

Report of: Leader of the Council

Meeting of:	Date:	Ward(s):
Executive	18 March 2021	All

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APPENDIX C TO THIS REPORT IS NOT FOR PUBLICATION**SUBJECT: Non-Recent Child Abuse Proposed Support Payment Scheme****1. Synopsis**

- 1.1 The purpose of this report is to seek approval for a proposed Support Payment Scheme ('SPS') for persons who suffered emotional, physical, and sexual abuse whilst resident in the council's children's homes from 1966 to 1995. The proposed SPS will enable abuse survivors to receive a financial support payment without having to bring a civil compensation claim. It has been designed to enable eligible applicants to receive a payment more quickly than having to go through the trauma of the lengthy civil compensation claims process.
- 1.2 The report considers in detail:
 - 1.2.1 The affordability of the SPS for the council; and
 - 1.2.3 The risk of the council receiving an increased number of historic child abuse civil liability claims and the financial implications for the council.
- 1.3 If the proposed SPS is approved, it is intended that consultation on the SPS will take place with the Islington Survivor's Network (ISN), survivors and other key stakeholders.

2. Recommendations

- 2.1 To note the options for implementing a SPS and the associated legal and financial risks.

- 2.2 To approve the proposed SPS (Appendix A) for the purposes of consultation with ISN and other stakeholders.
- 2.3 To approve the consultation statement (Appendix B).
- 2.4 To authorise the Corporate Director of Resources, following consultation with the Leader, Executive member for Health and Social Care, Corporate Director People and Acting Director of Law and Governance to agree the consultation document.
- 2.5 To note that the period of consultation will be 6 weeks.
- 2.6 To note that a further report on the SPS will be submitted to the Executive detailing the outcome of the consultation exercise.
- 2.7 To note that it is recommended that one-off windfall monies and unspent contingencies be used in the first instance to fund the SPS at the discretion of the Section 151 Officer. An accurate assessment of the running costs of the SPS will need to be undertaken when the SPS has proceeded through consultation.

3. Background

Background to the SPS

- 3.1 At the meeting of the Executive on 28 September 2017, the Leader of the Council formally apologised to victims of child abuse in Islington care homes for the council's past failings. The apology was endorsed by the Council's Executive who recognised that some children in Islington's care had been subject to abuse during the 1970s, as well as the 1980s and early 1990s and noted that the apology be extended to all victims who suffered child abuse whilst in the borough's care.
- 3.2 This also included an apology to Liz Davies the social worker who first raised the concerns that subsequently led to the inquiries and the White Report and has been at the forefront of supporting survivors to navigate towards a sense of justice from the council. Islington Survivors Network (ISN) was established in 2017 by Liz Davies and those who self-identify as survivors of non-recent abuse in Islington.
- 3.3 The council established a support service which consists of trauma counselling, specialist advice, support and assistance for care, housing, appropriate welfare benefits, access to further education and suitable employment and support to access to care records. In May 2018, at a meeting with ISN, the council indicated that it is willing to enter discussions with them about the possibility of a redress scheme.
- 3.4 It is recognised that nothing can compensate for the traumatic harm caused to and which still affects survivors of historic abuse. However, a full remedial support offer which has practical support, a financial element and recognition and acknowledgement by the council of the abuse that they suffered, is important to survivors and can be part of a survivor's journey that helps them to heal. A full remedial support offer must be focused on respect, engagement, information and support for survivors to move forward from their experiences.

Further, it is recognised that going through the civil compensation claims process may re-traumatise an abuse survivor as they are required to relive their experiences.

4. SPS and other options

The following three options have been considered:

- (1) Support Payment Scheme (SPS);
- (2) Lambeth type Redress Scheme; and
- (3) No scheme

These options are outlined below. The SPS is recommended as the preferred option.

Option 1: SPS

The SPS will provide a financial support payment of £8,000 to eligible survivors of non-recent abuse suffered when resident in the council's homes between 1966 and 1995. Payments to eligible survivors will be made through a process that is as straightforward and quick to access as possible and minimises the need to re-live past trauma or the risk of further trauma or harm. It is not a compensation scheme and does not seek to evaluate in financial terms the consequences of abuse suffered.

The SPS's focus is determining if the applicant is a survivor of abuse who satisfies the criteria of the scheme, rather than an analysis of the intimate details of the abuse. It thus avoids the need for survivors to undergo expert medical examinations or provide lengthy statements, with the 're-living' that would result from this. The SPS will facilitate support payments rather than present 'obstacles to be overcome' through a non-adversarial process. It does not require or adopt any standard of proof. It requires only that there be credible information and/or material of an applicant's eligibility. The SPS has an automatic review process where an application is not initially successful, and reasons will be given where an application is not accepted.

The SPS will not determine any issue of fault, negligence, or legal liability. It has no bearing on any civil compensation claims that abuse survivors may bring save that it requires an applicant to agree contractually to offset any scheme payment received against any subsequent civil compensation claim payment and requires any prior civil compensation claim payment to be offset against a scheme payment.

The drafting and design of the SPS reflects the advice received from Leading Counsel. Leading Counsel (Andrew Warnock QC) has confirmed that the SPS is lawful subject to the council having sufficient resources to operate the SPS and to meet the estimated cost of payments and it not posing an unreasonable risk to the council's insurance cover for civil compensation claims.

Option 2: Lambeth type Redress Scheme

A Lambeth type Redress Scheme would provide for every survivor resident in the council's children's homes during the relevant period to receive a harm's way payment on the basis that they were fearful that they would be subject to immediate physical or sexual abuse or neglect or cruelty.

In addition, the scheme would provide for an individual compensation payment for every survivor who suffered physical, sexual, or psychological abuse whilst living in

the children's home. The harm's way payment would be treated as an interim payment for compensation.

The amount of the harm's way payment and compensation would be a matter for the council to determine. The Lambeth scheme provides for a harm's way payment of up to £10,000 and a compensation payment of up to £125,000.

The establishment of a redress scheme would meet the aspirations of ISN and abuse survivors. However, the council's position is different from Lambeth's in two significant respects. Firstly, Lambeth does not have any insurance cover to meet the cost of civil compensation claims and secondly Lambeth obtained a capitalisation direction from the Secretary of State enabling it to finance the cost of its redress scheme through borrowing.

Accordingly, it would be unlawful for the council to establish a redress scheme such as the Lambeth scheme for the following reasons:

- It would be irrational and a breach of its council's fiduciary duty for the council to fund compensation payments when it has already paid for several tens of millions of pounds of insurance cover to meet the cost of civil compensation abuse claims; and
- The redress scheme is unaffordable as the council does not have sufficient revenue resources available to meet the estimated cost of harm's way and compensation payments under a redress scheme.

Option 3: No Scheme

Although the council has made a number of representations about a possible financial payment scheme for abuse survivors, it is nevertheless open to the council to decide not to establish such a scheme. Survivors might seek to argue that the council has created a legitimate expectation that there will be a redress or support scheme (in addition to non-monetary support services which the council has already put in place for survivors) but that would be unlikely to succeed, because the council's statements do not amount to a clear and unambiguous commitment to have a scheme. Moreover, the representations are at a very generalised level, with no representation or promise as to the specific contents of any such scheme.

The main benefit of not having a support payment scheme is that the revenue resources required to fund the scheme will be available for other purposes including funding additional support services for abuse survivors.

However, it is considered that the above benefit is outweighed by the disadvantages of not having a scheme. The council will be seen to have 'failed' survivors. Whilst the council has been criticised in the past for failing to act in response to child abuse allegations, the present administration has recognised this, apologised, and agreed to consider the introduction of a financial support scheme. Whilst the introduction of a scheme cannot right the wrongs of the past, it will be a further public acknowledgement of past failures and can be part of an abuse survivor's journey that helps them to heal and to move forward with their life.

Further, a decision not to have a scheme will be unacceptable to ISN and impair the council's future relationship with many abuse survivors and ISN.

Affordability of the draft SPS

5.

To help inform the SPS, an actuarial firm was appointed to conduct a study at the end of 2019 to estimate the number of individuals who were resident at any point in Islington homes in the 30-year period 1965 to 1995. This was based on a sample of Islington Council's family files and estimated only the numbers resident, not the numbers who suffered abuse. There is no complete list of children's home records for the period in question. The actuary estimated that between 1,700 and 2,400 individuals were resident in homes at any time during the period, and were still alive, with a best estimate of 2,000, in their report 'Historical Child Care Data, London Borough of Islington' dated 23 December 2019.

The actuarial study of December 2019 was important in establishing the maximum direct cost of the SPS, based upon the number of surviving residents and the amount of the proposed SPS per surviving resident (assuming SPS criteria would have been met). It is recommended that one-off windfall monies and unspent contingencies be used in the first instance to fund the SPS at the discretion of the Section 151 Officer. An accurate assessment of the running costs of the SPS will need to be undertaken when the SPS has proceeded through consultation.

There is a risk that the number of direct claimants under the SPS could be greater than the estimated number of applicants assumed in these financial implications; this could push the direct scheme cost above the amount assumed in the medium-term financial strategy. There is also a possibility that the number of direct claims could be less than the estimated number.

Stakeholder consultation on the proposed SPS

6.

There is a greater chance of the proposed scheme succeeding if it is the product of consultation. It is proposed to consult with survivors, the Islington Survivors Network (ISN) and other key stakeholders on the proposed SPS for a period of 6 weeks.

Any comments or suggestions received from ISN and others, will be carefully and properly considered before the SPS is finalised, sent to MMI for their further comments and /or a suitably worded letter of comfort before being re-submitted to a future meeting of the Executive for their consideration of the consultation responses and approval of the final SPS.

Next steps and milestones

7.

The NRCA Programme sets out the milestones for obtaining Executive approval to the final SPS. The key milestones are set out below with indicative dates:

1. Proposed SPS and consultation documentation submitted to Executive for approval to proceed with the consultation	18 March 2021
2. Consultation with ISN, survivors and other stakeholders (6 weeks)	March / April 2021

3. Outcome of consultation considered and final SPS drafted	May / June 2021
4. Consultation outcome and final SPS submitted to the Executive for consideration and approval to proceed with the scheme	September 2021

8. Implications

8.1 Financial implications:

8.1.1 The council has been working on a form of support payment scheme (SPS) since November 2018, for survivors of child abuse in Islington's children's homes covering the period 1965-1995. The intention has been to provide support payments to qualifying, former residents, but without restricting individuals' rights to pursue a civil compensation (public liability) claim. **The financial implications of the draft SPS are contained within the body of this report and in exempt Appendix C**

8.1.2 The main report and legal comments cover the reasons that a redress scheme is not a viable option to pursue. From a financial perspective, this is specifically because:

- There is significant insurance cover in place for the period 1965-95, as detailed above for civil compensation payments, so setting up a redress scheme to make compensation payments would not be a prudent use of public money.
- The redress scheme is unaffordable, as the council does not have sufficient revenue resources available to meet the estimated cost of a redress scheme, which would be well in excess of the estimated direct cost of the SPS.
- The option of financing a redress scheme via a capitalisation directive from central government would require (a) an actuarial statement to say that a redress scheme represented a value for money option to pursue and (b) a willingness from central government to grant a capitalisation directive.

8.2 Legal Implications:

8.2.1 The legal implications reflect the advice received from external Counsel.

Power to establish the Support Payment Scheme (SPS)

8.2.2 The council has power to establish the SPS under section 1 of the Localism Act 2011. Under section 1, the council has a general power of competence to 'do anything that individuals may do' and which expressly includes the power to do it for the benefit of the authority, its area or persons resident or present in its area.

8.2.3 However, the general power of competence must be exercised in accordance with the principles of administrative law which means that any decision to establish the SPS must be taken reasonably and properly, taking into account all relevant considerations and disregarding irrelevant ones. In particular, proper regard must be had to the council's fiduciary duty to its council tax and business

rate payers to act 'in a fairly business-like manner with reasonable care, skill and caution and a due and alert regard to the interests of those contributors who are not members of the body'. Therefore, the council must strike a reasonable balance between the interests of its council taxpayers and business rate payers who contribute funds and those abuse survivors who would be entitled to receive payments under the SPS.

8.2.4 Subject to complying with the principles of administrative law, the council has a broad statutory discretion to set up the SPS as it thinks fit setting criteria for entitlement to payment.

8.2.5 Claimants have no specific statutory entitlement to compensation under a scheme and therefore the SPS does not fetter the council in considering individual civil compensation claims brought by abuse survivors.

8.2.6 The proposed SPS provides for a financial support payment of £8,000 to persons where there is credible information that they suffered emotional, physical, or sexual abuse when resident in one of the council's children's homes between 1966 and 1995. In deciding whether to set up the SPS, the council will need to take into account:

- (1) estimated cost of the SPS and whether it is affordable for the council;
- (2) the council's auditor's duty under section 20(1) (c) Local Audit and Accountability Act 2014 to ensure that the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources; and
- (3) resident impact assessment.

Consultation

8.2.7 The council is proposing to consult ISN, survivors and other stakeholders on the proposed SPS. The Executive will need to conscientiously take into account all responses received to the consultation when deciding whether to establish the final SPS.

8.3 Environmental Implications and contribution to achieving a net zero carbon Islington by 2030:

No negative carbon emission or environmental impacts are expected.

8.4 Resident Impact Assessment:

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to

participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

A Resident Impact Assessment was completed on 25 February 2021 and the summary is included below. The complete Resident Impact Assessment is appended at Appendix D.

The proposed SPS is likely to have a positive impact on the range of known equalities and diversity characteristics of children who were in the care of Islington Council within the eligibility period.

In tandem with the existing specialist support services, the proposed scheme is likely to contribute to advancing the health, wellbeing and independence of survivors. The proposed scheme must acknowledge and be responsive to a potential applicant's multiple and complex support needs developed as a result of childhood abuse. There will be a need to ensure that:

- equalities and diversity is monitored and reported on throughout the implementation of the scheme
- a swift and compassionate process is in place to minimise impact on the health, wellbeing and independence of older applicants and/or those with disabilities.
- strategies are in place to address disproportionality in uptake by potential applicants from ethnic and cultural communities
- further harm and impact on an applicant's physical and mental ill-health or entitlement to benefits are minimised as far as possible
- strategies are in place to minimise triggering or re-traumatising applicant through the consultation on, or implementation of, the proposed scheme
- there is equitable access to information about the scheme for potential applicants
- strategies are in place that recognise the impact of institutional childhood abuse in a way that does not adversely affect the outcome for potential applicants.

9. Reason for recommendations

The proposed SPS will provide financial support for eligible survivors / victims of non-recent abuse suffered when in the council's children's homes. It will form part of a wider support scheme which encompasses trauma counselling, specialist advice, support and assistance for care, housing, appropriate welfare benefits, access to further education and suitable employment and support to access to care records. Whilst nothing can compensate for the traumatic harm caused to and which still affects survivors / victims of historic abuse, a full remedial support offer which has practical support, a financial element and recognition and acknowledgement by the council of the abuse that they suffered, is important to survivors / victims and can be part of a survivor's journey that helps them to heal and to move forward from their experiences. Accordingly, the proposed SPS is recommended for approval.

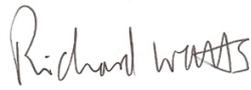
Appendices

- Appendix A - Revised SPS
- Appendix B – Consultation statement
- Appendix C - Exempt
- Appendix D – Resident impact assessment

Background papers: None

Final report clearance:

Signed by:



2 March 2021

Leader of the Council

Date

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