

## Practice Direction No. 2 Expert Reports - Guidance to Solicitors

### Purpose

1. This Practice Direction sets out the general approach which will be adopted by a panel of the Redress Board, appointed under section 8 of the Historical Institutional Abuse (Act) NI 2019. It is intended to address certain recurring issues which have arisen with some Expert Reports provided in support of applications for compensation. In some cases panels have considered the Expert Reports to be deficient for the purpose for which they have been submitted.
2. Rules 4 (1)(e) & 4(2)(i) of the Historical Institutional Abuse Redress Board (Applications and Appeals) Rules (Northern Ireland) 2020 state that an application must be supported by any Expert Report relating to the applicant **which the applicant or the applicant's solicitor considers relevant to the application** (whether or not the report was obtained for the purpose of supporting the application). To comply with this panels expect targeted medical information – whether medical reports or GP notes and records.
3. For clarity Rules 4(1)(e) & 4(2)(i) do not impose a mandatory requirement for an Expert Report to be provided in all applications. Solicitors should consider in each application, informed by the Redress Board Banding Guidance, as to whether an Expert Report is necessary and are reminded of the provisions of Rule 17 (2) which is set out below:

*Where a solicitor has obtained an Expert Report in support of an application for compensation under the Act or an appeal under section 16 of the Act, **and the Board considers it was reasonable to obtain the report**, the Board may, on presentation of the receipt from the expert of the fee for preparing the report, reimburse the solicitor the amount of that fee, in so far as the solicitor has not been and is not to be reimbursed from some other source. (emphasis added)*

4. Properly prepared Expert Reports can be of significant benefit to a Redress Board panel in assessing the impact of reported abuse and informing its determination of facts, impact and the appropriate level of compensation. The main purpose of the Expert Report is to provide an analysis of the impact(s) and where possible attributing responsibility for the said impact(s). This is especially the case when there is clear documentary evidence indicating that there are multi-factorial issues prior and after attendance at an institution which might impact on that determination.
5. Similarly it is important that only **relevant** GP/medical notes and records are submitted – redacted only where necessary to protect confidential information or information that is not relevant to the matters in the application.

### Background

6. 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.

## Function

7. The principal function 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

8. 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;

## Recurring Issues

9. The Redress Board has identified a number of recurring issues with the content and detail of some Expert Reports, which include the following:-
  - Reports simply containing a verbatim repetition of the contents of the Statement of Experience;
  - Reports prepared without consideration of GP records, hospital reports, counselling notes and other relevant records, especially where they are available as part of the application;
  - Reports that are unclear on whether the applicant has been directly spoken to;
  - Reports that fail to provide an analysis of documented and relevant multi-factorial issues.

## Duties & Obligations

10. Experts always owe a duty to exercise reasonable skill and care to those instructing them and to who the report is addressed, and in preparing their reports to comply with any relevant professional code.
11. When instructed to prepare a report for the Redress Board they have an overriding duty to assist the Redress Board on matters within their expertise.
12. The Expert Report should be the independent product of the expert uninfluenced by the pressures of the instructing solicitor and/or the applicant who is bringing the application to the Redress Board.
13. Experts should assist the Redress Board by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate.
14. Experts should consider all material facts, including those which might detract from their opinions.
15. Experts should make it clear:-
  - (a) when a question or issue falls outside their expertise; and
  - (b) when they are not able to reach a definite opinion, for example because they have insufficient information or where it is not professionally possible to reach a conclusion.

16. If, after producing a report, an expert's view changes on any material matter, such change of view should be communicated to all the parties without delay, and when appropriate to the Redress Board.

### The Redress Board Requirement

17. The Redress Board requires that the following content **must** be detailed within the submitted Expert Report:

- The expert's qualifications;
- The initial letter of instruction and any subsequent instructions
- The supporting records/material provided and relied on;
- Referencing all of the records/material that have been reviewed as part of the assessment;
- Any further records/material or verification requested by the expert in preparing the report;
- Information about any examination, measurement, test or experiment used in the report;
- Identification of the facts in the report within the expert's own knowledge or not;
- A summary of conclusions;
- An analysis of documented and relevant multi-factorial issues
- Opinion and any qualification;

18. To assist experts the Redress Board has set out at **Annex A** the headings that should be addressed in the Expert Report.

### Sanction

19. Solicitors are reminded that an Expert Report which fails to satisfy the above requirements will be deemed not to have been reasonably obtained and the receipt for the fee of the report will not be reimbursed in accordance with the provisions of Rule 17(2).

### Experts Declaration

20. The Redress Board requires that the expert must include the following declaration at the end of their report.

- I confirm that I understand my duty to the Redress Board and that I have complied with that duty.
- I understand that my duty is to help the Redress Board on matters within my expertise and that this duty overrides any obligation to the person from whom I have received instructions or by whom I am paid.
- I have stated the substance of all material instructions, whether written or oral, on the basis of which the report is written.
- My evidence is my independent product, uninfluenced by the pressures of the application for compensation.
- The opinions I have expressed are objective, un-biased and based on matters within my own expertise and I have not adopted the role of an advocate for the party instructing me
- I have made clear if a question or issue falls outside my area of expertise.
- I have considered whether there is any conflict of interest and declared any potential conflict identified.

- I have given details of any literature or other material relied on in making the report.
- I have set out the substance of all facts which are material to the opinion expressed in this report or upon which my opinions are based.
- I have made clear which of the facts stated in the report are within my own knowledge.
- I have said when there is a range of opinion on a relevant issue and summarised the range of opinions and I have formed my own independent view as to the appropriate point in that range applicable to this case and given reasons for that view

### Statement of Truth

21. The Redress Board requires that the expert must sign-off the report with the following Statement of Truth:

*I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer*

### GP Records, Medical Notes and Counselling Records

22. Where applicants or their solicitors are submitting medical notes and records in support of an application, care should be taken that only information that is relevant to the application is submitted. This is normally done to establish facts (e.g. the occurrence of a specific incident) or impact (e.g. a diagnosis of PTSD). Material that is not relevant to the application should be removed as it is confidential to the applicant (e.g. diagnosis or treatment for unrelated issues).

Dated: 27 January 2022



Signed:



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

## **ANNEX A**

**Introduction**

**Summary of reported abuse**

**Reported psychological impact**

**Personal history**

**Family history**

**Previous medical history**

**Previous psychiatric history**

**Medication**

**Substance misuse history**

**Mental state examination**

**Review of notes and records**

**Summary of conclusions**

**Analysis of multi factorial issues**

- other major traumas

**Opinion**

**Declaration**

**Statement of truth**