

Redress For Survivors (Historical Child Abuse In Care) (Scotland) Act 2021: Statutory Guidance - Waiver, Contributions, and Other Routes to Redress

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Scottish Government
Riaghaltas na h-Alba
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Waiver, Contributions, and Other Routes to Redress

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:
 - What it means to accept an offer of redress and sign the waiver
 - What happens when an applicant’s waiver is revoked in respect of one or more organisation
 - The importance of legal advice
 - Other routes to redress and justice which potential applicants and applicants may wish to consider prior to accepting an offer of redress
 - Things an applicant may want to take in to account when considering abandoning ongoing civil court action to apply to the redress scheme

Background

4. The redress scheme is designed to be an alternative to civil court action. The redress scheme offers survivors a choice to participate in a statutory redress scheme, which will provide a package of financial redress alongside access to non-financial redress including apology and support.
5. In order to give organisations the certainty they need to be able to participate in the scheme, the acceptance of a redress payment is conditional upon the applicant agreeing to give up their right to pursue a remedy through the civil courts against organisations which have agreed to make fair and meaningful contributions.

Accepting an offer and signing the waiver

6. Section 46 of the Act requires that an applicant who wishes to accept a redress payment offer which has been made to them must sign and return a waiver agreeing to:
 - a) abandon any existing relevant civil proceedings, and
 - b) waive any right to raise any new relevant civil proceedings.

7. Relevant civil proceedings are civil proceedings against the Scottish Government or any relevant scheme contributor in which the applicant seeks compensation or any other remedy in relation to the abuse in respect of which the redress payment is offered.

Organisations listed on the scheme contributor list

8. Organisations which have made, or agreed to make, fair and meaningful financial contributions will be included on the publically available scheme contributor list. The waiver to be signed by the recipient of a redress payment will only extend to the Scottish Government and “relevant scheme contributors”, that is organisations included in the scheme contributor list on the date that Redress Scotland makes its determination of their application for redress. A copy of the relevant contributor list will be given to applicants alongside the determination letter from Redress Scotland.

9. An applicant’s right to raise civil court action against an organisation not included on the scheme contributor list, at the date their application is determined, will not be affected by signing a waiver.

10. More information on how an organisation can be added or removed from the contributor list can be found in the [Statement of Principles Regarding Financial Contributions](#).

Retrospective removal of an organisation from the contributor list

11. If an organisation fails to meet its obligations to contribute financially to the scheme, then it will be removed from the scheme contributor list. This may be with retrospective effect if the organisation has not made payments to support all redress payments relevant to it. Where this occurs, if an applicant has previously accepted a redress payment and signed a waiver which that organisation failed to fund, that waiver may be revoked in respect of that organisation and the applicant’s right to proceed with civil court action against that organisation may be reinstated.

Legal Advice

12. All applicants will have access to funded legal advice to ensure fully informed decisions are made, particularly in relation to signing the waiver. Applicants are encouraged to seek legal advice. Funding for legal advice covers the effect of the waiver as well as other matters. Further information on the advice funded by the Scottish Government can be found in the [legal fees guidance](#).

Pausing, resuming or withdrawing an application

13. All applicants have the right to pause or withdraw their application at any time prior to a determination of an offer of redress. An applicant can request their paused application is resumed at any time prior to the closing of the scheme. More information on pausing, resuming or withdrawing an application can be found in [the relevant guidance](#).

Review of an offer of redress

14. An offer of redress is valid for a period of 6 months beginning on the date on which it is received by an applicant. This period can be extended if Redress Scotland is satisfied there is good reason why an applicant needs more time to consider an offer, for example where an applicant became unwell and was unable to contact Redress Scotland to accept. During that time, the applicant is strongly encouraged to seek legal advice if they have not already done so on whether or not to accept the offer and sign the waiver.

15. It is also open to the applicant, before accepting the offer, to request that Redress Scotland carry out a review of the offer. The applicant has up to 8 weeks from receiving the determination to submit a request for review. Again, applicants are strongly encouraged to seek legal advice about this. If an offer of a redress payment is made on a review, the applicant will have 6 months beginning with the date on which they received that offer to accept or refuse.

16. More information about rights of review can be found in the [reviews guidance](#).

Things to take in to account when considering abandoning ongoing civil court action to accept a redress payment

17. It will be for applicants to decide whether or not they should abandon (not continue) ongoing civil action to accept a redress payment. The Scottish Government and Redress Scotland cannot provide applicants with advice in relation to this decision.

18. If an applicant has entered into an agreement with a solicitor, the details of this agreement should be discussed with their solicitor to make sure that before a decision is made by the applicant, they are fully aware of the consequences of abandoning ongoing civil court action. This includes being aware of any potential fees that the applicant may be charged by their solicitor in the event that an applicant chooses to abandon their existing action.

19. There is helpful information about dealing with a solicitor on [the Law Society of Scotland website](#).

20. Potential applicants to the scheme are entitled to complete their ongoing civil court action and then apply for redress. However, it is worth taking the following into consideration:

- any payments received by an applicant through civil court action will be deducted from any redress payment made to the applicant, and
- the redress scheme will be open for whichever is the longest of five years or two years following the publication of the Scottish Child Abuse Inquiry's final report, possibly longer. Any civil litigation would need to be completed and an application made prior to the closing of the scheme.

Other routes to redress and justice

21. There is no requirement to apply for redress and the existence of the redress scheme does not interfere with any rights survivors may have to pursue other remedies including raising a civil court action, unless, after choosing to make an application for redress, an offer of redress is accepted.
22. An applicant may decide that upon reading more about the scheme that they do not want to apply for redress, and that they would rather raise a civil court action.
23. Redress payments may be lower for some survivors under the scheme than would have been awarded by the courts. For others, the opposite may be true. However, the redress scheme is designed as an alternative remedy for survivors and is not designed to achieve the same outcomes, or use the same approach, as a civil court process. The financial redress offered under the redress scheme is not, therefore, linked to the amount of compensation that a person may receive in civil court action by way of damages.
24. The scheme is designed to reduce or remove the risks and barriers to accessing justice that can be associated with civil court action. Once eligibility for a redress payment has been established, the payment is guaranteed to be made in accordance with the terms of the Act.
25. The scheme has been designed to be more accessible, swifter, non-adversarial, and has different evidential requirements than civil court action. It is transparent in the payment levels offered and payments are not dependent on a defender having assets or an insurer being identified.
26. There are however, a number of important reasons why a survivor may choose not to sign a waiver and give up their right to continue or pursue civil court action including: the potential value or complexity of their action; the accountability and acknowledgement associated with a formal adjudication and finding of legal liability; or the stage of the process that they have reached in an ongoing legal action.
27. The information below sets out various other routes open to potential applicants. Other than raising a civil court action against an organisation on the scheme contributor list, all other routes remain open to applicants after accepting a redress payment (as well as before or whilst an application is ongoing).

Other routes to redress and justice which can be pursued after accepting an offer of redress

Reporting abuse to the Police

28. The redress scheme is completely independent of the criminal justice system and waivers do not affect criminal proceedings. Applicants, and potential applicants, will remain able to seek to pursue criminal justice against a perpetrator of abuse if they so choose. This would require reporting their abuse to the Police. It is

understood that it may be difficult for an applicant to do this. To support applicants through this process, case workers will be able to explain to survivors how to go to the police to make a report of abuse if that is what they want to do.

29. Disclosure to the police of information about a perpetrator provided by an applicant will be made with the consent of the applicant or where it is necessary to process their application. Applicants should, however, note that under section 87(4) of the Act, the Scottish Government and Redress Scotland are required to disclose relevant information to the police where it is considered that it is (a) reasonably necessary: to allow the investigation of an offence involving the abuse of the child; and (b) in the public interest.

30. In these circumstances, the relevant information must be disclosed to the Police. This obligation also applies to members and staff of Redress Scotland and staff of the Scottish Government. Further detail on how this information will be shared with the Police is included in the Privacy Notice which accompanies the application form.

Giving evidence to the Scottish Child Abuse Inquiry

31. Survivors may also want to tell the Scottish Child Abuse Inquiry about the abuse they suffered. Survivors can [get in touch with the Inquiry](#) via their website. They can do this at any time. Case workers will be able to provide applicants with more information if this is something they are interested in doing.

Raising civil court action against an organisation which has not contributed to the scheme

32. If an applicant successfully applies to the redress scheme and accepts a redress payment offer, that applicant will continue to have the right to raise or to continue civil legal action against any organisation which is *not* on the scheme contributor list at the time of their determination by Redress Scotland. This is however subject to the note below on pre-64 survivors.

33. If an applicant wishes to explore their options in relation to raising a civil action, they should seek independent legal advice. Legal advice relating to this action will not be funded by the Scottish Government, as it is not advice being given within the remit of making an application to the scheme. Legal aid may however be available. Further information on [how to access legal aid](#) can be found online.

Pre-64 survivors - the impact of The Limitation (Childhood Abuse) (Scotland) Act (2017)

34. Prior to 2017, a claim for personal injuries for childhood abuse generally had to be made within three years from the time of the injury or the survivor's 16th birthday. The Limitation (Childhood Abuse) (Scotland) Act (2017) ("the 2017 Act")

provided the option of civil court action for significantly more survivors by removing the time bar on personal injury claims for damages in respect of childhood abuse.

35. However, the 2017 Act only applies to abuse which occurred after 26 September 1964. For those who experienced abuse wholly before that date the financial redress scheme may be the only way in which they can have their harm publicly acknowledged and recognised.

Routes to redress and justice which cannot be pursued after accepting an offer of redress

Raising a civil court action against an organisation which has contributed to the scheme

36. If the applicant has received an offer of redress (whether or not after a review), the applicant may choose not to accept the offer. In that case, the waiver would not be signed and the applicant will continue to have the right to raise or continue existing civil court action against any organisation on the contributor list.

37. As before, raising a civil court action is not an option available to pre-64 survivors.



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