

# DRAFT

## APPENDIX C2

### ISLINGTON SUPPORT PAYMENT SCHEME – DRAFT AS AT 28/09/2021

#### Terms and Conditions

**G1.** Islington Council ['LBI'] offers a comprehensive support network for survivors of non-recent abuse. This includes counselling, care support and specialist advice in certain fields.

**G2.** The Islington Support Payment Scheme ['the scheme'] is part of this support network. It has been set up to provide financial support to eligible survivors of non-recent abuse suffered when *placed by LBI in children's homes run by LBI during the period 1966-1995*.

**G3.** The scheme's objective is to facilitate a support payment to eligible survivors 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.

**G4.** The scheme offers a fixed payment to eligible survivors. It is not a compensation scheme and does not seek to evaluate in financial terms the consequences of abuse suffered.

**G5.** The scheme'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.

**G6.** The standard of proof applied in civil litigation is that of 'the balance of probabilities'. This can also be described as 'more likely than not' or '51%+ likely'. The scheme wishes to facilitate support payments rather than present 'obstacles to be overcome' through a non adversarial process. It does not require or adopt such a standard of proof. It requires only that there be credible information and/or material of an applicant's eligibility. The scheme does not prescribe in any way the form that this credible information or material may take to facilitate maximum flexibility and discretion in the assessment process.

**G7.** The scheme does not seek to determine any issue of fault, negligence or legal liability. It operates wholly independently to and without any bearing on any civil compensation claims save that, in order to ensure fairness and compliance with its constitutional requirements, credit is required to be given in accordance with sections 7 and 8 below. Nothing done, nor any communication or representation made, in the course of the administration of the scheme or a scheme application has any bearing on, or amounts to any form of admission, waiver or acceptance or any fact or matter of law, in respect of any civil compensation claim.

**G8.** The comparatively straightforward nature of the scheme and the fact that the payment is fixed means survivors can access it without the need for legal representation.

## **1. Key terminology**

### **1.1 'LBI'**

The London Borough of Islington or Islington Council.

### **1.2 'The scheme'**

The Islington Support Payment Scheme to provide financial support to eligible survivors of non-recent abuse suffered when *placed by LBI in children's homes run by LBI during the period 1966-1995*.

### **1.3 'Support payment'**

A fixed payment of £10,000.

### **1.4 'Applicant'**

Survivor of non-recent abuse who applies for a support payment under the scheme.

### **1.5 'Placed in a LBI children's home'**

Resident in a LBI children's home, having been placed there by LBI.

### **1.6 'LBI children's home'**

A home contained within the list of scheme homes at Appendix 1. The list may be amended during the operation of the scheme, *if appropriate*.

### **1.7 'Relevant period'**

The relevant period is currently 1966 to 1995. The relevant period may be amended during the operation of the scheme, *if appropriate*.

### **1.8 'Qualifying abuse'**

Sexual, physical, emotional abuse and/or neglect as defined in 1.9, 1.10, 1.11 and 1.12 below committed by, or aided, abetted, counselled or deliberately procured by

- I. a person who was at the time employed by LBI
- II. a person who was providing child care services to children on behalf of LBI on a voluntary basis
- III. a visitor introduced into the LBI children's home and/or to the applicant by a person within I. or II. above

including abuse outside or away from the LBI children's home;

also including peer on peer abuse, racial abuse, the separation of siblings and use of restraint techniques such as 'pindown' where this falls within 1.9, 1.10, 1.11 and 1.12 below .

### **1.9 'Sexual abuse'**

Involves forcing or enticing a child or young person to take part in sexual activities, not necessarily involving a high level of violence, whether or not the child is aware of what is happening. The activities may involve physical contact, including assault by penetration (for example, rape or oral sex) or non-penetrative acts such as masturbation, kissing, rubbing and touching outside of clothing. They may also include non-contact activities, such as involving children in looking at, or in the production of, sexual images, watching sexual activities, encouraging children to behave in sexually inappropriate ways, or grooming a child in preparation for abuse. Sexual abuse can take place online, and technology can be used to facilitate offline abuse. Sexual abuse is not solely perpetrated by adult males. Women can also commit acts of sexual abuse, as can other children.

### **1.10 'Physical abuse'**

A form of abuse which may involve hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer fabricates the symptoms of, or deliberately induces, illness in a child.

### **1.11 'Emotional abuse'**

The persistent emotional maltreatment of a child such as to cause severe and persistent adverse effects on the child's emotional development. It may involve conveying to a child that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person. It may include not giving the child opportunities to express their views, deliberately silencing them or 'making fun' of what they say or how they communicate. It may feature age or developmentally inappropriate expectations being imposed on children. These may include interactions that are beyond a child's developmental capability, as well as overprotection and limitation of exploration and learning, or preventing the child participating in normal social interaction. It may involve seeing or hearing the ill-treatment of another. It may involve serious bullying (including cyber bullying), causing children frequently to feel frightened or in danger, or the exploitation or corruption of children. Some level of emotional abuse is involved in all types of maltreatment of a child, though it may occur alone.

### **1.12 'Neglect'**

The persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development. Neglect may occur during pregnancy as a result of maternal substance abuse. Once a child is born, neglect may involve a parent or carer failing to:

- a. provide adequate food, clothing and shelter (including exclusion from home or abandonment)
- b. protect a child from physical and emotional harm or danger
- c. ensure adequate supervision (including the use of inadequate care-givers)
- d. ensure access to appropriate medical care or treatment

It may also include neglect of, or unresponsiveness to, a child's basic emotional needs.

### **1.13 'Placement'**

**Period of residency in a LBI children's home.**

### **1.14 'Civil compensation claim'**

A claim for compensation for personal injury, loss or damage in accordance with the applicable laws of England and Wales.

### **1.15 'Compensation payment'**

A damages payment received in the course of a claim for compensation for personal injury, loss or damages in accordance with the applicable laws of England and Wales.

### **1.16 'Application form'**

The application form to access a support payment under the scheme at Appendix 2.

### **1.17 'SPS team'**

The team that administers the scheme. It comprises an independent service provider, an independent appeal panel and LBI staff who assist with the provision of information, records and confirmation checks.

### **1.18 'Independent service provider'**

An independent organisation with legal expertise.

### **1.19 'Independent appeal panel'**

A review panel that comprises independent individuals who possess either legal, social work or applicable charity work expertise.

### **1.20 'Adverse issues'**

Terrorism, links to a terrorist organisation, organised crime, sexual crimes, murder and manslaughter.

## **2. Who can apply**

2.1 Any living survivor of non-recent abuse can apply for a support payment if they were placed by LBI in a LBI children's home during the relevant period. An application may not be made in respect of a survivor who is deceased.

### **3. Criteria to qualify for a support payment**

3.1 An applicant will qualify for a support payment under the scheme if they:

- were placed in a LBI children's home by LBI
- during the relevant period and
- suffered qualifying abuse whilst in that placement.

3.2 These are the threshold criteria.

### **4. Information and material**

4.1 The scheme requires that there be credible information and/or material satisfying the threshold criteria.

### **5. Payment threshold**

5.1 Where there is credible information and /or material that the applicant was

- placed in a LBI home by LBI
- during the relevant period and
- suffered qualifying abuse whilst in that placement

5.2 then the threshold to make a support payment is met.

### **6. Adverse issues**

6.1 The scheme acknowledges a link between abuse and subsequent criminality on the part of survivors and subsequent criminality of itself does not prevent a survivor applying or a payment being made. At the same time, however, a link to the forms of extreme criminality defined as 'adverse issues', could be of such a severe nature that to make a payment under the scheme would be something that should not, in all good conscience, be done. LBI therefore reserves its right to decline an application where there is information and/or material that the applicant has had an involvement in or connection to the adverse issues identified and stated at paragraph 1.20 above, and a payment under the scheme should not in all good conscience be made.

6.2 Where any such involvement is identified the application will automatically be referred to the independent appeal panel to make this decision.

### **7. Prior civil compensation claim**

7.1 Where an applicant has, prior to qualifying for a support payment under the scheme, received a compensation payment or such a payment has been agreed in the course of a related civil compensation claim against LBI, the amount of any such payment or agreement will be offset against and deducted from any support payment to the applicant under the scheme. In this situation the applicant will receive only the balance of the support payment that exceeds the value of any compensation payment already made or agreed.

### **8. Subsequent civil compensation claim**

8.1 An applicant is required to agree contractually that a payment made under the scheme will be offset against, and deducted from, any subsequent, related future civil compensation claim payment or agreement to make such a payment.

8.2 The scheme is intended to provide straightforward and accessible financial support to qualifying applicants. It does not involve the process of investigation and analysis that would be applied in a civil compensation claim. Nothing done or stated in the course of the administration of the scheme or an application constitutes, or may be taken as, an admission or waiver of any matter of fact or law in relation to any civil compensation claim. LBI reserves its rights fully to defend any subsequent civil compensation claim, including to raise a limitation defence.

## **9. Limitation**

9.1 LBI reserves its rights to raise a limitation defence in any related civil compensation claim.

## **10. DWP**

10.1 LBI is seeking an agreement with the DWP that a payment made under the scheme is to be disregarded for the purposes of any assessment of a person's eligibility for a social security benefit entitlement that depends on any form of means test.

10.2 At the date hereof such an agreement has not been reached.

10.3 Absent such agreement an applicant would be obliged to notify the DWP of a payment received under the scheme.

## **11. Duration**

11.1 There will be an initial period of 2 years during which applications may be submitted.

11.2 This period may be varied upon 3 months' notice and can be extended if appropriate.

11.3 Any application received within this 2 year or any varied period will be accepted and processed.

## **12. Commencement Date**

12.1 The scheme will be operational with effect from [                    ]

12.2 Any application to join the scheme which is received by [                    ] will be accepted into the scheme for consideration. Any application to the scheme received thereafter will not.

## **13. Registration of interest**

13.1 Survivors are invited to register their interest in the scheme prior to it opening. They can do this clicking on the link at [ DETAILS TO BE CONFIRMED ] or calling [ DETAILS TO BE CONFIRMED ].

13.2 Anyone who has registered their interest in the scheme will, when the scheme opens, be sent an application form and provided with contact details for support staff who will assist in the completion and submission of the application.

## **14. Assistance/applicant's assistant and independent advocacy service**

14.1 An applicant may at any stage of the application process nominate one other person of their choice, the ‘applicant’s assistant’, to assist with their application and this other person may either act jointly with the applicant or solely on their behalf in the application process, as the applicant chooses. This other person may be affiliated to a survivor support group or similar organisation but is to be nominated only and directly by the applicant.

14.2 An independent advocacy service will be available to assist an applicant where this is reasonably required.

## **15. Application to the scheme**

15.1 An applicant applies for the support payment by submitting, or having his nominated applicant’s assistant submit, an application form together with specified documents.

15.2 The application form is available online [WEBSITE DETAILS TO BE INCLUDED] or in paper form from [ADDRESS]. The application form will explain that the applicant may nominate an applicant’s assistant and will signpost the applicant to any survivors’ support groups that LBI has knowledge of. The SPS team will also signpost the applicant to survivors’ support groups when application forms are obtained and being completed. The application form will also contain a section where applicants may confirm if they have any long term health conditions or life limiting conditions, for such applications to be expedited.

15.3 Dedicated staff within the SPS team are available to support applicants and applicant’s assistants in completing and submitting the application form. Contact details are included in the application form and will be provided to anyone who registers their interest in the scheme.

15.4 Applications should be submitted to the SPS team marked Strictly Private & Confidential at either the following postal or email addresses:

15.5 Postal address at [ ];

15.6 Email address [ ]

15.7 [DETAILS TO BE PROVIDED]

## **16. Administration of scheme**

16.1 The scheme is administered by the SPS team.

16.2 Upon receipt of an application, initial confirmation checks are carried out by the SPS team..

16.3 The independent service provider will then assess the application. Where it is satisfied that the threshold criteria have been met and no adverse issues as defined at 1,20 above are identified, a support payment will be made.

16.4 Where the service provider is not satisfied that the threshold to make a support payment has been met, or where adverse issues as defined at 1.20 above are identified, the application will be referred automatically to the independent appeal panel. The independent service provider will notify the applicant that the application has been referred to the independent appeal panel, as applicable confirm which of the threshold criteria have not been met and/or any adverse issues that have been identified, and invite the applicant to make any written representations in relation to this and/or submit any further information or material that they may wish to within 56 days, for the independent appeal panel to consider. The independent service provider will also offer the applicant a ‘face to face’ meeting with the independent appeal panel, which can take place in person or by a video link, should the applicant wish, to be requested within this 56 day period. The applicant may request further time to submit written representations,

information or material and request a 'face to face' meeting.

16.5 The application will then be reviewed by three independent appeal panel members, one with legal expertise, one with social work expertise and one with applicable charity work expertise. They will determine collectively whether the threshold criteria have been met. Where adverse issues have been identified they will also determine whether the application should be declined due to these. In the process of reaching their decision the panel members may request further information or material either from the applicant or the independent service provider, to assist in reaching their decision. If they consider the threshold criteria have all been met and any adverse issues are not such that the application should be declined, a support payment will be made. If they consider either that one or more of the threshold criteria have not been met, or that any adverse issues are such that the application should be declined due to them, the application will be declined and the applicant will, as applicable, be notified of the threshold criteria that have not been met and/or the adverse issues that have led to the application being declined.

16.6 The independent appeal panel's decision is final.

16.7 Any and all communication to the applicant confirming the decisions made will be limited to stating either that a support payment will be made, that the application has been referred to the independent review panel, or that the application has been declined, and in the latter two cases the reason(s) why.

## **17. Delay**

17.1 An applicant will be given reasonable and appropriate time to respond to any request by the SPS team for information or material, may request further time to provide this and any reasonable request will be accommodated. In the absence of a response within the specified or agreed time frames the SPS team will contact the applicant to follow up and will do all that is reasonably possible to support the applicant and by allowing further opportunities for a response. In the event of repeated and significant failures to respond to such a request the SPS team will notify the applicant of a final deadline for the information and material requested and confirm that following this deadline the application will be determined without this.

17.2 Upon the expiry of the final deadline specified the application will then be determined on the basis of the information and material already received only.

## **18. Right to withdraw application**

18.1 An application under the scheme can be withdrawn at any time during the application process, prior to the making of a support payment. An applicant does this by notifying the SPS team in writing that they wish to withdraw their application.

## **19. Confidentiality and Data Protection**

19.1 The transfer of all scheme data between LBI, the independent service provider and the independent appeal panel will be by secure, encrypted means.

19.2 The support team will treat all matters relating to all applications in the strictest confidence.

19.3 This does not preclude any person from disclosing protected information where required to by law.

## **20. Representatives**

20.1 The scheme is designed to be accessible without the need for legal representation. It does not,

therefore, allow for payment of legal or other representatives' fees of any sort or any payment in respect of applicant's assistants.. In the event that an applicant obtains legal representation in relation to an application, LBI will not be responsible for any legal costs incurred by the applicant.

20.2 The independent service provider is appointed by LBI to represent them regarding the operation of the scheme and applications received into the scheme.

## **21. Capacity**

21.1 An applicant who lacks the mental capacity required legally to run their personal affairs must have appropriate personal representation.

21.2 If it appears at any stage to the SPS team that an applicant lacks this capacity, the SPS team will facilitate the appointment of an appropriate personal representative for the applicant, referring the matter to the Court of Protection if required. The application will not be progressed further until this is in place.

## **22. Criminal Injuries Compensation Authority Payments**

22.1 If an applicant has received compensation from the Criminal Injuries Compensation Authority (CICA) in relation to abuse that forms the subject matter of their application, the applicant may have an obligation to repay to the CICA all or part of the compensation received from it and must notify the CICA of the support payment.

22.2 LBI will notify the CICA of any support payment made under the scheme.

## **23. Advertising**

23.1 LBI will from time to time advertise and publicise the scheme during the period it is open.

### **APPENDIX 1**

List of scheme homes.

### **APPENDIX 2**

Application form.