

Redress For Survivors (Historical Child Abuse In Care) (Scotland) Act 2021: Statutory Guidance – Payment of Legal Fees

December 2021



Scottish Government
Riaghaltas na h-Alba
gov.scot

Payment of Legal Fees

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 covers:
 - The background and purpose of the payment of legal fees
 - The prescribed sums available
 - The circumstances where decisions relating to the payment of legal fees are referred to Redress Scotland
 - The procedure for how a fee payment request should be submitted
 - The exceptional or unexpected circumstances where fees can be requested where an application was not submitted
 - The process and procedure for requesting additional sums beyond the prescribed sums and prior approval for incurring those costs
 - The review process for a fee payment request assessment

Background

4. Funding for applicants to obtain independent legal advice is a key element of the redress scheme. It is essential to give applicants a meaningful opportunity to obtain the support and advice that they need, in connection with making their application and to allow them to make fully informed decisions when considering an offer of a redress payment. This includes survivors, next of kin and nominated beneficiaries.
5. An applicant may choose whether they apply for redress with or without legal assistance or representation. Some applicants may want to instruct a solicitor from the outset of their application whereas others may find they only want the assistance at a later stage of the process.
6. The [Summary of Options](#) will be provided to applicants along with the application form, and again when they are notified of Redress Scotland’s determination of their application. It sets out the importance of obtaining independent legal advice before accepting an offer of a redress payment and signing a waiver. This key message is also within the [Help to Apply guidance](#) and will be reinforced by case workers when speaking with applicants.

7. There is a need to manage legal costs and, learning lessons from other redress schemes in which legal costs have escalated, section 92 of the Act provides for prescribed sums to be paid to solicitors in respect of legal work reasonably undertaken in making an application for redress.

8. Importantly, the Act provides for a degree of flexibility. In accordance with section 93(3), an additional sum, in excess of the prescribed sum, may be paid where Redress Scotland's assessment is that there are exceptional or unexpected circumstances which justify it.

9. If a person sought legal advice on their eligibility to apply for redress, but subsequently decided not to submit an application, under section 93(1), a prescribed sum will still be paid for that advice where Redress Scotland's assessment is that there are exceptional or unexpected circumstances which justify payment.

10. All fee payment requests must be submitted to the Scottish Ministers. Where a decision by or assessment of Redress Scotland is required before payment can be made, the Scottish Ministers will transmit the fee payment request to Redress Scotland and notify the solicitor of the outcome once Redress Scotland has made its assessment.

11. The [Redress for Survivors \(Historical Child Abuse in Care\) \(Payment of Legal Fees\) \(Scotland\) Regulations 2021](#) ("the Regulations") provide further detail on the arrangements that apply and the level of those fixed fees.

Prescribed Sums

12. Generally, solicitors who carry out legal work in relation to an application for redress will (if the work is reasonably undertaken) receive prescribed sums for the work, in other words, a fixed fee.

13. The prescribed sums are set out in the schedule of the Regulations, a copy of the Table of Fees is attached at Annex A on pages 7-9.

- Column A prescribes sums for all legal work where an application for a redress payment is submitted and a determination is made by Redress Scotland.
- Column B prescribes sums where an application for a redress payment is submitted but has not been determined by Redress Scotland because it is paused or withdrawn, or because of the death of the applicant.

14. The sum payable is set out in the relevant column and corresponds to the work undertaken. So, for example, the prescribed sum in respect of an application for a fixed rate payment which is determined is £450 (plus VAT) but if such an application was paused or withdrawn, the prescribed sum is £340 (plus VAT). In respect of an application for an individually assessed payment which is determined, the prescribed sum is £2000 (plus VAT) but if such an application was paused or withdrawn, the prescribed sum is £1500 (plus VAT).

15. In exceptional or unexpected circumstances, solicitors may be able to obtain additional sums, or they may be able to obtain sums where an application has not been submitted (see below).

16. However, the prescribed sums have been set at levels which ought to properly reflect the amount of work which will be required in almost all cases and gives solicitors certainty as to the sum they will receive.

Referral to Redress Scotland

17. It is anticipated that where an application for a redress payment is submitted (regardless of whether it was successful or not, or was withdrawn), almost all fee payment requests will be paid to the solicitor by the Scottish Government without any referral to Redress Scotland. However, where the Scottish Government believes that the legal work may not have been reasonably undertaken in making the application for redress, they will, as soon as reasonably practicable, refer the fee payment request to Redress Scotland to decide.

18. Examples of work where a referral might be made to Redress Scotland because Scottish Ministers believe the work may not have been reasonably undertaken may include:

- Where legal work which was carried where it ought to have been patently obvious to the solicitor that the person was not eligible because of the particular setting or dates of abuse, but nevertheless the solicitor submitted an application - for example where the setting involved was a day school.
- where an incomplete application was submitted with significant material missing and then soon thereafter was paused or withdrawn.

19. It should also be noted that different rules apply in respect of the payment of fees for legal work where an application for a redress payment has not actually been submitted (see below).

Fee Payment Request

20. After the conclusion of legal work, the fee payment request must be submitted to the Scottish Ministers, on the form provided, and set out the legal work undertaken and when that work was carried out.

21. The fee payment request must be submitted within 8 weeks of the applicant receiving notification of a determination under section 36 or the outcome of a review under section 57. Where an application was paused or withdrawn, or the applicant did not subsequently submit an application, the fee payment request must be submitted within 6 months of the receipt by the Scottish Ministers of the request to pause or withdraw or the decision not to submit, whichever is applicable.

22. Scottish Ministers may consider a fee payment request outwith these timescales if they are satisfied that the solicitor had good reason for not making the request sooner.

Fees where no application for redress submitted – exceptional or unexpected circumstances (section 93(1) and (2))

23. Where legal work is provided to a person who sought advice or assistance on their eligibility to apply for a redress payment but did not subsequently submit an application for a redress payment, the fee payment request will be submitted by Scottish Ministers to Redress Scotland for assessment. Prescribed sums will only be paid, in these circumstances, where Redress Scotland assesses that the legal work was reasonably undertaken and there are exceptional or unexpected circumstances for payment of the prescribed sum.

24. If it is Redress Scotland's assessment that the prescribed sums ought to be paid, the prescribed sum is £250 (plus VAT).

25. The fee payment request in this case must contain information about the exceptional or unexpected circumstances and why the work was reasonably undertaken. The fee payment request must be submitted within 6 months of the date on which the decision was taken not to submit an application for a redress payment.

26. Scottish Ministers may consider a fee payment request outwith these timescales if they are satisfied that the solicitor had good reason for not making the request sooner.

27. The Scottish Ministers will, as soon as reasonably practicable, refer fee payment requests made under Section 93(1) to Redress Scotland for a decision.

28. Exceptional or unexpected circumstances to justify payment, may, for example, be the death, serious injury or illness of the potential applicant. It does not include circumstances in which the solicitor gave advice to the applicant on redress but the applicant then chose not to make an application.

29. The outcome of Redress Scotland's assessment, together with its reasons, will be notified to the solicitor by the Scottish Ministers as soon as reasonably practicable after they receive it.

Additional legal fees (section 93) and prior approval

30. Where it is reasonable for a solicitor, in unexpected or exceptional circumstances, to carry out legal work in connection with an application for a redress payment, and where the solicitor considers that the prescribed sums do not adequately reflect the cost of the legal work, the solicitor may seek an additional sum. Before such work is undertaken, the solicitor must submit a written request to the Scottish Ministers seeking authority in principle to undertake any legal work in excess of that covered by the prescribed sum and specify the additional sum that is likely to be requested in the fee payment request. However, note that if prior approval has not been sought, if there is good reason for the solicitor not having obtained authority in principle, Redress Scotland has the discretion to pay an additional sum.

31. The request for prior approval, must, as soon as reasonably practicable, be referred to Redress Scotland.

32. Redress Scotland must assess whether there are exceptional or unexpected circumstances which justify the solicitor reasonably undertaking the work identified and if so indicate if the additional sum specified in the request for prior approval is appropriate or whether an alternative sum is appropriate.

33. Every request for additional sums will have to be considered on its own merits and the particular facts and circumstances of the application.

34. Examples of exceptional or unexpected circumstances which may justify the solicitor seeking an additional sum may include, but are not limited to:

- Costs and expenses incurred by a solicitor where an applicant is invited to make oral representations, including to cover the solicitor's attendance;
- Where, in the particular facts and circumstances of the application, the solicitor requires to conduct a number of interviews with witnesses to obtain statements in support of an application, involving work in excess to that covered by the prescribed sum;
- Where the solicitor requires to carry out significant work where an application for a redress payment is affected by convictions for serious offences under section 60; or
- Where, in the particular facts and circumstances of the application, the solicitor requires to instruct an opinion from counsel or relevant expert. The opinion or expert report must relate to the application for redress. An additional sum would not be considered justified where the opinion sought was in relation to advice of the prospects of success of a civil claim. Additional sums are not intended to cover that type of advice or assistance. Where an applicant wishes to explore their prospects of success of a civil claim, they are encouraged to do so and to access existing mechanisms to fund that, including legal aid.

35. In indicating what alternative sum would be appropriate, Redress Scotland may take into account the full facts and circumstances within the request, in order to assess what is reasonable. For example, if the request is for fees that include travelling time and time interviewing witnesses, it would probably not be necessary or reasonable for two rather than one solicitor to attend to take a witness statement.

36. The outcome of Redress Scotland's assessment of the prior approval request, together with their reasons, will be notified to the solicitor by the Scottish Ministers as soon as reasonably practicable after they receive it.

37. A solicitor may, request a review of that decision by Redress Scotland if approval in principle is not given, or Redress Scotland assesses that a sum less than that specified by the solicitor would be appropriate. Unless there has been an intervening change of circumstances, and provided the fee payment request relates to the same work for which the prior approval was given, Redress Scotland should not change the decision they have already made.

38. Where Redress Scotland has assessed a fee payment request, a solicitor may, within 8 weeks of receiving notification of Redress Scotland's assessment, request a review of that decision. Requests made outwith that 8 week period may also be considered if Redress Scotland is satisfied that the solicitor had good reason for not making the request sooner. Examples of circumstances which may amount to good reason may include where there has been a demonstrable difficulty in obtaining the applicant's instructions in time

39. The review is to be considered by a review panel consisting of at least 2 members of Redress Scotland. Further information on the reviews process can be found in [the reviews guidance](#).

[Restriction on additional legal fees \(section 96\)](#)

40. Section 96 of the Act provides that solicitors who obtain payments for legal work under the scheme in relation to a redress application may not also charge their clients separately for work carried out in relation to the same application.

41. The effect of this is that solicitors will not be able to top up the fee they receive from the redress scheme and recoup fees over and above that which is paid by scheme. Applicants who access legal advice funded by the redress scheme will be able to keep the entirety of their redress payment, without further legal fees being deducted or requested separately by their solicitor in relation to work that is already covered by the redress scheme's legal fees provisions.

Annex A: Table of Fees

Part 1 – First applications

	<i>Column A</i>	<i>Column B</i>
1. For all work in connection with an application for a fixed rate payment under section 29(1)(c)(i) of the Act.	£450	£340
2. For all work in connection with an application for an individually assessed payment under section 29(1)(c)(ii) of the Act.	£2000	£1500
3. For all work in connection with any application for a next of kin payment under section 29(1)(c)(iii) of the Act.	£450	£340

Part 2 – Subsequent applications

	<i>Column A</i>	<i>Column B</i>
4. Where a person has made a previous application for a fixed rate payment, for all work in connection with an application for an individually assessed payment under section 30(2) of the Act by that person.	£1550	£1160
5. Where a person has made a previous application for an individually assessed payment, for all work in connection with a further application for an individually assessed payment under section 30(3) of the Act by that person.	£250	£190
6. Where a person has made and withdrawn a previous application for an individually assessed payment, for all work in connection with a new application for an individually assessed payment under section 30(6) of the Act by that person.	£500	£375
7. Where a person has made a previous application for an individually assessed payment, for all work in connection with a further application for an individually assessed payment under section 30(8) of the Act by that person.	£250	£190
8. Where a previous application for an individually assessed payment resulted in a determination under section 60(4) of the Act that the person was precluded from being offered a payment and as a result of an appeal in respect of a conviction or sentence, section 60 will no longer apply, for all work in connection with a further application for an individually assessed payment under 30(7) of the Act by that person.	£250	£190
9. Where a previous application for a fixed rate payment resulted in a determination under section 60(4) of the Act that the person was precluded from being offered a payment and as a result of an appeal in respect of a conviction or sentence, section 60 will no longer apply, for all work in connection with an application for an individually assessed payment under section 30(7) of the Act by that person.	£1550	£1160
10. Where a previous application for a fixed rate payment has been made and withdrawn by an applicant, for all work in connection with a new application for a fixed rate payment under section 30(6) of the Act by that person.	£110	£80
11. Where a previous application for a fixed rate payment has been made, for all work in connection with a further	£250	£190

	application for a fixed rate payment under section 30(8) of the Act by that person.		
12.	Where a previous application for a fixed rate payment resulted in a determination under section 60(4) of the Act that the person was precluded from being offered a payment and as a result of an appeal in respect of a conviction or sentence, section 60 will no longer apply, for all work in connection with a further application for a fixed rate payment under section 30(7) of the Act by that person.	£250	£190
13.	Where a previous application for a next of kin payment has been made and withdrawn by a person, for all work in connection with a further application for a next of kin payment under section 30(6) of the Act by that person.	£110	£80
14.	Where a previous application for a next of kin payment resulted in a determination under section 60(4) of the Act that the person was precluded from being offered a payment and as a result of an appeal in respect of a conviction or sentence, section 60 will no longer apply, for all work in connection with a further application for a next of kin payment under section 30(7) of the Act by that person.	£250	£190
15.	Where a previous application for a next of kin payment has been made, for all work in connection with a further application for a next of kin payment under section 30(8) of the Act by that person.	£250	£190

Part 3 - Reviews

		<i>Column A</i>	<i>Column B</i>
16.	For all work in connection with a review of a determination made under section 25 of the Act (eligibility to apply for a next of kin payment: exceptional circumstances) under section 26 of the Act.	£250	£190
17.	For all work in connection with a review of a direction under section 51 of the Act (payments to children) under section 52 of the Act.	£250	£190
18.	For all work in connection with a review of a redress payment determination under section 54 of the Act.	£250	£190
19.	For all work in connection with a review of a determination made under section 60(4) of the Act (applicants etc. with convictions for serious offences) under section 62 of the Act.	£250	£190
20.	For all work in connection with a review of a determination made under section 66(3) of the Act (applicant's death while application ongoing) as to whether a nominated beneficiary is to be invited to take over the application under section 68 of the Act.	£250	£190

Part 4 – Nominated beneficiaries

	<i>Column A</i>	<i>Column B</i>
21. For all work in connection with an application for a redress payment by a nominated beneficiary where the nominated beneficiary has been invited to take over the application under section 66 of the Act.	£500	£375



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2021

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80201-662-8 (web only)

Published by The Scottish Government, December 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS977186 (12/21)

W W W . g o v . s c o t