

**Executive summary of Audit report on the
Administration of the ‘Lambeth Children’s Homes Redress Scheme’ undertaken between
December 2019 and June 2020**

1. **Terms of reference:** to undertake an audit of a random selection of files where awards have been made under the “Lambeth Children’s Homes Redress Scheme” (hereafter the Scheme) and to review the approach taken by Kennedys, Solicitors and Lambeth in the making of offers and the settlement of applications made under the Scheme.

2. **The “Lambeth Children’s Homes Redress Scheme”:** the terms of the Scheme are set out in 2 documents, namely, a substantive document (of 14 pages) which sets out the scope and terms of the qualifying criteria, and a document setting out 3 compensation bands/tariffs (B1, B2 and B3) for the IRP award (which at common law would be characterised as an award for general damages) and one compensation band/tariff (B4) to cover damages for loss of educational and employment opportunity. Provision is also made for the award to include an element of aggravated damages at clause 2.12¹. I am informed that where the threshold for an enhanced award is met, as a matter of practice an uplift of 10% is applied to the IRP award. The tariff bands in turn provide the parameters for settlement of particular categories of claims with reference to a points system. By definition, the exercise of discretion is required on the part of the file handler and third party Solicitors to arrive at an appropriate level of award and these decisions are informed with reference to various categories of documentation and medical evidence.

3. **Method of selection of the files to audit:** I was provided with a list comprising the names of all settled applications and I identified 76 of the files on a random basis, which were sent by courier to my Chambers. The files contain correspondence and other documentation compiled by and/or received by Kennedys in their handling of the claims.

¹ “This category of damages is awarded as compensation for an individual’s mental distress where the manner in which the abuse has been committed, or the motive for the abuse, has upset or outraged the individual. For example issues of race or sexual orientation. The tariff applied to this Scheme factors in an aggravating element into the damages awarded.”

4. **Method of review:** I have read through all of the 76 files with a particular focus on the following documentation:

(i) The evidence provided by the applicants of their experiences of abuse, which is typically presented in one or more of the following ways:

- Within the Scheme application forms
- In witness statements attached to the scheme application forms, or more usually submitted at later dates
- Further accounts provided in correspondence from the applicants' Solicitors in the course of and prompted by discussions about valuation of the claims
- Accounts given by applicants to medical experts where a medical report has been requested under the terms of the Scheme;

(ii) Other evidence which might be available to corroborate/elaborate upon the evidence provided by the applicants about their experiences of abuse, which might include:

- Social care records [although in many cases these had not been retained and were not available]
- GP and other medical records
- School reports and CVs
- Witness statements from family members
- Witness statements from siblings who have also made claims under the Scheme;

(iii) Summaries of the above evidence compiled by the file handlers as part of the process of analysis and assessment, which are typically recorded in the following categories of documents:

- File notes
 - Advice letters to Lambeth
 - Offer letters to the applicants by their Solicitors
 - Attendance notes of discussions with Solicitors acting for the applicants
 - Attendance notes of discussions with litigants in person;
- (iv) General inter-party correspondence.

5. **Particular matters for consideration:** I was particularly concerned to consider and ensure that:

- The applicants' accounts of abuse and its effects were consistent with the balance of the evidence
- Within reasonable parameters, that a range of evidence had been sought where appropriate and necessary to corroborate the claims
- The categorisation of the abuse by Kennedys and Lambeth for the purpose of assessing quantum was consistent with the applicants' accounts and with the medical evidence and the balance of the evidence as a whole
- Due consideration was given to any representations made by applicants and/or their Solicitors and assessments revised in light of new evidence
- The offers made by Lambeth were commensurate with the nature, extent and impact of the abuse in any particular case
- The offers made were communicated to the applicants with sufficient explanations and breakdowns so that they could be properly understood
- Counter-offers, where not accepted, were rejected with a full explanation as to why they were not considered to be acceptable
- Proper consideration, sensitivity and courtesy was exercised at all times towards applicants and/or their Solicitors

- Proper explanations of the working of the Scheme were provided where relevant
- Offers were made of the non-financial benefits and opportunities available to applicants in addition to financial compensation and that the processes to access such benefits were clearly set out
- The Harms Way Payments (HWP) were properly calculated and made at the outset of the claims (save where the applicants were deceased)
- Due consideration was given to the making of Band 4 offers and uplifts for aggravated damages.

6. **Analysis of the medical evidence:** my observations about this aspect of the evidence are as follows:

- In all cases summaries of the medical evidence were clearly set out and consistent with the medical reports and other documentation
- There was little dispute or challenge by applicants and/or their Solicitors arising from the factual summaries of the medical evidence which were offered by Kennedys as the basis for their quantum assessments
- The majority of challenges made by applicants and/or their Solicitors were with reference to the interpretation of such events and injuries with reference to the tariff bands and the points that should be allocated on this analysis
- There were some complaints made by applicants about the attitude and methodology of several of the medical experts. It is impossible to assess the veracity of such complaints: however, they were dealt with sensibly and sensitively in a non-adversarial manner.

7. **Emerging themes and trends:** I make the following observations about the general approach to the claims:

- Increased offers were frequently made by Lambeth of its own initiative without being invited to do so, usually where Kennedys had identified and advised that additional evidence disclosed had rendered a higher award appropriate

- Applicants were generally given the benefit of the doubt in the interpretation of their evidence, even where inconsistencies were also identified in the documents: in most cases the discrepancies were not so stark as to be of any significant concern: however, case **881409** is an example where there were significant inconsistencies, but where the applicant was given the benefit of the doubt in order to facilitate settlement
- It was clearly recognised by the file handlers that accounts of abuse may take time to evolve and crystallise considering the difficulties that can arise with survivors coming to terms with and articulating the details of their abuse: in one case an applicant had no recollection at all of sexual abuse due to amnesia, but his award was increased when a different applicant named him as the victim of a known Shirley Oaks abuser
- It is evident from the many harrowing accounts given that the suspicion of fabrication/exaggeration is rare: there were several cases where the medical experts questioned the reliability of the accounts of abuse, but these were also characterised by the applicants having co-morbid psychiatric conditions which were in themselves difficult to disentangle from the effects of the abuse
- Factual elements which are better susceptible to verification e.g. the location and duration of periods in Lambeth's care; the co-incidental presence of known abusers; educational achievements etc were all properly investigated with reference to social care records, school records and the applicants' employment histories/CVs etc. Applicants were always given the benefit of the doubt e.g. where out of area foster placements cropped up with no clear connections, they were nonetheless treated as being Lambeth related and therefore within the Scheme for the purpose of assessing compensation.

8. **Non-financial benefits:** the Scheme offers a range of non-financial benefits to applicants in addition to financial compensation and it is important that these are offered and explained before a case is concluded. I did not have access to information about the provision of non-financial benefits, which would take place after the financial settlement was concluded. My findings in respect of this area of enquiry may be summarised as follows:

- The opportunity to take up non-financial benefits was always re-iterated at the point at which offers were accepted
- Where applicants were legally represented, their Solicitors were of course aware in any event of the availability of non-financial benefits
- Where applicants were litigants in person it was evident that much care was taken to ensure that they were also made fully aware of the suite of opportunities available for non-financial redress
- there are 2 examples of delay in sending out letters of apology, which apparently caused upset to the applicants in question (both of whom had legal representation): the reason for the delay (possibly administrative delay by Lambeth) is not clear, but in both instances the problem was picked up and addressed by Kennedys chasing Lambeth and by issuing further apologies in respect of the delay.

9. **Observations in respect of offers made:** the assessment of quantum with reference to the tariff bands requires the exercise of discretion within a potential range and is not a binary process. In common with the assessment of damages for personal injury at common law there will necessarily be an objectively reasonable range within which a particular award might lie:

- Settlement in the cohort of claims under review was invariably achieved by a willingness on both sides to be flexible and understand that a wide margin for interpretation existed and that adopting a middle ground approach was usually the best solution: this is one significant advantage of applicants having legal representation
- Where applicants were litigants in person, assessments appear to have been made at the higher end of the reasonable parameters for settlement and file handlers clearly had in mind the need to be fair
- In most cases it was necessary to make increased offers after an initial offer had been made, not necessarily because the claims had been undervalued at the outset, but because: **(a)** some applicants requested pre-medical offers before the evidence had crystallised; and because **(b)**

the evidence generally evolved anyway as the claims progressed, with applicants providing more detailed information and more commentary as the process unfolded

- The files document the analysis behind all offers made and demonstrate how they were arrived at with reference to the tariff bands
- It is therefore possible to understand the basis upon which quantum has been assessed and, where appropriate reassessed, with reference to the medical and other evidence and the tariff bands
- Pre-medical offers were made in some cases where the value was judged likely to be less than £30,000, but only where the applicant had indicated that this approach was welcome
- In some cases with a likely higher value, pre-medical offers were made in excess of the £30,000 threshold, usually where the applicant had decided not to opt for a medical examination and always where he/she had invited such an offer
- All offers were made with the caveat that the applicant was welcome to provide further evidence or submissions if he/she considered that any points had been overlooked
- Where the parties were still not in the same ballpark after further discussion and exhaustive investigation, the applicant would be invited to utilise the appeal procedure, although this outcome was not pursued in any of the cases presently under review
- Where lengthy discussion had not achieved resolution, but where the parties were not significantly apart in their valuations, Lambeth's approach was usually to move to the middle ground to facilitate settlement on a commercial basis, thereby saving unnecessary further expenditure e.g. on medical reports, disclosure, the expense of collating chronologies etc
- There were several settlements above the Scheme limit, for example cases **902568**, **885215** and **908425** at £141,000, £129,000 and £131,100 respectively, all of which were justified on the evidence. It would have been pointless and expensive to require these claims to continue as common law claims considering the costs benefits of the Scheme
- Otherwise all the offers considered in this review were within an objectively reasonable range, with 2 cases (**904908** and **905912**) being at the higher end of an objectively reasonable

range and with the award in 2 a further cases (**887382** and **888722**) being arguably excessive. I was not able to identify any settlement awards that were below an objectively reasonable range.

10. **Band 4 awards:** my observations about this element of the awards are as follows:

- In the vast majority of cases the issue of the loss of educational and employment opportunity and the extent to which the abuse was attributable was addressed by the medical experts in their reports, with varying degrees of specificity
- In many cases the issue of the loss of educational and employment opportunity and the association of such disadvantage with the abuse was clear cut
- In a minority of cases it was more difficult to associate any disadvantage with the abuse and the picture was often complicated by histories of abuse in non-Lambeth related settings
- Nonetheless, in all of the cases where this issue was relevant, resolution was achieved by discussion and negotiation
- This picture reflects the pattern seen in common law litigation where claims under this head of loss often defy logical analysis and will be dealt with by the Court doing its best to balance the evidence to achieve an objectively fair result.

11. **The evidence provided by the applicants:** the evidence provided by the applicants was inevitably anecdotal and there were significant variations in the quality and detail of the accounts given by the applicants. It was also common for sketchy detail of the abuse to be provided in the first instance, then to be supplemented at a later date by further statements or correspondence from Solicitors.

There was a clear recognition by the file handlers that the evidence presented in support of applications might not always be as complete in the first instance as it might become on further reflection. In the vast majority of cases additional evidence was presented in a piecemeal fashion

further down the line and the file handlers would then simply undertake a reassessment of quantum based on the new evidence. The most common vehicle for the introduction of new or more detailed evidence was within the medical reports, which is not surprising considering that these reports would involve consultations of up to 2 hours in duration.

Where offers were made but not accepted, the file handlers always pointed out in correspondence that they would be happy to consider any additional evidence or submissions.

There was no real difference in the quality of evidence provided by litigants in person as opposed to applicants who were represented.

12. **The approach generally to the quantification of the claims:** the Scheme is an alternative to litigation at common law and sets an evidential threshold, which makes it inevitable that some differences of opinion will arise. The correspondence and telephone discussions between the parties around the quantification issues were, without exception, conducted on a co-operative basis. The file handlers always made it clear they would be happy to reconsider any offers/counter-offers upon receipt of additional evidence and in many instances, the provision of further evidence did result in higher offers being made.

The 3 main reasons for offers being increased from their initial starting points was the provision of further evidence which suggested:

- (i) A greater duration/frequency/severity of abuse than previously indicated;
- (ii) Specific psychological effects, whereas initial accounts may have omitted to mention such information; and
- (iii) That other periods in non-Lambeth care institutions had not in fact been contributory to the overall damage.

13. **The significance of legal representation:** the vast majority of applicants had the benefit of legal representation and it can be reasonably assumed that offers were only accepted in accordance with appropriate legal advice. The correspondence from Solicitors acting for applicants clarifies that

instructions were taken in respect of all offers made. Where applicants were not represented they were required to sign disclaimers indicating that they understood their entitlement to independent legal advice and that settlement was in full and final settlement.

14. **Applicants seeking to renege on settlement agreements:** in one instance, an applicant (who had legal representation) changed her mind after accepting a pre-medical offer and stated that her intention was to proceed to a medical examination after all. After due consideration Lambeth permitted her to revoke her decision and a medical examination was undertaken, which resulted in a marginal increase from the pre-medical offer of several thousand pounds.
15. **The level of offers/settlements:** on my analysis the vast majority of the settlements were within an objectively reasonable range based on the information provided by the applicants and obtained through the disclosure process. The tariffs are not susceptible to precise definition and, in common with the assessment of damages in any action for personal injury at common law, the ultimate “appropriate” figure will always fall within a bracket and sometimes within a relatively wide bracket. I also identified several examples of offers that were arguably too high, although still within an objectively reasonable range, although these offers were recognised as such by Lambeth at the time and were made at the “higher end” for various reasons as hereinbefore set out e.g. splitting the difference to facilitate settlement; making a higher offer notwithstanding inconsistencies in the applicant’s account of the abuse and its effects; and making offers to the estates of deceased survivors based on reasonable assumptions, but without insisting on any further investigation with reference to records.
16. **Litigants in person:** the communications between and interaction of the file handlers with the cohort of litigants in person is well documented and the following points should be noted:
 - All litigants in person were repeatedly informed that they were entitled to access to their own independent legal advice paid for by Lambeth
 - A number of applicants who started the claims process without legal representation did in fact engage Solicitors after submitting their applications

- All were given careful explanations of the working of the Scheme process and all appeared to understand what they were being told
- All were told there were no time limits and that they should take as much time as required to present their claims and/or consider offers
- All were told they were at liberty to introduce further evidence and make any counter-offers they saw fit
- Telephone discussions were undertaken with patience and sensitivity and were recorded in detail
- All correspondence and enquiries were responded to promptly with a view to avoiding unnecessary distress in the process
- The file handlers were clearly aware of their professional duty to ensure that no advantage was gained by reason of an applicant being a litigant in person
- All of these settlements fell within or above an objectively reasonable range of assessment.

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Dated this 8th day of July 2020