

Fair and Meaningful Contributions

Scotland's redress scheme looks to offer survivors of historical child abuse in residential care a collective national response to the harms of the past. Financial contributions to redress payments for survivors (or in some cases their next of kin) are sought from those organisations which were responsible for the care of children at the time of the abuse.

Any such organisations which make fair and meaningful contributions towards redress payments to survivors will be included on a list of scheme contributors by the Scottish Ministers. Transparency is critical in ensuring that survivors know which organisations are playing their part in the scheme so that the making of fair and meaningful contributions, and the system of waiver linked to that, function fairly and effectively for all. The fair and meaningful principles are a way of ensuring this.

A **fair** contribution is where an organisation agrees to pay the redress payment for the survivor above the Scottish Government's £10,000 contribution, where that organisation is named in an application, which results in an offer of a payment under the scheme being made and accepted, as being the care setting where abuse occurred.

A **meaningful** contribution is one that represents meaningful participation in the national collective endeavour to acknowledge the harms of the past and provide access to a trauma informed redress scheme. Contributing organisations will accept that they cannot view individual applications or challenge or appeal any decisions made by Redress Scotland. Where an organisation has made a fair contribution they will be considered to have contributed meaningfully to a redress scheme built on the overarching principles of compassion, fairness, integrity and respect, unless they take any action which is otherwise inconsistent with those overarching principles.

Background to financial contributions

In the CELCIS consultation (2017) and the pre-legislative consultation for the Bill, the view from respondents who identified as survivors supported the position that contributions should be sought in order to acknowledge and provide tangible recognition of the harm suffered as a result of historical child abuse whilst residing in a relevant care setting in Scotland.

The Scottish Government's pre-legislative public consultation, which ran from 2 September to 25 November 2019, received 280 responses - 229 from individuals and 51 from organisations. In total, 201 individual respondents identified as survivors. The consultation showed that respondents were in favour of having responsible organisations contribute to the cost of the scheme with 94% of respondents (individuals and organisations) agreeing that those bearing responsibility should be expected to provide financial contributions to the cost of redress. Among individual respondents, 95% supported this approach, along with 89% of organisations.

Legislative framework for contributions

The fair and meaningful principles are to be used by the Scottish Ministers in the assessment of proposed financial contributions to the redress scheme from organisations. The Scottish Ministers will use these principles to assess the proposed contribution of an organisation for the purposes of inclusion in the list of scheme contributors established and maintained under section 12(1) of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill (“the Bill”).¹ The principles will also be treated as a way to set out the Scottish Ministers’ expectations of contributing organisations, consistent with the fair and meaningful principles mentioned above.

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 (“relevant organisations”).² Those will include organisations which were responsible for the provision of residential accommodation in a relevant care setting such as a residential institution or other place as mentioned in section 18 of the Bill.

Relevant organisations which provide fair and meaningful contributions to the scheme, as agreed with the Scottish Ministers, will have their name added to the scheme contributor list as set out under section 12(1)(a) of the Bill, and will be covered by a waiver signed and returned under section 45 of the Bill provided that they were on the contributor list on the date that it was determined that the applicant was eligible for a redress payment³. This list will be publicly available, but it will also be provided to applicants when they are made an offer of a redress payment, to assist in informing their decision on whether or not to accept any offer of a redress payment and sign the waiver under section 45 of the Bill.

The fair and meaningful principles will also underpin any agreement reached between the Scottish Ministers and a relevant organisation in respect of the making of a fair and meaningful financial contribution towards the funding of redress payments under the Bill (“relevant agreement”).⁴

Where a relevant organisation fails to pay the fair and meaningful financial contribution which they have agreed to make in accordance with the fair and meaningful principles and as reflected in any relevant agreement, their name may be removed from the scheme contributor list by virtue of section 12(6)(c) of the Bill. Moreover, the Scottish Ministers may, in accordance with section 12(8) of the Bill, recover any unpaid contribution as a debt due in addition to any steps which may be taken in accordance with the terms of any relevant agreement⁵.

¹ As introduced to the Scottish Parliament on 13 August 2020. The Bill is subject to the approval of the Scottish Parliament and it is expected that amendments will be made to it during its parliamentary passage.

² Section 12(1)(a) of the Bill.

³ See the definition of “relevant scheme contributor” at section 45(6) of the Bill.

⁴ These principles apply under section 12(1)(b) of the Bill.

⁵ As per section 12(9) of the Bill.

Overview of fair and meaningful contributions

Redress applications will be attributed to a relevant organisation where those applications which have resulted in an offer of a redress payment being made and accepted refer to such an organisation. This could be the case, for example, where the organisation:

- had responsibility for the applicant as a child and had placed that child in relevant care settings where abuse took place, or
- owned, managed or were otherwise responsible for the relevant care setting in which the applicant had been abused.

The Scottish Ministers will meet the cost of the first £10,000 of every redress payment made pursuant to a successful application⁶ (and the cost of any redress payments to the extent that the relevant organisation has not contributed or no longer exists and there is no successor organisation). The Scottish Ministers will also meet the costs of Redress Scotland, including costs of legal advice for applicants to the scheme.

Where a relevant organisation has agreed to contribute to the scheme, their contribution will be to meet the cost of an individually assessed payment to the extent to which it has resulted in an offer of a further sum, in addition to the fixed rate payment, of £10,000, £30,000 or, as the case may be, £70,000⁷ (“the further sum”).

It will be a condition of an organisation’s inclusion in the scheme contributor list and agreement to make a fair and meaningful contribution that the organisation acknowledges that any determination of an application for a redress payment attributable to that organisation is for Redress Scotland to determine and the organisation will not attempt to challenge it, even where it has a direct impact on the amount due under a contributor agreement.

⁶ Whether an application for a fixed rate redress payment, an individually assessed payment or a next of kin payment.

⁷ As per section 38(1)(b) of the Bill.

The Fair and Meaningful Principles

A relevant organisation will be considered to have made a fair contribution if it agrees to pay the further sum determined and paid out in respect of an application for an individually assessed payment attributable to that organisation.

- An organisation contributing through **the “defined contributions” approach** will be required to:
 - agree an initial financial contribution that reflects the Scottish Ministers’ initial assessment of anticipated applications settled which are attributable to the organisation (“the initial financial contribution assessment”).
 - pay the initial financial contribution as set out in the initial financial contribution assessment before they will be added to the contributor list.
 - agree to the review mechanism as set out in the relevant agreement between the Scottish Ministers and that organisation. This mechanism will ensure that:
 - an organisation will make an additional financial contribution, as assessed by the Scottish Ministers, in respect of any applications attributable to that organisation which have resulted in offers of payment being accepted over and above the initial financial contribution assessment, including where payments made have been higher than anticipated,
 - the Scottish Ministers will refund the organisation to the extent that less is paid out in relation to applications attributable to that organisation than was anticipated in the initial financial contribution assessment.
 - pay the remainder of the financial contribution amount as revised in accordance with the review mechanism, over an appropriate time period in accordance with the relevant agreement, as agreed with the Scottish Ministers.
- An organisation contributing through **the “redress payments determined” approach** is required to:
 - agree and pay an appropriate initial financial contribution, as assessed by the Scottish Ministers and agreed to by the relevant organisation, before they will be added to the contributor list.
 - agree to pay the remaining amount of redress payment in individually assessed applications attributable to that organisation in accordance with the relevant agreement.

Fair and meaningful participation in the redress scheme represents the national collective endeavour to acknowledge the harms of the past. Where an organisation has made a fair contribution, they will be considered to have contributed meaningfully to a redress scheme built on the overarching principles of compassion, fairness, integrity and respect, unless they take any action which is inconsistent with those overarching principles.

- The amount of any fair contribution made will directly relate to redress payments made to survivors.
- By offering transparency on the contributions received from organisations, it may allow organisations to offer further public acknowledgement of the harms of the past.
- As set out above, by participating in the scheme, contributing organisations will agree to accept any determination by Redress Scotland of an application for a

redress payment attributable to that organisation which has resulted in an offer of a payment. In consequence, this means the organisations accept that they cannot challenge any decisions made by Redress Scotland. Moreover, it means that contributing organisations will not be able to view or comment on applications received by Redress Scotland.

- By participating in the scheme, contributing organisations will be supporting trauma-informed and non-adversarial access to redress for survivors and a process that will likely be faster than the civil courts.
- Contributions that are made over such a long period of time that the contribution is reduced to such small amounts as to be considered meaningless will not be accepted.
- A contributing organisation will need to accept that if the organisation fails to pay their agreed contribution, it can be removed from the contributor list by the Scottish Ministers in accordance with section 12(6)(c) of the Bill.
- A contributing organisation which fails to make their agreed payments in accordance with the relevant agreement may have any unpaid contribution recovered as a debt by the Scottish Ministers in accordance with section 12(8) of the Bill, in addition to any steps which may be taken in accordance with the terms of any relevant agreement.
- Contributing organisations will be required to report on their wider redress activity annually in accordance with section 91 of the Bill and in compliance with any reporting directions under section 92 of the Bill.