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**RESPONSE ON BEHALF OF THE FACULTY OF ADVOCATES TO QUESTIONS ON THE ASSESSMENT FRAMEWORK TO BE USED TO SUPPORT DECISION-MAKING BY REDRESS SCOTLAND ON APPLICATIONS FOR INDIVIDUALLY ASSESSED PAYMENTS (IN TERMS OF THE REDRESS FOR SURVIVORS (HISTORICAL ABUSE IN CARE) SCOTLAND ACT 2021)**

1. **Does the Assessment Framework provide enough detail and clarity to allow survivors, and their representatives, to see how individual experiences might sit within the payment levels?**

The Assessment Framework is intended to provide guidance both to Redress Scotland and to survivors, as to the assessment of applications for individually assessed payments under section 38 of the Act.

In terms of section 38(4) of the Act, in determining what further sum, if any, is appropriate for the purposes of section 38(1)(b), the panel-

“(a) must have regard to the nature, severity, frequency and duration of the abuse to which the application relates, and

(b) may have regard to any other matter it considers relevant.”

The present wording in each payment level section does not make this clear.

1. Under each payment level heading, the second bullet-point states that the panel will consider the nature, severity, frequency and duration of the abuse, but does not state that it may also have regard to any other relevant matter.
2. Under the heading “Relevant Factors” it is not made clear that the factors to be taken into account are the nature, severity, frequency and duration of the abuse, all four of which must be taken into account, along with any other matter which may be considered relevant. All of these factors are to be taken into account in determining what level of payment is appropriate.

The wording in each payment level section should be changed to make it clear that the panel must assess the abuse suffered by reference to the nature, severity, frequency and duration of the abuse, along with any other matter which may be considered relevant.

There remains some vagueness of language. For example, in relation to the duration of abuse, it is stated that applicants for payment level 3 are likely to have spent a number of years in the abusive care setting, while for payment level 4 applicants are likely to have spent a significant proportion of childhood in the abusive care setting. Surely it is the frequency of the abuse and over what period which is important, rather than the time spent in the care setting. It is not explained what duration of abuse would be regarded as short, medium or long-term, or what impact that would make to the assessment.

The examples of the different types of abuse (sexual, physical, emotional and neglect) in the Assessment Framework do provide guidance on the kind of abuse which falls under each payment level, but there remains some vagueness of language which means that it will be important for the survivor to have access to legal advice, when making an application and considering an offer. Providing that access to legal advice is available, and subject to the changes suggested, the Framework does indicate how individual applications might be assessed within the payment levels.

1. **Are the payment levels sufficiently distinct in terms of the abusive behaviours which may fall under them?**

The examples of abuse do demonstrate an escalation of the extent of abuse, upward from payment level 1 to payment level 5.

1. **In seeking to provide detail as well as transparency between the payment levels, some of the language used is graphic, do you have any views on that?**

The language used is necessarily descriptive and not overly explicit.

1. **The Framework is not intended to be overly prescriptive as we recognise that the amount payable in any individual case, is a matter for the judgement of the independent decision makers of Redress Scotland, taking all relevant considerations into account as provided for in the Act.**

**Do you feel that we have the balance right to ensure that assessment is not rigid and inflexible? Does it offer enough transparency and allow for consistency in decision making?**

We refer to our response to question 1 above.

The examples of abuse do show an escalation of abuse, to indicate which payment level should apply. The examples of relevant factors, however, are the same for all payment levels. It is unclear what impact they will have on the decision maker’s assessment in the particular case. For example, the age of the applicant at the time of the abuse is listed as a relevant factor. The child’s age is not listed in the examples of abuse. What impact will different ages of children abused have on decision makers, in their assessment of applications? Whilst flexibility is given to the decision maker, it may make consistency in decision making more difficult.

Given that each assessment will be a matter for the discretion of the decision maker, the Framework does give flexibility. As noted above, there may be some difficulties of consistency in decision making.

1. **At each payment level, there are examples of abusive behaviour for different types of abuse (emotional abuse and neglect, physical abuse and sexual abuse)? What are your views on whether the examples at each payment level fairly and appropriately capture the escalating levels of harm experienced by children abused in care in Scotland?**

The examples of abusive behaviour given demonstrate an escalation of abuse at higher payment levels. We cannot comment on whether this properly captures “the escalating levels of harm experienced by children abused in care”.

1. **Do you have any comments on the list of ‘relevant factors’ that would be considered in each application? Are there any factors that you feel should not be included or any that you feel are missing?**

We have no comment on the examples of potentially relevant factors listed.

**Any other comments:**

1. We observe that the term “descriptors” is used rather that “descriptions”. We think “descriptions” would be preferable, or simply “Examples of abuse”.
2. For payment level 2, the second bullet point example of emotional abuse and neglect provides:

“Frequently forced to engage in the physical or emotional abuse of other children and/or witnessing the serious abuse of a sibling and being unable to prevent it”.

We are unclear why the alternative requires the witnessing of serious abuse of a sibling and being unable to prevent it, rather than witnessing this abuse of another child. It seems inconsistent to require a sibling relationship, given that the children were living in a residential care setting.

1. For payment level 4, the examples of sexual abuse include “one incident of severe sexual abuse involving a penetrative act”. For payment level 5, the examples of sexual abuse include “regular and repeated instances of sexual abuse involving penetrative acts”. What is the situation if there are two instances of sexual abuse involving penetrative acts? Should the payment level 5 example not simply say more than one instance of sexual abuse involving penetrative acts?