

# **The Redress for Survivors (Historical Child Abuse In Care) (Scotland) Act 2021: Statement of Principles Regarding Financial Contributions**

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# The Redress for Survivors (Historical Child Abuse In Care) (Scotland) Act 2021: Statement of Principles Regarding Financial Contributions

This sets out the principles the Scottish Ministers will use to assess whether an organisation is making a fair and meaningful financial contribution to Scotland's Redress Scheme.

## Part 1 – Introduction and Legislative Context

1.1 The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (“the Act”) establishes a financial redress scheme for survivors of historical child abuse in certain residential care settings in Scotland; Scotland’s Redress Scheme (“the Scheme”). The purpose of the Scheme is to acknowledge and provide tangible recognition of harm as a result of historical child abuse in certain care settings in Scotland. The Scheme provides elements of accountability, justice, and financial and non-financial redress for those who wish to access it. The Act provides that the Scheme does not establish legal liability for the consequences of abuse. Paramount to the Scheme is the principle that all survivors, their next of kin and nominated beneficiaries, should be treated with dignity, respect and compassion.

1.2 The Scottish Government believes that organisations, which were involved with relevant care settings or certain placements of children in relevant care settings at the time of historical child abuse should meaningfully participate in this national collective endeavour to recognise the harms of the past, by contributing to the Scheme both financially and in acting consistently with its spirit and ethos. This may include, where appropriate, successor organisations where the original organisation no longer exists. Seeking contributions from those organisations is consistent with the views expressed by survivors.

1.3 This document rightly focuses on fair and meaningful contributions, which reference a proportion of redress payments made which are relevant to a specific organisation. Despite this, fair and meaningful contributions are not about a particular organisation paying redress to any named applicant, rather it is a national, collective scheme to redress the harms of the past.

1.4 The amount of redress paid to survivors will not be affected by whether any particular organisation has contributed to the Scheme. An applicant will receive the redress payment that Redress Scotland determines they are entitled to, whether or not the organisation(s) responsible for their care has contributed. Where an organisation does not contribute, the Scottish Government will meet any shortfall, including in circumstances where this may mean paying the full redress payment.

1.5 An organisation can only become a scheme contributor, if, in the opinion of the Scottish Ministers, it has made, or has agreed to make a fair and meaningful financial contribution, and which, in agreeing to make such a contribution,

acknowledges the wrongfulness of, and the harm caused by, the historical child abuse which took place (see section 14 of the Act).

1.6 Organisations which may be included as scheme contributors include public authorities, voluntary organisations and other persons (other than individuals) who exercise or have exercised functions in relation to safeguarding or promoting the welfare of children or protecting or furthering their interests as described in section 14 of the Act (in this Statement of Principles such organisations are referred to as “relevant organisations”). This would include, for example, an organisation which owned, managed or was otherwise involved with a relevant care setting where historical child abuse took place (such as a residential institution as described in section 20 of the Act) or an organisation that arranged foster care or boarded out placements. A broad range of organisations are therefore potential contributors to the Scheme.

1.7 The Scottish Ministers are required by the Act to prepare and publish a list of organisations which have made fair and meaningful contributions (“the contributor list”). The contributor list will be publicly available and will contain information such as the date that the contributor was added to the list, and the contribution the organisation is making or agreed to make.

1.8 As a means of securing financial contributions, the Act requires an applicant who wishes to accept a redress payment to sign a waiver (see section 46 of the Act). By signing the waiver, the applicant agrees not to continue or raise civil proceedings, such as actions for damages, in respect of the historical child abuse within the scope of the Act, against the Scottish Ministers and those on the contributor list at the time their application was determined by Redress Scotland.

1.9 In particular circumstances, scheme contributors will be removed from the contributor list. Scheme contributors who fail to make the financial contribution which they had agreed to make may be removed from the contributor list in accordance with sections 15 and 16 of the Act (including with retrospective effect where appropriate). In accordance with section 46 of the Act, where retrospective removal occurs, rights to pursue legal proceedings against the scheme contributor will be restored to applicants who signed waivers from the date that the scheme contributor was retrospectively removed from the list. Section 15 of the Act requires the Scottish Ministers to prepare and publish a statement of the principles according to which they will determine whether to:

- include an organisation on the contributor list,
- remove a scheme contributor from the list, and
- remove a scheme contributor with retrospective effect.

1.10 Section 15 of the Act also says that the Statement of Principles must include the matters which the Scottish Ministers will take into account in determining whether a financial contribution is fair and meaningful. Those matters must include:

- the circumstances in which a contribution that a relevant organisation proposes to make over a period of time for reasons of affordability can be a fair and meaningful one, and
- the circumstances in which a contribution that takes into account the sustainability of any services provided by a relevant organisation can be a fair and meaningful one.

1.11 Section 16 of the Act provides that where the Scottish Ministers intend to remove a scheme contributor with retrospective effect, they must carry out an assessment of any contribution made by the contributor under the agreement and allocate it against redress payments as they consider appropriate. The allocation must be carried out in accordance with the statement published under section 15 of the Act about how a fair and meaningful financial contribution is to be calculated, and allow the Scottish Ministers to determine the date on which they consider any contribution made by the scheme contributor to be exhausted.

Part 2 sets out the statement of principles, as required by the Act.

## Part 2 – Statement of Principles

Meaningful contributions, respecting the ethos of the Scheme and wider redress

2.1 Of equal importance to a relevant organisation making a fair financial contribution to the Scheme, is the meaningfulness of the contribution. A meaningful contribution is one that represents sincere and committed participation in the national collective endeavour to acknowledge the harms of the past and which provides access to a trauma informed and non-adversarial redress scheme for survivors.

2.2 In addition, the Act itself requires scheme contributors to have regard to the principle that applicants for redress, people thinking about applying for redress, and those provided with support by the Scheme, should be treated with dignity, respect and compassion (see section 13 of the Act). This is a fundamental principle of the Scheme, and Scottish Ministers expect scheme contributors to behave consistently with this both in their words and actions. As well as being legally required by the Act, this requirement will be reflected in the terms and conditions of any contract entered into between the scheme contributor and Scottish Ministers in respect of the contribution.

2.3 Section 14 of the Act requires scheme contributors to acknowledge the wrongfulness of, and the harm caused by, the historical child abuse which took place in relevant care settings. To comply with section 14, scheme contributors will have to publicly and explicitly make this acknowledgement. As well as being legally required by the Act, this requirement will be reflected in the terms and conditions of any contract entered into between the scheme contributor and Scottish Ministers in respect of the contribution.

2.4 Scheme contributors will be required to report annually on their wider redress activity in accordance with section 99 of the Act and in compliance with any reporting directions under section 100 of the Act. This annual reporting requirement provides

scheme contributors with an opportunity to report on what action they have taken to provide non-financial redress to those who experienced historical abuse as a child.

2.5 Any behaviour of scheme contributors which does not comply with the spirit and ethos of the Scheme will be raised on behalf of Scottish Ministers with that organisation. The contracts entered into between scheme contributors and Scottish Ministers will provide for the remedies available to Scottish Ministers in the event of any breach.

#### Scottish Government's Contribution

2.6 The Scottish Government will initially meet all the costs of setting up and delivering the Scheme, including the costs associated with providing support to survivors during the application process, legal costs for survivors to apply and costs associated with delivering non-financial redress, such as therapeutic support.

2.7 In addition, the Scottish Government will solely fund:

- all fixed rate payments (£10,000),
- all next-of-kin payments (£10,000),
- the balance of the individually assessed payment to the survivor (after any other relevant contribution) if the relevant organisation(s) is not a scheme contributor, or where the organisation(s) no longer exists and no successor organisation contributes.

2.8 The Scottish Government will also solely fund the greater of £10,000 or one third of each individually assessed payment where relevant organisations are scheme contributors. The Scottish Government's contribution to an individually assessed payment will be paid after deduction of any Fixed Rate Payment the Scottish Government has already made<sup>[1]</sup>. Therefore, the starting point for a fair and meaningful contribution from another organisation is, subject to consideration of affordability, sustainability and an agreed cap, that the organisation will pay a share of the remaining two thirds of all individually assessed payments which relate to that organisation (subject to allocation, see paragraphs 2.23-2.25 of this statement).

#### Local Authorities' Contributions

2.9 The Scottish Ministers' approach has, from the outset, been to seek to agree a collective contribution from Scottish local authorities, to reflect the legacy of local government responsibility for historical child abuse in relevant care settings. This contribution will reflect firstly the exposure of local authorities for abuse carried out in care settings operated by them and for abuse carried out in foster care and boarding out placements arranged by them; but also the broader responsibility of local authorities for the placing of children in care, the oversight and scrutiny of care in their areas and the historical failure to respond appropriately to allegations of abuse where they were made. Local Government has acknowledged its role as a major provider of support for children, directly and indirectly, over many years and recognises its responsibility to address the wrongs of the past.

2.10 Given the breadth of local government involvement, it is difficult reliably to estimate the proportion of redress payments which will be attributable to local

government. Wider responsibility, beyond the provision of direct residential care, can be difficult to ascertain due to the passage of time, retention of records, and restructuring of local authority boundaries and responsibilities. The full extent of local authorities' involvement in, or responsibility for, historical abuse may not fully come to light in specific applications as their role may not be known or recognised by the survivor applicant.

2.11 Further, local authorities have had and continue to have duties to provide certain services to children, which differentiates them from other organisations.

2.12 At the same time, all local authorities have an ongoing responsibility for providing a very broad range of public services in their community – sustainability of these wide ranging public services is a key consideration. In broad principle these considerations mirror the affordability considerations which are covered in paragraphs 2.17-2.19 of this statement as regards third sector organisations and other providers.

2.13 The approach of Scottish Ministers to local authorities' financial contributions reflects those distinctions and differences which set them apart from third sector organisations and other providers.

#### Other Organisations' Contributions

2.14 The following paragraphs relate to all scheme contributors other than local government. The position regarding local government's contributions is set out in paragraphs 2.9 to 2.13 of this statement.

2.15 Where an offer of redress has been made and accepted, then subject to the deduction of the Scottish Government contribution (see paragraph 2.8), the starting point for the fair and meaningful contribution is based on the principle that a relevant organisation will pay individually assessed payments (or a relevant share of them, see paragraphs 2.23-2.25 of this statement) which relate to that organisation. The Scottish Government will calculate a relevant organisation's fair and meaningful contribution based on an estimate of i) the number of children resident within each relevant care setting that the scheme contributor was involved with (whether as owner, manager or otherwise) or foster care or boarding-out placements they arranged where abuse occurred, ii) the number and age of children who were abused whilst resident in those care settings, iii) the proportion of those survivors who will make an application to the Scheme which results in a determination by Redress Scotland, and iv) the average level of award which will be made to each applicant. This general approach is subject to the considerations set out below.

#### Maximum Financial Contribution

2.16 The Scottish Government has agreed to discuss with third sector contributors the scope for agreeing where appropriate a maximum financial contribution (known as "a cap"). This is to provide scheme contributors with a degree of certainty in regards to their financial planning. Any cap will be based on an estimate of the cost of individually assessed payments likely to relate to that organisation, but it is still necessary to reflect the considerable uncertainty which exists.

## Affordability

2.17 Considerations of affordability will be taken into account by the Scottish Ministers when agreeing the payment schedule for a contributor, whilst still requiring the contribution to be made over a period of time that is fair and meaningful.

2.18 The payment schedule may extend past the lifetime of the Scheme where an organisation can demonstrate that there are circumstances, such as a need to deliver current public services, or financial risks faced by the organisation (e.g. a significant pension deficit, or exposure to litigation for historical abuse which is likely to result in significant damages), which justify this.

2.19 Processes will be put in place to ensure that outstanding contributions owed following the closure of the Scheme will continue to be delivered and any appropriate action will be taken by the Scottish Ministers (including retrospective removal from the contributor list in accordance with section 16 of the Act), with a view to ensuring that the organisation does not benefit from waivers in respect of redress payments to which it has not contributed.

## Sustainability

2.20 Fair and meaningful contribution amounts will include any considerations that have been taken into account by the Scottish Ministers in relation to the sustainability of any services for public benefit provided by that organisation.

2.21 As a starting point, the Scottish Ministers will look to see if a longer period of time to pay contributions will make this sustainable for the organisation. Again, any extension of time requested on the basis of sustainability will require the organisation to produce robust evidence of its financial position and its public facing services to justify this.

2.22 In exceptional circumstances, the total contribution might be lower than the estimated total of the individually assessed payments that may be allocated to that organisation. Again, the Scottish Ministers will take into account evidence presented of circumstances such as the extent of public benefit provided by a service, the range of public services provided by an organisation, and alternative steps which the organisation could take to protect its public services whilst making its full contribution to the Scheme.

## Allocation

2.23 These are the general principles upon which allocation will be made.

2.23.1 In this paragraph:

“the balance of the redress payment” means an individually assessed payment less the Scottish Government’s contribution as referred to in paragraph 2.8.

a “responsible organisation” is a relevant organisation<sup>1</sup>:

- (a) that was involved with a relevant care setting (whether as owner, manager or otherwise); or
- (b) that arranged foster care or boarded-out placements.
- (c) where abuse referred to in the application occurred.

2.23.2 Where an offer of redress has been made and accepted by the applicant, the Scottish Ministers will determine which organisations are responsible organisations and the balance of the redress payment will be allocated as follows:

2.23.3 Where the Scottish Ministers determine that there is only one responsible organisation, that organisation will be allocated the full balance of the redress payment;

2.23.4 Where the Scottish Ministers determine that there is more than one responsible organisation, such responsible organisations will be allocated an equal share of the balance of the redress payment.

2.23.5 To be clear the above principles will apply regardless of the number of care settings or placements relevant to an application. In addition, the Scottish Ministers may determine that different organisations were responsible for a care setting at different times during the period of the abuse referred to in the application.

2.23.6 The above general principles are relevant for allocating the balance of a redress payment where a local authority is the responsible organisation. Any remaining balance of the local government contribution will be allocated towards the costs detailed in paragraph 2.6 of these Principles.

2.24 Scheme contributors will not have an opportunity to challenge the Scottish Ministers’ determination of the share of allocation of redress payments, nor will there be any opportunity to challenge Redress Scotland’s determination of the level of redress payment in respect of the application.

2.25 Where a responsible organisation is not a scheme contributor or where the responsible organisation no longer exists, and no successor organisation has agreed to join as a scheme contributor, the Scottish Government will pay the sum of that organisation’s allocated contribution.

## Reconciliation

2.26 With respect to each organisation listed on the contributor list, there will be a regular reconciliation of redress payments made as compared to contributions. Scheme contributors will be provided with regular contribution and allocations statements. Statements and reconciliations undertaken during the period of the

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<sup>1</sup>Who exercise or have exercised functions in relation to safeguarding or promoting the welfare of children or protecting or furthering their interests as described in section 14 of the Act.



Scheme are provisional until the final reconciliation is undertaken in accordance with paragraph 2.38.

2.27 If an organisation's financial situation should change and it considers itself no longer able to meet the agreed payment schedule it must notify the Scottish Ministers. Where the Scottish Ministers have been notified, they will work collaboratively with the relevant contributor to sustain participation in the Scheme so far as possible.

#### Amendment of the Contribution Payments Schedule

2.28 In general, the Scottish Ministers will work with organisations to manage the payment schedule.

2.29 The Scottish Ministers have the discretion, from time to time, to give notice to a scheme contributor of a change to the payment schedule, either by increasing or decreasing the amounts of instalments or changing the date upon which any instalment is due (subject always to any cap agreed).

2.30 The scheme contributor may request that Scottish Ministers review the contribution payment schedule. Where the Scottish Ministers propose the amendment, they will give the scheme contributor a period of 28 days within which to make representations in relation to that proposal.

2.31 If an organisation wishes the Scottish Ministers to take into account a change of circumstances regarding affordability or sustainability, it must present the Scottish Ministers with robust evidence in that regard. The Scottish Ministers will apply the principles of affordability and sustainability (set out above) in relation to any amendment to the contributions payment schedule.

#### Default

2.32 Where a scheme contributor defaults on its contractually agreed contribution (subject to any amendment to the contribution payment schedule as set out above), the Scottish Ministers will be able to use the powers available to them under the Act, namely to remove the scheme contributor from the contributor list maintained under section 14, and to do so with retrospective effect in the circumstances where section 16 applies. The contracts entered into between scheme contributors and the Scottish Ministers will also provide for the measures the Scottish Ministers can take in the event of any breach.

#### Retrospective removal

2.33 Where a scheme contributor has defaulted in respect of its financial contribution, as set out above, the Scottish Ministers have the option to retrospectively remove the scheme contributor from the contributor list, in accordance with section 16 of the Act.

2.34 In determining the date on which retrospective removal is to take effect, the Scottish Ministers will consider the contribution paid by the organisation into the Scheme to be exhausted on the day before the date when, in the opinion of the Scottish Ministers, the contribution made by the organisation is no longer sufficient to

support every redress payment allocated to it, in respect of determinations made by Redress Scotland on that date.

2.35 Any determinations of redress payments made on or after that date will not be supported by a waiver. Any waivers already signed in respect of redress decisions made after that date will be of no effect. This means that unfunded waivers with respect to the defaulting organisation will be revoked and rights returned to applicants.

#### Final Reconciliation

2.36 The Scheme is open for applications for an initial period of the later of 5 years from commencement or 2 years after the final report of the Scottish Child Abuse Inquiry, though this period may be extended (see section 31 of the Act).

2.37 Even after this date, Redress Scotland will continue to make initial determinations of applications received during the application period and conduct reviews of determined applications if requested (see section 54 of the Act). Therefore, even though the Scheme is no longer able to receive new applications, decision making by Redress Scotland will continue for a period of time.

2.38 Thus, the final reconciliation of individually assessed payments allocated to a scheme contributor can only be made when Redress Scotland has made full and final decisions regarding all applications.

2.39 Scheme contributors may therefore have to contribute further sums after the application period of the Scheme has closed. Likewise, scheme contributors may receive a refund after the application period has ended. Further, for the avoidance of doubt, the Scottish Ministers may retrospectively remove the scheme contributor from the contributor list after the period for applications has closed and after Redress Scotland has ceased decision-making activity.

Deputy First Minister and Cabinet Secretary for Finance

Signed: 06 December 2023



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