

## Procedural Guidance

### INTRODUCTION

1. The purpose of this guidance is to provide information about how the HIA Redress Board (“the Redress Board”) will determine an application for compensation. This guidance is designed to help applicants understand the process which has been established by Historical Institutional Abuse (Northern Ireland) Act 2019 (“the Act”) and the Historical Institutional Abuse Redress Board (Applications and Appeals) Rules (Northern Ireland) 2020 (“the Rules”), but it does not replace or supersede that legislation. This guidance may be suspended, amended or updated as necessary.
2. The process set out in the legislation for the determination of applications for compensation is not an adversarial process and the Redress Board will ensure that a non-adversarial process is maintained throughout. The Redress Board expects and requires a collaborative and co-operative approach from legal representatives. The normal process for the determination of applications for compensation will be carried out by way of an assessment of the documentary material presented to the panel. An oral hearing will only be directed where there are exceptional circumstances which make it necessary to do so in the interests of justice.
3. All applications will be determined by a panel appointed under Section 8 of the Act who will determine the application on behalf of the Redress Board. The panel will be appointed by the President of the Redress Board and will consist of three members (one judicial member, who will chair the panel, and two non-judicial members drawn from a health and social care background).

### VERIFICATION PROCESS

4. When an application is received, the Redress Board will check the form to ensure that all of the required information and the necessary supporting materials have been provided (as stipulated by r3 & r4 of the Rules). It is important that any missing information of material requested by the Redress Board is furnished promptly.
5. If the material provided in support of an application includes video or audio recordings these may be viewed or listened to by the panel or, they may be transcribed for the use of the panel.
6. As part of the verification process, the Redress Board will give written notice to the body, society or organisation involved. This notice will provide

certain information (as set out in r7 of the Rules) and will require the body, society or organisation to verify the information provided within seven days. If the body, society or organisation wishes to submit any further written information in response to the notice of application it must do so within 28 days.

7. When the Redress Board is satisfied that all the information needed to progress the application has been received the applicant (and/or the legal representative acting on their behalf) will be notified. This notification will include an Expenses Claim Form which must be completed and returned by a specified date. When the Expenses Claim Form is received, the application will be considered ready to proceed to the next stage, namely, determination by a panel (as described at 3. Above).

### **THE DETERMINATION PROCESS**

8. Section 7 of the Act empowers the President of the Board to decide the order of priority in which applications for compensation will be determined and it requires him to have particular regard to the age and health, so far as it is disclosed in the application, of each applicant.

9. Thereafter, and in accordance with the prioritisation decided by the President, the application (including of the application form and all relevant supporting material) will be passed to the panel appointed under Section 8 to make a determination on it.

10. The panel will be required to consider the following:

- Application form;
- Proofs of identity and other relevant matters (such as relationship to the deceased) which have been provided;
- Statement of the applicant's experience;
- All medical reports provided by the applicant;
- Any written information provided by an institution;
- Any written information provided in response to a Board request; and
- Any other written statements or relevant material provided in support of the application.

11. If the application relates to an institution that was investigated during the Hart Inquiry the panel will have due regard to the findings of the Inquiry in respect of that institution as set out in the report of the Inquiry into Historical Institutional Abuse 1922 to 1995. In addition, if the applicant previously provided evidence to the Hart Inquiry they will not be required to provide any further evidence to the panel unless they wish to do so and the applicant may direct that the panel reach its determination on the basis of the information already provided.

## **ORAL HEARING PROCESS**

### **When will an oral hearing take place?**

12. As stated at 2. above, a panel will direct that an oral hearing takes place only where there are exceptional circumstances which make it necessary to do so in the interests of justice.

### **Notice to give oral evidence**

13. The Board will give an applicant and/or his/her legal representative at least 21 days' notice of the hearing. The notice of hearing will provide details of where and when the hearing is to be held. Hearings may be arranged at shorter notice by agreement. If the applicant is unable to attend the hearing, he/she must notify the Redress Board in writing as soon as is reasonably practicable and, in any event, at least 14 days before the date for hearing.

14. Similarly, the Board will give any other person and/or his/her legal representative at least 21 days' notice of the hearing. The notice of hearing will provide details of where and when the hearing is to be held. Hearings may be arranged at shorter notice by agreement. If the person cannot attend the hearing, he/she must notify the Board as soon as reasonably practicable and, in any event, at least 14 days before the date for hearing.

### **The role of a legal representative at an oral hearing**

15. The Redress Board may be represented by either a solicitor or counsel at an oral hearing, but may choose to sit without a legal representative. Any legal representative present, whether on behalf of the Redress Board, the applicant or another person, must comply with the directions of the panel and bear in mind that the process is non-adversarial.

### **The role of an applicant at oral hearing**

16. The oral hearing will be conducted by a panel consisting of three members who have been appointed by the President of the Board as described at 3 above. It is likely that at least one of the non-judicial members will come from a health and social care background. A hearing clerk will also be present to provide administrative support to the panel.

17. In keeping with the non-adversarial approach to the determination of applications for compensation the procedure at the oral hearing will be as informal as the panel considers appropriate.

18. When the applicant enters the hearing room he/she will be asked to sit at a table with their legal representative or companion if they have chosen to bring someone along for support. A member of the panel will welcome the applicant to the hearing and will identify and explain the role of any other person present in the room. He/she will outline what will happen at the oral hearing. If the applicant is unsure about any matter the panel will welcome requests for clarification and will try to explain things in a plain and straightforward way.

19. The judge will then identify the particular matters, if any, which the panel wishes to consider at the oral hearing.

20. Any person giving oral evidence will be asked to take an oath or make an affirmation. Anyone giving evidence to the panel is bound to tell the truth and serious penalties may be imposed if it is found that a person has been deliberately untruthful to the panel or has intentionally misled it in any way.

21. The procedure at the oral hearing may vary but normally the applicant will give evidence before any other witnesses. The panel members will have read all of the relevant documentation in advance and it may not, therefore, be necessary to go into all of the details of the application and supporting documentation. The panel will guide the applicant to any particular matters about which they would like hear.

22. Any person giving evidence may be asked questions by a member of the panel in order to explore factual matters or clarify evidence provided. It is important that the panel has the full facts in relation to the application in order to reach a fair and just decision. Applicants may find that some of the questions are direct and sometimes probing but all questions will be asked, and all answers listened to, in a courteous and sensitive way.

23. When the panel has heard the applicant's evidence it may want to hear the evidence of any witnesses called on his/her behalf. If the applicant has any questions these should be addressed to the judicial member whose name will be displayed in front of him or her. The same procedure described in this section will be followed in respect of the questioning of any other witnesses at the oral hearing.

24. Panel members may take notes during the giving of evidence to help it reach its determination. To ensure that no relevant evidence is missed the oral hearing will be recorded using a digital audio recording system.

25. When all of the oral evidence has been given the judicial member of the panel will ask you if you have any final comments. If the panel is in a position to do so, it may, at the end of the hearing, indicate if it is satisfied that the evidence is now complete and/or if there is a timeframe within which a determination is likely to be made.

26. The oral hearing will normally take place in private. An oral hearing will only take place in public if the panel consider that this would be in the interests of justice. It is anticipated that this will only be taken place in exceptional circumstances.

27. Should the panel wish to hear oral evidence from a person other than a person giving evidence in support of the application for compensation this will, save for exceptional circumstances, be scheduled for hearing on a different occasion. This is in keeping with the non-adversarial nature of the redress process.

## **THE DETERMINATION NOTICE AND APPEAL PROCESS**

28. The applicant or his/her legal representative will be notified in writing of the panel's decision. The written notification will be accompanied by a summary of the panel's reasons for the determination. The applicant will have 21 days from the date of issue stamped on the notice to decide whether or not to accept it.

29. If the applicant decides to accept the determination they must notify the Redress Board in writing within 21 days. This notification of acceptance must specify the details of the bank account into which the person wishes the award to be paid. An applicant who accepts a determination and who provides written notification of acceptance will not be able to bring proceedings on a claim for compensation based on matters to which the application relates - see s15(6) of the Act.

29. . If the applicant decides not to accept the panel's determination, they have the right to appeal the determination. An appeal will be determined on behalf of the Redress Board by a single judicial member selected by the President of the Board. An appeal will be dealt with by way of a reconsideration, as set out at s16(6) of the Act. The single judicial member can uphold the decision of the panel, reverse the decision, or increase or reduce the award of the panel. A decision on appeal is final.

30. If the applicant rejects the award without lodging an appeal, the Redress Board process comes to an end. It is then for the applicant to decide whether or not to pursue his/her claim through the civil courts. The applicant is advised to take legal advice prior to rejecting the decision of the panel.

31. It is essential that the applicant decides whether to accept or appeal the award within 21 days. If notification of acceptance or rejection has not been received within 21 days the award will be deemed to have been rejected. In these circumstances, no award will be paid and the applicant will have lost their right to appeal