

PRACTICE DIRECTION No. 1

(This Practice Direction sets out the approach of the Redress Board to the assessment of compensation and is made by the President further to Parts 4(2) & 5(6) of Schedule 1 of the Historical Institutional Abuse (NI) Act 2019).

Background

1. The Historical Institutional Abuse Redress Board was established formally on 31 March 2020, further to the recommendations of the Inquiry into Historical Institutional Abuse, which published its Report on 20 January 2017.

2. The principal task of the Historical Institutional Abuse Redress Board is to receive and assess applications for compensation made by or in respect of a person who suffered abuse while a child and while resident in an institution in Northern Ireland, at some time between 1922 and 1995, and to make awards of compensation.

Interpretation

3. In this Practice Direction:

- (a) “the Act” means the Historical Institutional Abuse (Northern Ireland) Act 2019;
- (b) “the Rules” mean the Historical Institutional Abuse Redress Board (Applications and Appeals) Rules (Northern Ireland) 2020;
- (c) “the Hart Report” means the Report of the Inquiry into Historical Institutional Abuse, also known as “the Hart Inquiry”;
- (d) “the President” means the President of the Redress Board, as described in the Act;
- (e) “judicial member” and “other members” of the Board have the meanings ascribed to them in the Act;
- (f) “panel” means a panel duly appointed by the President under section 8 of the Act;
- (g) “Banding guidance” and “Examples of abuse” refer to the documents bearing those titles which have been published on the Redress Board’s website.
- (h) the “CMP” means the programmes commonly known as the Child Migrant Programme, under which children were sent to Australia.

Statutory Framework

4. Under section 2 of the Act, an application for compensation may be made by, or in respect of, a person who suffered abuse while a child and while resident in a relevant institution between 1922 and 1995. Abuse is defined at section 2(2) as:

- (a) *having suffered sexual, physical or emotional abuse or neglect or maltreatment,*
- (b) *having witnessed one or more children suffer abuse of a kind referred to in paragraph (a),*
- (c) *having otherwise been exposed to a harsh environment, or*
- (d) *having been sent to Australia under the programme commonly known as the “Child Migrant Programme”.*

In making an assessment of compensation, a HIA Redress panel shall bear in mind the provisions of section 12 of the Act which set out the amounts of compensation that can be awarded.

Section 12(2)(a) establishes the minimum figure that can be awarded, which is £10,000.

Section 12(2)(b) states that a panel can award:

“an amount not exceeding £70,000 if the panel is satisfied that an additional amount is justified by the severity of the matters raised by the application”.

Therefore, as directed by the Act, where assessment is necessary, a panel will begin the assessment task by considering the severity of the matters raised by the application.

Section 12(2)(c) establishes a fixed sum of £20,000 for an application by, or in respect of, a person who was sent to Australia under the “Child Migrant Programme”.

5. Before finalising its assessment, a panel will consider whether a deduction needs to be made from the award figure in compliance with section 13(5) of the Act.

6. Part 4(1) of Schedule 1 of the Act requires the Redress Board (and any member of the Board acting on its behalf) to have regard to the Hart Report in the exercise of Board’s functions. This includes the assessment of compensation by a panel – see paragraph 7 below.

The Hart Report

7. Volume 1, Chapter 4 of the Hart Report states that the HIA Inquiry, as part of its consideration of the issue of compensation, gathered information about as many civil claims against institutions (within its Terms of Reference) as it could, and analysed the resulting awards / settlements. The Report recommended that:

“We do not consider that there is any reason why awards by the HIA Redress Board should be materially out of line with amounts that have been already been paid as a result of litigation, whether against individual institutions or public authorities, or by the state in the form of Criminal Injury Compensation, or which may be awarded by the courts. We believe that such awards are the appropriate benchmark against which awards by the HIA Redress Board in this jurisdiction should be measured”.

Redress Board panels will take account of this recommendation in carrying out its assessment task.

8. The same chapter of the Hart Report also stated:

“Some applicants believe that had they not been abused whilst resident in a children’s home that they would have had had more success in life, and so earned more money. We consider that if a person wishes to claim for loss of earnings in adult life then they should pursue such a claim for loss of earnings as part of a claim in civil proceedings, and that claims for loss of earnings should not be allowed under the capped compensation scheme we recommend”.

Redress Board panels will bear in mind that, in making their assessment, they are attempting to arrive at a fair, composite figure, akin to the assessment of general damages, rather than conducting a calculation such as might occur in the assessment of special damages.

9. In accordance with the recommendation in the Hart Report at Volume 1 Chapter 4, paragraph 42, when making their assessments the panels must be satisfied that an applicant is entitled to compensation on the balance of probabilities.

General Approach

10. As can be seen from what is set out above (and leaving aside the CMP provisions), an applicant who has established an entitlement, under this scheme, to compensation for the abuse that he/she suffered, will be awarded between £10,000 and £80,000. It is important to understand that the Redress Board is required to operate within these financial limits and to approach the assessment of compensation in a way that is quite different from a civil court.

Over the past 5 months, the President and the staff of the Redress Board have engaged closely with victims / survivors and have listened carefully to their views, expressed both directly and via the Interim Advocate. On foot of this engagement, and taking account of the recommendations of the Hart Report and the financial limits imposed by the Act, the Redress Board has created two guidance documents, entitled "Banding Guidance" and "Examples of Abuse".

The Redress Board is acutely aware that the Hart Report found a wide and varied range of abuse across the homes it investigated, ranging from a harsh environment to extremely serious criminal offences. Therefore the Redress Board considered it appropriate to produce and publish these guidance documents in order to ensure fairness, consistency and transparency in the assessment of compensation, within the range available to it. These documents were finalised and published on the Redress Board's website after carefully considering the very constructive feedback received from the victim and survivor groups, via the Interim Advocate's office.

Redress Board panels will take account of these guidance documents, in conducting their assessment task. However, the panels will also bear in mind the preamble to the "Banding Guidance" document which states that:

*"the bands set out below are given in broad terms and with relatively broad ranges to take account of the infinite variety of factual situations. **They are meant as guidance only and not to be considered as providing inflexible and formulaic scales for the panels.** These guidelines provide assistance to panels in determining consistently and transparently the appropriate redress in the individual circumstances of each application. Equally, the descriptions included in the 'Sequelae' section are provided for guidance only – they are not a pre-requisite for compensation under a given band. **The focus of the panel will remain on the severity of the matters raised in the application**".*

Dated: 23rd April 2020



Signed: _____



The Honourable Mr Justice Colton
President of the Historical Institutional Abuse Redress Board