

Historic Abuse Redress Scheme

Scheme Document: Updated March 2014

The purpose of this updated Scheme Document is to clarify how therapy costs are administered under the Historic Abuse Redress Scheme and to update references to the Scheme Lawyers.

The Scheme

1. The "Historic Abuse Redress Scheme" (the "**Scheme**") has been established by the Council of Ministers (the "**Council of Ministers**") of the States of Jersey (the "**States**") to enable financial compensation to be assessed and paid to the victims of historic abuse suffered when in the full-time residential care of the States from 9 May 1945 to 31 December 1994.
2. The Minister for Health and Social Services (the "**Minister**") has been designated by the Council of Ministers with responsibility for establishing and overseeing the administration of the Scheme.

Scheme Paperwork

3. This Scheme document sets out the terms of the Scheme and its intended operation.
4. In addition, the following background documents (the "**Background Material**") are relevant to the Scheme:
 - a. the Press Release to be issued by the Chief Minister's Department announcing the Scheme on 29 March 2012 (the "**Launch Date**");
 - b. a Public Notice to be issued for publication from the Launch Date onwards and at regular intervals thereafter;
 - c. a Leaflet entitled "Historic Abuse Redress Scheme: A Guide".

The Background Material is available at www.gov.je/HistoricAbuseRedress.

5. The following documents, together with this Scheme Document, are core documents (the "**Core Document**") and should be reviewed by any person who applies to the Scheme (a "**Claimant**") at an early stage:
 - a. the application form which will need to be completed by any Claimant (the "**Application Form**") and is available from www.gov.je/HistoricAbuseRedress and in hard copy from the Citizens Advice Bureau, the States of Jersey Customer Service Centre, Cyril le Marquand House, The Parade, St. Helier and from the Scheme Lawyers (as set out below);
 - b. the standard settlement agreement (the "**Settlement Agreement**") setting out the terms which a Claimant will ultimately be asked to enter into when agreement is reached under the Scheme for the payment of compensation.

The Core Documents will be provided to any Claimant upon application to join the Scheme.

6. In addition, the following optional documents (the "**Optional Papers**") may be relevant to particular Claimants:

- a. the letter of engagement to jointly-instructed psychiatrists, as more particularly set out at paragraphs 18 to 21 below;
- b. the letter of engagement to a jointly-instructed English barrister, expert in the field, in respect of the review mechanism, as more particularly set out at paragraphs 36 to 41 below.

These Optional Papers will be provided to a Claimant if they become relevant to their claim.

The Scheme timeframe

7. The Scheme will be operative with effect from the statement to be given by the Chief Minister on the Launch Date.
8. Any application to join the Scheme must be received by 30 September 2012 (the "**Closing Date**").

Scope of the scheme

9. In order to join the Scheme a Claimant will have to:
 - a. establish that they were resident in the States of Jersey's full-time residential care at any time between 9 May 1945 and 31 December 1994;
 - b. particularise the unlawful physical and/or sexual abuse they suffered whilst in such care; and
 - c. apply for compensation under the Scheme as set out herein and be accepted into the Scheme.
10. The Scheme specifically excludes:
 - a. any abuse which occurred when not in the States' full-time residential care system. As such, abuse suffered whilst in foster care is therefore not included;
 - b. any application in respect of a Claimant who is deceased; and
 - c. any claimant rejected from the Scheme by the Scheme Lawyers (as defined below).
11. The States of Jersey's legal advisers are instructed to advise and revert to the Council of Ministers if the end-date of 31 December 1994 prevents a claim for historic abuse when in the full-time residential care of the States of Jersey from being resolved under the Scheme.

Representation

12. The Minister first appointed Mourant Ozannes of 18-22 Grenville Street, St Helier, Jersey, JE4 8PX as the Scheme Lawyers (the "**Scheme Lawyers**") and their role is as set out herein.
13. Mourant Ozannes ceased to be the Scheme Lawyers on 30 September 2013. With effect from 1 October 2013, the Minister appointed Lacey Advocates of Central Chambers, 14 Hill Street, St Helier, Jersey JE2 4UA to act as the Scheme Lawyers.
14. All references in the Scheme document after 1 October 2013 are, therefore, references to Lacey Advocates
15. A Claimant may represent him/herself in applying under the Scheme, or may:

- a. appoint a Jersey or non-Jersey lawyer to represent him or her and in such case the Claimant's reasonable legal costs will be met under the Scheme as set out in paragraphs 46 to 51 below; or
- b. elect to be assisted or represented by a family member, friend or member of a care leavers group or other support group. A written authorisation to deal with any such person will be required from the Claimant in such cases.

Application to join the scheme

16. All Claimants must complete an Application Form and provide all information and documentation set out therein in order to submit their claim (the "**Claim**").
17. A Claim should be submitted:
 - a. by post to the Scheme Lawyers: prior to 30 September 2013 at 18-22 Grenville Street, St Helier, Jersey JE4 8PX; after 1 October 2013 at Central Chambers, 14 Hill Street, St Helier, Jersey JE2 4UA. All correspondence should be marked "Strictly Private & Confidential: To be opened by Historic Claims Team Only";
 - b. after 1 October 2013 by e-mail to: historicclaims@laceyadvocates.com; or
 - c. in such other manner as may be specifically agreed between the Scheme Lawyers and a claimant or his/her representative.
18. Application Forms received after the Closing Date shall not be accepted.

Initial Review

19. The Scheme Lawyers shall conduct an initial review of the Application Form provided and will advise the Claimant on:
 - a. whether the Claim falls within the Scheme or not; and
 - b. if the Claim is to be admitted and proceed under the Scheme, confirm whether any further information is required in order to progress the Claim, explaining what that information is.

Psychiatric assessment

20. In appropriate cases, the Claimant may be required to meet with a jointly-instructed psychiatrist for an expert evaluation (report) to be prepared. In each case, the Scheme Lawyers and the claimant's legal adviser will discuss and agree whether such an assessment is required. It must be noted that if the allegations put forward in the Application Form are such that the Claim may fall within brackets 3 or 4 as listed below (namely rape and/or prolonged aggravated physical and/or sexual abuse) then there will be a presumption that a psychiatric evaluation/report will be required.
21. In the event that a Claimant refuses to co-operate with the appointed psychiatrist, the Claim may be rejected from the Scheme, or it may be permitted to proceed but the level of compensation awarded may be adversely affected in light of the lack of additional verification of the facts and/or the effect of any abuse.
22. The psychiatrist allocated to meet with any Claimant will be from a selection of psychiatrists agreed between the Scheme Lawyers and lawyers acting for claimants generally. A claimant may specify if they particularly wish to see a male or female psychiatrist.
23. The costs of the assessment, report and any travel expenses reasonably incurred in relation to the assessment will be met under the Scheme.

Material Review

24. The material reviewed by the Scheme Lawyers as part of the assessment of a Claim will include:
- a. all historic records held by or on behalf of the States of Jersey in relation to the Claimant and their time in care, including documentation held on family files in respect of the placing of the Claimant into care;
 - b. all records held by or on behalf of the States of Jersey in relation to the Claimant or any facts which may be relevant to the Claim, including medical records, mental health records and social services records;
 - c. all records held by or on behalf of the States of Jersey in relation to the running of any establishment at the time the Claim relates to and information held which is considered relevant to the Claim or the alleged abuse or abusers;
 - d. documentation provided by the States of Jersey Police to the Scheme Lawyers in respect of the subject matter of the allegations set out in the Claim, which may comprise restricted information;
 - e. to the extent relevant, information held by the Criminal Injuries Compensation Board in respect of any claim submitted by the Claimant for financial compensation for alleged abuse, together with any other material in respect of any claim made by the Claimant for financial compensation; and
 - f. where prepared, the report of the jointly-instructed psychiatrist.
25. The Claimant will be required by signing the Application Form to consent to the disclosure of information to the Scheme Lawyers by the States of Jersey Police and the Criminal Injuries Compensation Board and to liaison between those parties.

Assessment - Damages

26. The Scheme Lawyers, together with representatives of the Health & Social Services Department of the States of Jersey, will consider the Claim and make an assessment of the appropriate amount which should be awarded. The Claimant's legal adviser will be consulted during this process.
27. The basis of any compensation to be offered will be assessed with reference to:
- a. the nature, severity and frequency of abuse suffered; and
 - b. any physical and mental injuries or long-term effects.
28. With reference to the above-mentioned factors, a Claim will fall into one of four "Compensation Bands" and the factors above will, taken together, also determine where within a Compensation Band a Claim falls:

Band	Description	Range
1	Physical and/or sexual abuse	Up to £10,000
2	Aggravated physical and/or sexual abuse	£10,000-£20,000
3	Rape and/or prolonged aggravated physical and/or sexual abuse: standard bracket	£15,000-£35,000
4	Rape and/or prolonged aggravated physical and/or sexual abuse: upper bracket	£25,000-£60,000

29. The above Bands have been arrived at based upon specialist advice from leading UK barristers.
30. The final sum arrived at after assessment will be known as the "**Assessed Award**".

31. The financial damages payable under the Scheme will be limited to the Assessed Award. There is no potential for any extra award for "special damages", such as, without limitation, loss of earnings or loss of opportunity.

Additional Payments – medical and psychiatric expenses

32. In addition to the Assessed Award, a Claimant may be entitled to the following :

- a. the reimbursement of reasonable expenses incurred prior to the calculation of the Assessed Award in respect of any medical or psychiatric treatment for the effects of injuries suffered as a result of the abuse giving rise to the Assessed Award. Any payment will be subject to the provision of valid receipts and an assessment by the Scheme Lawyers as to the reasonableness of the sums claimed in all the circumstances; and
- b. the provision by the Minister of a certain amount of money, to be held by the Scheme Lawyers (the "Lump Sum"). The Lump Sum shall be held by the Scheme Lawyers to meet the anticipated costs of reasonable future expenses that may be incurred by the Claimant in respect of future medical and/or psychiatric treatment for the effects of injuries suffered as a result of the abuse giving rise to the Assessed Award. Payments from the Lump Sum shall be made to cover the costs of treatment based on:-
 - i. the recommendation of the jointly-instructed psychiatrist; and/or
 - ii. any other relevant medical evidence; and/or
 - iii. any other relevant information provided to the Scheme Lawyers by or on behalf of the Claimant

and any reasonable expenses incurred by or on behalf of the Claimant, incidental to or in connection with receiving the treatment, including but not limited to travel costs.

33. The Lump Sum shall be held by the Scheme Lawyers in accordance with the terms of paragraph 36 below.

34. Any payments for past and/or future medical expenses will be subject to an overall maximum of £3,000 per Claimant, unless exceptional circumstances exist in which case the Minister may agree to make a "special exemption" as being appropriate and reasonable. The Minister, or the Minister's appointed delegate, may agree to such a special exemption based on the recommendation of the Scheme Lawyers.

35. Any payment in respect of past medical expenses as set out herein will be added to the Assessed Award and paid as per paragraph 48 below.

36. The Lump Sum shall be held by the Scheme Lawyers on the following terms:-

- a. it shall be paid into the Scheme's Lawyers' Client Account and held by the Scheme Lawyers in respect of the Claimant, on whose account the Lump Sum has been paid;
- b. the costs of future medical and/or psychiatric treatment, and any incidental expenses incurred, shall be reimbursed directly to the Claimant upon the production of receipts or invoices. Alternatively, the Scheme's Lawyers may discharge the costs of treatment, and any incidental costs, payable on account of the Claimant, directly to the service provider in question;
- c. at all times, the Lump Sum, or any balance remaining, shall remain the property of the Minister.

- d. the Lump Sum, and or balance remaining, shall be held by the Scheme Lawyers for the maximum period of up to two calendar years after the date of the official publication of the report by the States of Jersey "Committee of Inquiry: Historical child abuse (P.118/2012)". Upon the expiry of that period, save in exceptional circumstances, the Scheme Lawyers shall return any remaining balance from the Lump Sum to the Treasurer of the States of Jersey. The application of any such exceptional circumstances is to be agreed by or on behalf of the Minister.
37. The payment of medical or psychiatric treatment expenses to or on behalf of a Claimant is conditional upon a Settlement Agreement being entered into and there is no entitlement to any such payment or reimbursement if a Settlement Agreement is not entered into.

Offer

38. Upon completion of the assessment, the Scheme Lawyers will write to the Claimant, or their nominated representative, on a strictly private and confidential basis and advise them of the Assessed Award.
39. The Claimant will then have 42 days to either:
- a. accept the Assessed Award (see paragraph 46 below);
 - b. reject the Assessed Award and leave the Scheme; or
 - c. require a review of the Assessed Award (see paragraph 40 onwards below)

Review

40. A Claimant may require the Assessed Award to be reviewed.
41. The review will be conducted by an independent English barrister of the level of Queen's Counsel. Two QC's are to be retained to discharge this role and will be agreed between the Scheme Lawyers and lawyers presently acting for claimants. Cases will be sent for review between the QC's on a rotating basis.
42. The relevant QC would review the following paperwork:
- a. the Application Form;
 - b. the Psychiatric Report (where one has been prepared);
 - c. the letter from the Scheme Lawyers stating the Assessed Award and any rationale provided for the Assessed Award;
 - d. any submissions the Claimant wishes to make as to why the Assessed Award is considered unfair.
43. The QC will then reach a determination of whether the Assessed Award was correct and fair, or whether it should be amended, upwards or downwards.
44. The review is non-binding on the Minister and the Minister may refuse to pay out at the enhanced level recommended by the relevant QC.
45. In all cases in which the review recommends an increase in the award in the amount of 20% or more, the costs of the review will be met by the Minister (regardless of whether the enhanced payment is made or not). In any other case, the costs of the Review are to be met by the Claimant and either paid for directly by the Claimant, or deducted from the Assessed Award payable.

Agreement

46. Where agreement is reached (whether after review or not) as to the level of the Assessed Award, the Claimant and the Minister will enter into a Settlement Agreement under which the Claimant will release the Minister and other States individuals and entities, as set out in the Settlement Agreement, from any liability in respect of the Claim.
47. The Minister may delegate execution of the Settlement Agreement to an appropriate person of her choice.

Payment

48. Upon execution of the Settlement Agreement payment will be made to the Claimant either by cheque or by bank transfer to a nominated account in the name of the Claimant.
49. A payment will be made within 56 days of execution of the Settlement Agreement.

Legal Fees

50. In cases where a Settlement Agreement is entered into in respect of a Claimant who appointed a lawyer, the Claimant will be entitled to their reasonably incurred legal fees and those legal fees will be paid on behalf of the Minister. The Claimant's lawyer will be required to submit:
- a. a full print-out of the appointed lawyer's time and costs; and
 - b. the appointed lawyer's letter of engagement setting out the agreed applicable hourly rates.
51. The hourly rate recoverable under the Scheme in respect of any legal advice provided to the Claimant will be the lesser of:
- a. the actual hourly charge-out rate charged to the Claimant;
 - b. the Taxation of Costs Factor "A" Rates Per Hour as published and amended by the Royal Court of Jersey from time to time. At the present time these rates are:

<i>i.</i> Partner	£222 per hour
<i>ii.</i> Qualified Staff	£180 per hour
<i>iii.</i> Other Staff	£148 per hour
52. The costs of the Claimant's lawyer should be referred to the Scheme Lawyers for initial review as to their reasonableness and the Scheme Lawyers may accept the costs of the Claimant's lawyer, in which case the lawyers fee will be paid to that lawyer directly.
53. In any case where the costs are not accepted by the Scheme Lawyers, the claimant's lawyer may refer his costs to the Deputy Judicial Greffier of the Royal Court of Jersey (the "**Deputy Judicial Greffier**") to be assessed on the standard basis applying the relevant hourly rate as above. The costs of this process will be dealt with in accordance with usual Court taxation principles.
54. Any decision of the Deputy Judicial Greffier as to the fees payable by the Minister will be final.
55. In respect of any Claim where a Settlement Agreement is not fully executed, there shall be no entitlement to recover any legal costs.