

Historic Abuse Redress Scheme:

A Guide

March 2012

States 
of Jersey

Introduction

This leaflet provides a general outline of the Historic Abuse Redress Scheme. The scheme is designed to deal with applications for compensation for historic sexual or unlawful physical abuse suffered between 9 May 1945 and 31 December 1994 by children when in the States of Jersey's full-time residential care (known as the "Claims").

Can I apply for compensation?

You can apply for compensation through the Scheme if you can answer "yes" to **both** the following questions:

- Were you in the States of Jersey's full-time residential care system at any time between 9 May 1945 and 31 December 1994. For example, Haut de la Garenne?
- Were you subjected to sexual and/or unlawful physical abuse whilst in full-time residential care?

It is *not* necessary for an individual to have been prosecuted or convicted of any criminal offence in connection with the abuse in question, although this will be taken into account in handling a claim under the Scheme.

If the above criteria are met, then the application will proceed and be considered as part of the Scheme.

Please note that the Scheme will not award financial compensation if:

- *The claimant was not in the States of Jersey's full-time residential care at the time of the unlawful abuse;*
- *The person who was abused has died; or*
- *Damages have already been awarded by a court or have been agreed and paid in respect of the abuse.*

If a monetary award for historic abuse under the Scheme has previously been given by the Criminal Injuries Compensation Board in Jersey, this shall be deducted from an Assessed Award under the Scheme.

Mourant Ozannes, Jersey Advocates and Solicitors, have been appointed to advise on the Claims under the Scheme (known as the "Scheme Lawyers"). The Scheme Lawyers will be responsible for assessing the Claims, recommending whether it is appropriate for a claim to be admitted under the Scheme and then the amount of financial compensation to be paid to a claimant under the Scheme.

The Minister of Health and Social Services will authorise each payment based on that recommendation. The Scheme Lawyers will work alongside members of the Health and Social Services Department in managing the applications and Claims admitted under the Scheme.

How do I apply?

To apply for compensation you must complete an Application Form which is designed to collate the information required to deal with your application.

The Application Form should be used by any person who is applying for compensation for himself or herself, or by any person who is applying for compensation on behalf of a person who is incapable of managing his or her own affairs.

Application Forms are available from:

- (i) the States of Jersey website (www.gov.je/HistoricAbuseRedress);
- (ii) the Citizens Advice Bureau;
- (iii) the States of Jersey Customer Service Centre, Cyril le Marquand House, The Parade, St Helier
- (iv) Mourant Ozannes at 18-22 Grenville Street, St Helier
- (v) States Assembly Information Centre in Morier House.

The Application Form will ask you to provide evidence in support of your claim. It is important to remember that the more information you give the sooner the Scheme Lawyers can process your claim.

All Application Forms must be received by the Scheme Lawyers on or before 30 September 2012. After that date the Scheme will close to new claims.

Who can help me to apply?

You may wish to engage a lawyer for help in completing and submitting an Application Form. If settlement is arrived at under the Scheme, your reasonable legal costs and expenses will be paid in accordance with the Royal Court's taxation. This means that no legal fees that you incur should be deducted from your compensation award.

There is the risk that a lawyer's fees may exceed the amount that the Council of Ministers are prepared to agree to pay for your legal fees. It is expected that the lawyer appointed will agree to write-off any shortfall and not require you to pay it.

You should, however, agree at the outset with your lawyer what will happen in the event of such a shortfall and, in particular, whether you will personally be required to meet any cost if there is a shortfall.

You may, of course, elect others to assist you with your application, whether that is a care leavers group, a member of your family or a friend. Or you may simply wish to make an application yourself.

If you are not legally represented and wish to have a lawyer to assist you with your application, Mourant Ozannes can provide you with details of the law firms currently assisting with applications. However, no recommendation or advice on this aspect will be given.

Where a person, who may be entitled to compensation, is unable to manage his or her own affairs, the application may be made by a relative or other person on his or her behalf with the appropriate authority.

How will my application be dealt with?

Once your Application Form is received, the Scheme Lawyers will first check they have all the information necessary to progress your case. This will include:

- All Medical records
- All Mental Health records
- All Social Services records
- Any other records of your time in care as a child
- Copies of any Police statements given in relation to this matter

Your agreement to obtain these records will be required and there will be space on the Application Form for you to provide your permission for the Scheme Lawyers to obtain those records.

Depending on the nature of the abuse suffered, an independent report may be required on any psychiatric and/or psychological harm suffered. If that is the case, you will be asked to undertake an assessment by an independent psychiatrist. This will be paid for under the Scheme.

If the Application Form contains insufficient information, the Scheme Lawyers may write to you, or the person assisting you, for further information.

Once all required evidence and information is obtained, the Scheme Lawyers will proceed to assess the financial compensation due against set financial bands, depending on the nature of your claim and where your claim fits in those bands. Once the compensation due under the Scheme (the "Assessed Award") has been assessed by the Scheme Lawyers, they will write setting out the Assessed Award, which you will be free to accept or reject.

If you decide to accept the Assessed Award, you will be asked to sign an agreement. The agreement will state the amount of the Assessed Award, that it is accepted by you in full and final settlement of your claim(s) for abuse and that you will keep the amount of the Assessed Award "private and confidential". This means you agree not to talk publicly about the amount of the award. The States of Jersey will keep the Assessed Award "private and confidential". Once that agreement is signed, payment of the amount of the Assessed Award will be authorised and no further action will be required of you.

If you decide to reject the Assessed Award, then your claim will cease to be dealt with under the Scheme and you will be able, should you so decide, to issue proceedings in the Royal Court for damages.

As explained above, the Scheme is intended to provide an informal, private and efficient means by which fair and reasonable financial compensation is delivered to the victims of historic abuse.

There are four compensation bands ranging from claims receiving compensation up to £10,000 to the highest band in the most serious cases having a maximum cap of £60,000. These bands have been determined based on specialist advice as to the amounts awarded in similar cases for general damages by the High Court of England and Wales and take account of the streamlined process of the Scheme compared to lengthy court proceedings.

How will the assessed award be calculated?

The Assessed Award will be a fair and reasonable sum having regard to your personal circumstances, and will take into account:

1. **Severity of the abuse and any harm caused**

Based on the medical and other evidence supplied, the Scheme Lawyers will assess your compensation claim with reference to:-

- (1) The nature, severity and frequency of the abuse suffered; and
- (2) any physical or mental injuries or long-term effects.

2. **Medical Expenses**

Any additional payment required for reasonable expenses incurred in respect of medical or psychiatric treatment for the effects of the injuries suffered as a result of the abuse.

3. **Other costs and expenses**

In certain cases, a payment may be made for other costs and expenses reasonably incurred in making and processing your application for compensation. Typically, the cost of your reasonable legal fees incurred in making the application will be met as will any travel costs incurred by you for the purpose of undergoing a psychiatric assessment for the purposes of assessing your application.

How will my compensation be paid?

Compensation will be paid in one lump sum, by means of a cheque or by payment into your bank or building society account.

Will an award affect my tax or benefits position?

In Jersey, such compensation is not taken into account by the Comptroller of Income Tax. In relation to Social Security or other benefits, in Jersey such compensation is not taken into account for a period of twelve months after you receive it.

If you live outside Jersey, you should obtain advice on how your compensation is dealt with in such matters.

What can I do if I am dissatisfied with the assessed award?

If you are not satisfied with the amount of the Assessed Award there is a right to an independent review under the Scheme. The costs of the review are estimated to be in the region of £1,000, depending on the complexity of the case. If the review decreases the Assessed Award or if it increases the Assessed Award by less than 20 per cent, then the costs of the review will be deducted from your Assessed Award.

If you are not satisfied with the Assessed Award before or after review, you may of course reject it and pursue legal proceedings through the Royal Court.

Once an Assessed Award is rejected, however, you may not subsequently re-apply for the claim to be dealt with under the Scheme or to accept the Assessed Award.

How does accepting the assessed award affect my right to claim damages in the courts?

If you decide to accept the Assessed Award, you will be required to agree in writing that you will not issue legal proceedings of any nature in relation to the abuse suffered.

When the Scheme Lawyers write to you with the Assessed Award, you will have six weeks (42 days) in which to decide whether to accept or reject the Assessed Award.

If you decide NOT to accept the Assessed Award, any right you may have to bring a claim for damages in the Royal Court will not be affected in any way. In this case all legal arguments and defences may be relied on by both parties. However, your claim will not be re-admitted under the Scheme if, for example, in due course your claim is struck out by the Royal Court or if you subsequently learn that any damages recoverable by you through court proceedings are lower than the Assessed Award under the Scheme.

Please note that, based on advice, the establishment and operation of the Scheme is without admission of liability on the part of the Council of Ministers or any other party. This means that:-

- (a) no questions of civil or criminal liability on the part of persons involved in the running of full-time residential care will be considered as part of the process of the Scheme;
- (b) if a claim is admitted to be dealt with under the Scheme, this is without admission of liability; and
- (c) should legal proceedings be issued, then the right to raise all defences available is reserved.

**This information can also be accessed from the States of Jersey website at:
www.gov.je/HistoricAbuseRedress**

Contact Details

You may contact the Scheme Lawyers as follows:

Historic Claims

Mourant Ozannes
18-22 Grenville St
St Helier Jersey JE4 8PX

Telephone Number: (00 44 1534) 676 371

Email: historicclaims@mourantozannes.com

www.gov.je/HistoricAbuseRedress