



THE SCHEME

A Scheme to compensate persons who suffered harm/injury whilst in the care of Kerry CAMHS, as identified through the Maskey Report and who have been notified by CAMHS, in the period 1st July 2016 to 19th April 2021.

Introduction:

1. The Compensation Scheme (the Scheme) introduces a non-adversarial scheme of compensation for persons who suffered harm/injury whilst in the care of Kerry CAMHS in the period 1st July 2016 to 19th April 2021, as identified through the Maskey Report and who have been notified by CAMHS.
2. The Scheme will take the form of a binding mediation subject to a right of review of the mediator's determination by Mr. Justice Peter Kelly, retired President of the High Court (the Judge) and, where required by law, approval and ruling by the Court.
3. The Scheme will provide for the reasonable costs of applicants for legal representation and other admissible costs as provided for in paras. 21. and 22.

Objectives of the Scheme:

4. The Scheme is designed to provide full compensation, in accordance with para. 5, and agreed clinical supports to persons who suffered injury or harm as identified through the Maskey Report and who have been notified by CAMHS.
5. The Scheme will provide a non-adversarial mediation forum whereby applicants will receive full compensation in accordance with established principles of compensatory damages. Liability is not an issue for the purposes of the Scheme. Agreed clinical supports, where required, will also be provided to applicants.

Criteria for the Scheme

6. To qualify to receive compensation under the Scheme, an applicant must have suffered harm/injury whilst attending Kerry CAMHS in the period 1st July 2016 to 19th April 2021, as identified through the Maskey Report and who has been notified by CAMHS.

Detail of the Scheme

7. An applicant to the Scheme, through his/her solicitor, will write to the HSE indicating that he/she wishes to enter the Scheme.
8. The State Claims Agency (SCA) will administer the Scheme on behalf of the HSE (the Respondent).
9. The SCA, following receipt of an application to the Scheme, will make a payment on account to the applicant of €5,000 to assist in discharging any initial expense that may have been or will be incurred.
10. A panel of independent expert psychiatrists will be established under the Scheme to provide applicants with an independent expert clinical report where they wish to elect to commission such a report. The report of the independent psychiatrist will be accepted and not disputed by the respondent for the purposes of the Scheme.
11. Where an applicant does not wish to avail of using a panel independent expert to provide a report, the SCA reserves the right to commission an expert report from one of the panel's independent experts.
12. The applicant and the SCA may, where required, commission appropriate other experts' reports for the purposes of a mediation conference.
13. Following receipt of their experts' reports the applicant and the SCA will agree to the appointment of a mediator, drawn from a panel of mediators.
14. The mediator will convene a mediation conference to enable the parties and their legal teams to arrive at an agreed settlement and may, in advance, issue written directions to the parties.
15. In the event that the parties are unable to agree a settlement, the mediator will give a written, reasoned determination (on the basis of established principles of compensatory damages and on the basis of the papers furnished to the mediator) outlining the settlement award, and the parties shall be bound by such determination subject to paras. 16. and 18.
16. In the event that either party is dissatisfied with the decision of the mediator, the party is entitled to have that decision reviewed by the Judge and the parties shall be bound by his determination. The review will be paper based. A request for a review shall be lodged with the Judge within 28 days of the mediator's written determination on notice to the other party. The Judge may issue such directions as he feels relevant or necessary for the purposes of his review.
17. The mediator's determination, where not accepted by either of the parties, will be equivalent to and have the same effect as a lodgement for the purposes of costs of the review. In the event the Judge determines that the amount ordered is not altered in favour of the applicant party, the applicant party will bear the costs of the application unless the Judge determines otherwise for good reason. In the event of

the SCA requesting a review by the Judge and the Judge reducing the amount ordered the SCA will not seek its costs against the Applicant.

18. The Judge shall be entitled to interfere with the decision of the mediator only where he concludes that the mediator has made a decision that falls outside the range of what was reasonably open to him/her.
19. The applicant, where required by law, will have the settlement ruled by the Court. If the Court does not agree to rule an assessment, then the assessment shall be referred back to the mediator or the Judge as appropriate.
20. The compensation awarded to the applicant does not disqualify him/her from entitlement to ex-gratia clinical supports, where required, which will be made available by the HSE to such applicants. Neither will the compensation award be considered as means for the purposes of the award or retention of a medical card; however, the medical card and any ex-gratia clinical supports shall be taken into account in terms of the level of compensation awarded.
21. The aggregate legal costs to be incurred in relation to an assessment by the mediator, a review by the Judge (subject to para.17) and a subsequent court ruling, where required by law, shall be reasonable and proportionate, in accordance with party and party principles, and limited to what is necessary to arrive at a fair and appropriate assessment. No element of the legal costs payable to the applicant's solicitor shall include any work in connection with liability issues.
22. In the event that the parties do not agree the legal costs in any particular case, it is agreed that such cases will be referred to a Legal Costs Accountant (LCA), such LCA to be agreed upon by the parties for expert determination and the parties shall be bound by such determination in respect of any such case. In the event that the parties cannot agree the identity of the LCA, a LCA shall be nominated by the President of the Law Society. The costs of the LCA shall be borne equally by the parties and the parties shall also bear their own costs in relation to the expert determination process, in respect of costs.

**State Claims Agency,
April 2022.**