

Council **19 July 2017**

Former Lambeth Council Children's Homes: Redress Scheme Update

Wards: All

Portfolio: Councillor Lib Peck – Leader of the Council

Report Authorised by: Strategic Director for Adults and Health, Helen Charlesworth-May

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Report summary

This purpose of this report is to update Council on the progress that has been made since June 2016 in developing a Redress Scheme to compensate survivors of historic sexual, physical and psychological abuse in Lambeth Council's former Children's Homes. The Council considers that the Scheme is the first of its kind in the UK, and compares very favourably to similar schemes which have been developed for example in Jersey, the Republic of Ireland and Canada.

Finance summary

There are no immediate financial implications arising out of this report, however, the financial implications of the Scheme will be considered fully by Cabinet before a decision to implement a Scheme is made.

Recommendations

1. To note the progress to date in seeking to develop a Redress Scheme and the timetable that will need to be adopted in order to implement the Scheme and start to make payments before the end of this calendar year.

1. Background and History of Shirley Oaks Children's Home

- 1.1 In July 2015 SOSA addressed full Council to highlight the appalling treatment that their members suffered as children placed in care in Shirley Oaks Children's Home. The Council's Leader, Councillor Lib Peck apologised for the Council's past failings.
- 1.2 The Council first proposed a package of compensation to SOSA members in September 2016 and has been trying to reach agreement with SOSA since then. In December 2016, SOSA launched their report Looking For A Place To Call Home that clearly set out the suffering of young people in the home.
- 1.3 At the launch of the report Council Leader Lib Peck said: "The testimonies we heard today at the launch of SOSA's report were incredibly moving. This report shines a light on a period of Lambeth's history that is very dark indeed.

"As the current leader of Lambeth Council I make a full and genuine apology for the abuse that people suffered due to failings in the care system. We've taken the decision not to be like past administrations and instead are working openly and constructively with SOSA."

- 1.4 The Council has had many meetings with SOSA to identify the types of reparations that could be included in a redress scheme. In developing the scheme the Council tried wherever possible to use language that matched that used in SOSA's report, because it represented the way that survivors related their experiences.
- 1.5 In 2012 Operation Yewtree, the investigation into the abuse of children, found widespread child abuse in many UK public institutions. The national publicity around child abuse led to many people coming forward who had been abused at Shirley Oaks, one of the Council's former children's homes, where it became clear that many children were abused between the 1930's and the 1980's. Lambeth Council took over the running of the home from London County Council in 1965 and ran it until it closed in 1983.
- 1.6 The Council of today has been clear in accepting liability for abuse that occurred at Shirley Oaks and has been clear in acknowledging that the council of the 1960's, 70's and early 80's failed to protect many of its most vulnerable young people. Since 2015 the Council has processed hundreds of requests for people's personal files and supported the police in bringing fresh prosecutions.
- 1.7 The Shirley Oaks Survivors Association (SOSA) was founded in 2014. Since March 2015 the Council has worked closely with them and has provided them with financial assistance in order to give survivors of abuse a voice. This has helped SOSA to raise awareness amongst survivors with the production of campaign videos, to provide support to survivors to access their social care records, and access to counselling services. The Council has also contributed to SOSA's running costs.
- 1.8 The Council presented a draft redress scheme to SOSA and their lawyers in February 2017 and in March SOSA's lawyers presented their own scheme in response. Since then the council has been seeking to reach agreement with SOSA on a final scheme.
- 1.9 The Council and SOSA have agreed that we should work together to create a scheme that is swift and compassionate and that does not victimise survivors by pushing them through the courts. This would mean that survivors do not have to relive their suffering as they prepare and present their

case. This approach also avoids significant amounts of survivors' redress payments being taken up by lawyers' fees.

1.10 The key provisions of the scheme are summarised at 3.1 below.

1.11 The Council needs to consider how to progress a redress scheme as quickly as possible given abuse dates from the 1930's and some survivors are nearing the end of their lives. The Council also needs to consider what options are available if it is unable to reach an agreement with SOSA regarding the terms of the Scheme. Both the Council and SOSA know that the constant discussion of past abuse causes survivors deep distress now, as they are forced to remember their experiences. Finalising the scheme and moving swiftly to compensate people is an urgent requirement to allow people to get on with their lives.

2. The national Independent Inquiry into Child Sexual Abuse (IICSA)

2.1 IICSA identified Lambeth Council as one of a number of local authorities (including Nottinghamshire, Leicestershire, Rochdale and Rotherham) and other organisations including the Roman Catholic Church and the Anglican Church for investigation into the extent to which State and non-State institutions have failed in their duty of care to protect children from sexual abuse and exploitation. In March 2016 the Council was made a core participant in the IICSA and has so far provided over 112,000 pages of documentation to the Inquiry however no dates have been set for the public hearings for the Inquiry and it is unlikely that these hearings will now take place until the end of 2018 at the very earliest.

2.2 It had been anticipated that IICSA would consider the issues of compensation and that would inform the Council's approach, however because the outcome of the Inquiry is now not likely to be known for several years, the Council feels it is important to begin to address this difficult issue in as open and sensitive a way as possible.

3. Key elements of the Draft Redress Scheme

3.1 It is important to note that the Scheme is still in draft form. Following the negotiations with SOSA the current working draft of the Scheme can be summarised as follows:-

3.1.1 All former residents of Shirley Oaks Children's Home who were living in and subjected to a harsh environment will be eligible to receive a common experience payment (CEP) of up to £10,000. A harsh environment is one 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. Where a CEP is paid and the person also applies for an individual redress payment the CEP will be treated as an interim payment for redress;

3.1.2 Any child who had a mental impairment affecting their ability to make decisions is entitled to a minimum CEP of £10,000 if they were resident in one of the Council's specialist disability residential units;

3.1.3 In addition the Scheme provides for an individual redress payment for every child who has been physically, sexually or psychologically abused by a house parent, social uncle or aunt, teacher or any other third party for whom the Council has vicarious liability in relation to Shirley Oaks Children's Home or Shirley Oaks Primary School. The Scheme provides compensation up to a maximum sum of £125,000. Complex cases where compensation for loss of earnings could result in a higher award of compensation will be dealt with under an

alternative mechanism as these cases involve a more detailed analysis of expert evidence to assess the to assess the appropriate level of compensation;

- 3.1.1 The Scheme provides for legal costs to be paid for by the Council and these are not deductible from the compensation awarded;
 - 3.1.2 The estates of deceased former residents of Shirley Oaks Children's Home who were abused will be entitled to apply for an individual redress payment;
 - 3.1.3 Where there is evidence that a child who was in care at Shirley Oaks Children's Home was deliberately placed in harm's way with foster parents who then went on to abuse those children, then the Scheme provides for the Council to pay compensation to those survivors;
 - 3.1.4 The Council has set up a free specialist and dedicated counselling support service. In addition all those eligible under the Scheme are entitled to appropriate counselling or other therapeutic, psychological or psychiatric support;
 - 3.1.5 The Scheme provides for all those eligible to receive a written apology acknowledging what has happened to them and providing an acceptance of responsibility by the Council. In addition a meeting with a senior Council representative will be offered to all those who enter the Scheme to ensure the Council has fully heard and understood the extent of the abuse suffered by individuals. We recognise that survivors want to know that the lessons of the past have been learnt, and that children today do not face the same hazards. We know that for many people this is more important than compensation;
 - 3.1.6 The Scheme provides for a specialist service providing specialist advice, support and assistance to obtain housing, appropriate welfare benefits, further educational qualifications and suitable employment;
 - 3.1.7 The Scheme will be open for 2 years from the date of implementation;
 - 3.1.8 The Scheme provides for the payment of aggravated damages in line with common law principles;
 - 3.1.9 The Scheme provides for determination by an independent assessment panel of the level of redress;
 - 3.1.10 The Scheme automatically waives any limitation period defence for those people who enter the Scheme.
- 3.2 In summary the Council wishes to implement a redress scheme which will provide swift and compassionate recourse to appropriate compensation to the survivors of abuse, minimising the legal costs associated with these types of claims by streamlining the process and avoiding costly legal proceedings through the civil justice process. It seeks to do so while making sure that levels of compensation are in line with existing case law and operate within the existing legal framework for compensation claims.
- 3.3 There is still work to be done to see if agreement can be reached. The outstanding points of contention relate mainly to the common experience payment, the tariff and the issue of redress for abuse whilst in foster care. The Council has offered a further meeting with SOSA's lawyers to attempt to resolve these outstanding matters with a view to the Scheme being taken to Cabinet in September 2017 for final approval.

- 3.4 In summary the key areas where SOSA have submitted that the Scheme does not go far enough are as follows:
- 3.4.1 **Common Experience Payment** – SOSA have argued that the Scheme should provide for a blanket payment of £10,000 for all former residents of Shirley Oaks. The Council has offered a mechanism by which the Council can make payments at this level to all residents where there is evidence that residents were subjected to a harsh environment as defined above. The payment of £10k is stepped according to the period in which residents were subjected to the harsh environment. The £10k payment is paid where the resident was subjected to the harsh environment for 6 months or more, £5k for a period of 3 - 6 months, £2.5k for more than 1 week up to 3 months and £1k for under a week. This payment relates to being subjected to a harsh environment; anyone who has been **abused** sexually, physically or psychologically is eligible to apply in addition for an individual redress payment which will be calculated by reference to a points based tariff system which is based on common law principles.
- 3.4.2 **Foster Carers** – The Council's position is that the redress scheme is not designed to compensate those who have been abused by Foster Carers unless there is evidence that the Council deliberately placed a child with an abusive foster carer. The Council acknowledges that there will be cases where the Council has acted negligently in relation to foster care placements **and that where this has resulted in abuse then the Council will pay compensation for the negligence**. However these types of cases are more complex and not suitable for the redress scheme. The Council proposes to deal with these types of case in a similar, non-adversarial manner to ensure that where the Council is liable, compensation can be assessed and paid quickly without the need for legal proceedings.
- 3.5 Given the time that has elapsed since the Council agreed to develop the Scheme it is now imperative that a Scheme is approved by September 2017 if the Council is to be in a position to accept applications and administer payments through the Scheme before Christmas 2017.
- 3.6 The Council considers that the Scheme as currently drafted is the first of its kind and innovative. The provisions of the draft Scheme compare very favourably to similar schemes which have been developed for example in Jersey, the Republic of Ireland and Canada. A comparison table is set out below.

Established Historic Child Abuse Schemes

It should be noted that whereas the proposed Lambeth Scheme is operated by the Local Authority, the other Schemes were Government backed/led schemes. As such, the draft Lambeth Scheme is the only Local Authority scheme listed below.

Scheme entry	Lambeth Scheme	Republic of Ireland Scheme	Jersey Scheme	Northern Ireland Historical Abuse Inquiry (HIA) – Recommendations only – not a Redress Scheme as yet	Canada – Nova Scotia	Differences
1. Period of Operation	2 years	3 years	6 months	Not applicable as this was an Inquiry	3 years, 9 months	Republic of Ireland & Nova Scotia Schemes open 1 year longer than Lambeth's Scheme
2. Who Scheme Funded by	Primarily Lambeth Council with some contribution from insurers	Public funds with contributions from religious organisations and insurers	State of Jersey	N/A	Nova Scotia Province	Two of these schemes are Government funded. One other was funded by public funds but with contributions from other organisations. The Lambeth Scheme is mainly funded by Lambeth Council
3. Remit of Compensation Payments	Compensation paid for:-	Compensation paid for people who:	Compensation paid for people who:-	Recommends compensation for:-	Compensation Paid to:-	Lambeth Scheme goes further in :-

Scheme entry	Lambeth Scheme	Republic of Ireland Scheme	Jersey Scheme	Northern Ireland Historical Abuse Inquiry (HIA) – <u>Recommendations only – not a Redress Scheme as yet</u>	Canada – Nova Scotia	Differences
	<ul style="list-style-type: none"> Former residents of SO who suffered abuse at SO, perpetrated by someone who Lambeth would be vicariously liable for Former residents of SO abused by a foster carer, where that foster carer was deliberately aided/abetted/procured by someone Lambeth would be vicariously liable for CEP – criteria listed below 	<ul style="list-style-type: none"> were abused while resident at a relevant institution; and could show they suffered abuse and resulting injury 	<ul style="list-style-type: none"> were in full time residential care (not foster care) between 1945 and 1994 	<ul style="list-style-type: none"> People who suffered abuse between 1922 and 1995; and Were residents in a residential institution in NI; and Was under 18 at the time 	<ul style="list-style-type: none"> survivors of physical and sexual abuse in three institutions 	<ul style="list-style-type: none"> offering CEP; and compensating those deliberately placed with foster parents for purpose of abuse
4. Compensation for Abuse by Foster Carers	<ul style="list-style-type: none"> Compensation paid to former residents of SO abused by a foster carer, where that foster carer was deliberately aided/abetted/procured by someone Lambeth 	No compensation for abuse by foster carers	No compensation for abuse by foster carers	No express compensation recommended for abuse by foster carers but subject to further consideration	Silent on foster carers	Lambeth’s scheme does include compensation for those abused by foster carers, but with limitations

Scheme entry	Lambeth Scheme	Republic of Ireland Scheme	Jersey Scheme	Northern Ireland Historical Abuse Inquiry (HIA) – <u>Recommendations only – not a Redress Scheme as yet</u>	Canada – Nova Scotia	Differences
	would be vicariously liable for					
5. Common Experience Payment	<p>Stepped CEP paid to Eligible Applicants of up to £10,000 where:</p> <ul style="list-style-type: none"> • they were residents of Shirley Oaks (SO) and lived in a harsh environment; OR • Were residents at SO but cannot recall their experiences due to an impairment of the mind; OR • Were residents at SO and suffered from a mental disability at the time 	No CEP	No CEP	<p>Standard payment of £7,500 to:</p> <ul style="list-style-type: none"> • anyone abused including those who experienced a harsh environment or witnessed abuse 	No CEP	Lambeth goes beyond all these other schemes in offering a CEP which no other scheme offer of up to £10,000

Scheme entry	Lambeth Scheme	Republic of Ireland Scheme	Jersey Scheme	Northern Ireland Historical Abuse Inquiry (HIA) – <u>Recommendations only – not a Redress Scheme as yet</u>	Canada – Nova Scotia	Differences
6. Limitation defences	No limitation defence will be raised for any application under the Scheme	Silent on limitation	Silent on limitation	Applicants should still be able to seek redress where they brought civil proceedings previously and the claim was defended on grounds of limitation	No specific reference but this was a no fault scheme	The Lambeth Scheme goes further than other schemes. Where an application is accepted into the Scheme, Lambeth will not raise a limitation defence
7. Maximum award	£125,000 The Lambeth Scheme deals with claims where the applicant values their claim up to £125,000. As such, claims valued in excess of £125,000 would be dealt with outside of the scheme but in accordance with common law principles.	300,000 euros (approx £263,000) It should be noted that the Republic of Ireland jurisdiction is more generous in the compensation awards for damages	£60,000 £3,000 for medical (past or future) costs	£100,000 including a CEP	\$120,000 (approx £92,760)	The Lambeth Scheme provides a higher maximum award than most other schemes, aside from the Republic of Ireland Scheme
8. Applications from the Estates of those who are now Deceased	The Estate can apply for an individual redress payment for someone who would	Applications from the Estate of the Deceased accepted	No compensation where deceased	Where a person died after 29 September 2011 their spouse or children should be	Silent	Lambeth's Scheme goes beyond those other schemes where an Applicant

Scheme entry	Lambeth Scheme	Republic of Ireland Scheme	Jersey Scheme	Northern Ireland Historical Abuse Inquiry (HIA) – <u>Recommendations only – not a Redress Scheme as yet</u>	Canada – Nova Scotia	Differences
	have been an Eligible Applicant, but not a CEP	where they died after 11 May 1999; or where they died after making an application but before determination of their application		able to recover 75% of the award that would have been made		is deceased as it has fewer constraints around the eligibility for an award
Number of Applicants	Unknown currently, a total median of 3,000 has been used for forecasting	16,750	132	Not applicable as not a scheme	1,260	Lambeth estimates that there were over 20,000 looked after children
9. Apology	Lambeth have already made a public apology to survivors of abuse in their care [press release of 15 December 2016] A Written and personal apology is offered to all Eligible Applicants under the provisions of the Scheme.	Generic apology on behalf of the State given but not individual apologies	Generic apology given by the Chief Minister but not individual apologies	Recommends the NI Executive and those responsible for the institutions where systemic failings were found, should apologise publicly	No apology offered	The Lambeth Scheme goes further than all the other schemes
10. Psychiatric assessment	Where a psychiatric assessment is required, the	Medical Report provided by the	Presumption that expert evidence will	Silent	Consideration of medical records	Lambeth Scheme is in line with other

Scheme entry	Lambeth Scheme	Republic of Ireland Scheme	Jersey Scheme	Northern Ireland Historical Abuse Inquiry (HIA) – <u>Recommendations only – not a Redress Scheme as yet</u>	Canada – Nova Scotia	Differences
	parties will agree a joint expert and the Scheme will cover the associated costs	Board’s medical advisors	be required for claims for more severe abuse. Where less severe cases the necessity of this will be assessed Where the Claimant does not cooperate, their application may be rejected or their award reduced		relating to the applicant	Schemes in that consideration of medical records / evidence is required
11. Counselling and rehabilitation services	There is a free counselling service offered which is currently in place and being utilised by survivors – this is an unrestricted service available during the operation of the scheme Specialist advice re housing/benefits/further education/employment also offered	Advice on financial management of the award given	None detailed	Specialist funds available for ten years to cover cost of general counselling and practical help re literacy, numeracy, education, employment, housing and benefits advice	Investment Advice could be requested - cost of advisors not covered	The Lambeth Scheme goes beyond other schemes in the advice offered. It is in line with the HIA recommendations

Scheme entry	Lambeth Scheme	Republic of Ireland Scheme	Jersey Scheme	Northern Ireland Historical Abuse Inquiry (HIA) – <u>Recommendations only – not a Redress Scheme as yet</u>	Canada – Nova Scotia	Differences
12. Previously compensated the same abuse	<p>People will repay payments from the Criminal Injuries Compensation Authority (CICA) for same abuse. Where an award is made under the scheme and the applicant is known to have previously received a CICA award for the same abuse, Lambeth will notify the CICA of the settlement reached. It will then be for the individuals to liaise with the CICA in repaying any monies requested.</p> <p>This means an applicant can make an application under the Scheme even if compensation previously paid for same abuse – any previous payment will be treated as an interim payment</p> <p>Where there are previous payments from 3rd parties the amount will be deducted</p>	Applicants who had previously received damages could not apply for redress	Silent to this	Where a person has received compensation through civil proceedings they should not be entitled to a payment from the HIA Redress Board	Silent	The Lambeth Scheme allows applications even where compensation for the same abuse has previously been received

Scheme entry	Lambeth Scheme	Republic of Ireland Scheme	Jersey Scheme	Northern Ireland Historical Abuse Inquiry (HIA) – <u>Recommendations only</u> – not a Redress Scheme as yet	Canada – Nova Scotia	Differences
	from the award. If previous award exceeds scheme award, no further payment will be made					

4. Finance

- 4.1 There are no immediate financial implications arising from this report, however, the Council has recognised that it has significant liabilities arising from abuse of children in Lambeth children's homes. In the case of Shirley Oaks these liabilities extend to abuse committed whilst the home was the responsibility of the Home Office and London County Council, and were inherited by Lambeth Council in 1965.
- 4.2 Lambeth Council is seeking to meet its financial responsibilities quickly and through a process that is compassionate and non-adversarial. The Council believes this is best done through a redress scheme rather than through the normal litigation process. For this to be successful survivors must be confident that redress will reflect the levels of compensation they would receive through the court process. It also has the added benefit of reducing legal fees. This is what ensures that this approach meets the fiduciary duties of the Council and reflects the stewardship responsibility the Council has for the use of tax-payers' money.
- 4.3 In considering the likely cost, the Council has to consider a range of factors, these include the likely number of people who may seek redress, the amount of compensation per individual, and the fees for administering the scheme. It is difficult to estimate how many people will come forward with a claim and the likely level of claims, however this has to be done on the best information available and a judgement made. The Council has virtually no insurance cover for the period in question and is looking at ways in which the cost can be capitalised.
- 4.4 SOSA's estimate of potential claims has risen from approximately 200 in December 2016 to approximately 1,200 in July 2017 following their campaign to raise awareness of this issue. The Council knows that 50% of children in Lambeth homes lived at Shirley Oaks. It is known that similar schemes have seen more people come forward than was originally anticipated, and we know from the work that SOSA have done that the number of children experiencing abuse is far higher than previously identified. In that context a prudent assumption might be that up to 3,000 people may come forward across Lambeth's Children's Homes as the survivors of abuse. Based on the information currently available a conservative assumption is that the cost of compensation is likely to exceed £60 million. This will be subject to an actuarial review which will form part of the report to Cabinet.

5. Legal and Democracy

- 5.1 The Council has a legal power to establish a redress scheme under s. 1 Localism Act 2011 which introduced a "general power of competence" (GPOC) which gives the local authority "the power to do anything that individuals generally may do" and which expressly includes the power to do something for the benefit of the authority, its area or persons resident or present in its area.
- 5.2 The GPOC in common with any other source of power must be exercised reasonably and properly. The Council must be mindful of its fiduciary duty to council tax payers and therefore needs to balance the needs of survivors against its public duty to ensure that claims are appropriately validated and that payments are reasonable and lawful.
- 5.3 The Council's auditors have a statutory duty under the Local Audit and Accountability Act 2014 to be satisfied that "the authority has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources".

- 5.4 This item of business was included in the summons and can be considered by full council. The report, however, had not been completed at the time of agenda publication and was not publically available for five clear days before the meeting. Despite this, the Acting Chief Executive was satisfied that the report was genuinely urgent and could not wait until a later meeting of council.
- 5.5 Section 11 indicates that Cabinet is due to approve to scheme in September 2017. In the absence of any other council meeting scheduled before this time, it was considered necessary to provide council with an urgent update at the meeting on 19 July 2017.

6. **Consultation and co-production**

The Council has consulted widely on the terms of the Scheme. In addition to SOSA the Council will be consulting on the provisions of the Scheme with its insurers, its external auditors and with the Association of Child Abuse Lawyers.

7. **Risk management**

Risk relating to the production of the scheme has been identified, managed and a project risk register maintained. If the Council does not develop a Redress Scheme there is increased risk of litigation with attendant legal costs under the civil justice process.

8. **Equalities impact assessment**

The Council is undertaking a full equalities impact assessment in relation to the Redress Scheme and its implementation to ensure that the Council is complying with its obligations under the Equalities Act 2010.

9. **Community safety**

Not applicable

10. **Organisational implications**

10.1 **Environmental**

None

10.2 **Staffing and accommodation**

None

10.3 **Procurement**

None

10.4 **Health**

None

11. **Timetable for implementation**

Date	Action
02/08/17	Legal opinions/endorsement – will require legal opinions on final scheme
04/08/17	External audit sign off – endorsement of scheme, by KPMG
04/08/17	Draft report comments to Legal, Finance & democratic services
18/08/17	Informal cabinet report deadline
25/08/17	Cabinet planning deadline
31/08/17	Final report deadline

Date	Action
01/09/17	Agenda publication (Cabinet)
11/09/17	Scheme approved by Cabinet
15/09/17	Minutes of decision published
24/09/17	Call-in deadline
25/09/17	Scheme publication - Website and scheme information published
01/10/17	Scheme goes live – applications accepted into scheme
31/10/17	First applications verified
30/11/17	First payments made

Audit Trail				
Consultation				
Name/Position	Lambeth directorate / department or partner	Date Sent	Date Received	Comments in paragraph:
Councillor Lib Peck	Leader of the Council	13.07.17	14.07.17	
Jackie Belton Strategic Director	Corporate Resources	13.07.17	14.07.17	
Fateha Salim Legal Services	Corporate Resources	13.07.17	14.07.17	
Wayne Chandai, Democratic Services Manager	Corporate Resources	13.07.17	18.07.17	5.4 – 5.5
Mark Nicholson Head of Risk & Insurance	Corporate Resource	13.07.17	14.07.17	

Report History	
Original discussion with Cabinet Member	Ongoing
Report deadline	n/a
Date final report sent	n/a
Part II Exempt from Disclosure/confidential accompanying report?	N/A
Key decision report	No
Date first appeared on forward plan	n/a
Key decision reasons	N/A
Background information	none
Appendices	None