be circumstances in which Redress Scotland consider it necessary to ask an applicant to provide further information in person, in support of their application or request for review.

8. Importantly however, Redress Scotland does not have the power to compel the applicant to attend a meeting to make oral representations. The applicant always has the choice of whether or not they want to attend such a meeting (albeit if they choose not to attend, 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).

9. Applicants do not have a statutory right to meet Redress Scotland to make oral representations on their application; this process is only at Redress Scotland's invitation where oral representations are considered necessary.

### Circumstances in which oral representations might be necessary

10. There may be circumstances where Redress Scotland, considers it to be necessary to invite an applicant to make oral representations. This may include, but is not restricted to, determinations in relation to requests for review.

11. Reflecting the operation of the Advance Payment Scheme, it is anticipated that oral representations should generally not be necessary in respect of Redress Scotland's consideration of applications for fixed rate payments.

12. It is ultimately a matter for Redress Scotland to consider on a case by case basis, but it is anticipated that oral representations will only be necessary where:

- the contents of the application form, request for review and supplementary documents submitted has not provided a sufficient basis on which Redress Scotland is satisfied it can make a determination;
- additional information is required to establish, clarify or expand on a matter;
- additional information either cannot reasonably be obtained through correspondence with the applicant (such a request being made through the Scottish Government) or reasonable efforts to do so have been made and have not elicited the information required; and
- there are no other reasonable efforts that can be made to source that additional information from elsewhere (e.g. from a third party).

13. In assessing reasonable efforts, Redress Scotland may consider exercising its powers under section 81 of the Act to instruct the Scottish Ministers to issue a notice compelling a person, other than the applicant, to provide information. Redress Scotland may also take into account matters such as delay to the outcome of the application and any other factor it deems relevant.

14. Examples of determinations in which this might be necessary include, but are not limited to:

- Section 37: eligibility to apply for a redress payment, the level of individually assessed redress payment; or the amount of deduction to be made from a redress payment because of a relevant previous payment under section 42. E.g. determining level of payment (per criteria in section 39(4)) or issues establishing eligibility such as in respect of cohabitants where there is a lack of available documentation on the length of time someone has been living together as if they were married (per section 28(4) definition of cohabitant of the deceased person).
- Section 60: (applicants with convictions for serious offences) e.g. where Redress Scotland require to clarify information submitted to allow them to consider the matters set out in Section 60(6) for the purposes of determining whether or not it would be contrary to the public interest to make a redress payment to a person.

15. Where Redress Scotland invites an applicant to make oral representations, it will set out the reason for the request.

### Procedure

16. The conduct and procedure of meetings to which applicants are to be invited to make oral representations, is a matter for Redress Scotland. Careful consideration should be given to how applicants invited to make oral representations will be empowered and supported. Wherever possible, Redress Scotland should be flexible as to the location and timing to accommodate applicants' needs and should consider any special assistance required by the applicant.

17. The redress scheme is designed to be a non-adversarial alternative to court and applicants will not be placed on oath and compelled to answer questions they do not wish to. The applicant always retains the right to leave the meeting.

### Costs and expenses

18. The redress scheme may reimburse reasonable travel, subsistence and accommodation costs incurred by an applicant invited to make oral representations to Redress Scotland. The scheme may also reimburse the cost of a baby-sitter or carer where required for an applicant to attend an oral evidence session. More information on expenses can be found in the [reimbursement of costs guidance](#).

### Support and legal representation for the applicant

19. An applicant may choose to bring a supporter(s) and/or a legal representative when they attend to make oral representations. If they choose to bring a supporter, the reasonable travel, subsistence and accommodation costs of the supporter may be reimbursed by the scheme. The scheme may also reimburse the cost of a baby-sitter or carer of a support person in attendance. More information on expenses can be found in the [reimbursement of costs guidance](#).

20. If the applicant chooses to be supported by a legal representative, the legal representative may wish to apply to Redress Scotland for an 'additional sum', over and above the prescribed sums payable for legal work carried out in connection with an application for redress. Prior authorisation for the additional sum should be obtained in advance. More information on legal fees can be found in the [legal fees guidance](#).



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