



**The Forum of Complex Injury
Solicitors (FOCIS)
Response to the Scottish
Government's consultation:
"Financial Redress for Historical
Child Abuse in Care"**

About Us

FOCIS members act for seriously injured Claimants with complex personal injury and clinical negligence claims, including group actions. The objectives of FOCIS are to:-

1. Promote high standards of representation of Claimant personal injury and medical negligence clients,
2. Share knowledge and information among members of the Forum,
3. Further better understanding in the wider community of issues which arise for those who suffer serious injury,
4. Use members' expertise to promote improvements to the legal process and to inform debate,
5. Develop fellowship among members.

See further www.focis.org.uk.

Membership of FOCIS is intended to be at the most senior level of the profession, currently standing at 22 members. The only formal requirement for membership of FOCIS is that members should have achieved a pre-eminence in their personal injury field. Seven of the past presidents of APIL are members or Emeritus members of FOCIS. Firms represented by FOCIS members include:

Anthony Gold	Hugh James
Atherton Godfrey	Irwin Mitchell
Ashtons	Kingsley Napley
Balfour + Manson	Leigh Day
Bolt Burdon Kemp	Osbornes
Dean Wilson	Potter Rees Dolan
Digby Brown	Prince Evans
Fieldfisher	Rix & Kay
Fletchers	Stewarts
Freeths	Thompsons NI
Hodge Jones & Allen	

FOCIS members act for seriously injured Claimants with complex personal injury and clinical negligence claims. In line with the remit of our organisation, we restrict our responses relating to our members experience, practices and procedures relating to complex injury claims only. We will defer to others to respond on the impact relating to other classes of case.

Endorsement

FOCIS endorses and supports the response to this consultation submitted by one of our members, Kim Leslie of Digby Brown LLP.

Some of our English members have had experience of representing clients who have applied through redress schemes operating south of the border, in particular the Lambeth Children's Homes Redress Scheme and the Manchester City Football Club scheme. We hope that our experience in so doing will assist the Scottish Government in making a decision on its own redress scheme for children in care.

Redress schemes are generally a very good idea. They allow survivors to obtain compensation where their cases have failed or are unlikely to be successful in the civil courts. The reasons for this are many-fold, such as:

- The evidence may not be cogent enough to prove the abuse on the balance of probabilities,
- Medical causation may be problematic,
- In England and Wales, the claim may be significantly out of time,
- The individual defendant may be dead or otherwise have insufficient funds to satisfy a claim for damages,
- The institutional defendant may have closed down and it may be impossible to trace an insurance policy which would have covered them,
- If the abuser was a director of the company, any insurer would not be obliged to cover the institution (KR & others v Royal & Sun Alliance PLC [2006] EWCA Civ 1454)
- Clients are likely to be vulnerable and some will feel unable to cope with pursuing litigation.

Redress schemes then are an important tool in widening access to justice. However they are also a compromise and /or last resort for claimants and they often pay less in compensation than a civil court would award in damages, being less tailored to a claimant's individual needs and circumstances.

It is vital in our view that any redress scheme should exist to expand the choice for survivors, and not restrict that choice. So claimants should retain the right to litigate their claim through the civil courts. The prohibition on double recovery of damages should be preserved, so that any claimant who was awarded compensation through a redress scheme, and then who goes on to successfully obtain a damages award through the courts, then they would have to reimburse the scheme.

Abuse ultimately is about power and control. Victims and survivors should be empowered to choose to pursue a claim either through a redress scheme or a civil court (or both).