

**Report of: Leader of the Council**

<b>Meeting of:</b>	<b>Date:</b>	<b>Ward(s):</b>
Executive	14 October 2021	All

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**APPENDIX E TO THIS REPORT IS NOT FOR PUBLICATION****SUBJECT: Non-Recent Child Abuse Support Payment Scheme****1.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

- 1.1 The purpose of this report is to seek approval for the 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 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 consultation process undertaken on the proposed SPS during the period 6 April 2021 to 2 June 2021;
  - 1.2.2 The consultation responses received by the council on the proposed SPS;
  - 1.2.3 The council's response to the issues raised in the consultation responses ;
  - 1.2.4 The changes proposed to the SPS arising from the consultation responses; an
  - 1.2.5 If approved, the arrangements for implementation of the SPS.

**2. Recommendations**

- 2.1 To note the consultation undertaken on the proposed SPS and the responses received from consultees (Appendix A);

- 2.2 To approve the final SPS (Appendix C1) and final Scheme Terms and Conditions (Appendix C2);
- 2.3 To note the arrangements for implementation of the SPS (paragraph 4.1) and the proposals for the appointment of the Independent Service Provider and members of the Independent Review Panel (paragraphs 4.2 and 4.3);
- 2.4 To authorise the Corporate Director of Resources, following consultation with the Leader of the Council, to make any further changes to the SPS and Scheme Terms and Conditions considered necessary as a result of the responses from the council's insurers.
- 2.5 To authorise the Chief Executive and Corporate Director of Resources to take all necessary action to implement the approved SPS; and
- 2.6 To note that update reports on the operation of the SPS will be submitted to future meetings of the Executive.

### **3. Background**

#### **3.1 Approval of SPS for Consultation**

At the meeting of the Executive on 28 September 2017, the then 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.

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.

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 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.

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.

On 18 March 2021, the Executive approved the proposed SPS to 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 also 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 care records.

### **3.2 Consultation Process**

A public consultation on the scheme proposal took place between 6 April and 2 June 2021. The consultation gave local people and organisations the opportunity to provide detailed comments on the Council's proposed support payment scheme for survivors of non-recent child abuse.

There were 43 responses to the consultation. A total of four responses were received from organisations and/or those who work with survivors. Of those who submitted an individual response directly to the council, 32 identified as an Islington survivor of abuse in care and one identified as a non-Islington survivor of abuse in care.

The Council consulted on:

- Guiding principles for the scheme;
- Eligibility of who would be able to apply to the scheme;
- The evidence requirements for payments;
- Arrangements for making an application and scheme length; and
- How the scheme might be delivered including equalities issues that need to be considered.

Engagement and participation in the consultation was encouraged from survivors and key individuals or organisations, including those working with or representing survivors. Consultees were provided with a copy of the proposed SPS and the reasoning behind its terms. They were invited to provide comments or suggestions in relation to it within an original period of six weeks which was subsequently extended for an additional two weeks at the request of a survivors' organisation.

Responses were collected via written or verbal feedback including an online consultation form. The main method for collecting feedback was the consultation webpage and online survey. Information about the consultation was posted on the Council's webpage. Individuals and organisations could also send their comments and feedback to: [SPS.Consultation@islington.gov.uk](mailto:SPS.Consultation@islington.gov.uk)

The consultation document and a summary of the consultation responses is included at Appendix A.

### **3.3 Issues raised in the consultation responses, Council's response and proposed changes to the SPS**

#### **Scheme administration**

##### **3.3.1 Application form**

Several consultation respondents proposed ideas and recommendations about the application form that will be used for the scheme. There is a wealth of expertise and

experience to contribute and this input is to be welcomed and encouraged. The council welcomes the input of groups supporting survivors on the application form.

Their input and recommendations as to the format and content of the application form will be sought but beyond that it should be for council and its advisers to draft and finalise the application form.

### **3.3.2 Term 'support team'**

It is suggested that the use of the 'support team' within the scheme is confusing and suggest that this is changed.

This is accepted and has been changed to the 'SPS team' in the SPS (see Appendix B).

### **3.3.3 Prioritise applicants with long term health / life limiting conditions**

It is suggested that there is a need to prioritise applications by survivors who are older or have long term health problems or life limiting conditions.

This is accepted and a question / option will be included within the application form for an applicant to identify such long term health issues or life limiting conditions on the application form (their age will be apparent in any event) and the processing of such applications will be prioritised.

### **3.3.4 Assistance/advocacy**

The SPS provides for assistance from designated council staff when making/completing their application, should an applicant wish.

It has been proposed in the consultation responses that applicants should have the support of an advocate, guardian, partner, sibling or family member when completing the application form. A survivor support group say that they should both support this process and advocate on behalf of applicants. At the same time, however, it has also been proposed that there be easy access to the process and support structures that is independent of a survivor support group.

It would be appropriate, in addition to providing staff to assist with the completing and submission of applications, to allow for an applicant to be assisted and/or represented either jointly with, or wholly by, any other individual that they may wish to nominate, to include someone from a survivor support group if that is their choice. The role of 'applicant's assistant' has therefore been added to the scheme. It should be made clear, however, that no fees for any assistance or representation will be paid from the scheme.

Further, the council will procure an independent advocacy service to assist an applicant where this is required.

### **3.3.5 Information and material**

It was expressed that there could be involvement in establishing facts about credible information and material from groups that support survivors. This includes research and evidence, lists and survivor accounts from residential staff and children, council homes, documented incidents and statements. All relevant information must be taken into account.

The council embraces assistance that support survivors to assist with providing information and material. This assistance can only be provided at the specific request of and with specific authorisation from individual applicants and whatever information and material that groups supporting survivors can provide would have to be submitted with each application in question. The potential assistance that survivor support groups can offer will be communicated to applicants within the application form and when obtaining and completing their applications. It is then a matter for the applicant whether they take up the offer.

A concern was expressed that the scheme having access to applicant's files, would circumvent an agreed and established process of achieving this in a sensitive and safe way. It was also expressed that some survivors already have their files and that they can evidence their statements, whilst other survivors are not ready to read their records. Any information or material that can be provided to an applicant is to be welcomed. The objection to the SPS team having access to an applicant's records is not, however, accepted.

It is suggested that some guidance could be provided as to what counts as credible information and/or material, what is required in this respect.

The SPS documents have been amended so as to clarify that the requirement for credible information and/or material is non-prescriptive and allows for maximum flexibility and discretion in this respect

### **3.3.6 Confidential ID/confidentiality**

It has been proposed that each applicant be given a confidential ID and from then on be anonymous but what precisely is envisaged/proposed is not clear. Any suggestion that the identity of an applicant somehow remain unknown to the SPS team dealing with their application would not be viable.

Officers will consider whether confidential IDs can be used in a viable and constructive way in the application process

Concern was also expressed as to the confidentiality of any applicant who may work for council.

The independent nature of the SPS team should ensure the confidentiality of applicants who are council employees but any further administrative measures that might strengthen their confidentiality will be considered.

### **3.3.7 Confirmation checks**

It is suggested that the confirmation checks specified are too extensive and intrusive and will deter applicants.

Such checks would be carried out by the SPS team so in this way would not be intrusive. However, not all applicants will already be known to survivor support groups or the council and, therefore, an appropriate level of checks is required to avoid fraudulent applications and protect the council. Nevertheless, the checks proposed have been reviewed and their appropriateness and necessity considered (see Scheme Proposal Map – Appendix B).

### **3.3.8 Assessment**

It was expressed that those assessing the applications should have knowledge of the history of the council 'child abuse scandal', an awareness of child abuse and the impact of abuse. This also included requiring approaches such as a Statement Validity Analysis, a trauma informed approach and an understanding of dissociation, minimisation and child abuse accommodation syndrome.

It is intended that those assessing the applications will receive all the necessary and appropriate training and have the requisite knowledge and expertise. This is now explicitly stated in the SPS documents.

### **3.3.9 IPR/appeal**

Although it was raised that there is no right of appeal from the application decision, this is not accurate. There is an automatic appeal to the independent appeal panel (IAP) where the independent service provider (ISP) considers the threshold criteria for receipt of a payment have not been met. The wording and definitions within the SPS documents have been revised to make this absolutely clear.

It was suggested that survivor groups should agree IAP panel members, also that one member of the panel should be from a survivor run organisation. The experience and expertise from survivors and the groups who support them is again to be welcomed here. Their input as to the constitution of the IAP, along with that of other survivor support groups, will be sought and taken into account by the council before finalising the constitution. However, the membership of the panel must be wholly independent and should be decided by the council.

Criticism is made of the 28 day period for applicants to submit further documentation to the IAP for their review. It is accepted that it would be reasonable to extend this period to 56 days, with a facility for an applicant to request further extensions if required and the SPS has been revised to reflect this.

### **3.3.10 Face to face input**

The absence of any face to face input from applicants, that is opportunities for an applicant to make representations in person during the application process, has been criticised.

This had been specifically excluded from the process to avoid the need for applicants to have to give direct oral accounts with the risks of 're-living' and further harm related to this, also to make the process as quick as possible. There is no wish, however, to deprive an applicant who may wish to do so from providing face to face input.

Balancing this against the risk of 're-living'/further harm and the wish for a quick process, it is considered that the option for a face to face presentation at the IAP appeal stage, should an applicant wish, should be included. Accordingly, the SPS has been revised to provide for the option of a face to face meeting with the IAP members or via a zoom/teams type video link. The applicant would have until the conclusion of the 56 days, or any agreed extension, for submission of further documentation to make this request. As with other stages of the application process, an applicant would have the right to be assisted or represented, jointly or solely, by anyone they nominate at this face to face presentation.

### **3.3.11 Dismissal /delay**

It has been stated that the provision in the SPS permitting the council to dismiss an application in the event of repeated significant delay by an applicant in providing information or material is harsh, unrealistic and punitive.

The SPS wording had made clear that this would only happen following repeated significant delays in responding by an applicant. This provision was included to avoid potential administrative impasses. Upon further consideration, however, this could be achieved by setting a final deadline after which the application will be assessed but without the information and material requested, should this not have been provided after all reasonable time has been allowed for this. The SPS has therefore been revised accordingly.

### **3.3.12 Feedback**

It was requested that groups supporting survivors take part in periodic reviews of the SPS and that there should be a feedback facility for survivors/applicants.

There should be a facility for both applicants, survivors, survivor support groups or anyone else interested to provide feedback whilst the SPS is operational. It is important for the council to hear the range of views and a facility will be introduced enabling applicants, survivors, survivor support groups or anyone else interested to provide feedback whilst the SPS is operational.

### **3.3.13 Database**

The issue has been raised of prior claimants providing their consent to being included in the proposed database and being protected.

This is accepted and the SPS documents have been revised to ensure that prior claimants provide their consent to being included in the proposed database and are protected

### **3.3.14 Promoting scheme**

There were a range of ideas and recommendations as to publicising the scheme. This input is important and should be progressed.

The council is happy to consider the ideas and recommendations and will seek the input of survivor support groups as to publicising and promoting the SPS.

### **3.3.15 Referrals**

It has been requested that publically announced strategies/policies for referring alleged and known child abusers to the police and to the council's local authority designated officer (LADO) should be incorporated into the SPS.

The SPS has been amended to give effect to this request.

### **3.3.16 Adverse issues**

Unconscionability is a material consideration. The right to decline an application where it would be unconscionable to make a payment due to adverse issues has been questioned.

The majority of comments appear not to take into account the unconscionability aspect, that this provision is a protection for very particular and extreme situations which are unlikely to arise in practice and is in no way seeking to use criminal activity as a means to exclude applicants.. A concern was expressed about the inclusion of the category of 'paedophilia' as this was seen as one form of sexual crime whereas all are relevant.

This is a necessary protection and should remain but it is accepted that the current wording in the SPS requires refinement. Accordingly, the SPS has been revised by replacing the adverse issue of 'paedophilia' with 'sexual crimes.' Further, a more expansive explanation of 'adverse issues' has been provided, that acknowledges a link between abuse and criminality and makes clear that there is no intention to use criminality as a means to exclude applicants per se, but that there could potentially be a situation where the particular and extreme features of the adverse activities would make a scheme payment ethically or morally untenable.

## **Eligibility**

### **3.3.17 Categories of survivors**

Consultation responses have proposed that the following further categories of survivors should also be eligible to receive a support payment under the scheme:

- Those placed in small group foster homes if not already included;
- Those who were placed in foster care;
- Those who were placed in boarding schools;
- Those who were placed by council in non-council homes;
- Those who were placed by other bodies in council homes
- Those who were placed in holiday placements;
- Those who were placed in B&B/hotel placements;
- Those who were placed in Hutton Poplars;
- Deceased survivors;
- Survivors who were in care with LCC (prior to 1966);
- Survivors who were in care prior to 1966 or subsequent to 1995; and
- 'All people in care.'

It has also been proposed that there be 'complete flexibility' as regards those survivors who should be eligible and that applications should be considered on a case by case basis.

The SPS was conceived to support a specific/discrete group of survivors (those placed by the council in council run children's homes between 1966 and 1995), taking into account the limited financial resources of the council and the fact that it has insurance in respect of civil compensation claims. The actuarial investigations and analysis which underpin the scheme do not extend beyond those who were placed by the council in council run children's homes from 1966 to 1995.

The adverse experiences and abuse suffered by survivors outside this category are equally legitimate and valid but the information, analysis and funding is not currently available to encompass them in the SPS at this time. To encompass them within the SPS a whole new actuarial and financial process would have to take place and further engagement with the council's insurers which would take a considerable time and would significantly delay the commencement of the SPS.



Care situations where the council were not directly in charge/responsible and did not have day to day control can also be distinguished from those that fall within the scope of the current SPS.

The reason why the scheme was limited at conception was that a specific issue in relation to council run children's homes had been identified.

The purpose of the SPS is to provide financial assistance to survivors rather than compensation. As such, it is not considered appropriate for the scheme to make provision for payments to next of kin of survivors who have died.

### **3.3.18 Types of abuse**

Consultation responses have proposed the inclusion of the following categories of abuse:

- Neglect;
- Peer on peer;
- Financial abuse;
- Exploitation;
- Racist abuse;
- Any abuse by a council employee;
- Separation of siblings;
- 'Pindown restraints'; and
- Abuse perpetrated by visitors introduced to care homes by managers/staff at care homes.

Comments also questioned whether abuse perpetrated physically outside/away from the care home in question, for example whilst on a holiday or in a staff member's own home, is included (this is the intention, assuming the other criteria are also satisfied).

The wording of the definitions of abuse cited in the scheme documents (which had been deliberately streamlined a little, trying to be less 'legalistic') has also been questioned.

Unlike the categories of applicant, the addition of further categories of abuse in isolation would not impact on the actuarial or estimated maximum financial costs underpinning the scheme (see below paragraph 5.1 Financial Implications).

#### **The following types of abuse are considered below:**

##### **(a) Neglect**

There is arguably an inconsistency in including emotional abuse but not neglect. Accordingly, the SPS has been revised to include abuse which takes the form of neglect.

##### **(b) 'Peer on peer' abuse**

Purely 'peer on peer' abuse was originally excluded from the SPS. This is a reference to an exceptional situation in which the care environment, staff etc. have played no role of any sort in the occurrence of the abuse. In virtually all instances the environment does contribute to peer on peer abuse at some level and all these other instances are already included. The attempt to draw this distinction appears not to have been readily

understood and bearing in mind the exceptional and unlikely nature of the exclusion, it has now been removed from the SPS.

### **(c) Financial abuse, exploitation and racist abuse**

It is considered that financial abuse, exploitation and racist abuse would fall within the other categories of abuse in the SPS.

However, the wording of the SPS has been clarified to make it absolutely clear that financial abuse, exploitation and racist abuse do fall within the specified categories of abuse within the scheme

### **(d) Abuse by a council employee**

It is considered that the categories of abuse already provided would in effect cover any abuse by a council employee and this doesn't require any specific amendment to the SPS.

### **(e) Separation of siblings and 'pindown restraints'**

The separation of siblings and the use of 'pindown' restraint do not of themselves amount to abuse but could do so depending on the circumstances. It would be incorrect to consider including them as categories of abuse. However, the SPS has been amended to make it clear that the separation of siblings and the use of 'pindown' restraint are not of themselves alone forms of abuse but can be, depending on the factual circumstances and clarifying that in such situations both would fall within the specified categories of abuse within the scheme.

### **(f) Abuse perpetrated by visitors**

It is accepted that abuse perpetrated by visitors introduced to care homes by the manager/staff is abuse facilitated by the latter and should be included within the SPS.

The SPS has been modified to include this.

### **(g) Abuse perpetrated physically outside/away from the care home**

The SPS as originally drafted is intended to cover abuse perpetrated physically away from the home during the placement. The SPS now covers this.

### **(h) Definition of abuse**

It is accepted that the definitions of abuse included in the SPS should be those that are most acceptable to survivors. Accordingly, the SPS has been modified to include the specific definitions of abuse preferred by survivors.

## **3.3.19 Time period of SPS**

It has been suggested both that 2 years is too short a period for the SPS and that 5 years would be more appropriate. It was expressed that the scheme length must be flexible and express concern at the provision allowing for this to be varied – presumably reduced - upon 4 weeks' notice. The concern appears to be applicants not having sufficient time to submit

their applications which could be exacerbated by the closure date being accelerated at what is seen as short notice.

The 2 year period specified appears appropriate, with the facility for the council to extend or shorten if required. However, it is considered appropriate, in order to try and address the concerns here, to extend the notice period for changing the closure date from 4 weeks to 3 months, also to clarify that any closure date relates to the submission/receipt of the application only and not the assessment/conclusion of the application and that there is the facility to extend the period and the flexibility is seen as required.

### **3.3.20 Amount of payment**

It has been proposed that the amount of the support payment be increased from £8,000 to £10,000.

The council is amenable to increasing the support payment to £10,000. The financial implications of increasing the support payment are set out in paragraph 5.1 below.

### **3.3.21 Offsetting**

Opposition has been voiced to the proposal to offset any prior civil compensation payment against any scheme payment and any scheme payment against any future civil compensation payment. The point is made that the scheme payment is not a compensation payment and the two are therefore distinct. There is, however, an issue of fairness that has a bearing here and must be considered. Whilst a scheme payment and a compensation payment are different, they are both coming from or on behalf of the council and the offset allows a fair distribution of a finite resource.

Further, it appears that the offset may be a prerequisite to securing potential support for the SPS from the council's insurers.

Therefore, it is proposed that the offset remain part of the scheme. .

### **3.3.22 Payment of support payments and impact on benefits**

It has been pointed out that a significant number of survivors' entitlements to benefits/exemptions would be adversely affected by a scheme payment. An exemption in this respect is being sought from government by the council. The survivor support groups and survivors could potentially assist with this/lobby government

The proposed changes to the SPS in Appendix B are shown by crossing through in the case of deletions and by underlining in the case of additions.

## **3.4 Meeting with a survivor support group**

A meeting took place with one of the survivor support groups for them to put forward their comments on the proposed SPS on 31 August 2021. The outcome of that meeting has been taken into account by officers when finalising the SPS.

## **3.5 Summary of the main provisions of the recommended SPS**

The SPS will provide a financial support payment of £10,000 to eligible survivors who suffered abuse by way of neglect, emotional (sometimes referred to as psychological), physical and / or sexual abuse from a council employee, a visitor introduced to a care home by the manager or member of staff or volunteer when placed by the council in Islington run children'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 attempts to minimise the need to re-live past trauma or the risk of further trauma or harm.

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 to the Independent Appeal Panel where an application is not initially successful, and reasons will be given where an application is not accepted

The SPS is not a compensation scheme and does not seek to evaluate in financial terms the consequences of abuse suffered. It 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.

An application under the SPS may be declined if there is information or material that the applicant has been involved in terrorism, links to a terrorist organisation, organised crime, murder, manslaughter and sexual crimes ('adverse issues') and it would in all the circumstances be unconscionable for the council to make a payment under the SPS. The Independent Review Panel will be responsible for determining whether an application should be declined due to adverse issues.

### **3.6 Position of Council's Insurers**

The final SPS has been sent to the council's insurers for their further comments. Their responses have not yet been received. If available, they will be reported to the meeting. It is recommended that authority be delegated to the Corporate Director of Resources, following consultation with the leader of the Council, to agree any further changes to the SPS considered necessary as a result of those responses. The current position of the insurers regarding the SPS is included in exempt Appendix E.

## **4 Implementation of SPS**

### **4.1 Arrangements for receiving and considering applications**

The operation of the SPS needs to have an identity independent from the council in all its dealings. Therefore, the SPS will be administered by a Support Payment Team that will operate independently from the council. Any external organisations or individuals that may

be involved in the administration of the SPS will share and operate under this independent identity.

The Support Payment Team will comprise an independent service provider (ISP), an independent appeal panel (IAP) and staff recruited by the council specifically for the administration of the SPS. The administrative staff will be responsible for supporting applicants in completing and submitting the application, receiving and registering applications for payment, locating any children's files relating to the application and transferring the applications and all relevant files / documents and information to the independent service provider and keeping records. The administrative and ISP will make the necessary confirmation checks. The ISP will be responsible for assessing each application received and determining whether the threshold for making a support payment is satisfied. The IAP will consider and determine whether the threshold criteria for a support payment has been met in respect of an application which the ISP is not satisfied meets the threshold and whether an application where adverse issues have been identified, should be declined.

#### **4.2 Procurement process for external legal firm to access applications**

A need for the assessment of applications to be carried out by an independent body has been identified. The assessment of the applications will require the analysis of information and material. It will also, therefore, need to be carried out by individuals with appropriate professional expertise. It is therefore proposed that an independent service provider ['ISP'] with the necessary professional expertise, namely a law firm, be engaged to administer parts of the SPS.

The appointment of an external service provider will constitute a public services contract and therefore need to comply with the provisions of the Public Contracts Regulations 2013 and the council's Procurement Rules. The appointment of a provider by way of a direct call off from an established framework will satisfy the requirements of the regulations and procurement rules. The appointment will be the subject of a separate procurement strategy and contract award report. The report will recommend the direct appointment of a service provider from the Crown Commercial Services' General Legal Advice Services framework agreement. The framework was the subject of a competitive tendering exercise and therefore satisfies competition and value for money requirements and may be accessed by local authorities.

#### **4.3 Independent Appeal Panel procurement**

The IAP members will need the appropriate knowledge and expertise to carry out their role. It is therefore proposed that the panel comprise barristers/judges, senior or expert social workers and individuals from relevant charitable organisations with appropriate expertise. A judge or barrister would chair the IAP.

As the appointment of barristers/ judges is a specialist discipline, council officers have sought the advice of its external legal advisers on the scheme (DAC Beachcroft) as to potential retired Judges and / or barristers that could sit as members of the IAP. A short list of candidates will be put together who meet the selection criteria namely:

- (1) Experience - Relevant experience of abuse claims, support payment schemes and personal injury cases generally;
- (2) Knowledge - Level of interest expressed, knowledge and observations about the SPS;
- (3) Alignment with the objectives of the SPS;

- (4) Commitment - Time commitment over life of scheme, other commitments;
- (5) Conflicts – Any potential conflicts of interest, independence; and
- (6) Cost – Daily and hourly rates and terms and conditions.

A similar selection process will be undertaken in respect of the appointment of the non-legal members of the IAP. It is proposed to evaluate the non-legal experts against the following criteria: (1) Experience - Working background;

- (2) Knowledge - Personal background;
- (3) Alignment with the objectives of the SPS;
- (4) Commitment – Availability for life of scheme, other commitments; and
- (5) Cost – Daily and hourly rates

The appointment of members of the IAP constitutes a 'light touch' service for the purposes of the Public Contracts Regulations 2013. However, the aggregated value of the contracts for the IAP members is estimated at below the 'light touch' threshold and therefore the full requirements of the 2013 regulations will not apply. However, the appointment of the IAP members will need to comply with the requirements of the council's Procurement Rules and their appointment will be the subject of a separate officer delegated decision.

#### 4.4 Timetable

The timetable for approval of the final SPS is currently:

<b>Description</b>	<b>Date</b>
<b>Council Executive meeting</b>	
Executive meeting to approve final SPS	14/10/21
<b>Key decision of Corporate Director of Resources</b>	
Approval of procurement strategy for an independent service provider and contract award	27/10/21
<b>Delegated decision of Corporate Director of Resources</b>	
Appointment of members of the Independent Appeal Panel	11/21
<b>Support Payment Scheme</b>	
Launching of the SPS	Spring 2022

## 5 Implications

### 5.1 Financial implications:

#### 5.1.1 Background

The council is consulting on a support payment scheme (SPS) for survivors of child abuse in Islington's children's homes covering the period 1965-1995. The intention is to provide support payments to qualifying, former residents, but without restricting individuals' rights to pursue a civil compensation (public liability) claim.

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 children's 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 Islington children's homes at any time during the period, and were still alive, with a best estimate of 2,000. The actuarial study was important in estimating 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). An estimated maximum direct scheme cost of £16m has been provided for in Islington's budgeted reserves.

In considering the overall affordability of the scheme, consideration must be given to the Council's budget and its reserves position. The Council has a balanced budget and does not presently anticipate a problem in balancing its recurrent income with its expenditure over the medium term. The Council intends to fund the SPS from its reserves. As at 31<sup>st</sup> March 2021, the total Council Earmarked reserves stood at £140m. After accounting for ring fenced funds and timing differences, the Council held just below £92m. An SPS of £16m would reduce the Council's reserves by 17.4% to £76m. Increasing the maximum scheme cost to £20m would reduce reserves by 21.7% to £72m. By way of comparison, in 2018/19 (the last full dataset available) the average Earmarked Reserves balance for an Inner London Borough was £115m.

### **5.1.2 Consultation Responses**

For the purposes of considering the financial implications, the consultation responses are considered generically, where possible.

#### **(1) Individual Payments Raised to £10k from £8k**

This would increase the estimated maximum direct cost of the SPS by £4m to £20m, a percentage increase of 25%. The financial impact of this decision needs to be carefully considered alongside the Council's fiduciary duty. Based on the original maximum estimated scheme cost a reserve was established of £16m in order to set aside funds to be utilised. Should the amendment to the scheme be approved, the additional £4m can be found from the 'Budget Risk and Insurance' reserve. This is estimated to reduce this reserve from £25.4m to £21m. Whilst this is a one off reduction in a key element of our financial resilience, it is affordable in the context of an ongoing and sustained financial strategy of increasing Earmarked Reserves and the General Fund Balance.

#### **(2) Extending the SPS Period from the Current 1965-1995**

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. Any change to the 30-year qualifying period would require the council to commission another actuarial review so that the estimated maximum scheme cost could be re-calculated. This would be a lengthy process to commission and execute. The entire process would then need to be re-run to determine the affordability and legality of the resulting scheme and cost.

There would need to be a significant re-engagement with the council's insurance providers for the period.

**(3) Include Deceased Residents within the SPS Eligibility**

The actuarial review underpinning the financial assumptions of the scheme is based on estimated numbers of surviving residents. Should the scheme be expanded to include deceased residents, a further actuarial review would be required with the associated redetermination of affordability and legality of the scheme overall.

**(4) Include Foster Care Placements**

Similar to (3) above, the actuarial review underpinning the financial assumptions of the scheme is based on estimated numbers of surviving residents of Islington Care Homes. Should the scheme be expanded to include foster care placements, a further actuarial review would be required with the associated redetermination of affordability and legality of the scheme overall

**(5) Include Placements other than Islington Children's Homes**

Consultation responses have proposed that the SPS should cover specific and ongoing placements in settings such as non-Islington children's homes, boarding schools and secure units, bed and breakfast and other hotel accommodation, and all other places where Islington placed children in care. It is not clear if records of such placements exist. If there are some records or data indicating such placements, then a further actuarial review would be required with the associated redetermination of affordability and legality of the scheme overall

**(6) Include Third Party Abuse including Peer-On-Peer and by Visitors to Islington Children's Homes**

These events would relate to abuse against residents of Islington children's homes over the 30-year period. Recognising that the actuarial review included an estimate of all placements and not the type of potential abuse, there would be no increase in the estimated maximum direct cost of the SPS in the event that these do constitute qualifying abuse headings under the SPS. The actual cost (as opposed to the maximum cost) of the scheme would be higher however as an increased proportion of residents would be eligible.

**(7) Include Abuse Headings such as Neglect, Racism, Separation of Siblings and Pin-Down**

There would be no increase in the estimated maximum direct cost of the SPS in the event that these do constitute qualifying abuse headings under the SPS, as these events would relate to abuse against residents of Islington children's homes over the 30-year period. As per (6) above, the actual cost of the scheme would be higher due to the increased number of actual eligible residents.

**(8) Make Payments under the SPS where Previous Civil Claims Paid and No Offset Against Future Civil Claims**



The first instance would involve making payments over and above a court assessed judgement as to the financial award paid out for an individual claim. The second instance would take away a key benefit of the SPS to the council's insurance providers. Both instances would, on the face of it, potentially compromise the council's insurance position in respect of settled and future claims. This would appear to be a fundamental change to the proposed scheme and would need to be fully re-assessed accordingly from a legal, financial and insurance perspective.

## **(9) Reduce the Number of Proposed 'Verification' Checks**

This could not be countenanced from a financial or insurance perspective. We must ensure that SPS claims are subject to the full range of proposed verification checks to ensure that there is proper use and application of public funds and to ensure that our insurance position is not in any way compromised in respect any of future, civil compensation claims.

Further financial implications are included in exempt Appendix E.

## **5.2 Legal Implications:**

5.2.1 In deciding whether or not to approve the adoption of the final SPS set out in Appendix C, the Executive must:

- (1) conscientiously have full and proper regard to the consultation responses in Appendix A and summarised in paragraph 3.5;
- (2) take into account the comments on each of the issues raised by consultees as set out in paragraph 3.6;
- (3) have regard to the changes proposed to the SPS as a result of the consultation (paragraph 3.8 and Appendix B);
- (4) consider the recommended SPS; and
- (5) have regard to the matters set out in the Financial Implications, paragraphs 5.2.2 to 5.2.6 below and exempt Appendix E.

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

### **Power to establish the Support Payment Scheme (SPS)**

5.2.2 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.

5.2.3 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.

5.2.4 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.

5.2.5 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.

5.2.6 The proposed SPS provides for a financial support payment of £10,000 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.

Further legal implications are included in exempt Appendix E.

### **5.3 Environmental Implications and contribution to achieving a net zero carbon Islington by 2030:**

No negative carbon emission or environmental impacts are expected.

### **5.4 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.

The Resident Impact Assessment completed on 25 February 2021, has been updated following completion of the consultation undertaken on the SPS. The summary of the final SPS is included below. The complete updated Resident Impact Assessment is appended at Appendix D.

The final 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.

## **6 Reason for recommendations**

The 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 – Consultation document and responses
- Appendix B1 – Proposed SPS with tracked changes
- Appendix B2 – Proposed SPS terms and conditions with tracked changes
- Appendix C1 – Final SPS
- Appendix C2 – Final terms and conditions
- Appendix D - Resident impact assessment
- Appendix E - **Exempt**

**Background papers:** None

Final report clearance:

**Signed by:**



6 October 2021

Leader of the Council

Date:

Report Author:	David Daniels, Lawyer
Tel:	020 7527 3277
Email:	<a href="mailto:david.daniels@islington.gov.uk">david.daniels@islington.gov.uk</a>

Financial Implications Author:	Tony Watts, Head of Financial Planning
Tel:	020 7527 2879
Email:	<a href="mailto:tony.watts@islington.gov.uk">tony.watts@islington.gov.uk</a>

Legal Implications Author:	David Daniels, Assistant Director of Law
Tel:	020 7527 3277
Email:	<a href="mailto:david.daniels@islington.gov.uk">david.daniels@islington.gov.uk</a>