

# **Reconsideration and Review of Determinations – SG/2023/46**

**April 2023**

# Reconsideration and Review of Determinations – SG/2023/46

## 1. Status of this Guidance

1.1 This guidance is issued under section 106 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (“the Act”) insofar as it relates to the operation of the Act. Section 78 of the Act empowers the Scottish Ministers to make further provision in regulations about or in connection with the reconsideration of a determination under section 75 of the Act and any review of it under section 76. This power has been exercised to make [The Redress for Survivors \(Historical Child Abuse in Care\) \(Reconsideration and Review of Determinations\) \(Scotland\) Regulations 2022 \(legislation.gov.uk\)](#) (“the Regulations”) which relate, among other things, to the payment of legal fees, costs and expenses in connection with reconsiderations and reviews. For completeness, this guidance also covers the operation of the Regulations more broadly.

2. This guidance is issued to all those with an interest in connection with the reconsideration and review of determinations made under Part 4 of the Act. This guidance applies to “relevant persons” within the meaning of section 75(9) of the Act, their legal representatives and Redress Scotland, who must have regard to it.

3. The purpose of this guidance is:

- to explain the support available to persons engaged in the reconsideration and review processes under sections 75 and 76 of the Act, by way of payment of legal fees and reimbursement of costs and expenses in certain circumstances;
- to set out the procedures to be followed for requesting payment of legal fees and reimbursement of costs and expenses in the reconsideration/review context, as well as the procedures for considering these requests;
- to explain how a request for review of a decision taken on the payment of legal fees and costs and expenses is to be made;
- to explain processes to be followed where legal fees, costs or expenses have potentially been paid in error and liability where such an error has been made; and
- to explain processes relating to the reconsideration of a determination under section 75 of the Act or a review of a reconsidered determination under section 76 of the Act, particularly where this is linked to the determination of a redress payment.

## Background

4. Section 75 of the Act makes provision for a reconsideration of a determination made under Part 4 of the Act where Redress Scotland has, or the Scottish Ministers have, cause to believe that it may have been materially affected by an error. An “error” in this context is one that led to a determination under Part 4 of the Act being made incorrectly or correctly on the basis of incorrect or misleading information.

5. Whenever the reconsideration process is engaged, a “relevant person” (within the meaning in section 75(9) of the Act) will be notified of this and given information about the implications of the reconsideration. They will have the opportunity to make written representations in connection with the reconsideration and be able to claim legal fees, costs and expenses in accordance with the Regulations.

6. Once the reconsideration process is complete, the “relevant person” will be notified of the outcome and will have the right to request a review of it under section 76.

7. Section 77(2) of the Act contains built-in protections to ensure that people are not deterred from exercising this right where the determination which has been reconsidered under section 75 relates to the outcome of a redress application. In particular, it states that a panel undertaking a review under section 76 cannot:

- reverse or vary a determination under section 75 that a person remains eligible for a redress payment;
- determine that a person is to be entitled to or, as the case may be, offered a lower amount by way of an individually assessed payment than the person was entitled to or offered under section 75; or
- determine that more is to be deducted in accordance with section 42 from the person's redress payment than was determined under section 75.

8. In accordance with the Regulations, funded legal advice and reimbursement of costs and expenses are also available to ensure that people are supported to invoke the review process under section 76.

## The Reconsideration Process

9. Section 75 of the Act sets out the process to be followed in relation to the reconsideration of determinations under Part 4 of the Act<sup>1</sup> which may have been materially affected by error, including:

- a referral for reconsideration of the determination to a “reconsideration panel” (i.e. a panel of at least three members of Redress Scotland appointed by the chairing member) is mandatory where Redress Scotland has, or the Scottish Ministers have, cause to believe that the determination may have been materially affected by an error;
- Redress Scotland must inform the Scottish Ministers of any referral it makes to the reconsideration panel as soon as reasonably practicable;
- where a determination is referred for reconsideration, the Scottish Ministers must, as soon as reasonably practicable, notify the relevant person in writing that the determination is to be reconsidered; of the reasons why; and of the potential implications of the reconsideration;
- on receiving notification from the Scottish Ministers that a determination is to be reconsidered, the relevant person must be given at least 8 weeks to make written representations in connection with the reconsideration.

10. The process to be followed by the reconsideration panel is set out below:

- Following the expiry of the period given to the relevant person to make written representations in connection with the reconsideration, the panel should consider all of the relevant information which has been referred and provided to it;
- the reconsideration will be determined on behalf of Redress Scotland by a panel of at least three members who are appointed by the chairing member;
- The panel must determine if the original determination was affected by error;

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<sup>1</sup> I.e.:

- a determination under section 36 of the Act (determination of applications).
- a determination of a review under section 57 of the Act (outcome of a section 54 review).
- a determination made under section 60 of the Act (applicants etc. with convictions for serious offences).
- a determination of a review under section 63 of the Act (outcome of a section 62 review).
- a determination under section 66(3) of the Act (determination of whether a nominated beneficiary is to be invited to take over application).
- a determination of the outcome of a review under section 69 of the Act (outcome of section 68 review).
- a determination made under section 75(5) of the Act (reconsideration of determination where possible material error).
- a determination made under section 77 of the Act (outcome of a section 76 review).

- If the determination was affected by error, the panel should re-determine it on the basis of how it would have been determined had the error not been made;
- upon Redress Scotland reaching its determination, the Scottish Ministers will notify the relevant person of its decision in writing, provide a summary of the reasons why it has been reached and implications, if any, for payments and waiver (detailed under Part 5 of the Regulations).

## Rights of Review

11. Rights of review exist in relation to a number of aspects of the redress scheme. The Scottish Ministers have an obligation, under section 9 of the Act, to ensure that information is available to people on how to exercise those rights and that they can make informed choices.

12. Information on a range of review processes under the Act can be found on the gov.scot website: [Redress For Survivors \(Historical Child Abuse In Care\) \(Scotland\) Act 2021: statutory guidance – reviews - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/redress-survivors-historical-child-abuse-in-care-scotland-act-2021-statutory-guidance-reviews/pages/2-introduction.aspx)

13. In terms of reviews made under section 76 of the Act, a person who is notified of a determination under section 75 may request a review of it. The request must be made to the Scottish Ministers before the end of the period of 8 weeks beginning with the date on which the person received notice of the determination, unless Redress Scotland is satisfied that the person has a good reason for not requesting the review sooner. Applicants should contact their caseworker to obtain the form for review. A person who submits a request for a review must specify why they are making the request and give information that they consider relevant.

14. As soon as reasonably practicable, the Scottish Ministers will provide a request for a review and any information accompanying it to Redress Scotland. The review will be determined on behalf of Redress Scotland by a panel appointed by the chairing member. It must consist of at least three members and must not include any member of the panel whose determination is the subject of the review request.

15. Section 77 of the Act sets out that the panel which conducts the review must consider whether the reconsideration panel which made a determination under section 75 ought to have reached a different determination. Further, in a case where additional evidence is provided to or obtained by the review panel, consideration must be given to whether a redress application ought to be determined differently as a result.

16. Section 77(2) of the Act contains protections to ensure that a person cannot be prejudiced by exercising their right of review under section 76 in relation to the outcome of a redress application, and provides that:

- firstly, a review panel cannot reverse or vary a determination that the relevant person is or remains eligible for a redress payment;
- secondly, the panel cannot determine that a person is to be offered a lower amount by way of an individually assessed payment than was offered to them under section 75; and
- thirdly, the panel cannot determine that more is to be deducted from the person's redress payment than was determined under section 75.

17. A request for a review under section 77 can be withdrawn at any time prior to a determination being made under it. Should the request be withdrawn, no further request for a review may be made in respect of the determination to which it relates unless the further request is made for a different reason.

18. Where a review has been determined, the determination is final. The only exception to this would be if the determination of the review panel itself were referred for reconsideration under section 75, on the basis of a potential material error which was different from the one which previously led to the review.

## **Redeterminations and reviews in relation to the outcome of redress applications**

19. Paragraphs 20-24 set out the guidance for potential outcomes following reconsideration or review of a reconsideration, as set out in part 5 of [The Redress for Survivors \(Historical Child Abuse in Care\) \(Reconsideration and Review of Determinations\) \(Scotland\) Regulations 2022 \(legislation.gov.uk\)](#)

### *Reconsiderations*

20. The reconsideration process under section 75 of the Act can be engaged where Redress Scotland or the Scottish Ministers have cause to believe that a determination under Part 4 of the Act was materially affected by an error (as defined in section 75(9)). A determination under Part 4 includes the determination of a redress application – either under section 36 or on review - meaning that the reconsideration process, and any subsequent review under section 76, may ultimately have a bearing on what redress payment, if any, a person receives and potential consequences for previously signed waivers.

21. Under section 74 of the Act, a person is liable to repay the value of any redress payment paid to them due to a “relevant error”. This could arise, for example, where a mistake in processing payment leads to the person being paid incorrectly, or it could arise where a material error was made in determining the amount of redress payment they were entitled to. In the latter case, the reconsideration process is designed to check whether such an error was made – either due to general circumstances or because incorrect or misleading information was given in support of the redress application. Discretion as to whether to recover redress payments made in error lies with the Scottish Ministers, who will carefully consider all relevant facts and circumstances before effecting recovery, if appropriate.

22. The Regulations modify the Act to make provision in relation to what happens where a reconsideration is undertaken in relation to the outcome of a redress application, as follows:

- **Section 75A is inserted into the Act to provide that:**
  - if a determination relating to the offer of a redress payment is referred for reconsideration at a point at which the offer is still open for acceptance, the offer is suspended. Similarly, any review of the determination of the redress application which is ongoing is paused.
  - if the reconsideration panel under section 75 determines that the original determination was not materially affected by an error, any review of the offer which has been paused will be resumed. Further, any suspended offer of a redress payment will be revived for a period for 6 months, or longer if the reconsideration panel considers that there is a good reason for extending this

period. The offer can be accepted by the relevant person (as defined in section 75(9)) signing and returning a waiver to the Scottish Ministers under section 46 of the Act, or in a case where section 46(2) of the Act applies, by giving the Scottish Ministers notice in writing that the offer is accepted.

- **Section 75B is inserted into the Act to provide that:**

- if a determination relating to the offer of a redress payment is referred for reconsideration at the point at which an offer has been made and accepted, but payment (in full or part) is still pending, then entitlement to the payment (or any unpaid part of it) is suspended pending the reconsideration by Redress Scotland.

- if the reconsideration panel under section 75 determines that the original determination was not materially affected by an error, then entitlement to the payment (or any unpaid part of it) is restored.

- **Section 75C is inserted into the Act to cater for circumstances in which a person has signed a waiver to accept an offer of a redress payment which a reconsideration panel under section 75 determines was affected by error and ought not to have been given.** (This could arise, for example, where a person has made false representations about their eligibility for a payment.) In these circumstances, section 75C(2) renders any waiver signed and returned to accept the erroneous offer of no effect. This reflects that section 74 will operate to render the person who has received a redress payment in error liable to make repayment to the Scottish Ministers.

- **Section 75D is inserted into the Act to cover scenarios in which a reconsideration panel determines that a person is to be given an offer of a redress payment, either where an offer was not previously made under the original determination, or where an offer had been made, but had not been accepted at the point when a referral for reconsideration was made.**

- In these scenarios, an entirely new or revised offer will be issued to the relevant person. In line with section 75(5A) and (5B) of the Act, no account will be taken of any redress payment which has previously been paid in respect of the original determination in assessing the amount of the redress payment to be offered.

- The offer will be valid for the period of six months beginning with the date on which notification of the redetermination under section 75(5)(b) of the Act was received by the relevant person, or such longer period as the reconsideration panel determines if it is satisfied that there is a good reason why the person needs, or may need, longer to consider whether or not to accept the offer.

- The options available to a person receiving such an offer are:

- to accept it in accordance with section 50(1) of the Act,

- to reject it by giving notice to the Scottish Ministers in writing that the offer is rejected, or

- to request a review of the offer in accordance with section 76 of the Act.



- If none of these actions are taken during the period of the offer's validity, then the redress application is to be treated as having been brought to an end by the offer being rejected.
- **Section 75E has been inserted into the Act** to cater for circumstances in which an offer of a redress payment has been accepted, but following the reconsideration process, a new offer is to be made because the original offer was materially affected by error. In such an instance, the new offer may be the same as the original offer or it may be higher or lower than it was before.
  - If the new offer is for the same amount as the original one, section 75E(2)(a) and (b) of the Act will operate to deem that it has been accepted in accordance with section 50(1) of the Act and to ensure that any original waiver will remain effective and in place.
  - Where the new offer is not for the same amount as the original offer (i.e. it is higher or lower than the offer a person has previously accepted), it will be valid for the period of six months beginning with the date on which notification of the redetermination under section 75(5)(b) of the Act was received by the relevant person, or such longer period as the reconsideration panel determines if it is satisfied that there is a good reason why the person needs, or may need, longer to consider whether or not to accept the offer.
- On receiving a new offer which is higher or lower than that flowing from the original determination following the section 75 reconsideration process, a relevant person has the option to:
  - accept it in accordance with section 50(1) of the Act,
  - reject it by giving the Scottish Ministers notice of the rejection in writing, or
  - request a review of the offer in accordance with section 76 of the Act.
- Where the new offer is accepted, any waiver signed and returned in accordance with section 46 of the Act in respect of the original offer continues to have effect (see section 75E(6) of the Act). If, however, the new offer is rejected, then any such waiver will be rendered of no effect by the operation of section 75E(7) of the Act. Section 77B(2) of the Act will also operate where the new offer is rejected to render the person liable to pay the Scottish Ministers the value of any redress payment paid in respect of the original offer.
- The scheme will to provide the necessary level of information, support and access to legal advice during the process to ensure applicants are fully aware of their options and can make an informed decision.
- In the unlikely event that the relevant person does not accept, reject or request review of a new offer during the period of its validity, the Act will operate to deem that the new offer has been accepted. This will mean that any waiver signed and returned in accordance with section 46 to accept the original offer will continue in effect. This position has been adopted to cause the least detriment to a person who has accepted a previous offer, as:

- Firstly, it means that a person will be paid an additional sum where a new offer is higher than the sum they accepted before; and
- Secondly, it means that where a person does nothing in response to a notification that they have been offered a lower payment than that which they previously accepted, they will not be liable to repay the whole redress payment which they have received to the Scottish Ministers. Rather, they will only be liable to repay the value of any payment they have received to the extent that it was paid to them due to a relevant error.
- Those engaging with the reconsideration process will be supported to understand its implications and the options arising from the outcome of a reconsideration. In particular, where a reconsideration has been undertaken by Redress Scotland, section 75(7)(b) of the Act obliges the Scottish Ministers to provide:
  - a summary of the reasons for the determination which was reached;
  - information in relation to the effect of the panel's determination on a previous offer of a redress payment made under the original determination; and
  - where an offer of a redress payment is to be given as a result of the reconsideration, information about the period for which the offer remains valid and the options available to the person in respect of it.

### *Reviews of reconsidered determinations*

23. Where a person is notified of a determination under section 75 of the Act they may request a review of it under section 76 of the Act, following the process outlined under paragraphs 11-18. This includes where a person is notified of the outcome of a reconsideration relating to the outcome of a redress application.

On a review under section 76 of the Act, a Redress Scotland panel must consider whether a different determination ought to have been reached under section 75 of the Act and, in a case where additional evidence is provided to or obtained by it, whether a redress application ought to be determined differently. As noted under paragraph 16, there are protections built into section 77(2) of the Act to ensure that a person cannot be prejudiced by exercising their right of review under this section in relation to the outcome of a redress application.

However, a panel undertaking a review under section 76 of the Act can uphold, reverse or vary any part of the determination made under section 75 of the Act, whether the request for a review relates to that part of it or not.

Where an offer of a redress payment is to be made following a review under section 76 of the Act, no account is to be taken in assessing this of any redress payment

which has previously been paid in respect of the original determination which was referred for reconsideration under section 75 of the Act.

An offer made following a section 76 review will be issued to the person who requested the review and will be valid for the period of six months beginning with the date on which they received notification of the review outcome. A longer validity period may also apply if the review panel is satisfied that there is a good reason why the person needs, or may need, longer to consider whether or not to accept the offer.

If no offer of a redress payment was issued as a result of the original determination, or if such an offer was issued but not accepted, the person receiving the offer arising from the section 76 review will be able to accept it in accordance with section 50(1) of the Act or reject it by giving notice of this to the Scottish Ministers in writing.

If the offer is neither accepted nor rejected during the period of its validity, then the redress application will be treated as having been brought to an end by the offer being rejected.

- If, however, an offer linked to the original determination has already been accepted, then:
  - if the offer on review is for the same amount as the original offer, section 75E(2)(a) and (b) of the Act (as applied by section 77(4C) of the Act) will operate to deem that it has been accepted in accordance with section 50(1) and to ensure that any original waiver will remain effective and in place.
  - where the offer is not for the same amount as the original offer (i.e. it is higher or lower than the offer a person has previously accepted), then the person who requested the review will have the option to accept it in accordance with section 50(1) of the Act or give the Scottish Ministers notice in writing that it is rejected.
  - As with reconsiderations, if the offer is accepted, any waiver signed and returned in accordance with section 46 of the Act in respect of the original offer will continue to have effect.
  - If, however, the offer is rejected, then any such waiver will be rendered of no effect. Section 77B(2) of the Act will also operate where the offer is rejected to render the person liable to pay the Scottish Ministers the value of any redress payment paid in respect of the original offer.
- If a person who has requested a review under section 76 of the Act has previously accepted an offer of a redress payment flowing from the original determination, but does not then accept a revised offer following review during the period of its validity, the Act will operate to deem that the revised offer has been accepted. This will mean that any waiver signed and returned in accordance with section 46 of the Act to accept the original offer will continue

in effect and that a person will be paid any additional payment they are entitled to.

- As is the case with reconsiderations, the Act obliges the Scottish Ministers to provide the person who requests a review under section 76 of the Act with certain information once Redress Scotland has undertaken it (see section 77(5)(b) of the Act). In particular, information will be provided on the outcome of the review as to why the review redetermination has been reached, what the effect of this determination is on a previous offer of a redress payment made under section 75 and, where an offer of a redress payment is to be made following the review, for how long the offer is valid and what the options are in respect of it.
- Should a person wish to withdraw a request for a review of a reconsidered determination under section 76 of the Act, they must do this in accordance with section 59 of the Act (as applied by section 76(6) of the Act). In practice, this means that a review request can be withdrawn at any time before a determination is made under section 77 of the Act by giving notice in writing to the Scottish Ministers.
- In a case in which a review request is withdrawn and an offer of a redress payment was made following the section 75 reconsideration process, section 77A(2) of the Act operates to extend the period of validity of the offer by the number of days in the period beginning with the date on which the request for a review was made and ending with the date on which the request was withdrawn.

### **Legal Fees in connection with Reconsideration and Review under Section 75 or 76 of the Act.**

24. Relevant persons engaged in the reconsideration and review processes will be able to access support, legal advice and reimbursement of costs and expenses at the level outlined in the Regulations. Part 2 and the accompanying schedule of The Redress for Survivors (Historical Child Abuse in Care) (Reconsideration and Review of Determinations) (Scotland) Regulations 2022 ([legislation.gov.uk](https://www.legislation.gov.uk)) sets out the relevant legal fees and applicable charges for work reasonably undertaken.

25. The payment of legal fees guidance relates to all legal fees set out within the Act and under part 2 of the secondary legislation (Part 2), with the exception of fees related to reconsiderations and reviews under Sections 75 and 76 of the Act. Legal fees payments in this context refer to the costs of legal work reasonably undertaken for a relevant person in connection with a reconsideration or review. Costs and expenses relate to costs reasonably incurred by that person in connection with the reconsideration or subsequent review process. Costs and expenses could, for example, relate to costs incurred in obtaining documentation to make representations to a reconsideration/review panel.

26. The requirements for making a legal fee payment request in respect of legal work undertaken as part of a reconsideration or review under section 75 or 76 and for making a request for reimbursement of costs and expenses linked to a reconsideration or review will be considered by Redress Scotland. The person affected by the outcome may request a review if they are not content with it. Further information is set out below and under part 2 of the Regulations.

### Prescribed Sums

Generally, solicitors who carry out legal work in relation to a reconsideration or review of an application for redress will (if the work is reasonably undertaken) receive a fixed fee for the work.

27. The fixed fees for reconsideration and review are set out in [The Redress for Survivors \(Historical Child Abuse in Care\) \(Reconsideration and Review of Determinations\) \(Scotland\) Regulations 2022 \(legislation.gov.uk\)](#):

- Column A prescribes sums for all legal work where an application for a redress payment is submitted and a determination is made by Redress Scotland.
- Column B prescribes sums where an application for a redress payment is submitted but has not been determined by Redress Scotland because it is paused or withdrawn, or because of the death of the applicant.

The schedule lists eight determinations under Part 4 of the Act which may be subject to a reconsideration or subsequent review. The fixed fee in respect of each determination subject to a reconsideration is £250 (plus VAT, where applicable). In respect of a review of a reconsidered determination, the fixed fee is £250 (plus VAT where applicable), unless the review is paused or withdrawn, in which case the fee is £190 (plus VAT where applicable).

28. In exceptional or unexpected circumstances, solicitors may be able to obtain an additional fee (see below).

29. However, the prescribed sums have been set at levels which ought to properly reflect the amount of work which will be required in almost all cases and which give solicitors certainty as to the sum they will receive.

### Fee Payment Request

30. For standard fees that do not require prior approval, a fee payment request in respect of a reconsideration or review must be submitted to the Scottish Ministers, [Scotland's Redress Scheme: legal fees payment request form - gov.scot](#)

[www.gov.scot](http://www.gov.scot) , setting out the legal work undertaken, when that work was carried out and any other matters considered relevant by the solicitor.

31. Should the solicitor consider that there are exceptional or unexpected circumstances which may justify the payment of an additional sum, they must provide information about this on the payment request form.

32. The fee payment request must be submitted to Scottish Ministers by the solicitor within 8 weeks beginning with the date on which notice of the outcome of the reconsideration, or as the case may be, the review was received by the relevant person. The Scottish Ministers may consider a request submitted after the 8 week period if they are satisfied that the solicitor had a good reason for not making the request sooner.

33. It is anticipated that where a fee payment request which does not include a claim for an additional fee in exceptional or unexpected circumstances is submitted in relation to a reconsideration or review, almost all fee payment requests will be paid to the solicitor by the Scottish Ministers without the need for any referral to Redress Scotland. However, where the Scottish Ministers have cause to believe that the legal work may not have been reasonably undertaken in connection with the reconsideration or review, they will, as soon as reasonably practicable, refer the fee payment request to Redress Scotland to consider it.

#### [Prior approval for legal work in exceptional or unexpected circumstances](#)

34. Where a solicitor considers that the legal work they are due to undertake in respect of a reconsideration or review is affected by unexpected or exceptional circumstances and the prescribed sums may not adequately reflect the cost of the legal work, they may seek payment of an additional sum.

35. The solicitor must submit a written request under [Scotland's Redress Scheme: prior approval request form - gov.scot \(www.gov.scot\)](#) to the Scottish Ministers seeking authority in principle to undertake any legal work in exceptional or unexpected circumstances and specify the additional sum that they consider is likely to be requested in the fee payment request. In seeking prior approval for an additional sum over and above the standard fixed fees, solicitors should demonstrate they have forecasted that the work required will go beyond the prescribed fees available. Solicitors should also provide information as to why the circumstances in which the additional work is to be undertaken should be considered 'exceptional' or 'unexpected'.

36. Redress Scotland will assess any request for authority in principle to undertake legal work in exceptional or unexpected circumstances as soon as reasonably practicable. The outcome of this will then be communicated to the

solicitor by the Scottish Ministers, along with a summary of the reasons why this outcome has been reached.

37. Where a solicitor is informed that the outcome is that Redress Scotland is not satisfied that authority in principle should be given, or where it considers that the additional sum ought to be lower than that which the solicitor specified in their request, the solicitor can request a review under [Scotland's Redress Scheme: prior approval review request form - gov.scot \(www.gov.scot\)](https://www.gov.scot/Topics/justice/redress-scheme/prior-approval-review-request-form). The request must be made in writing to the Scottish Ministers and contain or be accompanied by any information that the solicitor considers relevant.

38. If prior approval to undertake legal work in exceptional or unexpected circumstances has not been sought and there is a good reason for the solicitor not having obtained authority in principle, Redress Scotland has the discretion to dispense with the prior approval requirement and Scottish Ministers may still pay an additional sum. It should be stressed that, however, solicitors must seek prior approval wherever possible.

39. Every request for the payment of additional sums will have to be considered on its own merits and in light of the prevailing facts and circumstances.

40. In indicating what additional sum, if any, would be appropriate, Redress Scotland should take into account the full facts and circumstances within the request, in order to assess what is reasonable. For example, it may be reasonable to pay an additional sum:

- where, in the particular facts and circumstances of the reconsideration or review, the solicitor requires to conduct a number of in-depth investigations/ interviews, involving work in excess of that covered by the prescribed sum;
- further examples can be found in the [Redress For Survivors \(Historical Child Abuse In Care\) \(Scotland\) Act 2021: statutory guidance – payment of legal fees and related decisions made by Redress Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot/Topics/justice/redress-scheme/statutory-guidance-payment-legal-fees-related-decisions)

#### Review of the assessment of a fee payment request

41. Where Redress Scotland has assessed a [Scotland's Redress Scheme: legal fees payment request form - gov.scot \(www.gov.scot\)](https://www.gov.scot/Topics/justice/redress-scheme/legal-fees-payment-request-form), and the decision reached is that no sum is to be paid as a fixed fee; any additional sum requested is not to be paid; or that any additional fee to be paid is less than that requested by the solicitor, the solicitor has a right to request a review of that decision. In terms of the review process:

- a review by a solicitor should be made before the end of the period of 8 weeks beginning with the date they received notification of Redress Scotland's assessment.

Requests made out with the 8 week period may also be considered if Redress Scotland is satisfied that the solicitor had good reason for not making the request sooner.

- The solicitor must make a fee payment request by completing and submitting <https://www.gov.scot/publications/scotlands-redress-scheme-legal-fees-payment-review-request-form/> to the Scottish Ministers. This should contain an outline of the grounds for the review and any accompanying information they consider relevant to assist Redress Scotland in carrying out its review.
- all relevant information provided by the solicitor will be forwarded by the Scottish Ministers to Redress Scotland as soon as reasonably practicable;
- the fee review will be determined on behalf of Redress Scotland by a panel of at least two members who are appointed by the chairing member;
- the panel members must not have been involved in the original fee determination under review;
- There is no further right to review by the solicitor following the determination of the fee review panel;
- A review request can be withdrawn by a solicitor at any time before it is determined by making a request in writing to the Scottish Ministers.

#### **Reimbursement of Costs Incurred in Relation to a reconsideration or Review under Section 75 or 76 of the Act**

42. Part 3 of Regulation 13 of [The Redress for Survivors \(Historical Child Abuse in Care\) \(Reconsideration and Review of Determinations\) \(Scotland\) Regulations 2022 \(legislation.gov.uk\) sets out the relevant legal](#) fees and applicable charges for work reasonably undertaken.

43. The Scottish Ministers will reimburse relevant costs and expenses reasonably incurred by or in respect of a relevant person in connection with a reconsideration, irrespective of whether the reconsideration resulted in a redetermination having been made. In the case of a subsequent review, reimbursement of costs and expenses can be made under the Regulations regardless of whether the determination under review was upheld, reversed or varied.

44. This Part of the guidance covers:

- costs and expenses which may be reimbursed in connection with a reconsideration or review;
- limits on the costs and expenses which may be reimbursed;
- processes to be followed where a cost/expense has been incurred in a different currency;
- what may be considered as “exceptional or unexpected circumstances” warranting the reimbursement of costs/expenses above the usual limit;



- time limits for a request for reimbursement to be made;
- process for reviews of decisions regarding the reimbursement of costs incurred in relation to a reconsideration of review.

### Costs and expenses which may be reimbursed

45. To receive reimbursement for costs or expenses incurred or in respect of a reconsideration or review, a claimant who is a “relevant person” (as defined in [regulation 1 of the Regulations](#)) is required to submit the expenses form which has been provided by the Scottish Ministers for this purpose. This form is [available online](#) and on request from a case worker.

46. A relevant person’s solicitor is also permitted to request reimbursement of costs and expenses they have incurred on behalf of the relevant person, in accordance with the Regulations. This form is available at [Scotland’s Redress Scheme: reclaiming expenses for solicitors form - gov.scot \(www.gov.scot\)](#) or on request from a caseworker.

47. The Regulations set out further details in relation to the types of costs and expenses in connection with a reconsideration or review which may be reimbursed by the Scottish Ministers, provided they are reasonably incurred. Where the solicitor has incurred costs and expenses ordinarily attributable to their client - for example, in obtaining the applicant’s identification documents, those costs should be claimed in respect of their client’s costs and expenses entitlement, with the payment being reimbursed to the solicitor.

48. Regulation 13 sets out that the costs and expenses which must be reimbursed, if reasonably incurred on or after 7 December 2021, in connection with a reconsideration or review are in relation to:

- obtaining information or evidence in connection with a reconsideration or review;
- verifying this information or evidence for the purposes of a reconsideration or review;
- travel, accommodation, subsistence and care costs (for the care of children or other dependants) associated with a relevant person (and one person accompanying them) making oral representations to Redress Scotland where they have been invited to do so for the purposes of a review;
- other costs and expenses not listed above which the Scottish Ministers are satisfied was reasonably incurred in connection with the reconsideration, or as the case may be, the review, must also be reimbursed if they were reasonably incurred by or in respect of a relevant person on or after 7 December 2021. These may, for example, include the costs of translation or other services required to assist a

relevant person who needs support in engaging with the reconsideration or review process.

49. Potential claimants are strongly encouraged to seek advice from case workers ahead of incurring costs and expenses in the context of a reconsideration or review. In particular, before instructing any expert report, a relevant person or their solicitor should contact a case worker. Whilst it is understood that expert reports may be required in some circumstances, they should not routinely be instructed without seeking case worker input in relation to costs and expenses in advance.

#### Limits on the costs which will be reimbursed

50. Regulation 13 of the Regulations sets out the “appropriate limit” in relation to a cost or expense relating to obtaining or verifying information in connection with a reconsideration or review. In line with this limit, reimbursement is limited to £50 in most circumstances.

51. Where this cost limit is to be exceeded, the Scottish Ministers must be satisfied that there are exceptional or unexpected circumstances to justify this occurring. Unexpected or exceptional circumstances which may have resulted in the appropriate limit being exceeded might include, circumstances where a large volume of information requires to be provided /verified by the relevant person in response to a reconsideration or review.

52. For relevant persons who are invited to make oral representations to a panel of Redress Scotland for the purposes of a review under section 76 of the Act, any travel or subsistence costs must be reasonably incurred. Ministers expect that costs should align with the current Scottish Government travel and subsistence policy.

53. The Scottish Government will normally book accommodation on behalf of the relevant person, and any individual accompanying them, to prevent them having to incur the cost in the first place. Where this is not the preference of the relevant person, reimbursement of accommodation costs, including breakfast, will generally be limited to £75 per person per night. Reimbursement above this limit will only be provided where the Scottish Government consider this reasonable, for example, where there is no cheaper alternative.

54. Reimbursement of subsistence costs, including for meals, food and drink, will be set at £30 per person per day. Breakfast may be claimed separately if it is not included as part of a person’s accommodation costs. Receipts for this expenditure should be provided where possible.

55. Where needed, the Scottish Government will normally book travel on behalf of the relevant person, and any individual accompanying them, to prevent them having

to incur travel costs up-front. Where this is not the preference of the relevant person, or where the method of transportation cannot be pre-booked, for example a local bus service, there will be no maximum limit put on these costs but they must remain reasonable. However, such costs should be receipted where possible to provide proof of cost and to allow for an assessment of the reasonableness of the cost.

56. All costs and expenses to be claimed in connection with a reconsideration or review must be reasonably incurred. We strongly encourage that, for unusual or significant expenses, relevant persons should speak to their case worker before incurring such costs/expenses.

57. In some circumstances, costs relating to a reconsideration or review may be incurred by the Scottish Ministers to prevent the applicant having to incur the cost in the first place. For example, where agreement is reached that the Scottish Ministers will pay for translation services to assist with an applicant's access to legal advice.

#### Where costs/expenses have been incurred in a currency other than Sterling

58. As set out in the Regulations, where a reimbursement request relates to a cost or expense incurred in a currency other than Sterling, the person making the request must calculate the value of the cost and expense by reference to the Sterling equivalent on the date that the cost and expense was incurred. They should complete this process to the best of their ability. Conversions of currency will be verified by Scottish Ministers to prevent errors being made. If any issues arise during this verification process, the case worker will discuss the matter with the person requesting a reimbursement.

#### Time limits to make a request for reimbursement

59. Where a reimbursement request relates to a reconsideration or review, a request must be made within 8 weeks beginning with the date on which the relevant person received notice of the outcome of a reconsideration under section 75 of the Act, or as the case may be, any subsequent review under section 76 of the Act.

60. Prior to the relevant person receiving notice of a determination under section 75 or 76 of the Act from Redress Scotland, a request for reimbursement of costs and expenses can be submitted at any time.

61. Where the 8 week time limit mentioned above for submitting a request has been exceeded, the Scottish Ministers may still consider and assess a request for reimbursement if they are satisfied that there is a good reason why the request was not submitted sooner. This may include where the claimant was seriously ill or had personal circumstances which prevented them from making a request within the prescribed time limit.

## Notification of decision on reimbursement of costs and expenses

62. On receipt of the reimbursement request, the Scottish Ministers will as soon as reasonably practicable assess it and determine if the costs were reasonably incurred in connection with the reconsideration or review. In respect of claims for obtaining or verifying information, they will also consider what the “appropriate limit” for reimbursement is. The person who made the request will then be provided with the decision and a summary of the reasons for the decision.

## Reviews

63. Where a person has received notification of a decision about the assessment of a reimbursement request, they may request a review of that decision in writing to Scottish Ministers under regulation 14 of the Regulations. The person may request a review of the decision to the extent that a person is not entitled to reimbursement of a cost or expense or that the cost and expense to be reimbursed is less than the sum requested.

64. A person has 8 weeks from when they received notification of the initial decision relating to their reimbursement request to make a request for a review. Where a person fails to submit a request for a review within this time frame, a review may still be conducted where Redress Scotland is satisfied that the person had good reason for not requesting a review sooner. This may, for example, include circumstances where the person was seriously ill or had personal circumstances which prevented them from making a request within the prescribed time limit.

65. The review will be carried out by a review panel of at least 2 members of Redress Scotland and will be based on the evidence originally considered by the Scottish Ministers when assessing the request for the reimbursement of costs and expenses, and any further evidence provided to or obtained by the review panel.

66. The outcome of the review and a summary of the review panel’s reasons for their determination will be conveyed to the Scottish Ministers, who will then forward this to the person who requested the review. The determination of the review panel is final.

67. At any point prior to the determination of the review, a person can withdraw their request for a review.

## **Payments and Reimbursements in relation to reconsideration or review made in error**

68. Part 4 of the Regulations provide the process for these decisions to be reconsidered, for the persons affected by them to be notified and given the opportunity to make representations, and for the outcome of the reconsideration to be reviewed.

69. Although the exercise of recovery powers will sit with Scottish Ministers in their general administration of the scheme, consideration of whether decisions to make payments of fees (including legal fees) and/or costs and expenses in the context of a reconsideration or review were materially affected by error will be undertaken by Redress Scotland.

70. Where Redress Scotland has, or the Scottish Ministers have, cause to believe that a decision to pay fees, or to reimburse costs and expenses in relation to a reconsideration or review has been made due to a “decision error” (as defined in regulation 20(9)(b) of the Regulations), they can commence a procedure for reconsideration of that decision.

71. The process to be followed is that:

- the decision is to be considered on behalf of Redress Scotland by a panel of at least two of its members appointed by the chairing member;
- the decision can be referred to the panel by either Redress Scotland or the Scottish Ministers and a referral can be made regardless of whether a payment/reimbursement has been made as a result of the decision or not;
- if a referral to the panel has been made by Scottish Ministers, all relevant information will be forwarded by the Scottish Ministers to Redress Scotland as soon as reasonably practicable;
- if Redress Scotland makes the referral, they must notify Scottish Ministers of this as soon as reasonably practicable.
- Once the referral has been made, the Scottish Ministers must inform the “appropriate person” (as defined in regulation 20(9)(a) of the Regulations) in writing as soon as reasonably practicable that the decision is being reconsidered, why and what the implications of this may be.
- the appropriate person must be given at least to 8 weeks from the date they receive notification that a reconsideration is to take place to make written representations in connection with the reconsideration. The representations may be considered beyond this time frame if the panel undertaking the reconsideration is satisfied that the appropriate person had a good reason for not making those representations sooner.
- Once the reconsideration panel has considered the information available to it and any written representations made, it will:
  - determine if the decision on payment/reimbursement was affected by a decision error and, if so, it must re-determine the decision on the basis of what it would have been, had the error not occurred;
  - Upon Redress Scotland reaching its determination, the Scottish Ministers will be informed. They will, in turn, notify the appropriate person of Redress Scotland’s decision in writing and provide a summary of the reasons why it has been reached;
  - The appropriate person is able to request a review of this decision.

72. The requirements for the appropriate person submitting a request for review are set out below:

- the person has up to 8 weeks from the date they receive notification of the outcome of the reconsideration to request a review;
- should the request for review not be made within the 8 week period, the person should provide additional information setting out why they were unable to make the request sooner. This will be used by Redress Scotland in determining whether the review will be permitted to go ahead out with the normal time frames;
- the request should be made by the appropriate person to Scottish Ministers in writing, using the relevant form obtained through their case worker;
- the appropriate person must provide, in writing, an outline of the grounds for the review and any accompanying information they consider relevant to assist Redress Scotland in carrying out its review.

73. The review process and considerations for decision-making by Redress Scotland are set out below:

- all relevant information provided will be forwarded by the Scottish Ministers to Redress Scotland as soon as practicable;
- where a review has been submitted out with the normal time frames, Redress Scotland needs to be satisfied that the person had good reason for not requesting a review sooner. This may include circumstances where the person was seriously ill or had personal circumstances which prevented them from making a request within the prescribed time limit;
- the review will be determined on behalf of Redress Scotland by a panel of at least two members who are appointed by the chairing member;
- the panel members will not have been involved in making the decision which is under review;
- Redress Scotland will use all relevant information it holds to decide the outcome of the review;
- upon Redress Scotland reaching its determination, the Scottish Ministers will be notified. They will, in turn, notify the appropriate person of its decision in writing and provide a summary of the reasons why it has been reached.
- A request for a review can be withdrawn at any time before the review is determined. The withdrawal must be made in writing to the Scottish Ministers.
- Where a request for a review is withdrawn, no further request for a review may be made in respect of the determination to which the request relates unless the further request is made for a different reason.
- The determination of the review by Redress Scotland is final, and there is no further right of review or appeal in respect of that determination.



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