

Guidelines on Discretionary Payments for Abuse in State Care Claims

This document provides guidance to redress agencies when considering a discretionary payment for a survivor of abuse in state care for a payment amount that is more than the payment amount that has been assessed under the Common Payment Framework.

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About

1. In April 2025, Ministers decided that core State redress agencies will work towards offering comparable settlement payment for comparable experiences of abuse through the development and implementation of a common payment framework.
2. The Common Payment Framework was implemented in January 2026 and is the tool to guide decision making about what payment is offered to survivors of abuse in State care who are accessing redress from government agencies under their alternative disputes resolution processes. It has payment categories with fixed payment points which ascend in severity taking into account the severity of the abuse, the frequency, the duration and who carried out the abuse.
3. It is to be applied consistently by redress agencies when determining payments so that survivors benefit from a clear, consistent and fair approach that reflects the severity, frequency and duration of the abuse and neglect they experienced, irrespective of where they were in care or when the abuse or neglect occurred.



4. The Common Payment Framework states:

'The Payment categories are intended to determine payments for abuse in care redress. However, there may be the occasional claim where a further discretionary payment is appropriate in line with separate discretionary payment policy guidance'; and

'All potential category five payments shall be assessed as a discretionary payment and the process described in the discretionary payment policy guidance is to be followed.'

Purpose

5. The purpose of these guidelines is to:
 - provide guidance on when a redress agency may consider recommending a discretionary payment, being a payment for an amount that is more than the payment amount that has been determined for the claim under the Common Payment Framework (this includes category 5 payments);
 - outline the process it needs to follow when considering making a payment; and
 - ensure transparency for survivors about circumstances in which a discretionary payment may be recommended in respect of their claim.

6. The intent of the cross-agency collaboration discussed in these guidelines is to ensure that redress agencies are taking a reasonably consistent approach to the exercise of the discretion, including that survivors with similar circumstances are receiving similar discretionary payments no matter which state care setting they experienced abuse or neglect in.

Scope

7. This policy applies to claims where a redress agency has determined payment for the claim using the Common Payment Framework (including when it is considering a category 5 payment). It applies after a claim has been assessed, but before payment has been approved and any settlement offer is made.

It does not apply to claims:

- a. that are being assessed under a rapid payment. This is because discretionary payments usually relate to claims that have unique factual situations or circumstances where a person's concerns and care experience have been individually considered. Under existing rapid payment frameworks currently operating, consideration is not given to specific allegations so there is insufficient information to make such a determination.

- b. where a settlement offer is being considered outside of a redress agency's alternative disputes resolution process in a litigation context where other factors (such as litigation risk) are being considered¹.
- c. that relate to proven allegations of torture (as defined under the United Nations Convention Against Torture and the Crimes of Torture Act 1989). Any payment for proven torture is determined through processes outside of these guidelines.
- d. for other payments not being determined by the Common Payment Framework, such as an ex gratia payment for a process failure associated with the processing of an abuse in care claim, or a settlement payment for an interference with privacy arising from the processing of a claim.

Exercising the Discretion

Who is the decision-maker?

- 8. The decision-maker is the person within each redress agency who has the delegation² to approve redress payments. However, as discussed below, cross-agency consultation is required prior to a final decision being made.

How may the discretion be exercised?

- 9. The decision-maker may exercise discretion to make a payment for an amount that is more than the payment amount that has been determined for the claim under the Common Payment Framework. There is no ability to exercise a discretion for an amount that is less than what the Framework provides.

When may the discretion be exercised?

- 10. As noted in the Common Payment Framework, discretionary payments for claims should only arise occasionally because the Common Payment Framework was designed to cover the vast majority of claims. There will usually need to be exceptional circumstances before a discretionary payment is made.
- 11. This guidance does not describe all situations where a decision-maker may consider it appropriate to make a discretionary payment. Below are examples of situations where it may be appropriate to make a discretionary payment:
 - a. Where the redress agency has assessed the claim as falling into category five of the Common Payment Framework. These claims will always require exercise of

¹ This policy does not exclude discretionary payments where court proceedings have been filed, but the claim has been considered for payment under the Common Payment Framework.

² All redress agencies must operate within the delegation framework established by Cabinet Circular CO18(2).

discretion given there are no fixed payment points in category five (the category is \$75,000 plus).

- b. Where the survivor's state care experience is overall unique or contains novel or extraordinary elements and the Common Payment Framework payment category amount does not sufficiently recognise this.
- c. Where the payment level determined by the Common Payment Framework is insufficient to provide for an adequate remedy (as determined by the redress agency) in respect of potential legal breaches such as³:
 - i. Serious, long-standing or multiple potential breaches of section 9 of the New Zealand Bill of Rights Act 1990 (BORA); or
 - ii. Unlawful detention involving a significant⁴ loss of liberty – for example, a lengthy period of time in a care or youth justice residence where there was no Court order in place that permitted placement in that residence (e.g. where only a supervision order was in place).
- d. Where an additional payment is proposed in the context of a 'second claim'⁵ consistent with any policy in place for these claims.

What is the evidential threshold of allegations required to make a discretionary payment?

12. A discretionary payment can be made where an assessment has determined there is sufficient information to take the relevant allegations into account for the purposes of settlement. The level of evidence required should at minimum have regard to the evidential thresholds of the assessment process used by the redress agency. But as discretionary payments are generally for claims with novel circumstances and/or serious allegations where higher payments are often being made, it may be appropriate to consider a higher evidential threshold if a relatively low threshold is in general use by the redress agency concerned.

How is quantum of a discretionary payment determined?

13. As each claim that may involve the exercise of the discretion is unique, there is no fixed way for determining payment. Factors that may be relevant to consider include:
 - a. The relevant facts and circumstances of the claim including the severity of these and where they would ordinarily fit within the Common Payment Framework. For

³ The Common Payment Framework incorporates all aspects of a claim, including providing an adequate remedy for potential breaches under the New Zealand Bill of Rights Act 1990. Therefore, any discretionary payment that is made for potential BORA breach(es) or unlawful detention will be exceptional.

⁴ "Significant" in this context refers to the nature and duration of the loss of liberty.

⁵ See separate second claims guidance for a definition of a 'second claim', but a second claim is generally where a survivor has already received a payment and resolved a claim, but the relevant agency has agreed to assess additional allegations not previously considered or revisit allegations that have been previously considered.

example, if the claim falls into category 5 of the Common Payment Framework, consider how much more serious the claim is than category 4 claims.

- b. Any legal advice provided on possible quantum.
 - c. Previous comparator claims in which a discretionary payment has been made.
14. For any category 5 claims where the payment is for more than \$75,000, Crown Law endorsement of the payment is required in line with *Cabinet Office Circular (18)(2): Proposals with Financial Implications and Financial Authorities*.

Process for considering discretionary payments

15. Whilst a survivor may ask for a discretionary payment, no request is required from a survivor for an agency to consider making a discretionary payment.
16. If a survivor requests a discretionary payment, but the redress agency considers that a discretionary payment is not appropriate, the agency is not required to consult at a cross-agency level. However, the agency must still provide adequate reasons to the survivor when communicating the outcome of the claim. Reasons for declining a survivor's request for a discretionary payment could include the redress agency's opinion that:
- a. The allegations have not met the required evidential threshold;
 - b. The allegations do not meet the legal requirements for alleged legal breaches such as breaches of BORA or unlawful detention;
 - c. The Common Payment Framework amount is sufficient to provide an adequate remedy for potential legal breaches of this nature;
 - d. No reasons, or inadequate reasons have been identified for why the Common Payment Framework amount may be insufficient.
17. Where a redress agency is proposing to make a discretionary payment ("proposing agency"), the agency must consult with the other redress agencies on the proposed payment before seeking its own internal approvals to make the payment. While ultimately it is the decision of the proposing agency as to whether a discretionary payment is approved and made, the proposing agency should consider feedback from agencies provided during consultation. The usual steps for such consultation are:
- a. The proposing agency prepares a summary of information relating to the claim which enables the other redress agencies to broadly understand the claim and why a discretionary payment is being proposed ("the information summary"). All information shared is to be anonymised.

- b. The information summary is to be shared with the other agencies through any cross-agency assessment related group that may be in place at the time or other agreed mechanism⁶ (cross-agency group). The cross-agency group will consider the appropriateness of making a discretionary payment and any proposed payment amount having regard to such matters including but not limited to the following:
- i. The relevant facts and circumstances of the claim;
 - ii. Whether there are sufficient reasons for making a discretionary payment including whether it fits into one of the types of situations referred to in paragraph 11 above;
 - iii. Previous comparator claims in which a discretionary payment has been considered and/or made;
 - iv. Any legal advice that may have been obtained;
 - v. Possible precedential impacts.
- c. If the cross-agency group is in agreement that there are insufficient reasons for the making of a discretionary payment and the proposing agency agrees, a discretionary payment will not be progressed by the proposing agency and they will assume responsibility for the matters contained in paragraphs 19 and 20.
- d. Where the cross-agency group agree that there are sufficient reasons for the making of a discretionary payment or where there is no consensus, but the proposing agency wishes to progress it, the summary information along with any advice covering the matters in paragraph 17(b) is to be provided to the Operational Leaders Group⁷ for consideration.
- e. If payment is not supported by the Operational Leaders Group and the proposing agency still wishes to progress the payment, the summary information along with any other advice covering the matters in paragraph 17(b) is to be escalated to the Senior Officials Group⁸ for discussion. This discussion may be helpful to inform the final decision, but ultimately, it is the decision of the agency's decision-maker as to whether a discretionary payment is approved.
18. A cross-agency anonymised discretionary payment register is to be kept of all claims where an agency consults on a proposed discretionary payment. The register should include key information such as whether the payment was or was not progressed

⁶ This could include the weekly cross-agency meeting that is set-up as part of the 'Collaborative Ways of Working' to help ensure a consistent approach to the application of the Common Payment Framework.

⁷ This is a cross-agency leadership group made up of operational leaders from each redress agency who regularly meet to discuss operational matters that impact all agencies.

⁸ The Senior Officials Group is a cross-agency group made up of representatives from all redress agencies who provide governance for the redress implementation work programme.

and the reasons for doing so, the amount of any approved discretionary payment amount and the Common Payment Framework amount.

19. The proposing agency will have responsibility for updating the discretionary payment register, obtaining the relevant payment approvals consistent with any internal policies and communicating the outcome to the survivor consistent with paragraph 20.
20. Adequate written reasons are to be provided to all survivors who have requested a discretionary payment or who are receiving a settlement offer which includes a discretionary payment.