

# STATES OF JERSEY



## **HISTORIC ABUSE REDRESS SCHEME: APPROVAL BY THE STATES ASSEMBLY (P.80/2012) – COMMENTS**

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**Presented to the States on 8th October 2012  
by the Council of Ministers**

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**STATES GREFFE**

## COMMENTS

The Council of Ministers opposes this Proposition.

The Council recognises the need to treat claimants in an empathetic and caring way and to seek to ensure that claims are dealt with by a simple and speedy process. Ministers believe that it is better for all concerned if the setting up of the scheme remains the responsibility of the Council of Ministers. This will allow the scheme to remain sufficiently flexible to do justice to individual claimants.

The Historic Abuse Redress Scheme was designed to provide an alternative and efficient means of providing fair financial compensation to the victims, rather than requiring that the victims resort to legal proceedings. Any such proceedings would by their nature be adversarial and public and many victims expressly stated that they wished to avoid resorting to such legal proceedings if possible. Further, there is a major problem in relation to a victim pursuing legal proceedings in that there is a time period within which claims would have to have been brought, and the legal advice available to the Council of Ministers is that that time period has long expired, leaving the victims in effect without a legal remedy.

The Scheme was therefore established in light of this.

The Scheme lawyers advised the Council of Ministers on the establishment of the Scheme. This advice was provided after research into redress schemes established in other jurisdictions and discussions with those who administered those schemes, who helpfully provided their views on what did and did not work in the operation of their own schemes. In addition, independent expert UK Counsel advice was obtained to assist the Scheme lawyers in the development of both the levels of compensation and the rules applied to those levels.

The Scheme lawyers also consulted extensively with lawyers acting for all known claimants prior to the establishment of the Scheme and adapted certain elements of the Scheme in light of those comments. The lawyers acting for claimants all recommended the Scheme (in its current terms) to their clients and claims have subsequently been submitted by those lawyers on behalf of their clients. Further claims have been submitted by lawyers appointed after the introduction of the Scheme and also by claimants personally.

The Scheme has now received 128 applications for compensation and those claims are being processed. The claims are at various stages: many claims remain at the initial stage of investigation and the gathering of relevant documentation; a number of claimants have either seen, or have appointments to see, the Scheme psychiatrist for the preparation of relevant reports; the Scheme lawyers are in negotiations over settlement on a number of claims; and 5 claimants have entered into settlement agreements.

The Scheme was launched on 29th March 2012. All States Members were invited to attend a briefing on the terms of the Scheme at the time of its launch and there was also a media briefing and public advertisements concerning the Scheme. The terms of the Scheme are publicly available.

The Scheme allowed 6 months for the claimants to come forward and submit claims and the Scheme is therefore now closed.

The time frame was agreed with lawyers acting for all known claimants prior to establishment of the Scheme. A timeframe needed to be included in order that a point could be reached whereby we would reasonably know the extent and details of the claims which needed to be addressed. It is quite usual to have an end date for schemes of this nature.

A number of the claims have common themes. It therefore greatly assists those considering the claims to have received all claims by a certain date so that they have a complete understanding of the facts relating to all allegations and they can then assess all claims in that light.

The Scheme was well publicised when it was launched, along with the website and leaflets, with the time period for applications clearly identified. In addition, notices have appeared in the local media warning of the imminent closure of the Scheme so that all potential claimants would be fully aware of the Scheme and its terms.

In the event that any applications are submitted after the deadline of 30th September 2012, the acceptance of any such application into the Scheme will be considered on a case-by-case basis with reference, in particular, to the circumstances of the claimant and the length and cause of the delay in submitting the application.

The claimants and, where relevant, their legal advisors have all submitted applications on the basis of the Scheme as currently drafted. It is acknowledged that some issues have arisen on certain claims. In certain cases there is a lack of any corroboration in respect of allegations put forward and in these cases additional reports are being requested. Further, there are some applications which are considered to fall outside the Scheme and the Scheme lawyers are bringing this issue back to the Council of Ministers shortly. However, no claims have been rejected from the Scheme to date and the Scheme lawyers are seeking to work with the relevant claimant, or their lawyer, to address any issues. It is suggested that any issues that arise on particular claims should be dealt with on a case-by-case basis, and there is no justification for re-working the entire Scheme based on these issues.

The Council of Ministers recognises the importance of the Historic Abuse Redress Scheme in the provision of compensation for victims of abuse who would otherwise have to endure the Court process to seek recompense. It has been recognised that significant difficulties would be experienced by victims to succeed in Court due to the historic nature of the abuse and the passage of time since the abuse occurred.

Ministers are of the view it is unlikely that deferring the full and final settlement of claims under the Scheme, so that the States Assembly can further debate the terms of the Scheme, will benefit victims in any way. Many victims seek closure and their claims are currently being progressed in order to seek to provide that for them, and some have already received full and final settlement under the Scheme. The Council of Ministers is committed in due course to bring back a report to the Assembly detailing the type and general nature of the claims dealt with under the Historic Abuse Redress Scheme and the outcome and costs of the Scheme once all claims have been resolved under it.

### **Financial and manpower implications**

The proposition recognises that there would be cost implications if the Assembly felt that the levels of compensation being offered were inadequate or the Scheme was being applied too narrowly or too restrictively. It should be noted that there would also be increased costs associated with re-opening the Scheme for a further period of time. It is not possible to place any figures on the likely future costs without knowing how any amendment to the terms of the Scheme will operate. The Scheme should now be moving into the process of dealing with all claims submitted and the consequence of, effectively, re-opening the Scheme and extending its terms may have substantial financial and manpower implications which it is difficult at this stage to quantify.

**The Council of Ministers therefore urges Members not to support this Proposition.**

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### **Statement under Standing Order 37A [Presentation of comment relating to a proposition]**

The Council of Ministers apologises for the late delivery of these comments. The Council clearly has to give these matters full consideration and this was difficult to secure earlier as the issue was not discussed by Ministers until Thursday 4th October 2012 following which some further revisions were required.

## Historic Abuse Redress Scheme

### Scheme Document

#### 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](http://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](http://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 has 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. 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

14. All Claimants must complete an Application Form and provide all information and documentation set out therein in order to submit their claim (the "**Claim**").
15. A Claim should be submitted:

- a. by post to the Scheme Lawyers at 18-22 Grenville Street, St Helier, Jersey, JE4 8PX, marked "Strictly Private & Confidential: To be opened by Historic Claims Team Only";
- b. by e-mail to: [historicclaims@mourantozannes.com](mailto:historicclaims@mourantozannes.com); or
- c. in such other manner as may be specifically agreed between the Scheme Lawyers and a claimant or his/her representative.

16. Application Forms received after the Closing Date shall not be accepted.

Initial Review

17. 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

18. 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.

19. 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.

20. 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.

21. 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

22. 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.

23. 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

- 24. 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.
- 25. 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.
- 26. 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

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

- 30. In addition to the Assessed Award, a Claimant may be entitled to the following medical expenses:
  - a. reasonable expenses incurred in respect of medical or psychiatric treatment for the effects of injuries suffered as a result of any abuse. Any payment will be subject to the provision of valid receipts and an assessment as to the reasonable entitlement to reimbursement.



- b. reasonable future expenses to be incurred in respect of future treatment for the effects of injuries suffered as a result of any abuse. This will only cover any treatment as recommended by the jointly-instructed psychiatrist.
31. Any payment for medical expenses will be subject to a maximum of £3,000, unless a special exemption is applied in any particular case, such exemption requiring exceptional circumstances.
32. Any additional payment in respect of medical expenses as set out herein will be added to the Assessed Award and paid as per paragraph 44 below.
33. Payment of medical expenses is conditional upon a Settlement Agreement being entered into and there is no entitlement to such costs or reimbursement if a Settlement Agreement is not entered into.

Offer

34. 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.
35. The Claimant will then have 42 days to either:
- a. accept the Assessed Award (see 42 below);
  - b. reject the Assessed Award and leave the Scheme; or
  - c. require a review of the Assessed Award (see 36 below)

Review

36. A Claimant may require the Assessed Award to be reviewed.
37. 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.
38. 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.
39. 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.
40. 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.
41. 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

42. 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.
43. The Minister may delegate execution of the Settlement Agreement to an appropriate person of her choice.

Payment

44. 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.
45. A payment will be made within 56 days of execution of the Settlement Agreement.

Legal Fees

46. 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.
47. 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. Partner £222 per hour
    - ii. Qualified Staff £180 per hour
    - iii. Other Staff £148 per hour
48. 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.
49. 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.
50. Any decision of the Deputy Judicial Greffier as to the fees payable by the Minister will be final.
51. In respect of any Claim where a Settlement Agreement is not fully executed, there shall be no entitlement to recover any legal costs.