
Recognition, redress or renewed pain

*Experiences with the financial compensation arrangements
'Sexual abuse in residential care and foster homes'*



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Draft Summary

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S Summary

S.1 Objective and design of the study

In response to the Samson Committee report, the Dutch government defined two financial arrangements relating to compensation for damages sustained for victims of sexual abuse in residential youth care institutions and foster homes.¹ The objective of the arrangements is to offer recognition and redress to the victims of sexual abuse who were placed in state residential institutions or foster homes on the authority of the state after 1945, and who can no longer or are no longer willing to call anyone to account about the harm inflicted and the damages sustained. A financial indemnification may in part compensate the victims; however, the government is aware that money cannot repair the harm.

The Victim Policy Department of the Ministry of Security and Justice wanted to gain insight into the extent to which these financial arrangements have proved to be a satisfactory interpretation of the intended objective according to those involved, and therefore asked the Research and Documentation Centre (WODC) to supervise a study on this issue and to commission a research agency to conduct it.

Research agency Cebeon, in collaboration with Regioplan Policy Research, conducted a study on the experiences with the arrangements of those involved. Interviews were conducted with 47 victims who had submitted an application to the Criminal Injuries Compensation Fund and whose applications had been dealt with. The interviews took place in person or by telephone. In addition, interviews were held with eight institutions that had received insurance claims. Conversations have been held with mainly directors of residential institutions and (family) guardianship institutions. One individual and two group interviews were held with the Compensation Fund, the organisation that carries out the settlement of the claims. Finally, we also spoke with five team leaders of Victim Support Netherlands (which had a specific role in providing support to applicants who wished to make use of this service), the SKIP foundation (self-help organisation that represents the interests of victims of child sexual abuse in institutions and foster homes) and the sector organisation Youth Care Netherlands.

In addition, the extent of the use of the arrangements was mapped out on the basis of the application registration data of the Compensation Fund.

S.2 The financial arrangements explained

difference between both arrangements

Two financial arrangements were introduced, the Statute² (*Statuut*) and the Temporary Arrangement (*Tijdelijke Regeling*).³ The payments of both arrangements are all-in, which means that both immaterial and material damages are included. Previously received compensation payments are deducted from the granted compensation. Leniency was shown with regard to statutory rules and regulations, namely concerning limitation period, notification period and burden of proof.

¹ The initial duration was from 1 September 2013 to 31 December 2015. This period was extended up to and including 28 February 2017.

² In full: Statute for the out-of-court settlement of civil claims for compensation in connection with sexual abuse of minors in residential youth care institutions and foster homes.

³ In full: Temporary Arrangement payments child sexual abuse in institutions and foster homes.

Within the Statute, the institution responsible (or its legal successor) is held liable and has to pay the amount of the claim granted to the victim. Both sides are heard. The members of Youth Care Netherlands committed themselves to the Statute. The amounts to be paid vary from 5,000 to 100,000 euros per person. The burden of proof is more severe for the Statute than for the Temporary Arrangement. The Temporary Arrangement is a regulation that was established on behalf of victims who can no longer or are no longer willing to call anyone to account about the damages sustained, in order to offer them the possibility to nevertheless make an application. The compensation amounts granted to victims are paid by the government. The amounts to be paid vary from 1,000 to 35,000 euros per person.

scope of the arrangements

Both arrangements are intended for people who were minors at the time, and who, within the framework of their residence in a youth care institution or foster home, became victims of sexual abuse between 1 January 1945 and 31 December 2012. The institutions concerned are those that fell under provincial youth care (at the time the arrangements came into force in 2013), those that offered secure youth care ('Youth Care Plus'), and juvenile correctional institutions or their legal predecessors or institutions that offered the same types of youth care at the time. This entails that sexual abuse in other institutions does *not* fall under the arrangements. Abuse in a foster home only falls under the arrangements if placement in the foster home occurred under government responsibility.

application procedures

The application procedures of both arrangements consist of various steps, in which victims must make a decision, namely: they must choose between the two arrangements, decide whether or not to involve support (the government offers the support of Victim Care Netherlands), whether or not to fill in the application in which the abuse narrative must be put into words, whether or not to gather evidence and – in case the Compensation Fund asks for it – whether or not to supplement the application and the evidence. Moreover, as part of the Statute procedure, a hearing takes place in which the victim must recount his story verbally before the chambers (*Raadkamer Statuut*) and (in principle) also before the accused institution. The Temporary Arrangement procedure does not include a hearing; it is completed in writing and – if desired – partly by telephone.

It is possible to lodge an objection or an appeal to a decision within the framework of the Temporary Arrangement or to take one's case to a higher court. A decision within the framework of the Statute is binding for both parties (victim and institution). None of the two arrangements grants full acquittal, which means that the victim retains the possibility to hold the accused liable by means of civil proceedings.

institutions

Institutions have two roles in the arrangements: 'information provider' and 'defendant'. In both arrangements, they provide information to victims or to the Compensation Fund. Secondly, in the Statute procedure only, they are held liable for the harm inflicted. This liability is based on the strict liability an employer has for his employee's unlawful conduct. This means that institutions must submit a statement of defence, attend a hearing and (in case the application is granted) pay the compensation.

S.3 Number of appeals to financial arrangements

applications and grants

832 applications were submitted⁴, including 238 on the basis of the Statute (29%) and 594 on the basis of the Temporary Arrangement (71%). 701 applications were decided on, 530 of which (or 76%) were granted. The grant percentage of the Temporary Agreement is higher (81%) than that of the Statute (59%). The grant percentage of the applications relating to abuse in foster homes is higher (85%) than that of applications relating to abuse in institutions (63%).

Reasons for rejection are mainly related to the fact that the institution where the abuse took place did not fall within the scope of the arrangements, that there was insufficient circumstantial evidence or that 'factual knowledge' (only relevant to the Statute) could not be proved.

Objections were lodged to 69 decisions within the framework of the Temporary Arrangement (13% of the applications that were decided). As far as decided, more than half of the objections were declared well-founded.

The average lead time from the first submission to the decision was 9 months. Positive decisions took place after an average of 8 months; rejections after an average of 12 months. The average lead time of Statute applications is approximately twice as long as that of Temporary Arrangement applications, namely 14 months and 7 months respectively.

granted amounts

The total of granted amounts (until early February 2017) is 9.5 million euros. 4.8 million euros of which was paid by institutions for applications within the framework of the Statute and 4.7 million euros by the government for applications within the framework of the Temporary Arrangement. The average amount paid per granted application is 18,300 euros, with a higher average for granted applications within the framework of the Statute (54,400 euros) than for those based on the Temporary Arrangement (10,900 euros).

S.4 Analysis

In this study, the experiences of the individual parties involved – victims, institutions and the Compensation Fund – have been portrayed. The three perspectives have been brought together to enable an analysis of the effects of the arrangements, by focusing on characteristics proved to be essential.

objective of the arrangements

The arrangements were developed with the aim to offer recognition and redress to victims. The aim was to offer *recognition* and *apologies* to individual victims and to combine this recognition with a financial compensation. 530 applications were granted. It can be said that for these applicants the arrangements indeed meant that the recognition and apologies were complemented by a financial compensation.

⁴ Situation on 3 February 2017.

A number of comments can be made with regard to this:

- In principle, apologies could only be offered if the institution responsible was contacted, consequently this only applied to applications within the framework of the Statute;
- Even when the opportunity arose to offer apologies, it turns out that this did not always happen;
- Not everyone experienced the financial payment as compensation. In these cases, applicants for instance indicated that the compensation was too low in relation to the harm inflicted and/or in relation to the practical and emotional efforts to submit the application. Some victims had ambivalent feelings about whether or not they felt recognised: on the one hand victims were glad to be recognised, on the other hand the result felt like an insult or trivialisation.

In addition, 24% of the applications were rejected. By completing the process, some of the applicants concerned received recognition (for example, during a hearing or in contact with the Compensation Fund or Victim Support Netherlands), but this does not apply to everyone. In any case, with regard to the rejections compensation is out of the question. For these applicants, the intended purpose was therefore not achieved. For them, secondary victimisation may have occurred, which is indeed the case according to victims' stories. A number of them have (again) had to seek psychological help. Some victims had the feeling that again people did not believe them or that the harm inflicted was dismissed as 'less important'.

Two arrangements side by side

The Statute was set up as the main arrangement, with civil proceedings and compensation payments comparable with the arrangement in the Roman Catholic Church. The Temporary Arrangement was intended as a safety net arrangement.

In practice, applications based on the Temporary Arrangement were submitted more often (2.5 times as many) than applications based on the Statute. This result can be interpreted in different ways:

- For a large number of applicants, the Temporary Arrangement enabled them to get a compensation if they could not or did not want to appeal to the Statute;
- The Temporary Arrangement, intended as safety net arrangement, in practice actually served as the main arrangement. On the information leaflet of Victim Support Netherlands and the Compensation Fund the Temporary Arrangement was mentioned first and the Statute second. Victims themselves also decided (possibly advised by others) to first start the less severe proceedings of the Temporary Arrangement and to consider afterwards whether or not to submit an application based on the Statute after all.

objection and appeal

It is not possible to object to or appeal against a decision on an application based on the Statute, however, under the Temporary Arrangement this is in fact possible. Under the Temporary Arrangement, some people objected to a rejection or a payment that, in their opinion, was too low.

There are victims and institutions who indicate that they would have liked to have the opportunity to object to or appeal against decisions based on the Statute. However, it is not known to what extent the possibility to object or appeal would have advantaged victims or institutions, and to what extent it would have led to further juridification of the procedure. Based on the study, no conclusion can be drawn.

amounts of compensation under the two arrangements

The maximum amount of compensation (100,000 euros) under the Statute is higher than that under the Temporary Arrangement (35,000 euros). In both arrangements rates are applied, that are based on the gravity of the abuse. The compensation payments are 'all-in' amounts for material and immaterial damages sustained.

From the point of view of victims, the difference in the level of compensation payments for comparable harm raises the question of justice. Under the Temporary Arrangement a lower amount is paid than under the Statute for the same degree of abuse. For example, if an institution no longer exists, the 'factual knowledge' cannot be proved, or if the applicant regards the Statute procedure as too demanding, a victim receives a lower amount of compensation. Victims perceive this as unfair because there is nothing they can do about the lack of evidence.

When granting compensation, 'full acquittal' is not required, which means that it remains possible for victims to claim further damage in other ways. Institutions fear this possibility because of the financial consequences, while for the most part they generously co-operated with the arrangement.

Some of the victims experienced working with rates as negative. To them it seems (if they are not granted the highest rate) as if their suffering is not fully recognised.

delineation between the arrangements

The arrangements only applied to residential youth care institutions that fell under the Act on Youth Care (until 1-1-2015; 'provincial youth care'), juvenile correctional institutions and state institutions. They did not apply to institutions that were financed from the Exceptional Medical Expenses Act (*Algemene Wet Bijzondere Ziektekosten*) or from the Care Insurance Act (*Zorgverzekeringswet*). With regard to foster homes, the arrangements were limited to children who were placed in foster homes under government responsibility. Due to these limitations, applications of victims with regard to whom there was no doubt that they were sexually abused as minors in institutions or foster homes, could still be rejected.

way of involvement of institutions

The institutions had two roles: on the one hand they had to help victims unlock information and they contributed to recognition and (under the Statute) could offer apologies, on the other hand they had to pay the compensation (only under the Statute). This combination of roles under the Statute put institutions in a predicament. Some of them indicated that the payment was at the expense of current care. This is a direct result of holding institutions individually liable. Both for victims who were confronted with a defensive attitude of the institution and institutions that felt compelled to adopt this attitude because it was in the interest of the institution, this turned out to be a painful situation.

An important factor is that many of the responsible institutions by now no longer exist and that legal successors were made liable, that can do little or nothing about it.

evidence

In old cases evidence is often hard to find or no longer exists. The laborious search for evidence was emotionally demanding and led to long lead times, which required a lot of perseverance of the victim. It turns out that for some people Victim Support Netherlands was an important stimulus to persevere. Nevertheless, a number of victims dropped out during the process. From this, the conclusion can be drawn that the burden of proof required from victims meant that the arrangement was particularly effective for the most self-reliant, resilient or well-supported victims.

'factual knowledge' criterion

In the Statute an extra criterion applies to cases in which the offender was not a staff member of the institution, but for instance a group member or foster father: the 'factual knowledge'. The institution was only held liable if it could be proved that the institution had been in the know of the abuse and had not

taken effective action. Proving factual knowledge turned out to be quite difficult, because it required registered reports of the abuse. With regard to abuse in institutions, sometimes circumstantial evidence could be obtained, because group members had reported abuse by the same person. With regard to abuse in foster homes this was hardly ever possible.

hearing

The hearing within the framework of the Statute contributed to the objective of the arrangements in two ways: the hearing offered victims the opportunity to (finally) be heard, and it enabled recognition and apologies. Victims, institutions, Victim Support Netherlands and the Compensation Fund have all indicated that this usually had a healing effect on victims.

However, the hearings did not always have a positive effect, namely when the institution:

- adopted a defensive (legal) attitude (in some cases even rebuffing the victim);
- was represented by more than one person (superior numbers);
- was represented by a lawyer.

funding of the payments

The compensation payments based on the Temporary Arrangement were funded by public means; payments based on the Statute were funded by the budget of the individual, accused institutions. In the opinion of all parties heard (victims, institutions and the Compensation Fund), the latter was the reason that some institutions adopted a defensive attitude. For institutions that were sympathetic and generous, it could also entail a serious blow to their finances.

execution by the Compensation Fund

The Compensation Fund is responsible for the execution of the arrangements. The chambers (*Raadkamer*) of the Compensation Fund are of the opinion that this appears to have created a better foundation than if a whole new organisation had been established. Nevertheless, applying the arrangements in practice demanded further discussion and elaboration of several of their aspects. The target group was new to the Compensation Fund and markedly more severely damaged than other victims they were familiar with. The chambers (*Raadkamer*) tried to adopt an understanding and generous attitude towards the victims and also demanded this from the institutions – insofar as they did not take this attitude of their own accord. This put them in a difficult position, because they were supposed to have an independent judgement and therefore to take into account the interest of the institution.

complexity of the arrangements

All interviewed parties regarded both arrangements as complex. In addition to applying the arrangements, explaining them was also difficult for the Compensation Fund. This complexity concerned various aspects of the arrangements, for instance the way to obtain evidence, determining the legal successor, the required elaborateness of recounting the abuse narrative, the delineations between the arrangements, and the two (partly different) procedures. The support provided by Victim Support Netherlands has been of great value with regard to this according to many interviewed victims who received help from Victim Support Netherlands.

Lead time and emotional weight of the process

The lead times of the applications are long. Long qualifying periods – victims are not in charge of – are emotionally demanding. The longer the application process takes, the longer the confrontation with the

past lasts, in particular when victims cannot influence the lead times themselves. This applies even more if consecutive applications are submitted (for the Statute and the Temporary Arrangement).

aftercare

The arrangements do not provide for aftercare, nor for (psychological) assistance during the application procedure. However, it turns out that there is a need for aftercare or assistance during the process. This need concerned psychological assistance, assistance with financial management (after considerable amounts were granted) or the possibility to have a talk afterwards, about the proceedings and the decision.

There are examples of initiatives experienced as valuable. For example, some institutions told victims during the hearings about what has been improved in institutions or they invited them to pay a visit to see for themselves how things are being done nowadays. There are also institutions that have offered help.

Another form of continuation is to involve victims in trainings offered to relief workers, for which they are invited as experience experts. In such cases, victims are offered the opportunity to contribute to the prevention or early detection of current sexual abuse of children.

S.5 Conclusion

The Samson Committee concludes that it is certain that sexual abuse happened to children placed by the government in out-of-home care in institutions or foster homes between 1945 and 2012. The committee formulated recommendations, for instance on giving recognition to the victims and with regard to apologies offered by the boards of institutions. The Samson Committee indicated that there are limitations with regard to potential financial compensation for victims, in particular the fact that the Compensation Fund is not allowed to deal with older cases (before 1973).

By means of two new financial arrangements, the government and Youth Care Netherlands wanted to fill this gap and thus contribute to recognition and redress for victims of sexual abuse in youth care institutions or foster homes from that period. In addition to offering apologies, the intention was to recognise that great harm was done to children who were placed in out-of-home care under their responsibility who became victims of sexual abuse.

The two arrangements concerned (Temporary Arrangement and Statute) were linked to existing procedures. The Temporary Arrangement was a variation on the regular scheme of the Compensation Fund. The Statute was a variation on civil proceedings. In spite of this connection, in essence the arrangements were new, and in fact no experience had been gained with them. Especially at the beginning, this led to a search that may have been underestimated by the parties involved in the development of the arrangements. In spite of the good intentions, retrospectively, doubts may be justified regarding some aspects of the arrangements from the perspective of the intended purpose, namely the achievement of recognition and redress for victims.

We have observed that for some victims the intended goal has been achieved: they are of the opinion that their suffering has been recognised and that they have also received some redress through the compensation granted. The meeting between the victim and the institution (under the Statute) and the support provided by Victim Support Netherlands (insofar as called in by the victim) seem to have contributed to the purpose.

However, for other victims the intended purpose of the arrangements has not been achieved. From the study, the following elements emerge indicating why the arrangements did not function optimally:

- The *scope* of the arrangements is limited, which meant that sexual abuse in certain institutions (and periods) was outside their range;
- The fact that victims *themselves* had to gather (circumstantial) evidence is an extra burden and proved to be a difficult task;
- In spite of the fact that the chambers (*Raadkamer Statuut*) did not doubt the occurrence of sexual abuse, in cases where there was *insufficient evidence* no compensation could be granted;
- The individual *financial liability* of institutions (under the Statute) in some cases led to a defensive attitude of the institutions, which led to painful confrontations for victims during hearings;
- The fact that *rates* were applied in the arrangements meant that the gravity of the harm had to be ‘weighed’ by the Compensation Fund. This turned out to be painful for some victims;
- Some elements of the arrangements turned out to be very complicated and therefore it was hard to apply and explain them, for instance, determining the *legal successor* and proving ‘*factual knowledge*’ (under the Statute);
- The fact that *two arrangements* existed side by side with different compensation amounts for the same degree of abuse was experienced as unjust;
- Interim care and *aftercare* were lacking, whereas victims did have a need for them.

In retrospect, it can be argued that when the arrangements were formulated not enough attention was paid to these elements.

Perhaps, the government and youth care can never completely adopt the right approach with regard to this issue; the harm inflicted is too severe and it is impossible to translate it into amounts of money. However, as indicated above, there are particular elements in the arrangements that have unnecessarily hindered the achievement of the intended objectives. Because of this – in addition to victims who obtained recognition and redress by the arrangements – there are also victims for whom the process of applying for compensation led to renewed pain.