

Consultation and engagement on a potential financial compensation/redress scheme for victims/survivors of abuse in care

Report 1: Executive summary of the consultation with victim/survivors of abuse in care

September 2018



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ACKNOWLEDGEMENTS

We would like to acknowledge the time and effort put into this consultation by the 181 participants who took part. Their thorough, thoughtful and often detailed responses have provided invaluable insight and information that has made this report possible.

A specific thanks is also extended to the victims/survivors who attended our pilot events to help review and develop the early versions of the question paper for the public consultation. Each individual's patience with the process and the contributions made to the content were instrumental in shaping the final product.

SUPPORT

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DISCLAIMER

This report presents the views of participants who took part in the consultation on financial compensation/redress and does not necessarily reflect the views of the Scottish Human Rights Commission (SHRC), the InterAction Action Plan Review Group or the Centre of Excellence for Looked After Children in Scotland (CELCIS).

1 INTRODUCTION

In January 2017, The Centre for Excellence for Looked After Children in Scotland (CELCIS), in partnership with the Scottish Human Rights Commission (SHRC) InterAction Action Plan Review Group (Review Group)¹, was commissioned by the Scottish Government² to take forward a consultation and engagement exercise on a potential financial compensation/redress scheme for individuals who experienced abuse in care in Scotland, as defined by the Terms of Reference of the Scottish Child Abuse Inquiry (SCAI)³.

Progress has been made in taking forward a number of the commitments in the Action Plan, for example, the Apologies (Scotland) Act 2016, the Limitation (Childhood Abuse) (Scotland) Act 2017 and Future Pathways, Scotland's in care survivor support fund. However, the commitment on financial compensation/redress was not taken forward and many victims/survivors and the SHRC argue that many individuals are still being denied a core element of reparation and redress⁴.

A financial compensation/redress scheme for victims/survivors of abuse in care in Scotland would offer an alternative route for those who are unable to, or choose not to, pursue financial compensation through existing routes, such as civil damages or the criminal injuries compensation scheme. A financial compensation/redress scheme would provide a core element of the broader reparation package for victims/survivors of abuse in care; without it, access to a financial compensation route for some victims/survivors will remain denied.

The key focus of the consultation and engagement exercise was a national consultation with victims/survivors. From the outset, it included victim/survivor representation and used a collaborative approach to the development of the actual process of the consultation and engagement activity, as well as to questionnaire design⁵. In addition, information was gathered on financial redress schemes established in other countries, and engagement with residential and foster care providers, and other professional groups took place to gain their initial high-level views.

The consultation was open from 4 September 2017 until 17 November 2017 for all victims/survivors of historical abuse in care, as defined by the Terms of Reference of the Scottish Child Abuse Inquiry. There were 181 responses to the

¹ The Interaction Action Plan Review Group is a national stakeholder group. It includes representation from survivors, survivor support organisations, service providers, the Scottish Human Rights Commission (SHRC), the Scottish Government, CELCIS and Social Work Scotland. The Group monitors the implementation of the Action Plan on Justice for victims of historic abuse of children in care. Full membership details are in Appendix x

² See the Deputy First Minister's update to the Scottish Parliament on issues relating to the Child Abuse Inquiry in Scotland on 17 November 2016. Retrieved from <https://news.gov.scot/speeches-and-briefings/update-on-issues-relating-to-the-scottish-child-abuse-inquiry>

³ Terms of Reference for the SCAI. Retrieved from <https://www.childabuseinquiry.scot/about-us/terms-of-reference/>

⁴ SHRC (2010). *A human rights framework for the design and implementation of the proposed "Acknowledgement and Accountability Forum" and other remedies for historic child abuse in Scotland*. Retrieved from <http://www.scottishhumanrights.com/justice/historic-child-abuse/>.

⁵ A total of 21 Review and survivor subgroup meetings took place between January 2017 and August 2018. Two pilot groups with additional survivor representation also helped shape the consultation questions.

consultation, mostly from victims/survivors, but also including some submitted on behalf of a victim/survivor or a deceased victim/survivor, or on behalf of a support organisation.

The consultation was developed by CELCIS and the Review Group and was structured around the following themes:

- Eligibility
- Information required to support applications
- Choice of support for victims/survivors making an application
- Administration and decision-making
- Types of payment
- Approach to determining payment amounts
- The role of Scottish Government and others

The questionnaire was made available to victims/survivors in the following ways:

- As a download from the CELCIS website that could be printed
- As an online version that could be accessed via PC or mobile phone;
- As a paper questionnaire sent by post via established victim/survivor support organisations
- As a paper questionnaire posted direct from CELCIS when requested by individuals

CELCIS staff also facilitated a free dedicated telephone line and victim/survivor support group events.

An agreed set of principles was central to all engagement activities to support a safe environment: Do no harm, Voice, Being Heard, Respectful Treatment and Constructive Engagement. Victim/survivor involvement in the early design and testing of the questions was intended to ensure victim/survivor experience and knowledge was reflected, and to help facilitate the accessibility and safety of the consultation. However, understandably, some participants noted that the detailed language in particular questions was difficult to understand, while others noted the emotional impact of taking part in the consultation. This underlines the need for any potential scheme to consider how it can increase its accessibility and reduce the emotional impact on applicants.

Appropriate procedures in relation to confidentiality and data management were adhered to within CELCIS and over the course of all activities. An independent verification process was also put in place to provide the Review Group with an additional layer of independent scrutiny and quality assurance⁶.

⁶ An independent consultant and a representative from SHRC undertook this task, initially between 27th November and 8th December 2017, and again for the final stage between June and August 2018. The Review Group was satisfied that the verification process was robust and in-depth. Overall, the feedback from the verifiers at initial and final stage was very positive. This provided the Review Group with confidence in the procedures in place and with the quality of work being undertaken.

This report provides an executive summary of the consultation with victims/survivors. This is one of a series of four reports:

- Report 1: Executive summary of the consultation with victims/survivors of abuse in care
- Report 2: Analysis and findings of the consultation of victims/survivors of abuse in care
- Report 3: International Perspectives – a descriptive summary
- Report 4: Initial perspectives from residential and foster care service providers and other relevant professional groups

In addition to the four reports, the Review Group has also submitted key recommendations to the Scottish Government and these are detailed at the end of this report.

Limitations

As noted previously, responses to the consultation were gathered in a range of ways. The anonymous nature of participation, along with the possibility of participants responding in more than one way is a limitation of the analysis. However, every effort has been made to include information from the full range of responses to the consultation. The views contained in this report reflect those of the participants who took part in this consultation.

Presentation and language

Given the limitations outlined above, the analysis has used more approximate terms to indicate the level of consensus or differences of opinion in relation to particular issues. Phrases such as *'most victims/survivors'* or *'almost all representatives of support organisations'* have therefore been used to show the extent to which participants have identified particular issues. The details of language used is as follows:

Almost all	means	over 90%
Most	means	75% to 90%
Majority	means	51% to 74%
Half	means	50%
Less than half	means	15% to 49%
Few	means	up to 15%

Percentages (%) in tables and charts have been rounded to the nearest whole number and, therefore, there may be instances where the total does not add up to 100 per cent.

2 VICTIM/SURVIVOR RESPONSES TO THE CONSULTATION

General themes

2.1 The consultation was structured around a series of relatively tightly focused questions and the responses to these are outlined in Section 3. However, a number of cross-cutting themes were also evident in responses across more than one question and these are summarised first.

2.2 The importance of principles such as choice, fairness, respect and individuality - in terms of victim/survivor needs and wishes, and to the redress processes and outcomes - was highlighted. The recognition of individual circumstances and experiences was stressed as was the importance of Victim/survivor voice and the need for integrity - of the scheme and all those involved.

2.3 While victims/survivors were not asked about their own individual abuse experience, participants made reference to the challenges of disclosing abuse, the nature of abuse and/or the impact of abuse through their lives, including impact on families, loss of opportunities, and physical and mental health.

2.4 Trust and lack of trust were a recurring theme in relation to service providers, the Scottish Government, religious bodies, the Police, justice services, and professional organisations. This related to past involvement with services, current provision and formal processes, including the timescales for a potential financial compensation/redress scheme.

2.5 Some participants felt that financial compensation/redress would mean that victims/survivors have achieved some form of justice and provide recognition and validation of their experience of abuse. Others saw it as a way to honour the victim/survivor and recognise the support of family. While some saw such a scheme as directly compensating in some way for the abuse, other victims/survivors considered that a payment could not fully compensate for their experiences and queried how abuse experience could be quantified in monetary terms. It was felt that financial redress could benefit individuals' health and well-being and reduce financial and other worries, and that it might help access immediate support, improve choices and secure opportunities. Some reference was made to the need for amounts awarded to be fair, fit with the crime perpetrated, and are comparable with similar schemes elsewhere.

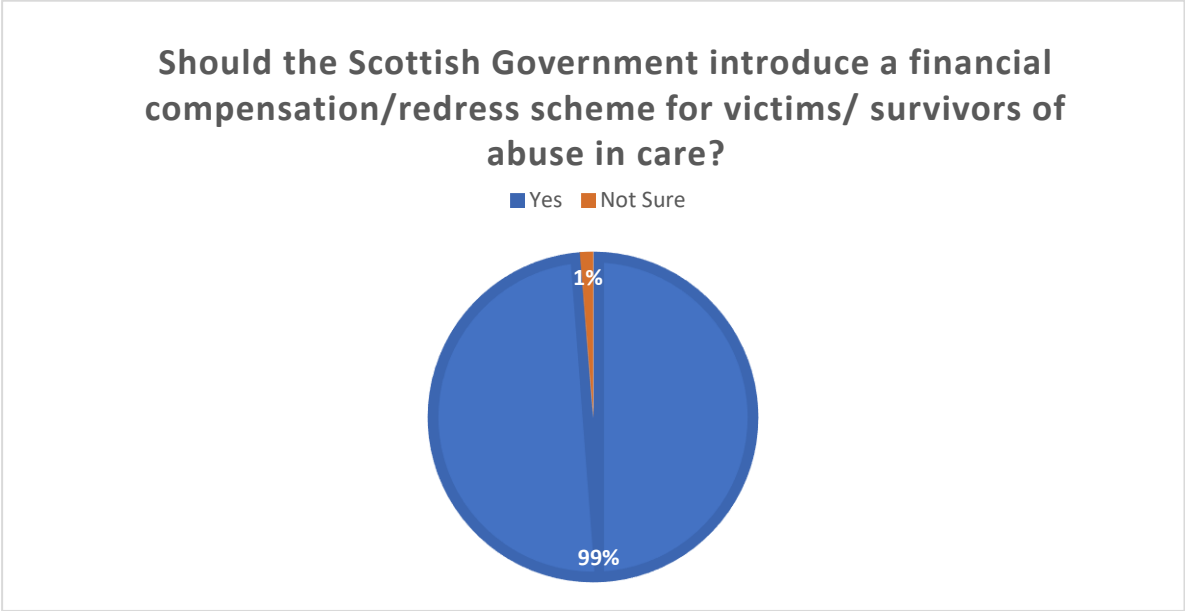
2.6 Interim payments, in particular, were seen as potentially offering immediate financial help to older or infirm victims/survivors and assist them with end of life plans. In this context, victims/survivors described waiting years for financial redress and many felt individuals had already waited long enough. There was concern about the number of individuals who have already died, and about those who may die before they receive financial redress.

2.7 Victims/survivors made suggestions for different ways that payments could be made and also outlined concerns about possible negative consequences, such as impact on benefits or savings, or risks of harm or vulnerability from receiving a payment.

3 CONSULTATION QUESTION RESPONSES

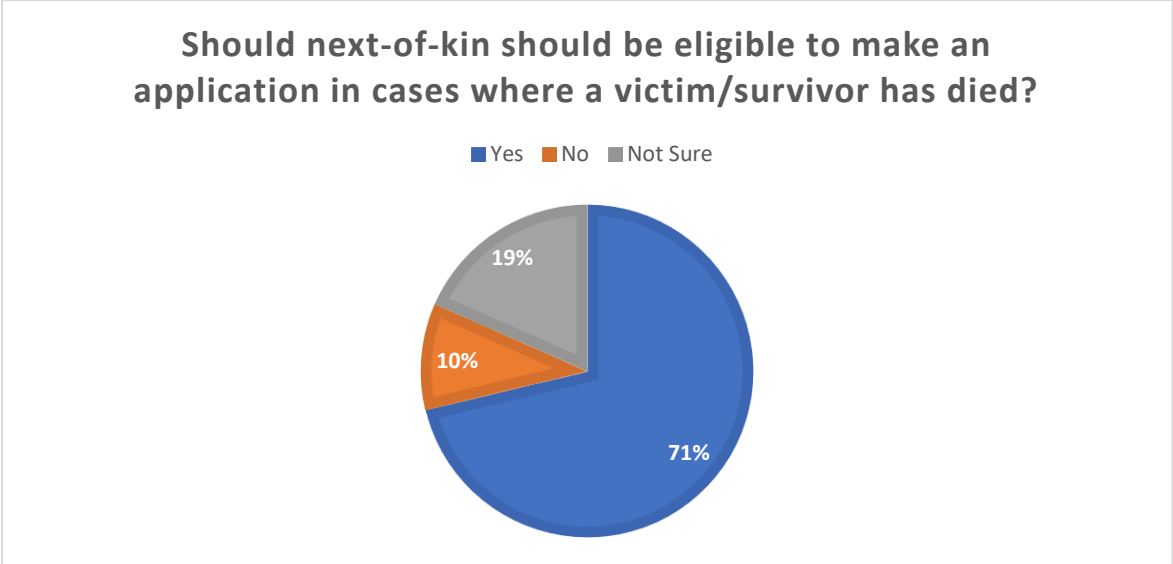
Question 1: A scheme for Scotland

3.1 Participants were asked if the Scottish Government should introduce a financial compensation/redress scheme for victims/ survivors of abuse in care. Almost all (99 per cent) of the 163 participants who answered this question said that it should. Two participants were unsure.



Question 2: Eligibility of next of kin

3.2 Participants were asked whether next-of-kin should be eligible to make an application in cases where a victim/survivor of historic childhood abuse had died prior to a financial scheme being implemented. Of the 174 participants who answered this question, the majority of participants (71 per cent) supported the idea of next-of-kin of a deceased victim/survivor being eligible to apply, while 10 per cent considered they should not be eligible and 18 per cent were unsure.



3.3 Most comments supported next-of-kin eligibility. It was felt by participants that it was right, fair and just that families should be compensated and that next-of-kin should not be penalised for the delays in progress. It was seen as an acknowledgement of the abuse and recognition of past mistakes. It was also regarded as recognition of the impact that abuse of victims/survivors had on their next of kin. There was a range of suggestions about how payments may be made, for example, split across family members, paid in to a trust fund, or given in the name of the victim/survivor to a trust fund or children's charity.

3.4 A number of participants felt that eligibility of next-of-kin should be conditional. Some considered that only particular next-of-kin should be eligible, for example, children, spouses or siblings, or next-of-kin of pre-1964 victims/survivors⁷. Or it was suggested that eligibility might be based on certain circumstances, for example, when there was no life insurance in place. The quality and nature of the relationship between next-of-kin and victims/survivors was also raised, with concerns about abusive next-of-kin being eligible for financial redress. It was also suggested that the wishes of victims/survivors should be known, particularly if they had never disclosed their abuse. Others considered that eligibility should be on an individual basis, depending on factors such as impact of abuse on next-of-kin.

3.5 Some participants suggested that next-of-kin should not be eligible because the abuse experienced was personal to victims/survivors and that next-of-kin did not suffer abuse directly, or that next-of-kin would not expect to be compensated.

3.6 There were a number of broader concerns about next-of-kin eligibility. These included: potential disclosure of abuse to next-of-kin when the victim/survivor did not want them to know; difficulties for next-of-kin in making an application because the next-of-kin may not know all the facts regarding the abuse and that next-of-kin may not have sufficient evidence; the possible impact and stress on next-of-kin; and, the risk that the scheme would lose credibility if the scope for eligibility of next-of-kin was too wide.

⁷ SHRC (2017) Effective Remedies for pre-1964 survivors. Retrieved from <http://www.scottishhumanrights.com/justice/historic-child-abuse/>.

Question 3: Written information

3.7 Participants were asked what type of written information should be submitted to a scheme and were presented with seven types of written information: placement details; nature and severity of abuse experienced; information on impact of the abuse; police records of any allegations or convictions; previous or ongoing civil/criminal action; testimony from a third party; and, material prepared for another purpose. Across all seven options, an average of 170 participants answered this question.

3.8 Most participants (approximately 85 per cent) who answered this question supported each type of written information, very few answered 'no' to any single type of information and approximately 11 per cent were unsure.

Do you think the following types of written information, if available, should be submitted in support of an application to a scheme (this may be from the victim/survivor, or someone on their behalf including their next-of-kin)?							
Types of written information	Total response	Yes		No		Not Sure	
		N	%	N	%	N	%
Placement details	175	149	85%	6	3%	20	11%
Nature and severity of abuse experienced	171	147	86%	6	4%	18	11%
Information on impact of the abuse	171	145	85%	6	4%	20	12%
Police records of any allegations, convictions or related matters	170	145	85%	6	4%	19	11%
Previous or ongoing civil/criminal action	168	143	85%	5	3%	20	12%
Testimony from a third party	170	144	85%	6	4%	20	12%
Material prepared for another purpose	163	140	86%	6	4%	17	10%
Average Total	170	145	85%	6	4%	19	11%

3.9 Additional comments stressed the need for flexibility, suggesting that relevant information for each applicant should reflect their individual circumstances.

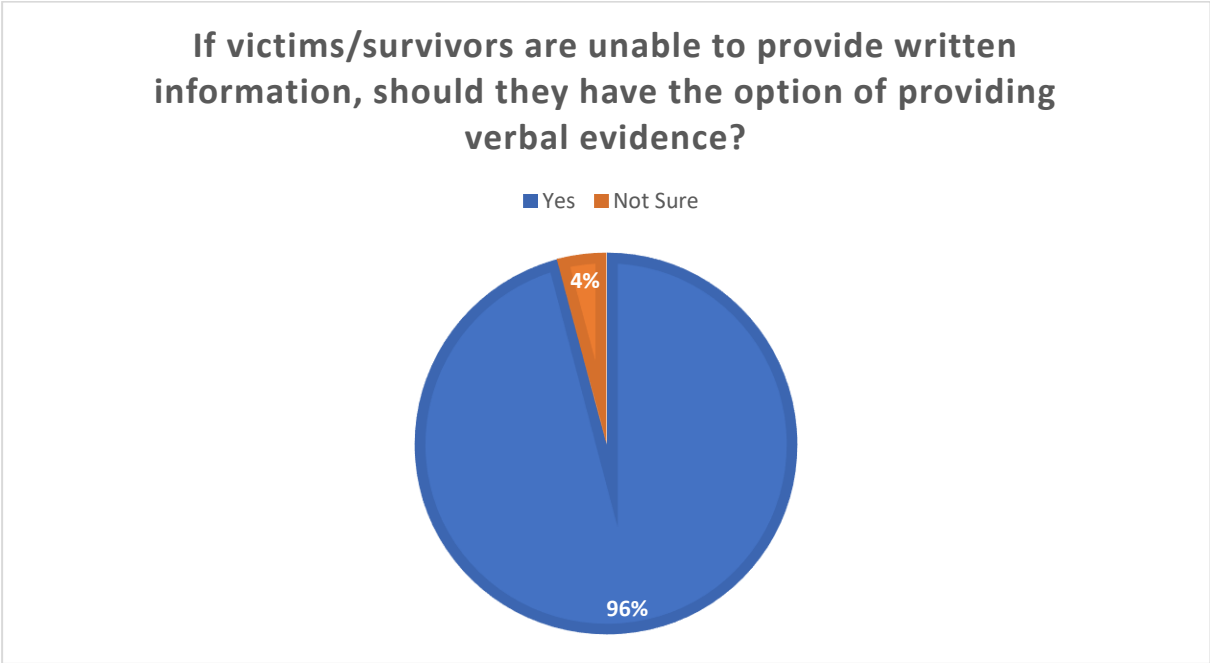
3.10 Other types of information suggested included: information previously submitted to inquiries or other formal investigations; historic school records or teacher testimonies; care records and reports of abuse; and medical records. Interviews, personal diaries, personal letters, and personal research that had been undertaken were also suggested. A range of third party sources for written testimony were suggested, including: friends and family, individuals who were in the same placement, professionals, survivor organisations and support groups.

3.11 Participants noted that written information could provide greater insight into experiences of victims/survivors and help to determine the facts and inform decisions about the payment amount. The therapeutic value of providing voice and closure through written evidence was also raised.

3.12 However, concern was expressed that recalling and retelling their experiences could be distressing and time-consuming for victims/survivors. Potential difficulties accessing written records and the poor quality of information was highlighted and comments were made about the destruction of records or obstruction on the part of agencies, the difficulty of remembering details or simply the passage of time. The level of supporting information for evidence that is currently available and the responsibility for providing it was raised as a concern, as this was felt could become a barrier to application. However, participants felt that evidence and the vetting of applications should ensure the validity and authentication of applications in order that a scheme is robust and credible.

Question 4: Verbal evidence

3.13 Participants were asked whether victims/survivors who are unable to provide written information, should have the option of providing verbal evidence and 171 participants answered this question. Almost all participants (96 per cent) who answered this question supported the option of providing verbal evidence and a small number (four per cent) were unsure.



3.14 Participants suggested a range of ways in which verbal testimony from victims/survivors could be provided, including providing evidence in person or over the phone, via a pre-recorded verbal statement or with a transcription of a previous verbal testimony. It was felt that victims/survivors might prefer verbal instead of written information and that for some it might be the only option

available. Creating a safe and supportive approach, ensuring a fair hearing, having access to support and guidance, and not feeling cross examined were highlighted as important. Some participants stressed that verbal evidence should be optional and not essential, as it might be difficult for some. Others felt that providing verbal evidence would allow victims/survivors voices to have their voices heard and to feel believed, allow them to provide a personal account of their experience and facilitate fuller disclosure. It was also felt that it could be a therapeutic experience and help with healing, validation and closure.

3.15 There was also some support third party verbal testimonies and victim/survivors identified a similar range of possible sources to those specified as third party written information.

3.16 As was the case with written evidence, participants highlighted the potential risk of the burden of proof being placed on victims/survivors and that providing verbal evidence could be distressing and traumatic for victims/survivors.

Question 5: Choice of support for victims/survivors making an application

3.17 Participants were asked about the types of support that could be useful for applicants to a scheme, particularly about practical, emotional, financial, legal, and advocacy support. Most participants who answered this question were in favour of applicants having access to the full range of suggested supports.

Would it be useful for applicants to a scheme to have access to.....?							
Type of support	Total Responses	Yes		No		Not sure	
		<i>N</i>	%	<i>N</i>	%	<i>N</i>	%
Practical Support	173	164	95%	1	1%	8	5%
Emotional Support	173	154	89%	5	3%	14	8%
Financial Support	172	146	85%	2	1%	24	14%
Legal Support	172	147	85%	3	2%	22	13%
Advocacy	173	146	84%	2	1%	25	14%
Other kinds of information	165	113	68%	3	2%	49	30%

3.18 Participants felt that the support offered should be victim/survivor-centred and have an element of choice. Participants also described what victims/survivors might look for from services, and/or what factors or characteristics they might look for from the individuals or services providing support. The importance of independence and impartiality was noted.

3.19 It was suggested that victim/survivors would need practical support to help applicants understand what a financial redress scheme is and how it would work in practice, to access records and compile information, and to complete the application process and signpost to relevant information sources and support where required. This support could be face-to-face or by phone.

3.20 Safeguarding and emotional support pre- and post-redress was viewed as helpful. Coping with anxieties and feelings about applying for compensation and throughout the application process, particularly when providing verbal evidence, were noted by participants as relevant areas. Peer group support was also felt to be a potentially valuable source of support, as was that from family and friends, alongside more formal sources of support.

3.21 Participants stressed that a lack of income should not prevent victims/survivors from applying and progressing an application, and that any associated costs related to the application process could be covered. Post-payment financial advice and guidance was also felt to be important.

3.22 Participants suggested a range of legal support services to help victims/survivors understand options relating to civil and or criminal court action as opposed to a financial redress scheme, to help with legal documentation and to facilitate the retrieval of records.

3.23 Participants suggested that free legal support would ensure there is no financial penalty for victims/survivors applying to a scheme.

3.24 Advocacy was considered to be particularly important for vulnerable adults, those with literacy or communication difficulties, and those with a mental disability or illness. It was seen as potentially helping with the application process, as well as a means of representing individuals' views and rights in meetings.

3.25 Participants commented on the value and nature of existing sources of support and some indicated they would like these to continue.

Question 6: Victim/survivor representation

3.26 Participants were asked how they thought victims/survivors could be best represented in the development and administration of a scheme. Some of the participants who answered this question also interpreted representation as involvement in the process of individual applications to a financial redress scheme.

3.27 The majority of comments received related to the direct involvement of victims/survivors in scheme development and administration, and there was general support for the involvement of victims/survivors. Participants felt this would make a positive contribution. It was suggested that victim/survivor involvement should be integral at every stage: that their voices should be respected and listened to at all levels of the decision-making process. Participants suggested that participation should be supported, and representation

should be genuine and not tokenistic, but that further consultation may be required to consider best how to support involvement. Some also felt that representation should not cost too much.

3.28 Around a third of participants suggested that involvement could be through membership of an advisory or steering group. It was noted that individual survivors should be drawn from a broad representative group and there should be significant representation. Participants also suggested that victims/survivors could have direct involvement through membership of the board or panel that would be developing and administering the scheme. Some participants considered that victims/survivors could have involvement through membership of a victim/survivor support group both during and after the redress process, to allow individuals to share their experiences to help others.

3.29 Participants highlighted that the personal experience and insight of victims/survivors would help inform the development and administration of the scheme, and provide peer support to other victims/survivors through the application process. It would help with transparency, impartiality and fairness in compensation processes and outcomes.

3.30 Participants felt that keeping victims/survivors informed through regular updates would facilitate their involvement. It was suggested that technology could be used to support participation and broaden representation, and that regular updates - perhaps with leaflets written by victims/survivors - would facilitate trust and increase access.

3.31 Participants considered that third party representation was important because fair representation of victims/survivors is required. It was felt that third party representation would ensure that victims/survivors have someone to support them, believe in them, fight their corner, and to speak on their behalf. Some participants emphasised the importance of choice of representatives. Victim/survivor support groups or organisations were viewed as well placed to represent victims/survivors, both in the development and administration of the scheme, and as individuals. Participants suggested a range of other third party representation: advocacy, financial representation and legal representation.

3.32 A few participants felt that there was no need for any further representation of victims/survivors. One view here was that victims/survivors were already well represented; another was that the current consultation was sufficient.

3.33 A few participants raised concerns about victim/survivor involvement in the development and administration of a scheme because of the potential burden and emotional impact. There was also concern about access to confidential information.

Question 7: Knowledge and understanding areas

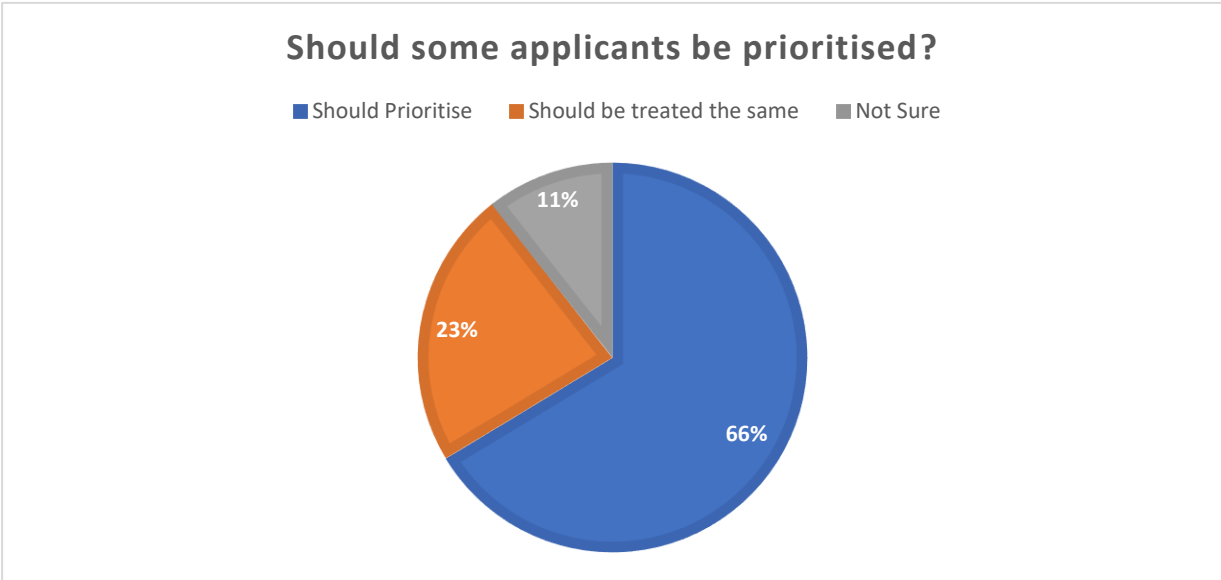
Participants were asked about knowledge and understanding that could be applied when assessing applications. Most participants (approximately 86 per cent) who answered this question supported the inclusion of each of seven knowledge and understanding areas to be applied in decision-making: advocacy, finances/financial compensation assessment; health; human rights law; law; social care; and trauma.

What areas of knowledge and understanding could be applied when assessing applications?							
Knowledge and understanding areas	Total responses	Yes		No		Not sure	
		n	%	n	%	n	%
Advocacy	163	140	86%	2	1%	21	13%
Finances/Financial Compensation Assessment	160	137	86%	2	1%	21	13%
Health	160	137	86%	2	1%	21	13%
Human Rights law	159	136	86%	2	1%	21	13%
Law	157	134	85%	2	1%	21	13%
Social Care	161	138	86%	2	1%	21	13%
Trauma	159	136	86%	2	1%	21	13%

3.34 Participants suggested a number of other areas which would be useful for assessment, including: education, finance and benefits, and knowledge and understanding about children and their development. Participants also highlighted the importance of knowledge and understanding of victim/survivor experiences in care, the care system and the different care establishments, the extent of abuse and trauma, and the long-term impact, including mistrust. The value of hearing from those with lived experience was highlighted. Participants highlighted representation in decision-making of victims/survivors themselves and representation from support groups or support organisations. Also noted were individuals with different professional backgrounds, including experience and knowledge of child abuse and trauma, education or supporting victims/survivors. All should understand the potential impact of the application process and have the capacity to respond to vulnerable groups.

Question 8: Priority circumstances

3.35 Participants were asked whether some applications to a financial compensation/redress scheme should be prioritised and 169 participants answered this question. The majority (69 per cent) of participants who answered this question felt that some applications should be prioritised, while almost a quarter (24 per cent) felt applications should be treated the same and seven per cent were unsure.



3.36 Priority circumstances based on victim/survivor age and health were mentioned most. Age-related factors included anyone who was elderly or from a specific age bracket, or pre-1964 victims/survivors⁸. Health-related priority circumstances included any victim/survivor suffering poor health generally or, more specifically, those with severe ill-health, chronic ill-health, life-changing illness, critical illness or terminal illness. It was also suggested that priority should be given to individual circumstances such as disability, those in need of therapeutic or rehabilitation intervention, or those in immediate practical or financial need. Reference was also made to family-related areas, where family members have health issues or other needs, or where there is an application from a sibling group. The experience and impact of abuse on victims/survivors, including the severity and circumstances of the abuse, was also a suggested factor for interim payments. In addition, it was suggested that for those victims/survivors who had witnessed the successful prosecution of their perpetrator of abuse, that this could mean that there should be no further delay in a redress payment.

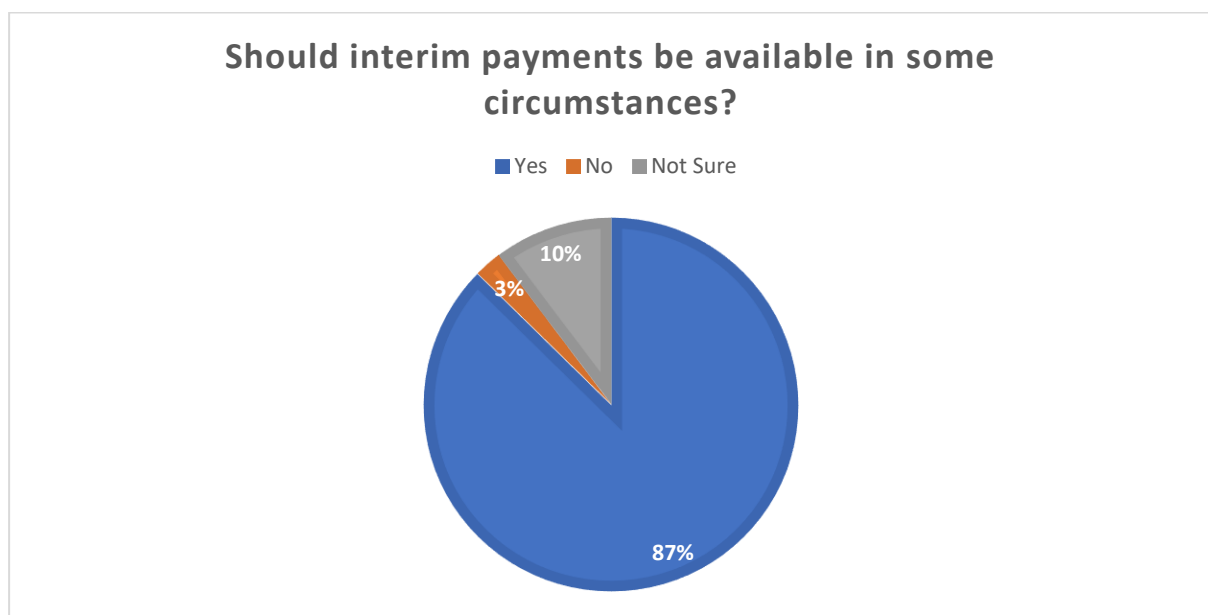
⁸ SHRC (2017) Effective Remedies for pre-1964 survivors. Retrieved from <http://www.scottishhumanrights.com/justice/historic-child-abuse/>

3.37 Some participants felt that all applications should be treated the same and not prioritised, and applications should be dealt with as a single process, as it may be difficult and unfair to prioritise.

3.38 Some concerns were raised about prioritising applications for particular victims/survivors in relation to discrimination and the legality of that position, and the potential for fraud in the process.

Question 9: Interim payments

3.39 Participants were asked whether interim payments should be made available in some circumstances and 166 participants answered this question. Most participants (87 per cent) who answered this question felt an interim payment should be made in some circumstances, two per cent felt that they should not, and 10 per cent were unsure.



3.40 A number of general statements were made in support of interim payments, in that they would help provide support and positive change for individuals and, at times, for their families.

3.41 Most comments supporting interim payments referred to age or health circumstances, such as life-limiting or terminal illness, and physical and/or mental health issues. It was suggested that interim payments should be issued to any victim/survivor who has any kind of capacity issue, has a disability, or is in emergency or other immediate need. Loss of opportunity was also suggested as a reason for an interim payment, to support victims/survivors returning to employment or accessing opportunities. The severity or duration of abuse or the long-term consequences of abuse were also suggested.

3.42 Two types of financial circumstances were suggested as criteria by participants for interim payment. The first related to victims/survivors experiencing financial difficulties or hardship. The second related to the length of

the application process - that an interim payment would be warranted for those experiencing an extended assessment and decision-making process. It was also suggested that interim payments should be issued to victims/survivors where there had been a successful criminal prosecution.

3.43 A few participants suggested that all applicants should receive an interim payment regardless of their circumstances, that discrimination between applicants should be avoided, and that all victims/survivors have been waiting a long time for redress.

3.44 Some comments referred to the process for interim payments, such as the timescale for payments or the assessment of interim payments. Comments suggested that there needed to be a balance between interim payments being granted without adequate checks and the process being over-complicated.

3.45 There were a range of comments about the value of interim payments including that such payments should have real meaning, and be adequate whilst waiting for full financial redress.

Question 10: Individual experience payments

3.46 Individual experience payments can involve using different factors to decide the level of payment made. Each factor is assessed within the context of individual circumstances and is worked out using a matrix or tariff table. Participants were presented with a list of factors commonly included in this approach: length of time in care, type of abuse, time over which abuse took place, frequency of abuse, severity of abuse, impact of abuse, and loss of opportunity. For each of the factors, 69 per cent of participants who responded to this question felt they should be included in a matrix or tariff table, with approximately 20 per cent answering 'no', and the remainder being unsure.

Which factors do you think should be included in a matrix tariff table?							
Matrix/ tariff factors	Total response	Yes		No		Not sure	
		N	%	N	%	N	%
Length of time in care	172	118	69	35	20	19	11
Type of abuse	171	118	69	35	20	18	11
Period of time over which abuse took place	171	118	69	35	20	18	11
How often the abuse occurred	170	117	69	35	21	18	11
How severe the abuse was	170	117	69	35	21	18	11
Impact of the abuse	169	117	69	34	20	18	11
Loss of opportunity	169	116	69	35	21	18	11
Average Total	170	117	69	35	20	18	11

3.47 Participants were asked to identify other factors that should also be considered and to make any further comments about individual experience payments. Overall, participants supported this approach to redress and most of the comments received referred to factors mentioned above, with impact of abuse, loss of opportunity and type of abuse being mentioned most frequently. Additional factors were suggested by a small number of participants, and these were: loss of identity; the impact of being placed in care; the lack of medical care; vulnerability; the impact of living in fear; and the lack of support after leaving care.

3.48 A small number of participants said no specific factors should be considered; a few others stated that particular factors should not be included, and these were: type of abuse; length of time in care; frequency of abuse; severity of abuse; and loss of opportunity.

3.49 A small number of concerns were raised about individual experience payments, the most common being to ask how abuse can be quantified and measured. Reference was made to the place of value and moral judgements when comparing different abuse experiences, as well as how the factors influencing individual circumstances would be taken into account. Differences in individual coping abilities and how this might affect the impact of abuse was raised. A few participants were concerned that this approach placed too much of the burden of proof on individuals and was potentially traumatic. The level of payment and potential lack of evidence available to older applicants were also concerns.

Question 11: Standard payments

3.50 In a standard payment scheme each applicant would receive the same amount of payment regardless of individual circumstances. The majority of comments (69 per cent) received in relation to this question did not support this approach. Although this question was in relation to standard payments, 13 per cent of the comments expressed support for standard payments and 15 per cent had mixed views or were unsure about the standard payment approach.

3.51 Most common was a view that a standard payment is inappropriate as it does not consider individual experiences of abuse and its impact. As such, there was a preference for either individual experience or combination payments. This led to a perception of standard payments being unfair. Similarly, they were seen as failing to recognise the abuse suffered and provide real redress, making victims and survivors feel unheard. It was also suggested that standard payments were seen as an easy option for the authorities, avoiding full responsibility, and as being easier to administer.

3.52 Of the small number of comments expressing support for standard payments, most related to perceptions of equality and fairness, that they acknowledged all abuse and avoided the difficulty of measuring abuse.

Some felt standard payments might be helpful for those not wishing to participate in a potentially traumatic process, avoiding the need to provide details of their experience.

3.53 It was suggested by participants that standard payments need to be of a sufficient amount to reflect the abuse suffered and ensure victims and survivors do not feel devalued. There was also concern about the potential for the system to be abused.

Question 12: Combination payments

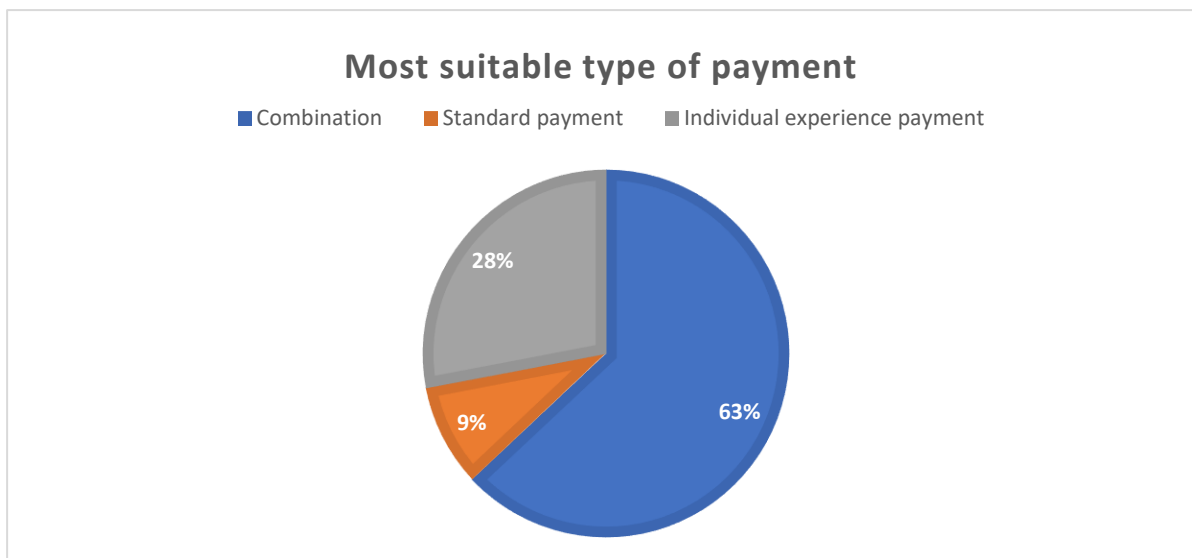
3.54 For all eligible victims and survivors, combination payments combine both a standard payment, and an optional individual experience payment which is applied for. A small majority of comments (52 per cent) received in relation to this question supported this approach to financial redress and although this question was in relation to combination payments, 12 per cent of comments expressed preference for individual experience payments and a few mentioned that they were in favour of standard payments.

3.55 The most common reason for supporting this approach was a perception of fairness, including the recognition of all abuse, while at the same time acknowledging differences in individual experience. Combination payments were also seen to recognise the long-term impact abuse can have on individuals' lives and the level of support and care required.

3.56 There were a small number of concerns about combination payments. They have the potential to be overly complex and time-consuming. The need for appropriate support was highlighted, and the need to be as simple as possible to minimise potential trauma. A few participants suggested the decision regarding whether or not to apply for an additional individual experience payment should be a personal choice.

Question 13: The most suitable type of payment for a Scottish financial redress scheme

3.57 Participants were asked to choose which of the three approaches (an individual experience payment, a standard payment, or a combination approach) would be most suitable for a Scottish financial compensation/redress scheme. A total of 160 participants answered this question. The majority of participants (63 per cent) who answered this question stated that a combination approach was most suitable, while 28 per cent supported individual experience payments, with nine per cent expressing support for standard payments.



3.58 Comments in support of individual experience payments saw this as the fairest approach taking into account differences in individual experience, such as length of time in care, type of abuse, and lifelong impact. However, some concern was again expressed about how abuse can be quantified and the difficulty for some victims/survivors of providing information about past experiences.

3.59 Those who supported standard payments considered that this approach acknowledged all abuse and that this was fair. Standard payments would prevent unnecessary trauma to victims/ survivors by not making them divulge detailed information about their experiences. Those against this approach considered that it fails to recognise individual experiences and provides an easy option for the authorities.

3.60 Comments in support of combination payments also described it as the fairest approach, with the standard payment element providing an acknowledgement of all abuse and the individual payment providing real redress based on individual experience. Allowing victims/survivors a choice in whether or not to pursue an individual payment was considered an important and positive aspect of the approach. The concerns about combination payments included the complexity of the approach, whether the need to provide evidence may deter claims, and raising the question about how abuse could be quantified

3.61 More general comments around payment types highlighted that victims/survivors should be at the centre of whichever process is adopted, the need for the consultation to consider all three approaches, and the difficulty of deciding which approach is most suitable.

Question 14: Approach to determining payment amounts

3.62 Participants were asked about three sources used elsewhere as a basis for developing an approach to help determining payment amounts: the payment tariff structure used by the Criminal Injuries Compensation Scheme;

civil damages payments in other parts of the UK; and payment amounts made in financial compensation/redress schemes in other countries. An average of 142 participants responded to each source.

3.63 Between 43 per cent and 44 per cent of participants who answered this question were in favour of each of these approaches, 21 per cent did not think each approach should be considered and just over 36 per cent were unsure.

Which of the following do you think should be considered while developing an approach to determining payments?							
Payment approaches	Total responses	Yes		No		Not Sure	
Published information on the payment tariff structure used by the Criminal Injuries Compensation Scheme	146	64	44%	30	21 %	52	36%
Information relating to civil damages payments in other parts of UK	140	60	43%	29	21%	51	36 %
Information on payment amounts made in financial compensation/redress schemes in other countries	141	60	43%	30	21%	51	36%

3.64 Some participants considered that all information sources should be considered when looking at compensation payments and putting together a fair matrix/tariff. Other approaches suggested by participants were:

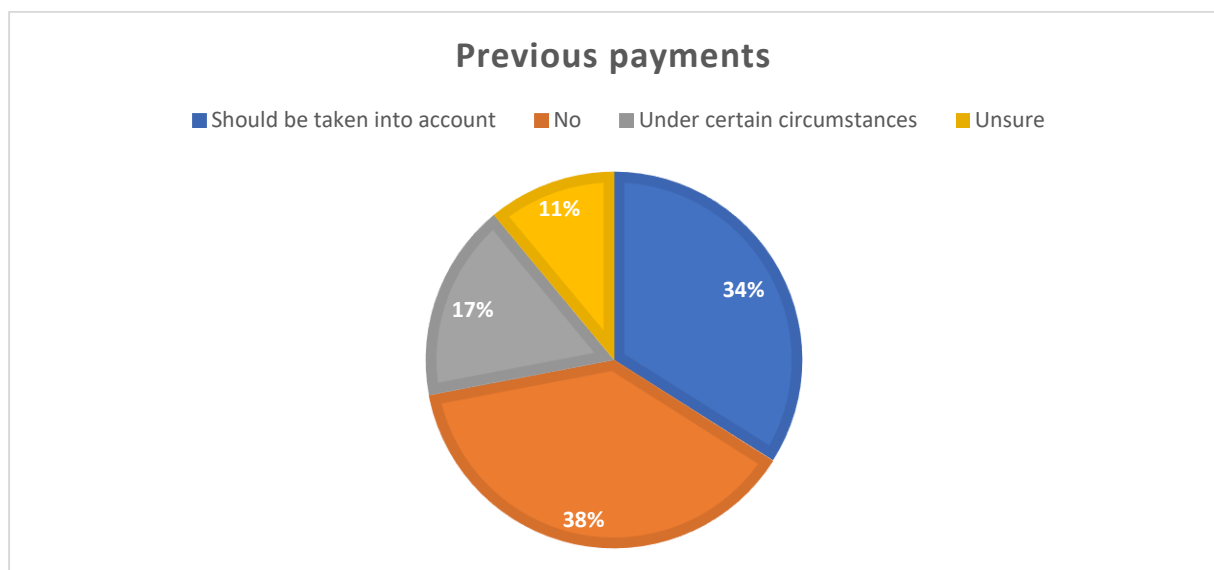
- Data from professionals who have expertise in child abuse and its lifetime consequences for victims/survivors;
- Statistics about the numbers of victims/survivors abused in care, including race and ethnicity;
- Information on financial payments issued by local authorities, including the amount paid and to whom it was paid;
- Information from victim/survivor groups in other countries;
- Information relating to the experience and impact of abuse.

3.65 In relation to criminal injuries, a number of concerns were highlighted, including: the distinct nature of historical abuse, challenges in justifying and calculating amounts of payments, and the factors to be considered. In relation to civil damages payments, it was suggested that out-of-court as well as in-court settlements should be considered. Compensation for accidents caused through negligence were suggested as the starting point for compensation calculations. Some participants suggested that, when considering financial compensation/redress schemes from other countries, it would be helpful to look at the payment amounts, their strengths and lessons learned.

3.66 Some participants highlighted that the approach to payments needs to be reasonable, fair and show consideration to victims/survivors. A number of comments called for an approach that was specific to Scotland because of its individual history and experience.

Question 15: Consideration of previous payments

3.67 Participants were asked whether or not previous payments should be considered by a financial compensation/redress scheme. Of the 112 comments on this topic, 38 per cent considered that previous payments should not be taken into account, 34 per cent considered that they should be taken into account, 17 per cent considered they should be taken into account under certain circumstances, and 11 per cent were unsure.



3.68 Those justifying why previous payments should not be taken into account viewed these payments as separate, privately sought or irrelevant. Some participants noted that previous payments may have been limited in terms of the abuse considered or disclosed, or due to the lack of understanding of the nature and context of abuse at the time. The importance of choice was noted, and it being unfair to take previous payments into account as the option of a redress scheme was not previously known about. Participants also spoke of experiencing harm in previously accessing compensation and therefore their efforts should not be used to exclude them from any new financial redress payments, and that previous payments should not cancel out the opportunity to receive financial redress from a new scheme.

3.69 For those participants that felt previous payments should be considered, some viewed that this would be fair and just, and that individuals should be treated equally. Comments included that there should only be one payment, as receiving two payments would be unfair or wrong, particularly for the same abuse experience, and that these cases have already been reviewed.

3.70 If previous payments were not taken into account, it was felt that this could affect the amount of financial redress for other victims/survivors and that redress should be prioritised for those who have not had any previous payment.

3.71 Some participants considered that previous payments might be taken into account in certain situations, such as, if the previous payment was over a certain amount or was a significant amount, or if previous payments amounts were judged to be fair and reflected an understanding of the impact of abuse for victims/survivors.

3.72 Some participants also felt that previous payments should be considered if this was necessary or required, that it was for those overseeing the scheme to decide what is fair, and that it should be considered on an individual basis. The current legal requirement for individuals to pay back a criminal injuries payment if they receive a further payment for the same injury was noted.

Question 16: The role of the Scottish Government and others

3.73 Participants were asked who they thought should contribute to a financial redress scheme: Scottish Government; care providers; the local authority (or its successor) responsible for making the placement decision; the local authority (or its successor) within which the child was placed; and/or religious bodies responsible for the care service. Almost all participants who answered this question felt that each of these bodies should contribute to a financial redress/compensation scheme.

Who should contribute to a financial compensation / redress scheme?							
Providers/Institutions	Total responses	Yes		No		Not Sure	
		n	%	n	%	n	%
Scottish Government	169	159	94%	6	4%	4	2%
Care providers	161	151	94%	6	4%	4	2%
The local authority (or its successor) responsible for making the placement decision	161	151	94%	6	4%	4	2%
The local authority (or its successor) within which the child was placed	160	151	94%	5	3%	4	3%
Religious bodies ⁹ responsible for the care service	162	152	94%	6	4%	4	2%

3.74 Participants expressed the view that all parties are responsible for the decision-making and care of children removed from their parents, and all should

⁹ A religious body can be described as an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious beliefs or principles.

be held responsible for their role in historic abuse; they all 'let down' victims/survivors. It was suggested that the Scottish Government should accept and take responsibility because it was responsible for victims/survivors who were looked after by organisations that the Government commissioned and licensed. Reference was also made to a specific policy implemented by the Government that was viewed by victims/survivors as discriminatory and led to children being taken into care¹⁰. Furthermore, it was felt that Government permitted local authorities to act in the way that they did. However, the changing relationship of the Scottish Government to the UK Government was noted. Participants considered that local authorities have responsibility and should contribute, because they had failed to protect the children for whom they had a duty of care. It was also remarked that all service providers and organisations who licensed care homes or employed perpetrators of abuse should share that responsibility. They had a duty of care to the children and should address their failure to uphold that duty.

3.75 As noted above, most participants considered that all parties should contribute to the financial compensation/redress scheme. One suggestion was that all parties should make a percentage contribution. However, it was also stated that this should not be allowed to cause delay; the scheme needs to provide survivors with timely access to redress. Participants also felt that the Scottish Government had a key role to compensate victims/survivors for the failure to protect vulnerable children.

3.76 A few participants stated that the Scottish Government should take a more active lead in addressing what happened to victims/survivors, to show firm commitment to financial redress, and to hold all responsible to account. There were also concerns about the independence of the Scottish Government in any potential compensation/financial redress scheme.

Question 17: Further comments on financial redress

Participants were provided with the opportunity to provide further comment on a financial compensation/redress scheme not already covered in the questionnaire.

All comments were about broader redress, remedies or reparation and have been incorporated within the 'general themes' section at the beginning of this report.

¹⁰Maclennan, K., McPhee, R., McPhee, S. & Turbett, C. (2017). *Gypsy Travellers: Human rights and social work's role* (pp.6-7). Glasgow: IRISS. Retrieved from <https://www.iriss.org.uk/sites/default/files/2017-02/insight-35.pdf>.

4 CONCLUSION

This consultation is the first in Scotland to consider the specific matter of financial compensation/redress for victims/survivors of abuse in care. It has, from the outset, included victim/survivor representation and used a collaborative approach to the development of the actual process of the consultation and engagement exercise, as well as to questionnaire design.

The consultation with victims/survivors identified a number of issues where there was a high degree of consensus, as well as areas where views differed. Participants have provided invaluable information on their thoughts and feelings, as well as outlining concrete ideas, opinions and concerns. These insights offered by victims/survivors will prove extremely useful in the early stages of the Scottish Government's decision making on whether to commit to establish a financial compensation/redress scheme, as well as at any later stages of scheme design and implementation.

Almost all victims/survivors who took part in this consultation considered that a financial compensation/redress scheme for victims/survivors of abuse in care should be taken forward in Scotland. The InterAction Action Plan Review Group supports this view and has outlined this opinion in a set of recommendations that have been forwarded to the Scottish Government along with this report. These are outlined below.

5 RECOMMENDATIONS

Recommendations and key messages from the consultation

The Review Group presented a letter to the Scottish Government outlining the background to the consultation and engagement and detailing a set of key recommendations with these reports.

These recommendations are drawn, mainly from information gained from the consultation with victims/survivors and with reference to the other reports in the consultation and engagement series (Report 3: International Perspectives – a descriptive summary and Report 4: Initial perspectives from residential and foster care service providers and other relevant professional groups).

The recommendations paper is published separately. The recommendations are:

- **Recommendation - A financial compensation/redress scheme for victims/survivors of abuse in care should be established.**
Almost all (99 per cent) of victims/survivors who answered this question considered that a financial compensation/redress scheme should be established. The SHRC Framework highlighted that the state has a duty to ensure effective remedies for violations of human rights and this includes the need for a financial compensation mechanism that is open to all victims/survivors of abuse in care. This is not currently being provided in Scotland.
- **Recommendation – Approval of a financial compensation/redress scheme for victims/survivors of abuse in care should take place as soon as possible following detailed scheme design.**
The Review Group urges the Scottish Government to approve a financial compensation/redress scheme for victims/survivors of abuse in care as soon as possible, following detailed scheme design, and for legislation to be passed by the end of this parliamentary term, March 2021.
- **Recommendation - The preferred approach to financial compensation/redress is a combination payment.**
The majority of victims/survivors who answered this question felt that the preferred approach is a combination payment which involves a flat-rate standard payment along with an individual experience payment which takes account of a range of factors such as: the nature of abuse; the severity of abuse; the period of abuse; and the life-long consequences of the abuse. The operational design and detail will need further consideration.
- **Recommendation - Next-of-kin of deceased victims/survivors of historic abuse should be eligible to apply to a scheme.**
The majority of victims/survivors who answered this question indicate support that the next-of-kin of deceased victims/survivors should be eligible for compensation/redress. However, there were a number of cautions about the eligibility of next-of-kin, in terms of the definition of next-of-kin, personal relationships with the deceased victims/survivors while they were living, and practical operational issues. These matters require further consideration.

- **Recommendation – There should be arrangements for interim payments which would allow priority groups of victims/survivors to access payments prior to full payment.**
 It was considered by the majority of victims/survivors who answered this question that it is important for priority groups of victims/survivors to access interim payments. There was a range of views regarding the criteria for these payments, in general, age and health factors were highlighted as priorities. Such interim payments should be considered in the context of further discussions about 'advanced payments' (see below).
- **Recommendation - A range of written and verbal information, where available, should be used to assess individual applications.**
 Victims/survivors who answered this question considered that, where available, a range of written and verbal information should be used to assess applications, and this included: information about placement details; nature and severity of abuse experienced; information on impact of the abuse; testimony from a third party; police records of alleged or convicted perpetrators of abuse; previous or ongoing civil/criminal action; and, material prepared for another purpose. Challenges in the availability and securing of information, the impact on individuals through the process and the importance of choice were also noted.
- **Recommendation – A range of support and guidance should be put in place for applicants to assist them through the process of the scheme.**
 Most victims/survivors who answered this question outlined a number of potential different types of supports to meet a range of individual and different needs at each stage through the application and payment process. These included: practical support, emotional support, financial advice, legal advice and advocacy.
- **Recommendation - Victims/survivors should be represented in the administration and governance of a full financial compensation/redress scheme.**
 The value and insight offered by victim/survivor representation was highlighted by the consultation participants. Similar to the types of support, victims/survivors suggested a broad range of ways by which victim/survivors could be represented, either through the development and administration of the scheme or the individual application process. These views accord with a human rights based approach where participation is a recognised key component. Representation and participation should be significant and meaningful, involving appropriate information available in accessible formats, and the provision of necessary support and guidance.
- **Recommendation - A range of knowledge and understanding should be represented in any panel or board which will have a decision making role in the scheme.**
 Victims/survivors who answered this question noted a number of suggested professional backgrounds and specified services, and highlighted the value of lived experience. Key areas of knowledge and understanding included: advocacy, finance, health, human rights law, social care, and trauma.

- **Recommendation - All those responsible should contribute to a financial compensation/redress scheme.**

Victims/survivors who answered this question consider that all those responsible should contribute, including: Scottish Government, residential and foster care providers, local authorities which placed children in care and those which provided care placements, and religious bodies responsible for care services. The SHRC Framework also makes clear that institutions should contribute to reparation packages in a manner proportionate to the extent to which they are accountable.

- **Recommendation - Scheme design should take account of a number of key principles to ensure the integrity and effectiveness of a scheme.**

Victims/survivors who answered this question noted that the scheme will need to address important principles of choice, fairness, respect, integrity and individual experience, needs and wishes. The integrity of the scheme is crucial and it must be robust and credible; the evidence required, and the scrutiny of it, must create a balance which will deter fraudulent claims, without putting off applicants or refusing genuine applications because of lack of evidence.

- **Recommendation - It is essential that any potential negative consequences are considered during scheme design.**

The risk of any negative consequences for individual victims/survivors was highlighted by consultation participants. It is important to consider how these could be prevented and where this not possible, mitigated. This would include considering how any payment may impact on personal vulnerabilities as well as benefits, pension, or any previous payments such as criminal injuries compensation payments.

- **Recommendation – The Scottish Government should discuss next steps with the Review Group and other victims/survivors, particularly the process to take forward detailed scheme design and implementation.**

The consultation with victims/survivors identified a number of issues where there was a high level of consensus, as well as areas where views were more mixed. There were a number of matters which will require further work to ensure any implemented scheme is appropriate to Scotland and Scotland's victims/survivors of historic abuse in care. These should be taken forward in discussion with the Review Group and other victims/survivors.

Advance payment scheme

Alongside the consultation and consideration of 'interim payments', specific discussions took place concerning the status of pre-1964 victims/survivors and all the following recommendation was made in regard to an advance payment scheme.

- **Recommendation – An ‘advanced payment scheme’ for the elderly and ill should be progressed as soon as possible and before the main financial compensation/redress scheme is established in statute.**

The Review Group is currently considering further details, including eligibility matters relating to this proposal and will forward any relevant information as soon as possible.

In summary, the Review Group recommends that the Scottish Government commits to establishing a financial compensation/redress scheme, and agrees to introduce an advanced payment scheme (for ill and elderly survivors) as soon as possible. It is recommended that discussions take place with the Review Group as to how the next steps on detailed scheme design are conducted, including how others will be involved in that process. Furthermore, it is proposed that the other recommendations and key messages drawn from the consultation with victims/survivors and other engagement activities should be taken into account as part of the detailed scheme design. This includes how those responsible can contribute. Finally, that legislation for a statutory financial compensation/redress scheme should be passed before the end of this parliamentary term in March 2021.