

APPENDIX E: SUMMARY OF CONSULTATION - REDRESS SCHEME

ISSUE RAISED	COUNCIL'S RESPONSE
1. Administration and Adjudication of the Scheme	
<p>Independent administration and adjudication of the entire Scheme by an independent Panel/body.</p>	<ul style="list-style-type: none"> • Administration of the Scheme will rest with the Council's Redress Team and there will be an independent Appeal Panel. • It was suggested that the Council should have an entirely independent administration and adjudication of the Scheme by an independent panel/body. However, it is considered appropriate for the Council to administer its own Scheme, designed to ensure swift redress without recourse to the courts. The Scheme is fair and transparent with sufficient safeguards built in to protect the interests of applicants within the Scheme. Applicants will be entitled to be legally represented throughout the process with legal costs met by the Council. If agreement cannot be reached between the parties decisions can be challenged via the independent Appeal Panel. • The Redress Team administering the Scheme have had no involvement in historical claims, staff have all been vetted and undergone DBS checks and conflict checks to ensure they have not had previous dealings with any Council matters relevant to applications. They have also received training from the National Association for People Abused in Childhood (NAPAC). • The Council has instructed external solicitors to deal with the Scheme and they have had no involvement with handling abuse claims that have been brought against the Council in the past, which it has been suggested were not dealt with appropriately. • It is not practical for an independent panel to administer the entire Scheme. This would involve the Council procuring a panel and delegating their authority to them to fulfil the function of administering the Scheme. This would result in significant cost and inevitable delay in setting up and managing such a body through a process of audit and contract management which would inevitably require the Council to retain some overarching control. • In addition to the Council and the Applicants receiving legal advice it is probable (particularly as the Panel is multi-disciplinary) that the Panel themselves would require a team of legal advisors and a secretariat to administer the Scheme on their behalf.

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	<ul style="list-style-type: none"> • Council officers have over a two year period collated a large volume of historical information which has been digitised and is subject to ongoing review. As a result officers have acquired knowledge and understanding of documents and events from the past. Independent administration would require that knowledge along with data to be transferred to an external body. The Council's officers are best placed to use that information and knowledge in order to verify and deal with applications swiftly. Transfer of this process to an independent body would be unnecessarily costly and lead to avoidable delay. • Having regard to the Council's public law duties it is not considered reasonable to expend costs on independent administration of the Scheme. The Council is satisfied that there are sufficient safeguards built into the Scheme to ensure that claims are administered appropriately and are able to be challenged through the independent Appeal Panel if Applicants do not agree with an award or decision. Applicants can withdraw from the Scheme at any time should they wish to pursue their claim through the civil process.
2. Appeal Process	
<p>The structure and process of the Appeal mechanism to resolve disputes and the need for an oral hearing.</p>	<p>The purpose of the Redress Scheme is to provide efficient and swift means of redress and compensation.</p> <p>The Lambeth Scheme will be fair and transparent by providing:</p> <ul style="list-style-type: none"> • A one stage appeal process to an independent Appeal Panel in the event the Council and Applicant's lawyers cannot reach agreement as to whether the Applicant is accepted into the Scheme and/or settlement of the claim. • The cost of the Appeal Panel will be met by Lambeth • Applicants do not need to accept the Appeal Panel decision and can opt out of the Scheme at any point and pursue their claim via the civil process. • The Council has considered the possibility of an oral hearing but to do so would be impractical, delay redress and add large additional costs. The Panel would require legal support and a secretariat function, both sides would need representation, there would need to be a process for exchanging evidence and

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	<p>supporting witnesses. The Council has borne in mind that an Applicant unhappy with the independent review can leave the Scheme at any time and seek civil redress if their overriding objective is a hearing. To the extent that an Applicant wishes to express their experiences in care the Redress Scheme provides for a meeting with a suitable Council representative. Additionally the Independent Inquiry into Child Sexual Abuse (IICSA) has established the Truth Project which allows survivors to share their experiences of abuse with the Inquiry anonymously.</p> <ul style="list-style-type: none"> • A two tier appeal process as has been suggested would be extremely costly to the Council and certainly more costly than a one tier appeal process. • A two tier appeal process would delay settlements because of the longer process.
<p>3. Appeal Panel membership</p>	
<p>A Panel made up of multi-disciplinary experts to include legal, medically trained and those with dispute resolution skills</p>	<ul style="list-style-type: none"> • Having considered this option the Council has agreed that the Appeal Panel will comprise a pool of experts from a multi-disciplinary background such as psychiatrists, guardians, psychologists and barristers. • The Appeal Panel will be chaired by a retired Judge to develop guiding principles and to ensure consistent approach and analysis of appeals.
<p>4. Harm's Way Payment (formerly Common Experience Payment)</p>	
<p>Development of the Harm's Way Payment (HWP) and evidence required</p>	<ul style="list-style-type: none"> • The Council is legally able to offer a £1,000 ex gratia payment to all survivors. However, the Council considers this would not have been sufficient to recognise the nature of the abuse suffered by survivors. SOSA requested a blanket Common Experience Payment of £10,000 for all residents of Shirley Oaks Children's Home. • Therefore the Council sought to introduce a Common Experience Payment (CEP) for residents of all Lambeth children's homes. This is a stepped payment up to £10,000 and the criteria for such a payment is how long the Applicant lived in a harsh environment - now known as a Harm's Way Payment (HWP).

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	<ul style="list-style-type: none"> • The Council sought advice from Professor Anthony Maden, Consultant Forensic Psychiatrist on the threshold for the Harm's Way Payment, definition of 'harsh environment' and evidence in support of a HWP. • The Scheme was amended in light of advice from the expert and a Guidance document will accompany the Scheme explaining the threshold and what evidence will be acceptable. • A HWP of £10,000 would also apply to all those who were resident in a Lambeth specialist children's unit as a child.
5. Operation period of the Scheme	
Length of the Scheme	<ul style="list-style-type: none"> • Lambeth's proposed Scheme operates for a 2 year period which is considered sufficient and in line with other redress schemes. The Council has amended the Scheme to provide the Council with discretion to vary the Scheme upon advance notice and advertising of any proposed change.
6. Claims for abuse by third parties	
<p>Whether all claims for abuse by third parties including those the Council was not vicariously liable for can be included in the Scheme and compensated eg. abuse by doctors, scout leaders, teachers, social aunts and uncles and other visitors</p> <p>Whether the Scheme can include abuse that took place off site by doctors, teachers and social aunts & uncles.</p>	<ul style="list-style-type: none"> • Whilst the Scheme does provide for redress for abuse perpetrated by third parties, it would not be appropriate to include a prescriptive list where the Council is only vicariously liable for certain classes of people. For example other professionals present challenges in terms of liability which make such claims unsuited to the scheme. • As an alternative the Council has proposed that where Applicants were abused by visitors to a Lambeth Children's Home, those applications would be assessed through a Pre-Scheme negligence workflow. To assess negligence consideration and analysis of social work records is required, hence these applications need to be considered through the Pre-Scheme workflow and will enter the Scheme if this prior consideration results in negligence being determined. If negligence attaches to the Council, the application will then be administered through the Redress Scheme. • The Council has included in the Scheme redress payable where social aunts and uncles abused children off site. • Child on child abuse claims are included within the Scheme subject to the Pre-Scheme negligence work flow assessment.

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7. Claims for abuse by foster carers	
Whether Claims for abuse perpetrated by foster carers can be included in the Scheme	<ul style="list-style-type: none"> • As the law changed during the development of the Scheme following the Supreme Court decision in <i>Armes v Notts County Council</i> on 18 October 2017, the Scheme was extended to children who were abused by foster carers if children were placed with the foster carers directly from a Lambeth children's home. The Council recognises that where there is a direct correlation between placement in a children's home and a move to foster care placement in which a child suffered abuse then those claims can be dealt with through the Scheme. • Cases involving alleged foster care abuse are now recoverable against the Council. However, the Redress Scheme is for children abused in Lambeth children's homes where there has been institutional failings. It does not follow that the same logic automatically applies to all foster care placements, historic or recent. Foster care claims present more complex evidential considerations including delay, input from the alleged perpetrator as well as complex recovery considerations. The claims are likely to be recent as well as historic. A further important consideration is the Council's insurance position with large levels of indemnity available in the latter period. To include these claims within the Scheme would potentially compromise the Council's indemnity. As such they are not suited for this redress scheme and will be considered on a case by case basis.
8. Claims arising from negligence	
Whether claims for negligence can be included in the Scheme	<ul style="list-style-type: none"> • As stated above, the Council has introduced a Pre-Scheme workflow whereby some negligence claims will be assessed outside of the Scheme. If it is accepted that negligence attaches to Lambeth, these claims will subsequently enter the Redress Scheme. • The Scheme is designed to deal with claims where liability is admitted. Negligence claims require a greater level of consideration and analysis and as such, it is imperative that they are dealt with outside of the Scheme until such time that liability is assessed.
9. Applications on behalf of deceased residents	

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Whether applications could be made on behalf of the Estates of deceased residents	An initial bar to applications on behalf of a deceased resident has been removed so their Estate can apply for an Individual Redress Payment (but not a Harm's Way Payment)
10. Submission of applications	
Survivors requested that the application for Redress be addressed to a body independent of the Council	Application forms to be addressed to the Redress Team
Survivors requested that the application be submitted to an independent body	A separate PO Box has been set up for applications to be submitted to the Redress Team.
11. Standard of proof	
Whether the standard of proof to be applied under the Redress Scheme should be different to the current civil test of balance of probabilities.	This is the current civil test when assessing the standard of proof in abuse claims and this legal test cannot be altered. This opinion is supported by leading counsel.
12. Test for causation	
What is the appropriate test for causation as 'material contribution' has been suggested	Material contribution as a test for causation represents a change from the test applied in civil proceedings in a fundamental way. The test for causation which will be applied under Lambeth's Redress Scheme is the test applied by the courts in civil proceedings for historic abuse cases which is one of apportionment. This opinion is supported by leading counsel.
13. Compensation for aggravating factors	
Aggravated damages for all survivors in addition to compensation for physical/psychiatric/sexual harm for factors such as racial discrimination.	The Scheme Tariff has been approved by leading counsel and as with all claims of abuse incorporates an element of aggravated damages by the nature of the abuse. To the extent that individual cases have separate aggravating features for example in relation to race or sexual orientation the Scheme has incorporated this into the Tariff.
14. Tariff for awards	

A points based tariff for awards was suggested	Council introduced points based Tariff in June 2017
15. Maximum award for compensation	
A maximum redress payment of £300,000 plus 20% was suggested	<ul style="list-style-type: none"> • Council has increased the maximum redress payable under the Scheme from £100,000 to £125,000. • Lambeth’s proposed Tariff and awards have been considered and approved by leading counsel, who has confirmed that these awards are in line with common law principles. • If the awards were to be increased any further, they would not be in line with common law awards and would not be in line with the Council’s fiduciary duty. • Complex claims which are assessed at over £125,000 require more analysis in terms of assessing compensation and are, therefore, not suitable for the Scheme. The Council therefore accepts that there will be some cases exceeding the value of the Scheme and for which the Council will satisfy its legal obligations, in the spirit of but not through the Scheme, in order to do proper justice to the applicants.