

Are redress schemes the answer to improving the way abuse claims are dealt with?

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But any organisation considering going down this route will need to grapple with a number of challenges.

Certainty - the size of the project

One of the first hurdles is to be certain of the size of the group that can access the scheme, so that it can be budgeted for. For non-recent abuse the organisation's historical record keeping may not have survived or been sufficiently detailed for the number or value of potential claims to be predicted with confidence. Knowing the maximum size of the pool is one thing, predicting the number of claims that will actually emerge is something else. The Irish experience suggests that the number of financial claims under a scheme will be roughly 10 times the number of people who otherwise came forward. In contrast Lambeth are scaling down their expectation of scheme applications.

The basis of a scheme

Clarity of purpose is essential, and it has to be accepted that there may be some applicants who will simply not be eligible for a payment because they do not meet the scheme criteria. If the group is defined by reference to the nature of the liability (eg to cover all claims for which the organisation is vicariously liable) evolving case law may widen the pool beyond the scheme's original intention. A balance needs to be struck on simplicity and scope but identifying appropriate boundaries can be a protracted task.

Insurance

Where the organisation has insurance cover which would respond to an abuse claim the impact of a redress scheme on that insurance cover can be problematic. Insurance contracts are designed to respond to a legal liability to compensate via damages. Whether insurers will contribute to a redress scheme will depend upon whether payments under the scheme are properly interpreted as compensation to discharge a legal liability.

If insurance is in place to respond to claims the insured organisation may face challenge to its intent to set up a redress scheme. For example charities may face a brake on their redress plans through the stance of the Charity Commissioners. Public sector organisations may be asked to demonstrate that their schemes are not ultra vires. In both cases the challenges could be tricky if the redress scheme is designed to respond even where there is no legal liability.

The effect of delay

If the time limit for bringing a claim through the courts has expired the court will need to be convinced that a fair trial is still possible. This will depend primarily upon the state of the surviving evidence.

A separate (and less frequent) consideration is whether it is fair to have a trial. This will involve an inquiry into how the parties have conducted the claim and the defence.

When designing a scheme what should the approach to delay be? If insufficient evidence survives for a court to be able to adjudicate a claim can a redress scheme come to a fair assessment? What will you do if the only surviving evidence is the applicant's uncorroborated statement?

What does the future hold and what can we learn?

Whilst the conventional claims process is far from perfect it has been honed by case law over many years. The terms of any redress scheme will be untested as to scope and application and so may be subject to (mis)interpretation and challenge. A sensible balance needs to be struck between sums paid to applicants and sums eaten up by collateral expenses. A modest single payment to all those eligible will be fast, uncomplicated and reduce scheme costs. It will be instructive to see how the Government backed [Child Migrant payment scheme](#) fares.

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