

Pre-legislative public consultation on financial redress for historical child abuse in care

Analysis of responses

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Executive summary

1. The Scottish Government has committed to introducing a statutory financial redress scheme for victims / survivors of abuse in care. Building on earlier consultation and engagement work, in September 2019, the Scottish Government issued a public consultation, inviting views on its specific proposals for the establishment of such a scheme. Findings from an independent analysis of the responses are summarised below.

The response to the consultation

2. In total, 280 responses to the consultation were received. Of these, roughly four out of five (82%) were from individuals, while the remainder (18%) were from organisations. Of the individuals who responded, around nine out of ten (91%) identified as a survivor of abuse in care.

3. The consultation comprised a mix of closed (quantitative) and open (qualitative) questions. As with all consultations, the views submitted and presented in this report are not necessarily representative of those of the wider public or, in this case, those of the victim / survivor community as a whole.

4. A small number of questions were not well understood by all respondents – either because of the inherently complex or technical character of the issue being asked about, or a degree of ambiguity in how the question was worded.

5. Some individuals drew on their own experience of abuse in care to illustrate or explain their answers.

Areas in which there was broad support for the proposed approach

6. There was broad support for many of the general principles and some of the specific proposals outlined in the consultation document.

- ◆ Around 9 out of 10 of all respondents (88%) agreed with the proposed wording of the **purpose** of the scheme, though this was considerably higher among individuals (93%) than organisations (61%).
- ◆ The **guiding principles** proposed for the redress scheme were widely supported (by 94% of all respondents).
- ◆ A large majority of respondents (94%) also agreed with the proposed **definition of abuse**.
- ◆ Overall, 79% of all respondents agreed with the proposal to limit eligibility for financial redress to situations in which institutions and bodies had '**long term responsibility for the child in place of the parent**'. However, while 85% of individuals agreed, only 46% of organisational respondents did so.
- ◆ There was widespread support for the proposals to allow **child migrants and those with criminal convictions** to apply – although, in relation to the latter, some respondents argued that eligibility (or the level of payment) should take account of the nature of any conviction.

- ◆ The difficulties facing applicants in documenting their in-care experience were widely noted and there was almost universal support (98%) for the proposal for the redress scheme to have the **power to require bodies or organisations to release relevant documentation**.
- ◆ A large majority of both organisations (95%) and individuals (88%) agreed that individuals should be able to give **oral testimony** in support of their application (but should not be required to do so).
- ◆ With regard to the **assessment of claims**, there was broad agreement that there should be no 'hierarchy' in terms of **different types of abuse** as a means of determining the level of individually assessed Stage Two payments. Although some respondents said all cases should be treated the same, there was greater support for cases to be assessed in a 'holistic' way, taking account of all circumstances, and a range of factors (including length of time in care and nature of the abuse). A recurring view was that the impact of the abuse should be key in determining payments.
- ◆ There was widespread support (96% of all respondents) for the suggestion that the scheme should offer **assistance to victims / survivors** in obtaining documentary records required for an application. Respondents offered a range of reasons for this, including the potential distress and emotional upheaval associated with the application process; the inherent difficulties of navigating complex and unfamiliar systems; barriers relating to literacy, IT skills, geographical location and health or disability; and the limited resources (of various kinds) available to some victims / survivors.
- ◆ The principle of allowing applications from **next-of-kin** was widely supported (in cases where the individual who had been abused in care was now deceased). Respondents said such payments were 'fair' or 'appropriate', or that next-of-kin were 'entitled' to payments that would otherwise have gone to their deceased relative. Such payments would also recognise the significant impact of abuse on whole families; acknowledge the suffering of the deceased family member; and provide closure for their next-of-kin. Organisations in particular said that that next-of-kin provision was in line with standard legal principles and the rules of other similar schemes. However, there was a range of views about how next-of-kin might be defined and how the proposal might be put into practice.
- ◆ Three-quarters of all respondents (75%) thought that **anyone who has received a payment from another source (such as a civil court case) should still be eligible** to apply to the redress scheme. Respondents commonly said the scheme should be open to all, and that this was the fairest or best approach. Just over half of all respondents thought that redress payments should take account of any payments received from other sources.
- ◆ There was general agreement (94% overall) that organisations bearing responsibility for historical child abuse should **contribute financially** to the redress scheme. This was seen as a way for these organisations to 'take responsibility' for past wrongs and to acknowledge failings in their duty of care. Organisational respondents (particularly care providers) thought financial contributions should be 'proportionate' and 'fair'.

- ◆ Almost all respondents (97%) agreed with the proposal that there should be **consequences for those responsible who do not make a 'fair and meaningful' contribution**. However, organisations often raised caveats, pointing out that what constitutes a 'fair and meaningful' contribution was still to be determined. Organisations often suggested that refusal to contribute to the scheme should be dealt with on a case-by-case basis.
- ◆ A large majority of both individuals and organisations supported many of the proposals of how the scheme should be administered, including those relating to the establishment of a **Decision-making Panel** (83%), a **Survivor Panel** (96%), and a **new public body** (83%). There was a general view that membership of the Survivor Panel should be diverse and representative of the full range of victim / survivor experiences and perspectives.
- ◆ There was widespread consensus among individuals and organisations that **joint administration** of financial redress and wider reparations would be helpful. Those supporting such an arrangement thought it would offer benefits in terms of a single point of contact, better signposting and ease of access for victims / survivors to the full range of practical and emotional supports available.
- ◆ Respondents were almost unanimously in favour (97%) of **wider reparations** being available to everyone who meets the eligibility criteria for the redress scheme. They also strongly supported priority access to wider reparations being given to certain groups (for example, the elderly and seriously ill).
- ◆ There was general consensus that a **personal apology** should be given to victims / survivors of in-care abuse alongside a redress payment (87%) and that a **dedicated support service** for in-care victims / survivors would (continue to) be needed once the financial redress scheme is in place (96%).

Areas in which there was less support or views were mixed

7. There was less consensus (and sometimes a degree of uncertainty or confusion) about a small number of issues of principle and a range of concrete proposals about how the scheme might operate in practice.

- ◆ Proposals that were seen to **restrict eligibility** for the scheme were not widely supported. For example, some of those who responded were concerned or uncertain about the reference to 'institutions and bodies having long-term responsibility for the child in place of the parent' and there was only minority support for the specific proposals to exclude those abused in fee-paying boarding schools (44%) and hospitals (41%) where the institution did not have long-term responsibility in place of the parent. There was particular concern that some groups of victims / witnesses might be unfairly or arbitrarily excluded from the scheme.
- ◆ Although there was a very high degree of consensus around the proposed definition of abuse, views were more mixed in relation to the question of what should constitute **'historical' abuse**. Overall, 61% agreed with the proposed cut-off date of 1 December 2004. (However, some respondents, and especially individuals, found this question difficult to understand or to answer.)

- ◆ In terms of the **evidence that should be required for a Stage One application**, respondents generally supported the use of (i) a signed declaration by the applicant that they had suffered abuse, (ii) a short written description of the abuse and its impact, and (iii) any existing written statement from another source which provides details of the abuse. However, there was no clear consensus about which of these three forms of evidence should be preferred.
- ◆ In relation to **Stage Two applications**, organisations were somewhat more likely to prioritise the use of third-party documentary evidence while individuals were more likely to favour oral or written evidence provided directly by the applicant. There was also a mix of views on whether different types of evidence should be *required* or *allowed*, or used in combination for corroborative purposes, and where the balance should be struck between sufficiency of evidence and the need to ensure that the scheme was victim-centred, flexible and empowering.
- ◆ Respondents also mentioned a broad range of **factors** they thought should be taken into account in determining levels of payment. The general impact of the abuse was most commonly mentioned here, but some respondents identified particular types of impact – including mental and psychological harm, physical injuries and disabilities, and general consequences for relationships, health, education and employment.
- ◆ Just over half of respondents (54%) agreed that any **previous payments** (e.g. those received through civil court action) should be taken into account in assessing redress payments, although organisations were markedly more likely than individuals to think this (86% compared with 49%). There were three main themes in the views of those who agreed, relating to (i) principles of fairness and equality, (ii) concerns about double payments, and (iii) questions about how any previous payment might be taken into account. Among those who disagreed, a common view was that individuals should not be penalised for having pursued another source of compensation or justice at a time when redress had not been an option.
- ◆ Most respondents (57%) agreed that applicants should **choose between accepting a redress payment or pursuing a civil court action**. However, there was considerable variation by organisational type – for example, while all local authorities / public sector partnerships agreed, all third sector respondents disagreed. There was a lack of clarity about the way individuals had understood and answered this question, meaning that caution should be exercised in interpreting the responses from individuals.
- ◆ Support for applicants having to choose mainly focused on concerns about double payments – respondents said these should be avoided as a matter of legal principle and so that responsible bodies were not penalised twice. Opposition to applicants having to choose focused on the different purposes of redress and court action, with some respondents also pointing out that the system could and should be designed to take account of double payments. However, it was common for respondents (both those who agreed and those who disagreed that respondents should have to make a choice) to stress (i) the importance of personal choice on this matter, and (ii) the importance of good quality legal advice to assist claimants in making a decision.

- ◆ With regard to next-of-kin applications, there was no clear consensus on a **cut-off date**. However, 17 December 2014 was the option that attracted the highest level of support (42%), with respondents noting that this date was aligned with the announcement of the Scottish Child Abuse Inquiry, and would maximise the number of eligible individuals. Similarly, there were mixed views about the **scale of payment** that next-of-kin should receive, with 100% being the option attracting most support (from 56% of all respondents).
- ◆ There was general agreement that those organisations bearing responsibility for abuse should make a financial contribution to the scheme, but less consensus about exactly **who should be considered responsible**. Care provider organisations, local authorities, the Scottish Government and individual perpetrators were all mentioned in this context, especially by individual respondents. Organisational respondents highlighted the challenges and complexities of identifying the organisations responsible.
- ◆ Organisations and individuals offered different types of comments about what would constitute **fair and meaningful financial contributions** to the scheme. In general, organisations said they could not answer this question without further information. By contrast, individuals often suggested specific sums or percentages of the total redress payment (e.g. 25%, 100%).
- ◆ Individuals were more likely to view contributions from organisations bearing responsibility for abuse as an issue of **justice** and so were less likely to countenance flexibility in relation to the level or timing of any such contributions made. Organisations, on the other hand, were less likely to support the idea of upfront contributions and more likely to consider that the **impact on current services** should be taken into account (92% compared with 37% of individuals).
- ◆ There were mixed views about **where the scheme administration should be based**. The most common suggestions were Edinburgh, Glasgow or ‘somewhere in the Central Belt’. Another perspective, however, was that the scheme should have multiple locations, a ‘hub and spoke’ or mobile model, or a significant outreach function.
- ◆ In relation to the question of what the new public body should be called, respondents proposed both general principles and a wide range of specific **names**. It was suggested that the views of victims / survivors should be paramount here, perhaps canvassed by means of a vote.

Recurring themes

8. There were also some important recurring themes across different questions:
 - ◆ How the scheme should operate – in particular, the need for it to be clear and simple, accessible and victim / survivor-centred in terms of, for example, the documentation associated with the application process, evidential requirements, and where the scheme administration might be located

- ◆ Whether the details and operation of the scheme should be subject to review / revision, the nature of the governance arrangements, and the extent of involvement of victims / survivors in those
- ◆ The need for an appeal / review procedure for individual cases
- ◆ The need for the scheme to complement, and be consistent with, existing support for victims / survivors, legislation and routes to redress – in order to ensure both that the demands on victims / survivors are minimised and to avoid legal complications arising from the use of different definitions
- ◆ The need for applicants to be given appropriate support (both practical and emotional) in connection with applications made to the scheme and more generally and for special provisions to be made for those lacking mental or legal capacity
- ◆ The widely held view among individuals that ‘abuse is abuse’ and the implications of this for how different types of abuse and its impact should be assessed and treated within the scheme
- ◆ The need to balance robustness and transparency with a commitment to listening to, giving voice to and believing the accounts of victims / survivors
- ◆ The difficulties faced by some victims / survivors (especially those who are older) in accessing evidence of time spent in care or the abuse itself.

9. In general, organisations were more likely than individuals to express concerns about:

- ◆ Evidence thresholds and standards of proof
- ◆ Clarity of definition and consistency with wider legislation and practice
- ◆ The scope for particular groups (e.g. some people abused in the context of fee-paying boarding schools or long-term hospitals) to be excluded
- ◆ The absence of sufficient insurance cover (particularly from local authorities) to cover organisations’ financial contributions to the scheme
- ◆ How financial contributions from responsible organisations will be determined, and how the potential impact on current and future service provision will be managed.

10. By contrast, individuals were especially likely to be concerned about:

- ◆ Ensuring that the application process and administration of the scheme is inclusive, accessible and easy to understand
- ◆ The difficulty of evidencing in-care status or abuse, particularly for older applicants and next-of-kin
- ◆ The role and voice of victims / survivors in the process as a whole.

1. Introduction

1.1 The Scottish Government has committed to introducing a statutory financial redress scheme for victims / survivors of abuse in care. This will form one part of a wider package of reparations.

1.2 The Scottish Government has made it clear that the development of a redress scheme should be informed by the voices of survivors of historical abuse in care and has already supported significant independently-led consultation and engagement work (see paragraph 1.5). Building on this earlier work, the Scottish Government issued a public consultation inviting more detailed views on its proposals for the establishment of a financial redress scheme. This report, which was prepared by a team of independent consultants, provides an analysis of the responses to that consultation.

Policy context

1.3 Recent years have seen a range of initiatives aimed at shedding light on, acknowledging and responding to historical experiences of abuse of children in care in Scotland. These have included:

- An apology on behalf of the Scottish people made by the then First Minister on 1 December 2004, and an apology on behalf of the Scottish Government made by the Deputy First Minister on 23 October 2018
- The SHRC Human Rights Framework for Justice and Remedies for Historic Child Abuse (2010)
- The Action Plan on Justice for Victims of Historic Child Abuse (2014)
- The establishment of the Scottish Child Abuse Inquiry in 2015
- The Apologies (Scotland) Act 2016
- The Limitation (Childhood Abuse) Scotland Act 2017, which removes the three-year time limit for bringing civil action for child abuse
- The establishment of the National Confidential Forum, which provides an acknowledgement function for survivors of abuse in care
- The establishment of Future Pathways, which provides personal outcomes focussed support to survivors of abuse in care.

1.4 Additionally, the Scottish Government has also sought to examine the desirability and feasibility of establishing a specific financial redress scheme for survivors of historical abuse in care.

1.5 In January 2017, the Scottish Human Rights Commission (SHRC) InterAction Action Plan Review Group (IAPRG), a national stakeholder group, was asked to take forward a programme of consultation on this issue in collaboration with the Centre for Excellence in Looked After Children (CELCIS) at Strathclyde University. Alongside additional engagement activity with care providers and other professional groups and a

review of the operation of relevant schemes in other jurisdictions, the analysis of 181 written responses to a consultation aimed at survivors helped to inform the Review Group's recommendations on the establishment of a financial redress scheme.

1.6 Reflecting the views of almost all those who took part in the initial consultation, the Review Group proposed that a financial redress scheme should be established, as soon as possible upon completion of the necessary design work. Among other conclusions and recommendations, the Review Group called for a combination-type payment (that is, a flat-rate payment and a separate 'individual experience' payment that takes account of a range of factors); next-of-kin eligibility; an interim payment scheme for priority groups; and victim / survivor representation in the administration and governance of the scheme.

1.7 In October 2018, the Deputy First Minister, John Swinney, accepted the main recommendation of the Review Group that a financial redress scheme should be established 'in tangible recognition of the terrible harm that was done to children who were abused in care by those who were entrusted to look after them'.¹ In the period since, an Advance Payment Scheme has been established for those who either have a terminal illness or are aged 70 or over.² Meantime, the Scottish Government and relevant stakeholders have been progressing work to develop the statutory financial redress scheme, and initial plans and proposals have now been put to public consultation in order to canvass views on the detailed design of the scheme with the aim of passing legislation in the Scottish Parliament by the end of the parliamentary term in 2021.

The consultation

1.8 The consultation paper, *Pre-Legislative Public Consultation on Financial Redress for Historical Child Abuse in Care*, was published by the Scottish Government on 2 September 2019 and the consultation closed on 25 November 2019.

1.9 The consultation questionnaire was in two parts and contained 60 numbered questions. However, many of these questions contained multiple elements, typically comprising a closed (tick-box) question (or questions) and an open question inviting respondents to explain or elaborate on their answer. Other questions were wholly open or wholly closed. In total, the questionnaire contained 51 closed and 66 open questions.

1.10 Part 1 of the consultation questionnaire focused on the design of the redress scheme and covered (i) the definition of its purpose and principles (Question 1 and Question 2); (ii) eligibility criteria (Question 3 to Question 11); (iii) the evidence required to submit a claim, the assessment of claims and payment structures (Question 12 to

¹ Deputy First Minister John Swinney, statement to Parliament, 23 October 2018. <https://news.gov.scot/speeches-and-briefings/response-to-recommendations-on-financial-redress-for-survivors-of-child-abuse-in-care>

² The Advance Payment Scheme, which opened on 25 April 2019, provides acknowledgement and recognition, by means of a financial payment and an apology, to those who suffered abuse in care in Scotland before December 2004, and who either have a terminal illness or are aged 70 or over.

Question 26); (iv) the application process (Question 27 to Question 30); (v) next-of-kin payments (Question 31 to Question 34); and (vi) financial contributions to the scheme from responsible institutions (Question 35 to Question 44). Part 2 focused on scheme administration and the need for wider reparations (Question 45 to Question 60).

1.11 The Scottish Government organised a series of activities aimed at encouraging engagement and participation among survivors. This involved the development of an awareness raising and communications strategy and direct contact with key individuals and organisations, including those working with or otherwise representing victims / survivors. In addition, six engagement and information sessions were held to secure support for the consultation process, reduce barriers to taking part, and further encourage participation. These information sessions took place with professionals working with victims / survivors as well as with victims / survivors and their support organisations. A focused input was provided by representatives of the Scottish Government but each of the survivor sessions also had a follow-up session without the presence of the Scottish Government in order to allow participants to consider matters independently. Further details about this engagement and information activity is presented in Annex 1.

About the analysis

1.12 This report is based on a robust and systematic analysis of all responses to the consultation and aims to ensure that the voices and views of survivors and all other respondents are represented clearly and accurately.

1.13 Frequency analysis was undertaken in relation to all the closed (tick-box) questions in the consultation questionnaire and the findings are shown in tables throughout this report.

1.14 Qualitative analysis was carried out in relation to the comments submitted in response to each question. The aim of the qualitative analysis was to identify main themes and the full range of views submitted in response to each question or group of questions, and to explore areas of agreement and disagreement in views between different groups of respondents. Occasionally, respondents made comments but did not answer the initial tick-box question – the points made by these respondents were largely the same as the points made by other respondents, and their views are not, generally, considered separately.

1.15 Note that not all respondents used the consultation questionnaire (online or offline) to submit their responses to the consultation. Some submitted letters; others submitted separate (Word or pdf) documents which followed the general structure of the consultation questionnaire. The content of these responses was read alongside the relevant individual consultation questions and, where the respondents clearly stated in their written comments a reply to a tick-box question, the response to that tick-box question was imputed. The tables throughout this report include these imputed responses.

1.16 As with all consultations, the views submitted and presented in this report are not necessarily representative of those of the wider public or, in this case, those of the victim / survivor community as a whole. Anyone can submit their views to a consultation, and individuals (and organisations) who have a keen interest in a topic – and the time, ability and capacity to respond – are more likely to participate in a consultation than those who do not. This self-selection means that the views of consultation participants cannot be generalised to the wider population. For this reason, the main focus in analysing consultation responses is not to identify how many or what proportion of respondents held particular views, but rather to understand the range of views expressed.

The report

1.17 The remainder of this report is structured as follows:

- Chapter 2 presents information on the respondents to the consultation and the responses submitted.
- Chapters 3 to 15 present an analysis of respondents' views on the consultation questions:
 - Chapter 3 looks at the underlying purpose and principles of the proposed scheme.
 - Chapters 4 and 5 consider inclusion / exclusion criteria for the scheme and broader issues of eligibility.
 - Chapters 6 and 7 focus on evidence requirements for Stage One and Stage Two of the scheme, respectively.
 - Chapter 8 considers (i) the implications – for scheme eligibility and the amounts received – of other kinds of compensation payments, and (ii) the broader relationship between financial redress and court actions.
 - Chapter 9 focuses on the process of making an application to the scheme.
 - Chapter 10 looks at a range of issues relating to next-of-kin payments, including the overall principle of providing redress to the family of those who have died and how such arrangements might be operationalised.
 - Chapter 11 considers who should reasonably be expected to contribute to the costs of redress and how that might happen.
 - Chapters 12 and 13, respectively, examine issues relating to the proposed establishment of (i) decision-making and survivor panels and (ii) a public body to administer the scheme.
 - Chapter 14 examines the relationship between the proposed redress scheme and elements of wider reparations, while Chapter 15 looks at the relationship between redress and issues of acknowledgement, apology and support for survivors.

1.18 Annexes to the report present further details of the Scottish Government's engagement and participation strategy for the consultation (Annex 1), a list of organisational respondents (Annex 2) and the number of responses received to individual questions (Annex 3).

2. The respondents and responses

2.1 This chapter provides information about the respondents to the consultation and the responses submitted.

Number of responses received and number included in the analysis

2.2 The consultation received 292 responses. However, 12 of these were removed prior to analysis. The reason for this is as follows. Ten respondents submitted more than one response to the consultation. In nine cases, the respondent submitted two different responses. In the tenth case, the respondent submitted three different responses. In every case, responses from the same individual were combined to create a single amalgamated response. Where there were differences in the respondent's answers to closed questions, the answers from both responses were retained. This process resulted in the removal of eleven responses – while the ten amalgamated responses were retained for the analysis. In addition to this, one organisation requested that their response be withdrawn.

2.3 Thus, the analysis in this report is based on **280** responses (292 submitted responses minus 12 removed responses).

About the respondents

2.4 Responses were submitted by 51 organisations or groups and 229 individuals. (See Table 2.1.)

Table 2.1: Types of respondent

Respondent type	n	%
Individuals	229	82%
Organisations	51	18%
Total	280	100%

2.5 The consultation questionnaire invited individual respondents to indicate if they identified as a survivor of abuse in care. Not all individuals answered this question. Among those who did, 91% identified as survivors (Table 2.2).

Table 2.2: Do you identify as a survivor of abuse in care?

	n	%
Yes	201	91%
No	14	6%
Prefer not to say	6	3%
Total	221	100%

2.6 Similarly, organisational respondents were given a list of ten categories and asked to indicate which category best described their organisation. Respondents could tick more than one category, and 14 of the 51 respondents did so. Table 2.3 shows the

spread across categories, based on self-identified organisation type. Respondents who did not indicate a self-selected organisation type were allocated to a category by the consultation team and / or the analysts, and these organisations are included in the table.

Table 2.3: Self-identified organisation type

Organisation type	n	%
Local authorities	13	25%
Third sector or community groups	12	23%
Current care provider	10	19%
Legal sector organisations	9	17%
Previous care provider	7	13%
Other public sector organisations	6	12%
Survivor organisations	4	8%
Academic / educational organisations	1	2%
Private sector organisations	1	2%
Other organisation types	9	17%
Base – total number of organisational respondents	51	

Five of the respondents selecting the ‘other organisational types’ category provided further details describing themselves as a grant aided special school, a health and social care partnership, a partnership of four organisations commissioned to deliver support to survivors of in care abuse, a professional organisation and an umbrella support and training body. Percentages do not total 100 due to selection of multiple categories.

2.7 In order to assist the analysis, the self-selected categorisation shown above was adjusted in two ways. First, respondents selecting more than one category were allocated to a single category. Second, the categories were rationalised, reducing the number from ten to six. In particular, single combined categories were created for (i) current and previous care providers, and (ii) third sector, community groups and the survivor groups. This resulted in the categorisation shown in Table 2.4. This categorisation is used in the analysis throughout the remainder of this report.

Table 2.4: Organisation type – single category

Organisation type	n	%
Local authorities and public sector partnerships	13	25%
Other public sector bodies	5	10%
Current or previous care providers	11	22%
Third sector, including survivor groups	9	18%
Legal sector organisations	9	18%
Other organisational respondents	4	8%
Total	51	100%

Other organisational respondents include three representative or professional bodies and one unidentified organisation. Percentages may not total 100 due to rounding.

2.8 Table 2.4 shows that the largest category of organisation was that of local authorities and public sector partnerships. These accounted for a quarter of

organisational responses (25%). Other public sector bodies accounted for a further 10% of organisations. Current and previous care providers, third sector organisations including survivor groups, and legal organisations each accounted for around a fifth (between 18% and 22%) of organisations. The remaining category of ‘other organisation respondents’ comprised 8% of all organisations and was made up of three representative or professional bodies and one unidentified organisation.

2.9 A complete list of organisational respondents is provided at Annex 2.

The content of responses

2.10 As noted above, over four-fifths of the responses to the consultation came from individuals, most of whom self-identified as survivors of abuse in care. Thus, the overall quantitative findings presented in the tables in this report are very much shaped by the views of survivors.

2.11 There are also some important points to note about the written comments from organisations and individuals.

- First, organisations tended to provide longer, more detailed answers to the questions than individuals. In general, individuals provided very short comments.
- Second, several organisational respondents chose not to respond to significant sections of the consultation, in some cases because they took the view that the design of the scheme should be directed primarily by the views of people who were abused in care. At the same time, amongst individuals there was a relatively high proportion of ‘no comment’ and ‘don’t know’ answers across the questionnaire – particularly in relation to some of the more technical questions.
- Third, in relation to some elements of the consultation, the written responses provided by individuals suggested a degree of misunderstanding of the issue being asked about or the specific wording of the question. Where this appears to have been relatively common, and caution is warranted in interpreting the quantitative data, it has been highlighted in the accompanying text throughout this report.
- Fourth, very occasionally, written comments from respondents appeared to be at odds with their responses at the closed question. However, to preserve the integrity of the original responses, these have not been ‘corrected’.
- Fifth, where counts have been provided in the report of the number of respondents providing written comments in response to a question, these include *any* comment, including very short answers (such as ‘yes’, or ‘I agree’) that effectively restate the response to the closed question, and comments where the respondent said ‘don’t know’ or ‘no comment’.
- Finally, it was common for individuals to provide personal accounts of abuse in their responses to the questions, sometimes without directly addressing the

question itself. While these accounts are important and need to be acknowledged, they are not covered in any detail in this report.

Responses to individual questions

2.12 Not all respondents answered all the questions in the consultation questionnaire. Overall, response rates were generally higher for questions in Part 1 of the consultation questionnaire compared to Part 2 for both individuals and organisations.

2.13 Among individuals the response rates for closed questions ranged from 70% for Question 38 on the impact of financial contributions to 100% for Question 7 on adopting the definition of abuse used in the Limitation (Childhood Abuse) Scotland Act 2017. (Note that this analysis considers single-response questions only.) The only closed questions in Part 1 of the questionnaire which attracted responses from fewer than 90% of individuals were Questions 38 and 43, both on the issue of financial contributions. By contrast, response rates for open questions were lower, ranging from 40% for Question 4 on defining 'in care' abuse to 86% for Question 10 on the eligibility of those with criminal convictions.

2.14 Among organisations, response rates to closed questions ranged from 57% at Question 58 on the provision of an apology to victims / survivors to 86% at Question 28 on assistance for victims / survivors in obtaining evidence. (Again, this analysis considers single-response questions only.) For organisations, the response rates for open questions ranged from 35% for Question 52 on the possible disadvantages of co-location of scheme administration, to 88% for Question 15 on Stage One evidence requirements.

2.15 In general, individuals were more likely than organisations to answer the closed questions, while organisations were generally more likely than individuals to provide comments at the open questions.

2.16 See Annex 2 for full details.

Part One: Design of the redress scheme

3. Purpose and principles (Q1–Q2)

3.1 In advance of questions about the detailed design of the proposed statutory financial redress scheme, the consultation paper discussed the overarching purpose and principles of the scheme. Section 1.1 included two questions on these high-level themes which sought to gather views on the proposed wording of the purpose of the scheme and its guiding principles.

Question 1: We are considering the following wording to describe the purpose of financial redress: ‘to acknowledge and respond to the harm that was done to children who were abused in care in the past in residential settings in Scotland where institutions and bodies had long-term responsibility for the care of the child in place of the parent’. What are your thoughts on this? Do you agree? [Yes / No]

If no, what are your thoughts on purpose?

Question 2: We are considering the following as guiding principles:

- To ensure that redress is delivered with honesty, decency, trust and integrity
- To make the scheme as accessible as possible
- To treat applicants with fairness and respect and to offer them choice wherever possible
- To ensure that the assessment and award process is robust and credible
- To make every effort to minimise the potential for further harm through the process of applying for redress.

Do you agree with these guiding principles? [Yes / No / Unsure]

Would you suggest any additions or amendments to the proposed principles?

Key points

- ◆ Around 9 out of 10 respondents (88%) agreed with the proposed wording of the purpose of the scheme, although agreement was considerably higher among individuals (93%) than organisations (60%).
- ◆ Those who disagreed with the proposed wording often took issue with the reference to institutions and bodies having ‘long-term responsibility for the care of the child in place of the parent’ as it was felt this might unfairly exclude those who had been abused in the course of short-term placements or care, or in settings such as hospitals or fee-paying boarding schools.
- ◆ Most of those who agreed with the wording used their comments to welcome the overall intention or specific aspects of the proposed scheme, such as the acknowledgement of harm caused, the opportunity to give a voice to victims / survivors, the signal that institutions would be held accountable for past failings or the indication that steps would be taken to prevent such abuse in the future. However, some respondents who agreed with the wording also offered comments and suggestions on wording and definitions. Again, these often reflected concern about the potential exclusion of those abused in the course of short-term placements or in specific types of residential settings.

- ◆ There was also a wider concern about issues of definition, particularly among organisational respondents, and there were calls for greater alignment between the proposed purpose and the wording used in the Limitation (Childhood Abuse) (Scotland) Act 2017.
- ◆ The guiding principles proposed for the redress scheme were widely supported (by 94% of all respondents), although some additional principles – such as transparency or timeliness – were also proposed.
- ◆ Some organisational respondents noted that the guiding principles were geared towards the needs and interests of individual claimants and suggested that the principles should be extended to cover all aspects of the operation of the scheme.
- ◆ Others were concerned that aspects of the proposed wording – such as the reference to robustness – might imply a standard of proof that would be difficult or impossible for some claimants to meet, or imply an assessment process that might be distressing or retraumatising for those involved.

Purpose (Q1)

3.2 The Scottish Government is considering the following wording to outline the purpose of financial redress: ‘to acknowledge and respond to the harm that was done to children who were abused in care in the past in residential settings in Scotland where institutions and bodies had long-term responsibility for the care of the child in place of the parent’. Question 1 asked for views on this.

3.3 Table 3.1 shows that around 9 out of 10 of all respondents (88%) agreed with this proposed wording, but that the figure was markedly higher for individual compared to organisational respondents (93% vs 60%). Although the numbers involved are small, it is worth noting that agreement was especially low among legal sector organisations, with only one out of five agreeing with the proposed wording.

Table 3.1: Q1 – Do you agree with the proposed wording to describe the purpose of financial redress?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	7	64%	4	36%	11	100%
Other public sector organisations	3	60%	2	40%	5	100%
Current or previous care providers	6	67%	3	33%	9	100%
Third sector, including survivor groups	5	71%	2	29%	7	100%
Legal sector organisations	1	20%	4	80%	5	100%
Other organisational respondents	2	67%	1	33%	3	100%
Total organisations	25	60%	16	40%	40	100%
Individual respondents	203	93%	16	7%	219	100%
Total (organisations and individuals)	227	88%	32	12%	259	100%

3.4 In total, 133 respondents (94 individuals and 39 organisations) provided additional comment. Although the follow-up question was aimed at those answering ‘no’ to the closed

question, additional comment was also provided by some respondents who indicated that they agreed with the proposed wording.

3.5 The most common single theme in the comments from those **disagreeing** with the proposed purpose was an objection to the reference to institutions and bodies having 'long-term responsibility for the care of the child in place of the parent'. Some respondents were simply concerned that 'long-term' was not defined and proposed that it should be as part of the statement of purpose. Most, however, objected in principle to the idea that the scope of the scheme should be limited in this way, arguing that it would unfairly exclude those who had experienced abuse in the course of short-term placements or care. Some respondents proposed specific wording changes in this context – for example, the deletion of the terms 'long-term' or 'in residential settings'.

3.6 One other fundamental issue of scope was raised less often, namely that the scheme should not be limited to formal care settings and should include, for example, children abused within fee-paying boarding schools.

3.7 These specific issues – relating to 'long-term responsibility' and care settings – were also raised, and are discussed further, in relation to subsequent questions on eligibility for the proposed scheme (see Questions 3 to 7).

3.8 The other main comments from those disagreeing with the proposed wording fell into two main groups. First, there were those (especially among individual respondents) who indicated that the culpability and previous failings of state institutions and actors should be explicitly acknowledged in the wording of the purpose of the scheme. Secondly, some individual respondents argued that the proposed wording was overly focused on the harm experienced in the past and should clearly recognise the long-term, lasting or ongoing consequences of abuse.

3.9 Other views on the purpose of the scheme were expressed by smaller numbers of respondents. For example, some proposed that the purpose of the scheme should be to:

- Respond to but not to acknowledge the harm caused as other forums already established by the Scottish Government as part of its holistic response to historical abuse are better placed to achieve the latter
- Acknowledge the fact that the abuse experienced was a breach of victim / survivors' human rights
- Provide compensation for material and non-material harms.

3.10 Some who disagreed with the proposed wording suggested specific amendments. For example, it was suggested that the wording of the purpose was too long and a condensed alternative was proposed. There was also a call for more active language to be used and a corresponding suggestion that the purpose could be framed in terms of acknowledging and responding '*actively* to the *lasting* harm' done to children.

3.11 Most of those indicating that they **agreed** with the proposed wording (via the closed question) used their comments to welcome the overall intention or key aspects of the proposed scheme, such as the acknowledgement of harm caused, the opportunity to give

a voice to victims / survivors, the signal that institutions would be held accountable for past failings or the indication that steps would be taken to prevent such abuse in the future. Some also commented specifically that they thought the wording was 'fair', 'clear' or 'straightforward'. In some cases, respondents drew on their own personal experience (or that of a close relative), citing past experience of abuse or lasting or ongoing impacts.

3.12 However, even among those indicating that they agreed with the proposed wording, some nevertheless offered comments and suggestions relating to specific phrases and concepts. These largely reflected the issues of scope and definition identified above in the comments from those disagreeing with the proposed wording. Again, the most common issue raised here was the reference to 'long-term responsibility': while some participants simply suggested that this should be defined, others thought it should be removed so as not to negate the experiences of those abused in the course of short-term placements. There was a suggestion that the only relevant factors should be that a child was placed in a setting by a public body and in that setting they suffered abuse. The phrase 'responsibility for the care of the child in place of the parent' was also thought by some to be potentially problematic as there may have been cases in which the state did not assume formal responsibility but nevertheless played a significant role in exposing the child to the situation in which abuse occurred. There was also a suggestion that the scheme should take account of cases in which institutions and bodies facilitated private arrangements within families, supporting relatives or family friends to provide care for the child in place of the parent.

3.13 These points reflected a wider concern about issues of definition, particularly among organisational respondents. There was a suggestion that there should be greater alignment between the proposed purpose and the wording used in the Limitation (Childhood Abuse) (Scotland) Act 2017 – a theme which, again, recurred in responses to subsequent questions.

3.14 Some individuals who indicated that they agreed with the proposed wording at the closed question nevertheless signalled that they would like to see other specific amendments: for example, that the words 'or neglected' be added to the phrase 'children who were abused' (but see the discussion of the definition of abuse at Question 7), or that the description of purpose should specifically mention the impact of abuse.

Principles (Q2)

3.15 The consultation paper also proposed a set of guiding principles for the redress scheme:

- To ensure that redress is delivered with honesty, decency, trust and integrity
- To make the scheme as accessible as possible
- To treat applicants with fairness and respect and to offer them choice wherever possible
- To ensure that the assessment and award process is robust and credible
- To make every effort to minimise the potential for further harm through the process of applying for redress.

3.16 Question 2 asked respondents if they agreed with these principles.

3.17 The results suggest a very high degree of support for the principles outlined in the consultation paper: as Table 3.2 shows, 88% of organisations and 95% of individuals agreed with these. Of the remainder, more respondents indicated that they were ‘unsure’ than actively disagreed.

Table 3.2: Q2 – Do you agree with these guiding principles?

Respondent type	Yes		No		Unsure		Total	
	n	%	n	%	n	%	n	%
Local authority / public sector partnerships	10	77%	–	0%	3	23%	13	100%
Other public sector organisations	4	80%	1	20%	–	0%	5	100%
Current or previous care providers	9	100%	–	0%	–	0%	9	100%
Third sector, including survivor groups	6	86%	1	14%	–	0%	7	100%
Legal sector organisations	6	100%	–	0%	–	0%	6	100%
Other organisational respondents	3	100%	–	0%	–	0%	3	100%
Total organisations	38	88%	2	5%	3	7%	43	100%
Individual respondents	209	95%	2	1%	10	5%	221	100%
Total (organisations and individuals)	247	94%	4	2%	13	5%	264	100%

One individual ticked ‘yes’ and ‘no’ and one ticked ‘yes’ and ‘unsure’ in response to this question. These responses are not included in the table above.

Percentages may not total 100% due to rounding.

3.18 In total, 115 respondents (79 individuals and 36 organisations) provided comments at this question, typically suggesting additions and amendments to the guiding principles – this included respondents who had answered ‘yes’, ‘no’ and ‘unsure’ at the closed question. Comments from all three groups (those who agreed or disagreed or were unsure about the proposed principles) were similar in nature and have been combined in the following analysis.

3.19 Some respondents mentioned additional concepts which they considered should be incorporated into the principles of the scheme. Among these, the most commonly mentioned was transparency; there was also one specific suggestion that the fourth principle be amended to read ‘robust, credible and transparent’.

3.20 Another proposed additional principle was timeliness, with participants emphasising the need for claims to be processed swiftly. This was seen to be important, either because of the age of potential claimants or simply because victims / survivors have already waited a long time for redress. Less often, individual respondents proposed that other specific concepts, such as fairness, consistency, efficiency or compassion, should be reflected in the principles of the scheme. Some individuals and organisations also suggested that the principles of the scheme should explicitly refer to the need to provide appropriate support for applicants.

3.21 In addition, the point was made that there are a number of standards or principles arising from international human rights law in relation to reparations and that these – including, for example, notions of adequacy, effectiveness and promptness – should be more fully reflected in the guiding principles for the scheme.

3.22 Some organisational respondents noted that the proposed wording was currently geared towards the needs and interests of individual claimants and suggested that the principles should be extended to cover all aspects of the operation of the scheme – including, for example, the involvement of organisations and individuals who are not themselves applicants.

3.23 Others were concerned that aspects of the proposed wording – such as the reference to robustness – might imply a standard of proof that would be difficult or impossible for some claimants to meet, or imply an assessment process that might be distressing or retraumatising for those involved. Occasionally, respondents specifically queried the reference to the scheme being as inclusive ‘as possible’ or ‘wherever possible’ – suggesting that this might create space for the authorities to evade their responsibility to all victims / survivors.

3.24 Some organisational respondents argued in relation to the proposed principles that, while financial redress should be fair and proportionate, it should not be at a level that would jeopardise the ability of organisations to provide current or future services. This issue will be discussed in further detail in Chapter 11.

4. Eligibility – definitions and exclusions (Q3–Q8)

4.1 The consultation paper proposed that the definition of ‘in care’ should be based on two criteria: (first) that the abuse should have occurred within an eligible residential setting (namely those settings included in the definition of ‘children in care’ in the Terms of Reference of the Scottish Child Abuse Inquiry) and (additionally) that the institution or body in question should have had ‘long-term responsibility’ for the applicant ‘in place of the parent’. It went on to explain that this means that not all those who are covered by the Terms of Reference of the Inquiry would be eligible for the redress scheme, for example individuals who were abused in certain institutional settings (such as fee paying boarding schools or hospitals) would not be eligible for the scheme if their parents retained long-term responsibility for them. The consultation sought views on these eligibility criteria and on two related issues: the definition of abuse in general and the ‘cut-off’ date for the definition of ‘historical’ abuse.

Question 3: Do you agree with the proposed approach in relation to institutions and bodies having long term responsibility for the child in place of the parent? [Yes / No / Unsure] Please explain your answer.

Question 4: Subject to the institution or body having long term responsibility for the child, do you agree that the list of residential settings should be the same as used in the Scottish Child Abuse Inquiry’s Terms of Reference? [Yes / No / Unsure] Please explain your answer.

Question 5: Where parents chose to send children to a fee-paying boarding school for the primary purpose of education, the institution did not have long-term responsibility in place of the parent. Given the purpose of this redress scheme, applicants who were abused in such circumstances would not be eligible to apply to this scheme. Do you agree? [Yes / No / Unsure] Please explain your answer.

Question 6: Where children spent time in hospital primarily for the purpose of medical or surgical treatment, parents retained the long-term responsibility for them. Given the purpose of this redress scheme, applicants who were abused in such circumstances would not be eligible to apply to this scheme. Do you agree? [Yes / No / Unsure] Please explain your answer.

Question 7: We intend to use the same definition of abuse as the Limitation (Childhood Abuse) (Scotland) Act 2017 for the purpose of the financial redress scheme. This includes sexual abuse, physical abuse, emotional abuse and abuse that takes the form of neglect. Do you agree? [Yes / No / Unsure] Please explain your answer.

Question 8: In our view, 1 December 2004 represents an appropriate date to define ‘historical’ abuse for this financial redress scheme. Do you agree? [Yes / No / Unsure]

Key points

- ◆ Overall, 79% of respondents agreed with the proposal to limit eligibility for financial redress to situations in which institutions and bodies had ‘long term responsibility for the child in place of the parent’. However, while 85% of individuals agreed, the same was true of only 46% of organisational respondents.

- ◆ Those who disagreed typically thought that key elements of the proposal required additional clarification or definition or simply believed that eligibility should not be dependent on the length of time spent in care.
- ◆ There was also concern that the proposed approach might exclude those who experienced abuse in settings (such as fee-paying boarding schools or hospitals) where the authorities exercised considerable influence and control over key aspects of the child's life and wellbeing, even if parents retained formal responsibility.
- ◆ Around three-quarters of respondents (74%) agreed that the list of residential settings should be the same as used in the Scottish Child Abuse Inquiry's Terms of Reference. Organisations were slightly more likely than individuals to agree, while a relatively high proportion of individuals (18%) were unsure on this point.
- ◆ Some respondents were in favour of consistency with the Terms of Reference but wanted to confirm that any further changes to these would also apply to the redress scheme.
- ◆ Occasionally, respondents explicitly suggested that eligibility for the scheme should be wider than that implied by the terms of reference of the Scottish Child Abuse Inquiry
- ◆ There was only limited support for the specific proposals to exclude those abused in fee-paying boarding schools (44%) and hospitals (40%) from the scheme, with respondents repeating concerns that these proposals would unfairly or arbitrarily exclude some groups of victims / survivors from the scheme.
- ◆ There was a high degree of consensus around the proposed definition of abuse (supported by 94% of respondents). This was seen as comprehensive, and alignment with the Limitation (Child Abuse) (Scotland) Act 2017 was welcomed.
- ◆ Views were more mixed in relation to the question of what should constitute 'historical' abuse. Overall, 61% agreed with the proposed cut-off date of 1 December 2004. Those who disagreed (or were unsure) were mainly concerned about the implications for those who had suffered abuse since 2004. Some respondents (especially individuals) found this question difficult to understand or to answer.

Defining 'in care' (Q3–Q6)

4.2 Three questions asked about the definition of 'in care' and each is discussed below.

Having long term responsibility for the child in place of the parent (Q3)

4.3 Question 3 asked for views on the proposal to limit eligibility for financial redress to situations in which institutions and bodies had long term responsibility for the child in place of the parent. As Table 4.1 indicates, 79% of respondents overall agreed with this approach. However, there were differences between organisations and individuals on this question: whilst 85% of individuals agreed, the same was true of only 46% of organisational respondents.

Table 4.1: Q3 – Do you agree with the proposed approach in relation to institutions and bodies having long term responsibility for the child in place of the parent?

Respondent type	Yes		No		Unsure		Total	
	n	%	n	%	n	%	n	%
Local authority / public sector partnerships	6	55%	3	27%	2	18%	11	100%
Other public sector organisations	2	50%	1	25%	1	25%	4	100%
Current or previous care providers	5	56%	3	33%	1	11%	9	100%
Third sector, including survivor groups	3	43%	3	43%	1	14%	7	100%
Legal sector organisations	1	20%	3	60%	1	20%	5	100%
Other organisational respondents	1	33%	2	67%	–	0%	3	100%
Total organisations	18	46%	15	38%	6	15%	39	100%
Individual respondents	191	85%	12	5%	21	9%	224	100%
Total (organisations and individuals)	209	79%	27	10%	27	10%	263	100%

One individual ticked 'yes' and 'no' in response to this question and two ticked 'yes' and 'unsure'. These three responses are not included in the table above.

4.4 In total, 139 respondents (104 individuals and 35 organisations) provided further comments. Individuals **agreeing** with the proposed approach tended to highlight the failings of institutions and bodies to discharge their responsibilities appropriately – in short, explaining why authorities with such long-term responsibilities should be held accountable, rather than why eligibility should be explicitly restricted to such circumstances.

4.5 Those who **disagreed** with the proposed approach tended to do so either because they considered that key elements (such as 'long-term responsibility', 'eligible residential setting' or 'in place of the parent') required additional clarification or definition or, more commonly, because they simply believed there should be no suggestion that eligibility should be dependent on the length of time spent in care. A recurrent theme here was that regardless of the length of time spent in an institution, the consequences of abuse could be extremely detrimental and long-standing.

4.6 Some respondents were concerned that the proposed approach might unreasonably or unfairly limit eligibility by excluding those who experienced abuse in settings in which the relevant authorities may not formally have had 'long-term responsibility in place of the parent' (such as fee-paying boarding schools or hospitals) but, in practice, exercised day-to-day influence and control over key aspects of the child's life and wellbeing. The child's corresponding lack of control and potential vulnerability was also noted in this context. (These concerns are reflected more fully in the responses to Questions 5 and 6.) Others simply argued that the scheme should be as inclusive as possible.

4.7 In addition to these general concerns about the notion of 'long-term responsibility', occasionally, it was also occasionally suggested that the specific reference to 'moral responsibility' was insufficiently precise and / or anachronistic.

Residential settings in the SCAI Terms of Reference (Q4)

4.8 Question 4 asked for views on the proposal to limit eligibility for financial redress to the same list of institutions used in SCAI's Terms of Reference – subject to the institution having long-term responsibility for the child. Table 4.2 shows that, overall, 74% of

respondents agreed with this proposal. The proportion agreeing was slightly higher among organisational respondents than among individuals (85% vs 72%). There was also some evidence of uncertainty among individuals in relation to this issue – indeed the proportion who were unsure (18%) was higher than the proportion indicating disagreement (10%). It is also notable that all 12 responding local authorities / public sector partnerships agreed with the proposed list.

Table 4.2: Q4 – Subject to the institution or body having long term responsibility for the child, do you agree that the list of residential settings should be the same as used in the Scottish Child Abuse Inquiry’s Terms of Reference?

Respondent type	Yes		No		Unsure		Total	
	n	%	n	%	n	%	n	%
Local authority / public sector partnerships	12	100%	–	0%	–	0%	12	100%
Other public sector organisations	3	75%	–	0%	1	25%	4	100%
Current or previous care providers	8	89%	–	0%	1	11%	9	100%
Third sector, including survivor groups	5	83%	1	17%	–	0%	6	100%
Legal sector organisations	3	60%	2	40%	–	0%	5	100%
Other organisational respondents	2	67%	–	0%	1	33%	3	100%
Total organisations	33	85%	3	8%	3	8%	39	100%
Individual respondents	157	72%	22	10%	40	18%	219	100%
Total (organisations and individuals)	190	74%	25	10%	43	17%	258	100%

Four respondents – one organisation and three individuals – ticked both ‘yes’ and ‘unsure’ in response to this question.

These responses are not included in the table above.

Percentages may not total 100% due to rounding.

4.9 Altogether, 118 respondents (91 individuals and 27 organisations) provided further comment at Question 4.

4.10 Some of the uncertainty in responses to the closed question on this topic may reflect a lack of knowledge or awareness (particularly among individual respondents) of the residential settings included in the SCAI’s Terms of Reference. In this context, some individual respondents were concerned to establish that specific (named) institutions would be included in such a list.

4.11 Other respondents (both individuals and organisations) were in favour of ensuring consistency with the Terms of Reference but, as these have been widened since the Inquiry was established, wanted to confirm that any further changes would also apply to the redress scheme.

4.12 Occasionally, respondents explicitly suggested that eligibility for the scheme should be *wider* than that implied by the terms of reference of the Scottish Child Abuse Inquiry – including, for example, children abused within kinship care arrangements – or returned to the theme of not restricting eligibility to those abused in residential settings where institutions and bodies had ‘long-term responsibility for the care of the child in place of the parent’ (see Question 1).

Proposed exclusion of abuse in fee-paying boarding schools (Q5)

4.13 Question 5 asked for views about whether eligibility for financial redress should exclude those who were abused in fee-paying boarding schools.

4.14 Not surprisingly, given the views already outlined in relation to Question 1, the proposed exclusion of abuse in fee-paying boarding schools had only limited support among respondents. Table 4.3 shows that fewer than half of all respondents (44%) agreed with this aspect of the proposed eligibility criteria. Of the remainder, 39% disagreed and 18% were unsure. Organisational respondents were slightly more likely than individuals to disagree (45% vs 38%).

Table 4.3: Q5 – Where parents chose to send children to a fee paying boarding school for the primary purpose of education, the institution did not have long-term responsibility in place of the parent. Given the purpose of this redress scheme, applicants who were abused in such circumstances would not be eligible to apply to this scheme. Do you agree?

Respondent type	Yes		No		Unsure		Total	
	n	%	n	%	n	%	n	%
Local authority / public sector partnerships	6	55%	4	36%	1	9%	11	100%
Other public sector organisations	1	25%	1	25%	2	50%	4	100%
Current or previous care providers	4	50%	3	38%	1	13%	8	100%
Third sector, including survivor groups	1	14%	4	57%	2	29%	7	100%
Legal sector organisations	1	14%	4	57%	2	29%	7	100%
Other organisational respondents	1	33%	2	67%	–	0%	3	100%
Total organisations	14	35%	18	45%	8	20%	40	100%
Individual respondents	98	45%	82	38%	37	17%	217	100%
Total (organisations and individuals)	112	44%	100	39%	45	18%	257	100%

One individual ticked 'yes' and 'unsure' in response to this question, and three individuals ticked 'no' and 'unsure'. These four responses are not included in the table above.

Percentages may not total 100% due to rounding.

4.15 This question attracted additional comment from 183 respondents (149 individuals and 34 organisations).

4.16 Among those who **agreed** with the proposed exclusion, three main themes were apparent. The first was the suggestion that parents had generally chosen to place their children in fee-paying educational institutions and would have had regular contact and retained formal responsibility for them during their time there. Linked to this was the (sometime implicit) argument that children in such settings had various avenues open to them to report abuse and that their parents could have withdrawn them from the school in the light of any such concerns. This was sometimes contrasted – particularly by individual respondents – with the situation of children in care, who were seen as having no-one to turn to and a complete absence of choice or control. Individual respondents sometimes drew on their own experience to illustrate this sense of having no-one to turn to.

4.17 A second theme was that the scheme should be focused on securing redress for those who experienced abuse 'in care' and that, as the state did not have direct

responsibility for fee-paying boarding schools, such settings should not be considered part of that system.

4.18 The third main theme in support of the proposed exclusion was that victims of abuse within fee-paying boarding schools have (or should have) alternative routes to redress open to them. Some respondents suggested, for example, that allegations of such abuse should be taken up directly with the institutions involved, while others suggested that redress could or should be sought through the civil courts. Occasionally, respondents proposed that a separate scheme be established for victims of abuse in such settings; there was also an alternative suggestion that this group of victims could be eligible for a Stage One payment with further redress then sought through other channels (unless all parties agreed that the scheme offered an appropriate alternative route to justice).

4.19 Among those who **disagreed** with the proposed exclusion, the most fundamental argument – and one of the most common, among both individuals and organisations – was that all abuse should be treated equally. Multiple respondents used the phrase ‘abuse is abuse’ in this context. Some elaborated on this theme, arguing that the impacts of abuse are the same wherever it occurs or that all victims should have an equal right to redress.

4.20 A related but slightly different argument was that, even if parents nominally retained responsibility for their child, fee-paying boarding schools had a clear duty of care or were, in practice, acting ‘in loco parentis’. Some considered that such institutions actually met the criterion of having ‘long-term responsibility for the child in place of the parent’ and thus should be included on this basis within the proposed scope of the scheme. Other respondents focused less on the question of parental responsibility and more on the lack of power and control experienced by children themselves in such settings.

4.21 A number of other points were made less frequently:

- It was argued that not all parents were able to exercise choice in sending their children to fee-paying boarding schools because of parental employment abroad for the state (e.g. in the military or on diplomatic missions). In such cases, the fees may even have been paid by the state.
- More generally, a distinction was drawn between children whose places at such institutions were funded by the local authority and those who were privately funded.
- The point was also made that, because local educational authorities were responsible for inspecting fee-paying boarding schools, the state was effectively responsible for ensuring the safety of children within them.

Proposed exclusion of abuse in hospital (Q6)

4.22 Question 6 asked for views about whether experiences of abuse in hospital should be excluded from the financial redress scheme.

4.23 As Table 4.4 indicates, there were mixed views on this proposal, which was supported by only a minority of respondents (40%) overall. The level of agreement was, however, higher among individual than organisational respondents (42% compared with

33%), while over half of organisational respondents (53%) actively disagreed with the proposal. Around one in five respondents overall (21%) indicated that they were unsure about the merits of the proposal.

Table 4.4: Q6 – Where children spent time in hospital primarily for the purpose of medical or surgical treatment, parents retained the long-term responsibility for them. Given the purpose of this redress scheme, applicants who were abused in such circumstances would not be eligible to apply to this scheme. Do you agree?

Respondent type	Yes		No		Unsure		Total	
	n	%	n	%	n	%	n	%
Local authority / public sector partnerships	6	55%	3	27%	2	18%	11	100%
Other public sector organisations	1	25%	3	75%	–	0%	4	100%
Current or previous care providers	3	38%	4	50%	1	13%	8	100%
Third sector, including survivor groups	2	29%	5	71%	–	0%	7	100%
Legal sector organisations	1	14%	4	57%	2	29%	7	100%
Other organisational respondents	–	0%	2	67%	1	33%	3	100%
Total organisations	13	33%	21	53%	6	15%	40	100%
Individual respondents	92	42%	80	36%	48	22%	220	100%
Total (organisations and individuals)	105	40%	101	39%	54	21%	260	100%

Two individuals ticked 'no' and 'unsure' in response to this question. These responses are not included in the table above.

Percentages may not total 100% due to rounding.

4.24 This question attracted additional comment from 168 respondents (132 individuals and 36 organisations). Not surprisingly, the themes evident in the comments were similar to those relating to the proposed exclusion of children abused in fee-paying boarding schools (see Question 5) – indeed, some respondents referred directly to their previous comments in this context. Those who disagreed with the proposal generally provided fuller responses.

4.25 Among those who **agreed** with the proposed exclusion (and particularly individual respondents), the most common view was that parents retained responsibility for their children during such stays in hospital settings and that the parent and / or child would (or should) be able to pursue compensation or redress through existing legal channels – for example, by suing the hospital or health board concerned – or through the establishment of a separate scheme.

4.26 Some of those who agreed with the proposal simply indicated that the experiences of those abused in hospital settings lie outside the remit or purpose of the scheme, or should do – suggesting, for example, that eligibility should be limited to those who had no parental representation or guardianship in place to oversee questions of welfare. Again, some individual respondents sought to contrast the degree of contact and oversight that parents were able to offer their children in hospital with that available to children in residential care settings.

4.27 Others argued in more specific terms that hospitals were very different environments from residential care settings and / or that medical staff did not have any long-term responsibility for the overall welfare of the child – largely using language from

the consultation paper to explain why such an exclusion would be valid. The point was also made that, whilst there have been cases of abuse in hospitals in the past, practices that would reduce the risk of abuse (such as parents staying overnight with their child) have been introduced in Scotland over several decades.

4.28 Among those who **disagreed** with the proposed exclusion of those abused in hospital settings (and especially among individual respondents) the most common theme – as at Question 5 – was simply that ‘abuse is abuse’. This was frequently elaborated by reference to the fact that the impacts of abuse can be hugely damaging wherever it occurs, regardless of length of residential stay, and it was widely held that all those who experienced victimisation in institutional settings should be treated equally. Some individuals pointed to the vulnerability of children in such settings and / or referred specifically to the Savile case³ to illustrate the risks of abuse within hospitals.

4.29 A further set of arguments (mainly put forward by organisational respondents) sought to justify the inclusion of such instances of abuse through direct or indirect reference to the proposed purpose of the scheme and, in particular, the theme of responsibility for the child. Respondents made a number of related arguments in this context:

- In practice, **parents were generally not present**, could not know what was happening and were not in a position to exercise responsibility for their child, and so had effectively delegated responsibility to the hospital staff.
- The **power differentials** which existed between medical professionals and many families made it difficult to challenge decisions or to exercise parental authority, even where it existed in principle. Consequently, in the case of **decision-making about medical treatment**, the state had a significant role or power in determining the placement of the child.
- As statutory authorities subject to inspection and regulation by the state, health boards and hospitals had an **explicit responsibility** to ensure the safety of children within the system.
- While hospitals may not have had ‘long-term responsibility’ for the welfare of the child, they had a clear **duty of care**.

4.30 Some organisational respondents expressed concern – possibly based on a misunderstanding – that those placed in learning disability or psychiatric hospitals with parental consent would be excluded from the scheme. In fact, the Terms of Reference for the SCAI, and hence the proposed eligibility for the scheme, explicitly include long-term health care establishments or institutions.

4.31 However, this specific issue relates to a wider concern – articulated by some respondents in relation to both Question 5 and Question 6 – that specific groups might find themselves unfairly (or illegally) excluded from the scheme, on the basis of an atypical pathway into residential care or that the relevant authorities did not clearly assume long-

³ The reference here is to Jimmy Savile, British media personality, and the criminal investigation launched one year after his death, which found that he had sexually abused hundreds of individuals, predominantly children – including children in hospitals – over a period of 50 years.

term responsibility for the child in place of the parent. It was argued that this might mean that individuals with similar experiences of abuse might find themselves in very different situations in terms of opportunities for redress.

Defining ‘abuse’ (Q7)

4.32 The Scottish Government intends to use the same definition of abuse as the Limitation (Childhood Abuse) (Scotland) Act 2017 for the purpose of defining eligibility for the financial redress scheme. This includes sexual, physical and emotional abuse and abuse that takes the form of neglect. Question 7 asked respondents if they agreed this definition should be used.

4.33 Table 4.5 shows that there was a very high level of agreement among both individual and organisational respondents (94% and 91%, respectively) that, for the purpose of the financial redress scheme, this definition of abuse should be used.

Table 4.5: Q7 – We intend to use the same definition of abuse as the Limitation (Childhood Abuse) (Scotland) Act 2017 for the purpose of the financial redress scheme. This includes sexual abuse, physical abuse, emotional abuse and abuse that takes the form of neglect. Do you agree?

Respondent type	Yes		No		Unsure		Total	
	n	%	n	%	n	%	n	%
Local authority / public sector partnerships	13	100%	–	0%	–	0%	13	100%
Other public sector organisations	4	100%	–	0%	–	0%	4	100%
Current or previous care providers	7	78%	2	22%	–	0%	9	100%
Third sector, including survivor groups	7	100%	–	0%	–	0%	7	100%
Legal sector organisations	6	86%	1	14%	–	0%	7	100%
Other organisational respondents	2	67%	–	0%	1	33%	3	100%
Total organisations	39	91%	3	7%	1	2%	43	100%
Individual respondents	215	94%	5	2%	8	4%	228	100%
Total (organisations and individuals)	254	94%	8	3%	9	3%	271	100%

Percentages may not total 100% due to rounding.

4.34 Additional comment was provided at Question 7 by 147 respondents (117 individuals and 30 organisations).

4.35 Those who **agreed** with the proposed definition commonly welcomed the recognition that abuse takes a variety of forms, and that all have damaging, long-term impacts and should be treated equally. Some individual respondents drew on their own experiences to illustrate these broader dimensions and consequences of abuse.

4.36 Respondents also commented positively on other aspects of the framing of the definition – for example, on the fact that it was comprehensive and potentially inclusive of all forms of abuse; or that the wording was clear, succinct or self-explanatory.

4.37 The consistency of definition with the Limitation (Childhood Abuse) (Scotland) Act 2017 was welcomed by several respondents as it was thought that this would aid clarity of definition and harmonisation across the system as a whole. More specifically, there was a

suggestion that, as the redress scheme is intended as an alternative to civil litigation, the proposed alignment with the 2017 Act makes sense. However, there was another view that the definition of abuse used in the redress scheme should be aligned with the SCAI Terms of Reference (as at Question 4), rather than the 2017 Act.

4.38 Although it was unusual for respondents to **disagree** actively with the proposed definition of abuse, some of those who indicated at the closed question that they agreed with or were unsure about the definition also identified some concerns. In the analysis that follows, these have been combined with comments from those who disagreed. The main concerns about the definition expressed were as follows:

- Some individuals mentioned additional themes or concepts that they believed should be referred to within the definition, including morality, enslavement, torture and medical abuse.
- Some organisational respondents argued that the definition of abuse would be strengthened by the further or explicit definition of key concepts, such as 'emotional abuse' – a term described as 'vague' and 'undefined'.
- Some organisations expressed concern about the scope of the definition, arguing that it had simply been drawn too widely, or that, by including neglect, potentially extends the definition from 'intentional acts' to 'unintentional omissions'. This contrasts with the views of those, noted above, who welcomed the inclusive character of the proposed definition.
- Among those who answered 'unsure' at Question 7, the point was also made that there is scope for shifting societal norms to have an impact upon definitions of abuse – for example, in relation to the acceptability of corporal punishment at different points in time.

Defining 'historical' abuse (Q8)

4.39 The consultation paper outlined a proposal to take 1 December 2004 – the date on which then First Minister Jack McConnell made a public apology endorsed by the Scottish Parliament for the harm suffered by children in care – as the cut-off point to define 'historical' abuse. Question 8 invited views on this proposal.

4.40 Table 4.6 shows that a majority of both individual (63%) and organisational respondents (54%) to this question agreed with this proposal. However, around one in five all those responding (22%) were unsure about this issue – a larger proportion than those actively disagreeing (17%).

Table 4.6: Q8 – Do you agree that 1 December 2004 represents an appropriate date to define ‘historical’ abuse for this financial redress scheme?

Respondent type	Yes		No		Unsure		Total	
	n	%	n	%	n	%	n	%
Local authority / public sector partnerships	8	73%	1	9%	2	18%	11	100%
Other public sector organisations	2	40%	2	40%	1	20%	5	100%
Current or previous care providers	6	67%	1	11%	2	22%	9	100%
Third sector, including survivor groups	3	43%	3	43%	1	14%	7	100%
Legal sector organisations	1	17%	3	50%	2	33%	6	100%
Other organisational respondents	2	67%	–	0%	1	33%	3	100%
Total organisations	22	54%	10	24%	9	22%	41	100%
Individual respondents	136	63%	34	16%	47	22%	217	100%
Total (organisations and individuals)	158	61%	44	17%	56	22%	258	100%

One individual ticked ‘yes’ and ‘no’ to this question; one ticked ‘yes’ and ‘unsure’; and one ticked ‘no’ and ‘unsure’. These three responses are not included in the table above.

Percentages may not total 100% due to rounding.

4.41 Additional comments were provided by 152 respondents (116 individuals and 36 organisations). It is worth noting that some individual respondents said that they found the question difficult to understand, that they lacked the necessary information or felt insufficiently qualified to offer an opinion. It was clear, too, that some individuals had misunderstood the question: having indicated in the closed question that they disagreed with the proposed date, their open text responses suggested that they thought this meant that those who had experienced abuse *before* this date would be ineligible for the scheme.

4.42 Those who **agreed** with the proposed cut-off date did so for a variety of reasons. Some (particularly among individual respondents) simply indicated that they considered it to be ‘fair’, ‘reasonable’ or ‘appropriate’ without giving any further explanation, or they emphasised the importance of publishing clear timelines governing eligibility for the scheme. Others explicitly referred to aspects of the rationale outlined in the consultation paper itself – for example, the fact that 2004 was the point at which the failings of the state were first acknowledged in the Scottish Parliament and the start of a process of recognition, regulatory improvement and redress. As such, some individual respondents believed that a 2004 cut-off date was appropriate as a means of offering a degree of ‘closure’ to victims of historical abuse.

4.43 One organisational respondent said that a date prior to the commencement of the scheme would be appropriate, given the purpose of the scheme, the fact that evidence should be more readily available in relation to recent instances of child abuse and the removal of the usual time limits for bringing civil claims for child abuse.

4.44 Some respondents explicitly suggested that 2004 marked an appropriate cut-off point as most cases of abuse occurred before that date or because much more effective protections were now in place and evidence should be more readily available in relation to recent instances of child abuse. It was also suggested that more recent victims of abuse would have other means of redress open to them.

4.45 Among those who **disagreed with** or were **unsure about** the proposed date, the principal concern – among both individuals and organisations – related to the implications for those who have suffered abuse since 2004. Sometimes this was simply framed in terms of the need to acknowledge and respond to abuse – and its impacts – regardless of when it occurred. Other respondents argued that, while there have been system-wide improvements in child protection since 2004, child abuse within care settings has not been eradicated. There was also a wider concern about potential inequities for those abused since 2004. In this context, there was a suggestion that the imposition of an arbitrary cut-off date for eligibility could adversely affect the standing of the scheme in light of the commitment to ‘honesty, decency, trust and integrity’ in its guiding principles.

4.46 Some (largely individual) respondents maintained that there should simply be no cut-off date in relation to eligibility for the scheme. Others (including some organisational respondents) accepted the need for a cut-off date but argued that it should be later. Suggestions here included: (i) December 2014, to bring the scheme into line with the timeframe for evidence of abuse to the SCAI; (ii) 2019, which marked the publication of Professor Kenneth Norrie’s report on the legislative and regulatory framework governing children in care in Scotland from 1900 to date; and (iii) 2022, as this was believed to be a likely end date for the SCAI.

4.47 Occasionally, respondents queried the usefulness or appropriateness of the word ‘historical’, and the decision of the SCAI to drop the term from its own work was highlighted in this context.

4.48 Some respondents (especially organisations) suggested that there was an insufficiently clear rationale for the proposed cut-off date of 2004. Others put this more strongly, describing the choice of 2004 as arbitrary, confusing or illogical. One suggestion was that the application of a 2004 cut-off date would require evidence of the effectiveness – in terms of preventing abuse – of regulatory arrangements put in place after that date.

4.49 A final theme in the responses to this question was that of the need for alternative accessible and widely known routes to redress for those abused subsequently if a cut-off date of 2004 were to be applied,

4.50 In this context, it was suggested that it might be appropriate to review the scheme (e.g. after three years) to consider whether the definitions agreed for legislative purposes (including the proposed cut-off date) were still fit for purpose. Another was that there should be a careful review of existing legislation and policies / regulations in order to avoid a situation in which certain categories of survivors might find themselves unable to secure compensation through any route.

5. Eligibility – other inclusion / exclusion criteria (Q9–Q11)

5.1 The consultation sought views on the potential eligibility of two specific groups: survivors who experienced abuse in Scotland but were also part of the UK child migration programmes⁴ (and may have received, or might still receive, a payment under the UK Government's payment scheme for former British child migrants); and survivors with a criminal conviction. Respondents were also given the opportunity to provide any other comments on eligibility for the scheme.

Question 9: Do you have any comments you would like to make in relation to child migrants who also meet the eligibility requirements of this redress scheme?

Question 10: Do you have any comments about the eligibility of those with a criminal conviction?

Question 11: Do you have any other comments on eligibility for the financial redress scheme?

Key points

- ◆ There was widespread support among both individuals and organisations for the proposal to allow child migrants to apply to the scheme.
- ◆ Respondents argued that child migrants should be included if they had experienced abuse in care in Scotland, regardless of where they now lived, or any payments already received from the UK Government's scheme for former child migrants. They highlighted the impact of the abuse, the particular vulnerability of the children involved and questions of fairness and equality.
- ◆ There appeared to be some misunderstanding among those who opposed the proposal, with some believing, for example, that the proposal related to child migrants 'coming in' to Scotland. However, there was also occasional concern expressed about the possibility of 'double payments'.
- ◆ Respondents were largely supportive of the proposal to allow individuals with criminal convictions to apply to the scheme. In this context, some respondents pointed out that many victims / survivors are likely to have criminal convictions; others argued explicitly that the experience of abuse in care may lead to offending.
- ◆ The views of respondents opposed to the proposal typically centred on particular types of convictions. It was argued, for example, that anyone who had committed very serious offences (and, in particular, offences involving children and / or sexual abuse) should be deemed ineligible.

⁴ The UK government set up a payment scheme for former British child migrants, who were separated from their families and sent overseas as part of the UK government's historical participation in child migration programmes. The scheme was set up after a recommendation made in the Independent Inquiry into Child Sexual Abuse (IICSA) interim report and its report on child migration programmes, which were both published in spring 2018.

- ◆ In terms of general views on eligibility, respondents commonly said that the proposed terms of the scheme were too restrictive and / or that the scheme should be open to all those abused in care. While some suggested that eligibility should be looked at on a case-by-case basis, an alternative view was that all cases should be treated equally.
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Eligibility of child migrants (Q9)

5.2 The Scottish Government proposed that survivors who suffered abuse in Scotland and met all the eligibility criteria, and were also part of the UK child migration programmes should be eligible to apply to the redress scheme. Question 9 (a single-part open question with no preceding tick-box question) asked respondents if they had any comments on this proposal. A total of 192 respondents (154 individuals and 38 organisations) provided a response. However, a substantial number of individuals (around one in five) simply said they had no comment to make or that they felt they lacked the knowledge or information to do so.

5.3 Almost all of the substantive responses from organisational respondents, and the vast majority of those from individuals, were supportive of the provisions for child migrants as outlined in the consultation paper.

5.4 Most commonly, respondents simply expressed general agreement with the proposal or sought to emphasise that child migrants should be included if they had experienced abuse in care in Scotland, regardless of where they now lived or any payments already received from the UK Government's scheme for former child migrants.

5.5 Some respondents elaborated on **why** they thought child migrants should be considered eligible, arguing, for example, that:

- **'Abuse is abuse'** – in other words, all victim / survivors should have a route to redress.
- The **impact or trauma** of abuse experienced by child migrants should be recognised.
- Child migrants experienced particular **vulnerability** having been removed from their country of birth, without consent.
- The eligibility of child migrants is a matter of **fairness, justice or equality**.
- Payments in relation to child migration were (and are) a **separate matter** and should not be taken into account when considering financial redress for abuse suffered in care in Scotland.

5.6 Some of those who supported the proposal outlined in the consultation paper nevertheless sought to emphasise that eligibility should be strictly limited to those who experienced abuse in Scotland, that there should be a threshold in terms of the minimum time spent in a care setting, or that eligibility should be subject to proof of status.

5.7 Among those who indicated **opposition** to the proposal to allow applications from former child migrants were some individuals who appeared to have misunderstood the issue. For example, a handful expressed concern about migrants 'coming in' to Scotland.

Others indicated that they believed redress should be provided by the government of the country to which a child migrant had been sent – apparently because of a misapprehension that the Scottish scheme might compensate victims / survivors for abuse suffered abroad.

5.8 Most of the remaining comments from individuals related to the possibility of ‘double payments’ and the suggestion that, as child migrants may already have received financial compensation from the UK or a foreign government scheme, it would not be fair for them to also receive further redress from the proposed scheme in Scotland.

Eligibility of those with a criminal conviction (Q10)

5.9 The consultation paper noted that redress schemes in other countries have taken different approaches to the eligibility of those with a criminal conviction. In the context of the Scottish scheme, it was proposed that someone with a criminal conviction should not be excluded from applying for redress if they meet the broader eligibility requirements. Question 10 (a single-part open question with no preceding tick-box question) asked respondents for their views on this issue. A total of 237 respondents (197 individuals and 40 organisations) provided written responses of some kind; some, however, simply wanted to indicate that they had no comment to make.

5.10 For the most part, respondents who offered substantive comments were supportive of the proposal contained in the consultation paper. Among responses from both organisations and individuals, by far the most common theme was the possible **link between experience of abuse and later offending**. Some respondents simply pointed out that many victims / survivors are likely to have criminal convictions; others argued explicitly that the experience of abuse in care may lead to offending – for example, through drug and alcohol use as a means of dealing with trauma or broader mental health difficulties, or through exposure to criminogenic environments. These arguments were made by both individual and organisational respondents.

5.11 Other explanations of why those with a criminal conviction should be considered eligible for the scheme included the following:

- Redress should be **open to all**; thus those with convictions should be eligible **if they meet the scheme criteria**.
- Excluding those with a criminal conviction would be **discriminatory and / or in breach of human rights**.
- Financial redress should be about the failings of the system and about harm experienced as a child – **not the character and experience of individuals as adults**.
- There is a risk that individuals might be deemed ineligible on the basis of **wrongful convictions** or **childhood offending for minor offences**.

5.12 Among individual respondents who were **opposed** to allowing those with a criminal conviction to apply to the scheme, there was a single overarching view: that anyone who had committed very serious offences (and, in particular, offences involving children and / or sexual abuse) should be deemed ineligible.

5.13 Some respondents (both individuals and organisations) who were straightforwardly in favour of, or opposed to, the proposal contained in the consultation paper also touched on this theme, suggesting that eligibility or the level of redress should take account of the **nature** of any criminal conviction. Again, some suggested that restrictions should apply to those convicted of serious crimes, while others focused specifically on crimes involving children and / or sexual offending. A further view was that applications from individuals with extensive criminal records, or a history of fraudulent behaviour, should be given particular scrutiny.

5.14 Two further comments were made about the proposal to allow claims from those with criminal convictions: first, that some adverse public reaction should be anticipated; and second, that it might be appropriate for vulnerable claimants (not just including those with a criminal conviction) to have a representative appointed to help ensure that any redress payment is used appropriately.

Other comments on eligibility (Q11)

5.15 Question 11, a further single-part open question, asked for any other comments on eligibility for the financial redress scheme. Although 179 responses were recorded at this question, around two-fifths of these were from respondents who simply said that they had no comment to make. Other comments, from both individual and organisational respondents, related to themes discussed more directly in the context of other questions, and are therefore not discussed here. The remaining comments covered a wide range of themes, as discussed below.

5.16 Some respondents sought to reinforce themes already discussed in relation to earlier questions on eligibility. Most commonly, it was argued – especially by individuals – that the proposed terms of the scheme are too restrictive and / or that it should be open to all those abused in care in Scotland regardless of characteristics such as nationality or criminal convictions and regardless of setting.

5.17 There was also a view that eligibility (and, by implication, payments) should be looked at on a case-by-case basis or that cases should be ‘judged on their own merit’. Variation in the nature, duration and harm or impact of abuse were all mentioned in this context. However, an alternative view was that all cases should be treated equally because of the difficulty of establishing or evaluating such differences, particularly in relation to harm.

5.18 A number of additional themes were especially evident in responses from organisational respondents. For example, there was a view that any exclusions from the redress scheme needed to be fully justified and / or based on clear definitions, and the relationship between the proposed scheme and other forms of support, acknowledgment and redress needed to be clear. It was variously argued that there should be scope – and a process – to challenge scheme decisions, including those on eligibility; and to review (and, if necessary, adjust) the terms of the scheme after a period of operation. The need for special provisions for those lacking mental or legal capacity was also highlighted.

5.19 Other responses addressed other aspects of how the scheme could or should operate, rather than issues of eligibility per se. These included, for example, suggestions

that the scheme should not involve a 'drawn out' process, or be set up in such a way that it might 'intimidate' vulnerable victims / survivors or otherwise place unnecessary 'hurdles' in the way of potential applicants. Individual respondents also used this question to draw attention to the circumstances and potential eligibility of particular groups – especially next-of-kin (an issue covered by Questions 31 to 34 – see Chapter 10) and victims / survivors who are older and / or in poor health. In relation to the latter, it was suggested that the age range for Advance Payments should be extended.

6. Stage One evidence requirements (Q12–Q15)

6.1 The earlier survivor consultation indicated a clear preference for an approach to financial redress based on a combination payment. This would involve a flat-rate standard payment, and an individual experience payment which would take account of a range of factors such as the nature, severity, duration and long-term consequences of the abuse. The consultation paper outlined plans to adopt a combination payment approach with two possible stages. For a Stage One payment, there would be no attempt to assess an individual's experience of abuse or its impact; however, there would need to be evidence that an individual had been in care in Scotland during the appropriate period and had suffered abuse. An application for an 'individual experience' Stage Two payment would require more detailed evidence about the abuse suffered and the impact of that abuse.

6.2 Questions 12 to 15 sought views on a number of issues relating to the evidential requirements and process for Stage One payments. Respondents' views relating to the evidence requirements for a Stage Two payment are discussed in Chapter 7.

Question 12: What options might be available for someone who has been unable to obtain a supporting document which shows they spent time in care in Scotland?

Question 13: Do you think the redress scheme should have the power, subject to certain criteria, to require that bodies or organisations holding documentation which would support an application are required to make that available? [Yes / No] Please explain your answer.

Question 14: For Stage One, what evidence do you think should be required about the abuse suffered?

- A signed declaration by the applicant that they suffered abuse, but no other supporting evidence [Yes / No]
- A short written description of the abuse and its impact [Yes / No]
- Any existing written statement from another source which details the abuse in care [Yes / No]

Question 15: Do you have any additional comments on evidence requirements for a Stage One payment?

Key points

- ◆ Respondents put forward a wide range of options for how individuals might show they had spent time in care in Scotland. This included health, education and social work records, existing evidence related to previous legal and administrative proceedings, personal and third-party (family, friends, staff etc) statements and oral evidence. There was a mix of views on the extent to which documentation or verification should be required and the evidential threshold that should be applied, and some concern that requirements did not retraumatise victims / survivors.
- ◆ There was near unanimous support (98% overall) for a power to require bodies or organisations to make available documentation that would support a redress application. Respondents thought this would help address the difficulties and stress

faced by individuals trying to access documents, and help ensure that claims could proceed, while also enhancing the transparency and efficiency of the scheme. However, some thought the right to access such information already existed under data protection legislation, and others highlighted the resource implications of such a power (seen as a particular issue for local authorities) and the need to protect third party confidentiality when accessing documentary evidence.

- ◆ In terms of the evidence that should be required for a Stage One application, respondents generally supported the use of (i) a signed declaration by the applicant that they had suffered abuse, (ii) a short written description of the abuse and its impact, and (iii) any existing written statement from another source which provides details of the abuse. However, there was no clear consensus about which of these three forms of evidence should be preferred.
 - ◆ Respondents also commented on the Stage One process more generally, calling for this to be fair, transparent, straightforward and accessible for all claimants, with appropriate support and assistance provided, and appropriate evidential thresholds in place.
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Supporting documentation to confirm in care status (Q12)

6.3 Question 12 was an open question (with no preceding tick-box question) seeking views on the options available to someone who has been unable to obtain a supporting document which shows they spent time in care in Scotland.

6.4 Altogether, 207 respondents (168 individuals and 39 organisations) commented at Question 12. There were three main themes in these comments – often raised in combination – which related to (i) discussion of problems accessing documents, (ii) the kind of help that might be given to victims / survivors in accessing documents, and (iii) alternative forms of evidence that might be acceptable. Each of these is discussed below.

Difficulties in accessing supporting documents showing time spent in care

6.5 Respondents often highlighted the difficulties of accessing evidence of time spent in care in Scotland.

6.6 General comments on this theme related to records being destroyed or lost; ‘poor record-keeping practices’ in the past; relevant organisations having ceased to exist, or now being known by a different name; records being held in parents’ or siblings’ names; organisations being unhelpful, uncooperative and deliberately withholding information; and the prohibitive costs and considerable effort involved in establishing who holds the relevant documentation. Respondents also referred to the particular difficulties faced by older victims / survivors. Some argued that victims / survivors should not be penalised for organisational failings and that these bodies should be held to account if individuals could not access the necessary evidence.

6.7 Some individual respondents discussed their own experience of trying to access documentation – in most cases, commenting on the difficulties they had faced in doing so. Occasionally, respondents provided more positive comments – for example, explaining how they had managed to access documentation and who (a social worker, lawyer or Wellbeing Scotland) had helped them to do so.

Options for evidencing in-care experience

6.8 Respondents made a wide range of suggestions for alternative types of evidence that applicants might use to show they had been in care in Scotland. The main options mentioned (in roughly descending order of frequency) were:

- Medical records (including GP, hospital, and psychologist documentation)
- School records (including letters, attendance records, and reports)
- Testimonies or accounts from others in care with the applicant (including siblings)
- Testimonies or accounts from family, friends and others with close involvement with the applicant
- Legal documentation (including police and court records, or other evidence of civil or criminal complaints being made, or records of Scottish Child Abuse Inquiry (SCAI) proceedings)
- Photographs (for example, of the applicant, with other children or staff in situ or during trips away or events)
- Social work records
- Survivor knowledge and recall of their time in care (including descriptions of the accommodation, uniforms, routines, and excursions and details of staff names (care, teaching, religious and others) and other children in care at the same time)
- Evidence from institutions, including records and accounts from former staff members
- Oral evidence (either from the applicant or a third party).

6.9 Although respondents often referred to the need for 'statements', it was not always clear exactly what was meant by this term. For example, some referred to statements by the victim / survivor and some to those by third parties, and others did not clarify. Similarly, some suggested that 'personal statements', 'written statements' and 'testimonies' should be taken 'under oath', 'sworn' or 'signed', while others spoke more generally about statements and did not express a view on whether or how these might be taken or verified.

6.10 Occasionally, respondents expressed the view that victims / survivors should be trusted and their accounts of time spent in care in Scotland should be believed. Consequently, some argued that no documentation should be necessary, or that requirements should be minimal. Some organisations also suggested that the approach to documentary evidence for a Stage One payment should follow the same, or a similar, approach to that adopted in relation to Advance Payments or that any lessons learnt from the implementation of the Advance Payment Scheme should be taken on board.

6.11 While there was little explicit discussion of what the evidential threshold might be, there were occasional references to the 'balance of probabilities', 'likelihood' and 'benefit of the doubt', on the one hand, and to the need for a 'high degree of certainty' on the other.

6.12 Much less often, respondents suggested that evidence was required to prevent fraudulent claims to the redress scheme. Most of these comments were of a general

nature, but there were also specific suggestions that such claims could be prevented by requiring a signed statement or imposing a harsh penalty system for making fraudulent claims.

6.13 While respondents commonly believed that some evidence of time in care was needed, there were some concerns that the suggested approach risked further traumatisation of victims / survivors by reinforcing a sense of not being listened to or believed. In this context, some also suggested that the onus of producing evidence should be on institutions and local authorities rather than victims / survivors.

Supporting victims / survivors to access evidence of time in care

6.14 Some respondents made suggestions about who might provide support to victims / survivors to access documentary evidence of time spent in care in Scotland. The Scottish Government and the redress scheme itself were suggested most often, followed by local authorities. Other less common suggestions included lawyers, advocacy workers, the organisations being investigated, and whichever organisation lost the information. Diverse comments were made about how this support process might operate – for example, relating to the need for support to be offered as early as possible, for the process to be expedient, for organisations to be compelled to provide documentation, and the redress scheme being used as a holding centre for documentation.

6.15 Organisations were also more likely than individuals to comment on how the process might work – emphasising, for example, the need for a broad definition of supporting documentation and clarification about information requirements and timescales; consistency with the guiding principles of the scheme; a quick process; and consideration of how victims / survivors with additional needs will be supported.

Power to require organisations to release documentation (Q13)

6.16 The consultation paper indicated that the Scottish Government is considering whether there should be a legislative power requiring bodies or organisations, subject to certain criteria, to release any documents which relate to ‘an applicant’s identity, placement details, abuse or injury suffered as a consequent of that abuse’. Question 13 asked for views on this.

6.17 Table 6.1 shows that there was near unanimous support for this proposal, with just 2 organisations (both in the care provider group) and 3 individuals indicating disagreement.

Table 6.1: Q13 Do you think the redress scheme should have the power, subject to certain criteria, to require that bodies or organisations holding documentation which would support an application are required to make that available?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	11	100%	–	0%	11	100%
Other public sector	5	100%	–	0%	5	100%
Current or previous care provider	8	80%	2	20%	10	100%
Third sector, including survivor groups	8	100%	–	0%	8	100%
Legal sector	6	100%	–	0%	6	100%
Other	3	100%	–	0%	3	100%
Total organisations	41	95%	2	5%	43	100%
Individual respondents	217	99%	3	1%	220	100%
Total (organisations and individuals)	258	98%	5	2%	263	100%

One individual ticked 'yes' and 'no' in response to this question. This response is not included in the table above.

6.18 Altogether, 180 respondents (139 individuals and 41 organisations) provided further comments. Not surprisingly, these largely reflected the overwhelming support for the proposed approach. At the same time, some respondents pointed out that individuals already have a right to access their records under data protection legislation and so queried the need for an additional power. An alternative view was that social work records alone should be a sufficient source of evidence.

6.19 Although most comments suggested general support for a power to require bodies or organisations to make relevant documentation available, some addressed the **circumstances in which this power might be appropriate** – for example, only after reasonable time has passed, if evidence of abuse already exists, if individuals have given their permission, or if an organisation has not complied with an individual's request.

6.20 The consultation paper itself suggested that this power would be subject to certain criteria, but very few respondents made direct reference to this concept. Among those who did, there were general comments about the need to have criteria, the need to establish what these might be, and for them to be 'appropriate'. Occasionally, respondents explicitly stated that *no* criteria should be applied.

6.21 A further group of comments related to the **benefits, aims and purpose** of the redress scheme having such powers:

- Most commonly, respondents cited evidential issues, and said the power would help to provide proof of time in care and eligibility, and additional evidence or corroboration.
- Requiring bodies to provide documentation was seen by some as enhancing transparency and preventing organisations from evading their responsibilities. Other comments related to the principle of providing documentation, with references to organisations' moral duty and the rights of victim / survivors.
- The power was also seen as potentially removing the burden of proof from individuals, making the process less stressful and more victim / survivor-centred.

- Others believed that this power would reduce the risk of victim / survivors being prevented from making successful claims.

6.22 **Difficulties in accessing documentation** (as discussed at paragraph 6.6) were widely referred to by respondents to justify the proposed power to require organisations to make documentation available. It was suggested that such a power would help overcome many of these difficulties. In addition, some organisations suggested that the power to require organisations to make documents available would help improve the **efficiency and effectiveness** of the scheme. The experience of the Australian redress system was referred to in this context.

6.23 Finally, the point was made that the proposed power is **consistent with the existing legal framework of ECHR law** (which specifies that the state must support an individual to access information about their childhood) and the ‘Van Boven principles’ on the entitlement of victims to information on the causes leading to victimisation and violations of international human rights law and international humanitarian law.⁵

6.24 Some respondents discussed **how** organisations might be required to make documentation available. While some made general references to organisations simply being ‘compelled’ or ‘forced’ to do so – or to cooperation being ‘mandatory’ – others explicitly stated that they thought organisations should be required ‘by law’, ‘legislation’, ‘the courts’ or ‘a statutory framework’ to provide the documentation requested. Some also suggested penalties, such as prosecution or a fine, for non-compliance. Less often, respondents proposed that organisations should be compelled to make searches for documentation that they claim are missing and that the redress scheme should have the power to scrutinise any such claims. An alternative view was that legislation is needed to **enable** organisations to release documentation that might otherwise be covered by data protection laws.

6.25 Some respondents referred to the **type of organisation and / or type of documentation** that the power should cover. The most common view here was that all types of organisations and documentation should be included, though some respondents specified particular organisations (including local authorities, institutions and the police) and / or types of documentation (such as that evidencing failure of duty of care, log books, minutes and non-active social work files).

6.26 Overall, organisations and individuals expressed similar views in relation to this issue. There were, however, a small number of other issues raised primarily by organisations. Some organisations (and, occasionally, individuals) raised the issue of **safeguarding the confidentiality of others** named in documentation relating to claimants. Suggested strategies to address this included redaction and / or sending the documentation directly to the redress body, or to a third-party organisation for holding, rather than to the claimant.

⁵ Office of the High Commissioner on Human Rights (2005) *Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*. Adopted by the UN General Assembly, resolution 60/147, 16 December 2005. See <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

6.27 Organisations also highlighted (i) the need to provide **realistic timescales** for compliance, and (ii) the fact that this proposal would have **resource, staffing and management implications** for organisations and that these would increase if documents have to be redacted before being released. Regarding the latter point, some respondents emphasised the need to ensure that documentary searches do not result in resources being diverted from the provision of statutory services (e.g. child protection and welfare).

Evidence of abuse required for a Stage One payment (Q14)

6.28 Question 14 asked respondents for their views about the type of evidence of abuse that individuals should be required to submit in support of an application for a Stage One payment. This was a closed question and respondents were asked to indicate agreement or disagreement with three options.

6.29 Table 6.2 shows the number of respondents who answered 'yes' to one or more of the three options, as a proportion of the those responding to *any* of the three options. It should be noted that, although the first of the options is logically incompatible with the subsequent ones, respondents were asked to respond to each option separately, and some ticked 'yes' to all three options. All these responses are included in the table.

6.30 Table 6.2 shows that, overall, between around two-thirds (64%) and three-quarters (76%) of respondents answered 'yes' to each of the options offered, indicating general support for all three forms of evidence, but no clear consensus on a preferred form of evidence. The broad pattern of response was similar for individual and organisational respondents; however, the percentage of respondents agreeing that each type of evidence should be required was slightly higher among individuals than organisations.

Table 6.2: Q14 – For Stage One, what evidence do you think should be required about the abuse suffered?

Respondent type	Organisations		Individuals		Total	
	n	%	n	%	n	%
(1) A signed declaration by the applicant that they suffered abuse, but no other supporting evidence	23	62%	152	70%	175	69%
(2) A short written description of the abuse and its impact	25	68%	168	77%	193	76%
(3) Any existing written statement from another source which details the abuse in care	20	54%	143	66%	163	64%
Base (number ticking any response at Q14)	37		218		255	

At each of these options a small number of respondents ticked both 'yes' and 'no'. These have been excluded from both the numbers and percentages above.

Other views on Stage One evidential requirements (Q15)

6.31 Question 15 was an open question asking respondents if they had any additional comments on the evidence requirements for a Stage One payment. Altogether, 195 respondents (150 individuals and 45 organisations) addressed this question and the views expressed largely echoed those already discussed in relation to Questions 12 and 13 above. In particular, individuals often highlighted personal experiences of being in care and the abuse suffered, or discussed the difficulties of accessing and giving evidence and making claims related to, for example, SCAI proceedings or civil court action.

6.32 The remaining responses related to several broad themes, as discussed below.

Types of supporting evidence

6.33 Respondents at Question 15 frequently commented on the type of evidence that might be used to support an application for a Stage One payment. Some referred specifically to the three forms of evidence asked about in Question 14, while others referred to possible alternative sources of evidence. In general, these other forms of evidence were similar to those highlighted at Question 12 (such as medical records, police statements, court and social work records). The most common type of additional evidence referred to was pre-existing evidence, such as that presented to the SCAI.

6.34 Comments relating to the three options highlighted in Question 14 – a signed declaration, a short written description and an existing written statement from another source – are summarised below.

Option 1 – Signed declaration by the applicant

6.35 Although the consultation paper describes Option 1 as a signed declaration *not* supported by any other evidence, respondents who expressed support for this option generally thought a signed declaration from the applicant should be used in conjunction with another form of evidence. For example, respondents said that a signed declaration should be considered acceptable or relevant only if the SCAI had already identified the pertinent organisation as failing to protect young people from abuse, or if the claimant had other existing evidence of abuse and its impact and proof of being in care. Only occasionally did respondents suggest that a signed declaration by the applicant should be considered sufficient evidence on its own.

Option 2 – A short written description of the abuse and its impact

6.36 Around three-quarters of respondents said that a short written description of the abuse and its impact should be required as a form of evidence for Stage One. However, in their comments, respondents often expressed concerns that requiring respondents to prepare this type of evidence might cause further trauma to victims / survivors. As a result, some respondents suggested that this type of evidence should be optional rather than mandatory, or qualified their support for Option 2 saying, for example, that this type of evidence should only be required from applicants to the scheme if no previous report of abuse had been made. Some respondents also commented on how any such evidential requirement might operate in practice, suggesting that (i) a written description prepared by a third party on behalf of the applicant should be acceptable, and (ii) this type of evidence should only be acceptable if it was signed and dated.

6.37 However, some thought the need for such evidence depended on the design of the scheme. For example, it was suggested that a short written description of the abuse and its impact should be required if the level of a Stage One payment were to be higher than the level of an Advance Payment. However, it was also argued that, as a Stage One payment would not involve an assessment of the nature and impact of the abuse (according to the proposals for the scheme), a written description of the abuse and its impact would not be relevant at Stage One.

Option 3 – Any existing written statement from another source

6.38 Respondents only occasionally made comments on the use of written statements from other sources. The point made most often was that these could be helpful in corroborating other forms of evidence and in preventing fraudulent claims.

Need for evidence for proof, verification and avoidance of fraudulent claims

6.39 Some respondents referred to the need for some evidence to prove that an individual spent time in care or that abuse occurred and for corroboration of that evidence. This was often because of concerns about the potential for fraudulent claims and abuse of the system. These views were expressed by both individuals and organisations (mostly current or previous care providers).

6.40 Some also suggested that supporting evidence would be needed to ensure that the redress scheme appears credible and robust and to give victims / survivors confidence in it. It was suggested that not requiring evidence might expose the scheme to criticism, as well as false claims, with negative consequences for genuine victims / survivors.

6.41 However, respondents also reiterated earlier comments (made at Question 12) about the difficulties accessing documentary evidence of time spent in care, and also noted additional difficulties in evidencing abuse related to non-disclosure by victims / survivors, and lack of witnesses (either because nobody was present when the abuse occurred or because potential witnesses have since died).

The structure and management of the Stage One process

6.42 Respondents frequently made comments about the proposed approach to Stage One claims. In particular, it was common for individual respondents to refer to the values they hoped the redress system would embody, using words such as 'fair', 'equitable', 'transparent', 'simple' and 'straightforward'. Organisational respondents also commented on the need for the process to be simple and straightforward. Less often, both individuals and organisations suggested that the design of the Stage One process needs to ensure victims / survivors are not in any way further traumatised and that they can have confidence in a robust and credible system.

6.43 Respondents also offered suggestions about other aspects of the process (including payment structures) or the process more generally. However, there was little commonality and no clear consensus on the points raised.

Support for victims / survivors to access and present evidence

6.44 Some respondents (particularly organisations) highlighted the need to support victims / survivors to access or present their evidence. Most commonly, this was discussed in relation to the needs of applicants with literacy and / or learning difficulties who might find it hard to provide written or oral statements.

6.45 In other cases, respondents outlined what support might involve, such as helping to source information from other agencies, minimising trauma or encouraging the disclosure of information about abuse and its impact. It was suggested that the Scottish Government

should fund any support required and the victim / survivor should be able to choose which organisation provides this support.

Evidential thresholds

6.46 Comments about evidential thresholds and standards of proof were mainly, but not exclusively, made by organisations. Most often, respondents suggested that the standard of proof required at Stage One should be 'low' or of 'a minimum standard', or they argued that setting 'arduous' requirements for evidence risked deterring people from making claims to the redress scheme. Some referred to taking a 'balance of probabilities' approach, similar to that used in the civil courts, while others argued even this might be too high a threshold because of the difficulties in accessing evidence and the risks of further trauma.

6.47 Reference was made to the Advance Payment Scheme and, while some respondents thought that Stage One payments should have the same evidence requirements as this, others suggested that there may need to be a higher threshold (if, for example, payments were to be higher than those made under the Advance Payment Scheme). However, there was also a view that, whilst there may be a case to have a higher evidential threshold for Stage One payments than Advance Payments, there was a risk that the scheme may be open to criticism if different rules apply to different age groups.

6.48 Finally, there was a suggestion that the Scottish Government may wish to work with victims / survivors to establish their views on a realistic evidential burden.

7. Stage Two evidence requirements and assessment process (Q16–Q23)

7.1 The consultation paper explained that Stage Two payments would be based on an assessment of applicants' individual experiences of abuse and the impact it has had on their life. A set of eight questions sought views on issues related to the Stage Two process including the nature and extent of evidence that should be required, and how specific factors might be taken account in decision making.

Question 16: For Stage Two, what additional evidence of the abuse and of its impact should be required for the individual assessment?

- Any existing written statement from another source which details the abuse [Yes / No]
- Oral testimony of abuse and its impact [Yes / No]
- Short written description of the abuse and its impact [Yes / No]
- Detailed written description of the abuse and its impact [Yes / No]
- Documentary evidence of impact of the abuse (from existing medical and / or psychological records) [Yes / No]
- Documentary evidence of impact of the abuse (from new medical and / or psychological assessment) [Yes / No]
- Supporting evidence of the abuse / impact from a third party. [Yes / No]

Question 17: Do you have any comments on evidence requirements for a Stage Two payment?

Question 18: Do you think applicants should be able to give oral evidence to support their application? If yes, under what circumstances might it be available?

Question 19: Do you have any views on whether the length of time in care should be factored into the Stage Two assessment? [Yes / No] If so, how?

Question 20: Do you have any views on the balance the assessment should give to different types of abuse (physical, emotional, sexual, neglect)?

Question 21: What are your views on which factors in relation to the abuse and its impact might lead to higher levels of payment?

Question 22: Do you think:

- The redress payment is primarily for the abuse suffered [Yes / No]
- The redress payment is primarily for the impact the abuse has had [Yes / No]
- Both the abuse suffered and the impact it has had should be treated equally [Yes / No]

Question 23: How do you think the scheme should ensure all parties are treated fairly and that the assessment and award process is sufficiently robust?

Key points

- ◆ Regarding the evidential requirements for a Stage Two application, there was a general view among respondents that different forms of evidence (as set out in the consultation paper) would be relevant and helpful in assessing a Stage Two application. Organisations were markedly more likely than individuals to support the use of third-party evidence (including existing or new medical and / or psychological records or any existing written statement from another source), whereas individuals were more likely

than organisations to favour the use of oral testimony or a short written description of the abuse and its impact. There was also a mix of views on whether different types of evidence should be *required* or *allowed*, or used in combination for corroborative purposes, and where the balance should be struck between sufficiency of evidence and the need to ensure that the scheme was victim-centred, flexible and empowering.

- ◆ However, there was a high level of agreement (95% and 88% for organisations and individuals respectively) that individuals should be able to give oral testimony in support of their application. Some said that giving such evidence should be a matter of choice for individuals, and could give victims / survivors a voice in the redress process, while others thought its use should be restricted to particular circumstances only, or particular types of claimants, such as those with low literacy levels or learning disabilities.
- ◆ With regard to the assessment of claims, although some respondents said all cases should be treated the same, there was greater support for cases to be assessed in a 'holistic' way, taking account of all circumstances, and a range of factors (including length of time in care and nature of the abuse). A recurring view was that the impact of the abuse and the long-term loss and harm caused should be key in determining payments, although the difficulties in assessing this were also recognised.
- ◆ The vast majority of respondents (94%) thought that both the abuse suffered and the impact it has had should be treated equally as factors in determining redress payments – these were said to be (i) both relevant, (ii) intertwined, or (iii) the same / indistinguishable.
- ◆ Respondents thought that principles such as clarity, accessibility, efficiency and effectiveness were important to ensuring fair treatment of all parties and a sufficiently robust assessment and award process. Respondents also highlighted the need to treat parties fairly and with compassion, dignity and respect; to provide appropriate support for all applicants; to have appropriately experienced and skilled scheme staff and panel members; and adequate systems for monitoring and oversight and review and appeal.

Evidence for Stage Two (Q16)

7.2 Question 16 was a closed question, inviting views about the forms of evidence that should be required for a Stage Two payment – in addition to those required for a Stage One payment. The question offered seven options, and respondents were asked to tick 'yes' or 'no' in relation to each one.

7.3 Table 7.1 shows the number of respondents who answered 'yes' to one or more of seven options presented, as a proportion of those responding to *any* of the options. Overall, the proportion answering 'yes' in relation to each type of evidence ranged from 58% to 65% of all respondents. Organisational respondents were slightly less likely than individuals to indicate that oral testimony or a short written description of the abuse should be required as part of a Stage Two application. However, they were substantially more likely than individuals to think that certain types of third-party evidence should be required (including existing or new medical and / or psychological records or any existing written statement from another source).

Table 7.1: Q16 – For Stage Two, what additional evidence of the abuse, and of its impact, should be required for the individual assessment?

Respondent type	Organisations		Individuals		Total	
	n	%	n	%	n	%
(1) Any existing written statement from another source which details the abuse	28	76%	134	61%	162	64%
(2) Oral testimony of abuse and its impact	21	57%	143	66%	164	64%
(3) Short written description of the abuse and its impact	21	57%	141	65%	162	64%
(4) Detailed written description of abuse suffered and its impact	26	70%	140	64%	166	65%
(5) Documentary evidence of impact of the abuse						
(a) Existing medical and / or psychological records	35	95%	129	59%	164	64%
(b) New medical and / or psychological records	30	81%	119	55%	149	58%
(6) Supporting evidence of the abuse / impact from a third party	27	73%	120	55%	147	58%
Base (number ticking any response at Q16)	37		218		255	

At each of these questions a small number of respondents ticked both 'yes' and 'no'. These have been excluded from both the numbers and percentages above.

Views on Stage Two evidential requirements (Q17)

7.4 Question 17 asked for any comments on the evidence requirements for a Stage Two payment. Altogether, 193 respondents (152 individuals and 41 organisations) commented. Respondents discussed a diverse range of topics – often expanding on their responses to Question 16 about whether certain types of evidence should be required as part of a Stage Two payment. The other main themes in respondents' comments were (i) the difficulties of obtaining evidence about the nature and impact of abuse, (ii) the evidential threshold for a Stage Two payment and (iii) the process of assessing evidence. Each of these is discussed below

Views on the types of evidence required for a Stage Two payment

7.5 Several recurring points were made in relation to each of the types of evidence listed in Question 16. In particular, there was a broad consensus among respondents that all of the forms of evidence listed in Question 16 would be relevant and helpful in assessing a Stage Two application. At the same time, however, respondents also thought there should be no absolute **requirement** for victims / survivors to obtain certain types of evidence; instead they should be encouraged and given the support to provide these if they wished. Alternatively, it was suggested that the type of evidence required should be decided on a case-by-case basis. Respondents were concerned that, if certain forms of evidence were required, some victims / survivors would be unable to make a claim because the evidence was not (or was no longer) available. There were also concerns about the risk of re-traumatising victims / survivors, especially if they were being asked to repeat evidence they had given elsewhere (such as at the Scottish Child Abuse Inquiry

(SCAI)). Consequently, it was suggested that the collection of certain forms of evidence (and particularly the use of oral testimonies or written descriptions of abuse and its impact) would need to be victim-centred, and handled very sensitively, with appropriate support provided.

7.6 The forms of evidence discussed most often related to the use of oral testimonies, existing medical and psychological records and supporting evidence from a third party. Specifically:

- Regarding **oral testimonies**, some respondents saw these as a preferred option for certain groups of victims / survivors (for example, those with low literacy levels who might find giving written evidence challenging). However, respondents suggested that a **requirement** to provide oral testimonies could feel (too) similar to court action and deter people from making Stage Two claims. (That said, there was also an alternative view that any oral evidence presented should be given under oath.) Occasionally, it was suggested that oral testimony should only be drawn upon if documentary evidence was unavailable, or that it might not be needed at all if such evidence had previously been presented to, for example, the SCAI or National Confidential Forum (NCF). Note that there was a common view at Question 18 that individuals should have the *option* to give oral evidence.
- There were mixed views about the use of **existing medical and psychological records** as evidence of the impact of abuse. Some respondents supported this, but there were also reservations. Some referred to the 'silencing effect' of abuse, with victims / survivors often unable to tell professionals, or indeed anyone, about their experiences in care. In this context, it was argued that there may be no documented record of the abuse. It was also suggested that, even in cases where victims / survivors had disclosed their experience and its impact, this might not always have been recorded accurately. Other views, expressed occasionally, were that: (i) existing medical and psychological records might be used to back up oral or other forms of written evidence, and (ii) medical / psychological evidence should be provided by a consultant rather than a GP.
- Regarding the use of **supporting evidence from a third party**, some respondents suggested that relatives or those close to the victim, 'other appropriate adults' and other individuals who were in care in the same institution were all possible sources of such evidence. Very occasionally, respondents queried what was meant by this type of evidence.

7.7 There was little comment in relation to the other forms of evidence listed in Question 16, and the following points were made by relatively few respondents:

- Regarding **new medical and psychological records**, there were differences of opinion about whether these were seen as potentially important sources of evidence or whether a requirement to obtain these types of records would be unhelpful and risk retraumatising victims / survivors. Other points included that (i) all applicants should be given access to an independent assessment and (ii) such evidence should only be used if existing medical or psychological records were

unavailable. Concerns about how this might be funded and the capacity of the NHS clinical psychology service to undertake assessments were also noted.

- In relation to a **short, written description of abuse and its impact**, the points were made that the definition of 'short' is unclear, and that some applicants would find this traumatic to produce.
- In relation to **detailed written descriptions** of the abuse and its impact, different respondents thought (i) such descriptions would be helpful and (ii) there should be the option for a third party to provide this on behalf of a victim / survivor. It was also suggested that a short statement of facts (i.e. who, what, when and where) should be sufficient.
- In relation to drawing on **existing written statements from another source**, there was a view that this should not be required as it would already have been given at Stage One and therefore was not essential at Stage Two.

7.8 Some respondents suggested **additional types of evidence** that might support individual Stage Two assessments, although there was little consensus about these. Suggestions included evidence submitted to the SCAI or NCF; police statements or letters and telephone calls made to the police; court records and certificates of conviction; policy documents; local authority records; evidence of past and future loss of earnings (via an employment expert) and loss of pension (via an actuary); details of treatment costs; and physical injuries and scars.

7.9 Occasionally, organisations called for care providers to be able to submit statements, or other forms of evidence, or to have the opportunity to dispute evidence presented by the applicant.

Difficulties in accessing and providing evidence

7.10 Some respondents highlighted the potential difficulties of accessing / providing evidence about the nature of abuse and its impact – suggesting (as discussed in Chapter 6) that, in some cases, evidence was unavailable because records had been lost, or had never been collected. In addition, some made the point that evidence might also be unavailable because the victim / survivor had felt unable to talk about their experience.

7.11 Occasionally, respondents also discussed (i) the difficulty of obtaining corroborating evidence through third-party statements in cases where there had been no witnesses to the abuse and (ii) the possibility of the abuse having been covered up by authorities.

Views on the evidential threshold

7.12 Organisations were more likely than individuals to comment on the evidential threshold for the Stage Two redress payment. In general, there was a view that this should be higher than at Stage One but also that a balance needs to be struck between the sufficiency of evidence and the need to ensure that the scheme remains victim-centred, flexible and empowering, and avoids further traumatisation of victims / survivors.

7.13 Some respondents suggested that more than one type of evidence should be required for reasons of corroboration. Others said that as many forms as evidence as

possible should be used, or argued that a requirement for multiple sources of evidence would help to prevent fraudulent claims. Very occasionally, respondents said that **all** the forms of evidence noted should be required.

7.14 Occasionally, respondents gave examples of evidential approaches used in other contexts, including the European Court of Human Rights for pecuniary awards ('a clear causal link between violation, abuse and impact) and non-pecuniary awards ('evident trauma'). There were also suggestions that: (i) a lower threshold of evidence should be required for applications relating to establishments already known to have failed to protect children; (ii) greater weight should be given to contemporaneous evidence of abuse (i.e. evidence created at the time of the abuse such as medical records of injuries, etc.); and (iii) a 'balance of probabilities' (rather than 'beyond reasonable doubt') approach to standards of proof might be appropriate. However, the point was also made that the use of a lower standard of proof for the redress scheme could affect the ability of organisations to seek indemnity under any existing insurance policy.

Views on the evidence assessment process

7.15 Respondents also made a range of comments about the need for the evidence gathering and assessment process to be 'fair', 'clear', 'quick', 'straightforward' and 'cost-effective'. Some advocated the use of guidelines; others simply suggested that steps should be taken to ensure the validity of claims.

Provision for oral testimony (Q18)

7.16 The consultation paper noted that in some redress schemes in other countries, oral hearings have only been used in certain circumstances – for example when a case was complex and could not be resolved based on documentary evidence or when a payment offer was rejected by the applicant. However, findings from the 2017 survivor consultation indicated that victims / survivors thought an applicant should be able to give oral testimony of abuse and its impact if they are unable to provide documentary evidence. Question 18 invited views on this issue.

7.17 Table 7.2 indicates that there was a very high level of agreement among respondents that applicants should be able to give oral evidence to support their application – overall, 89% answered 'yes', with a similar pattern of response among individuals and organisations.

Table 7.2: Q18 – Do you think applicants should be able to give oral evidence to support their application?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	10	100%	–	0%	10	100%
Other public sector organisations	4	100%	–	0%	4	100%
Current or previous care provider	8	89%	1	11%	9	100%
Third sector, including survivor groups	7	100%	–	0%	7	100%
Legal sector organisations	5	83%	1	17%	6	100%
Other organisational respondents	3	100%	–	0%	3	100%
Total organisations	37	95%	2	5%	39	100%
Individual respondents	193	88%	26	12%	219	100%
Total (organisations and individuals)	230	89%	28	11%	258	100%

Two individuals ticked both 'yes' and 'no' to this question. These responses are not included in the table above.

7.18 Respondents who answered 'yes' at Question 18 were asked to comment on the circumstances in which oral evidence might be used to support a Stage Two application. Altogether, 204 respondents (164 individuals and 40 organisations) provided comments. This includes some who answered 'no' to the closed question. The views of this latter group are presented below following a summary of respondents' comments about when oral evidence should be used to support an application.

The use of oral evidence for a Stage Two application

7.19 Respondents identified several situations in which it might be appropriate for oral testimony to be used to support an application for financial redress.

7.20 The most common two situations were (i) in cases where there might otherwise be a **lack of evidence** (for example, as a result of missing documentation, medical records or other types of documentary evidence) or (ii) in **especially complex cases**. In these kinds of cases, respondents thought oral evidence could be used either to supplement other evidence or, in some cases, as the main source of evidence. However, respondents emphasised that the use of oral evidence should be a choice and not compulsory.

7.21 Respondents generally saw oral evidence as an opportunity for victims / survivors to tell their stories, to speak out about the abuse, explain its impact, to be listened to and believed. The use of oral evidence would also enable an individual to explain why it may not have been possible to provide other sources of (documentary) evidence. The point was made that, although giving oral evidence might be traumatic for some applicants, others might prefer to speak about their experience rather than to write it down. Thus, respondents thought this option should be available to all. Some also expressed the view that oral evidence could be more effective and more powerful than written evidence.

7.22 Respondents also often suggested that oral evidence might be particularly appropriate for **certain applicants** – including those with low levels of literacy or learning disabilities – who might find it difficult to provide written statements. Occasionally, respondents suggested that, for certain applicants, there should be the option for oral evidence to be given by a relative on behalf of the applicant.

7.23 Although there was broad support for victims / survivors having the option to give oral evidence, some respondents offered an alternative view, arguing that oral evidence should *only* be used in certain circumstances, such as in cases where there is a lack of documentary evidence, where further evidence is needed, or in cases that are complex or cannot be resolved in any other way. Respondents in this group also suggested that the use of oral evidence should be avoided if possible or used primarily to supplement existing evidence. Occasionally, respondents suggested that the use of oral evidence should *only* be allowed at the review and appeal stages of an application.

7.24 As previously discussed in relation to the evidential requirements for Stage One and Stage Two applications, respondents thought some victims / survivors may need **support** to give oral evidence and to participate in the application process effectively. This could involve, for example, the use of legal representation and/or the presence of family and friends, counsellors, support workers and specialist psychologists to minimise the risk of additional harm or trauma.

7.25 Occasionally, respondents suggested that those who have already given **oral evidence in other settings** should not have to do so again and that, rather than risk further trauma, the redress scheme could use this existing evidence (e.g. statements made to the SCAI, solicitors and the police, or records of discussions with psychologists or within support group sessions).

7.26 In a few cases, respondents expressed views about how the giving (and receiving) of oral evidence might work in practice. For example, they thought that those taking oral evidence should be appropriately skilled and experienced to reduce the risk of further harm to those giving evidence. Respondents who raised this issue emphasised the need for a non-adversarial, 'victim-led', 'empathetic', 'compassionate', and 'sensitive' process. A range of other suggestions were made, including that oral evidence should be given (i) in a safe, appropriate and neutral venue, (ii) via video link or in private, (iii) to a small panel, or (iv) as a one-to-one interview. Respondents sometimes also suggested the need for evidence to be recorded and verified and / or for it to be given under oath.

Views opposed to the use of oral evidence for a Stage Two application

7.27 Table 7.2 showed that only a small minority of respondents (mostly individuals) thought that applicants should not be able to give oral evidence to support their application for redress. However, the comments made by this group suggested that some felt that oral evidence might still be appropriate in certain circumstances. For example, some indicated that this should be at the discretion of the individual, decided on a case-by-case basis, or considered where there was a lack of written evidence.

7.28 However, in general those who did not support the use of oral evidence raised concerns about the ability of individuals to give this type of evidence, its suitability as a form of evidence (given the possibility for trauma), and how the oral evidence process might be managed (for example, who would take the evidence, the need for a video link option and ensuring the separation of the victim from the abuser), and whether oral evidence from other sources (such as police statements) could be used. These views suggest that at least some of the respondents in this group thought oral evidence should not be compulsory, rather than not be allowed at all.

Stage Two assessment – length of time in care (Q19)

7.29 The consultation paper noted that Stage Two payments would require an assessment of an individual's experience of abuse and the impact this has had on them. It also noted the difficulty of assessing impact given that individuals can have very different responses to similar abusive experiences. The consultation paper stated the intention for the Stage Two assessment process to take account of – in a 'consistent, fair and transparent way' – a range of factors. The previous survivor consultation considered relevant factors to include length of time in care, type of abuse, frequency and severity of abuse, impact of abuse, and loss of opportunity resulting from abuse and its impact.

7.30 Question 19 asked respondents if they had any views on whether the length of time in care should be factored into the Stage Two assessment. This was a closed question requiring a yes / no response. As the wording of the question was somewhat ambiguous, and respondents' comments clearly indicated different interpretations of the question, the quantitative findings are not presented in table format.⁶ However, the balance of opinion (based on the responses to the closed question and the qualitative comments provided by respondents) suggested there was general support for length of time in care being factored into a Stage Two assessment.

7.31 Altogether, 191 respondents (150 individuals and 41 organisations) offered comments at Question 19. The views of those expressing support for time in care being considered as a factor in the Stage Two assessment are discussed first, followed by the views of those expressing opposition to this.

7.32 Note that respondents did not necessarily distinguish between 'length of time in care' and 'duration of abuse' when addressing this question, although occasionally they explicitly stated that they understood these two things not to be synonymous.

Support for length of time in care as a factor in a Stage Two assessment

7.33 Among those who supported time in care being factored into the Stage Two assessment, the main reason given was that there is likely to be a link between the length of time spent in care and the extent of abuse or degree of suffering that individuals were exposed to. Respondents generally thought that the longer the time spent in care, the greater the likely impact, both at the time and in the longer-term. Although impact was most often discussed in terms of the abuse experienced, respondents also highlighted the consequences of being exposed to abusive behaviour directed towards others, and the institutionalisation of those in long-term care.

7.34 Some respondents argued that the extent to which time in care was an important factor in determining the impact of abuse would depend on the circumstances of the case, and that it should not be considered in isolation but alongside the nature, type and severity

⁶ While a 'yes' response could be understood as indicating agreement with the proposition that time in care should be factored into the assessment process, respondents may also have said 'yes' simply to indicate that they had views on the issue. The comments made at Question 19 confirmed that respondents interpreted this question in these two different ways.

of abuse and injuries suffered. Occasionally, respondents suggested that the length of time in care was particularly relevant for those subjected to persistent, long-term abuse.

7.35 There was a range of views about how length of time in care might be factored into the redress scheme. Some respondents suggested, for example, that there should be no minimum time spent in care, while others proposed minimums ranging from three weeks to 18 months. There were also occasional references to the need to consider time in care cumulatively as some children moved care setting frequently and may have been in certain care services for only a short time.

Opposition to length of time in care as a factor in a Stage Two assessment

7.36 Less often, respondents thought that length of time in care should *not* be factored in. Among this group, the most common perspective was that ‘abuse is abuse’, regardless of the time spent in care, and that all survivors should be treated equally. There was also a clear view that serious abuse and harm could occur within a very short period of time. In this context, the circumstances of children who were in care in Scotland for a short time but subsequently sent into long-term care settings overseas were highlighted.

7.37 As mentioned above, respondents occasionally stated explicitly that the period in care and the duration of abuse should not be seen as the same and that, if there were to be any consideration of time, it should relate to the duration of abuse.

7.38 Among those who did not support length of time in care being factored into the Stage Two assessment, the second most common view was that the extent of the impact of abuse on an individual’s life should be seen as a more important consideration. Respondents in this group argued that abuse taking place over a short period of time could be as traumatic and detrimental to an individual as long-term abuse. Some noted that individuals with similar abuse experiences can have very different outcomes and, therefore, that the impact of abuse is the most relevant factor to any assessment.

7.39 Organisations in this group thought that, while time in care should not be a stand-alone determinant of the Stage Two payment, it could nevertheless be a useful factor to consider in certain cases (for example, in the absence of other evidence). In general, organisations thought that the severity of the abuse suffered and the impact it had on the individual should have higher priority than length of time in care when assessing a Stage Two application. The point was made that this issue should be considered in light of the scheme’s purpose of providing redress for abuse suffered, not for time spent in care.

Stage Two assessment – different types of abuse (Q20)

7.40 Question 20 was an open question asking respondents for views on the balance the assessment should give to different types of abuse (physical, emotional, sexual and neglect). A total of 235 respondents (193 individuals and 42 organisations) commented.

7.41 The most common view was that Stage Two assessments should treat all types of abuse equally. Those expressing this view did not wish to see a system in which certain types of abuse are considered ‘worthy’ of a higher payment than others. However, the alternative view was that a grading or tariff type system would be helpful and that certain

types of abuse *should* be prioritised over others. Both these perspectives are discussed below.

Views supporting all types of abuse being treated equally

7.42 By far the most common view in responses from **individuals** was that all forms of abuse should be treated equally. Again, the phrase ‘abuse is abuse’ was used frequently. This group repeatedly argued that the impact of abuse is more important, or that there is often no clear correlation between the type of abuse suffered and the level of impact. Many different types of impact were referred to including physical injuries, long-term health problems (both physical and mental), low self-esteem, relationship problems, loss of earnings, and general life challenges.

7.43 The second most common view amongst individuals was that it was difficult or impossible to disentangle different types of abuse. For example, physical and sexual abuse were seen, almost inevitably, to involve emotional abuse. A link between neglect and emotional abuse was also identified. Furthermore, some pointed out that there can be varying degrees of seriousness within each type of abuse, and that no meaningful ranking or grading of types of abuse is therefore possible.

7.44 Like individuals, **organisations** were generally reluctant to support a system of redress which prioritised one type of abuse over another. This was primarily because other factors – such as the nature and severity of the abuse, injuries suffered, time in care and extent of impact on an individual’s life (for example, on their mental health) – were seen as being of more relevance. All types of abuse were seen to cause harm and to affect individuals differently. Some organisational respondents did indicate that sexual abuse is more serious but did not explicitly say it should be given higher priority within the assessment process. In addition, there was a view that separate payments should be made for the abuse suffered and the impact it has had on an individual.

7.45 Assessing the experiences and impact of different types of abuse was seen to be difficult and some respondents argued that adopting an approach which attempted to do so (for example, through a tariff system) would risk marginalising or minimising the experiences of particular victims / survivors. Some organisations highlighted the need for highly skilled professionals to be involved in assessments if type of abuse was to be considered as a factor. Emotional abuse and neglect were seen by some as more difficult to assess than sexual and physical abuse. Some suggested that each case should be dealt with on its own merits.

Views supporting a distinction being made between different types of abuse

7.46 Support for a distinction being made between the different types of abuse in Stage Two assessment was not common, and was largely restricted to individuals, who said that the form of abuse should be considered alongside other factors, such as duration and severity of abuse.

7.47 However, amongst those who supported this distinction, sexual abuse was usually identified as the most serious (‘highest’, ‘worst’, or ‘most traumatic’) form of abuse. These respondents advocated a ranking system in which sexual abuse was placed first out of the four types. In addition, sexual abuse was seen to be the most damaging in the long-term

for individuals, creating complex psychological problems which were considered difficult to overcome even in adulthood.

7.48 Amongst individual respondents who referred specifically to emotional abuse, there were mixed views. Some argued that emotional abuse (i) should be considered the most serious form of abuse or (ii) could have the most significant long-term impact. However, others argued that it was too subjective a concept and should be given less weight than either sexual or physical abuse.

7.49 Occasionally, respondents referred specifically to physical abuse, with some highlighting the long-term trauma associated with this and others ranking it second or third out of the four types of abuse. It was also unusual for respondents to offer specific views about neglect, with those who did arguing it was too subjective, and / or should be given less weight than physical and sexual abuse or all other forms of abuse.

7.50 Some individuals indicated that they were unsure about the balance the assessment should give to different types of abuse and stated a preference for dealing with applicants on a case-by-case basis.

Factors which might lead to higher levels of payment (Q21)

7.51 Question 21 was an open question which asked for views on the factors – relating to the abuse and its impact – that might lead to higher levels of redress payments. Altogether, 210 respondents (170 individuals and 40 organisations) commented.

7.52 A minority of respondents (around a fifth) thought that all cases should be treated equally. However, it was far more common for respondents to say different factors should be taken into account in determining higher levels of payment. The main factor identified was the impact of abuse. Less often, respondents discussed other factors which they thought should be considered (such as length of time in care, length of time over which abuse occurred, severity and type of abuse). These views are discussed below. Note that there was considerable overlap between the comments made in response to Question 21 and those already reported for Questions 19 and 20 above.

Impact as a factor which might lead to higher levels of payment

7.53 There was widespread agreement among respondents that the impact of abuse should be a factor that might lead to higher levels of payment in relation to Stage Two. In some cases, respondents considered this to be the primary factor; others thought that impact should be considered alongside other factors.

7.54 Some respondents simply made general statements to say that the extent of the impact of abuse was an important, and sometimes *the* most important, consideration when looking at levels of payment. Respondents often highlighted the overall long-term, and sometimes irreparable nature of the impact of abuse which, they said, could last into adulthood. Other respondents highlighted detailed specific types of impact, including:

- Mental health, emotional or psychological damage (including depression, suicide and self-harm)
- Physical injuries and disabilities

- Difficulties with personal relationships and family life
- Restricted employment opportunities, and low earnings
- Poor social functioning (including being unable to feel part of a community or establish friendships, having a lack of life skills and impaired decision-making)
- Education and academic underachievement (as a result of disrupted education)
- Low self-esteem, self-confidence and self-respect
- Poor health (unspecified)
- Substance misuse and addiction.

7.55 Occasionally, respondents referred to impact in terms of loss, both to the individual and to the family – for example, loss of opportunity, liberty and human rights, or financial or emotional loss.

7.56 Although there was strong support for the impact of or loss resulting from abuse in care being considered in determining payment, some respondents highlighted the challenges of assessing and measuring impact. An example was given in relation to the visibility of impact – where long-term physical damage may be easier to evidence than emotional damage.

Other factors which might lead to higher levels of payment

7.57 Less often, respondents identified other factors which might lead to higher levels of payment. The points made generally reiterated those made at Questions 19 and 20, discussed above, and related to:

- Length of time over which the abuse took place: Some respondents suggested this was particularly relevant as a factor in determining payment level if the abuse was of a sustained and systematic nature.⁷
- Severity of abuse and type of abuse: Respondents again referred to the four main types of abuse (discussed at Question 20) – physical, sexual, emotional and neglect – and argued that sexual abuse was the most serious and likely to have the greatest impact, and thus should attract a higher level of payment. Occasionally, respondents said that higher payments were appropriate for those who suffered multiple forms of abuse.

7.58 Reference was made to Article 41 of the European Convention on Human Rights on ‘Just Satisfaction’ and the principles of pecuniary and non-pecuniary damage which suggest that seriousness, impact and duration of abuse would be relevant factors, along with age and any protected characteristics, and the capacity of the state to respond.⁸

7.59 Other factors mentioned occasionally were frequency of abuse; acknowledgment of abuse by the institution; whether the institution knew about the abuse at the time and failed to act to stop it; age at which the abuse began; number of care placements a child was in;

⁷ Note that, as at Question 19, some respondents referred to ‘length’ but did not specify if they were referring to the length of time in care or the duration of abuse.

⁸ The following document produced by the Council of Europe provides further information:
<https://www.coe.int/en/web/execution/article-41>

relationship between the abused and the abuser; grooming, victimisation, intimidation, etc; and level of trauma experienced before going into care.

Views on the process of considering factors for higher payments

7.60 Although asked to identify factors that might be considered for higher payment, some respondents (mainly organisations) offered additional comments on how the assessment process might work and concerns they had about this. Some suggested that it would be helpful if the Scottish Government referred to redress schemes in other jurisdictions and developed a system in line with other schemes or the court system. Very occasionally, respondents indicated that the approach suggested by the question was overly simplistic and that assessment of different factors would be very difficult; or that assessments would need to be based on evidence.

Main purpose of the payment (Q22)

7.61 Question 22 asked respondents whether they considered the redress payment to be primarily for (i) the abuse suffered, (ii) the impact the abuse has had, or (iii) both equally. The first part of the question presented the three options and asked respondents to select 'yes' or 'no' for each option. However, the design of the question meant that respondents could select 'yes' (or 'no') for more than one option. Because the question did not, therefore, require individuals to choose a single option, the percentages choosing 'yes' across the three options do not sum to 100%.

7.62 Table 7.4 shows that the vast majority of respondents (94%) thought that both the abuse suffered and the impact it has had should be treated equally as factors in determining redress payments. Although the overall pattern of responses was similar for individuals and organisations, organisations were somewhat less likely than individuals to support equal treatment of abuse and impact (86% compared with 95%), and somewhat more likely to say that the impact of the abuse should be the primary factor in determining payments (11% compared with 4%).

Table 7.4: Q22 – Do you think...

Respondent type	The redress payment is primarily for abuse suffered (Option 1)		The redress payment is primarily for impact of abuse (Option 2)		Both abuse suffered and impact should be treated equally (Option 3)		Total	
	n	%	n	%	n	%	n	%
Organisations	1	3%	4	11%	31	86%	36	100%
Individuals	2	1%	9	4%	204	95%	215	100%
Total (organisations and individuals)	3	1%	13	5%	236	94%	251	100%

Altogether, 260 respondents ticked at least one of the boxes at Question 22. Of these, five ticked only 'no' and another four ticked both 'yes' and 'no' to one or more of the options offered. These nine respondents have been excluded from the analysis shown in Table 7.4, which is based on the 251 respondents who ticked 'yes' (and only 'yes') to one or more of the three options.

Sixty-nine respondents ticked 'yes' to two or more options offered (i.e. Options 1 and 2, Options 1 and 3, Options 2 and 3, or all three options). For the purposes of this analysis, these 69 respondents have been treated as having selected Option 3 only.

7.63 Altogether, 198 respondents (158 individuals and 40 organisations) commented at Question 22. The sections below present the views of those supporting each of the options presented. A separate section looks briefly at additional points made by those who provided comments but did not indicate clear support for any of the options offered in the question.

Support for Option 3: Equal treatment of abuse suffered and impact

7.64 As shown in Table 7.4, there was a very high level of support for the option of treating abuse suffered and its impact equally (Option 3) – although whether this was ‘equally’ in terms of process or financial outcome is not entirely clear. Among those selecting this option, there was a general view that both abuse and impact were relevant and important to the redress process, with both causing suffering and affecting victims / survivors in significant ways. Individuals in particular often said that abuse and impact were inherently interlinked (with abuse inevitably impacting on individuals, and impacts only occurring because of the original abuse); some also said that abuse and impact were the same, or said it was not possible to draw a distinction between them.

7.65 Although the selection of Option 3 indicated that respondents thought that abuse suffered and impact should be treated equally, comments tended to focus on the treatment of impact. Respondents, particularly individuals, highlighted the very wide-ranging, long-lasting and severe nature of the impact of abuse (with some describing their own experiences) and called for a redress system that recognised the very individual nature of abuse and its impact. Across the comments, respondents stressed the importance of treating victims / survivors as individuals; recognising that all cases and experiences are different, and that the impact of abuse can manifest itself differently in different people; and of the redress process taking account of the full circumstances of each case. However, the challenge of assessing impact, and the role of ‘evidence’ in that was raised by some respondents.

7.66 In a few cases, individuals said that all victims / survivors should be treated equally, or the same.

7.67 Occasionally, respondents offered slightly different types of comments. Some organisations stated that they selected Option 3 because they understood that the purpose of the proposed two-stage process was to recognise *both* abuse (Stage One) and impact (Stage Two), while some individuals talked more generally about the ‘purpose’ of the redress scheme (as covered in Question 1 – see Chapter 3).

Support for Options 1 and 2: Differential treatment of abuse and impact

7.68 As indicated in Table 7.4, there was very limited support for either Options 1 or 2. Those selecting Option 1 thought it would be too complicated to assess impact, or that all victims should be treated the same, regardless of impact. Those selecting Option 2 said that both elements were important but emphasised the life-long and far-reaching nature of the impact of abuse. Additionally, some organisations selecting Option 2 referred to the proposed two-stage payment system. They saw Stage One as providing redress for abuse suffered and Stage Two as providing redress for the impact of that abuse. As they

interpreted Question 22 to be asking about the purpose of Stage Two payments, they selected Option 2.

Views of those who did not select an option

7.69 A few of those providing comments did not complete the closed part of the question or only ticked 'no' at one or more the options. These respondents did not generally offer additional substantive points about the relative balance between redress for abuse suffered and redress for the impact of that abuse. In some cases, however, they noted the difficulty of assessing impact, and expressed concern about how payments linked to impact might be perceived by survivors receiving different awards. The point was also made that, whilst it was important to take account of both the abuse suffered and the impact of that abuse, it was not appropriate for these two broad concepts to form the basis of a payment system. Instead it was suggested that redress payments should be based on damages linked to specific impacts directly attributed to the abuse in individual cases (reflecting both the Van Boven principles in international human rights law⁹ and European Court case law).

How to ensure fairness in assessment and award processes (Q23)

7.70 Question 23 asked for views on how the scheme should ensure fair treatment of all parties and a sufficiently robust assessment and award process. This was a single-part open question (i.e. there was no initial tick-box for respondents to complete). Altogether, 204 respondents (161 individuals and 43 organisations) answered this question. However, more than a tenth of the individuals who responded did not offer any substantive comment, saying that they did not know, were not sure, did not feel qualified to comment or did not understand the question. Such responses are not considered further in the analysis below.

Ensuring a fair and robust scheme

7.71 Those respondents who did offer substantive comments expressed a range of views on how the scheme might ensure fairness and robustness, with the following main themes identified: general principles, the treatment of parties, monitoring and oversight, staffing and panel membership, and appeal procedures, as discussed below. Respondents also offered more procedural comments, and these are presented in a separate section.

- **General principles:** There was a wide range of calls for the scheme to be clear, open, transparent, thorough, independent and consistent in its approach and operation, and to be accessible to all, including those with special needs. Respondents emphasised the importance of geographic accessibility as well as accessibility of scheme rules, proceedings, documentation and materials. Comments often reflected aspects of the proposed 'guiding principles' for the scheme as set out in the consultation paper (Part 1.1), and sometimes made direct reference to these. One organisational respondent called for a 'rights-based approach' to be adopted.

⁹ Office of the High Commissioner for Human Rights (2005) *Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*. UN General Assembly resolution 60/147, 16 December 2005. See <https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx>

- **Treatment of parties:** Respondents were keen that applicants were treated fairly (or equally), compassionately and with dignity and respect. Some stressed the importance of victims / survivors being listened to, being treated as individuals, and being assisted and supported throughout the claim process. Case communication was also seen as important, with some stressing the need for clear information to be provided on the reasons for the final claim outcome. Some noted that *all* parties should be treated fairly and given the opportunity to be heard.
- **Staffing and panel membership:** Respondents noted the importance of ensuring that all those involved in the operation of the scheme had appropriate experience, knowledge and skills (both professional and interpersonal) and were trained to deal with victims / survivors and their claims in a sensitive, supportive, impartial and non-judgemental way. Respondents also wished to see adequate resourcing and appropriate guidance, supervision, and team-working to assist in achieving consistency of approach across the work of the scheme. The importance of having panel members from different disciplines and backgrounds was noted.
- **Monitoring and oversight:** There were various calls for both internal and external monitoring and oversight of scheme operations. Respondents wished to see internal oversight and challenge, as well as external scrutiny and inspection. There was a range of suggestions for independent review bodies or reference panels which could undertake activities such as regular monitoring of activities, auditing of cases, or gathering participant feedback.
- **Appeal / review procedures:** Respondents, organisations in particular, said it was important for the scheme to have an appeal or review process for survivors dissatisfied with the assessment and award made in their case, or for those implicated in cases. A complaints procedure was also mentioned.

7.72 The importance of involving survivors in the design, running and ongoing monitoring and review of the scheme was also noted.

Procedural issues

7.73 As noted above, it was common for respondents to give views on specific aspects of scheme procedures in their answers to Question 23. More than a third of individuals made comments of this type (in most cases *only* making comments of this type). These comments related to issues such as evidential requirements, the factors to be considered in assessing claims and the relative weight to be given to different types of abuse, the extent of abuse suffered and the impact of that abuse. Comments indicated that respondents saw the treatment of these issues as important to the fairness and robustness of the scheme. The points raised are described briefly below, but respondent views are addressed more fully in relation to other consultation questions.

7.74 The main themes in comments from **individuals** included the following:

- There was a range of views on **evidential requirements**, with some arguing for limited or basic evidence requirements and no scrutiny, and others calling for the use of interviews, expert testimony and corroboration.

- In terms of **assessment of claims**, most individuals argued for an approach which took full account of all circumstances, the extent of suffering and any ongoing impact, although a few called for all cases or individuals to be treated 'equally' or 'the same'. There was also some concern that the assessment process should not disadvantage those who had kept their experiences to themselves or treat some types of abuse as more serious than others.
- On **payments**, some individuals argued for fixed standard payments for all, while others endorsed the use of a two-stage process, or expressed support for case-by-case assessment or varying forms of graded payment systems – including tariff systems – which would take account of all aspects of abuse and its impact.

7.75 **Organisations** touched on similar issues but were more likely to call for:

- The process to be fair to all parties
- Appropriate evidential requirements for claimants and the opportunity for evaluation, scrutiny and response or challenge for implicated institutions and other agencies
- Clarity on payments, including via a tariff system.

7.76 Organisations representing the local authority sector raised the implications (financial, legal and insurance related) for local authorities and called for these to be considered in the development of the scheme.

7.77 Other points, raised by one or two respondents only, related to issues such as case management, timeframes for processing claims and the treatment of other payments.

Other comments

7.78 In a few cases **individuals** did not offer their own views at Question 23 but said that ensuring fairness and robustness was a matter for others – for professionals, experts, the Scottish Government and other agencies – or that it was not possible to comment without knowing more about the proposed scheme. Occasionally, individuals indicated satisfaction with or confidence in the way the scheme was being developed.

7.79 **Organisations** also sometimes said it was hard to comment without knowing the detail of how the scheme would operate, or that ensuring robustness and fairness should be a role for the body charged with setting up the scheme.

7.80 Finally, some respondents, organisations in particular, suggested that existing schemes and systems could provide pointers on ensuring fairness and robustness, with reference made to the SCAI, the already operational Advance Payment Scheme, current practice and recent reforms in the court procedures, other redress / compensation schemes and approaches in this and other fields (including the Criminal Injuries Compensation Authority, Lambeth redress scheme, the UK mesothelioma compensation scheme, and European Court of Human Rights case law).

8. Consideration of other payments (Q24–Q26)

8.1 The consultation paper noted the intention to allow those who have received a payment from another source in respect of their abuse to remain eligible to apply to the redress scheme, with prior amounts received being deducted from any redress payment made. It noted that consideration would need to be given to how any such adjustments would be made. Two questions were asked in relation to this – one relating to eligibility to apply for redress and the other to the consideration given to previous payments when assessing the amount of a redress payment.

8.2 The consultation paper also noted the Scottish Government’s proposal that applicants will have to choose between accepting a payment through the redress scheme or pursuing a case through the civil courts, as is the case in many other countries. It is anticipated that individuals would be informed of their redress payment and then, after receiving legal advice about whether or not to accept this, decide which option to pursue. If a redress payment were to be accepted, individuals would be required to sign a waiver, giving up their right to pursue civil court action in relation to their abuse.

8.3 It is important to note that there was a significant degree of crossover between the questions – for example, with respondents to Question 24 about eligibility making comments about the need to consider previous payments (addressed at Question 25).

Question 24: Do you agree that anyone who has received a payment from another source for the abuse they suffered in care in Scotland should still be eligible to apply to the redress scheme? [Yes / No] Please explain your answer.

Question 25: Do you agree that any previous payments received by an applicant should be taken into account in assessing the amount of the redress payment from this scheme? [Yes / No] Please explain your answer.

Question 26: Do you agree applicants should choose between accepting a redress payment or pursuing a civil court action? [Yes / No] Please explain your answer.

Key points

- ◆ Three-quarters of all respondents (75%) agreed that anyone who has received a payment from another source should still be eligible to apply to the redress scheme. Respondents commonly said the scheme should be open to all, and that this was the fairest or best approach, although some thought eligibility might be restricted in some circumstances. Some also said court action and the redress scheme served different purposes. Respondents who did not think that people who had already received a payment should be able to make a redress claim either thought that acknowledgement and redress had already been achieved in such cases, or expressed concerns about double payments for abuse suffered.
- ◆ Just over half of respondents (54%) agreed that previous payments should be taken into account in assessing redress payments, although organisations were markedly more likely than individuals to think this (86% v 49%). Respondents said this approach

would be fair, and would deal with the issue of double payments. Those who disagreed with this approach said that individuals should not be penalised for having pursued another source of compensation or justice, and should be able to claim as much as possible. However, some said that the account taken of previous payment should be decided on a case-by-case basis.

- ◆ Most respondents (57%) agreed that applicants should choose between a redress payment or civil court action, with similar levels of agreement between individuals and organisations. However, there was considerable variation by organisational type – for example, while all local authorities / public sector partnerships agreed, all third sector respondents disagreed. It was also unclear whether individuals had always understood and answered the question in the same way.
- ◆ Some respondents who thought that claimants should have to choose were concerned about double payments, which they thought should be avoided as a matter of legal principle and so that responsible bodies would not be penalised twice.
- ◆ Those who indicated that applicants should be able to pursue both options referred to the different (and potentially complementary) features and purposes of redress and court action. Some also pointed out that the system should and could be designed to take account of double payments.
- ◆ However, it was also common for respondents to stress (i) the importance of personal choice on this matter, and (ii) the importance of good quality legal advice to assist claimants in making a decision about accepting a redress payment.

Consideration of other payments in relation to eligibility (Q24)

8.4 Question 24 asked respondents if they agreed that anyone who has received a payment from another source for abuse suffered in care in Scotland should still be eligible to apply to the redress scheme. As Table 8.1 shows, around three-quarters of both organisations (76%) and individuals (75%) answered ‘yes’.

Table 8.1: Q24 – Do you agree that anyone who has received a payment from another source for the abuse they suffered in care in Scotland should still be eligible to apply to the redress scheme?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	6	55%	5	45%	11	100%
Other public sector organisations	3	100%	–	0%	3	100%
Current or previous care provider	7	70%	3	30%	10	100%
Third sector, including survivor groups	6	100%	–	0%	6	100%
Legal sector organisations	5	100%	–	0%	5	100%
Other organisational respondents	1	50%	1	50%	2	100%
Total organisations	28	76%	9	24%	37	100%
Individual respondents	155	75%	53	25%	208	100%
Total (organisations and individuals)	183	75%	62	25%	245	100%

Two individuals ticked ‘yes’ and ‘no’ in response to this question. These responses are not included in the table above.

8.5 Altogether, 202 respondents (163 individuals and 39 organisations) provided additional comment at Question 24. The responses included a large number of disparate comments about the Stage Two Payment process. These are not covered in the sections below, but have been addressed elsewhere in the report.

Support for applicants who have received a payment from another source being eligible to apply to the redress scheme

8.6 Among those who believed that anyone who has received a payment from another source for abuse suffered in care *should* still be eligible to apply to the redress scheme, the most common type of response was simply to say that the redress scheme should be open to all. Some characterised this as the ‘fairest’ or ‘best’ approach. Occasionally, respondents emphasised the distinction between eligibility to apply and eligibility for payment.

8.7 However, some qualified their response, saying that continuing eligibility should be ‘conditional’, although they did not always say exactly on what this should depend. Among those who did, the most common view was that the amount of the previous payment should determine whether or not individuals should be able to apply for a Stage Two payment. Other respondents argued that eligibility should depend on the claim being for a different matter or against a different institution, or the previous payment being for a low amount – or it should depend on the basis on which the payment was made and the source of payment. There was also a suggestion that migrant children who have been compensated by other bodies should be excluded. An absolute bar to eligibility based on previous payments was seen by some, including most of the legal sector respondents, to be unfair and to go against the interests of justice.

8.8 Another common theme in comments from those who believed that previous payments should not render individuals ineligible for the redress scheme related to perceptions of the purpose of redress. Respondents often saw civil court action and the redress scheme as serving different purposes, although they did not always agree on what these were. Some simply referred to a difference in purpose, while others tried to explain their perceptions of the difference. For example, there was a view that the redress scheme representing the state’s acknowledgment of harm and failure within the care system, whilst the court system offered a means of holding institutions, and individuals, to account and of securing justice for personal abuse suffered. Some saw the purpose of the redress scheme more broadly – for example, as a way to address human rights abuses and to compensate for wider abuse or neglect experienced during time in care.

8.9 Among those agreeing with the proposed eligibility at Question 24, a large group (including most local authority respondents) nevertheless thought there should be a link between payments from different sources (an issue asked about specifically at Question 25) – with, for example, previous payments being deducted from any award made through the redress system. Respondents only very occasionally stated explicitly that all other awards should be disregarded, with no deductions being made from a redress payment.

Opposition to applicants who have received a payment from another source being eligible to apply to the redress scheme

8.10 There were two main themes evident in the comments from the minority of respondents who believed that anyone who has received a payment from another source should *not* be eligible to apply to the redress scheme. First, some suggested that previous payments are an indication that redress for abuse in care has already been achieved, that the individual's experience has been acknowledged, and that the case is now closed. Second, there was a view that individuals should not be allowed to receive double payments for the abuse suffered. While some did not elaborate on their reasons for this, others suggested that double payments would be unfair and / or go against the principle of compensation and the purpose of the redress scheme (see again paragraph 8.8). There were occasional concerns about the expense of double payments, including the cost to the public purse and the impact this would have on taxpayers.

8.11 In other cases, respondents made comments that simply reiterated their view that individuals who have already received payment should not be eligible for the redress scheme, or they qualified their response – for example, suggesting that individuals should not be able to apply if the amount received through civil action was substantial, if the previous action was for the same incident, or if individuals have already been treated fairly.

Consideration of other payments in relation to payment amount (Q25)

8.12 Question 25 asked respondents they if agreed that previous payments received by an applicant should be taken into account in assessing the **amount** of the payment from the redress scheme. Table 8.2 shows that just over half (54%) of those responding to Question 25 answered 'yes'. However, there were marked differences in the views expressed by organisations (86% agreed) and individuals (49% agreed).

Table 8.2: Q25 – Do you agree that any previous payments received by an applicant should be taken into account in assessing the amount of the redress payment from this scheme?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	11	100%	–	0%	11	100%
Other public sector organisations	2	67%	1	33%	3	100%
Current or previous care providers	8	89%	1	11%	9	100%
Third sector, including survivor groups	3	50%	3	50%	6	100%
Legal sector organisations	6	100%	–	0%	6	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	32	86%	5	14%	37	100%
Individual respondents	102	49%	107	51%	209	100%
Total (organisations and individuals)	134	54%	112	46%	246	100%

Three individuals ticked both 'yes' and 'no' in response to this question. These responses are not included in the table above.

8.13 A total of 182 respondents (144 individuals and 38 organisations) provided additional comment. This included some who did not provide a clear answer, with their comments suggesting that, for most, this was because they were unsure of their views.

Support for previous payments being taken into account

8.14 Among the majority of respondents who agreed that any previous payments received by an applicant should be taken into account in assessing the amount of the redress payment, three main interlinked themes were evident (mentioned by roughly equal numbers of respondents). These related to principles of fairness and equality, concern about double payments, and views about how any previous payment might be taken into account.

8.15 First, respondents often argued that taking previous payments into account was the only way to ensure fairness and equality. In some cases, respondents simply offered brief comments such as 'would be fair', 'level playing field', 'it's fair and just', and did not elaborate on why they thought this to be the case. Some also explicitly stated that no victim / survivor should be able to get more than another or thought that it would not be fair to those who had not been through the court system or could not go through it (for example, individuals with pre-1964 cases who cannot access other forms of redress, or those finding court action too distressing).

8.16 Second, respondents commonly expressed a view that the redress scheme should avoid double payments. Some discussed the need to avoid double payments in terms of the purpose of the scheme, mentioning the need to deter claims based on greed, financial gain and opportunism, while others argued that the scheme should be based on compensatory principles, similar to those used in the insurance sector and by the Criminal Injuries Compensation Authority. Others simply indicated that it was wrong to be paid twice for the same matter.

8.17 Third, respondents commented on **how** previous payments should be taken into account, with most referring to the need to deduct any previous payments from the redress amount and some referring to 'topping-up' court awards to the level of a redress payment or not getting a redress payment at all if the court award is at a higher level. It was also suggested that any deductions should not be higher than the sum actually received by the individual (e.g. after payment of any representatives' fees, if applicable).

8.18 Among those who agreed that previous payments should be taken into account, some suggested that this should be dependent on specific factors (including the amount received, what the payment was for, or the type of payment) or should be reviewed on a case-by-case basis. Occasionally, respondents argued that Advance Payments were the only type of previous payments that should be considered.

Opposition to previous payments being taken into account

8.19 Among the minority who disagreed that any previous payments received should be taken into consideration in assessing the amount of redress payments, some respondents simply made a general statement to this effect without providing further details. However, others (again) said that it should depend on specific factors (such as the level of payment,

what it was for and who it was from) and / or that applications should be considered on a case-by-case basis.

8.20 This group commonly argued that individuals should not be penalised for having pursued another source of compensation or justice. In this context, it was pointed out that redress had not been an option in the past; that the Scottish Child Abuse Inquiry took a long time to be set up so people chose alternative routes to justice; and that previous payments were often made a long time ago, at a relatively low level with little benefit to the individual, and did not always relate to all the abuse suffered (e.g. if a child had been in care in different settings).

8.21 As at Question 24, some respondents proposed that previous payments should not be taken into account because of the perceived difference in purpose of the redress scheme and civil court action.

8.22 Some also expressed the view that, as no redress scheme or other financial award can ever fully compensate for abuse suffered and its long-term impact, individuals should be entitled to claim as much as possible.

Choosing between a redress payment and court action (Q26)

8.23 Question 26 asked respondents if they agreed that applicants should choose between accepting a redress payment or pursuing a civil court action. Table 8.3 shows that most respondents (57%) answered 'yes'. There were similar levels of agreement between individuals and organisations (56% and 60% respectively) but considerable variation by organisational type – for example, all local authorities / public sector partnerships agreed, but all third sector respondents disagreed. Note that the overall proportion of respondents agreeing that applicants should choose between accepting a redress payment or pursuing a civil court action (57%) was similar to the proportion agreeing that any previous payments should be taken into account when making a redress payment (see Question 25).

Table 8.3: Q26 – Do you agree applicants should choose between accepting a redress payment or pursuing a civil court action?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	12	100%	–	0%	12	100%
Other public sector organisations	1	33%	2	67%	3	100%
Current or previous care providers	7	88%	1	13%	8	100%
Third sector, including survivor groups	–	0%	7	100%	7	100%
Legal sector organisations	1	14%	6	86%	7	100%
Other organisational respondents	3	100%	–	0%	3	100%
Total organisations	24	60%	16	40%	40	100%
Individual respondents	114	56%	88	44%	202	100%
Total (organisations and individuals)	138	57%	104	43%	242	100%

Three individuals ticked both 'yes' and 'no' in response to this question. These responses are not included in the table above.

8.24 A total of 195 respondents (155 individuals and 40 organisations) provided further comments. These often suggested that this question may not always have been interpreted as intended. For example, only around two-fifths of those who ticked 'yes' at Question 26 made comments suggesting that applicants should **have to choose** between accepting a financial redress payment and pursuing civil action. Others who ticked 'yes' made comments indicating support for the **right to choose** between the two options including, potentially, the right to choose both. There was greater clarity among those who said applicants should *not* have to choose, with around three-quarters commenting in a way that made it clear that they believed applicants should be able to pursue both options. These comments suggest that the figures shown in Table 8.3 should be treated with caution.

Support for applicants having to choose between accepting a redress payment and pursuing civil action

8.25 Respondents offered a range of comments on why applicants should have to choose between accepting a redress payment and civil court action.

8.26 Some respondents thought such a choice was necessary to avoid the possibility of **double payments**. In this context, some respondents made specific references to the purpose of redress (i.e. it is for an apology rather than financial gain) or the legal principle of prohibiting double payments. Some organisations opposed double payments on the specific basis that responsible bodies should not have to pay twice rather than concern about individuals receiving additional payments. It was common for local authority respondents, in particular, to express concerns about double payments.

8.27 Some respondents also commented on how the process should work. For example, some respondents emphasised that while they agreed a choice should be made, there was a need to ensure good quality legal advice about whether to accept or reject a redress payment in favour of civil court action (taking into account, for example, payment levels and the impact of the court process). The potential exploitation of individuals was also noted, along with anecdotal evidence of legal firms encouraging survivors to make claims on a 'no win, no fee' basis. (See also Questions 29 and 30.)

8.28 However, as noted above, respondents who ticked 'yes' at the closed question frequently discussed why respondents should **have a choice** of pursuing a redress payment or court action (including being able to choose to do both).

8.29 Some respondents highlighted the perceived **unsuitability of court action for some individuals and case types**. For example, concerns were expressed that civil court action would not be available to individuals with pre-1964 cases or might be inappropriate for some older individuals for reasons of health or the length of time cases can take to conclude. Respondents also highlighted cases where the institution no longer exists, or where insurance cover is not available to pay any resulting award. Occasionally, respondents also suggested that court action was unsuitable for some applicants, for example because of uncertainty about the process and outcome, the adversarial nature of court action, the significant costs involved, the public nature of a trial and the risk of further harm to victims / survivors. Redress was, therefore, seen as a potentially quicker and simpler option than court action, and as having a lower evidence threshold and higher

chance of success. (Note that these points were also raised by those who supported applicants being able to receive a redress payment *and* pursue a civil court action.)

Support for applicants being able to receive a redress payment *and* pursue a civil court action

8.30 Among those who supported applicants being able to receive a redress payment *and* pursue a civil court action, some simply made general statements about the **importance of individual choice** and of being able to pursue both options. Others commented on the perceived **advantages and disadvantages** of the different courses of action. (As such, there were similarities with some of the comments reported at paragraph 8.29 from those suggesting that applicants should be able to choose which option to pursue.)

8.31 With regard to the redress scheme, in particular, occasional concerns were raised. These related to individuals receiving lower levels of payment (relative to court action); the risk of it being used to reduce the overall cost of compensating victims / survivors for abuse suffered in care; and the scope for institutions responsible for abuse being able to hide behind the scheme. However, there was little commonality in such views.

8.32 Another theme in the comments (particularly in those from individuals and third sector organisations) about why applicants should not have to choose between a redress payment and pursuing court action – and potentially be able to pursue both – was the **perceived difference in purpose** of the two courses of action. The redress payment was seen as the state's way of acknowledging, and apologising for, harm caused and the failure of the system. Civil court action was seen to be about establishing guilt, holding individual organisations and perpetrators to account and ensuring justice for individual survivors. Some respondents commented that applicants may want to pursue civil court action, in addition to an application to the redress scheme, to ensure that justice is met or to air the matter in a public forum.

8.33 A number of other points were made on a less frequent basis. Some, especially legal and third sector respondents, suggested that allowing both options to be pursued was fundamental both to the principles of justice and to the aims of the redress scheme and the wider support the Scottish Government is providing for victims / survivors. The redress scheme was seen as a way of widening choice and access to justice and empowering individuals and this would only remain the case if individuals also had the choice to pursue court action as well as a redress payment. Forcing survivors to make a choice between courses of action was variously seen as: potentially limiting individual rights and access to justice, discouraging civil action, preventing individuals from getting damages they are entitled to, and as generally unfair and at odds with the Scottish Government's approach to supporting victims / survivors.

8.34 Some respondents suggested that, although individuals should be free to pursue both a redress claim and civil court action, awards should not be granted independently of each other. Consideration of other payments would need to be included in the assessment of the redress payment, with a system of deducting payments to ensure double payments are avoided. Similarly, some respondents suggested that claimants should have to discontinue any civil proceedings if they accepted a redress payment. Respondents only

very occasionally stated explicitly that there should be no deductions from payments, and that applicants should be able to receive full payment from both sources.

8.35 Some legal and third sector respondents recognised concerns about double payments but suggested that the system could take account of different payments – for example, through a reimbursement system. This was highlighted as a well-established legal principle that should be applied in the operation of this scheme.

8.36 Occasionally, respondents (mainly from the legal sector) highlighted the need to ensure that applicants have access to effective legal advice before making any decision about taking any course of action. In the event of a waiver being included as part of the redress process, respondents raised concerns about the quality of advice that might be provided, the risk of non-specialists advising victims / survivors to waive potentially substantial damages and the potential for increased professional negligence claims. Furthermore, concerns were raised that the advice given at a particular point in time, on the basis of the available evidence, might be to accept the redress payment. However, further evidence relating to a case might emerge over time, after the waiver had been signed, which would make a civil claim viable. Questions were also raised about how those who had already pursued court action, and signed waivers – prior to the redress scheme – would be dealt with.

9. Making an application (Q27–Q30)

9.1 Part 1.4 of the consultation paper focused on the process of making an application for a redress payment, looking specifically at the period for which the scheme would be open for applications; assistance for survivors in obtaining documentary records; and the need for independent legal advice. There were four questions seeking views on options and proposals relating to these issues, as follows:

Question 27: We are proposing that the redress scheme will be open for applications for a period of five years. Do you agree this is a reasonable timescale? [Yes / No] Please explain your answer.

Question 28: Should provision be made by the redress scheme administrators to assist survivors obtain documentary records required for the application process? [Yes / No] Please explain your answer.

Question 29: In your view, which parts of the redress process might require independent legal advice? Please tick all that apply.

- In making the decision to apply
- During the application process
- At the point of accepting a redress payment and signing a waiver

Question 30: How do you think the costs of independent legal advice could best be managed?

Key points

- ◆ Four-fifths of respondents (79%) agreed the redress scheme should be open for five years, with individuals somewhat more likely than organisations to agree with this. Most often, respondents said that this time period was sufficient to allow individuals to learn about the scheme and submit a claim (with the caveat that the scheme was adequately promoted). Some also said that five years would be helpful to victims / survivors in bringing ‘closure’ within a reasonable time period, and to care providers and other relevant bodies in giving ‘certainty’ with regard to potential future liabilities. Those who disagreed thought the five-year period risked excluding eligible people and said that a longer (or open-ended) scheme would better meet the needs of victims / survivors.
- ◆ There was strong support among both individuals (97%) and organisations (93%) for the scheme administrators to make provision to assist victims / survivors to obtain documentary records. Respondents thought this was important because of the challenges – emotional, practical, and resource and capacity-related – this task would present for victims / survivors. However, some said the application process should be simple enough not to need assistance, and others had concerns about the cost and time implications of providing assistance. There was a mix of views on whether assistance should be provided by the scheme itself or by a separate third party, and the type and extent of any assistance that should be offered.
- ◆ In terms of the need for independent legal advice, nine-tenths of respondents (90%) thought this might be required at the point of accepting a redress payment and signing a waiver; while around a third thought that it might be required in making the decision to apply to the scheme (36%) and during the application process (32%). Organisations

were more likely than individuals to think that such advice might be needed at different stages of the redress process. Respondents said that it was important that victims / survivors understood the implications of different actions at different stages, in what would be a potentially daunting process.

- ◆ There was support for various permutations of both set fees and capped fees, with a range of other possible ways of managing fees also mentioned (e.g. the establishment of a 'approved list' of lawyers, the use of in-house legal advisers). There was a mix of views on how legal advice should be funded (by the public purse, by care providers, by the redress scheme) and, although respondents mainly thought that legal advice should be provided to victims / survivors at no cost, there were also a number of suggestions as to how they might pay for or make a contribution to such costs.

Time period for making an application to the redress scheme (Q27)

9.2 Question 27 addressed the time period for which the redress scheme would be open for applications. The Scottish Government proposed that the scheme be open for five years and the consultation paper invited views on this.

9.3 Table 9.1 shows that around four-fifths of all respondents (79%) agreed with the proposed time period, with individuals somewhat more likely than organisations to agree (81% vs 68% respectively). Third sector organisations were the only type of respondent to indicate majority disagreement with the proposal (6 out of 8 disagreed).

Table 9.1: Q27 – We are proposing that the redress scheme will be open for applications for a period of five years. Do you agree this is a reasonable timescale?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	11	85%	2	15%	13	100%
Other public sector organisations	3	100%	–	0%	3	100%
Current or previous care providers	7	88%	1	13%	8	100%
Third sector, including survivor groups	2	25%	6	75%	8	100%
Legal sector organisations	3	50%	3	50%	6	100%
Other organisational respondents	2	67%	1	33%	3	100%
Total organisations	28	68%	13	32%	41	100%
Individual respondents	171	81%	40	19%	211	100%
Total (organisations and individuals)	199	79%	53	21%	252	100%

Two individuals ticked both 'yes' and 'no' to this question and one individual wrote 'unsure' on their questionnaire. These responses are not included in the table above.

Percentages may not total 100% due to rounding.

9.4 Altogether, 178 respondents (137 individuals and 41 organisations) made comments at Question 27 explaining their views or offering other comments on the period the redress scheme should be open for applications. The sections below present the comments of those who agreed with the timescale and those who disagreed. Those who did not give a clear indication of support for or opposition to the five-year period, or who offered mixed views, raised similar points to other respondents and their comments are not, therefore, discussed separately.

9.5 Note that it appeared that some respondents (especially individuals) may not have fully understood the proposal, with their comments suggesting they thought the five-year period referred to a ‘time bar’ (i.e. a maximum time elapsed since the abuse occurred for a claim to be valid) or the time it would take for applications to be processed and payments made. Among organisations, there was also a suggestion that it was important to distinguish between the period for *making* applications and the period for *processing* applications. This possible misunderstanding was apparent in the comments of both those who answered ‘yes’ and ‘no’ to Question 27.

Agreement that the scheme should be open for five years

9.6 Respondents who answered ‘yes’ at Question 27 often described the proposal as ‘adequate’, ‘sufficient’, ‘reasonable’, or ‘appropriate’ without explaining their views further. In a few cases, respondents (individuals in particular) described the proposed time period as ‘more than enough’, ‘very generous’ or ‘plenty’. Those who gave fuller comments offered two main views:

- Most commonly, respondents said that a five-year time period was sufficient to allow victims to learn about the scheme, gather the required information and submit an application. In offering this view, some recognised that there could be barriers for victims in submitting an application – both emotional and practical – but thought the proposed five-year period was sufficient to allow for that.
- Less often, respondents suggested that the five-year time period would be helpful to victims in bringing ‘closure’ within a reasonable time period, and to care providers and other relevant institutions in providing ‘certainty’ with regard to potential future liabilities. This latter point was raised by organisations in particular.

9.7 Respondents nevertheless offered a number of different caveats and qualifications to their support for the five-year time period. The two most common points, usually put forward by organisations, were as follows:

- The scheme would need to be actively promoted, with appropriate support provided to potential applicants, to ensure those eligible were aware of the opportunity for redress and able to make an application before the deadline. In this regard, there was a suggestion that applications should be allowed within five years of an individual learning about the scheme. (Note, however, that there was also a view that current publicity around historical child abuse means that awareness of a possible redress scheme is already high.)
- Provision should be made to review the time period and extend it if necessary or, alternatively, to allow flexibility beyond the official closing date on a discretionary basis.

9.8 Very occasionally, respondents suggested that (i) other (non-financial) redress measures should continue beyond this point, (ii) consideration would need to be given to the handling of complex or difficult cases within the time period (possibly suggesting that some respondents thought that cases would have to be completed rather than simply

initiated within the five year period), and (iii) once submitted, applications should be processed quickly and efficiently.

Disagreement that the scheme should be open for five years

9.9 With few exceptions, those who disagreed at Question 27 thought that five years was **too short** a period for the scheme to be open. In some cases, respondents simply said that five years was not long enough or that the scheme should be open-ended, but did not explain their views further.

9.10 Others suggested that the proposed time period did not take sufficient account of the experience and needs of abuse victims. They referred to the time it can take to come to terms with being a victim of abuse, and the courage and confidence needed to initiate a claim. The practicalities of ensuring that potential claimants, wherever they lived, were aware of the scheme was also cited as an issue. Some respondents also referred to the time it might take for victims to gather the necessary evidence to support a claim. Overall, these respondents thought the five-year period was inadequate and risked excluding eligible victims – some said that any deadline for applications was ‘wrong’ in principle (particularly as the 2017 Act had removed the normal three-year time bar for those seeking legal redress for childhood abuse) and would undermine the integrity of the scheme, or could lead to those who missed the deadline pursuing claims through the courts.

9.11 Although some suggested specific alternative time periods for the scheme to be open for applications (e.g. five to ten years, ten years), it was more common for respondents to call for an open-ended or permanent scheme.

9.12 Very occasionally, respondents thought the five-year time period was **too long**, although comments suggested that, in some cases, this was linked to a misunderstanding about the nature or purpose of the time limit. One organisational respondent suggested that three years would be more in line with the standard time bar period in damages cases.

Assistance obtaining documentary records (Q28)

9.13 The consultation paper noted that the 2017 survivor consultation had highlighted that people may need different types of help during the application process – including practical help in completing the application form or obtaining records. Question 28 asked respondents if the redress scheme administrators should make provision to assist survivors to obtain documentary records for the application process. The consultation paper did not, however, expand on the type of assistance that might be provided or how it might be delivered.

9.14 Table 9.2 shows that there was strong support for this suggestion, among both among organisations (93%) and individuals (97%).

Table 9.2: Q28 – Should provision be made by the redress scheme administrators to assist survivors obtain documentary records required for the application process?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	13	100%	–	0%	13	100%
Other public sector organisations	4	100%	–	0%	4	100%
Current or previous care providers	7	78%	2	22%	9	100%
Third sector, including survivor groups	8	89%	1	11%	9	100%
Legal sector organisations	6	100%	–	0%	6	100%
Other organisational respondents	3	100%	–	0%	3	100%
Total organisations	41	93%	3	7%	44	100%
Individual respondents	208	97%	7	3%	215	100%
Total (organisations and individuals)	249	96%	10	4%	259	100%

9.15 Altogether, 185 respondents (145 individuals and 40 organisations) provided additional comment at Question 28.

9.16 Although Table 9.2 indicates widespread agreement that survivors should be given assistance with the application process, there was a mix of views about who should provide assistance, the type of assistance that should be provided, and what applicants should get assistance with, as discussed in the sections below. Comments also indicated various interpretations of ‘assistance’ and ‘provision of assistance’ (with some saying they were unsure how to interpret this). It should also be noted that there was a degree of overlap between the comments of those answering ‘yes’ and those answering ‘no’. As such, the analysis below does not consider the views of those who answered ‘yes’ and ‘no’ separately but looks across all responses to present views on assistance for survivors making applications.

The need for assistance for survivors

9.17 As noted above there was broad agreement that survivors should get assistance with obtaining relevant documentary records, as well as with other aspects of making an application. Respondents gave a number of interlinked reasons for this, highlighting:

- The distress and emotional upheaval that the application process might cause for survivors
- The inherent difficulties and daunting nature of navigating a complex and unfamiliar system – particularly given the time that had elapsed in many of the cases, the loss or destruction of records in the intervening years, and the fact that care providers or individual institutions may no longer exist – with respondents often recounting their own experiences of trying to secure documents
- The barriers faced by some in terms of (a lack of) literacy and IT skills, health issues – mental, physical and age-related – learning disabilities and the fact that individuals may no longer live close to where the abuse took place, and may, in some cases, have moved away from Scotland, or even the UK

- The limited resources available to some survivors to allow them to pursue records in terms of time and money, computer and internet access, and assistance from family and friends.

9.18 For these reasons, respondents said that providing assistance was ‘fair’, ‘just’ or ‘correct’.

9.19 However, there were two alternative points occasionally made by respondents who:

- Argued that the application process should be simple enough not to need assistance (or should be as easy as possible for those making claims)
- Cautioned about the cost and time implications of providing assistance.

Who should provide assistance

9.20 As noted above, Question 28 asked whether the redress scheme should make provision to assist survivors. However, the specifics of *who* might directly provide such assistance was commented on by some respondents, particularly those who answered ‘no’ at the initial tick-box question, with a range of views offered on this.

9.21 Most commonly, respondents referred to assistance being provided by the scheme, or the scheme administrators, or a case worker acting on behalf of the claimant. However, there was an alternative view that support should *not* be provided (solely or at all) by the scheme or scheme administrators. Instead respondents thought that trusted third parties with relevant knowledge and skills should provide assistance and be funded by the Scottish Government to do so. Some were concerned about a potential ‘blurring of boundaries’ if assistance was provided by the redress scheme, while others talked of the importance of independent advice and choice for survivors.

9.22 GPs, social workers, support workers, and third sector agencies were all mentioned, as were organisations such as Future Pathways and Birthlink. It was noted that the latter two organisations, in particular, already had a focus in this area of work, and survivors may have existing contact with them. A bespoke organisation was also suggested.

9.23 In a few cases, respondents saw a role for central or local government, and the point was made that local authorities were already assisting claimants in finding records. It was suggested that additional funding that recognised this task would free up resources for other forms of support work, while also developing local skills and capacity in relation to data retrieval.

The types of assistance that should be provided

9.24 Question 28 specifically asked about provision to assist with obtaining documentary records, and respondents generally endorsed this. However, in some cases, they also suggested that assistance might be required with other tasks such as written communication and the completion of application forms, and the preparation of evidence, or that individuals might also need more general guidance, emotional support, counselling, advocacy, or legal advice.

9.25 Additionally, some respondents commented on the extent of any assistance that might be provided, with two contrasting views offered. On the one hand, some said that survivors should be given all necessary help and support. For example, there were suggestions that ‘assistance’ should extend to administrators (or other professionals) undertaking the recovery of documents on behalf of individual claimants as they would have the necessary knowledge, skills, resources and ‘clout’ to allow them to do this efficiently and effectively. On the other hand, some said that survivors themselves were best placed to pursue any information required for their application and that scheme assistance should be limited to providing information to allow this to happen, or signposting to appropriate bodies and agencies.

Legal advice (Q29–Q30)

9.26 The consultation paper included two questions on whether scheme applicants might need legal advice and how the cost of any such advice or representation might be met. The Scottish Government proposed that, as a minimum, independent legal advice should be available at the point of accepting a redress payment if this were to require the signing of a waiver, and stated that all options for delivering this provision, including that of funding via Legal Aid, would be considered.

Where the redress process might require independent legal advice (Q29)

9.27 Question 29 asked respondents for their views on the points in the redress process at which applicants might require independent legal advice. Three options were given: (i) in making the decision to apply, (ii) during the application process, and (iii) at the point of accepting a redress payment and signing a waiver. This was a closed question and respondents could tick more than one response.

9.28 Table 9.3 shows that nine out of ten respondents (90%) thought that independent legal advice might be needed at the point of accepting a redress payment and signing a waiver – this view was shared by 98% of organisations and 88% of individuals. Around a third of all respondents thought that legal advice might be required in making the decision to apply to the redress scheme (36%) and during the application process (32%). With regard to both of these points in the process, organisations were more likely than individuals to think that legal advice might be required. In particular, just over half of organisations (53%) thought that independent legal advice might also be needed in making the decision to apply to the scheme, compared with a third of individuals (33%).

Table 9.3: Q29 – In your view, which parts of the redress process might require independent legal advice? (Tick all that apply.)

Respondent type	Organisations		Individuals		Total	
	n	%	n	%	n	%
In making the decision to apply	21	53%	68	33%	89	36%
During the application process	16	40%	62	30%	78	32%
At the point of accepting a redress payment and signing a waiver	39	98%	182	88%	221	90%
Base (total answering Q29)	40		206		246	

9.29 There was no follow-up question asking respondents to explain their answer at Question 29. However, some respondents (around twenty) added comments to their tick-box response, or included comments at Question 30 on the need for legal advice at different stages of the application process. Organisational respondents (legal bodies in particular) were more likely than individuals to do so. A range of comments were offered, as summarised below – note that all of these were raised by a few respondents only:

- Independent legal advice would ensure survivors understood the implications of different actions at different stages of the process (e.g. in making an application, obtaining additional information in support of a claim and in responding to a payment offer) and were able to make informed decisions.
- Legal advice was important because of the daunting nature of the process, and the varying vulnerabilities, capabilities and circumstances of individual claimants.
- Giving claimants access to legal advice could benefit the scheme in the long term, by ensuring that claims are only made by those who are eligible, and that cases are dealt with efficiently and effectively by those with relevant expertise.
- The need for legal advice would be minimised by clear guidance for claimants, straightforward and non-adversarial procedures, and active case management – however, the option of referring cases involving complex points of law to the courts was also suggested.
- Support workers, advocacy workers or other advice workers might have a role in assisting claimants.
- Those involved in providing legal advice to claimants should be specially trained in dealing with survivors.

9.30 Additionally, some expressed concerns about how legal costs would be managed and funded – these points are explored further in relation to Question 30, below.

Managing the costs of independent legal advice (Q30)

9.31 Question 30 asked respondents how they thought the costs of legal advice could best be managed, and referred specifically to two options: (i) a set payment per application or (ii) a payment that takes account of the time spent on an application capped at a certain level. This was a single-part open question (i.e. there was no preceding tick-box question), with 222 respondents (183 individuals and 39 organisations) making comments. Respondents offered a range of views on how costs for legal advice might be best managed, but also often commented on how this should be funded, and both of these issues are discussed below. It should be noted that a relatively high proportion of individuals (around 15% of those commenting) said they did not know, were not sure, did not understand or did not know enough to comment.

9.32 Respondents indicated a number of different motivations and rationales for the comments they offered at this question, suggesting that they wanted to ensure that:

- Lawyers do not profit from the scheme, and are not incentivised to spend more time than necessary on cases

- Those responsible – directly or indirectly – for historical child abuse are made liable for legal costs, and / or
- Survivors have access to free advice or are protected from high or unexpected costs.

How the costs of legal advice might be managed

9.33 The responses to Question 30 indicated a general endorsement of the need to manage legal costs. There was support for both set fees and capped fees – the two mechanisms specifically mentioned in the consultation paper – although some qualified their support by suggesting, for example, different arrangements for different stages of the scheme, or fixed or capped fees with an option for claimants to pay additional fees beyond that. However, a range of other mechanisms for managing costs were also suggested, sometimes in combination. These included the following:

- The establishment of a list of approved or registered lawyers working for agreed fees
- Clear parameters for the work that would be funded at particular points in the process
- Agreement between the Scottish Government and the Law Society of Scotland or relevant law firms of an appropriate system
- Fees calculated as a percentage of the final redress payment awarded
- A system involving approval of costs on a case-by-case basis – for example, like that in place for the SCAI (whereby applications for legal expenses are submitted to the inquiry and adjudicated on by the inquiry chair)
- The use of lawyers offering services on a pro-bono basis
- The use of legal advisers employed directly by the redress scheme.

9.34 However, it should be noted that comments from respondents indicated varying interpretations of how capped or fixed fees might operate – for example, would the fee itself be fixed or capped, or would the sum funded by the scheme (or some other agency) be fixed or capped, with applicants potentially liable for any additional spend? Some referred to survivors agreeing capped or fixed fees on an individual basis.

9.35 Finally, it was suggested that redress / compensation schemes already in place in the UK and elsewhere and SCAI procedures could provide pointers on this issue.

How legal costs might be funded

9.36 Respondents also discussed how legal costs might be funded. Legal aid was the most frequently mentioned option (and was referred to in the question itself), although respondents also mentioned a range of other funding options and arrangements. The main comments made regarding each suggestion are summarised below.

- The public purse: Respondents commonly said that legal expenses should be publicly funded, either via legal aid, or covered by ‘the government’ or ‘taxation’. However, there was a mix of views about whether legal expenses should be fully

funded or means tested (as is the case with publicly funded legal aid), or should involve claimant contributions on some other basis (e.g. proportionate to the final payment). Some referred specifically to using the current public legal aid scheme, or a variation on this. However, in other cases it was not always clear if respondents were using the term 'legal aid' in a generic sense, or were referring specifically to legal aid as currently provided by Scottish Legal Aid Board (SLAB).

- Care providers and other implicated organisations and individuals: Some argued that those responsible or in some way complicit in the abuse should pay the legal costs of survivors. Comments were made about individual as well as organisational liability, although the difficulty of recovering costs from individuals was noted. It was also suggested that legal costs could or should be met initially from public funds with steps then taken to recover money from responsible parties. (The issue of organisational contributions to the redress scheme is covered in Chapter 11.)
- The redress scheme: Some respondents thought the redress scheme should cover the cost of legal advice, either by paying for it directly or by adding a sum to individual redress payments in respect of legal costs.

9.37 Some respondents explicitly referred to the role of survivors in paying legal costs. Most commonly, respondents thought that legal advice should be provided to survivors at no cost; however, there was an alternative view that survivors should pay legal costs, or a contribution to such costs (see also the points noted at paragraph 9.36 – bullets 1 and 3). In some cases, respondents suggested systems whereby a survivor would be liable for any legal advice and assistance beyond that covered as standard by legal aid, the redress scheme or some other fund, or should be required to pay a contribution based on a percentage of their final award.

10. Next-of-kin payments (Q31–Q34)

10.1 The consultation paper noted the intention for the redress scheme to include provision for next-of-kin payments for surviving spouses and children of deceased individuals who would have met all the eligibility criteria for a redress payment. The purpose of such payments was to acknowledge the fact that the individual who experienced abuse had passed away before the financial redress scheme was in place. There would be no attempt to assess the experience of the deceased individual or the impact of the abuse on surviving family members. As such a flat-rate payment was proposed.

10.2 Section 1.5 of the consultation paper included four questions on next-of-kin payments asking for views on the proposed approach to be taken, the inclusion of a 'cut-off date' for eligibility for payments, evidential requirements for applications and the appropriate payment level, relative to a Stage One redress payment.

Question 31: What are your views on our proposed approach to allow surviving spouses and children to apply for a next-of-kin payment?

Question 32: We are considering three options for the cut-off date for next-of-kin applications (meaning that a survivor would have had to have died *after* that date in order for a next-of-kin application to be made). Our proposal is to use 17 November 2016.

- 17 December 2014 – the announcement of the Scottish Child Abuse Inquiry. [Yes / No]
- 17 November 2016 – the announcement of the earlier consultation and engagement work on the potential provision of financial redress [Yes / No]
- 23 October 2018 – the announcement that there would be a statutory financial redress scheme in Scotland [Yes / No]

What are your views on which date would be most appropriate?

Question 33: We propose that to apply for a next-of-kin payment, surviving spouses or children would have to provide supporting documentation to show that their family member met all the eligibility criteria. What forms of evidence of abuse should next-of-kin be able to submit to support their application?

Question 34: What are your views on the proportion of the next-of-kin payment in relation to the level at which the redress Stage One payment will be set in due course? [25% / 50% / 75% / 100%]

Please explain your answer.

Key points

- ◆ There was widespread support for next-of-kin payments. Respondents said such payments were 'fair' or 'appropriate', and that next-of-kin were 'entitled' to payments that would otherwise have gone to the now deceased victim / survivor; would recognise the significant impact of abuse suffered on whole families; and would acknowledge the suffering of the deceased family member and, provide closure for next-of-kin. Organisations in particular said that next-of-kin provision was in line with standard legal principles and the rules of other schemes.

- ◆ Less often respondents said such payments were not compatible with the purpose and principles of the redress scheme, or that redress should only be for those who had been directly abused, or not merited for deaths that may have taken place some time ago.
- ◆ Most respondents endorsed the proposal to make payments to spouses and children. However, respondents also noted potential problems related to taking account of complex family relationships and evidencing such claims, and stressed the need for clear scheme rules to deal with these issues.
- ◆ There was no clear consensus on a cut-off date for next-of-kin applications. However, 17 December 2014 was the option that attracted most support (42%), with respondents noting that this date was aligned with the announcement of the Scottish Child Abuse Inquiry, and would maximise the number of eligible individuals. However, some thought there should be no cut-off date, or favoured an earlier cut-off date, with 17 December 2004 (when the then First Minister issued an apology on behalf of the Scottish Government) commonly suggested.
- ◆ Respondents largely agreed that next-of-kin should have to provide evidence of when and where the deceased was in care; some also said claimants should have to provide evidence related to the abuse suffered, or evidence of identity and / or relationship with the deceased. Those who commented on the forms of evidence that should be required mainly said that next-of-kin should have to provide the same evidence or documentation as victims / survivors, or put forward a wide range of specific suggestions reflecting suggestions made relating to evidence requirements at other questions.
- ◆ Just over half of respondents (56%) thought that next-of-kin were entitled to receive the full sum of money (i.e. 100%) that would have gone to their relative had they still been alive. Respondents said this level of payment recognised the significant impact such abuse had on both victims and their families. Those favouring lower proportions (25%, 50% or 75%) all tended to say that their preferred option recognised that next-of-kin had not suffered the abuse directly and / or was sufficient to recognise the abuse suffered by the victim / survivor and the impact this might have had on the wider family.

A note about the responses

10.3 Questions 31 to 34 are addressed in turn in this chapter. However, it should be noted that there was a degree of cross-over in the responses to these questions – that is, comments made at one of the questions in this section were also often relevant to one or more of the other questions. This was particularly the case with regard to Question 31, for which respondents offered comments relating to cut-off dates and other timescale related issues, evidence requirements and the nature and scale of payment to be made. In order to avoid repetition, comments are, as far as possible, considered only at the most appropriate question.

10.4 The comments also suggest there was a number of different interpretations and understandings of what a next-of-kin payment is. Some respondents appeared to understand next-of-kin payments to be a process for those who wished to **continue claims started by a victim / survivor before they died**, and endorsed this option. In other cases, respondents said that such payments should be restricted to (i) cases where the victim / survivor *had previously initiated* a claim (or had good reason for not having

done so) or, alternatively, to (ii) cases where the victim had *not* already made a claim. There was also a view that next-of-kin should be able to pursue a claim *on behalf of a survivor* while they were still alive.

Allowing surviving spouses and children to apply for a next-of-kin payment (Q31)

10.5 The first question in this section (Question 31) was an open question (with no initial tick-box question) which asked for views on the proposed approach to allowing surviving spouses and children to apply for a next-of-kin payment.

10.6 Altogether, 230 respondents (189 individuals and 41 organisations) commented at Question 31. More than half offered views on the principle of next-of-kin payments, while around a third commented on who should be eligible for such a payment, with some offering both types of comments. The sections below look at these two sets of comments in turn.

10.7 Note that it was common for individuals to provide only brief answers to this question without explaining their views any further – particularly where they were indicating endorsement of or agreement with the Scottish Government's proposal ('Yes', 'I agree', etc.). However, in these cases, it was not necessarily clear if respondents were agreeing with the principle of next-of-kin payments, the eligibility of spouses and children, or some other aspect of the 'approach' proposed by the Scottish Government.

The principle of next-of-kin payments

10.8 As noted above, more than half of respondents offered views on the principle of next-of-kin payments. The responses indicated a high degree of support amongst both individuals and all types of organisation for such payments, and there was only occasional opposition to – or reservations or more mixed views about – the proposal. The different viewpoints are discussed below.

Support for next-of-kin payments

10.9 Respondents offered a number of different reasons for supporting next-of-kin payments, sometimes citing these in combination. These included the following.

- Some respondents saw such payments as 'fair' or 'appropriate', or they said that next-of-kin were 'entitled' to redress payments. Respondents said that next-of-kin would have benefited had the victim of abuse still been alive and made a redress claim, and some individual survivors explicitly stated that they would want their families to be able to pursue claims and get financial assistance from the scheme if they were unable to do so. Some also said that the historical nature of the abuse meant that many victims would be deceased before the scheme came into force and would not, therefore, have the opportunity to seek redress in their own right. It was also suggested that, in some cases, abuse might only come to light after a person had died.
- Some respondents thought next-of-kin payments would recognise the significant impact (psychological, emotional, material) of the abuse suffered by victims /

survivors, and of the death of the abused individual, on whole families (with some organisations referring to the concepts of 'secondary victimhood' and 'inter-generational trauma').

- Others suggested such payments would acknowledge the suffering of a deceased family member (i.e. the victim of abuse) and provide closure for their next-of-kin.

10.10 Organisations in particular said that that next-of-kin provision would be in line with standard legal principles and other schemes which allow family members or the estates of a deceased person to pursue claims or seek compensation in personal injury cases.

10.11 However, alongside this broad support, some respondents expressed a degree of concern about how such claims might be evidenced. Very occasionally, organisations indicated that provision of next-of-kin payments should depend on the availability of sufficient evidence or the establishment of an appropriate basis for assessing eligibility.

Opposition to or reservations about next-of-kin payments

10.12 Those opposed to next-of-kin payments offered various reasons for this view. In the main, respondents did not think such payments were justified: they questioned whether such payments were compatible with the purpose and principles of the redress scheme, as set out in the consultation paper. Some thought that redress should only be for those who had been directly abused and was not merited for deaths that may have taken place some time ago. Others argued that a next-of-kin system would be too complicated or difficult to manage, or present too many practical problems – e.g. relating to evidencing claims or the treatment of multiple next-of-kin. Occasionally, respondents also expressed concern that such claims had the potential to be divisive within families, raised the risk of exploitative or fraudulent claims, would be too costly, or represented poor use of money.

Mixed views about next-of-kin payments

10.13 In a few cases, respondents offered mixed views on the idea of next-of-kin payments, recognising arguments put forward by those who supported such payments and those who opposed them.

Views on who should be eligible for a next-of-kin payment

10.14 Both individuals and organisations commented on how 'next-of-kin' might be defined. Most commonly, respondents endorsed the Scottish Government's intention to extend payment to spouses and children. However, others offered views on who should or should not be included within the definition, or how different family members might be prioritised. There were calls for next-of-kin to be defined in various ways: for example, including children but not spouses, or spouses but not children; children first, then spouse or other nearest relative; current spouse only / first spouse only; unmarried partners; and civil partners. There were also a few calls for the definition to include siblings.

10.15 In some cases, respondents also thought the scheme should consider the 'quality' of relationship between the deceased victim / survivor and their next-of-kin by, for example, excluding estranged family members or taking account of the wishes of the deceased individual (for example, as expressed in a will).

10.16 The consultation paper noted that assessing such claims may not always be straightforward, particularly where family circumstances are complex. In this respect, some respondents, particularly those representing organisations, stressed the need for a clear next-of-kin definition, and for clarity about how this would be applied in situations such as (i) those involving complex family relationships with step-children, non-biological children, kinship care arrangements, etc.; (ii) those in which there are no surviving children / spouse; or (iii) when the defined next-of-kin themselves die before a claim is paid – some thought that in such cases the system should allow the claim to pass to any surviving heirs. One view was that there should be the option of arbitration in complex cases.

10.17 Some respondents – individuals in particular – mentioned factors additional to simple familial relationship which might determine eligibility to receive a payment. Most commonly, such respondents said that eligibility should take account of individual circumstances, and suggested that payment should depend on (i) whether the next-of-kin had been affected by the experience of their deceased family member, or (ii) the extent to which they had been affected. Less often, it was suggested that anyone responsible for, complicit with, or suspected of abusive behaviour should be excluded from eligibility.

Cut-off date for next-of-kin applications (Q32)

10.18 The consultation paper explained that in other countries schemes offering next-of-kin payments have included a ‘cut-off’ date – that is, a date *after* which a survivor must have died for next-of-kin to be eligible for a payment. The consultation paper said that this type of approach may be appropriate for the scheme to be introduced in Scotland, and Question 32 asked for views on three possible dates:

- **17 December 2014** – the date that the Scottish Child Abuse Inquiry (SCAI) was announced
- **17 November 2016** – the date that the earlier survivor consultation and engagement work was announced
- **23 October 2018** – the date on which it was announced that there would be a statutory financial redress scheme in Scotland.

10.19 Altogether, 197 respondents (173 individuals and 24 organisations) answered this question. However, almost a third of respondents selected multiple dates: 49 respondents (25%) answered ‘no’ to all three of the dates offered; a further 15 (8%) ticked ‘yes’ to more than one of the dates, and one respondent ticked both ‘yes’ and ‘no’ in relation to the third date (23 October 2018).

10.20 The analysis shown in Table 10.1 relates to the 132 respondents (113 individuals and 19 organisations) who ticked *only one* of the options offered. The findings show that there was no clear consensus about the cut-off date for next-of-kin applications, although 17 December 2014, selected by two-fifths of respondents (42%), was the date that attracted the highest level of support. A third of respondents (33%) favoured 23 October 2018, and a quarter (26%) favoured 17 November 2016. The pattern of response was similar for both organisations and individuals.

Table 10.1: Q32 – Which of the following dates would be most appropriate?

Respondent type	17 December 2014		17 November 2016		23 October 2018		Total	
	n	%	n	%	n	%	n	%
Organisation	8	42%	5	26%	6	32%	19	100%
Individual	47	42%	29	26%	37	33%	113	100%
Total	55	42%	34	26%	43	33%	132	100%

Percentages may not total 100% due to rounding.

10.21 Altogether, 174 respondents commented at this question (141 individuals and 33 organisations). However, the comments suggested a degree of confusion amongst individuals. Some respondents appeared to have misunderstood how the cut-off date would operate or appeared to think that the question was asking for views on the closing (or opening) date for the submission of claims. Views on this latter point are covered in the analysis at Question 27. These misunderstandings present difficulties in interpreting some of the comments made.

10.22 Comments provided by respondents selecting each of the options are summarised below. It should be noted, however, that few respondents elaborated on their response in any extensive way, with organisations more likely than individuals to do so.

- Those selecting **17 December 2014** offered two main reasons for their view: (i) they agreed that aligning the cut-off date with the announcement by the Scottish Government of the SCAI was appropriate, and referred to the publicity surrounding that announcement and the symbolism and momentum associated with the launch of the SCAI, and / or (ii) they thought this date was the most inclusive option offered – their objective was to see as many individuals as possible covered by the scheme, including those who had missed out on the opportunity to apply to the already established Advance Payment Scheme.
- The main reason offered by those selecting **17 November 2016** was that this was the point at which the Deputy First Minister announced that he wanted to hear wider views on the potential provision of financial redress – prior to that there would have been no expectation of redress. Others said this date was ‘fair’, ‘appropriate’ or ‘proportionate’.
- The main reason offered by those selecting **23 October 2018** was that this was when the provision of financial redress was confirmed and became a realistic option for next-of-kin. There was also a view that the adoption of this date as a cut-off would ensure that any such claims would follow relatively soon after the death of the abuse victim.

10.23 Those selecting none of the options offered the following main views:

- There should be no cut-off date of the type proposed as there was no justification for excluding next-of-kin whose relatives met all other eligibility criteria simply because the individual had died some time ago. A cut-off date was seen as contrary to the purpose of the redress scheme.

- The cut-off date should be set at 2004 (or, more specifically, 17 December 2004), when the then First Minister first issued an apology on behalf of the Scottish Government (this was also the date proposed in the consultation paper as the cut-off date for the definition of ‘historical’ abuse). Alternative earlier and later dates were also proposed occasionally by respondents.

10.24 Additionally, amongst those who did not select a date, there was a view that the dates offered were somewhat arbitrary. Different approaches were proposed which were seen to be more in line with standard ‘time bar’-type rules allowing claims within a set period after the death of an individual.

Evidence to support a next-of-kin application (Q33)

10.25 The Scottish Government proposed that, to apply for a next-of-kin payment, surviving spouses or children would have to provide supporting documentation to show that their family member met the eligibility criteria for a redress payment. Question 33 was an open question (with no initial tick-box question) seeking views on the forms of evidence next-of-kin should be able to submit to support their application.

10.26 Altogether, 195 respondents provided comments at Question 33 (160 individuals and 35 organisations). However, respondents answered this question in different ways. Some commented on what claimants should be required to demonstrate, while others suggested specific forms of documentation or evidence that should be required. Individuals were more likely to concentrate on the former, while organisations were more likely to discuss the latter. Comments on what claimants should be required to demonstrate and the forms of evidence they should be able to submit are covered in the two sections below. A separate section covers other comments relating to evidence requirements.

What claimants should be required to demonstrate

10.27 Respondents, individuals in particular, commonly discussed what claimants should be required to demonstrate. Views here largely endorsed the Scottish Government’s proposals with respondents saying that next-of-kin should have to provide evidence of when and where the deceased was in care; some also said claimants should have to provide evidence of the abuse suffered, or evidence of abuse having occurred in the relevant institution. Respondents also commonly referred to the need to provide evidence of identity and / or relationship with the deceased.

10.28 Occasionally, respondents also said that claimants should be required to: (i) demonstrate that the deceased had previously taken action with respect to the abuse – either having reported it in some ‘official’ way, including to the SCAI or the NCF, or having initiated a claim for redress; or (ii) provide a statement as to how they became aware of the abuse.

The forms of evidence claimants should be able to submit

10.29 Fewer than half of respondents commented on the **forms** of evidence next-of-kin should be able to submit to support their application.

10.30 For the most part, those who commented either (i) said that next-of-kin should have to provide the same evidence or documentation as victims / survivors, or (ii) put forward a wide range of specific suggestions.

10.31 The suggestions for specific evidence or documentation included the following:

- Care provider and other official records showing that the individual was in care
- Health (including mental health and psychological) records
- Social work and support agency records
- Records from previous criminal investigations, or SCAI and NCF proceedings
- Contemporaneous records of abuse
- Oral and written statements from the next-of-kin and other family members, or previously given by the victim / survivor
- Third-party witness statements
- Personal papers, letters, photographs, etc.
- Birth, marriage and death certificates, passports, benefit and pension statements.

10.32 Some respondents offered more general views on the forms of evidence claimants should be able to submit, ranging from 'anything available', to 'same as for a civil legal claim'.

Other comments relating to evidence requirements

10.33 A range of respondents – both individuals and organisations – believed there would be challenges for next-of-kin in tracing and obtaining relevant records, and that these might be compounded by requirements under the General Data Protection Regulation (GDPR), and the fact that victims might not have discussed their in-care experience in detail before their death.

10.34 Some thought the evidential 'bar' should therefore be set low, or suggested flexibility in how requirements might be met. Others said that provision should be made for this within the scheme via guidance and assistance with obtaining required evidence. There was a specific suggestion for the redress scheme to have the power to authorise disclosure of information protected by GDPR requirements.

10.35 However, there was a contrasting view favouring more robust evidential requirements for next-of-kin payments, with respondents stressing the need for (i) verification of the evidence provided and the entitlement of the claimant, (ii) credible or reliable evidence sources, (iii) corroboration of evidence from more than one source, and (iv) clear evidence of abuse rather than simply of the deceased person having been in care.

Level of next-of-kin payments (Q34)

10.36 The consultation paper explained that the process associated with an application for a next-of-kin payment would not involve any attempt to assess the individual experience of

the person who was now deceased, nor the impact of that person’s experience on surviving family members. Thus, a next-of-kin payment would be a flat-rate payment – calculated as a proportion of the redress Stage One payment – which was intended to recognise and acknowledge the harm done to the deceased individual whilst they were in care. Question 34 asked for views on the level that next-of-kin payments should be set at, relative to Stage One payments. Four choices were given: (i) 25%, (ii) 50%, (iii) 75%, and (iv) 100%.

10.37 Table 10.2 shows that over half (56%) of the 187 respondents answering this question thought that next-of-kin payments should be the same as a Stage One payment for survivors (i.e. they should be set at 100% of the Stage One payment). Both organisations (50%) and individuals (57%) were more likely to select this option than any of the other three options. The next most popular option was that of setting next-of-kin payments at 50% of the Stage One payment, selected by a third of organisations (32%) and a fifth (19%) of individuals.

Table 10.2: Q34 – What are your views on the proportion of the next-of-kin payment in relation to the level at which the redress Stage One payment will be set in due course?

Respondent type	25%		50%		75%		100%		Total	
	n	%	n	%	n	%	n	%	n	%
Organisation	3	14%	7	32%	1	5%	11	50%	22	100%
Individual	18	11%	32	19%	21	13%	94	57%	165	100%
Total	21	11%	39	21%	22	12%	105	56%	187	100%

Two individuals chose both 25% and 50%. These responses are not shown in the table above.

10.38 Altogether, 175 respondents (145 individuals and 30 organisations) provided additional comments at this question. The comments provided are summarised below.

Views on different percentage options

10.39 The main reasons given by those selecting each of the options were as follows:

- Those selecting **100%** argued that next-of-kin were entitled to receive the full sum of money that would have gone to their relative had they still been alive. They also thought this level of payment recognised the significant impact such abuse had on both victims / survivors and their families.
- Those selecting **25%**, **50%** and **75%** tended to give the same two main reasons for their preferred option: they said that the level was appropriate because (i) it recognised that the next-of-kin had not suffered the abuse directly and / or (ii) it was sufficient to recognise the abuse suffered by the victim / survivor and the impact this might have had on the wider family. Those selecting 50% and 75% tended to give greater emphasis to the experience of next-of-kin – both while the abused individual was alive and subsequent to their death. A few in this group also thought a payment of less than 100% was appropriate given the likely time since the death and the potentially limited evidence base for such claims. There was also a view that a 50% payment would be in line with other types of compensation payment.

10.40 One alternative suggestion for a payment level of 66%, which was described as large enough to make a significant difference to the recipient, while still being sufficiently distinct from the full payment received by victims / survivors themselves.

Views of those who did not select a percentage option

10.41 There were two main groups among those who did not select a percentage:

- Respondents who thought the level of payment should depend on the circumstances of the case (e.g. the nature of the relationship and the extent of any impact on the next-of-kin and the number of next-of-kin) and / or thought this should be a legal decision taken on a case-by-case basis.
- Respondents who used their comments to restate their general opposition to next-of-kin payments (note that some opposed to next-of-kin payments selected 25%, the lowest proportion offered in the question).

10.42 However, a small group of respondents had reservations about offering any view on the percentage options offered, saying that:

- This should be an issue for legal / financial people, rather than those affected by the redress scheme
- This would depend on the intended purpose of payment
- There was no rationale provided for the different options
- It was hard to comment without knowing what the Stage One payment would be.

Other issues raised: the treatment of multiple next-of-kin

10.43 In addition to the views noted above on the different percentage options, some respondents raised the issue of cases involving multiple next-of-kin and of how claims would be processed, and payments calculated and attributed in these circumstances. Most commonly, respondents favoured a single application per family with the sum awarded divided equally among all eligible family members. However, there were calls for clarity on this issue.

Other comments on the operation of next-of-kin payments

10.44 Across this group of questions as a whole (Questions 31 to 34), respondents made a number of more general comments related to the operation of next-of-kin payments, as follows:

- Organisations were particularly likely to comment on the potential challenges of designing and operating a system for next-of-kin payments and the need to resolve issues such as those relating to the definition of next-of-kin, eligibility, the treatment of multiple next-of-kin, and evidential requirements.
- Some respondents stressed the importance of any system to be clear, simple and straightforward for claimants, and operated in a fair and honest way.
- Some respondents, organisations in particular, called for the approach taken to draw on the rules and conventions in place in other areas of legislation and legal

practice related to the pursuit of compensation and damages, and succession and inheritance. Specific mention was made of the Damages (Scotland) Act 2011, the Succession (Scotland) Act 2016, the Prescription and Limitation (Scotland) Act 1973, and the UK-wide scheme introduced to compensate those affected by mesothelioma.

- There was a view that the redress scheme as a whole should prioritise victim / survivor claims before dealing with next-of-kin claims.
- The benefit of learning from other schemes was noted – the Irish scheme which covered two different situations of dying before or after making claim was particularly mentioned.

11. Contributions to the redress scheme (Q35–Q44)

11.1 The consultation paper set out the Scottish Government’s view that those bearing responsibility for the abuse of children in care in the past should contribute to the redress scheme. Two funding models from Ireland and Australia were described, together with the problems encountered in using these models. Respondents were asked a series of questions about (i) the principle of institutions / providers making financial contributions, and (ii) how this might work in practice.

Question 35: We think those bearing responsibility for the abuse should be expected to provide financial contributions to the costs of redress. Do you agree? [Yes / No] Please explain your answer.

Question 36: Please tell us about how you think contributions by those responsible should work. Should those responsible make:

- An upfront contribution to the scheme [Yes / No]
- A contribution based on the number of applicants who come forward from their institution or service [Yes / No]
- Another approach to making a financial contribution to the redress scheme costs? [Yes / No]

Question 37: Are there any barriers to providing contributions, and if so how might these be overcome?

Question 38: Should the impact of making financial contributions on current services be taken into account? [Yes / No]. If so how?

Question 39: What other impacts might there be and how could those be addressed?

Question 40: How should circumstances where a responsible organisation no longer exists in the form it did at the time of the abuse, or where an organisation has no assets, be treated?

Question 41: What is fair and meaningful contribution from those bearing responsibility for the abuse?

Question 42: What would be the most effective way of encouraging those responsible to make fair and meaningful contributions to the scheme?

Question 43: Should there be consequences for those responsible who do not make a fair and meaningful financial contribution? [Yes / No] If yes, what might these be?

Question 44: In addition to their financial contributions to the redress scheme, what other contributions should those responsible for abuse make to wider reparations?

Key points

- ◆ There was general agreement (94% overall; 95% for individuals and 89% for organisations) that organisations bearing responsibility for historical child abuse should contribute financially to the redress scheme as a way of ‘taking responsibility’ for past wrongs and acknowledging failings in their duty of care.
- ◆ Organisations (particularly care providers) thought financial contributions should be ‘proportionate’ and ‘fair’ – that is, they (i) should be based on cases for which institutions

had responsibility, and (ii) should not adversely affect the ongoing work of care providers.

- ◆ There was no clear consensus about how financial contributions should be made. However, the largest proportion of respondents (56% overall) favoured contributions based on the number of applicants who come forward from a particular institution or service. There was a similar level of support (from 52% of respondents overall) for upfront contributions. However, organisations were much less likely than individuals to favour upfront contributions, and more likely to favour ‘another approach’, which could involve, for example, payments being made by the Scottish Government, then reimbursed by institutions once the actual costs are known.
 - ◆ There were differences in the views of organisations and individuals on the potential barriers to institutions making financial contributions. Most commonly, individuals said there were, or should be, no barriers. However, organisations (and some individuals) identified possible barriers relating to (i) insufficient funds, (ii) (lack of) insurance cover, (iii) organisations no longer existing, and (iv) legal restrictions on charitable spending.
 - ◆ Respondents disagreed about whether consideration should be given to the potential impact of financial contributions on current services. Nearly all organisations (92%) thought it should, whereas two-thirds of individuals (63%) thought it should not. Organisations wanted financial contributions to be set at a level that minimised the impact on current services. Those individuals who said the impact on current services should *not* be a consideration saw financial contributions as an issue of justice, and thought redress should be made, regardless of the circumstances of current services.
 - ◆ Respondents thought that the Scottish Government should cover contributions to the scheme for institutions that no longer existed and for organisations that had no assets. In cases where another organisation had assumed the responsibilities and / or assets of defunct organisations, respondents thought the successor organisation should be liable for contributions. However, organisations thought it would be unfair for *unrelated* care providers to cover the contributions of organisations that no longer existed.
 - ◆ Organisations and individuals offered different types of comments about what would constitute fair and meaningful financial contributions. In general, organisations said they could not answer this question without information. By contrast, individuals often suggested specific sums or percentages of the total redress payment (e.g. 25%, 100%).
 - ◆ In terms of how to secure contributions, respondents agreed that there should be consequences for non-payment (97% overall; 99% for individuals and 84% for organisations). The most common views among individuals were that contributions should be required by law; and non-payment should result in legal action, financial or other sanctions (e.g. withdrawal of public funding, revoking of charitable status, or closure), or ‘naming and shaming’. Among organisations, there were mixed views about whether persuasion / discussion, or a more formal (potentially legislative) approach should be used to secure financial contributions. Although some organisations agreed that legal action was an option, this group often also raised caveats or concerns about this, with some arguing that non-payment should be dealt with on a case-by-case basis.
 - ◆ Individuals and organisations agreed that responsible institutions should be expected to contribute towards wider reparations (in addition to making financial contributions).
-

A note about the responses

11.2 The following points should be noted about the findings presented in this section.

- Individual respondents interpreted this group of questions in different ways. Whilst some (correctly) understood the questions as asking about financial contributions from the **organisations** responsible for historical abuse, others understood them as referring to contributions from **individual perpetrators**. Thus, some individuals thought that the death of those individuals was a potential barrier to financial contributions, and / or they considered that imprisonment should be a consequence for those who do not make financial contributions. It is not always clear from the comments which of these two understandings individuals had. In addition, in relation to some of the questions in this section, a relatively large proportion of individuals answered the initial tick-box question, but when asked to explain their answer said that they 'did not know', that they were 'unsure', or that they did not understand the question. Thus, caution should be used in interpreting the views of individual respondents, as presented in this chapter.
- Some current or former care provider organisations stated that they had 'chosen not to answer', or 'were not in a position to comment' on many of the questions in this section of the consultation questionnaire. In addition, some organisations provided extensive comments at Question 35, and then simply referred back to these comments when responding to subsequent questions. The views expressed have been analysed and presented below at each of the relevant questions. Organisations were also more likely than individuals to provide comments without answering the tick-box questions.

The principle of financial contributions (Q35)

11.3 Question 35 asked respondents if they agreed with the Scottish Government that those bearing responsibility for the abuse should be expected to contribute to the financial redress scheme.

11.4 Table 11.1 below shows that the vast majority of respondents (94%) agreed, with a similar pattern of response among individuals (95% answered 'yes') and organisations (89% answered 'yes').

Table 11.1: Q35 – Do you agree that those bearing responsibility for the abuse should be expected to provide financial contributions to the costs of redress?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	8	73%	3	27%	11	100%
Other public sector organisations	3	100%	–	0%	3	100%
Current or previous care providers	9	90%	1	10%	10	100%
Third sector, including survivor groups	8	100%	–	0%	8	100%
Legal sector organisations	4	100%	–	0%	4	100%
Other organisational respondents	1	100%	–	0%	1	100%
Total organisations	33	89%	4	11%	37	100%
Individual respondents	203	95%	11	5%	214	100%
Total (organisations and individuals)	236	94%	15	6%	251	100%

One individual ticked both 'yes' and 'no' to this question. This response is not included in the table above.

11.5 Altogether, 193 respondents (154 individuals and 39 organisations) provided comments to explain their responses.

Agreement with financial contributions from those responsible for abuse

11.6 As Table 11.1 shows, there was general consensus among both individuals and organisations that those responsible for the abuse of children in care should make financial contributions. However, these two groups raised different issues in their comments.

11.7 In general, **individuals** focused on explaining **why** they thought those responsible for abuse should be expected to make financial contributions towards the cost of redress. Individuals saw such contributions as 'only fair' as they believed that those responsible for the abuse should be held accountable. This group suggested that a financial contribution would act as a public acknowledgement that the institution had failed in its duty of care. Some in this group also argued that the institutions (particularly religious groups) could afford to provide such contributions. Less often, individual respondents discussing the principle of financial contributions saw it as a form of 'punishment' (i.e. of an individual perpetrator) or 'compensation'.

11.8 Like individuals, **organisations** answering 'yes' to Question 35 saw the principle of financial contributions as a way of 'taking responsibility' and 'facing up to the wrongs of the past'. Some highlighted the symbolic nature of such contributions and its role in supporting the healing of victims of abuse. Others argued that the principle of seeking financial contributions from those responsible for abuse was in accordance with international best practice. The point was also made that concerns about abuse in children's homes in Scotland had been raised as early as the 1960/70s, but that no action had been taken at that time to investigate allegations.

11.9 However, while organisations supported the *principle* of financial contributions, they also frequently expressed concerns or caveats. Organisations (and particularly care provider organisations) argued that:

- Such contributions should be ‘proportionate’ and ‘fair’; institutions should only be expected to contribute in relation to cases for which they had responsibility.
- There would be a limit to how much most organisations could contribute to the scheme, and any contributions would impact on the ongoing work of those organisations.
- The scheme should not operate in such a way that it results in the bankruptcy or closure of existing frontline care services, as this would essentially punish the individuals who are currently being supported by those services, many of whom are vulnerable young people.
- There needed to be clarity about who would pay any financial contributions if a responsible organisation no longer existed or did not have the means to make such payments.

11.10 Some organisations (care providers, local authorities and legal sector bodies) also raised the issue of insurance – pointing out that many organisations would not have insurance cover for cases of historical abuse, and therefore any costs would need to be funded from existing budgets. Where insurance cover was in place, it would ordinarily only pay out in the event of liability being established through civil proceedings. Moreover, policy deductibles / excesses – which were likely to vary from year to year, and for different insured organisations – added further complexity. Thus, organisations may not be able to draw upon insurance to make financial contributions to a redress scheme.

11.11 Individuals were less likely than organisations to qualify their responses, and, when they did, they tended to focus on different issues. For example, individuals were concerned that the process of obtaining financial contributions from those responsible for abuse would be ‘lengthy and expensive’, since records were not available and, in some cases, the institutions had closed down. Some also commented that many of the individuals involved were now dead (suggesting perhaps an expectation that individual perpetrators would have a role in making financial contributions). Finally, some individuals thought that financial contributions should *only* be sought from institutions that could afford to pay.

The identification of ‘those bearing responsibility’

11.12 Both individuals and organisations raised questions about **who exactly** should be considered ‘responsible’ for the abuse suffered by victims / survivors, and thus liable to make financial contributions towards a redress scheme. Among individuals, there were disparate views on this matter; among organisations, there was a greater degree of consensus – although the consensus was that it was likely to be extremely difficult to identify the responsible entities.

11.13 Some individuals thought that any financial contributions should be made by: (i) the care provider organisations that were given money to look after children and allowed abuse to take place; (ii) the local authorities / social work departments that failed to monitor what was happening in these institutions; and / or (iii) the government (now the Scottish Government) which was considered to be ‘negligent’ in failing to ensure the safety of children. Others thought that ‘taxpayers’ should *not* have to pay towards the redress scheme.

11.14 In contrast to these arguments, organisational respondents discussed the challenges and complexities of identifying the organisations responsible for historical abuse. A consistent message from this group was that there is no straightforward way of determining who should make financial contributions to the scheme. Local authorities, in particular, highlighted the local government reorganisations that have taken place over the past few decades. Further difficulty / complexity was foreseen if more than one organisation had been involved in the care of an individual and / or if the individual had moved between authorities / institutions during their time in care. There was a widespread view amongst organisations that responsibility for historical abuse lies with multiple organisations – the care provider service, the local authority and central government.

11.15 However, the point was also made that some entities accused of abuse may, in fact, not be responsible for it. Concerns were voiced that organisations should not be expected to make financial contributions toward a redress scheme without having the opportunity to put forward a public defence against any allegations of abuse. There was also a view that financial contributions from those responsible for abuse should not be based on organisations voluntarily opting-in to the scheme, with the view expressed that survivors could be disadvantaged if payments to them were dependent on voluntary contributions being received. The experience of the Australian scheme was highlighted, where this type of model had led to some claimants being denied redress.¹⁰

11.16 Local authority respondents urged the Scottish Government to work closely with the Convention of Scottish Local Authorities (COSLA) to 'identify and stress-test' different contribution models before any legislation is introduced.

Disagreement with financial contributions from those responsible for abuse

11.17 The small number of respondents who disagreed at Question 35 (4 out of 38 organisations and 15 out of 251 individuals) offered a range of comments to explain their views. Some individuals argued that the events were 'too long ago' and that, in many cases, those bearing responsibility (i.e. the individual perpetrators of the abuse) had died. There were also concerns (both among individuals and organisations) that the requirement to make financial contributions for historical abuse could adversely affect the current (good) work of organisations in providing care to vulnerable young people. Some organisations argued that current care providers should not be held responsible for what happened in their organisation in the distant past.

11.18 Other points made by this group were that: (i) there is no funding available within organisations to provide a contribution towards a redress scheme; (ii) the cost of those contributions is likely to far exceed estimates; (iii) no insurance cover is available to meet such demands; and (iv) in some cases, allegations of abuse were robustly addressed by the organisation at the time they were made. There was a suggestion that institutions should *not* have to contribute towards redress for an individual survivor if that individual had already pursued compensation through a civil court action. There was also a recurring view among some organisations (a subset of local authorities and a subset of care

¹⁰ It should be noted that the Scottish Government does not intend that redress payments will depend on organisations making contributions.

provider organisations) that the Scottish Government should fund the financial redress scheme in its entirety.

How financial contributions to the scheme should be made (Q36)

11.19 Question 36 asked how the financial contributions from those responsible should be made. Respondents were given three choices – (i) an upfront contribution to the scheme (Option 1), (ii) a contribution based on the number of applicants who come forward from their institution or service (Option 2), or (iii) another approach (Option 3) – and were asked to indicate ‘yes’ or ‘no’ in relation to each. Respondents were asked to explain their answer. A further follow up question invited any additional comments about the mechanism for making financial contributions.

11.20 Altogether, 227 respondents (198 individuals and 29 organisations) ticked one or more of the boxes provided at Question 36, and Table 11.2 shows the number and percentage of respondents who answered ‘yes’ to each option as a proportion of those who ticked at least one box at Question 36. However, it should be noted that (i) around two-fifths of individual respondents ticked more than one option, compared to just two of the organisational respondents, and (ii) respondents did not necessarily tick a ‘yes’ or ‘no’ box beside all three of the options offered, and therefore it is not clear whether a non-response was intended to indicate ‘no’, or whether the respondent simply did not engage with all three parts of the closed question.

11.21 Table 11.2 shows that, among those who addressed this question, there was no clear consensus about how financial contributions should be made. However, the largest proportion of respondents (56%) favoured contributions based on the number of applicants who come forward from a particular institution or service. There was a similar level of support (from 52% of respondents overall) for upfront contributions. However, there were differences between organisations and individuals. Organisations were much less likely than individuals to favour upfront contributions to the scheme – 14% vs 57% respectively. Organisations were also more likely than individuals to favour ‘another approach’ to financial contributions – 48% vs 35% respectively.

Table 11.2: Q36 – How should those responsible make their contributions to the scheme?

Respondent type	Organisations		Individuals		Total	
	n	%	n	%	n	%
Option 1: An upfront contribution to the scheme	4	14%	113	57%	117	52%
Option 2: A contribution based on the number of applicants who come forward from the institution or service	14	48%	112	57%	126	56%
Option 3: Another approach	14	48%	69	35%	83	37%
Base (total who ticked at least one box at Question 36)	29		198		227	

One individual ticked both ‘yes’ and ‘no’ for the second option. This response is not included in the table above.

11.22 Altogether, 157 respondents (123 individuals and 34 organisations) provided further comments at Question 36. Note that organisations were more likely than individuals to make comments without ticking any of the three options at the closed question. Some

individuals stated in their comments that they did not understand the question or did not know how to respond. It was also relatively common for individual respondents **not to explain why** they chose one or more of the options at Question 36, but rather to repeat points made at Question 35 – i.e. that institutions responsible for abuse should contribute financially to the redress scheme as this was only fair and that these contributions should be mandatory.

Views on Option 1 – an upfront contribution to the scheme

11.23 In general, organisational respondents were not in favour of an upfront contribution to the scheme as they did not consider this option to be ‘fair’. Organisations thought that any payments made by care providers should be dependent on, and limited to, the number of claims made against them. The four organisations who selected Option 1 did not make clear why they had selected this option, but instead made comments about how such a system would operate, suggesting that a ‘fair methodology’ for determining contributions should be agreed with all those responsible before any contributions are paid; any upfront payments should be based on the number of individuals who have implicated specific care providers; and that any upfront contributions should be conditional on additional funds being contributed later depending on the severity of the abuse, the number of applications, and the extent to which contributions were covered by insurance.

11.24 In contrast to organisational respondents, individuals were more supportive of upfront contributions. The **main** reason was that this was likely to be the easiest and least complicated option – providing less opportunity for ‘stalling’, ‘prevaricating’ or ‘questioning by lawyers’, and helping to avoid delays in paying out to claimants. Other reasons, mentioned less often, were that:

- The number of applicants may never be known – thus making option 2 less attractive.
- The organisations implicated in historical abuse ‘have enough money’ and can afford to make upfront contributions.
- Upfront contributions would assist with Stage One payments.
- Upfront contributions would encourage insurance companies to ‘be more positive and willing to settle’.

11.25 Some individuals suggested that upfront contributions might need to be supplemented at a later stage once the number of applicants were known. There was also a suggestion that upfront contributions could be calculated based on the number of victims / survivors known to-date, and the levels of abuse suffered by each individual.

11.26 Occasionally, individuals who had selected options 2 or 3 explained why they did *not* support Option 1. The main reason given was that this option was likely to require evidence of the organisation’s involvement in abuse to be established first.

Views on Option 2 – contributions based on number of applicants

11.27 Organisations and individuals who thought that contributions should be based on the number of applicants who come forward from the institution or service (i.e. Option 2)

often cited reasons of 'fairness'. Both groups argued that it would be 'unfair' for care providers involved in isolated cases of abuse to make the same level of contribution as those who had a 'culture of abuse'. Some care provider organisations went further to suggest that it would be 'unjust' and an 'inappropriate use of charitable funds' to contribute to settlements relating to the failings of other institutions. Individuals, too, thought that the financial contributions from those responsible for abuse should reflect the fact that 'some places were worse than others' and they argued that proportional payments would achieve this. Individuals also suggested that contributions based on the number of people applying for redress would make it easy to calculate what each institution should pay.

11.28 Respondents in favour of having contributions based on the number of applicants sometimes made additional suggestions about how to ensure fairness. For example, it was suggested that further clarity was needed in relation to the roles of the placing authority (i.e. social work departments) and the institutions / organisations providing the care placement. There were also suggestions that (i) a formula should be agreed to determine the basis of contributions, (ii) organisations would need to have contingency plans in place in case further victims come forward, (iii) organisations should not have to pay twice if there has been a civil suit against them, (iv) there should be an allowance for scheme administrative costs, and (v) any financial contributions should take into account the impact of the abuse as well as the number of applicants coming forward.

11.29 Occasionally, respondents who had answered 'yes' to options 1 or 3 gave reasons why they did *not* support Option 2. These reasons included that:

- Organisations should have the opportunity to defend themselves against any claims of abuse. Therefore, payments based on the number of applicants (without evidence substantiating the claims) would be unfair.
- A scheme dependent on applicants coming forward would result in unpredictable obligations for organisations.
- The number of people who have been abused (and therefore the number of applicants) may never be known, as many may not come forward.

Views on Option 3 – another approach

11.30 As shown in Table 11.2 above, organisations were more likely than individuals to select Option 3. Respondents who selected Option 3 were asked to provide details about the type of approach to financial contributions which could be used. Among those who provided details, a wide range of suggestions were offered. A recurring view within these suggestions was that, since the redress scheme would be a national scheme, it should be funded by the Scottish Government – at least in the first instance. This type of approach was proposed by a subset of local authorities, care providers and individuals. Within this group, the most common suggestion was that the Scottish Government should make all the payments and then be reimbursed by institutions for their share once the actual costs are known, preferably according to an agreed formula. Some respondents referred to the Social Security Contributions and Benefits Act 1992, and the NHS CNORIS scheme as potentially relevant models.¹¹ Two other suggestions, made less often, were that (i) the

¹¹ CNORIS: Clinical Negligence and Other Risks Indemnity Scheme.

scheme should be funded entirely by the Scottish Government and (ii) that the Scottish Government should fund ‘the majority’ of the payments.

11.31 Other suggestions, usually made by just one or two respondents, included the following:

- Contributions should be made on a case-by-case basis since individuals and their circumstances are likely to vary. Those who made this suggestion thought that a blanket (one-size-fits-all) approach was unlikely to be helpful or fair for any of the parties involved.
- Contributions should be **negotiated** on a case-by-case basis, since there are other ways of making contributions which may not necessarily involve a financial transaction (e.g. by providing after-care, or other types of support), and some organisations may resolve cases through civil proceedings and should not have to pay twice.
- Organisations should meet 100% of the costs – if they can afford it. These payments should include not only the compensation element but also any costs relating to legal advice and support.
- The organisations’ assets should be frozen (or individual perpetrators’ assets should be seized) until their financial contribution is obtained.

11.32 Respondents choosing Option 3 also made a wide range of other relevant but disparate points. The most common of these were that: (i) applications to the scheme should be investigated to ensure their veracity to maintain the integrity and robustness of the scheme, (ii) any approach to contributions needs to take account of the share that would fall to insurers, (iii) an organisation’s assets should be taken into account when determining their level of contribution, and (iii) the redress scheme in Scotland should learn from schemes in other countries. Local authorities highlighted (again) the crucial role of COSLA in achieving satisfactory arrangements for contributions from councils.

Barriers to making financial contributions (Q37)

11.33 Question 37 (an open question) asked respondents if they thought there were any barriers to providing contributions, and if so, how these might be overcome. Altogether, 171 respondents (132 individuals and 39 organisations) provided comments. There were some similarities and differences between organisations and individuals in their responses.

11.34 Among individuals, the most common response was that there were – or should be – ‘no barriers’ to institutions making financial contributions to the redress scheme. The second most common response among individuals was that they did not know or were unsure about whether there were any such barriers. However, organisations – and some individuals – highlighted a number of barriers, and there was often agreement between these two groups about what these were, although the emphasis given to them varied. For example, both organisations and individuals identified a lack of sufficient funds as a possible barrier to institutions making financial contributions. For organisational respondents, this was the main issue raised, whereas individuals raised it less often. Similarly, both organisations and individuals raised the possibility that organisations might

no longer exist; however, this appeared to be a greater concern for individuals than for organisations.

11.35 The three barriers identified both by organisations and individuals were (i) insufficient funds being available, (ii) lack of, or limited, insurance cover, and (iii) organisation(s) no longer existing. Each of these is discussed briefly.

Insufficient funds available

11.36 This issue was raised by nearly all the care provider organisations and local authorities, as well as some third sector organisations, some legal organisations and some individual respondents. Organisations said that any money used for financial contributions would have to be diverted from current care services. This would be likely to compromise the care currently being provided to vulnerable young people and adults, making some organisations unviable and resulting in their closure. Furthermore, there would be a disproportionate impact on smaller organisations which had few funds available. Some organisations argued that the only sources of funding available to local authorities would be from council reserves, council revenue budgets, or from insurers; others suggested that local authorities had **no funds** to meet uninsured claims. Additionally, the point was made that organisations would also have to make provision for individual victims / survivors who decide to pursue a civil suit, rather than accept a redress payment. This would put further pressure on organisational finances, although it was noted that cases for which liability had been proven through civil court action were likely to be covered by public liability insurance; by contrast, insurance was not likely to be available for financial contributions where no liability had been established.

Lack of, or limited, insurance cover

11.37 A lack of, or limited, insurance to cover financial contributions to the scheme was a significant concern for local authorities. Some care providers and, occasionally, individuals also raised this issue. The points made were detailed and complex. However, the key issues related to: (i) organisations' historical insurance arrangements and the willingness (or not) of successor insurers to make contributions in respect of historical liabilities; (ii) insurance company requirements for evidence of 'harm' or 'injury' prior to paying a claim; (iii) policy excesses (deductibles); and (iv) the level of payments insurance companies were likely to make for a claim of abuse in care.

Responsible organisations no longer existing

11.38 Both individual and organisational respondents highlighted the possibility that organisations responsible for historical abuse may no longer exist. Some organisations were concerned that existing institutions should not be expected to cover part of the contributions that would have been paid by (unrelated) now non-existent care providers.

Other barriers identified by respondents

11.39 In addition to the three barriers discussed above, organisations – but not individuals – frequently identified barriers related to charity law which puts restrictions on charitable organisations in relation to their spending. Those who raised this point did not believe charitable organisations would be lawfully able to use funds to make payments to a

redress scheme for historical cases of abuse. Organisations also saw a barrier in terms of identifying / establishing exactly who the organisation responsible for the abuse might be. This was a significant issue for local authorities who highlighted local government reorganisations in 1975 and 1996, and for charitable sector care providers that did not necessarily have an employer-employee relationship with individuals alleged to have carried out abuse of children in care in the past. Individuals, on the other hand, thought that the denial of liability by some organisations could be a barrier.

Suggestions for overcoming barriers

11.40 Organisations and individuals made a range of suggestions about how barriers to making financial contributions might be overcome. The one made most often, by both groups, was that the Scottish Government should fully fund the redress scheme.

11.41 Organisations also tended to emphasise the importance of the Scottish Government engaging in discussions with insurers and with COSLA to fully assess the potential impact of the redress scheme on existing services and ensuring that any decisions about financial contributions took account of an organisation's financial standing. There was a suggestion that Audit Scotland should also be involved in these discussions. However, an alternative view was that the focus on 'financial' contributions was not helpful – and that it would be better to focus on other ways that care provider organisations could contribute to the redress scheme (for example, by providing support or other services to victims / survivors) – see Question 44.

11.42 Comments from individuals tended to focus on what could be done if an organisation responsible for abuse no longer existed. Individuals suggested that, in these cases, the parent organisation (for example, the Catholic Church where the responsible organisation was a religious order that no longer exists), or the organisation's insurers, should pay their share. Individuals frequently suggested that financial contributions should be 'mandatory', that organisational claims of lack of funding should be formally investigated, that organisational assets should be seized or frozen until the organisation paid, or that the organisation (in some cases, individual perpetrators) should be taken to court if they refused to pay.

Impact of financial contributions on current services (Q38)

11.43 Question 38 asked respondents whether consideration needed to be given to the potential impact on current services of making financial contributions to the redress scheme. Table 11.3 shows that respondents were divided in their views on this question – 47% said 'yes' and 53% said 'no'. In addition, organisations and individuals had different views – the vast majority of organisations (92%) answered 'yes', while almost two-thirds of individuals (63%) answered 'no'.

Table 11.3: Q38 – Should the impact of making financial contributions on current services be taken into account?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	12	100%	–	0%	12	100%
Other public sector organisations	2	100%	–	0%	2	100%
Current or previous care providers	10	91%	1	9%	11	100%
Third sector, including survivor groups	5	83%	1	17%	6	100%
Legal sector organisations	4	80%	1	20%	5	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	35	92%	3	8%	38	100%
Individual respondents	58	37%	100	63%	158	100%
Total (organisations and individuals)	93	47%	103	53%	196	100%

Three individuals ticked 'yes' and 'no' to this question. These responses are not included in the table above.

11.44 Altogether 155 respondents (117 individuals and 38 organisations) commented at Question 38. Individual respondents often said that they did not understand the question, 'did not know' or were 'unsure' about whether the impact on current services should be considered in relation to financial contributions. This group included some who ticked either 'yes' or 'no' to the closed question. In addition, among the individuals who answered 'yes' to this question, there were some whose comments suggested that the respondent did not necessarily think that the impact on current services should be a consideration. These two issues suggest that there may have been some confusion among individual respondents about the meaning of this question and therefore the figures shown for individuals in Table 11.3 should be treated with caution.

Views in favour of taking account of impact on current services

11.45 Organisational respondents reiterated their support for the financial redress scheme, and for the principle of organisations with a history of abuse making financial contributions towards the scheme. However, as discussed in relation to Questions 35 to 37, organisational respondents were concerned that the requirement to make financial contributions would have a severe impact on current service provision. These respondents repeatedly made the point that local authorities and other care provider organisations are facing significant cost pressures even before the redress scheme is introduced. In the absence of any insurance cover (which may well be the case for many organisations), the organisations will need to pay financial contributions from their own funds, which will inevitably divert funds from current services. Care provider organisations emphasised that this situation would have a 'huge impact' on their ability to continue to deliver vital support and care to vulnerable children and adults, could result in redundancies, and could put many existing services out of business.

11.46 Organisational respondents of all types emphasised that it would not be appropriate for today's vulnerable service users to suffer as a result of redressing 'past wrongs'. These respondents recognised the importance of financial contributions, but asked that contributions be set at a level that is affordable and proportionate, and which does not

have an adverse impact on the ability of services to provide safe, high-quality care now and in the future.

11.47 Organisations urged the Scottish Government to (i) engage in discussions with insurance companies and their representative bodies and other organisations such as Audit Scotland and the Office of the Scottish Charity Regulator (OSCR), and (ii) fully assess the impact on current services of making financial contributions. Organisations suggested that Scottish Government funding would be likely to be required to ensure that current services are not affected, and offered a range of views about the Scottish Government's role. As stated above, some thought that the redress scheme should be funded entirely by the Scottish Government. However, others suggested there might be a role for the Scottish Government in making payments for local authorities which no longer exist. A third view was that the Scottish Government could operate a loan scheme – making initial payments and then agreeing a repayment plan with individual organisations.

11.48 Individuals who answered 'yes' to Question 38 expressed the view that those who are currently in care should not be adversely affected by a requirement for an organisation to make a financial contribution to the redress scheme. Some also said it was important that any financial contributions made by current services should **not** result in good services being put at risk of closure.

11.49 However, it was more common for this group to say that the needs of victims / survivors should be prioritised, and that services should take responsibility for their past failings. This group made suggestions about how payments could be made without adversely affecting current services. These suggestions were similar to those made by organisations – i.e. that the contributions should be paid by public liability insurance policies, or that the Scottish Government should pay if the organisations are unable to do so (some respondents also suggested a loan arrangement as mentioned above). Occasionally, individuals suggested that properties could be confiscated, or individual perpetrators could be stripped of their pensions.

Views opposed to taking account of impact on current services

11.50 There were three main points made by respondents (almost all individuals) who thought the impact on current services should **not** be a consideration in relation to the issue of financial contributions. This group viewed financial contributions by responsible organisations as an issue of justice, and they thought that, whatever the circumstances of current services, redress needed to be made. Some expressed the view that it was appropriate for services to be 'punished' and said they 'did not care' about current services. Others argued that many of the organisations responsible for historical abuse had insurance policies, had 'enough money', or had land and assets that could be sold to pay contributions, without it affecting current services. They also believed that certain services (local authorities and religious groups were mentioned) had 'discretionary funds' that could be used for these purposes.

11.51 Some in this group suggested that organisations have known about the redress scheme for some time and therefore had sufficient opportunity to plan for their share of the financial contributions in setting budgets.

Other possible impacts and how these might be addressed (Q39)

11.52 Question 39 asked respondents if there might be any other impacts (other than on current service provision) which could result from financial contributions, and if so, how these could be addressed. This was an open question (with no initial closed question), addressed by 131 respondents (101 individuals and 30 organisations).

11.53 Among individuals, around half of those who made a comment said they 'did not know' or were 'unsure' about what other possible impacts could arise from making financial contributions. It was also relatively common for individuals to say that there would be **no** other impacts, that they did not care about other possible impacts, or that it was for others to identify and address any possible impacts. However, around a third of individuals commenting at Question 39 identified one or more additional impacts which could result from organisations making financial contributions towards the redress scheme. These covered potential impacts on the services **making** the contributions but, more often, focused on the potential impacts of financial contributions on the victims / survivors **receiving** the contributions.

11.54 Organisational respondents mainly identified impacts on the organisations making the contributions. Only occasionally did organisations identify possible impacts on victims / survivors. Thus, the views of individuals and organisations about other organisational impacts are discussed together first, before discussion of the possible impacts on victims / survivors.

Possible impacts on services making financial contributions

11.55 Organisations and individuals identified several possible service-related impacts which could arise as a result of organisations making financial contributions. These are all in addition to the impacts on care provision which have already been discussed in relation to Question 38 and included:

- **Reputational damage:** There were two aspects to this. First, the organisation making the financial contribution could itself suffer reputational damage if information about the payments were made public. This could result in a loss of faith in the organisation among current service users and their families and affect its ability to fundraise and continue to operate. Care providers and local authorities were concerned about this, as they felt incidents of historical abuse did not reflect the current quality and standards of care in their organisations. Secondly, respondents said that if a civil claim or criminal prosecution was brought against a previous member of staff alleged to have been involved in abusing children, current or previous employees of the organisation may be individually targeted and victimised by members of the public.
- **Local economic impact:** Depending on the size of a care provider organisation, financial contributions could result in staff redundancies, thus affecting local employment. In addition, these organisations are purchasers of local services (e.g. food, furnishings and other services) and this economic activity might also be affected by a reduction in a care provider's funding.

- **Impact on other services:** If local authorities must provide financial contributions towards a redress scheme, this could result in a reduction in funds available to other services provided by the local authorities.
- **Workforce impacts:** There were three aspects to this. First, there was the potential for workload impacts. For example, social work staff may need to assist claimants in tracing and providing evidence for redress claims, making applications, and arranging other support services. Local authority staff may also need to handle personal injury claims from these same individuals, and staff will need to be put in place to track and manage the financial impact of contributions. Second, there was the potential for redundancies due to cuts to staff budgets. Third, there was the potential for psychological impact on staff involved in supporting redress applications (e.g. vicarious trauma and burnout), caused by being exposed to stories of abuse and neglect of children in care. It was suggested that such impacts have already begun to be seen among staff involved in supporting the work of the Scottish Child Abuse Inquiry and Advance Payment Scheme.

11.56 Some organisational respondents suggested that a major risk of the scheme is the potential for an unexpectedly large number of applications. There were concerns that the financial impact on current service providers was likely to be underestimated.

11.57 Respondents made a range of suggestions for mitigating the risks identified above. These overlapped to a large extent with suggestions made previously in relation to addressing the barriers to financial contributions. These included:

- Making central funding available to minimise impacts on organisational budgets
- Ensuring that contributions are affordable and proportionate and do not affect the ability of a service to provide safe, high-quality services now or in the future
- Undertaking affordability and impact assessments prior to setting the level of financial contributions required
- Issuing a formal public statement that the payments made by organisations relate to historical issues that they accept and have learned from
- Highlighting more generally the systems and procedures which currently exist to monitor service quality and standards
- Ring-fencing funding within organisations which supports other areas of need.

Possible impacts on victims / survivors of financial contributions

11.58 Individual respondents and, occasionally, organisational respondents also identified the potential for impacts on victims / survivors of financial contributions (or of the process of obtaining financial contributions).

- **Length of time required to obtain financial contributions:** The point was made that if organisations were given the opportunity to defend themselves against any claims for redress, this would result in the scheme becoming more complex, legalistic and slower than may have originally been envisaged. It could also deter potential applicants if organisations can challenge whether abuse

actually occurred. If a victim / survivor was abused in more than one institution, this would require some provision for apportioning the contributions among different institutions which will also require further investigation and take time. There will be further complexity if an organisation no longer exists.

- **Loss of financial contributions from services that become financially unviable:** Where services are forced to declare bankruptcy due to the requirement to make financial contributions, it would be impossible for any further redress awards and / or civil court judgements against that organisation to be satisfied. This would have the potential to further harm the interests of victims / survivors who have applied for redress.
- **Impacts on individuals' financial circumstances:** There were two aspects to this. First, there was a concern that individual victims / survivors may need support / mentoring to manage their redress payments and / or to avoid falling victim to financial abuse by third parties (particularly for those who have learning disabilities, mental health problems, or problems with drug or alcohol dependence). Second, there was a concern that redress payments could affect the eligibility of victims / survivors for benefits. It was suggested that any monies paid via a redress scheme should not result in a 'claw back' of benefits.

11.59 A recurring theme in the comments from individuals was that financial contributions from those organisations responsible for historical abuse – while helpful – were unlikely to end the trauma that victims / survivors had been through. The point was made that these individuals are likely to require ongoing support. However, there was also a suggestion that there should be less focus on (negative) impacts, and more focus on the long-term benefits that may result from victims / survivors of historical abuse being more financially secure.

Organisations no longer in existence or with no assets (Q40)

11.60 Question 40 asked respondents for their views on what should happen (in relation to financial contributions) where a responsible organisation no longer exists in the form it did at the time of the abuse, or where an organisation has no assets. This was an open question with no preceding tick-box question. Altogether, 193 respondents (157 individuals and 36 organisations) commented; however, comments from seven of the organisations specifically stated that the organisation had no comments, was not in a position to answer, or had decided not to answer this question. At the same time, around a third of the responses from individuals said either that the respondent 'did not know' or was 'unsure' of how to answer, **or** they included comments that were unclear – possibly suggesting that the individual may not have entirely understood the question.

11.61 The remaining responses indicated similar views among organisations and individuals. Among both groups, the most common response was that, where a responsible organisation no longer existed in the form it did at the time of the abuse, or where an organisation has no assets, then the Scottish Government would need to step in and pay that organisation's contributions to the scheme. Less often, respondents said that the Scottish Government would need to pursue the contributions (e.g. through the courts or directly with the organisation), or that it was up to the Scottish Government to decide what should be done in these circumstances. Individual respondents emphasised that

individuals abused in organisations that no longer existed should not be disadvantaged in relation to the redress owed to them.

11.62 It was also relatively common for respondents (and particularly organisations) to say that if another organisation had taken over the responsibilities and / or assets of an organisation, then the successor organisation should be liable for contributions. In some cases, this successor organisation may have been a parent organisation (such as the Catholic Church or other religious body in the case of orphanages run by religious orders). Some local authority respondents pointed out that this situation also applied to councils as a result of local government reorganisations in 1975 and 1996, and they highlighted potential complications with respect to some local authorities having more than one successor authority (e.g. within the old Strathclyde Regional Council area), and cross-authority placements (i.e. a child from one authority placed in a care service in another authority). It was also suggested that the financial position of a successor organisation may be such that they would require an extended period of time to meet their obligations and, in these cases, it was suggested that the Scottish Government should initially fund the contributions and then seek repayment. However, some argued that it would not be realistic to try to obtain financial contributions from organisations that have been wound up and have no resources.

11.63 In addition to pursuing successor organisations, respondents (and again, particularly organisations) often suggested that contributions be sought through the predecessor organisation's insurers. It was noted that a similar scenario for victims of mesothelioma had been addressed through the establishment of a payment scheme with compensation packages available to individuals who could not trace a liable employer or an employer's insurer – these packages of support were funded by insurance firms via a levy. There was a suggestion that one of the purposes of a formal redress scheme should be to overcome the problems presented by this scenario.

11.64 Individuals often suggested that where an institution no longer existed, individuals previously responsible for the management of that institution, or individuals employed by that institution should be pursued instead. Occasionally, individuals also said that in these circumstances, the local authority which placed the child in care could make their financial contributions.

11.65 However, there was general consensus among respondents that should it prove impossible to pursue a successor organisation, or a predecessor organisation's insurers, then the Scottish Government would need to pay instead. Organisations thought it would be unfair to expect care provider organisations that **are** still in operation to contribute disproportionately to cover the contributions of organisations that no longer exist.

11.66 Some individuals and organisations suggested that, if it was not possible to obtain a financial contribution from a responsible organisation (either because the organisation no longer existed, or because they had no assets), the organisation should be named publicly and the former management (or employees) of the institution should be willing to issue a formal apology. Similarly, in situations where institutions continued to exist, but had no means to pay their financial contributions, the offer of in-kind support (of a non-financial nature) should be considered instead. Finally, some respondents suggested that the non-

existence of assets may need to be independently verified, particularly in cases where land may still be held by or on behalf of a former organisation.

What constitutes a fair and meaningful contribution (Q41)

11.67 Question 41 asked respondents for their views about what a fair and meaningful financial contribution would be from those responsible for historical abuse. This was an open question with no preceding tick-box question. Altogether, 195 respondents (158 individuals and 37 organisations) commented and there were marked differences in the views expressed by organisations and individuals, as described in the following paragraphs.

11.68 In general, organisations said that they were not able to answer this question without further information. Specifically, organisations wanted details about (i) the number of applicants, (ii) the range of payments likely to be awarded, (iii) how the scheme will operate in practice, (iv) the extent to which insurance companies will contribute to costs, and (v) financial projections of how contributions would impact on organisations' budgets. They thought that this information was needed before a view could be reached about 'fair and meaningful' financial contributions. In addition, instead of commenting on what would constitute a 'fair and meaningful' contribution, organisations often identified factors that should be considered in determining what a 'fair and meaningful' contribution is.

11.69 Around a third of individuals responded to this question by saying 'don't know' or 'unsure'. However, more often, individuals made very specific suggestions about what would constitute a 'fair and meaningful' financial contribution from organisations responsible for abuse. Usually these suggestions were expressed as a percentage of the total redress payment ranging from 25% to 100% – the most common suggestion was 100%. However, some individuals suggested that a percentage of the organisation's total assets (usually 100%) should form the basis of their contributions, and others suggested a specific amount – either a total amount (ranging from £2,000 to £100,000) or an amount per year that a victim / survivor was in care (ranging from £20,000 to £200,000 per individual per year spent in care). Some individuals also made more general statements such as 'as much as possible', 'as much as they can afford', or 'everything they own'. (Some individuals may have been referring to individual perpetrators of abuse in relation to such responses.) Very few organisations made such specific suggestions. Those who did proposed proportions ranging from 50% (with the other 50% paid by the Scottish Government) to 100%.

11.70 Like organisations, individuals also often highlighted factors that should be considered in deciding what a fair and meaningful contribution would be. In some cases, these factors were identified **in addition** to the more specific suggestions discussed above; in others, they were made **instead** of such suggestions.

11.71 Individuals (but not organisations) also occasionally referred to other external benchmarks which they thought could provide a basis for determining what a 'fair and meaningful' financial contribution would be – e.g. other similar legal claims and awards, or the experiences of other countries in making such payments. Individuals also frequently responded to this question with a question – e.g. 'how much is a lost childhood worth?' In addition, individuals often made more personal statements referring to the impact of abuse

and suggesting that no amount of money could compensate for the 'destruction of a person's life'.

Factors to be considered in determining 'fair and meaningful' contributions

11.72 As noted above, both organisations and individuals frequently identified factors they thought should be considered in determining the level of financial contributions from organisations responsible for historical abuse. The suggestions largely reflected the differing perspectives of organisations and individuals / survivors on the issue of financial contributions.

11.73 For example, among organisations, important considerations included:

- **Financial impact on the organisation:** There were two issues raised in relation to this point. First, it was suggested that larger organisations could absorb the impact of making financial contributions more easily than small organisations. Second, organisations argued that making financial contributions should not jeopardise current service provision.
- **How financial contributions would be apportioned among responsible organisations:** There were suggestions that multiple organisations and entities would have shared responsibility for the abuse suffered by children in care in the past. In addition to individual care provider organisations, responsible organisations would include the management boards overseeing organisations, the local authority social work departments who placed children in care, the government of the time which was responsible for setting policy and standards of care, the youth justice and children's hearings systems which had a duty of care to the children, and the statutory bodies responsible for the inspection and monitoring of care services. Those who raised this issue thought that the liability for financial contributions would need to be allocated proportionally to **all** such organisations.
- **'Tailored' vs 'standard' contributions:** Some organisations thought that decisions about financial contributions should be taken on a case-by-case basis since they would depend on a wide array of circumstances and on the sums awarded in each case. Others called for a 'standard' or 'universal' approach based on a transparent formula or methodology.

11.74 Among individuals (and also some organisations), the key factors for determining levels of financial contributions were seen to be (i) the severity of the abuse; and (ii) its impact. An alternative view was that 'fair and meaningful' contributions should be punitive – particularly in cases where it can be shown that the organisation knew about abuse but did not intervene to stop it. A second alternative view, expressed less often, was that responsible organisations should make voluntary contributions without being forced to pay as this would demonstrate their sincerity. Occasionally individual respondents suggested that steps should be taken to avoid the closure of organisations providing ongoing services.

Who should decide what a 'fair and meaningful' financial contribution is?

11.75 Finally, some organisations and individuals made statements about who **should**, or **should not**, have the task of deciding what constitutes 'fair and meaningful' contributions from responsible organisations. A wide range of views were expressed including that the decisions **should** be made by:

- The Scottish Government
- An independent body (no specific suggestions were offered)
- A judge / the courts / lawyers / 'the law'
- The various parties involved in each case
- The redress scheme management.

11.76 Respondents also suggested people or organisations who **should not** have responsibility for determining the level of financial contributions. These comprised (i) the Scottish Government, and (ii) survivors (suggested both by organisations and individuals).

Ways of encouraging fair and meaningful contributions (Q42)

11.77 Question 42 asked respondents about the most effective way of encouraging those responsible to make fair and meaningful contributions to the scheme. This was an open question with no preceding tick-box question. Altogether, 196 respondents (158 individuals and 38 organisations) commented. It should be noted that the comments of almost a fifth of the organisations specifically stated that they were 'not in a position to comment on this question', or they simply said, 'no comment'. There were some similarities in the suggestions made by organisations and individuals. However, the emphasis given to certain suggestions within the two groups was very different.

11.78 The most common views among individuals were that: (i) contributions should be compulsory (i.e. required by legislation); (ii) legal action should be taken against those who do not contribute; and (iii) those who do not contribute should be 'named and shamed'. In some cases, all three of these suggestions were made by a single respondent. Individuals sometimes also suggested 'seizing', 'freezing' or 'selling' an organisation's assets, reducing funding to the organisation, or introducing other financial penalties (including through taxation).

11.79 Less often, individuals suggested 'persuasion' as a way of encouraging contributions. This could involve: (i) producing evidence of abuse taken from the testimonies of victims / survivors; (ii) meeting victims / survivors and learning about the impact and trauma of abuse in their lives; (iii) appealing to the organisation's values, and their sense of 'duty' and 'moral responsibility'; (iv) publicly commending those organisations who **do** contribute; and (v) being persistent (i.e. 'keep asking'). Occasionally, individuals suggested that persuasion was likely to be more effective than legal imperatives in obtaining financial contributions.

11.80 Among those organisations who offered suggestions, there were mixed views about whether persuasion / discussion, or a more formal (potentially legislative) approach would be more effective in securing financial contributions from responsible institutions. Some organisations suggested that persuasion / discussion should be used in the first instance,

with legislation introduced if that fails. There were also differences between organisations as to whether contributions should be ‘voluntary’ or ‘compulsory’. Care provider organisations tended to support persuasion and voluntary contributions, whereas local authorities and other public sector bodies tended to support persuasion backed up by legislation. Organisational respondents did not generally suggest ‘naming and shaming’ as a way of encouraging financial contributions.

11.81 A recurring message among organisations was that effort needs to be invested at an early stage to ensure that (i) any financial contributions are fair (i.e. based on an organisation’s ability to pay), proportionate and do not affect current service provision, and (ii) the full range of institutions responsible for abuse contribute their share (see paragraph 11.73 above, second bullet point). Organisations called for dialogue between the Scottish Government and care providers to reach agreement on the question of contributions. Organisations thought that this dialogue needed to include detailed information about the likely scale of contributions and the extent to which these costs would be covered by insurance. Finally, there were calls for information about the costs of payments made to survivors of in-care abuse in other jurisdictions.

11.82 Occasionally, organisations and individuals suggested other possible incentives to making financial contributions. For example, both groups suggested (i) offering loans or other ways of letting organisations make contributions over a period of time, and (ii) removing the threat of civil action against organisations that contribute.

11.83 However, alongside these suggestions, some organisations reiterated previous statements that small care provider organisations / local authorities simply have no funding available to make financial contributions towards the redress scheme. These respondents called for the Scottish Government to cover the full cost of the scheme. There was also a question about why the Scottish Government would introduce legislation to compel payments from organisations to fund redress when such payments can already be obtained through the civil court system.

Consequences for not contributing to the scheme (Q43)

11.84 Question 43 asked respondents if there should be consequences if those responsible for abuse do not make a fair and meaningful financial contribution to the redress scheme.

11.85 Table 11.4 shows that there was general consensus on this issue. Among those who answered the question, overall 97% said ‘yes’. Individual respondents were nearly unanimous in their views, with 99% believing that there should be consequences. Among organisations, a small number of local authority / partnership bodies and current or previous care providers answered ‘no’.

Table 11.4: Q43 – Should there be consequences for those responsible who do not make a fair and meaningful financial contribution?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	8	80%	2	20%	10	100%
Other public sector organisations	1	100%	–	0%	1	100%
Current or previous care providers	4	67%	2	33%	6	100%
Third sector, including survivor groups	5	100%	–	0%	5	100%
Legal sector organisations	2	100%	–	0%	2	100%
Other organisational respondents	1	100%	–	0%	1	100%
Total organisations	21	84%	4	16%	25	100%
Individual respondents	189	99%	2	1%	191	100%
Total (organisations and individuals)	210	97%	6	3%	216	100%

11.86 Respondents answering ‘yes’ to Question 43 were asked a follow-up question: ‘What might these [consequences] be?’ Altogether, 197 respondents (163 individuals and 34 organisations) provided comments. These figures included some who did not answer the closed part of the question. Individuals who offered comments without addressing the tick-box question generally said they did not understand the question or were unsure how to answer it. Organisations who commented without addressing the closed question usually stated that they had no comment to make, had decided not to answer the question, or they raised issues / concerns without directly addressing the question.

11.87 The follow-up question at Question 43 was directed towards those who answered ‘yes’ to the closed part of the question. However, some respondents who answered ‘no’ also offered comments. Thus, the following sections look at comments from those who agreed with consequences for those who do not make a fair and meaningful contribution, and those that disagreed, while a final section looks at other comments.

Agreement with consequences for non-payment of financial contributions

11.88 Amongst individuals, some simply emphasised that organisations needed to accept responsibility for abuse and acknowledge the serious lifelong impacts of abuse for victims. Individuals reiterated earlier comments about the importance of holding responsible organisations to account, and the role of financial contributions in this respect. There was a great deal of consistency in the views of individuals who commented more specifically on consequences for non-payment of financial contributions. This group repeatedly suggested that the consequences for non-payment of contributions by responsible organisations should involve (i) civil legal action, criminal prosecutions and / or penalties (fines or prison), (ii) ‘naming and shaming’ responsible organisations, and (iii) ‘punishing’ the organisation financially – by withdrawing any public funding they receive, revoking their charitable status, or closing the organisation down. In some cases, respondents suggested these in combination. Less commonly, individuals answered this question by calling for the confiscation of the organisation’s assets.

11.89 The comments of organisational respondents were considerably more diverse. The most common view (expressed by all types of organisation apart from ‘other organisational

respondents') was that legal action should be taken to enforce contributions by responsible organisations and / or that legislation should be in place to enable this. However, this group often raised caveats, concerns or other issues in their responses. Specifically, it was noted that:

- The question of what constitutes a 'fair and meaningful' contribution is still to be determined. Organisations which do not (or cannot) make such contributions should have the right of appeal.
- It is unclear how consequences could lawfully flow from anything other than a legal liability for abuse – established through litigation.
- Any legal action to obtain payments from organisations that refuse to pay will need to involve a financial assessment of the organisation's assets and the impact on the organisation of making those contributions.
- It was unclear how the requirement to make financial contributions could be legally enforced if the responsible organisation was dormant or no longer in existence.
- The damage to the organisation was likely to be greater if they were forced to contribute through court action rather than contributing voluntarily.

11.90 The second most common view among organisations was that refusal to make contributions should be dealt with on a case-by-case basis. Some individuals also suggested this type of approach. The point was made that the organisation may be refusing to pay because it genuinely could not afford to so. In addition, it was noted that such an approach would be in line with the proposal to allow discretion in relation to the eligibility criteria for claimants to enable the unique circumstances of each survivor / applicant to be taken into account. It was suggested that the circumstances of these organisations should be examined to allow a decision to be made about what action to take. However, an alternative view favoured consistency of approach.

11.91 Less often, organisations suggested removal of the responsible organisation's charitable status, withdrawal of funding, or 'naming and shaming' as consequences for non-payment of contributions.

11.92 Individuals and organisations suggested a range of other consequences (including consequences that were less 'punitive' in nature). In general, these were identified by just one or two respondents and included:

- Applying any waiver on civil court action built into the redress scheme design only to those organisations who make contributions
- Giving positive publicity to those organisations who **do** make fair and meaningful contributions
- Requiring organisations that do not make payments to appear before 'an appropriate committee'
- Revoking any awards or affiliations the organisation or its management may have – for example Queen's honours.

11.93 Finally, some individuals and organisations who answered ‘yes’ to Question 43 commented that the consequences of non-payment were not for them to determine. Some individuals in this group suggested that the Scottish Government, a judge, or ‘lawyers’ should decide.

Disagreement with consequences for non-payment of financial contributions

11.94 The follow-up question at Question 43 was directed towards those who answered ‘yes’ to the closed part of the question. However, some respondents who answered ‘no’ also offered comments. These included two local authorities and one care provider organisation who reiterated previous arguments about local authorities having insufficient funds to make financial contributions (in the case of local authorities) and the shared responsibility for historical abuse (in the case of the care provider). Within this group, the view was expressed that the language of Question 43 was unhelpful and adversarial, and that it was inconsistent with the principles of ‘partnership’ and ‘collaboration’ set out in the consultation paper.

Contributions to wider reparations (Q44)

11.95 Question 44 (an open question with no initial tick-box) asked for views on what contributions, in addition to contributions to the redress scheme, those responsible for abuse should make to wider reparations. The consultation paper outlined how care providers and relevant bodies in other countries such as Ireland and Australia had contributed to the funding of support services for survivors, and to the establishment of a trust fund for the benefit of former residents of children’s homes. It also noted that residential service providers and other professional groups in Scotland had previously indicated that financial redress should be viewed in the context of a broader reparation package which might include:

- Enabling supportive access to records
- Financial support for counselling sessions
- Signposting people to a range of relevant supports
- Tracing and unifying families
- Offering after-care support
- Individual sessions to promote reconciliation
- Individual apology
- Ensuring that victims / survivors are aware of the scrutiny that exists for present-day care services by current registration and inspection regimes.

11.96 Altogether, 192 respondents (149 individuals and 43 organisations) made comments at this question. The views expressed by both organisations and individuals indicated a general consensus that financial redress should be seen as part of a ‘package’ of measures, and it was common for respondents to endorse some or all of the options listed in the consultation paper. However, respondents had different views about the areas to which those responsible might be expected to contribute and in what way they might do so.

11.97 For the most part, individual respondents tended to give brief answers to this question. Some endorsed the suggested areas of wider reparation listed in the consultation paper, or suggested that the arrangements put in place in countries such as Ireland and Australia could provide pointers on this issue. Among those who commented more specifically, the main areas of concern related to (i) contributions to support services, (ii) provision of apologies, and (iii) action to ensure that those in care were properly safeguarded in the future. Each of these is discussed briefly below:

- **Support services:** There was a widespread view among individuals that care providers should contribute towards support services for survivors. There were frequent references to counselling, and psychological, therapeutic and mental health services, but respondents also referred to other areas of support such as employment, housing, welfare, and general financial assistance. Respondents saw an ongoing need for such support for victims / survivors and thought responsible institutions should contribute in this area. Individuals did not often make it clear how they thought this should be done in practice. However, those who raised this issue mainly referred to contributing to the **funding** of services provided by third parties, and some explicitly said that it was not appropriate for those responsible for abuse to provide support to survivors directly.
- **Provision of apology:** There were calls for care providers to issue apologies to victims / survivors and their families – some envisaged this as an individual personal apology while others referred to ‘public’ or ‘official’ apologies. For some, it was important that this was linked to an explicit acknowledgement of what had occurred and an acceptance of responsibility for the abuse that had taken place.
- **Safeguarding those in care:** Individuals often said they wanted to know that, going forward, children (or adults) in care were properly protected from abuse and provided with high-quality care and support. They thought organisations should be required to demonstrate adequate systems, and should be subject to robust regulatory, monitoring and scrutiny arrangements.

11.98 Other specific areas where those responsible for abuse might make contributions to wider reparations, mentioned less often, included (i) providing assistance with accessing records; (ii) providing the opportunity for face-to-face meetings; (iii) signposting to appropriate services or assisting with access to support; and (iv) funding of legal costs previously incurred by individuals (legal assistance for those making claims for redress is discussed elsewhere in this report – see Questions 29 and 30, Chapter 9).

11.99 Similarly, **organisations** endorsed the importance of a wider package of measures but had more diverse views on what responsible institutions should contribute and how that might best be done. Specifically, there was a difference between the views of care providers and those of other organisations.

- Care providers saw their role as being very much focused on ‘in kind’ contributions. They talked about assisting survivors with accessing records and tracing family members; offering apologies and acknowledgments to survivors; engaging with individual survivors to offer support and promote reconciliation; ensuring openness and providing information and reassurance on current procedures and practices; and signposting survivors to other organisations for

further support and assistance. Some care providers described their current activity in this area and how this work would continue into the future.

- Other organisational respondents recognised the importance of this ‘in kind’ contribution, and some local authority respondents spoke of how they too were providing ongoing assistance with accessing records and providing support, including via social work services. However, this group of organisations were more likely to discuss the need for ongoing assistance and support services for survivors of the type discussed by individual respondents (counselling, social and welfare support, etc. – see paragraph 11.97, bullet 1). This was seen to be important to survivors and something that care providers should contribute toward, rather than provide directly.

11.100 However, organisations often discussed different models for the delivery and funding of a wider reparation package. As noted above, care providers largely discussed making ‘in kind’ contributions to wider reparations; in just one case did a respondent in this group refer to a financial contribution, suggesting the payment of a surcharge in respect of each redress award relating to each institution. In contrast, other types of organisations offered a range of comments and suggestions relating to the funding and delivery of wider reparations. For example:

- The most common view was that those responsible should provide funding for **other** organisations to deliver services to survivors. Some respondents said that any financial contributions should be made centrally and used to fund services at a strategic and coordinated level. In a few cases, respondents suggested that funding should be provided on an individual case-by-case basis.
- Some local authority respondents expressed concern about the financial implications for local authorities and argued that the Scottish Government should assume responsibility for funding services for survivors.
- Some respondents said that any financial contributions to wider reparations should be part of the overall financial contribution to the redress scheme and should not be treated separately. A few respondents referred to a ‘surcharge’ system, based on the volume of awards linked to abuse in their institutions.
- The need for transparency about contributions and funding arrangements was noted.

Part Two: Scheme Administration and Wider Reparations

12. Scheme panels (Q45–Q47)

12.1 Part 2.1 of the consultation paper outlined proposals in relation to two key aspects of the redress scheme's administration: the composition of the Decision-making Panel and the establishment of a Survivor Panel.

Question 45: Do you agree that the Decision-making Panel should consist of three members? [Yes / No] Please explain your answer.

Question 46: Do you agree that the key skills and knowledge for panel members should be an understanding of human rights, legal knowledge, and knowledge of complex trauma and its impact? [Yes / No] Are there other specific professional backgrounds or skills you feel are essential for the Decision-making Panel?

Question 47: We proposed that a Survivor Panel be established to advise and inform the redress scheme governance and administration, ensuring survivor experience of the application process is considered as part of a culture of continuous improvement. Do you agree? [Yes / No] Please explain your answer.

How do you think survivors should be recruited and selected for this panel?

Key points

- ◆ Respondents generally supported a panel of three members (83% overall agreed with this), saying that this would facilitate consensus, or allow majority decisions to be reached; ensure efficient, effective and consistent decision-making; and ensure a spread of knowledge, skills and backgrounds. Individuals who disagreed generally favoured a panel of *more* than three members.
- ◆ There was general agreement (97% overall; 98% for individuals and 90% for organisations) that understanding of human rights, legal knowledge, and knowledge of complex trauma and its impact were key for panel members, with respondents often emphasising the need for *specialist* knowledge and experience relevant to the issue of in care abuse. Knowledge and understand of the care system and the broad issue of historical abuse, as well as financial matters were also identified as relevant. Individuals often also said that personal qualities such as empathy, compassion, common sense, and commitment to fairness and justice were important for panel members.
- ◆ Some individuals called for the Decision-making Panel to include victims / survivors.
- ◆ There was a high level of support (96% overall) for the proposed Survivor Panel. Respondents thought the lived-experience of survivors would be 'invaluable' to the operation and governance of the scheme. They also thought it was important for survivors to be involved in the redress scheme on principle.
- ◆ Respondents mainly favoured recruitment of survivor panel members via a widely advertised and promoted open process involving an initial application and / or interview. Survivor groups were seen as having an important role in promoting the opportunity to be on the panel and encouraging and supporting applicants.
- ◆ There was a general view that panel membership should be diverse and representative of the full range of survivor experiences and perspectives.

- ◆ Openness, transparency and clarity were seen as important characteristics of the governance and operation of the Decision-making and Survivor Panels.

Decision-making Panel (Q45–Q46)

12.2 The Scottish Government proposed that decision-making in relation to the financial redress scheme should be made by a panel of three suitably qualified people. The Government further proposed that panel members should come from a variety of backgrounds, and identified understanding of human rights, legal knowledge, and knowledge of complex trauma as key skills for members.

Number of panel members (Q45)

12.3 Question 45 asked respondents if they agreed that the panel should consist of three members. Table 12.1 shows that there was strong support for this – with 83% of respondents overall answering ‘yes’. Organisations were almost unanimously in favour of this proposal (with 97% answering ‘yes’). However, a fifth of individuals (20%) disagreed.

Table 12.1: Q45 – Do you agree that the Decision-making Panel should consist of three members?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	8	100%	–	0%	8	100%
Other public sector organisations	3	100%	–	0%	3	100%
Current or previous care providers	8	89%	1	11%	9	100%
Third sector, including survivor groups	6	100%	–	0%	6	100%
Legal sector organisations	6	100%	–	0%	6	100%
Other organisational respondents	1	100%	–	0%	1	100%
Total organisations	32	97%	1	3%	33	100%
Individual respondents	160	80%	39	20%	199	100%
Total (organisations and individuals)	192	83%	40	17%	232	100%

12.4 Altogether 176 respondents (144 individuals and 32 organisations) offered additional comment on the proposed number of panel members. It was common for respondents to include views here on who should be on the panel, and these comments are covered at Question 46 below.

12.5 As Table 12.1 showed, there was a high level of agreement that the Decision-making Panel should comprise three members. Among those expressing **support** for this proposal, some (mainly individuals) simply endorsed the proposal – saying, for example, that this was ‘reasonable’ or that three was the ‘best’, ‘optimum’, or ‘right’ number of panel members, or would offer a fair or balanced approach. Others explained their answer further, with individuals and organisations offering broadly similar views. The main points made are summarised below, with respondents arguing that a panel of three would:

- Support decision-making either by facilitating consensus, or allowing a majority decision to be reached

- Ensure decisions were reached in an efficient, effective and consistent way
- Allow for a spread of professional knowledge, skills and backgrounds to be included, and ensure that claims were dealt with in a full and balanced way – though some qualified this by saying that panel members should be supported by appropriate professionals and / or have access to additional specialist advice as required
- Ensure that different views, perspectives and experiences were represented.

12.6 The last two points above were particularly important to individual respondents who thought this would be helpful in considering and understanding specific complex cases.

12.7 Occasionally, respondents also said that a membership of three offered logistical benefits in terms of convening panels, and would reflect practice in other hearings and schemes.

12.8 In some cases, respondents did not comment directly on the proposal for a panel of three, but said it was important that (i) the panel had an odd number of members to allow majority decisions to be reached, or (ii) decisions were not made by a single individual.

12.9 Some who indicated agreement at Question 45 qualified their answer by saying that they regarded three as the **minimum** number of panel numbers that would be appropriate.

12.10 Relatedly, the main view among respondents (mainly individuals) who **disagreed** at Question 45 was that the panel should involve **more** than three people, with five the most commonly suggested alternative number. Those who explained their views further thought this number would allow wider representation, ensure claims were fully considered and understood, and give greater 'balance' and fairness to the process. Some also suggested that a greater number of panel members was needed to provide cover in the event of absence. However, it wasn't clear if these respondents were referring to the option of being able to replace a panel member with a substitute from a wider pool, or whether they thought a panel of five (or more) would still be able to operate effectively if one member was unavailable.

12.11 Finally, some respondents (both individuals and organisations) said the rationale for a three-person panel was not clear. These respondents emphasised the importance of the skills and qualities of panel members rather than the number of members.

Skills and knowledge of panel members (Q46)

12.12 Question 46 asked about the key skills and knowledge for panel members. Table 12.2 shows that there was general consensus on this question, with 97% of respondents overall (98% of individuals and 90% of organisations) agreeing that the key skills and knowledge for panel members should be an understanding of human rights, legal knowledge, and knowledge of complex trauma and its impact, as proposed in the consultation paper.

Table 12.2: Q46 – Do you agree that the key skills and knowledge for panel members should be an understanding of human rights, legal knowledge, and knowledge of complex trauma and its impact?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	10	91%	1	9%	11	100%
Other public sector organisations	5	100%	–	0%	5	100%
Current or previous care providers	6	67%	3	33%	9	100%
Third sector, including survivor groups	7	100%	–	0%	7	100%
Legal sector organisations	6	100%	–	0%	6	100%
Other organisational respondents	3	100%	–	0%	3	100%
Total organisations	37	90%	4	10%	41	100%
Individual respondents	204	98%	4	2%	208	100%
Total (organisations and individuals)	241	97%	8	3%	249	100%

One individual ticked both 'yes' and 'no' to this question. This response is not included in the table above.

12.13 Altogether 152 respondents (116 individuals and 36 organisations) commented at Question 46. Although the follow-up question asked about any other essential professional backgrounds or skills for the Decision-making Panel, respondents commented more widely on aspects of panel membership and this is reflected in the following sections.

12.14 Some respondents used their comments to offer general endorsement of the key skills and knowledge proposed in the consultation paper, describing these as 'sufficient' or 'cover[ing] everything' or, alternatively, indicating that they did not have any suggestions for additional essential skills and knowledge. Those offering fuller comments set out a range of views, as discussed below.

12.15 Respondents attached a great deal of importance to the inclusion of **knowledge of complex trauma and its impact**, as proposed in the consultation paper. Some saw this as crucial and / or argued that **all** panel members should have knowledge and experience in this area. However, respondents also often emphasised the need for **specialist** knowledge and experience, with a focus on childhood trauma and its impact on child and adult development, and trauma related to childhood abuse (including sexual abuse) in particular. Two related areas of knowledge and understanding were also highlighted:

- Respondents often argued that specific knowledge and understanding of the issue of historical in-care abuse, and of the survivor experience was essential for panel members – some called for direct experience of working with victims / survivors of abuse.
- Some also said panel members should have knowledge of the relevant policy, legislative, operational and organisational contexts. Respondents called for specific knowledge and experience related to social work and residential care policy and practice during the relevant timeframe, and of the structure and organisation of religious bodies.

12.16 Respondents noted a range of key professionals whom they thought could offer relevant expertise, including:

- Mental health and psychology professionals
- Medical doctors / psychiatrists, with expertise related to children, and the impact (physical and mental) of trauma
- Counsellors, psychotherapists, and those with pastoral care skills
- Representatives of groups such as Future Pathways or Wellbeing Scotland.

12.17 There was also a suggestion (from a care provider organisation) that the care provider perspective should be represented on the panel.

12.18 With regard to the other two key areas of knowledge and skills identified in the consultation paper, respondents made the following main points:

- Some respondents endorsed the inclusion of **legal knowledge** as a key area – there were a number of specific suggestions to the effect that there should be at least one lawyer (or retired judge) on the panel, and / or that the chair of the panel should be legally qualified. However, others offered a mix of views on the inclusion of legal expertise on the panel. Some said that this should comprise **relevant** legal knowledge (e.g. related to in-care abuse, social work or charity law or compensation claims) while others queried or were opposed to the inclusion of legal professionals on grounds of cost, or because they thought this should not be required in an appropriately designed and robust redress system – some suggested that legal advice should be made available to the panel as necessary.
- Respondents did not often comment on the **understanding of human rights** as a key area of skill and knowledge for panel members. However, those who did offered opposing views: they either simply endorsed its inclusion or suggested that it was not relevant to panel considerations which would necessarily focus on the assessment of the case and evidence presented.

12.19 Respondents occasionally proposed that panel members should have knowledge and skills in relation to financial matters. This was seen as offering a different perspective and being potentially helpful in relation to advising on the level of awards.

12.20 Respondents also made a number of more general points relating to knowledge and skills, suggesting, variously, that panel members should (i) encompass a broad range of skills and knowledge; (ii) be suitably qualified in their area of expertise, and / or professionally qualified and covered by a relevant code of conduct; and (iii) have relevant experience, rather than just knowledge, in the key areas.

12.21 In addition, it was common for respondents (and individuals in particular) to discuss the personal qualities they thought were important for those fulfilling this role. Respondents in this group prioritised attributes such as empathy, understanding, compassion, common sense, and commitment to fairness and justice. Communication skills, including those relating to engaging with people with learning disabilities, were also noted. Some said that personal qualities were more important than professional knowledge and skills, with some individuals favouring the inclusion of lay people or members of the public on the panel (reference was made to the Children’s Panel as a possible model here).

The inclusion of survivors on the Decision-making Panel

12.22 A notable view amongst individuals (and, very occasionally, amongst organisations) was that, contrary to the recommendations of the Scottish Government, the panel should include victims / survivors of abuse to ensure the experience of claimants was properly understood. It was pointed out that this would be in line with the views expressed in the earlier survivor consultation and consistent with a human rights-based approach and would help ensure legitimacy and support for the redress process. It was also noted that some victims / survivors had already played a valuable part in the redress process in offering support and advice to fellow victims / survivors, and that concerns about confidentiality could be adequately dealt with. Others suggested that such involvement might be in an advisory or observer capacity, rather than as a panel member per se.

Other comments on the Decision-making Panel

12.23 Across Questions 45 and 46, respondents made a range of other points relating to the operation and governance of the Decision-making Panel, with individual points generally made by a few respondents only. These are summarised briefly below:

- **Panel membership:** Panel membership should be diverse, with the proviso that claimants be able to request a single-sex panel. Potential members should be vetted and should not include people linked to any Scottish Child Abuse Inquiry (SCAI) listed institution.
- **Resourcing:** There should be a pool of panel members, with multiple panels sitting simultaneously. A 'cover' system should operate to allow panel members to be replaced in the event of absences.
- **Chairing arrangements:** The panel should be made up of a chair and two members, with the chair having an executive (deciding) role. It was also suggested that the chair should be legally qualified.
- **Support for panel members:** Training and development should be provided for panel members, with access to additional professional support and specialist expertise as required. Access to counselling support should also be available.
- **Overall approach:** The panel should operate in a proactive, supportive and non-judgemental way, in order to assist survivors in presenting their case, and should have access to full information for each case.
- **Governance:** Clear governance arrangements should be in place for the panel, which should be independent and transparent in its work. Scrutiny should be provided via internal and external monitoring, review and appeal processes.

12.24 Finally, some respondents queried whether the panel would be involved in Stage One or Stage Two claims or both – these respondents did not think a panel was required for Stage One claims, but supported the proposals made as appropriate for Stage Two claims.

Survivor panel (Q47)

12.25 The consultation also outlined proposals for a Survivor Panel (separate from the Decision-making Panel) intended to ensure that the development and operation of the

redress scheme is informed by those using the scheme. Question 47 was a two-part question that asked for views on (i) the proposal to establish a Survivor Panel, and (ii) the recruitment and selection processes for membership of such a panel.

12.26 Table 12.3 shows a very high level of support for this proposal – 96% overall, with a very similar response pattern for organisations and individuals.

Table 12.3: Q47 – Do you agree that a Survivor Panel be established to advise and inform the redress scheme governance and administration?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	9	90%	1	10%	10	100%
Other public sector organisations	4	100%	–	0%	4	100%
Current or previous care providers	7	88%	1	13%	8	100%
Third sector, including survivor groups	8	100%	–	0%	8	100%
Legal sector organisations	5	100%	–	0%	5	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	35	95%	2	5%	37	100%
Individual respondents	194	97%	7	3%	201	100%
Total (organisations and individuals)	219	96%	9	4%	238	100%

Percentages may not total 100% due to rounding.

12.27 Altogether 162 respondents (125 individuals and 37 organisations) commented on whether there should be a Survivor Panel, and 174 respondents (144 individuals and 31 organisations) commented on how members should be recruited and selected for such a panel. The sections below consider each of these issues in turn.

Views on the establishment of a survivor panel

12.28 As shown in Table 12.3, there was strong support for the establishment of a Survivor Panel among both individuals and organisations.

12.29 Those who **supported** with the proposal focused on the following two main points in their comments:

- **Knowledge and experience of survivors:** Respondents of all types highlighted the unique knowledge and lived experience of survivors with regard to in-care abuse and its impact, and indicated that their perspective and contribution would be ‘invaluable’ to the operation and governance of the scheme.
- **The principle of survivor involvement:** Respondents also thought it was important for survivors to be involved in the redress scheme on principle. Organisations tended to say that working **with** survivors, or putting them at the ‘heart of the process’, was essential to the legitimacy of and confidence in the scheme, and would promote transparency and survivor empowerment. Some said it reflected international best practice and was in line with a rights-based participatory approach, and the guiding principles set out for the redress scheme. Individuals tended to talk about the importance of ensuring that survivors had a

'voice' and that their views and experiences were fully heard within the redress process.

12.30 Overall, there was a general view that a Survivor Panel could play an important part in informing the design, governance and continuous improvement of the scheme, and in ensuring the needs of survivors were met.

12.31 The relatively few respondents who were **opposed** to, or expressed reservations about, the proposed Survivor Panel raised concerns about conflicts of interest and impartiality. Some said decisions should be left to the 'government panel' or 'proper panel', possibly suggesting a misunderstanding of the role of the Survivor Panel (see paragraph 12.33). There was a separate concern that the panel would be complicated to administer. Other respondents were unsure about the need for a Survivor Panel, or unsure about its role. Nevertheless, some in this group thought there might be other appropriate ways for survivor views to inform the scheme – for example, via ongoing feedback, or representation on an oversight body.

12.32 Some respondents (organisations in particular) endorsed the intention that the Survivor Panel should have a role in the development and administration of the redress scheme and should not have any involvement in individual cases. However, it should also be noted that comments from individuals sometimes suggested that they thought the panel would have a more direct involvement in cases or with claimants (in advising the panel or assisting and informing claimants) which they thought would be beneficial.

12.33 Respondents also made a range of points relevant to the running of the panel including the following:

- There should be clarity about the role and responsibilities of the panel and panel members, and transparency about its operation.
- Panel members should have appropriate training and induction and ongoing guidance and support (emotional and practical).
- Panel members should adhere to a code of conduct, and procedures to deal with confidentiality would need to be in place.
- The panel should have a direct voice – their views should not be mediated via scheme officials.
- The operation of the panel should be evaluated.

12.34 Some also suggested the panel had a role to play in ensuring that steps were taken to ensure that children were protected from abuse in the future.

12.35 Additionally, it was suggested that individuals or organisations with relevant experience might be involved in the setting up of the panel.

Views on recruitment and selection of panel members

12.36 Respondents offered a range of views on the recruitment and selection to the Survivor Panel. (Note, however, that it was common for individuals to say they did not know or had no comment on how panel members should be recruited and selected.)

12.37 The most common view was that potential members should be recruited via an open process involving an initial application and / or interview. This approach was favoured by individuals and all types of organisations.

12.38 The less common view – put forward by care providers, legal bodies, third sector organisations including survivor groups, and some individuals – was that the recruitment process should be based on nominations from key survivor groups or invitations, or that recruitment might be based on evidence submitted to the Scottish Child Abuse Inquiry (SCAI). Often, such options were put forward in combination with, for example, nominated individuals being subject to a selection process.

12.39 However, respondents of all types said that the opportunity to participate in the Survivor Panel should be widely advertised and promoted via survivor groups, support services and other relevant channels, via normal media channels, and by directly targeting survivors on an individual basis (e.g. during SCAI or financial redress processes) – it was also suggested that survivor groups had an important role to play in encouraging applicants to come forward and assisting them in making applications.

12.40 Respondents also made a wide range of comments about how recruitment should be undertaken and who should be included on the panel, as covered below.

How the selection process should operate

12.41 There were calls for an open, fair and transparent recruitment process with robust procedures and clear selection criteria. Additionally, respondents thought there should be clear information on the roles of panel members, the demands of panel membership and the period of appointment. There was also a suggestion that potential members should be 'vetted'.

12.42 As well as being a source of potential members for the panel, some suggested that organisations such as INCAS (In Care Abuse Survivors), Future Pathways, and Health in Mind might have a role in advising on or facilitating the recruitment process.

Who should be on the panel

12.43 There was also a range of comments on who should be on the Survivor Panel. There was a general view that panel membership needed to be diverse and needed to ensure representation of the full range of survivor experiences and perspectives. Respondents suggested that factors such as length of time in care, when the individual was in care and the nature / severity of abuse suffered might be taken into account. Various options for rotating or regular renewal of panel membership were proposed in order to maximise survivor involvement. More specifically, respondents highlighted the following as being important for panel membership:

- **Personal qualities:** Respondents often commented on the personal qualities they thought were important for Survivor Panel members. These included fairness and honesty, empathy and sensitivity, people skills, including communication and listening skills, common sense, and a willingness and confidence to get involved.
- **Knowledge, education and professional experience:** Some thought panel members should have academic ability, professional backgrounds, or relevant

knowledge and expertise; some referred to the knowledge and skills identified for members of the Decision-making Panel (see Question 46).

- **Mental wellbeing:** It was suggested that panel members should be assessed as psychologically fit to participate in the panel, and that the role may not be suitable for some who are still struggling with the impact of their abuse.

12.44 It was also suggested that members of INCAS should be represented on the panel. One named person was suggested and some respondents also indicated their own interest in getting involved in a Survivor Panel.

13. Public body (Q48–Q50)

13.1 The consultation paper outlined the proposal that the financial redress scheme should be administered and governed by a new public body which, although accountable to Scottish Ministers, will be operationally independent, in particular with regard to the Decision-making Panel and process. The views of respondents were sought on various aspects of this proposal.

Question 48: Do you agree that the financial redress scheme administration should be located in a new public body? [Yes / No] Please explain your answer.

Question 49: Do you have any views as to where the public body should be located and what it should be called? What factors should be taken into account when deciding where the public body should be?

Question 50: How can survivors be involved in the recruitment process for these posts? How should survivors be selected to take part in this process?

Key points

- ◆ Around four-fifths of all respondents (83%) agreed with the proposal that a new public body should be created to administer the redress scheme
- ◆ Some respondents suggested that such an arrangement would help to ensure independence and impartiality. However, support was sometimes conditional on the new body demonstrably having such features.
- ◆ However, other respondents questioned the need for a new public body, either on grounds of cost and/or because it was felt that existing organisations could offer an appropriate base for the scheme.
- ◆ There were mixed views about where the scheme administration should be based. The most common suggestions were Edinburgh, Glasgow or ‘somewhere in the Central Belt’. Another perspective, however, was that the scheme should have multiple locations, a ‘hub and spoke’ or mobile model, or a significant outreach function.
- ◆ In relation to the question of what the new public body should be called, respondents proposed both general principles and specific names. It was suggested that the views of victims / survivors should be paramount here, perhaps canvassed by means of a vote.
- ◆ There was widespread support (for the involvement of victims / survivors in the appointment of the Chair and Chief Executive of the new public body. Most commonly, respondents indicated that victims / survivors should be represented on the interview panel, but some argued for an involvement throughout the recruitment process.

The creation of a new public body to administer the scheme (Q48)

13.2 Question 48 asked respondents whether a new public body should be created to administer the financial redress scheme. There was widespread consensus on this question, with 83% overall answering ‘yes’, and a similar pattern of response among both organisations and individuals.

Table 13.1: Q48 – Do you agree that the financial redress scheme administration should be located in a new public body?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	8	80%	2	20%	10	100%
Other public sector organisations	3	75%	1	25%	4	100%
Current or previous care providers	8	100%	–	0%	8	100%
Third sector, including survivor groups	6	86%	1	14%	7	100%
Legal sector organisations	5	83%	1	17%	6	100%
Other organisational respondents	1	100%	–	0%	1	100%
Total organisations	31	86%	5	14%	36	100%
Individual respondents	149	82%	32	18%	181	100%
Total (organisations and individuals)	180	83%	37	17%	217	100%

One individual ticked both 'yes' and 'no' to this question. This response is not included in the table above.

13.3 Additional comment at Question 48 was provided by 169 respondents (132 individuals and 37 organisations).

13.4 The most common themes in these responses clustered around notions of independence, impartiality, neutrality or absence of bias. For the most part, both individual and organisation respondents welcomed the proposed new public body **because** they believed it would be likely to have such characteristics. However, some offered more conditional support – in other words, backing the establishment of a new public body only **if** it could be shown to be independent of the Scottish Government, politicians, local authorities and other vested interests.

13.5 Individuals and organisations also variously suggested that a new public body could or would offer:

- Greater transparency, accountability and fairness
- A new or 'fresh' approach
- A dedicated focus on redress that would benefit victims / survivors (and leave the Scottish Government free to concentrate on other issues)
- Grounds for greater trust and confidence among victims / survivors and the wider public.

13.6 In relation to this last point, some (individual) respondents argued that previous failings by the Scottish Government meant that it should not have the lead role in delivery of the redress scheme. However, others took the opposite view, suggesting that the administration of the Stage One payments, or of the scheme as a whole, should remain with the Scottish Government as this would ensure that all voices are heard. A related view was that other schemes – such as Future Pathways – have been accepted by victims / survivors despite a lack of formal independence from the Scottish Government.

13.7 Other responses – especially from organisations – called into question the need for a **new** public body, arguing that there is already a range of existing organisations (apart from the Scottish Government) that could offer an appropriate base for the scheme.

Specific suggestions in this context included the Criminal Injuries Compensation Authority (CICA), or the Scottish Courts and Tribunals Service (which, it was suggested, has relevant expertise, and existing judicial oversight and appeals processes). Although such arguments were generally based on a positive assessment of the capabilities of existing organisations, there was also – from some individual respondents – a concern that the establishment of a new body would involve unnecessary time and expense.

13.8 A range of other comments were made, including suggestions that:

- The scheme should be managed or led by a United Nations Special Rapporteur
- The scheme should be housed in a dedicated building, offering a ‘one-stop shop’ for victims / survivors to access advice and support (this issue is discussed in detail in Chapter 14)
- The use of the term ‘public body’ might be alarming to some victims / survivors as it could be understood as implying a lack of confidentiality.

Location and name of the proposed public body (Q49)

13.9 Question 49 was a two-part open question (with no preceding tick-box question) seeking views, first, on where the proposed public body should be located and what it should be called and, second, on any factors that should be taken into account in deciding the location. As there was considerable overlap between views on where the scheme administration should be located and the factors that should be taken into account in deciding the location, responses from both parts of Question 49 are combined in the following analysis.

13.10 In total, 193 respondents (156 individuals and 37 organisations) offered a response of some kind at one or other part of this question.

13.11 Among those who expressed a view on **where the scheme should be located**, the most frequent suggestions (especially from individuals) were Edinburgh, Glasgow, Edinburgh **or** Glasgow, or simply somewhere in ‘central Scotland’ or the ‘Central Belt’. Another perspective, however, was that the scheme should have multiple locations (for instance, in Glasgow **and** Edinburgh, or in several major cities), a ‘hub and spoke’ or mobile model, or a significant ‘outreach’ function, in recognition of the geographically dispersed nature of the victim / survivor population. In this context, it was suggested that a single, fixed location could present a barrier to access and also reduce the scope to benefit from localised knowledge and expertise.

13.12 In terms of factors that should be taken into account in deciding location, by far the most commonly mentioned was ease of access. This was usually framed in terms of location in relation to transport (and especially public transport), and was typically associated with a view that the scheme should be based in central Scotland or a major urban centre. However, some respondents argued that precisely because of the need to ensure access, there should be multiple sites in different parts of Scotland.

13.13 Although accessibility was most frequently framed in terms of transport and location, some respondents highlighted other issues, such as wheelchair access, disabled parking spaces or the availability of a lift to every floor.

13.14 Other comments relating to the nature of the space rather than location per se included suggestions that the premises of any new public body should be discreet, private or anonymous, or otherwise geared towards ensuring that victims / survivors feel comfortable, secure and not intimidated in any face-to-face dealings with the scheme.

13.15 A range of other comments were made about the scheme location:

- Some respondents (especially individuals) argued that cost should be a significant consideration, and expressed concern about the impact of creating a new public body on the resources available for payments to victims.
- Others argued that location was unimportant, as long as the key principles of the scheme were adhered to.
- Similarly, some respondents indicated that the most important deciding factor should simply be the views of victims / survivors.

13.16 In relation to the question of **what the new public body should be called**, respondents proposed both general principles and specific names. For example, it was again suggested that the views of victims / survivors should be paramount, perhaps canvassed by means of a vote. Two other (potentially conflicting) suggestions were (i) that the name should be entirely transparent and (ii) that it should not include any direct reference to victims of abuse.

13.17 A large number of specific suggestions were put forward - almost all by individuals and almost none by more than one respondent. However, two main themes were evident: names that simply reflected the focus and purpose of the scheme (e.g. Child Abuse Reparation Scheme, Scottish Child Abuse Redress Panel or Scottish Child Abuse Redress Scheme (SCARS)); and names that emphasised victims / survivors (e.g. Help for Victims, Survivor Awareness, Survivor Scotland or Survivor Care Foundation). Other recurrent themes included justice and care, while specific suggestions included: Future Focus, Justice for the Misunderstood/Unheard, PRISM and The Forgotten.

Involving survivors in the recruitment process (Q50)

13.18 The consultation paper noted that the Chair and Chief Executive of the public body will be appointed through the public appointments process. Question 50 sought views on the nature of any victim / survivor involvement in this process and how individuals might be selected to take part. In total, 189 respondents (152 individuals and 37 organisations) provided a response to at least one of the two parts to this question.

13.19 In terms of **the nature of any involvement in the public appointment process**, the most common view – among both individuals and organisations – was that victims / survivors should be represented on the interview panel itself. Some respondents explained why they thought this was desirable – for example, citing the experience, insight and value that victims / survivors would bring to the process. Others were specific about the form of

involvement, suggesting that victims / survivors should play a full part in the interview panel, asking questions and, if necessary, providing the deciding vote.

13.20 Less frequently, respondents (both individuals and organisations) envisaged a role for victims / survivors throughout the appointment process – for example, in helping to develop role specifications and job descriptions and shortlisting candidates for interview. Others suggested that the role should be more limited – perhaps advisory rather than helping to assess the competency of candidates at interview – and there was also a view that victims / survivors should have no role in the appointments process at all.

13.21 In terms of **how victims / survivors should be recruited** to take part in the appointments process, there was a widespread view that the role should be formally advertised, or publicised through other channels, with individuals invited to put their names forward. Some respondents suggested that existing or recognised victim / survivor groups could be asked to raise awareness of the roles, while others suggested that organisations such as the Centre for Excellence in Looked After Children in Scotland (CELCIS) might do so. Most commonly, organisations were seen as simply communicating information, but it was occasionally suggested that they might be invited to nominate individuals to be part of the appointments process. There was also a suggestion (from organisational respondents) that individuals might be identified or recruited from the proposed Survivor Panel.

13.22 There was a relatively common view among both individuals and organisations that there should also be some kind of formal application or assessment process to identify individuals to be involved in the appointment process. Some indicated that this should be based on written applications; others suggested that it should involve an interview.

14. Wider reparations (Q51–Q55)

14.1 Part 2.3 of the consultation paper discussed the possibility of bringing together the administration of financial redress with other forms of reparation (including, for example, acknowledgement, apology and support). It highlighted some of the potential benefits for survivors who want or need wider reparation, including (i) having a single point of contact for both the financial redress scheme and wider reparation, and (ii) facilitating integration, efficiency and effectiveness in service provision. The consultation included five questions on the subject of the administration of wider reparations.

Question 51: What are your views on bringing together the administration of other elements of a reparation package such as support and acknowledgement with financial redress? What would be the advantages? Would there be any disadvantages, and if so, how might these be addressed?

Question 52: Do you agree that it would be beneficial if the administration of these elements were located in the same physical building? What would be the advantages? Would there be any disadvantages, and if so, how might these be addressed?

Question 53: Should wider reparation be available to everyone who meets the eligibility criteria for the financial redress scheme? [Yes / No] Please explain your answer.

Question 54: Should there be priority access to wider reparation for certain groups, for example elderly and ill? [Yes / No] Please explain your answer.

Question 55: If a person is eligible for redress, should they have the same or comparable access to other elements of reparation whether they live in Scotland or elsewhere? [Yes / No] Please explain your answer.

Key points

- ◆ There was widespread consensus among individuals and organisations that bringing together the administration of financial redress and wider reparations would be helpful. Those supporting such an arrangement thought it would offer benefits in terms of a single point of contact, better signposting and ease of access for survivors to the full range of practical and emotional supports available. However, perceived disadvantages included the possibility of conflicts of interest between the different parts of the administrative service, and data protection issues. There was a view that any potential benefits which could result from joint administrative arrangements must be shown to outweigh the risks of disrupting the existing mix of local and national provision.
- ◆ Individuals generally thought it would be beneficial for the administration of financial redress and wider reparations to be located in the same building. They emphasised the benefits to survivors of having a single point of contact and thought that co-location would offer greater efficiency, reduced running costs, and better communication. However, there were some concerns about the potential difficulties for survivors who may not be able to travel long distances due to poor health. Organisations had more mixed views on this issue and did not always think that co-location was necessary given the availability of video technology.
- ◆ Respondents were almost unanimously in favour of wider reparations being available to everyone who meets the eligibility criteria for the redress scheme (97% overall)

expressed this view). Respondents commented that (i) financial reparation may not be the only – or best – answer for all survivors, (ii) it should be up to individuals to decide which parts of the scheme they want to access, and (iii) making wider reparation available to everyone who is eligible for financial redress ensures equity and fairness.

- ◆ There was also strong support (93% overall) for priority access to wider reparations being given to certain groups (for example, the elderly and ill). Respondents thought that individuals with life-shortening illnesses, and those who are elderly, should be given the best opportunity to achieve ‘closure’ before they die. Some respondents argued that, if not prioritised, these groups may not benefit from wider reparation at all.
- ◆ In general, respondents agreed (86% overall; 86% of individuals and 90% of organisations) that wider reparations should be available to any person eligible for a redress payment, even if they no longer lived in Scotland. However, respondents also frequently acknowledged that it would be logistically challenging to provide access to support services to survivors living outside of Scotland.

Joint administration of financial redress and wider reparations (Q51)

14.2 Question 51 invited views on the option of bringing together the administration of other elements of a reparation package (such as support and acknowledgement) with financial redress. Respondents were asked what the advantages and disadvantages of this type of approach would be, and how any disadvantages could be addressed. This was an open question in three parts covering: (i) general views, (ii) advantages and (iii) disadvantages. Altogether, 193 respondents (151 individuals and 42 organisations) addressed one or more of the three parts of this question.

14.3 There was widespread consensus among individuals and organisations that bringing together the administration of financial redress and wider reparations would be helpful. Respondents repeatedly described this proposal as ‘a good idea’. Some said it ‘made sense’, was ‘logical’ and would be ‘more efficient’.

14.4 Those supporting such an arrangement thought it would offer a single point of contact, enabling better signposting and making it easier for victims / survivors to access the full range of practical and emotional supports available. They also thought it would offer a more holistic, ‘joined-up’, consistent and effective approach to the delivery of financial redress and wider reparations. Individuals often referred to this type of arrangement as a ‘one stop shop’, and thought it would ‘cut red tape’ and make the process less complicated and confusing for people to access the support they need. Some individuals saw a further advantage in terms of supporting better communication between the different aspects of the redress scheme. Organisations additionally highlighted potential ‘economies of scale’ and administrative efficiencies. Some respondents (and particularly individuals) said that they could see no disadvantages from this type of arrangement, and it was suggested that this type of model has been tried and tested.

14.5 Other respondents did identify possible disadvantages. Among those who were generally supportive of joint administrative arrangements – and also among the handful of respondents who did **not** support joint administrative arrangements – the potential disadvantages were seen to be the following:

- A combined service might be cumbersome, result in conflicts of interest, or lead to a perception that decisions about financial redress are too closely connected to decisions about wider reparations.
- There is a risk of confusing people – and inadvertently excluding them from either strand of the scheme (i.e. financial redress or wider reparation), particularly if individuals are disappointed with their experience with one of the strands.
- There might be data protection and confidentiality risks for survivors who do not want their information to be shared between different bodies and did not consent to sharing when they accessed services before the financial redress scheme was established.
- Current relationships with valued local support organisations and local authority social work departments might be disrupted and funding for these existing organisations put at risk. It may also be difficult to find suitably qualified staff to meet the substantial demands on the service at the start of the scheme.

14.6 Not all respondents who identified disadvantages went on to say how the disadvantages could be addressed or avoided. However, some of the suggestions offered were as follows:

- Establish a board representing the interests of survivors and the organisations contributing to the scheme to provide oversight of the joint administrative arrangements. Alternatively, have an independent person to oversee the arrangements.
- Provide clear explanations (potentially including a telephone helpline and a list of frequently asked questions (FAQs)) to assist victims / survivors to make informed decisions and choices, and also to manage their expectations.
- Provide long-term financial support to specialist services that are identified as meeting the needs of individual victims / survivors.
- Carefully manage the transition from current arrangements to ensure that existing skills and goodwill are retained and that the impact of disruption is carefully balanced against the potential benefits of joint administration.

14.7 Among the small number of respondents who did **not** support joint administration of financial redress and wider reparation, the point was made that, ultimately, individuals live in local communities and will benefit most from being linked into a local, accessible support network. There was a view that any potential benefits that could result from joint administrative arrangements must be shown to outweigh the risks of disrupting the existing mix of local and national provision.

Co-location of administration for all aspects of the scheme (Q52)

14.8 Question 52 asked respondents for their views about whether it would be beneficial for the administration of financial redress and wider reparations to be located in the same physical building. Respondents were asked what the advantages and disadvantages of co-location would be, and how any disadvantages could be addressed. Again, this was an open question in three parts covering: (i) general views, (ii) advantages and (iii)

disadvantages. Altogether, 201 respondents (163 individuals and 38 organisations) addressed one or more parts of this question.

14.9 Among individuals, the most common response to the first part of this question was the single word, 'yes', or variations thereof (e.g. 'absolutely', 'agree'). Occasionally, some in this group were less definitive, answering 'possibly', or 'probably'. Less often, individuals answered 'don't know' (or 'not sure'), or – very occasionally – 'no'. Where those who answered 'yes' provided further comment, they generally emphasised the benefits to survivors of having a single point of contact ('one stop shop', 'less confusing', etc.). They also thought that co-location of administrative functions would offer greater efficiency, reduced running costs, and better communication between the different strands of the redress scheme. Those who answered 'no' raised concerns about the difficulties for victims / survivors who may not be able to travel long distances due to poor health. There were suggestions that, if the administration of all aspects of the scheme were located in the same physical building, that this should be accessible by public transport with assistance offered for travel expenses. It was also suggested that mobile services / outreach workers could be used to travel to survivors, rather than expecting all survivors to travel to the administration offices.

14.10 Organisations had more mixed and nuanced views on this question. These ranged from (i) yes, co-location will lead to the best service, to (ii) yes, but this is not essential and / or not necessary due to current technology (e.g. video- and tele-conferencing facilities), to (iii) no, they do not have to be based in the same building as current technology makes this unnecessary. It was also relatively common for organisations of all types to say that they did not have a view on this question or had decided not to answer the question.

14.11 The main advantages of co-location identified by organisations related to consistency, collaboration and communication (a more 'joined-up' approach); economies of scale; and overall reduced costs.

14.12 Few organisations identified disadvantages of this type of arrangement. The main ones related to possible inconvenience for survivors who live in rural areas / at a distance from the location of the administrative offices – and the fact that access to support services would be more difficult for those living at a distance from the central offices. The point was also made that some victims / survivors may prefer to discuss their needs for wider reparation and support in a more informal (less institutional) environment – away from the location dealing with their application for financial redress. There were also concerns about (i) the impact on individuals who are denied redress, and the risk that this may be compounded by not being able to access further support, and (ii) whether one physical building would have the capacity to respond to the likely scale of support required.

14.13 Very occasionally, organisations identified possible administrative disadvantages of co-location. These related to higher initial start-up costs and the broader range of executive management responsibilities that would be required if both aspects of the redress scheme were jointly administered and located together.

Eligibility for wider reparations (Q53)

14.14 Question 53 asked whether wider reparations should be available to everyone who meets the eligibility criteria for the redress scheme. Table 14.1 shows that respondents as a whole were almost unanimously in favour of this, with 97% overall answering 'yes'. All organisations supported the proposal and only a small number of individuals expressed disagreement.

Table 14.1: Q53 – Should wider reparation be available to everyone who meets the eligibility criteria for the financial redress scheme?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	10	100%	–	0%	10	100%
Other public sector organisations	2	100%	–	0%	2	100%
Current or previous care providers	7	100%	–	0%	7	100%
Third sector, including survivor groups	6	100%	–	0%	6	100%
Legal sector organisations	4	100%	–	0%	4	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	31	100%	–	0%	31	100%
Individual respondents	159	96%	6	4%	165	100%
Total (organisations and individuals)	190	97%	6	3%	196	100%

One individual ticked both 'yes' and 'no' to this question. This response is not included in the table above.

14.15 Altogether, 135 respondents (104 individuals and 31 organisations) provided comments at Question 53.

14.16 This group made a number of related points, specifically, that (i) financial reparation may not be the only – or best – answer for all survivors, (ii) it should be up to individuals to decide which parts of the scheme they want to access, and (iii) making wider reparation available to everyone who is eligible for financial redress ensures equity and fairness.

14.17 However, some organisations made a slightly different point – that the financial scheme should not be a gateway for applying for other forms of redress. These respondents argued that support should begin from the point at which an individual makes an initial inquiry and be available (if desired) in preparing the application for financial redress. It was also suggested that it should not be necessary to meet the eligibility criteria for financial redress to benefit from wider reparations such as mental health and psychological support.

14.18 Some of the individuals who answered 'no' at Question 53 also made further comments. However, the points made were not always clear or directly related to the question about eligibility for wider reparation – suggesting that some of this group may not have understood the question. Two related points were made: that wider reparations may not be needed or welcomed by victims / survivors, and should only be available to individuals if they are requested.

Priority access to reparation for certain groups (Q54)

14.19 Question 54 asked whether certain groups (for example, the elderly and ill) should be given priority access to wider reparations. Respondents strongly supported this suggestion, with 93% overall answering ‘yes’. The pattern of response was similar among organisations and individuals.

Table 14.2: Q54 – Should there be priority access to wider reparation for certain groups, for example elderly and ill?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	10	91%	1	9%	11	100%
Other public sector organisations	3	100%	–	0%	3	100%
Current or previous care providers	7	88%	1	13%	8	100%
Third sector, including survivor groups	7	100%	–	0%	7	100%
Legal sector organisations	2	100%	–	0%	2	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	31	94%	2	6%	33	100%
Individual respondents	183	93%	13	7%	196	100%
Total (organisations and individuals)	214	93%	15	7%	229	100%

One individual ticked both ‘yes’ and ‘no’ to this question. This response is not included in the table above.

14.20 Altogether, 160 respondents (127 individuals and 33 organisations) provided further comments at Question 54.

Support for prioritising those who are elderly or ill

14.21 The main reason given by those who answered ‘yes’ to this question – both among individuals and organisations – was that individuals with life-shortening illnesses, and those who are elderly, should be given the best opportunity to achieve ‘closure’ before they die. Some respondents argued that, if not prioritised, these groups may not benefit from wider reparation at all. Respondents thought that prioritising these groups would allow for reparations to improve their quality of life without delay. The point was also made that it is appropriate to expedite reparation for groups that have lived with the impact of historical abuse for the longest period of time, and for groups that are likely to find it harder to pursue their rights to wider reparation.

14.22 Respondents often referred to the Advance Payment Scheme and suggested that access to wider reparations for these groups was entirely consistent with this, and with human rights standards.¹² There were calls for ‘fast-track’ arrangements to be put in place for any individual in these groups and for the prioritisation of these groups to be stated clearly in any operating standards for the redress scheme.

¹² Reference was made to UN Human Rights Committee (2004) *General Comment no. 31. The nature of the general legal obligation imposed on States Parties to the Covenant*. CCPR/C/21/Rev.1/Add. 13.

Opposition to prioritising those who are elderly or ill for wider reparations

14.23 Two organisations answered ‘no’ to Question 54 but the reasons given for this response were not entirely clear. One argued that prioritisation of these groups for wider reparation should be covered under the Advance Payment Scheme. The second thought that these groups should be given ‘priority access’, but not to ‘wider reparation’, which (in their view) should be assessed in the ‘standard way’.

14.24 Among the individuals who answered ‘no’ to Question 54, the main reason given related to equity and fairness. These respondents thought that if some groups were prioritised over others, then certain groups would always be ‘at the back of the queue’. There was also a view that being elderly or ill does not necessarily mean that a person has less time to live. This group argued that all cases should be considered of equal importance and that wider reparations should be available for all, at any time.

Views on other priority groups

14.25 Respondents sometimes identified other groups that they considered should be given priority access to wider reparation. These included:

- Anyone over the age of 70 (some said anyone over 60)
- Anyone who has immediate needs relating to health, living circumstances or wellbeing
- Those with significant challenges in managing their mental health, including those who are at risk of suicide
- People with substance abuse problems and those who are homeless.

14.26 More generally, respondents thought that any vulnerable survivors should be prioritised for wider reparations.

Other views on the prioritisation of certain groups for wider reparations

14.27 Occasionally, respondents made other points which were relevant to the prioritisation of certain groups for wider reparations:

- The term ‘elderly’ should not be used and should be replaced with the term ‘older people’.
- It is important to be transparent about the reasons for prioritising any particular group over another, and to agree these arrangements in consultation with victims / survivors.
- Each person applying for wider reparations should have their needs and context assessed appropriately.

Wider reparations for those no longer living in Scotland (Q55)

14.28 Question 55 asked whether an individual eligible for a redress payment should have the same access to wider reparations, whether or not they live in Scotland. Table 14.3 shows that respondents generally thought they should – with 86% overall answering ‘yes’.

Individuals were more likely than organisations to express disagreement on this issue (14% vs 10%, respectively).

Table 14.3: Q55 – If a person is eligible for redress, should they have the same or comparable access to other elements of reparation whether they live in Scotland or elsewhere?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	7	78%	2	22%	9	100%
Other public sector organisations	3	100%	–	0%	3	100%
Current or previous care providers	7	88%	1	13%	8	100%
Third sector, including survivor groups	7	100%	–	0%	7	100%
Legal sector organisations	2	100%	–	0%	2	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	28	90%	3	10%	31	100%
Individual respondents	157	86%	26	14%	183	100%
Total (organisations and individuals)	185	86%	29	14%	214	100%

Two individuals ticked both 'yes' and 'no' to this question. These responses are not included in the table above.

14.29 Altogether, 164 respondents (131 individuals and 33 organisations) provided additional comments.

Support for access to reparation for those no longer living in Scotland

14.30 Respondents who answered 'yes' to Question 55 largely agreed that if an individual was abused as a child in care in Scotland, and was therefore eligible for redress, they should also have access to wider reparations, even if they no longer live in Scotland. In general, respondents thought this was fair. Both individuals and organisations argued that a person's current location should not be a barrier to accessing reparations. Individuals added that some survivors may have left Scotland because of the abuse they had experienced, and that 'justice should have no boundaries'. The case was made that access to wider reparations should not be based on residency or financial contributions such as tax or national insurance; rather, supports should be provided because an individual suffered harm in Scotland whilst in the care of the state.

14.31 At the same time, organisations frequently acknowledged the challenges of providing access to support services for individuals living outside of Scotland. In their comments, organisations often said that whilst they agreed in principle that access to wider reparation should be available to anyone eligible for it, in practice it might be very difficult to achieve because supports available in other countries are not under the control of any Scottish public service or authority. There was a view that survivors living in other countries should be supported and, if necessary, given funding to access services identified and agreed to meet their needs in the country in which they live.

14.32 However, occasionally organisations highlighted caveats to their agreement in principle. For example, there were suggestions that:

- Survivors in other countries should have comparable access to seeking an apology and tracing records. However, the broader range of supports relating to employment, education, and benefits advice should not be included in the scope of this assistance for individuals now living in other countries.
- Wider reparations to individuals living outside of Scotland should be provided on a case-by-case basis.
- Services should be made available in Scotland, and access to these services could be provided through appropriate technology.

14.33 There was also a suggestion that Scotland should learn from the experience of other historical abuse inquiries in relation to this issue.

Opposition to access for those no longer living in Scotland

14.34 Organisations and individuals who answered 'no' at Question 55 gave different reasons for disagreeing with access to wider reparations for those no longer living in Scotland.

14.35 Organisations said that it would be too difficult to deliver the full suite of wider reparations to survivors living in other countries.

14.36 Individuals made a number of recurring points: that (i) it would be financially and logistically impractical to deliver wider reparations to survivors living in other countries; (ii) people living in Scotland should have priority; (iii) since the redress scheme will be funded by Scotland's tax payers, it should only be available to people who live in Scotland; and (iv) survivors living in other countries should seek support from the local services in those countries.

15. Acknowledgement, apology and support (Q56–Q60)

15.1 The final section of the consultation paper noted that acknowledgement, apology and support were key components of reparation, and gave examples of approaches adopted in other jurisdictions to address these aspects. Respondents were asked a range of questions about their views on how acknowledgement, apology and support could be delivered.

Question 56: To allow us more flexibility in considering how acknowledgment is delivered in the future, we intend to include provision in the redress legislation to repeal the sections of the Victims and Witnesses (Scotland) Act 2014 which established the National Confidential Forum. Do you have any views on this?

Question 57: Do you have any views on how acknowledgment should be provided in the future?

Question 58: Do you think a personal apology should be given alongside a redress payment? [Yes / No] Please explain your answer. If so, who should give the apology?

Question 59: Do you think there is a need for a dedicated support service for in care survivors once the financial redress scheme is in place? [Yes / No] Please explain your answer.

Question 60: Do you have any initial views on how support for in care survivors might be delivered in Scotland, alongside a redress scheme?

Key points

- ◆ Respondents praised the work of the National Confidential Forum (NCF), and emphasised the importance to victims / survivors of continuing to have this type of confidential service after the new redress scheme is established. However, some (mainly organisations) also thought it was appropriate to repeal the sections of the 2014 Act which established the NCF as its functions will be taken over by the scheme. This group wanted the scheme to build on the NCF's achievements.
- ◆ Respondents stressed the importance of **both a personal** individual acknowledgement (and apology), **and a public** acknowledgement of the wrongs and harms done in institutions where abuse took place. Respondents thought it was vital that decisions about the appropriate way to provide acknowledgement (and apology) should take account of the views of victims / survivors.
- ◆ There was general consensus among respondents that a personal apology should be given to survivors of in-care abuse alongside a redress payment – overall 87% of respondents (86% of individuals and 97% of organisations) expressed this view, with organisations almost unanimous on this issue. This group thought that a personal apology would be meaningful for victims / survivors and had symbolic significance in that it demonstrated acceptance of responsibility for abuse and affirmed that the victims / survivors were not to blame. However, some individuals who commented thought that a personal apology should *not* be given, and gave a range of reasons for their view, including that (i) an apology doesn't change anything, (ii) it is 'too late' for an apology, and (iii) the perpetrators of the abuse were dead.

- ◆ There was general consensus about the need for a dedicated support service for in-care survivors – overall 96% of respondents (97% of individuals; 91% of organisations) supported this idea. It was recognised that many forms of support would be required – both physical, emotional, financial and material – and that support would need to be tailored to the individual.
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Delivering acknowledgement (Q56–Q57)

15.2 Questions 56 and 57 sought views about different aspects of providing acknowledgement to survivors of historical abuse in care. Question 56 related to current legislation (the Victims and Witnesses (Scotland) Act 2014), which established the National Confidential Forum (NCF). The purpose of the NCF was to listen to and acknowledge people’s childhood experiences of institutional care in Scotland. However, given the range of other national developments since and the option to offer more flexibility as to how acknowledgement is delivered in the future, the Scottish Government proposed to repeal sections of the 2014 Act which established the NCF. Respondents were asked for their views on this proposal (Question 56), and if they had any views on how acknowledgement should be provided in the future (Question 57). Both of these were open questions, with no initial tick-box question.

Repeal of sections of the Victims and Witnesses (Scotland) Act 2014 (Q56)

15.3 A total of 177 respondents (141 individuals and 36 organisations) offered comments at Question 56. However, around half of these comments (both from individuals and from organisations) simply indicated either that the respondent had no views to offer in relation to the question, did not understand the question, or did not feel adequately qualified to comment. In addition, it was also relatively common for respondents to simply indicate that they were content with the proposal and to offer no further elaboration. Thus, the number of substantive comments at this question was relatively small.

15.4 There were three main types of comment in response to this question as follows:

- Some respondents praised the work undertaken by the NCF and emphasised the importance of victims / survivors continuing to have access to this kind of confidential service. A small subset of these respondents assumed that the repeal of these sections of the Victims and Witnesses (Scotland) Act 2014 would mean the abolition of the NCF and they did not think that was sensible or justified. However, other respondents who also praised the work of the NCF agreed that it was appropriate to repeal these sections of the Act as the new financial redress scheme was developed. These latter respondents were mainly organisational respondents who were knowledgeable about the current legislation. They emphasised (i) the positive opportunity of building on the achievements of the NCF, (ii) the importance of learning from the work it had undertaken and ensuring the skills that had been developed were not lost, and (iii) the requirement to incorporate acknowledgement into any new financial redress scheme.
- Some respondents did not address the question directly, but rather simply affirmed the importance of victims / survivors receiving an acknowledgement of

and / or apology for what had happened to them. (Note that respondents did not necessarily restrict their comments to the question of acknowledgement.)

- Finally, some respondents did not answer the question directly but rather repeated comments they had made in response to earlier questions. For example, they asked that ‘all complaints should be listened to before making a judgement’, that ‘everything should happen in one building’ and that ‘there should be a governing body who are sincere and passionate about giving justice to the wronged’.

15.5 Two respondents (one individual, one organisation) offered critical assessments of the NCF and thought its abolition would have no negative impacts.

How acknowledgement should be provided in future (Q57)

15.6 A total of 162 respondents (128 individuals and 34 organisations) offered comments at Question 57. However, two in five of these comments (both from individuals and from organisations) simply indicated either that the respondent had no views or that they thought this was a matter for the Scottish Government to decide.

15.7 The substantive comments covered a range of both general and specific points as detailed below. It should be noted that respondents’ comments did not necessarily distinguish between the requirements for the provision of an acknowledgement and the provision of an apology; therefore, there was a degree of overlap between the responses to this question (Question 57) and the responses to Question 58, discussed below, which asked specifically about whether a personal apology should be given.

15.8 The main general points made by respondents were that:

- All organisations and institutions where abuse took place should acknowledge the wrongs and the harms they have done.
- It was vital that decisions about the appropriate way to provide acknowledgement (and apology) should take into consideration input from victims / survivors.
- Any bureaucratic / legal ‘red tape’ in the provision of an acknowledgement (and apology) should be minimised so that the victims / survivors do not have a long time to wait to receive an acknowledgement (and apology).
- Any acknowledgement must be meaningful, sensitive, and tailored to individual circumstances.
- Acknowledgement (and apology) can be powerful, cathartic and can help victims / survivors achieve ‘closure’.
- There should be more support and care services for victims / survivors.
- The NCF and Scottish Child Abuse Inquiry (SCAI) have been effective in allowing acknowledgement of abuse by society at large; any future approach should incorporate both these elements (a confidential forum and an inquiry) and should build on the work already undertaken.

15.9 Respondents made a range of specific points and suggestions in relation to the provision of an acknowledgement (and apology). They emphasised the importance of **both** a **personal** acknowledgement (and apology) to the individual **and** a **public** acknowledgement. Some respondents explicitly said that there had already been **public acknowledgement** of the harms done.

15.10 Almost all respondents who commented said that the institutions where abuse took place should provide victims / survivors with an acknowledgement. In addition, some respondents also suggested that (i) organisations and institutions with wider responsibilities (e.g. local authorities, the Scottish Government, inspection agencies) and (ii) society 'at large' should provide victims / survivors with an acknowledgement.

15.11 As far as the **personal** acknowledgement was concerned, there were mixed views about whether this should be verbal (face-to-face), written (email or letter), or both. It was suggested that a face-to-face meeting with a professional or senior official could be helpful in going over evidence, and also that written confirmation could be important for the survivor to know that they were believed.

15.12 A range of other suggestions were made in relation to how any acknowledgement should be provided, including that:

- A national annual commemoration should take place.
- A (permanent) memorial should be installed in a public place.
- The acknowledgement function should be incorporated into a non-time limited body (e.g. the Care Inspectorate).

15.13 Finally, a small number of individual respondents were against the idea of receiving an acknowledgement (and / or apology). This was because they found the idea 'insulting' or felt it was 'too late' as 'the damage had already been done'. There was a view among this group that 'not all victims will be able to hear an apology'.

Personal apology (Q58)

15.14 Question 58 asked respondents if they thought a personal apology should be given to survivors of in-care abuse alongside a redress payment. Table 15.1 shows that there was general consensus on this issue – 87% of respondents overall answered 'yes'. Organisations were nearly unanimous on this question. However, among individuals 14% did **not** think a personal apology should be given alongside the redress payment.

Table 15.1: Q58 – Do you think a personal apology should be given alongside a redress payment?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	7	88%	1	13%	8	100%
Other public sector organisations	3	100%	–	0%	3	100%
Current or previous care providers	9	100%	–	0%	9	100%
Third sector, including survivor groups	6	100%	–	0%	6	100%
Legal sector organisations	2	100%	–	0%	2	100%
Other organisational respondents	1	100%	–	0%	1	100%
Total organisations	28	97%	1	3%	29	100%
Individual respondents	166	86%	27	14%	193	100%
Total (organisations and individuals)	194	87%	28	13%	222	100%

One individual ticked both 'yes' and 'no' to this question. This response is not included in the table above.

15.15 Respondents were asked to explain their answer, and where respondents answered 'yes', they were asked specifically who should give the apology.

15.16 A total of 214 respondents (178 individuals and 36 organisations) offered comments at Question 58. These comments were in response **both** to the original question about whether a personal apology should be given alongside a redress payment, **and** to the subsequent follow-up question which asked those who agreed that a personal apology should be given who they thought should give it.

15.17 All organisational respondents who made comments at Question 58 thought that a personal apology should be given. However, around one in five of the individuals who commented thought that a personal apology **should not be given**.

15.18 Those individuals who thought a personal apology **should not be given** offered a range of reasons for their view as follows:

- An apology doesn't change anything about what happened in the past; it serves no purpose. These respondents said they were 'not interested' in receiving an apology and that they would not accept one if it was offered.
- It is 'too late' for an apology. In some cases, respondents referred to the length of time since the abuse they suffered took place; in some cases, this was reported to be 40 years ago or more.
- It was not possible for a personal apology to be provided since (most of) the perpetrators of the abuse were already dead.
- Respondents were unconvinced that the apology would be sincere. This was particularly mentioned in relation to the expectation that a personal apology would be 'required'; it would therefore not be a voluntary – or sincere – act.
- Given that a public apology had already been provided, and that financial redress would be forthcoming, a personal apology was not necessary.

- It was not appropriate for an organisation / authority / institution to provide an apology since in most cases the organisation itself was not to blame; rather the blame for the abuse rested with specific individuals.

15.19 Both organisational and individual respondents said they were aware that some victims / survivors would not wish to receive an apology. These respondents affirmed that a personal apology should only be offered in cases where it had been requested or would be welcomed.

15.20 More generally, there were two main reasons offered both by organisational and individual respondents who supported the proposition that a personal apology should be given as follows:

- A personal apology would be very meaningful for victims / survivors. It is much more meaningful than a 'general' / 'non-personal' apology. It won't make up for the abuse but it can help with emotional healing and can allow individuals to 'move on' from the experience of abuse.
- It is a symbolic act which demonstrates the acceptance of responsibility for the abuse, affirms that the victims / survivors were not to blame, and helps to ensure that the abuse and the circumstances which led to it will never be repeated.

15.21 Occasionally, respondents provided specific comments on the relationship between the two elements of reparation (i.e. the financial redress and the apology) as follows:

- Some individuals said that a personal apology was **more** important than any financial redress. Indeed, it was suggested by this group that a personal apology would be enough on its own – without any financial redress.
- By contrast, a second group of individuals said that the financial redress is – in and of itself – the apology; for these individuals the financial payment is enough by itself.
- There was also a view that without an apology, the financial redress payment would feel like 'hush money'.
- One legal organisation said that more work needs to be done on the link between an apology and any legal liability.

15.22 Finally, there were mixed views on the extent to which personal apologies should or should not be (allowed to be) made public. On the one hand, there was an organisational view that a personal apology should be conditional on the victim / survivor agreeing not to publicise the apology, get press coverage or post it on social media. By contrast, among the individuals who raised this issue, there was a view that 'sincere apologies should be offered on live TV'; others focused on the importance of the (written) personal apology being made public.

15.23 As far as the comments on who should provide the apology were concerned, the most common response from both individual and organisational respondents was that the current chief executive / senior official / or senior representative of the organisations where the abuse took place – if those organisations still existed – should provide the apology.

15.24 However, there were also other / additional common types of response to this question as follows:

- There should also be an apology from (a senior representative of) any other organisation involved in the specific situation (e.g. any organisation involved in placing children in an institution where abuse was experienced, or an organisation which had responsibility for inspection or regulation of an organisation where abuse took place).
- If the organisation no longer existed, then a senior representative of the Scottish Government (or the financial redress scheme) should offer an apology.
- In addition to the apology from the institution where abuse took place, a (senior representative of) the Scottish Government should offer an apology in every case.
- The individuals who perpetrated the abuse – if they are still alive – should give an apology. This view was expressed to a large extent by individual respondents and not by organisational respondents.

15.25 Other suggestions, mentioned occasionally, were that (i) (a representative of) the Scottish Government should always apologise on behalf of the organisation where the abuse took place; this would be the most consistent approach given the complexities involved and (ii) everyone who knew about the abuse but did nothing to stop it should offer an apology.

15.26 Finally, individual respondents provided long, detailed and specific lists naming organisations and individuals which / who (they reported) had been involved in the abuse in their own case. These included specific organisations (e.g. local authorities, local authority social work departments, criminal justice organisations, religious organisations and orders) and some named individuals.

Support (Q59–Q60)

15.27 Question 59 asked respondents whether they thought there was a need for a dedicated support service for in-care survivors. Table 15.2 shows that there was general consensus on this question with 96% of respondents overall answering 'yes' – with a similar pattern of response among both organisations and individuals.

Table 15.2: Q59 – Do you think there is a need for a dedicated support service for in care survivors once the financial redress scheme is in place?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Local authority / public sector partnerships	7	100%	–	0%	7	100%
Other public sector organisations	4	100%	–	0%	4	100%
Current or previous care providers	6	75%	2	25%	8	100%
Third sector, including survivor groups	7	88%	1	13%	8	100%
Legal sector organisations	3	100%	–	0%	3	100%
Other organisational respondents	3	100%	–	0%	3	100%
Total organisations	30	91%	3	9%	33	100%
Individual respondents	197	97%	6	3%	203	100%
Total (organisations and individuals)	227	96%	9	4%	236	100%

Percentages may not total 100% due to rounding.

15.28 The comments made in response to this question overlapped considerably with the comments made at Question 60 – which asked ‘Do you have any initial views on how support for in care survivors might be delivered in Scotland, alongside a redress scheme?’ Therefore, these two questions have been analysed together.

15.29 In total, 220 respondents (179 individuals and 41 organisations) offered a comment either at Question 59 or at Question 60 or at both. Of these, just nine (9) respondents (6 individuals and 3 organisations) answered ‘No’ in response to Question 59.

15.30 It was common for respondents (both individuals and organisations) to simply affirm the importance of providing support to survivors of abuse; some specifically said that financial redress was not sufficient on its own. Respondents emphasised that any (new) service should be designed in collaboration with survivors and should be based around the services that people value. There was widespread recognition that the process of seeking redress could itself act as a catalyst to ‘triggering’ traumatic memories and it was vital that help was available to support survivors through this process. It should be noted that respondents who agreed a (dedicated) support service should be available also recognised that some survivors would not wish to engage with it, and that this should be respected.

15.31 More broadly, it was recognised that many forms of support would be required, and that these would need to be tailored to the individual. Many individuals would require support during the application process itself. Moreover, it was acknowledged that the support required in some cases would be lifelong, and there was general agreement that if lifelong support was required, then it should be available. The types of support which were thought to be required included:

- Emotional, mental health and social support (e.g. counselling, therapy, psychological support, peer group support, relational based support)
- Physical health support to treat injuries as a result of physical abuse
- Financial support (i) to ensure that victims / survivors were able to manage the money they received through the financial redress scheme and (ii) to ensure

victims / survivors can access support in relation to any (other) state benefits they are entitled to

- Advocacy support including help to deal with any complaints about the financial awards awarded under the redress scheme, access to their records etc.
- Material and practical support in relation to education and training, careers guidance, homelessness and housing etc.
- Signposting to a wide range of services and further counselling services.

15.32 It was noted by one legal organisation that the provision of this kind of support should not be to the detriment of the victim / survivor's access to independent legal advice.

15.33 As well as identifying these different types of support, respondents also commented on the characteristics of the support that would be required. The main features identified were that the support should be:

- Tailored to the needs of the individual, person centred and flexible
- Open ended, timely, easy and quick to access, and non-judgemental
- Consistent across Scotland
- 'Joined up' with other (mental health) services, initiatives (including the Independent Care Review) and existing support relationships and inclusive of other family members who may also require support
- Trauma informed, and provided by appropriately trained and specialist staff (the requirement for staff to be trained in delivering support for complex post-traumatic stress disorder was specifically mentioned)
- Properly funded.

15.34 Respondents suggested two main alternatives to the design of the support service:

- A dedicated and centralised national service which operated as a 'one stop shop' with a single point of entry and access to multiple agencies. It was implied in respondents' comments that this should be set up 'from scratch'.
- A service which explicitly recognised that a range of (local) support services for survivors were already in place. Under this arrangement, the service would build on the existing capacity and would primarily be about providing additional funding to existing services (and existing clients / users), and 'rolling out' services more widely from existing provision. This option was suggested by a wide range of individual and organisational respondents, but was particularly favoured by third sector and public sector organisations.

15.35 A third alternative was suggested, namely a central organisation with an administrative function, which then outsourced the work to (existing) approved providers.

15.36 Those respondents who favoured a (new) dedicated and centralised national service emphasised that:

- Bodies making redress payments won't be able to provide (adequate) professional support; therefore a (new) national service is required.
- A service with a single point of entry and access to multi-agency services would be the easiest to access and the most effective.
- Whatever is set up should be independent of any current arrangements for support.
- A dedicated – national – support service will build specialist skills; identify gaps; ensure that nothing 'falls through the cracks'; provide a Scotland-wide, consistent service; furnish information about – and analyse – existing provision; and work to improve services.

15.37 By contrast, those who favoured the model of joining up and rolling out existing services emphasised that:

- Current provision was seen to be very effective in helping victims / survivors to recover and those individuals who were already 'in the system' and being (well) supported would not wish to change their current set up.
- It would not be cost effective to duplicate existing services. This approach would enable the efforts of local authorities and (existing) community organisations (some of whom were already working in this field) to be harnessed effectively.
- Providing services locally – rather than nationally – would be more likely to meet the needs of victims / survivors. Moreover, victims / survivors should be given control over how they wish to direct and receive support as indicated in the Self Directed Support (Scotland) Act 2013; this was contrasted with the perception of a nationally commissioned service which survivors would be required to 'fit into'.
- Using existing organisations would give survivors 'choice' over where to go and would ensure that providers were suitably experienced.

15.38 In particular, the Future Pathways initiative was mentioned as an existing model which should be built on, replicated and rolled out. Future Pathways attracted a substantial amount of positive comment; just two individuals who commented on it thought it had not been successful. More generally, respondents commented that Future Pathways already provides survivors with a wide range of support and that, more particularly, survivors value their relationship with the Future Pathways Support Coordinator. It was thought that it would be important going forward to review Future Pathways in order to ensure that good practice and learning were identified.

15.39 A range of specific proposals were suggested, including that:

- The service should be developed in each health and social care partnership (HSCP) and / or health board and / or should be provided through GPs and the NHS. It should build on the current work undertaken by health boards on major incidents involving mass casualties.
- There is currently too much variation in the provision of high intensity interventions. There should therefore be regional training roles established to ensure a greater level of consistency in the provision of this kind of support.

- The service should incorporate an around-the-clock telephone helpline as well as drop-in centre(s) providing both one-to-one services and peer support / group support services.
- The maximum package of support / value of support should be made clear at the outset.

15.40 Finally, as set out in paragraph 15.27, a small number of respondents disagreed that there was a need for a dedicated service. Organisations in this group disagreed because either (i) they believed that any service should not be developed afresh, but should instead build on existing provision or (ii) they thought such a service should be provided by the Scottish Government. Individual respondents echoed the comments about building on existing provision, and made the following additional points:

- There is already sufficient help and support available.
- Past events were too traumatic to revisit under any circumstances.
- It is not possible to help or heal individuals who do not want to 'move on' from the abuse they suffered.

Annex 1: Organisational respondents

Responses were received from the following 51 organisations or groups.

Local authorities and public sector partnerships (13)

- Aberdeen City Council
- Aberdeenshire Council
- City of Edinburgh Council
- COSLA
- East Ayrshire Council
- East Lothian Council
- Glasgow City Council
- Inverclyde Council
- North Ayrshire Health and Social Care Partnership
- Renfrewshire Council
- Society of Local Authority Chief Executives and Senior Managers (Solace) Scotland
- South Lanarkshire Council
- West Lothian Council

Other public sector organisations (5)

- Glasgow Psychological Trauma Service: The Anchor: Greater Glasgow and Clyde NHS / Glasgow City HSCP
- Mental Welfare Commission for Scotland
- Police Scotland
- Scottish Human Rights Commission
- Scottish Social Services Council

Current or previous care providers (11)

- Balnacraig School Perth
- Barnardo's
- Church of Scotland (CrossReach)
- The Congregation of the Sisters of Nazareth
- Daughters of Charity of St Vincent de Paul
- De La Salle Congregation
- Dean & Cauvin Young People's Trust
- Harmeny Education Trust Limited
- Quarriers
- Rossie Young People's Trust
- Salesians of Don Bosco UK

Third sector, including survivor groups (9)

- Care Leavers Australasia Network (CLAN)
- Former Boys and Girls Abused in Quarriers
- Future Pathways
- Health in Mind
- The Moira Anderson Foundation
- National Confidential Forum

- People First
- Social Bite
- Wellbeing Scotland

Legal sector (9)

- Association of Personal Injury Lawyers
- Digby Brown LLP
- Faculty of Advocates
- Forum of Complex Injury Solicitors (FOCIS)
- Forum of Insurance Lawyers
- Kennedys LLP
- Society of Local Authority Lawyers & Administrators in Scotland (Child Law Working Group)
- Solicitors in England with Dedicated Abuse Claims Department
- Thompsons Solicitors

Other organisations (4)

- Anonymous
- Association of British Insurers
- Scottish Council of Independent Schools (SCIS)
- Social Work Scotland

Annex 2: Number of responses to individual questions

Question		Individuals		Organisations	
		n	% of total 229	n	% of total 51
PART 1 Design of the redress scheme					
Part 1.1: Purpose and principles of the financial redress scheme					
Purpose					
1	We are considering the following wording to describe the purpose of financial redress: 'to acknowledge and respond to the harm that was done to children who were abused in care in the past in residential settings in Scotland where institutions and bodies had long-term responsibility for the care of the child in place of the parent'. What are your thoughts on this? Do you agree? [Yes / No]	219	96%	40	78%
	If no, what are your thoughts on purpose?	94	41%	39	76%
Principles					
2	We are considering the following as guiding principles: <ul style="list-style-type: none"> • To ensure that redress is delivered with honesty, decency, trust and integrity • To treat applicants with fairness and respect and to offer them choice wherever possible • To ensure that the assessment and award process is robust and credible • To make every effort to minimise the potential for further harm through the process of applying for redress. Do you agree with these guiding principles? [Yes / No / Unsure]	223	97%	43	84%
	Would you suggest any additions or amendments to the proposed principles?	79	34%	36	71%
Part 1.2: Eligibility for the financial redress scheme					
Defining 'in care'					
3	Do you agree with the proposed approach in relation to institutions and bodies having long term responsibility for the child in place of the parent? [Yes / No / Unsure]	227	99%	39	76%
	Please explain your answer	104	45%	35	69%
4	Subject to the institution or body having long term responsibility for the child, do you agree that the list of residential settings should be the same as used in the Scottish Child Abuse Inquiry's Terms of Reference? [Yes / No / Unsure]	222	97%	40	78%
	Please explain your answer.	91	40%	27	53%

Question		Individuals		Organisations	
		n	% of total 229	n	% of total 51
5	Where parents chose to send children to a fee paying boarding school for the primary purpose of education, the institution did not have long-term responsibility in place of the parent. Given the purpose of this redress scheme, applicants who were abused in such circumstances would not be eligible to apply to this scheme. Do you agree? [Yes / No / Unsure]	221	97%	40	78%
	Please explain your answer.	149	65%	34	67%
6	Where children spent time in hospital primarily for the purpose of medical or surgical treatment, parents retained the long-term responsibility for them. Given the purpose of this redress scheme, applicants who were abused in such circumstances would not be eligible to apply to this scheme. Do you agree?	222	97%	40	78%
	Please explain your answer.	132	58%	36	71%
Defining 'abuse'					
7	We intend to use the same definition of abuse as the Limitation (Childhood Abuse) (Scotland) Act 2017 for the purpose of the financial redress scheme. This includes sexual abuse, physical abuse, emotional abuse and abuse that takes the form of neglect. Do you agree? [Yes / No / Unsure]	228	100%	43	84%
	Please explain your answer.	117	51%	30	59%
Defining 'historical' abuse					
8	In our view, 1 December 2004 represents an appropriate date to define 'historical' abuse for this financial redress scheme. Do you agree? [Yes / No / Unsure]	220	96%	41	80%
	Please explain your answer.	116	51%	36	71%
Child migrants					
9	Do you have any comments you would like to make in relation to child migrants who also meet the eligibility requirements of this redress scheme?	154	67%	38	75%
	Those with a criminal conviction				
10	Do you have any comments about the eligibility of those with a criminal conviction?	197	86%	40	78%
Other					
11	Do you have any other comments on eligibility for the financial redress scheme?	144	63%	35	69%

Question		Individuals		Organisations	
		n	% of total 229	n	% of total 51
Part 1.3: Payment structure, evidence and assessment					
Evidence requirements					
12	What options might be available for someone who has been unable to obtain a supporting document which shows they spent time in care in Scotland?	168	73%	39	76%
13	Do you think the redress scheme should have the power, subject to certain criteria, to require that bodies or organisations holding documentation which would support an application are required to make that available? [Yes / No]	221	97%	43	84%
	Please explain your answer.	139	61%	41	80%
14	For Stage One, what evidence do you think should be required about the abuse suffered?				
	A signed declaration by the applicant that they suffered abuse, but no other supporting evidence [Yes / No]	189	83%	32	63%
	A short written description of the abuse and its impact [Yes / No]	192	84%	31	61%
	Any existing written statement from another source which details the abuse in care [Yes / No]	182	79%	26	51%
15	Do you have any additional comments on evidence requirements for a Stage One payment?	150	66%	45	88%
16	For Stage Two, what additional evidence of the abuse and of its impact, should be required for the individual assessment?				
	• Any existing written statement from another source which details the abuse [Yes / No]	174	76%	30	59%
	• Oral testimony of abuse and its impact [Yes / No]	179	78%	31	61%
	• Short written description of the abuse and its impact [Yes / No]	174	76%	29	57%
	• Detailed written description of abuse suffered and its impact [Yes / No]	183	80%	31	61%
	• Documentary evidence of impact of the abuse (from existing medical and / or psychological records) [Yes / No]	171	75%	36	71%
	• Documentary evidence of impact of the abuse (from new medical and/or psychological assessment) [Yes / No]	169	74%	35	69%
	• Supporting evidence of the abuse / impact from a third party. [Yes / No]	173	76%	31	61%
17	Do you have any comments on evidence requirements for a Stage Two payment?	152	66%	41	80%
Provision for oral testimony					
18	Do you think applicants should be able to give oral evidence to support their application? [Yes / No]	221	97%	39	76%
	If yes, under what circumstances might it be available?	164	72%	40	78%

Question		Individuals		Organisations	
		n	% of total 229	n	% of total 51
Stage Two assessment					
19	Do you have any views on whether the length of time in care should be factored into the Stage Two assessment? [Yes / No]	212	93%	34	67%
	If so, how?	150	66%	41	80%
20	Do you have any views on the balance the assessment should give to different types of abuse (physical, emotional, sexual, neglect)?	193	84%	42	82%
21	What are your views on which factors in relation to the abuse and its impact might lead to higher levels of payment?	170	74%	40	78%
22	Do you think:				
	• The redress payment is primarily for the abuse suffered [Yes / No]	117	51%	18	35%
	• The redress payment is primarily for the impact the abuse has had [Yes / No]	121	53%	20	39%
	• Both the abuse suffered and the impact it has had should be treated equally [Yes / No]	216	94%	34	67%
	Please explain your answer.	158	69%	40	78%
23	How do you think the scheme should ensure all parties are treated fairly and that the assessment and award process is sufficiently robust?	161	70%	43	84%
Consideration of other payments					
24	Do you agree that anyone who has received a payment from another source for the abuse they suffered in care in Scotland should still be eligible to apply to the redress scheme? [Yes / No]	210	92%	37	73%
	Please explain your answer.	163	71%	39	76%
25	Do you agree that any previous payments received by an applicant should be taken into account in assessing the amount of the redress payment from this scheme? [Yes / No]	212	93%	37	73%
	Please explain your answer.	144	63%	38	75%
Choosing between accepting a redress payment and seeking a payment from another source					
26	Do you agree applicants should choose between accepting a redress payment or pursuing a civil court action? [Yes / No]	205	90%	40	78%
	Please explain your answer.	155	68%	40	78%

Question		Individuals		Organisations	
		n	% of total 229	n	% of total 51
Part 1.4: Making an application					
Time period for making an application					
27	We are proposing that the redress scheme will be open for applications for a period of five years. Do you agree this is a reasonable timescale? [Yes / No]	214	93%	41	80%
	Please explain your answer.	137	60%	41	80%
Practical help making an application					
28	Should provision be made by the redress scheme administrators to assist survivors obtain documentary records required for the application process? [Yes / No]	215	94%	44	86%
	Please explain your answer.	145	63%	40	78%
Legal advice					
29	In your view, which parts of the redress process might require independent legal advice? Please tick all that apply.		0%		0%
	* In making the decision to apply	68	30%	21	41%
	* During the application process	98	43%	25	49%
	* At the point of accepting a redress payment and signing a waiver?	182	79%	39	76%
30	How do you think the costs of independent legal advice could best be managed?	183	80%	39	76%
Part 1.5: Next-of-kin					
31	What are your views on our proposed approach to allow surviving spouses and children to apply for a next-of-kin payment?	189	83%	41	80%
32	We are considering three options for the cut-off date for next-of-kin applications (meaning that a survivor would have had to have died after that date in order for a next-of-kin application to be made). Our proposal is to use 17 November 2016.				
	• 17 December 2014 – the announcement of the Scottish Child Abuse Inquiry. [Yes / No]	127	55%	19	37%
	• 17 November 2016 – the announcement of the earlier consultation and engagement work on the potential provision of financial redress [Yes / No]	113	49%	13	25%
	• 23 October 2018 – the announcement that there would be a statutory financial redress scheme in Scotland [Yes / No]	120	52%	18	35%
	What are your views on which date would be the most appropriate?	141	62%	33	65%

Question		Individuals		Organisations	
		n	% of total 229	n	% of total 51
33	We propose that to apply for a next-of-kin payment, surviving spouses or children would have to provide supporting documentation to show that their family member met all the eligibility criteria. What forms of evidence of abuse should next-of-kin be able to submit to support their application?	160	70%	35	69%
34	What are your views on the proportion of the next-of-kin payment in relation to the level at which the redress Stage One payment will be set in due course? [25% / 50% / 75% / 100%]	167	73%	22	43%
	Please explain your answer.	145	63%	30	59%
Part 1.6: Financial contributions					
Contributions to the redress scheme					
35	We think those bearing responsibility for the abuse should be expected to provide financial contributions to the costs of redress. Do you agree? [Yes / No]	215	94%	37	73%
	Please explain your answer.	154	67%	39	76%
36	Please tell us about how you think contributions by those responsible should work. Should those responsible make:				
	* An upfront contribution to the scheme [Yes / No]	140	61%	19	37%
	* A contribution based on the number of applicants who come forward from their institution or service [Yes / No]	144	63%	23	45%
	* Another approach to making a financial contribution to the redress scheme costs? [Yes / No]	106	46%	23	45%
	Please explain your answer.	123	54%	34	67%
	Any other comments?	65	28%	9	18%
37	Are there any barriers to providing contributions, and if so how might these be overcome?	132	58%	39	76%
38	Should the impact of making financial contributions on current services be taken into account and if so how? [Yes / No]	161	70%	38	75%
	Please explain your answer.	117	51%	38	75%
39	What other impacts might there be and how could those be addressed?	101	44%	30	59%
40	How should circumstances where a responsible organisation no longer exists in the form it did at the time of the abuse, or where an organisation has no assets, be treated?	157	69%	36	71%
41	What is fair and meaningful contribution from those bearing responsibility for the abuse?	158	69%	37	73%
42	What would be the most effective way of encouraging those responsible to make fair and meaningful contributions to the scheme?	158	69%	38	75%
43	Should there be consequences for those responsible who do not make a fair and meaningful financial contribution? [Yes / No]	191	83%	25	49%
	If yes, what might these be?	163	71%	34	67%

Question		Individuals		Organisations	
		n	% of total 229	n	% of total 51
Contributions to wider reparations					
44	In addition to their financial contributions to the redress scheme, what other contributions should those responsible for abuse make to wider reparations?	149	65%	43	84%
PART 2: Scheme administration and wider reparations					
Part 2.1: Decision-making panel for redress					
45	Do you agree that the decision making panel should consist of three members? [Yes / No]	199	87%	33	65%
	Please explain your answer.	144	63%	32	63%
46	Do you agree that the key skills and knowledge for panel members should be an understanding of human rights, legal knowledge, and knowledge of complex trauma and its impact? [Yes / No]	209	91%	41	80%
	Are there any other specific professional backgrounds or skills you feel are essential for the decision-making panel?	116	51%	36	71%
47	We propose that a Survivor Panel be established to advise and inform the redress scheme governance and administration, ensuring survivor experience of the application process is considered as part of a culture of continuous improvement. Do you agree? [Yes / No]	201	88%	37	73%
	Please explain your answer.	125	55%	37	73%
	How do you think survivors should be recruited and selected for this panel?	144	63%	31	61%
Part 2.2: Public body					
48	Do you agree that the financial redress scheme administration should be located in a new public body? [Yes / No]	182	79%	36	71%
	Please explain your answer.	132	58%	37	73%
49	Do you have any views as to where the public body should be located and what it should be called?	150	66%	36	71%
	What factors should be taken into account when deciding where the public body should be?	135	59%	31	61%
50	How can survivors be involved in the recruitment process for these posts?	143	62%	34	67%
	How should survivors be selected to take part in this process?	143	62%	24	47%
Part 2.3: Wider reparations					
51	What are your views on bringing together the administration of other elements of a reparation package such as support and acknowledgement with financial redress?	146	64%	42	82%
	What would be the advantages?	130	57%	25	49%
	Would there be any disadvantages, and if so, how might these be addressed?	111	48%	22	43%

Question		Individuals		Organisations	
		n	% of total 229	n	% of total 51
52	Do you agree that it would be beneficial if the administration of these elements were located in the same physical building?	160	70%	38	75%
	What would be the advantages?	129	56%	23	45%
	Would there be any disadvantages, and if so, how might these be addressed?	109	48%	18	35%
53	Should wider reparation be available to everyone who meets the eligibility criteria for the financial redress scheme? [Yes / No]	166	72%	31	61%
	Please explain your answer.	104	45%	31	61%
54	Should there be priority access to wider reparation for certain groups, for example elderly and ill? [Yes / No]	197	86%	33	65%
	Please explain your answer.	127	55%	33	65%
55	If a person is eligible for redress, should they have the same or comparable access to other elements of reparation whether they live in Scotland or elsewhere? [Yes / No]	185	81%	31	61%
	Please explain your answer.	131	57%	33	65%
Acknowledgement and apology					
56	To allow us more flexibility in considering how acknowledgment is delivered in the future, we intend to include provision in the redress legislation to repeal the sections of the Victims and Witnesses (Scotland) Act 2014 which established the National Confidential Forum. Do you have any views on this?	141	62%	36	71%
57	Do you have any views on how acknowledgment should be provided in the future?	128	56%	34	67%
58	Do you think a personal apology should be given alongside a redress payment? [Yes / No]	194	85%	29	57%
	Please explain your answer.	157	69%	33	65%
	If so, who should give the apology?	150	66%	24	47%
Support					
59	Do you think there is a need for a dedicated support service for in care survivors once the financial redress scheme is in place? [Yes / No]	203	89%	33	65%
	Please explain your answer.	155	68%	37	73%
60	Do you have any initial views on how support for in care survivors might be delivered in Scotland, alongside a redress scheme?	154	67%	39	76%

Annex 3: Engagement and information activity

11. The Scottish Government took steps to promote the consultation, and encourage responses from those affected by historical abuse. They worked with relevant organisations to help facilitate engagement, and support survivor participation.

12. The consultation team identified a range of potential barriers to participation in the consultation, including the emotional, technical and complex character of the content and questions. In order to make the process as inclusive as possible respondents were able to complete the consultation questionnaire online or complete and return by post or email; respondents could also submit free narrative responses by post or email. An information phone line was also set up to answer questions on the consultation context and process.

13. More widely, a communication and awareness raising strategy was implemented to reach as many interested parties as possible, with survivor organisations were also encouraged to promote the consultation through their own routes.

14. Direct email communication highlighting the launch of the consultation was sent to survivor organisations, relevant national professional bodies, universal services (for example, housing, social work, and health), and individuals working with groups typically described as hard to reach such as the homeless, and the travelling community.

15. Organisations were encouraged to get in touch with any ideas to support survivor engagement and awareness, with a standing offer for Scottish Government representatives to meet with staff teams, existing small groups of survivors, or to discuss the option for small groups to be created for the purpose of delivering information sessions.

16. Information sessions for survivors and those working with survivors took place, as follows:

- Meeting with Survivor Support Innovation and Development Fund Network
- Multi-agency information meeting for practitioners and managers
- Meeting with representatives of organisations working with survivors including Future Pathways and Wellbeing Scotland
- Three survivor information sessions in Glasgow (two events) and Aberdeen.

17. Around 45 people attended the meetings hosted by organisations, and around 60 people attended the three survivor information sessions.

18. The key aim of the survivor information sessions was to explain the consultation process and provide background to the individual questions. The aim was not to gather responses to the questions as it was acknowledged that individuals would need time, support and space to consider their answers. Individuals were encouraged to submit responses in their own time following attendance at an event.

19. Information sessions involved a presentation by Scottish Government representatives and a separate session was organised for participants to consider matters independently. Follow-up sessions without the presence of Scottish Government were then held, either later in the day or on a separate day from the original input session.



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