

Redress For Survivors (Historical Child Abuse In Care) (Scotland) Act 2021: Statutory Guidance – Reimbursement of Costs Incurred in Relation to an Application

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Scottish Government
Riaghaltas na h-Alba
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Reimbursement of Costs Incurred in Relation to an Application

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 costs which may be reimbursed to applicants
 - Limits on the costs which may be reimbursed
 - The processes to be followed where a cost has been incurred in a different currency
 - What should be considered as exceptional or unexpected circumstances where costs were incurred but no application was made
 - The time limits for a request for reimbursement to be made
 - The process for reviews of decisions made regarding the reimbursement of costs incurred in relation to an application

Legislative introduction

4. Section 91 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (“the Act”) requires the Scottish Ministers to make provision in regulations which:
 - a) require reimbursement, on request, of costs and expenses reasonably incurred in relation to a redress application. This covers circumstances where that application is successful, unsuccessful or subsequently withdrawn and;
 - b) enabling the reimbursement, on request, of costs and expenses reasonably incurred in connection with an application by a person who did not apply. The Scottish Ministers must assess that the request discloses exceptional or unexpected circumstances which justify the reimbursement of those costs and expenses.
5. This means that costs can be reimbursed for or in respect of survivor applicants, next of kin applicants, and nominated beneficiaries who have incurred costs in relation to the application process, or in exceptional and unexpected circumstances, costs may be reimbursed where an application has not been made.

6. The Scottish Ministers have made regulations as required by section 91 and these came into force on 1 December 2021. See [The Redress for Survivors \(Historical Child Abuse in Care\) \(Reimbursement of Costs and Expenses\) \(Scotland\) Regulations 2021 \(legislation.gov.uk\)](#) (“the Regulations”).

Costs which may be reimbursed

7. To receive reimbursement for the costs incurred by or in respect of both applicants and potential applicants, they are required to submit the expenses form which has been provided by the Scottish Ministers for this purpose. This [form](#) is available online and by request from a case worker.

8. The Regulations set out further details in relation to the types of costs and expenses in connection with an application which may be reimbursed by the Scottish Ministers, provided they are reasonably incurred.

9. The costs and expenses which must be reimbursed, if reasonably incurred on or after 11 March 2021 (the date when the legislation for the scheme was approved by the Parliament) are in relation to:

- obtaining information or evidence in connection with an application,
- verifying such information or evidence for the purposes of an application,
- the reasonable travel, accommodation, subsistence and care costs (for the care of children or other dependants) associated with an applicant (and one person accompanying the applicant) who has been invited to make oral representations to Redress Scotland,
- any ‘other cost and expenses’ which the Scottish Ministers are satisfied was reasonably incurred in connection with the application.

10. Other ‘costs and expenses’ reasonably incurred may include:

- the cost of an applicant or solicitor instructing a psychological/medical assessment in support of an application,
- the cost of an applicant attending a psychological/medical assessment in support of an application,
- the cost of translation services or other services to assist an applicant requiring support for the purposes of applying to the scheme,
- the cost of bank charges where the applicant has a bank account outside of the UK.

11. In relation to the last category, other costs and expenses’ reasonably incurred; in order to have certainty that the Scottish Ministers will consider any particular cost or expense to have been reasonably incurred, it is strongly advised that applicants or their solicitors, engage with a case worker and seek advice on potential reimbursement prior to incurring any cost.

12. In particular, before instructing any expert report, including a psychological assessment, an applicant or their solicitor should contact a case worker. Whilst it is understood that these reports may be required in some circumstances, and indeed

Redress Scotland may instruct them in some circumstances, they should not routinely be instructed by an applicant or their solicitor without seeking approval in advance.

Limits on the costs which will be reimbursed

13. Regulation 2 of the Regulations set out some cost limits. All costs must be reasonably incurred.

14. Costs associated with obtaining and verifying evidence in connection with an application, whether that application is made or not, is limited to £50 in most circumstances. Where this cost limit is to be exceeded, the Scottish Ministers must be satisfied that there are exceptional or unexpected circumstances to justify this occurring.

15. Unexpected or exceptional circumstances which have resulted in the appropriate limit being exceeded might include:

- discovering that a higher amount of evidence requires to be provided by the applicant in support of an application
- there are additional costs attached to sourcing and/or verifying records in the country where the applicant is resident

16. For applicants who are travelling to meet Redress Scotland, for example to make oral representations following the panel's request, there are cost limits set out below which may apply in relation to the reimbursement for travel or subsistence costs. These align with the current Scottish Government travel and subsistence policy.

17. The Scottish Government will normally book accommodation on behalf of the applicant, and any individual accompanying the applicant, to prevent them having to incur the cost in the first place. Where this is not the preference of the applicant, the following limits will apply. Accommodation costs, including breakfast, will be limited to £75 per person per night. This limit may only be exceeded where it is considered reasonable to do so, for example, where there is no cheaper alternative.

18. Subsistence costs, including for meals, food and drink, will be set at £30 per person per day. Breakfast may be claimed separately if it is not included as part of their accommodation costs. Receipts for this expenditure should be provided where possible.

19. The Scottish Government will normally book travel on behalf of the applicant, and any individual accompanying the applicant, to prevent them having to incur travel costs up front. Where this is not the preference of the applicant, or where the method of transportation cannot be pre-booked, for example a local bus service, there will be no maximum limit put on these costs but they must remain reasonable. However, such costs should be receipted where possible to provide proof of cost and to allow for an assessment of the reasonableness of the cost.

20. There are no cost limits on the other costs detailed within the Regulations, but all costs must be reasonably incurred. We strongly encourage that, for unusual or significant expenses, applicants should speak to their case worker before incurring such costs. Ultimately, costs will only be reimbursed if reasonably incurred, and seeking advice in advance may assist in establishing that a cost was reasonably incurred.

21. In some circumstances, other costs relating to an application may be incurred by the Scottish Ministers to prevent the applicant having to incur the cost in the first place. Examples of when this could happen include:

- the Scottish Ministers may instruct and pay for a psychological or medical assessment on behalf of an applicant
- the Scottish Ministers may pay for translation services to assist with an applicant's access to legal advice

Where the cost has been incurred in a different currency

22. As set out in the Regulations, where a reimbursement request relates to a cost or expense incurred in a currency other than Sterling, the person making the request must calculate the value of the cost and expense by reference to the Sterling equivalent on the date that the cost and expense was incurred. They should complete this process to the best of their ability. Conversions of currency will be verified by Scottish Ministers to prevent errors being made. If any issues arise during this verification process, the case worker will discuss the matter with the person requesting a reimbursement.

Exceptional or unexpected circumstances where costs were incurred but no application was made

23. In relation to proposed applications, the Regulations set out that in cases where an application was not subsequently made under the redress scheme, the Scottish Ministers must be satisfied that there were exceptional or unexpected circumstances to reimburse the costs and expenses. These circumstances include:

- cases where a person died prior to being able to submit an application, or
- where the potential applicant had a serious illness which prevented them from being able to submit an application under the scheme.

24. There may be other circumstances which may be considered exceptional or unexpected which are not explicitly mentioned above. If a person is unsure if their circumstances would be considered exceptional or unexpected, they should discuss this with a case worker.

25. For a person to request reimbursement for the costs incurred in relation to an application, which they ultimately did not submit, the person must submit their request through an expenses form and provide information as to why they have exceptional or unexpected circumstances which merit reimbursement of the costs

and expenses incurred. As noted above, this process may involve dialogue with a case worker. Again, this [form](#) is available online and by request from a case worker.

Time limits for an applicant to make a request for reimbursement

26. Where a reimbursement request relates to a redress application, a request must be made by the applicant within 8 weeks of them receiving a determination letter from Redress Scotland under section 36 of the Act. Where a request for a review of a determination in relation to a redress application under section 57 of the Act has been made, the applicant will have 8 weeks to submit a request for reimbursement following the outcome of that review.

27. Prior to receiving a determination letter from Redress Scotland an applicant can submit a request for reimbursement at any time.

28. Where a request relates to a proposed application by a person who did not subsequently apply, the person has up to 6 months from when the cost in question was incurred to request a reimbursement.

29. Where these time limits for a request have been exceeded, the Scottish Ministers may still consider and assess a request for reimbursement if they are satisfied that there is a good reason why the request was not submitted sooner. This may include where the applicant, or proposed applicant, was seriously ill or had personal circumstances which prevented them from making a request within the prescribed time limit.

Reviews

30. Where a person has received notification of a decision about the assessment of a reimbursement request, they may request a review of that decision in writing to Scottish Ministers under regulation 3 of the Regulations. In the case of an application for a redress payment, the review concerns a decision that a person is not entitled to reimbursement of a cost or expense or that the cost and expense to be reimbursed is less than the sum requested. In the case of a proposed application, the review concerns a decision that there are no exceptional or unexpected circumstances which justify the reimbursement.

31. A person has 8 weeks from when they received notification of the initial decision relating to their reimbursement request to make a request for a review. Where a person fails to submit a request for a review within this timeframe, a review may still be conducted despite the request for it not being made within the period mentioned in paragraph (3)(b) of the Regulations. This may occur where Redress Scotland is satisfied that the person had good reason for not requesting a review sooner. This may include circumstances where the person was seriously ill or had personal circumstances which prevented them from making a request within the prescribed time limit.

32. The review will be carried out by a review panel of Redress Scotland and will be based on the evidence originally considered by the Scottish Ministers when assessing the request for the reimbursement of costs and expenses, and any further evidence provided to or obtained by the review panel.

33. The outcome of the review and a summary of the review panel's reasons for their determination will be notified to the person by the Scottish Ministers.

34. At any point prior to the determination of the review, a person can withdraw any request for a review. Further information on reviews can be found in [the relevant guidance](#).



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