

Financial Redress for Survivors of Historical Child Abuse in Care

Review of the Advance Payment Scheme

December 2019



Scottish Government
Riaghaltas na h-Alba
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FINANCIAL REDRESS FOR SURVIVORS OF HISTORICAL CHILD ABUSE IN CARE: REVIEW OF THE ADVANCE PAYMENT SCHEME

December 2019

1. Introduction

1.1 The Advance Payment Scheme 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 age 70 or over. As an outcome of this review the eligible age threshold has been lowered to age 68 or over.

1.2 The Advance Payment Scheme was one of a number of commitments given by the Deputy First Minister in his statement to Parliament in October 2018. Based on recommendations from an earlier consultation with survivors, he committed to establishing a statutory redress scheme, with legislation to be passed before the end of March 2021, subject to the approval of Parliament. There was also a commitment to make Advance Payments to those who may not live long enough to apply to the statutory scheme.

1.3 The Advance Payment Scheme opened on 25 April 2019 and was designed and launched within 6 months of the announcement. It is intended that it will remain open until the statutory redress scheme is operational. The focus throughout has been to deliver Advance Payments and provide recognition and acknowledgment in a sensitive and trauma informed way. The application process was designed to be as straightforward as possible, whilst ensuring robust procedures for the use of public funds.

1.4 The initial recommendation for advance payments included an early review of the age threshold:

“We recommend that a review of applications is undertaken at 3 months and continuously thereafter. If there are a limited number of applications over this timescale, we recommend that the age criterion is revisited and if necessary, lowered to be made more inclusive”. (Inter-Action Plan Review Group recommendations, September 2018)

1.5 This review fulfils that recommendation and includes the following sections:

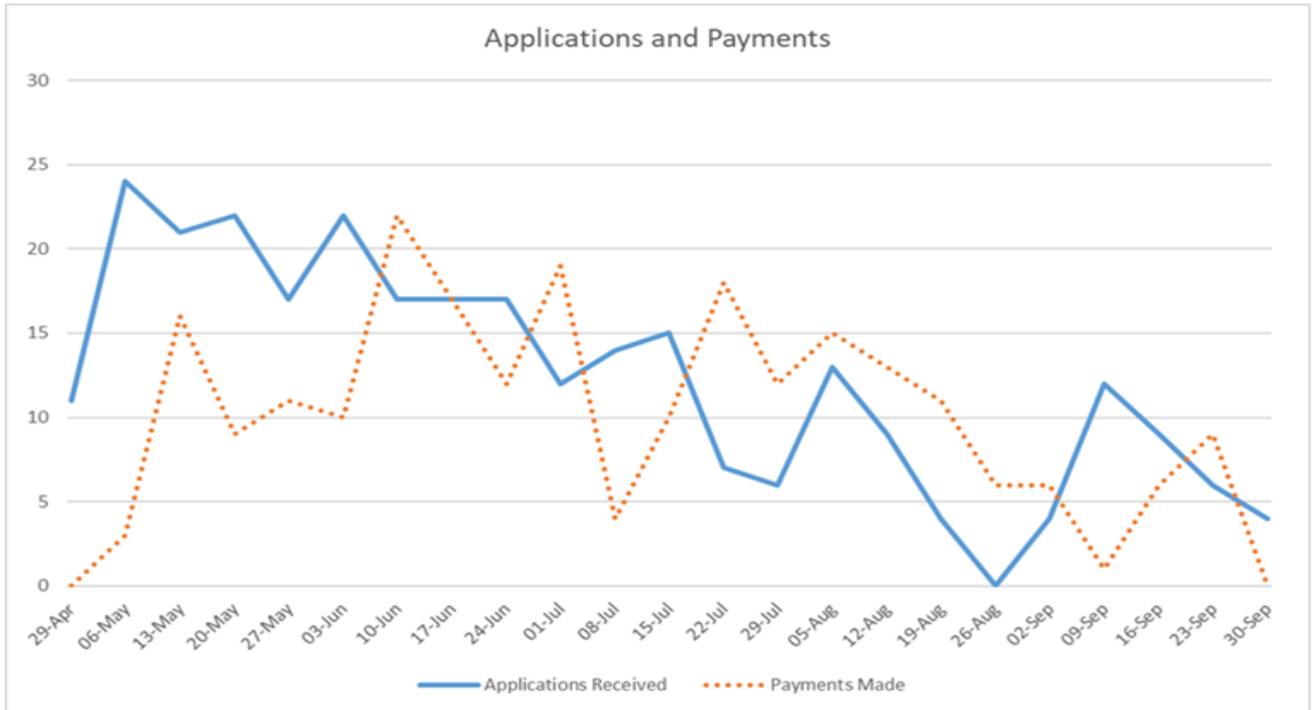
- Section 2: Overview of scheme statistics;
- Section 3: Review of the age threshold;
- Section 4: Review of the application form and guidance;
- Section 5: Review of the process for obtaining an in care record;
- Section 6: Feedback from survivors;
- Section 7: Conclusions and recommendations.

2. Overview of scheme statistics

2.1 Key statistics for the Advance Payment Scheme from its launch on 25 April until the end of September 2019 are shown in the annex and are summarised below.

- A total of 230 payments had been made as at end September 2019.
- The majority of applications (88%) were on age grounds, the remainder were on terminal illness grounds. Applications from those with a terminal illness are always prioritised.
- Average time from submission of application to approval was 26 days. In some cases it can be within a fortnight, in other cases longer, for a range of reasons to do with receipt or confirmation of supporting documentation.
- The average age of all applicants during this period was 74, the eldest applicant was 91.
- A slightly higher number of applications were received from men (54%) compared to women (46%).
- Around 6% of applications were ineligible based on the criteria set out in the application form, either in relation to age, not being confirmed as terminally ill or not being in care in Scotland.
- The majority of applications (63%) were from survivors resident in Scotland, with a further 20% being resident in England.
- There were a number of applications from survivors living abroad, most of them from Australia.

2.2 The pattern of applications and payments to end of September (see graph below) shows a peak in the early months of the scheme opening, followed by a largely downward trend, albeit with spikes often indicating media activity and awareness of the scheme reaching new audiences.



3. Review of the age threshold

3.1 The purpose of the recommendation to conduct a three month review of the scheme was primarily about assessing whether the age threshold could be reduced. As can be seen from the graph above, the pattern of applications at the three month point was dominated by the peak activity following the scheme launch, and a broader pattern to the applications had not yet emerged. This review has therefore considered application numbers over the first five months of the scheme to allow a fuller picture to be taken into account.

3.2 Uncertainty remains a key issue, with considerable spikes of increased activity within the generally downward pattern that has taken place. We anticipate these spikes of increased activity will continue within the current age threshold for eligibility. This is an expected outcome of increased awareness from steps to engage further with survivors and others in the work to develop the statutory scheme, and the expected increase in publicity and awareness that will be generated by the Parliament’s legislative process.

3.3 Anecdotal feedback would also suggest that some eligible survivors may remain uncertain or choose not to apply, perhaps believing that the scheme or the timing is not right for them. We hope that, over time, and with advice and support, any survivor who is uncertain will find the confidence to apply if that is the right choice for them.

3.4 Since the peak of applications following launch, a generally downward pattern of applications is apparent from the first five months of the scheme and, although there may be further points of increased activity going forward, we expect this lower level of activity to continue. **The review has therefore concluded that the age threshold should be lowered to allow more survivors who are nearing the end**

of their life to receive the recognition and acknowledgement that an Advance Payment can provide.

3.5 The review has also, therefore, considered the level of the lower age threshold for scheme eligibility. This has proved challenging, as was borne out in the initial discussions on age for the purpose of Advance Payments. The earlier, CELCIS run survivor consultation on redress asked about interim redress payments. Where the issue of elderly and ill survivors arose there was no consensus and very different views expressed from respondents who mentioned age.

3.6 We know from available research that there is a strong relationship between exposure to abuse and neglect in childhood and multiple risk factors leading to lower health outcomes and life expectancy. However, there is no definitive age that emerges from the research, furthermore a specific age will never fully reflect the wide range of individual circumstances which will exist.

3.7 Consideration has also been given to the impact a lower age threshold might have on the experience of applicants and the time to process applications and make payments. The focus of the scheme continues to be that eligible survivors have a positive experience of the process of applying and their engagement with the scheme Advisers and that they receive a service which is as sensitive and timely as is possible.

3.8 Taking account of the uncertainty in applications from survivors within the existing age threshold, as well as any lower age threshold, the focus on providing a sensitive and timely service to all applicants, and the lack of any specific age from the research, **a reduction to age 68 is considered appropriate and manageable.** This is considered consistent with the purpose of the scheme and will allow more survivors who may not live long enough to apply to the statutory scheme, with the opportunity to receive recognition and acknowledgment now for the abuse they suffered and the impact that has had.

3.9 We anticipate there will be another peak in application numbers as a result of this change to the age threshold. While this is likely to have an impact on the processing times for individual applications in the short term, we consider this would still allow for processing of applications within an acceptable timeframe. A lowering of the age threshold below age 68 may start to compromise the ability to deliver the scheme in a sensitive and timely manner.

3.10 This review has not altered the eligibility or the process in relation to applicants who have a terminal illness. Applications from those with a terminal illness will continue to be prioritised.

3.11 The reduction in the age threshold from 70 and over to 68 and over will have immediate effect.

4. Review of the application form and guidance

4.1 The application form and guidance have been reviewed based on the experience of the scheme Advisers and feedback from applicants to date. Updated versions of both have been uploaded to the Scottish Government's website. Any applications received using the earlier version will still be processed as the changes are minor rather than substantive.

4.2 An indication of the type of changes which have been made to the application form is provided below.

- More detail on the personal details section (e.g. inclusion of title) to allow for greater personalisation of the letter to the applicant informing them of the decision.
- Clarification of the documents required to show any changes of name since time in care and making it clearer that a linking document is required for each change.
- Clarification of banking detail requirements as documents provided in this section often did not include all the necessary information.
- New guidance for applicants from overseas in relation to bank requirements and certification of ID documents, including reimbursement of any additional fees incurred.
- In addition, a checklist for applicants is now available to help them check they have enclosed all the required documentation with their application and to help avoid delays.

4.3 An overview of the main changes to the Frequently Asked Questions guidance is provided below.

- There is a new section on what to expect when a survivor calls the scheme Advisers. This encourages applicants to make early contact with the Advisers to find out more information and to ask any questions they may have. Feedback suggests that an initial discussion has been very helpful for many applicants.
- The position in relation to boarding schools eligibility has now been clarified. For the purpose of the Advance Payment Scheme, in relation to boarding schools and any other type of residential school, the general principle is that residential pupils will not be eligible if their parents chose that place for their children's education. Some exceptions may apply, for example if a local authority paid for residential places at a fee paying boarding or residential school. If applicants are unclear whether they may be eligible, given their own particular circumstances, they are encouraged to contact the Advance Payments Team. It should be noted that the **eligibility criteria for the statutory redress scheme will be informed by the findings from the public consultation and will be subject to scrutiny by the Scottish Parliament as part of the legislative process.**

- Based on further discussions with DWP, HMRC and others we have provided further clarification on how a payment affects benefits, means tested social care, legal aid and tax. These are set out below.
 - **Benefits:** The Department for Work and Pensions (DWP) have advised that, for benefits purposes, Advance Payments will be treated in the same way as payments for a personal injury. This means the money will not be taken into account in assessing entitlement to means-tested benefits. However, applicants must let DWP know that they have received an Advance Payment so that they know not to take it into account. For many benefits this exemption lasts for one year only.
 - **Tax:** An Advance Payment will not be taken into account by Her Majesty's Revenue & Customs (HMRC) for the purpose of calculating income tax or capital gains tax, and there is no need to declare the receipt of an Advance Payment in a Self-Assessment tax return. However, if the Advance Payment is invested, resulting in additional income such as interest or dividends, then normal income tax rules will apply to that income. If a recipient of an Advance Payment dies after they have received the payment, the payment will be included in their estate for the purpose of inheritance tax. However, with the various inheritance tax reliefs and thresholds available, the majority of estates are unlikely to be subject to inheritance tax.
 - **Social care:** The Scottish Government has amended legislation to ensure that from 28 June 2019, a payment under the Advance Payment Scheme to a resident within a care home will be disregarded in the financial assessment of the resident's resources.
 - **Legal Aid:** The Advance Payment will be disregarded by the Scottish Legal Aid Board in any calculations when assessing financial eligibility for Legal Aid. This means that an Advance Payment would have no impact on the financial test for Legal Aid applications. Any application for Legal Aid will still be subject to the statutory tests around merit and reasonableness.
- We have provided clarification of the position we have agreed with Police Scotland if someone names an abuser in the application form, and the position has been reflected in the revised Privacy Notice.
 - Where an applicant provides information in their application form regarding a perpetrator of abuse, we will pass this information and the applicant's details to Police Scotland in order that an assessment can be made of any current risk posed by the perpetrator. Where an applicant provides information which indicates that a child or vulnerable person may be at significant risk of harm, we will pass this information and the applicant's details to Police Scotland in order that an assessment can be made of any current risk to that child or vulnerable person.

- Where an applicant wishes to make a new report of abuse to Police Scotland, we will provide them with information on the methods by which they can make a report directly to Police Scotland.

5. Review of the process for obtaining a written in care record

5.1 Before the launch of the Advance Payment Scheme there was considerable uncertainty about the availability of in care records and the process for obtaining a written record which was sufficient to demonstrate the applicant had spent time in care in Scotland before 2004. Despite concern about whether this would present a barrier to access for some, this was a necessary requirement of the scheme to ensure it was robust and credible.

5.2 The majority of applicants to date have been able to provide a written record with their application form, without further searches being required. For many who did not already have a record, and who made contact with the Advance Payment Team, the Advisers were able to advise them how to access their records and to suggest alternative sources of documentation.

5.3 It also appears that some survivors who had in the past attempted to get their records but were unsuccessful, have now been able to do so. This may be a consequence of the work of the Inquiry and the increased resource and attention which is being given to records retrieval. In some cases, it may have been different sources have been contacted to obtain a record, for example rather than the residential care provider, approaches have been made to health agencies, Police Scotland or local authorities.

5.4 Nevertheless, for some it can be a difficult process to obtain a record. This can be influenced by a number of factors such as the timing and arrangements of the care placement or the particular care settings. In these cases, applicants have been able to obtain records from elsewhere, although these have often been the cases that take longer. The scheme Advisers are developing expertise in how to broaden the search from records held by care providers to a wider range of potential sources. Where it is very complex, or could have significant emotional challenge, applicants are generally signposted to specialist record search and/or support services.

5.5 We are conscious that this is a complicated landscape, particularly for the eligible group for an Advance Payment. To date, no applicant to the scheme has been refused a payment because they could not provide a record showing time in care, although we accept that such a situation may occur in the future.

5.6 Over the first five months of the scheme, we have developed considerable skills and knowledge about different sources of records and have been building up networks and key contacts in many of the main care providers, across local authorities, and in other organisations such as the National Records of Scotland. The key learning has been to encourage applicants to engage in dialogue with the Advisers in the early stages of their application to consider their individual circumstances, and to take a flexible approach to exploring the most likely and effective routes to obtaining a written record.

5.7 There has been close working with COSLA to raise awareness of the scheme amongst local authority staff responsible for archiving records and for responding to Subject Access Requests. Steps have been taken to speed up the process for scheme applicants who only require one record which confirms they were in care, as this should in most cases take less time for local authority staff to process than a Subject Access Request for full records. A template request for this specific purpose has been agreed between Scottish Government and COSLA and this is now in use. Applicants wishing to use this should contact the scheme Advisers to discuss if this might be the most helpful approach for their circumstances.

5.8 The scheme requires the verification of the written in care record provided by an applicant with the organisation that provided the document or the care provider named on the document, if different. This is set out in the revised Privacy Notice. Care providers, COSLA and local authorities, and other organisations have been very helpful with this process which is working well. We are grateful for their time and assistance in helping us provide Advance Payments to survivors.

5.9 It is possible that some survivors have been put off applying for an Advance Payment either because they are concerned that records will be unavailable, have not been able to obtain records in the past or because the process seems too daunting. Potential applicants are encouraged to make contact with the Advisers who will be able to discuss any concerns and help guide them through the process.

5.10 In recognition of the importance of a written record for an Advance Payment, we are developing a Guidance Note on in care records. It is intended that this will help survivors, family members or other organisations supporting survivors to explore a range of possible routes to obtain, if available, a record for the purpose of the Advance Payment Scheme.

6. Feedback from survivors

6.1 A formal system for collating feedback from applicants was purposefully not put in place at the start of the Advance Payment Scheme as this was considered to be a further demand on survivors in addition to the process of applying.

6.2 However, an optional section was included in the application form for any further information an applicant might want to provide, and it was highlighted there that any feedback on the application process would be welcome.

6.3 Whilst few applicants to date completed this optional box, many have provided heartfelt and often very emotional feedback to the scheme Advisers or by way of thank you cards and emails. These have often praised the role of the Advisers in making the process friendly and putting them at their ease. Many have also commented on the value of receiving the letter reiterating the Deputy First Minister's apology of 2018 when they receive their payment.

6.4 Feedback is encouraged and we will continuously seek opportunities to improve the process for applicants to the Advance Payment Scheme to ensure it is

as sensitive, trauma-informed and as straight forward as is possible within the scheme requirements.

7 Conclusions and recommendations

7.1 This review has taken account of the first five months of the operation of the Advance Payment Scheme and has considered application numbers and scheme performance, the application form and guidance, the process of obtaining a written record showing time spent in care in Scotland, and feedback received to date.

7.2 The main conclusion of the review is that the age threshold for scheme eligibility should be lowered from age 70 and over to age 68 and over. This is consistent with the purpose of the scheme, to provide recognition to those who may not live long enough to apply to the statutory scheme. This decision balances uncertainty over future applications from within the existing age threshold as well as any lower age threshold, with the pattern of applications over the first five months, and the lack of any specific age from available research to reflect the impact of abuse in care on life expectancy. It also takes account of the need to provide a sensitive and timely service to all applicants.

7.3 Most importantly, this reduction in the age threshold will allow more survivors who may not live long enough to apply to the statutory scheme with the opportunity to receive recognition and acknowledgement now for the abuse they suffered in care in Scotland and the impact that has had. We know from feedback how meaningful that can be for some individuals.

7.4 The reduction in the age threshold to 68 will have immediate effect. There will be no further review to the age threshold thereafter. The intention is that the Advance Payment Scheme will cease to exist once the statutory redress scheme is operational.

7.5 We will continuously seek to improve the operation and delivery of the Advance Payment Scheme and learn lessons for the development and implementation of the statutory redress scheme. Feedback from applicants and others on the application form, guidance and process of applying to the scheme is encouraged.

7.6 Updated versions of the application form and guidance have now been published. These include revisions aimed at avoiding delays related to the required supporting documentation, including a checklist which applicants might find helpful. Specific guidance for those applying from overseas is now included. Some clarifications have also been provided in a number of areas, including an exception to the boarding school eligibility and detail about information which will be passed to Police Scotland in the event of perpetrators of abuse being named.

7.7 There has been a wealth of learning about how to obtain a written record which shows an individual spent time in care in Scotland. The scheme Advisers have built up considerable skills, knowledge and contacts in this area. Any potential applicant who is unsure how to do this is encouraged to make contact with the Team

for advice in relation to their individual circumstances. In addition, work is in hand to develop and publish a Guidance Note on obtaining an in-care record to help future applicants and those supporting them.

7.8 We are very grateful for the time and assistance of other organisations, including care providers, in supporting us to provide Advance Payments to survivors of abuse in care in Scotland. We will seek out opportunities to work with other organisations to improve the process, to learn and share lessons, and to make it easier wherever possible for survivors to receive recognition and acknowledgement of the abuse they suffered in care and the impact that will have had.

Annex: Detailed Scheme Statistics

Applications as at end September 2019

	April/ May	June	July	Aug	Sept	Total
Applications received	95	73	54	26	35	283
Applications approved	39	61	63	45	22	230

Note: The difference between applications received and applications approved is accounted for by applications being processed and any ineligible applications. There have been 17 ineligible applications in total as of end September 2019. Ineligible applications were those which do not meet the criteria set out in the application form, either in relation to age or terminal illness, or not being in care in Scotland.

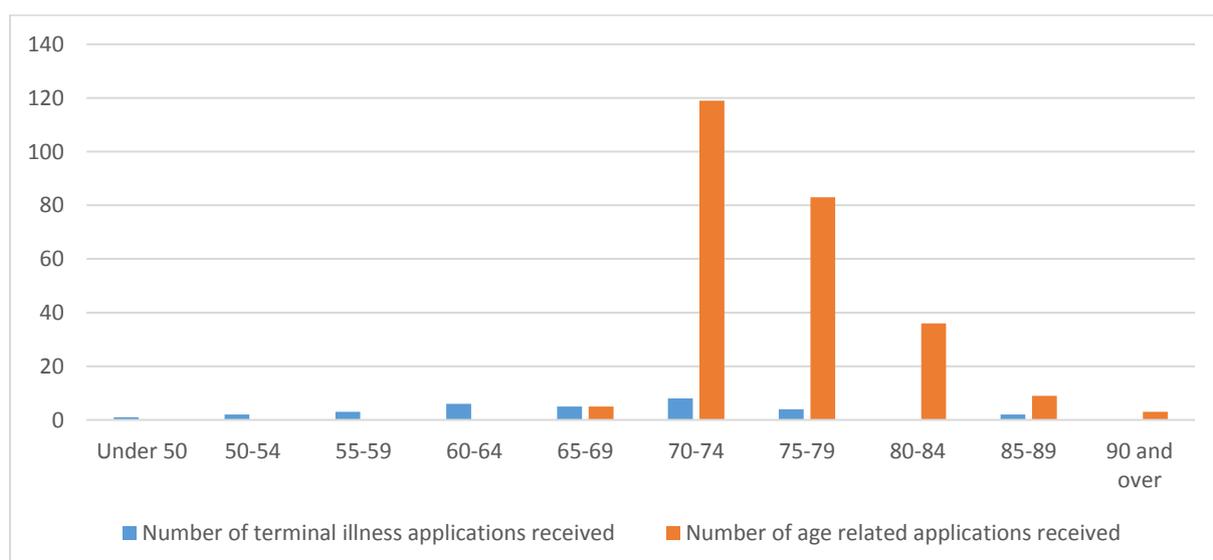
Enquiries as at end September 2019

Applications sent by post	152	22	27	17	11	229
Applications downloaded from website	464	130	53	81	66	794
Telephone enquiries	325	160	158	86	97	826

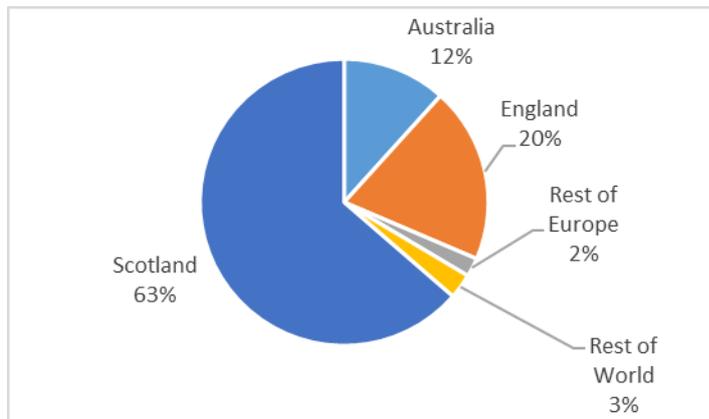
Breakdown of Type of Applicant

- Age-related 88%, terminal illness 12%
- Male 54%, female 46%

Age of Applicants



Location of Applicants





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