

Lambeth Children's Homes Redress Scheme

The Scheme

The Lambeth Children's Homes Redress Scheme ("the Scheme") has been established by the London Borough of Lambeth Council ("the Council") to enable appropriate redress to be given to children who suffered non-recent sexual, physical and/or psychological abuse whilst they were a resident at one of the Council's Children's Homes ("Lambeth Children's Homes").

1 Who can apply to the Scheme

- 1.1 A person can apply for redress under the Scheme if they were resident or a visitor to a Lambeth Children's Home or Shirley Oaks Primary School.

2 Definitions

The following definitions apply to this Scheme:-

- 2.1 **The Council** – Lambeth London Borough Council is the Local Authority for the London Borough of Lambeth in Greater London.
- 2.2 **Lambeth Children's Homes** - are homes that were run by Lambeth or its predecessor authority, either within or outside of their area that provided accommodation for children in care.
- 2.3 **Lambeth Redress Team** – the Redress Team set up and employed by the Council to work in conjunction with the Council's Solicitors to deal with applications for redress under the Scheme.
- 2.4 **Council's Solicitors** – Kennedys LLP, Greenwood House, 91-99 New London Road, Chelmsford, CM2 0PP who will deal with applications in conjunction with the Council.
- 2.5 **Eligible Applicant** – a person is an Eligible Applicant where they meet the criteria as set out below at paragraph 8 and their claim has been accepted into the Scheme.
- 2.6 **Litigation Friend** – an individual who offers support to an Eligible Applicant who lacks capacity and who is making an application under the Scheme and can fairly and competently conduct an application on behalf of the individual.
- 2.7 **Harm's Way Payment** – a payment made to an Eligible Applicant to reflect their experience of living in an environment which caused them to fear or apprehend

that they would be subject to immediate physical abuse and mistreatment or sexual abuse and/or neglect and/or cruelty. The Eligible Applicant must be able to demonstrate that their experience interfered with their ability to experience happiness and fulfilment during their childhood within the relevant qualifying period.

- 2.8 **Counselling Service** – a specialist and dedicated confidential independent counselling support service to provide appropriate counselling to any Eligible Applicant under the Scheme. This service will be funded by the Council.
- 2.9 **Advice and Assistance Service** – an advice and assistance service to support Eligible Applicants who would like to obtain advice in relation to housing, welfare benefits, accessing further educational qualifications and employment. This service will be funded by the Council.
- 2.10 **Individual Redress Payment/Compensation Payment** – an award of money which is paid to compensate the Eligible Applicant for the harm they have suffered. The amount of the payment will fairly reflect the severity of the abuse suffered as well as any consequential hurt, fear and humiliation the Eligible Applicant has experienced and the lifetime consequences the abuse has caused. The awards are aligned with common law compensation awards for similar abuse / harm suffered.
- 2.11 **Compensation Tariff** – the Tariff document (appended to this Scheme) setting out the appropriate tariff bands used to assess the Individual Redress Payment/Compensation Payment.
- 2.12 **Aggravated Damages** – an award for Aggravated Damages seeks to compensate for distress and humiliation caused. This category of damages is awarded as compensation for an individual’s mental distress where the manner in which the abuse has been committed, or the motive for the abuse, has upset or outraged the individual. For example issues of race or sexual orientation. The tariff applied to this Scheme factors in an aggravating element into the damages awarded.
- 2.13 **The Independent Appeal Panel** – 3 individuals, at least 1 of whom is legally qualified, who have been appointed by the Council to adjudicate on those aspects of the Scheme which they are authorised to. For example, the Panel will consider an Eligible Applicant’s claim in the event that the application is not capable of determination between the Eligible Applicant/their representative and the Council.

- 2.14 **Balance of Probabilities** – the standard of proof which applies to this Scheme is one of a ‘balance of probabilities’ and this is the same standard which applies to the civil procedure process. Whether an event occurred ‘on the balance of probabilities’ can also be expressed as whether an event is more likely to have occurred than not occurred.
- 2.15 **Vicarious Liability** – the Council will be liable for tortious acts carried out by its employees, or those in a role akin to employment, if those acts were carried out in the course of employment.
- 2.16 **Causation** – the civil procedure process provides for a Court to apportion damages between different causes/acts. As such, the Council will compensate Eligible Applicants in this Scheme only where the abuse, and any psychological harm suffered as a result of that abuse, has been caused by abuse suffered in a Lambeth Children’s Home or in a subsequent foster placement.
- 2.17 **Special Damages** - an award of money which is paid to compensate the Eligible Applicant for any financial loss caused by the abuse.

3 Commencement Date and Closing Date

- 3.1 The Scheme will be operative with effect from 2 January 2018.
- 3.2 Any application to join the Scheme which is received by 5pm on 1 January 2022 (**this is the extended date**) will be accepted into the Scheme for consideration.
- 3.3 Any applications to the Scheme received after the closing date will not be accepted into the Scheme. Any such claims will be dealt with under the normal civil claims process.
- 3.4 The Council reserves the right to give 3 months’ notice to vary the Scheme.
- 3.5 In the event there is a significant delay by the Applicant in responding to any reasonable request for information/documentation or offer of settlement, the Applicant will be notified that a continued failure to correspond with the Council may result in their application exiting the Scheme.

4 Representation under the Scheme

- 4.1 An Eligible Applicant may represent him or herself through the Scheme, or may:
- (i) elect to be assisted or represented by a family member, friend, support group or individual. If an Eligible Applicant elects to be represented in

this way, the Eligible Applicant must provide a signed written authority, identifying the individual or individuals who will assist and/or represent them together with the individual or individuals' correspondence and/or email addresses; or

(ii) appoint a legal advisor to represent the Eligible Applicant.

4.2 Kennedys Solicitors are appointed by the Council to represent them in relation to the operation of the Scheme and applications received into the Scheme.

5 Applications to the Scheme

5.1 Any application for redress under the Scheme shall be made by an Applicant on the Scheme Application Form, a blank copy of which is appended to the Scheme at Appendix 1.

5.2 Any application should be submitted to the Lambeth Redress Team marked Strictly Private and Confidential at either the following postal or email address:

(i) At address: PO Box 747, Winchester, SO23 5DP or

(ii) Email address: redress@lambeth.gov.uk

5.3 Unless otherwise specified, all correspondence and communications relating to either the Scheme or any applications (including any applications to review any decisions which have been made relating to an application), should be sent to either the postal address or the email address.

6 Advertising of the Scheme

6.1 The Council will from time to time advertise and publicise the Scheme during the timeframe for making an application to join the Scheme.

7 The Scope of the Scheme

7.1 The Scheme is intended to provide comprehensive redress to Eligible Applicants, including applications from the estate of an Eligible Applicant who is deceased.

7.2 Each Eligible Applicant is entitled to:

(i) a written apology acknowledging what has happened to the Eligible Applicant, providing an acceptance of responsibility and giving an assurance of the measures which have been taken to prevent any further repetition;

- (ii) a meeting with a senior representative of the Council so that the Eligible Applicant can feel that they have been heard and acknowledged by the Council;
- (iii) a Harm's Way Payment of up to £10,000, where the criteria for a Harm's Way Payment is met;
- (iv) appropriate counselling or other therapeutic, psychological or psychiatric support;
- (v) specialist advice, support and assistance to obtain housing, appropriate welfare benefits, access to further education and suitable employment; and
- (vi) an Individual Redress Payment /Compensation Payment assessed in accordance with the terms of this Scheme.

8 Eligibility under the Scheme

The persons entitled to redress under the Scheme ("the Eligible Applicants") are as follows:

- 8.1 Any person who can establish they were a resident at a Lambeth Children's Home and on a balance of probabilities lived in a Harsh Environment (see paragraph 11);

OR

- 8.2 Any person who can establish they were a resident or a visitor to a Lambeth Children's Home or Shirley Oaks Primary School as a child and;

- (i) there is evidence to show that on a balance of probabilities when he/she was a child he/she suffered:
 - (a) sexual abuse; and/or
 - (b) physical abuse; and/or
 - (c) psychological injury

AND

- (ii) the abuse was committed by, or aided, abetted, counselled or deliberately procured by a person at that time engaged in the management, administration, operation, supervision or regulation of a Lambeth Children's Home whether as an

employee of the Council or a person for whom the Council would be vicariously liable;

OR

- (iii) the abuse was committed by a foster carer in circumstances where the person was removed from a Lambeth Children's Home into a foster care placement.

Redress

9 Counselling Service

- 9.1 The Council has set up a free independent specialist and dedicated confidential counselling support service to provide appropriate counselling to any Eligible Applicant who would like to make use of this service (“the Counselling Service”).
- 9.2 The Council has agreed to fund the Counselling Service for the duration of the Scheme. If, at this stage, there continues to be a need for the counselling services by Eligible Applicants, the Council will consider whether the counselling services should be extended for a further period of time.

10 Specialist Advice and Assistance for Housing, Benefits, Further Education and Employment

- 10.1 The Council will provide confidential advice and assistance (“Advice and Assistance”) to support any Eligible Applicants under the Scheme who wish to obtain advice relating to housing options, appropriate welfare benefits, accessing further educational qualifications and suitable employment.
- 10.2 The Council’s Housing Options and Advice Service will provide enhanced housing options. Expert housing advice will be delivered by personal advisers who will work with Eligible Applicants to produce a joint housing plan, which will develop options and pathways to housing.
- 10.3 The Council’s Welfare Benefit Advice Service will provide a personalised advice on welfare benefits entitlements. Expert benefit advice will be delivered by a benefit adviser, who will provide advice on ensuring Eligible Applicants are receiving the appropriate entitlement to financial support and discuss options and explore the benefit entitlements available to support housing/learning/employment options / pathways being explored.
- 10.4 Advice and assistance will be available to Eligible Applicants on a range of further education opportunities for accredited or non-accredited courses. The aim is to offer a personalised approach to meet individual need and allow progression to employment or further study as required.
- 10.5 The Council will provide enhanced individualised access to employment and skills support. This will include a tailored employment and skills assessment and a related action plan to progress any Eligible Applicants under the Scheme towards and into sustained, meaningful employment.

11 Eligibility under the Scheme for a Harm’s Way Payment

- 11.1 The persons who are entitled to a Harm's Way Payment are any Eligible Applicant who:
- (i) was resident at a Lambeth Children's Home as a child and who can establish on a balance of probabilities that they lived in a harsh environment as defined below for the qualifying period; or
 - (ii) was a resident as a child at a Lambeth specialist unit for children with disabilities.
- 11.2 Harsh Environment is defined as living in an environment which caused an Eligible Applicant to fear or apprehend that they would be subject to:
- (i) immediate physical abuse and mistreatment and/or
 - (ii) sexual abuse; and/or
 - (iii) neglect; and/or
 - (iv) cruelty.
- 11.3 In relation to the above criteria the Eligible Applicant must be able to demonstrate that their experience interfered with their ability to experience happiness and fulfilment during their childhood within the relevant qualifying period.
- 11.4 The Harm's Way Payment will be a stepped payment for those Eligible Applicants who resided at a Lambeth Children's Home for the qualifying periods as set out below:-
- (i) more than 6 months: payment of £10,000;
 - (ii) between 3 and 6 months: payment of £5,000;
 - (iii) more than 1 week and up to 3 months: payment of £2,500;
 - (iv) less than 1 week: payment of £1,000.
- 11.5 An Eligible Applicant's stated experience will be judged on the balance of probabilities. Eligible Applicants who are seeking the Harm's Way Payment shall provide supporting evidence in the form of a witness statement. Expert medical evidence may be required where an Eligible Applicant is relying on corroborative evidence due to their mental capacity or due to their age at the material time.

- 11.6 An Eligible Applicant under paragraph 11.1(ii) will not be required to provide written evidence in support of their application, and will receive a Harm's Way Payment of £10,000.
- 11.7 Where an Eligible Applicant receives an Individual Redress Payment in addition to the Harm's Way Payment, the Harm's Way Payment will be treated as an interim payment for redress.

12 Individual Redress Payment / Compensation Payment

- 12.1 An Individual Redress Payment/ Compensation Payment is an award of money which is paid to compensate the Eligible Applicant for the harm they have suffered. The amount of the Individual Redress Payment/Compensation Payment should fairly reflect the severity of the abuse which the Eligible Applicant has suffered as well as the hurt, fear and humiliation the Eligible Applicant has experienced and the lifetime consequences the abuse has caused for the Eligible Applicant both in childhood and in adulthood so that such awards are aligned with common law compensation awards for similar abuse / harm suffered.
- 12.2 Each application for an Individual Redress Payment/Compensation Payment will be considered on the basis that it consists of the following three components for which redress should be made:
- (i) the severity of the abuse itself and any aggravating factors;
 - (ii) the extent to which the Eligible Applicant has suffered physical injury or any recognised medical or psychiatric condition as a consequence of the abuse; and
 - (iii) the loss of opportunity arising from the abuse and its effects which the Eligible Applicant has suffered.
- 12.3 The test for standard of proof which will be applied is the current civil test which is 'balance of probabilities'.
- 12.4 The test for causation which will be applied is the test applied by the Courts in civil proceedings for abuse cases, which is one of apportionment. As such, awards made under the Scheme will fairly reflect the effect of the abuse upon psychiatric injury suffered by the Eligible Applicant whilst at a Lambeth Children's Home but will not compensate the Eligible Applicant for those harms / difficulties / losses suffered which cannot be attributed to the abuse at a Lambeth Children's Home or in a subsequent foster placement.

Tariff

- 12.5 The awards for abuse suffered and resulting harm / consequences will be calculated by reference to the Tariff which forms part of this Scheme (“the Tariff”). The Tariff is comprised of 4 Schedules and the most suitable award to the Eligible Applicant will be calculated by reference to the most severe harm suffered and where this sits within the relevant Schedule of the Tariff.
- 12.6 Where an Eligible Applicant is entitled to an award of “Aggravated Damages”, such an award will be made as part of the Individual Redress Payment, but it will be specified that the payment includes an award for aggravated damages. The tariff awards will already provide for an award for Aggravated Damages and as such, no additional award for Aggravated Damages will be made above and beyond the payment provided for in the Tariff bands. Awards for Aggravated Damages are assessed in line with common law principles.
- 12.7 To the extent that the Eligible Applicant seeks significant special damages which would place the value of the claim at over £125,000 then those claims would operate within the common law framework which means they would be handled outside the Scheme.

13 Medical Evidence

- 13.1 In cases where it is deemed appropriate and necessary that expert psychiatric evidence be obtained for an Eligible Applicant, the parties will jointly instruct a psychiatric expert from the list of independent medical experts.
- 13.2 The Council’s Solicitors will send to the Eligible Applicant or their representative, a proposed joint letter of instruction for approval or amendment.
- 13.3 Where the parties are unable to reach agreement as to the wording of the joint letter of instruction, both parties shall each send a letter of instruction to the joint expert, ensuring a copy of their letter of instructions is also sent to the other party.
- 13.4 The joint psychiatric expert will notify both parties of the appointment date. Following receipt of the report of the Psychiatric expert, either party can put written questions to the expert. Copies of all questions must be provided to the other party at the time they are sent to the expert. The expert’s answers to those questions must be sent to both parties.

13.5 The funding of the instructed expert's report, reasonable travel for the Eligible Applicant to attend the instructed expert and any replies to questions will be borne by the Council.

14 Where an Applicant is Deceased

14.1 Where an application is made by a Personal Representative on behalf of the estate of the deceased, the Personal Representative will be eligible to apply for an Individual Redress Payment/Compensation Payment under the Scheme but not for a Harm's Way Payment on behalf of the deceased Applicant.

14.2 If a person who would otherwise have qualified as an Applicant is deceased and an application is made by a Personal Representative on behalf of the estate of the deceased, the Personal Representative shall submit the following with the application for redress under the Scheme:

- (i) a copy of the death certificate of the deceased;
- (ii) a copy of the relevant Grant of Probate or Letters of Administration;
and
- (iii) proof of his or her own identity upon which the Personal Representative of the estate of the deceased relies.

14.3 Where an application is made by an Applicant for a Harm's Way Payment and the Applicant subsequently dies, the Harm's Way Payment application will continue to be processed within the remit of the Scheme and any Harm's Way Payment which is payable will be paid to the deceased Applicant's Estate.

15 Where an Applicant or Eligible Applicant lacks capacity

15.1 Any Applicant who lacks capacity must be represented by a Legal Representative or appropriate Litigation Friend.

15.2 If the Redress Team, the Council's Solicitors or any Independent Appeal Panel Member suspects that an Applicant or Eligible Applicant lacks capacity to make an application under the Scheme, the following will happen:

- (i) No further action will be taken or decisions made in connection with that Applicant's/Eligible Applicant's application for redress under the Scheme until they are legally represented in connection with their application for redress under the Scheme.

15.3 Where an Eligible Applicant lacks capacity and is offered a Redress Payment under the Scheme, that Redress Payment will require Court approval. The reasonable legal costs of an Eligible Applicant who lacks capacity shall include:

- (i) the reasonable legal costs of investigating and obtaining evidence in relation to whether the Applicant has capacity or lacks capacity to make an application under the Scheme; and/or
- (ii) the reasonable legal costs of seeking the Court's approval of any decision to accept the redress which the Eligible Applicant has been offered under the Scheme.

16 Applications for Redress Arising out of Negligence

16.1 The Council will consider applications for redress which arise out of allegations that the Council were negligent.

16.2 Applications including but not limited to the following types of claim will receive initial consideration through the Pre-Scheme Workflow (this is not an exhaustive list):-

- (i) applications from former residents of a Lambeth Children's Home who suffered child on child sexual abuse at the Lambeth Children's Home;
- (ii) applications from former residents of a Lambeth Children's home who were abused by visitors to the Lambeth Children's Home.

16.3 If, following consideration of these applications, it is accepted by the Council that they were negligent, these applications will be invited to transfer into the Scheme.

17 The Independent Appeal Panel

17.1 The Council will appoint 3 multi-disciplinary Independent Appeal Panel members, at least 1 of which will be legally qualified. The Independent Appeal Panel will adjudicate on the following matters when disputes arise:

- (i) whether the Applicant is an Eligible Applicant under the Scheme. This will be adjudicated on by one panel member only, who is a retired Judge;
- (ii) the amount of any Harm's Way Payment to be paid by the Council to the Eligible Applicant under the Scheme;

- (iii) the amount of any Individual Redress Payment/Compensation Payment to be paid by the Council to the Eligible Applicant under the Scheme, if that can be determined at this stage;
 - (iv) the amount of legal costs and expenses payable and incurred by an Eligible Applicant in relation to their application and Individual Redress Payment under the Scheme.
- 17.2 If the Independent Appeal Panel requires further information or documentation from the Applicant or the Council to make its decision, this shall be requested by the Independent Appeal Panel Member(s).
- 17.3 The Independent Appeal Panel shall make their decisions based on:
- (i) the Applicant's application form together with any documentary evidence, or written submissions submitted by or on behalf of the Applicant;
 - (ii) any documentary evidence or written submissions submitted by or on behalf of the Council or the Council's Solicitors.
- 17.4 The decision of the Independent Appeal Panel will be final. The Eligible Applicant will be offered an amount awarded by the Independent Appeal Panel irrespective of any previous offers made in full and final settlement arising from the Council's liability under the Scheme towards the Eligible Applicant.

The Right to Discontinue

- 17.5 Any Eligible Applicant who wishes to discontinue their application for redress under the Scheme may do so at any time before they have formally accepted an offer of redress or, where the Eligible Applicant lacks capacity before the Court has approved any redress offer made under the Scheme. Notice of Discontinuance must be made in writing to the Redress Team.
- 17.6 If, at the time when an Eligible Applicant notifies the Redress Team that they wish to discontinue their application for redress and the Council has already made either a Harm's Way Payment or any other interim payments (to include any payments for counselling, specialist advice or other support) to the Eligible Applicant, those monies will not be repayable by the Eligible Applicant to the Council. However, if the Eligible Applicant brings a subsequent claim for compensation against the Council for the same abuse as that claimed for under the Scheme, any such payments previously made under the Scheme will be

treated as interim payments in respect of the Eligible Applicant's civil claim against the Council.

18 Civil Proceedings

18.1 If an Eligible Applicant applying for redress under the Scheme has previously received compensation from the Council or any other third party for the same abuse to which the application under the Scheme relates, then when making their application for redress under the Scheme:

- (i) the Eligible Applicant shall inform the Council of the claim and any compensation received at the time the application for redress under the Scheme is made; and
- (ii) the Council will be entitled to treat the previous payment of compensation as an interim payment towards any Redress Payment subsequently made to the Eligible Applicant under the Scheme.

18.2 If an Eligible Applicant applying for redress under the Scheme has previously brought a claim against the Council for the same abuse to which the application under the Scheme relates but did not receive a payment of compensation, the Eligible Applicant will be permitted to make an application under the Scheme.

18.3 If, at the time when an Eligible Applicant makes an application for redress under the Scheme, the Eligible Applicant has an ongoing civil claim for compensation against the Council relating to the same abuse then:

- (i) the Council and the Eligible Applicant will promptly make a joint application to the Court for an order staying the civil claim for compensation pending the determination of the Eligible Applicant's application for redress under the Scheme; and
- (ii) if the Eligible Applicant subsequently accepts (in writing) an offer for redress under the Scheme, the Council and the Eligible Applicant will make a joint application to the Court for an order that the Eligible Applicant's civil claim for compensation be discontinued on terms that that the Council pay the Eligible Applicant's reasonable costs of the action, to be the subject of a detailed assessment if not agreed; and
- (iii) if the Eligible Applicant subsequently discontinues their application for redress under the Scheme and the stay of their civil claim for compensation is lifted, the Council will be bound by paragraphs 19.1 and 19.2 of this Scheme regarding limitation.

18.4 If an Eligible Applicant accepts an offer of redress under the Scheme in writing, this redress payment will be in full and final settlement of the Eligible Applicant's claim against the Council and the Eligible Applicant will not bring any civil proceedings against the Council in relation to the same or substantially the same abuse, except for civil proceedings to enforce the offer of redress which the Eligible Applicant has accepted.

19 Limitation

19.1 The Council concedes that by accepting applications into this Scheme, the Council will not raise a limitation defence.

19.2 If an application exits the Scheme for any reason, the Council will only seek to reinstate a limitation defence in accordance with current case law guidance and any limitation defence the Council subsequently raises, cannot be applied to the period of time the application was within the Scheme (this period of time being from the date the application was received by the Council's Redress Team to the date the Eligible Applicant formally withdraws their application from the Scheme).

20 Criminal Injuries Compensation Authority Payments

20.1 If the Eligible Applicant has received compensation from the Criminal Injuries Compensation Authority (CICA) for the same injuries by the same perpetrator which relate to the same allegations as those in the Eligible Applicant's application under the Scheme, the Eligible Applicant will repay those monies directly to the CICA.

20.2 Where the Eligible Applicant has received compensation from the CICA, the Council shall notify the CICA of any settlement reached under the Scheme.

21 The Council's Right to Bring Recovery Actions

21.1 In circumstances where the Council accepts an application under the Scheme which leads to a redress payment being made to the Eligible Applicant, the Council reserves the right to seek to recover payments from:

- (i) the perpetrator of the offence(s); and/or
- (ii) any other organisation(s) which may also be liable for the abuse to some extent.

21.2 In these circumstances the Eligible Applicant is invited to cooperate with the Council in pursuing a recovery.

22 Confidentiality

22.1 The Council, the Redress Team, all other employees of the Council, all members of the Independent Appeal Panel, and the Council's Solicitors shall deal with all applications for redress and all matters relating to those applications in the strictest of confidence.

22.2 This duty of confidentiality does not preclude any person from disclosing protected information where required by law.

23 An Eligible Applicant's Entitlement to Costs and Expenses

23.1 The Council will pay, direct to the Eligible Applicant's legal representative, fixed costs in respect of applications for Harm's Way Payments in the sum of £450 plus VAT, upon successful determination of the Application.

23.2 The Council will pay any reasonable legal costs and other expenses which may be incurred by an Eligible Applicant in relation to their application and Individual Redress Payment under the Scheme.

23.3 The Council will pay any reasonable travel expenses incurred by an Eligible Applicant in attending any appointments with their legal representatives any medical appointments with a medical expert and any other expenses reasonably incurred which relate to their application for an Individual Redress Payment.

23.4 If and to the extent that the Council disputes the Eligible Applicant's claim for expenses/costs/legal costs, such costs/expenses will be decided by an Independent Appeal Panel on the basis of written submissions.